Journal of the Senate

Number 21 **Friday, April 2, 1993**

CALL TO ORDER

The Senate was called to order by the President at 8:55 a.m. A quorum present—39:

Mr. President	Diaz-Balart	Jenne	Scott
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams
Dantzler	Holzendorf	Myers	

Excused: Senator Grogan

PRAYER

The following prayer was offered by the Rev. C. Curtis Hess, Pastor Emeritus, Central Christian Church, St. Petersburg:

Our Father and our God, we thank you and we praise you for being who you are—the creator and the sustainer of all that is and ever shall be.

We thank you for making us in your very own image, your likeness. We thank you and we praise you for revealing yourself to us in the word and in the flesh. You have revealed unto us by precept and example your purpose for our existence upon your planet earth.

Help us to understand our purpose is not to gratify the desires of our flesh, but to bring honor and glory to your name. So, we pray that your will for us may be done through us on earth just as your will is done in heaven.

We come confessing our sins, realizing that we so often fall short of your will for us. Too often, O Lord, we think only of ourselves and not of others. Too often we do our own will and forget your divine purpose for us. Too often we do others before they do us rather than doing unto others as we would have others do unto us. To put it straight, we so often sin and come short of what we could be and what we should be. We ask, yes we pray, for your forgiveness.

Thank you, dear Lord, for providing so bountifully for us. Thank you for allowing us to have positions of great responsibilities in the world. We thank you for the privilege of living in this beautiful State of Florida. We thank you that you have ordained our form of government. Your word tells us "The powers that be are ordained of God."

We are grateful that in your providence you have made it possible for men and women of integrity to serve in places of leadership in this august body.

We pray for our Governor, Lawton Chiles. We pray for every member of this legislature and especially for the members of this upper house of Senators. Help them to understand that they are not up here just because they have "won an election"—rather they are up here because you put them here. . . not just to seek things for themselves and their constituents, but to seek your divine will as to what is best for all the people of the great State of Florida.

Lord, our needs are so great, yet our resources seem to be so small. So help us to seek your divine wisdom in every decision this body makes this day.

We pray for our President, Bill Clinton. We pray for all of the elected leaders in our federal government. We pray for our troops involved in their errand of mercy in Somolia and for others who are serving in the troubled places of our world.

Grant wisdom to all who are in this assembly today and may "the words of their mouth and the meditations of their heart be acceptable in your sight, O Lord, our strength and our redeemer." We pray in the strong name of him who loved us and gave himself for us. Amen

PLEDGE

Senate Page, Kelli Murray, of Bradenton led the Senate in the pledge of allegiance to the flag of the United States of America.

MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Jennings, by two-thirds vote **SB 1068** was withdrawn from the Committee on Judiciary, and by two-thirds vote, **SB 1068, CS for SB 1612** and **SB 360** were placed on the Special Order Calendar.

On motions by Senator Scott, by two-thirds vote **Senate Bills 564, 830, 982, CS for SB 1534, CS for SB 1898, CS for SB 2102** and **CS for SB 2218** were withdrawn from the Committee on Appropriations.

On motions by Senator Scott, by two-thirds vote **HB 2425, CS for SB 60, CS for SB 330, SB 1620** and **SB 2182** were withdrawn from the Committee on Appropriations.

MOTIONS

On motions by Senator Jennings, by two-thirds vote the following bills were placed on the Special Order Calendar: **SB 564, CS for SB 744** and **CS for SB 2102.**

On motion by Senator Meadows, by two-thirds vote **SB 1548** was placed on the Special Order Calendar.

EXECUTIVE BUSINESS

The Honorable Ander Crenshaw April 2, 1993
President, The Florida Senate

Dear Mr. President:

The following executive appointments were referred to the Senate Committee on Executive Business, Ethics and Elections for action pursuant to Rule 12.7(a) of the Rules of the Florida Senate:

Office and Appointment		*For Term Ending*
Greater Orlando Aviation Authority		
Appointees:	Hattaway, Robert T.	04/16/96
	Ritch, John B.	04/16/96
Florida Citrus Commission		
Appointees:	Austin, George H.	05/31/96
	McPherson, Rex V. II	05/31/96
	Sorrells, Howard E.	05/31/96
Hillsborough County Civil Service Board		
Appointees:	Francisque-Paul, Yveline M.	07/02/95
	Sanchez, Carmen	07/02/95
Board of Clinical Laboratory Personnel		
Appointees:	Barr, Norris H.	10/31/96
	Graham, Eleanore	10/31/95
	Krothapalli, Swarna	10/31/94
	Malgerstorfe, Luisa Marianna	10/31/96
	Mavros, George S.	10/31/95

Office and Appointment		*For Term Ending*
	Warden, Beverly A.	10/31/94
Board of Trustees of Edison Community College		
Appointees:	Kelly, Ann Johnson	05/31/93
	Taylor, Charles E., Jr.	05/31/96
Board of Trustees of Manatee Community College		
Appointee:	Brown, Gwendolyn Y.	05/31/93
Board of Trustees of North Florida Junior College		
Appointee:	Eade, Dale H.	05/31/95
Board of Trustees of Okaloosa-Walton Community College		
Appointee:	Hill, Walter B. (Mike)	05/31/93
Board of Trustees of Pasco-Hernando Community College		
Appointee:	Davis, Mitchell, Jr.	05/31/94
Board of Trustees of St. Petersburg Junior College		
Appointee:	Megaloudis, Demos A.	05/31/95
Construction Industry Licensing Board		
Appointees:	Adams, Robert J.	09/30/95
	Watts, Robert E., Jr.	09/30/92
Board of Cosmetology		
Appointee:	Fowler, Jerry Bernice	10/31/96
Board of Directors, Enterprise Florida, Inc.		
Appointees:	Candela, Hilario	07/01/94
	Donovan, Fred C.	07/01/95
Secretary of Environmental Regulation		
Appointee:	Wetherell, Virginia B.	Pleasure of Governor
Commission on Ethics		
Appointee:	Canton, Mirta P.	06/30/94
Tampa-Hillsborough County Expressway Authority		
Appointee:	Melo, O. E.	07/01/96
Florida State Fair Authority		
Appointees:	Bowman, William E., Jr.	06/30/95
	Clay, R. T., Sr.	06/30/95
	Duda, Elizabeth A.	06/30/95
Game and Fresh Water Fish Commission		
Appointee:	Hedgepeth, Quinton L.	01/06/98
Harbormaster for the Port of Fernandina		
Appointee:	Kavanaugh, William Hardee	12/05/93
Harbormaster for the Port of Ft. Pierce		
Appointee:	Ergle, Walter W.	09/26/93
Harbormaster for the Port of Key West		
Appointee:	Sweeting, Ulric E.	02/08/94
Health Care Board		
Appointee:	Martin, Joseph E.	09/30/93
Citrus County Hospital Board		
Appointees:	Henigar, Robert L.	07/07/96
	Jones, Floyd L.	07/05/93
Board of Trustees of South Lake County Hospital District		
Appointees:	McGriff, Dorothy C.	07/05/95
	Vander Meer, J. M.	07/05/96
Florida Housing Finance Agency		
Appointees:	Holland, William E. III	11/13/96
	Pitts, Otis, Jr.	11/13/92
		11/13/96
	Tompkins, Thomas N.	11/13/96
Florida Commission on Human Relations		
Appointees:	Penalver, Rafael A., Jr.	09/30/94
	Wagner, Deborah Hardin	09/30/95
State Board of Independent Colleges and Universities		
Appointees:	Jacob, Bruce R.	09/30/94
	O'Laughlin, Jeanne	09/30/94
	Rose, Jane A.	09/30/95
	Starling, Alan C.	09/30/95
State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools		
Appointee:	Miller, Paul G., Jr.	07/01/93
Florida International Affairs Commission		
Appointees:	Becker, Alan S.	07/09/94
	Kaiman, Marvin	07/09/96
	Salem, Richard J.	07/09/93
	Stahl, Angelique O.	07/09/92
Investment Advisory Council		
Appointees:	London, I. Edward	12/12/94
	Nast, Donald A.	12/12/95
	Stipanovich, C. Coleman	12/12/95
Secretary of Labor and Employment Security		
Appointee:	Gooding-Butler, Shirley O.	Pleasure of Governor
Board of Medicine		
Appointees:	Echevarria, Emilio D.	10/31/95
	Fenwick, Martin J.	10/31/95
Parole Commission		
Appointees:	Crockett, Maurice G.	11/01/97
	Latham, Gary D.	10/06/97
	Revell, E. Guy, Jr.	10/01/97
Board of Pilot Commissioners		
Appointee:	Brown, Warren T.	10/31/95
Postsecondary Education Planning Commission		
Appointees:	Bailey, Inez W.	02/04/94
	Berlin, Bret	08/31/93
Prepaid Postsecondary Education Expense Board		
Appointee:	Jones, Luther	06/30/95
Historic Tampa-Hillsborough County Preservation Board of Trustees		
Appointees:	Acosta, Delphin J.	06/30/95
	Baker, Andrew A.	06/30/94
	Bender, Shelby Jean Roberson	06/30/93
	Dunn, Hampton	06/30/93
	Fleischman, Sol J., Jr.	06/30/95
	Ham, Andrew M.	06/30/94
	Jennewein, Joan W.	06/30/94
	Rowe, H. Dean	06/30/95
	Venable, Glenda P.	06/30/93
Public Employees Relations Commission		
Appointee:	Anthony, Linoria	01/01/97
Florida Public Service Commission		
Appointee:	Johnson, Julia L.	01/01/97
Commission for Purchase from the Blind or Other Severely Handicapped		
Appointees:	Samuelson, Janet E.	10/01/96
	Thompson, William S.	10/01/95
Florida Real Estate Commission		
Appointees:	Steele, Jason	10/31/96
	Tangel-Rodriquez, Ana E.	10/31/96
Oklawaha Basin Recreation and Water Conservation and Control Authority in Lake County		
Appointee:	Modica, James V.	07/13/96
Board of Regents		
Appointees:	Lindsay, Elizabeth G.	01/01/98
	Pittman, Sean A.	09/01/93
	Watson, Welcom H.	01/01/96
East Central Florida Regional Planning Council, Region 6		
Appointee:	Kosmas, Suzanne M.	10/01/93
Central Florida Regional Planning Council, Region 7		

Office and Appointment		*For Term Ending*
Appointee:	Mason, Richard F.	10/01/95
Treasure Coast Regional Planning Council, Region 10		
Appointees:	Hartman, Peter	10/01/93
	Williams, Lorenzo	10/01/94
South Florida Regional Planning Council, Region 11		
Appointees:	Boyd, Charles W.	10/01/95
	Ciereszko, Ana Alejandre	10/01/92
		10/01/95
	Krinzman, Richard N.	10/01/95
	Simon, Lester A.	10/01/94
Board of Supervisors, Spaceport Florida Authority		
Appointees:	Busansky, Sheldon	06/30/96
	McCartney, Forrest S.	06/30/96
	Ogden, Tom	06/30/96
	Williamson, Kenneth E.	06/30/96
Board of Speech-Language Pathology and Audiology		
Appointee:	Craig, Robert J.	09/30/96
Jacksonville Sports Development Authority		
Appointee:	Nimnicht, E. A. II	09/30/95
Florida Commission on Tourism		
Appointees:	Benson, Hayward J., Jr.	06/30/96
	Cokes, Solomon A., Jr.	06/30/93
	Garfield, Randy A.	06/30/96
	Halloran, John F.	06/30/93
	Healan, Jack B., Jr.	06/30/96
	Kimball, Russell A., Jr.	06/30/94
	Litrenta, Edward J.	06/30/96
	Morgan, Dianna	06/30/94
	Mott, Austin L. III	06/30/96
	Nierenberg, Bruce	06/30/96
	Patronis, Jimmy T.	06/30/94
	Sanborn, John H.	06/30/93
	Staed, Thomas W.	06/30/93
Florida Transportation Commission		
Appointee:	Kirschenbaum, Malcolm R.	09/30/95
Unemployment Appeals Commission		
Appointee:	Harris, Charlie	06/30/96
Board of Veterinary Medicine		
Appointee:	Gomez-Sanchez, Elise P.	08/01/94
Governing Board of the St. Johns River Water Management District		
Appointee:	Roach, James Daniel	03/01/97
Governing Board of the Southwest Florida Water Management District		
Appointees:	Campo, Ramon F.	03/01/96
	Davis, Joe L., Jr.	03/01/96
	Eger, Rebecca	03/01/96
Manasota Basin Board of the Southwest Florida Water Management District		
Appointee:	Spencer, Robert N.	03/01/95
Peace River Basin Board of the Southwest Florida Water Management District		
Appointees:	Burtscher, John E.	03/01/95
	Satchel, Frank R., Jr.	03/01/94
Withlacoochee River Basin Board of the Southwest Florida Water Management District		
Appointee:	Vogel, John T.	03/01/94
Workers' Compensation Panel		
Appointee:	Urra, Marty	Pleasure of Governor

As required by Rule 12.7(a), the committee caused to be conducted an inquiry into the qualifications, experience, and general suitability of the above-named appointees for appointment to the offices indicated. In aid of such inquiry the committee held a public hearing at which members of the public were invited to attend and offer evidence concerning the qualifications, experience, and general suitability of each appointee.

After due consideration of the findings of such inquiry and the evidence adduced at the public hearings, the committee respectfully advises and recommends that:

(1) the executive appointments of the above-named appointees, to the office and for the term indicated, be confirmed by the Senate.

(2) Senate action on said appointments be taken prior to the adjournment of the 1993 Regular Session.

(3) there is no necessity known to the committee for the deliberations on said appointments to be held in executive session.

Respectfully submitted,
Charlie Crist, Chairman

On motion by Senator Crist, the report was adopted and the Senate confirmed the appointments identified in the foregoing report of the committee to the offices and for the terms indicated, in accordance with the recommendations of the committee. The vote was:

Yeas—38 Nays—None

The Honorable Ander Crenshaw April 2, 1993
President, The Florida Senate

Dear Mr. President:

The following executive appointments were referred to the Senate Committee on Executive Business, Ethics and Elections for action pursuant to Rule 12.7(a) of the Rules of the Florida Senate:

Office and Appointment		*For Term Ending*
Board of Acupuncture		
Appointee:	Yen, Johanna Chu	09/30/95
Clinical Laboratories Advisory Council		
Appointee:	Gonzalez, Mario S.	11/30/95
State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools		
Appointee:	Peoples, David L.	07/01/92
Acting Secretary of Labor and Employment Security		
Appointee:	Gooding-Butler, Shirley O.	Pleasure of Governor
Acting Secretary of the Department of Management Services		
Appointee:	Strong, Larry	Pleasure of Governor
Florida Real Estate Appraisal Board		
Appointee:	Tyre, Ralph Charles	05/20/94
North Central Florida Regional Planning Council, Region 3		
Appointees:	Sawyer, Tom	10/01/92
	Walker, Jane B.	10/01/92
Northeast Florida Regional Planning Council, Region 4		
Appointees:	Drawdy, R. Lee	10/01/92
	Waldron, Harry	10/01/92
Withlacoochee Regional Planning Council, Region 5		
Appointee:	Bronson, Thomas E.	10/01/92
East Central Florida Regional Planning Council, Region 6		
Appointees:	Augustine, Edward L.	10/01/92
	Barice, Carole Joy	10/01/92
Southwest Florida Regional Planning Council, Region 9		
Appointee:	Snipes, Carl B.	10/01/92
Florida Commission on Tourism		
Appointee:	Palacio, Luis	06/30/93
Governing Board of the Southwest Florida Water Management District		
Appointees:	Hamner, John T.	03/01/93
	Roehr, Rita J.	03/01/96

Office and Appointment	*For Term Ending*
Alafia River Basin Board of the Southwest Florida Water Management District	
Appointee: McNair, Theodore	03/01/93
Workers' Compensation Panel	
Appointee: Stiles, Mary Ann	Pleasure of Governor

The Senate Committee on Executive Business, Ethics and Elections has failed to consider these appointments because the committee finds that:

(a) the following terms have expired: Edward L. Augustine, Carol Joy Barice, Thomas E. Bronson, R. Lee Drawdy, John T. Hamner, Theodore McNair, David L. Peoples, Tom Sawyer, Carl B. Snipes, Harry Waldron, and Jane Walker;

(b) the following persons have resigned: Luis Palacio, effective 12/15/92; Rita J. Roehr, effective 4/6/92; Mary Ann Stiles, effective 3/18/93, Ralph Charles Tyre, effective 11/30/92; and Johanna Chu Yen, effective 3/1/93;

(c) the Clinical Laboratories Advisory Council has been abolished: Mario S. Gonzalez;

(d) the ACTING Secretary position of Larry Strong is no longer valid, as a Secretary has now been appointed; and

ACTING Secretary position of Shirley Gooding-Butler is no longer valid as she is now Secretary.

Based on the foregoing, the Senate Committee on Executive Business, Ethics and Elections respectfully advises and recommends that:

(1) the Senate fail to consider the appointments during the 1993 Regular Session; and

(2) the failure to consider the appointments be noted in the pages of the Journal of the Senate in accordance with s. 114.05(1)(e), Florida Statutes.

Respectfully submitted,
Charlie Crist, Chairman

On motion by Senator Crist, the report was adopted and the Senate failed to consider the appointments identified in the foregoing report of the committee to the offices and for the terms indicated, in accordance with the recommendations of the committee.

The Honorable Ander Crenshaw April 2, 1993
President of the Senate

RE: Suspension of:

DANIEL E. SCHRAMEK
Notary Public
State of Florida

Dear Mr. President:

The Committee on Executive Business, Ethics and Elections submits this final report on the matter of the suspension of Daniel E. Schramek.

By Executive Order Number 91-130, filed with the Secretary of State on May 16, 1991, the Honorable Lawton Chiles, as Governor, suspended Daniel E. Schramek as a Notary Public, State of Florida. The term of office for Mr. Schramek as a Notary Public, State of Florida, was from November 24, 1987 to November 23, 1991.

Executive Order Number 91-130, with information attached, charged that Daniel E. Schramek, while holding the aforesaid office, committed criminal violations of the laws of Florida, viz: (1) two counts of forgery in violation of sections 777.011 and 831.01, Florida Statutes; (2) two counts of uttering a forged instrument in violation of section 831.02, Florida Statutes; and (3) two counts of notary fraud in violation of section 117.02(2), Florida Statutes (1989). Executive Order 91-130 further stated that the Governor determined that the action of which Mr. Schramek was accused constituted a felony and that the office of Notary Public is within the purview of the suspension powers of the Governor, pursuant to Article IV, Section 7, Florida Constitution.

Criminal prosecution of Daniel E. Schramek was commenced in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, (Case No. CRC-90-06637CFANO), where he was charged with the violations described above, on April 19, 1990.

A notice of arraignment was filed on April 30, 1990, setting the arraignment for May 14, 1990. On May 3, 1990, Mr. Schramek filed, pro se, a motion to dismiss. On May 14, 1990, an amended defendant's motion to dismiss was filed, pro se; the arraignment was held; the defendant entered a plea of not guilty; and a pre-trial hearing was scheduled for July 16, 1990. On July 16, 1990, the trial date was set for August 28, 1990.

On July 17, 1990, the State filed a memorandum of law on the State's demand for a reciprocal discovery order and the alternative motion for sanctions against the defendant. Also on July 17, 1990, a notice of hearing was filed for July 23, 1990. On July 18, 1990, a notice of trial was filed, setting the trial for August 28, 1990.

On July 23, 1990, the defendant filed, pro se, his memorandum of law on his motion to dismiss. On July 23, 1990, the court entered an order granting the State's motion for discovery or the imposition of sanctions, and also entered an order denying the defendant's pro se motion to dismiss.

On August 2, 1990, the defendant waived his right to a speedy trial and a notice of hearing was filed setting a hearing date for August 3, 1990. On August 30, 1990, a notice of trial was filed setting a trial date of October 30, 1990.

On October 30, 1990, the defendant made pro se motions for immediate dismissal and for a continuance. On October 30, 1990, the court set a trial date for March 5, 1991, and entered orders denying defendant's pro se motions for immediate dismissal and for pro se counsel. The defendant made a motion pro se for mediation on December 4, 1990.

On February 14, 1991, the court entered orders denying defendant's pro se motions for rehearing and for mediation. On February 15, 1991, the defendant moved for a continuance.

On February 28, 1991, the court entered an order denying defendant's motion to suppress. On March 5, 1991, the trial was reset for April 16, 1991.

On March 25, 1991, the defendant moved to dismiss the case for selective and discriminatory prosecution and lack of prima facie evidence of guilt. The court set an April 8, 1991, hearing date on the defendant's motion to dismiss. On April 8, 1991, the court entered an order denying defendant's pro se motions to dismiss and to continue the trial. On April 10, 1991, the defendant filed a notice of appeal accompanied by an affidavit of indigency and moved for a stay. On April 11, 1991, the State made a motion to strike defendant's pro se motions to stay and to seek appellate review without payment of costs. On April 12, 1991, the defendant's petition for appellate review by common law certiorari was filed with the Second District Court of Appeal.

On April 15, 1991, the court entered an order granting the defendant's pro se motions to waive filing fees for certiorari and to proceed without payment of costs.

On April 16, 1991, the defendant moved for assistance by the court pro se and for continuance; the jury was sworn; the court entered an order denying defendant's motion to continue the trial; and the court entered an order granting defendant's motion for assistance by the court.

The trial proceeded from April 16 through April 18, 1991. On April 18, 1991, the jury found Mr. Schramek guilty as charged on all counts; judgment was entered; and he was placed on probation for two years, each count concurrent.

On May 16, 1991, the Second District Court of Appeal entered an order denying Mr. Schramek's (defendant's) motion for an emergency stay. On May 31, 1991, a judgment for fine and costs of $275 was entered.

On June 19, 1991, the defendant moved to seek appellate review without payment of costs. On June 25, 1991, the defendant moved for protective orders. A hearing was scheduled for July 8, 1991.

On June 26, 1991, the defendant made a motion for a temporary injunction which was denied. On June 28, 1991, the defendant moved to

seek appellate review without payment of costs. On July 5, 1991, the defendant made a motion for the imposition of sanctions. On July 8, 1991, the court entered an order denying the defendant's motion for a protective order.

On July 26, 1991, a true copy of the Second District Court of Appeal's order striking the defendant's notice of appeal and treating the defendant's motion for extension of time as a motion for rehearing was received by the circuit court.

On August 5, 1991, the court issued an order denying the defendant's motion for costs of appeal. On August 14, 1991, a true copy of the district court's order striking the defendant's notice of appeal was received by the circuit court. On August 16, 1991, a true copy of the district court's order denying the defendant's motion for rehearing was received.

On September 30, 1991, the defendant moved to seek appellate review without the payment of costs. On November 5, 1991, the district court issued an order denying defendant's motion to seek appellate review without the payment of costs.

On April 2, 1992, a true copy of the district court's order to the appellant that he pay filing fees within 15 days or his notice of appeal would be stricken was issued. On May 11, 1992, a true copy of the district court's order striking the defendant's notice of appeal was issued, the defendant not having complied with the April 2, 1992, order of the court that filing fees be paid.

On June 1, 1992, the defendant moved, pro se, for termination of probation. On July 24, 1992, the defendant's probation was terminated.

The Senate assumed jurisdiction of this matter on October 15, 1991, and this matter was referred to the Senate Committee on Executive Business, Ethics and Elections on October 16, 1991. Proceedings by this Committee were stayed, pursuant to Senate Rule 12.7(b), during the pendency of criminal prosecution in the trial court and the exhaustion of all appellate remedies. On December 8, 1992, the Florida Senate voted to waive Senate Rule 12.7(g) to insure that the Committee on Executive Business, Ethics and Elections would be allowed to continue suspension proceedings against Mr. Schramek.

Based upon the investigation of this Committee, it is the finding of this Committee that:

(1) Daniel E. Schramek was suspended from the office of Notary Public, State of Florida, on May 16, 1991;

(2) Daniel E. Schramek was found guilty by a jury of two counts of forgery in violation of sections 777.011 and 831.01, Florida Statutes; two counts of uttering a forged instrument in violation of section 831.02, Florida Statutes; and two counts of notary fraud in violation of section 117.09(2), Florida Statutes (1989); and that such acts constitute felonies under the laws of Florida;

(3) With the finding of guilt on April 18, 1991, on the felony counts described above, pursuant to Article VI, Section 4, Florida Constitution, Daniel E. Schramek become legally ineligible to hold public office;

(4) The Senate is authorized to remove from office any suspended official for the commission of a felony, pursuant to Article IV, Section 7, Florida Constitution;

(5) Daniel E. Schramek is deemed to have vacated his office upon conviction of a felony as defined in Article X, Section 10, Florida Constitution, pursuant to section 114.01(1)(j), Florida Statutes; and

(6) Daniel E. Schramek has not contested his suspension on his own behalf, nor shown any cause why the Senate should not take further action to remove him from office.

In view of the foregoing, it is the recommendation of this Committee that Daniel E. Schramek be removed from the office of Notary Public, State of Florida, effective May 16, 1991.

Respectfully submitted,
Charlie Crist, Chairman

On motion by Senator Crist, the foregoing report on the suspension of Daniel E. Schramek, Notary Public, State of Florida was adopted and the Senate removed Daniel E. Schramek from said office effective May 16, 1991. The vote was:

Yeas—35 Nays—None

BILLS ON THIRD READING

On motion by Senator Forman—

HB 1991—A bill to be entitled An act relating to taxation on jai alai games; creating s. 550.09511, F.S.; providing for taxes on jai alai; providing for an abandoned interest in a permit for nonpayment of taxes; providing for review and repeal; providing an effective date.

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

Yeas—32 Nays—1

On motion by Senator Forman—

HB 1993—A bill to be entitled An act relating to taxation on harness horse live races; creating s. 550.09512, F.S.; providing for harness horse taxes; providing for an abandoned interest in a permit for nonpayment of taxes; providing an effective date.

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

Yeas—32 Nays—1

SENATOR CHILDERS PRESIDING

On motion by Senator Kirkpatrick—

CS for SB's 2078 and 1608—A bill to be entitled An act relating to postsecondary education; amending s. 240.2601, F.S., relating to the State University System Facility Enhancement Challenge Grant Program; providing that a university may expend funds from private sources for certain fundraising activities; providing that the funds used for fundraising are eligible for matching funds if the facility project is initiated; amending s. 240.2605, F.S., relating to the Trust Fund for Major Gifts; providing for the trust fund to be administered by the Board of Regents as a part of the major gifts program; providing that moneys appropriated for the new donors program and the eminent scholars program shall be transferred into the Trust Fund for Major Gifts; providing that all real estate that is donated for the purposes of the major gifts program shall be administered under rules of the Board of Regents; providing for administration and for matching grants; requiring that foundations submit a report to the Board of Regents specifying the use of the proceeds of endowments established; deleting certain provisions relating to the trust fund; amending s. 240.207, F.S.; providing for a 2-year term of office for the student member of the Board of Regents; amending s. 240.253, F.S.; providing for confidentiality of certain personnel records of university direct-support organizations; amending s. 240.299, F.S.; providing for confidentiality of certain financial information of university direct-support organizations; amending s. 240.522, F.S.; providing for transfer of assets to the direct-support organization for the new state university in southwest Florida; amending s. 240.5285, F.S.; providing for a direct-support organization at the Broward County campus of Florida Atlantic University; prohibiting universities from assessing student fees not authorized by law; providing requirements for organizations that solicit financial support on university campuses; amending s. 215.16, F.S., relating to reductions in vacant positions; amending s. 240.209, F.S.; modifying provisions relating to the setting of fees by the Board of Regents; authorizing varying fee schedules and expenditures; requiring rules relating to financial aid fees; prescribing responsibilities of specified state universities for providing certain programs and services statewide; authorizing instruction in certain disciplines to be provided throughout the state; amending s. 240.2094, F.S.; authorizing an increase in salary rate under certain circumstances; amending s. 240.214, F.S.; revising data in the accountability process plan; requiring additional information in the accountability reports; amending s. 240.271, F.S.; revising provisions relating to funding based on enrollment; providing for the retention and expenditure of certain fee revenues; amending s. 240.272, F.S.; revising provisions relating to the carryforward and expenditure of certain funds; amending s. 240.278, F.S.; revising provisions relating to the required course program and the Quality Assurance Fund; amending ss. 240.531, 282.308, 447.203, F.S.; correcting cross-references; amending s. 240.311, F.S.; revising duties of the State Board of Community Colleges; providing

procedures for selection of presidents of community colleges; amending s. 240.319, F.S.; prescribing requirements for rules, procedures, and policies; amending s. 240.324, F.S.; revising community college planning relating to the accountability process; requiring automated student records systems; amending s. 240.325, F.S.; revising provisions relating to guidelines for community colleges; amending s. 240.331, F.S.; conforming provisions; amending s. 240.347, F.S.; revising provisions relating to the State Community College Program Fund; providing community college program requirements; amending s. 240.359, F.S.; providing for community college budgets and budget categories; amending s. 240.363, F.S.; providing requirements for purchases generated from external funding; repealing s. 240.257, F.S., relating to the Florida Endowment Trust Fund for Eminent Scholars Act; repealing s. 240.259, F.S., relating to the Trust Fund for New Donors; repealing ss. 240.349 and 240.361, F.S., relating to requirements for participation in the Community College Program Fund and budgets for community colleges; providing an effective date.

—as amended was read the third time by title.

The following amendments were offered to the bill as previously amended:

Senator Kirkpatrick moved the following amendment:

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

Section 1. Subsection (4) of section 240.2601, Florida Statutes, is amended to read:

240.2601 State University System Facility Enhancement Challenge Grant Program.—

(4)*(a)* *A* ~~No~~ project *may not* ~~shall~~ be initiated unless all private funds for planning, construction, and equipping the facility have been received and deposited in the trust fund and the state's share for the minimum amount of funds needed to begin the project has been appropriated by the Legislature. The Legislature may appropriate the state's matching funds in one or more fiscal years for the planning, construction, and equipping of an eligible facility.

(b) A university may expend funds from private sources to develop a prospectus, architectural schematics, and models for use in its effort to raise private funds for a facility. Additionally, any private funds expended for this purpose are eligible for state matching funds if the facility project is initiated.

Section 2. Section 240.2605, Florida Statutes, is amended to read:

240.2605 Trust Fund for Major Gifts.—

(1) There is established a Trust Fund for Major Gifts, to be divided into challenge grants to be administered by the Board of Regents *as the major gifts program.* The Legislature shall designate funds to be transferred to the trust fund from the General Revenue Fund. *All moneys appropriated for the new donors program and the eminent scholars program must be transferred into the trust fund.* All appropriated funds deposited into the trust fund shall be invested pursuant to rules of the Board of Regents. *All real property that is donated for the purposes of this program must be administered under rules of the Board of Regents.* Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any undisbursed balance remaining in the trust fund and interest income accruing to that portion of the trust fund not allocated shall remain in the trust fund and shall increase the total funds available for such challenge grants. If excess unencumbered funds exist in the Trust Fund for Eminent Scholars or the Trust Fund for Major Gifts, such funds may be transferred between such trust funds to be used for matching grants on the approved priority list.

(2) The Board of Regents shall specify the process for submission, documentation, and approval of requests for matching funds, accountability for endowments and proceeds of endowments, allocations to universities, restrictions on the use of the proceeds from endowments, and criteria used in determining the value of donations.

(3) The moneys appropriated to the trust fund shall be allocated by the Board of Regents to each state university and the New College, based on the amount of each donation and the restrictions applied to that donation. Donations for a specific purpose will be matched in the following manner:

(a) Each university that raises a contribution of at least $100,000 but no more than $600,000 from a private source will receive a matching grant equal to 50 percent of the private contribution.

(b) Each university that raises a contribution in excess of $600,000 but no more than $1 million from a private source will receive a matching grant equal to 70 percent of the private contribution.

(c) Each university that raises a contribution in excess of $1 million but no more than $1.5 million from a private source will receive a matching grant equal to 75 percent of the private contribution.

(d) Each university that raises a contribution in excess of $1.5 million but no more than $2 million from a private source will receive a matching grant equal to 80 percent of the private contribution.

(e) Each university that raises a contribution in excess of $2 million from a private source will receive a matching grant equal to 100 percent of the private contribution.

For the purpose of this schedule of matching private donations, a donation made by one individual that is divided among universities is considered one donation.

(4) A single donation made after July 1, 1993, for the establishment of a permanent endowment to be used at the discretion of the president of a university for improving the educational and academic programs of the university, which donation is not restricted for use by a specific college, department, discipline, or program and which donation is at least $100,000, will be matched at the rate of 70 percent of the private contribution. A donation for the establishment of a permanent endowment to be used at the discretion of the president of a university for improving the academic programs of the university, which donation is not restricted for use by a specific college, department, discipline, or program and which donation is in excess of $1 million will be matched pursuant to the provisions of subsection (3) for matching a restricted donation.

(5) Annually, each foundation shall submit to the Board of Regents a report specifying the use of the proceeds of endowments established pursuant to this section. The Board of Regents shall specify the format and content of the annual report.

(6) The Board of Regents shall specify conditions under which matching funds may be encumbered by a down payment and pledged schedule of future donations. Such conditions shall include conditions of default and reinstatement of defaulted pledges.

~~(2) The amount appropriated to the trust fund shall be allocated by the Board of Regents to each university on the basis of one $50,000 grant for each $100,000 contributed by private sources. Grants from the fund shall be allocated for contributions made after July 1, 1985. A contribution may also qualify for a matching grant if the donor makes an initial payment of $20,000 and provides a written pledge to pay the balance of the contribution within the subsequent 4 years in an annual amount equal to at least 25 percent of the written pledge. Payments on the balance shall be made on or before the anniversary date of the initial payment. No grant shall be allocated prior to collection of the total $100,000 contribution.~~

~~(3) Grants received pursuant to this section shall be placed in a restricted endowment by the university foundation. The interest income accrued to the endowment shall be expended exclusively for endowed professorships and scholarships other than athletic.~~

~~(4) The New College Foundation shall also establish a trust fund account for donors into which shall be deposited private, voluntary contributions and appropriated moneys appropriated thereto by the state. The foundation shall annually report to the board the amount of funds actually transferred to New College for programs identified in subsection (3).~~

Section 3. Section 240.253, Florida Statutes, is amended to read:

240.253 Personnel records.—The university may prescribe the content and custody of limited access records which the university *or the university's direct-support organizations* may maintain on its employees. Such records shall be limited to information reflecting evaluations of employee performance and shall be open to inspection only by the employee and by officials of the university *or direct-support organization* who are responsible for supervision of the employee. Such limited

access employee records are confidential and exempt from the provisions of s. 119.07(1). Except as required for use by the president in the discharge of his official responsibilities, the custodian of limited access employee records may release information from such records only upon authorization in writing from the employee or upon order of a court of competent jurisdiction. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 4. Subsection (4) of section 240.299, Florida Statutes, is amended to read:

240.299 Direct-support organizations; use of property; board of directors; audit; status.—

(4) ANNUAL AUDIT; *CONFIDENTIALITY.*—

(a) Each direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent certified public accountant in accordance with rules ~~to be~~ promulgated by the *Auditor General* ~~Board of Regents~~. The annual audit report shall include a management letter and shall be submitted to the Auditor General and the Board of Regents for review. The Board of Regents and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization.

(b) All information about a donor or a prospective donor which, if released, would identify that donor is exempt from the provisions of s. 119.07(1). Except for expenditure information, marketing strategies and campaign plans are exempt from the provisions of s. 119.07(1). In any case in which a direct-support organization seeks to sell real property, all appraisals and other reports relating to value, offers, and counteroffers must be in writing and are exempt from the provisions of s. 119.07(1) until execution of a valid option contract or written offer to sell has been conditionally accepted by the buyer, at which time the exemption shall expire. For the purpose of this paragraph, "option contract" means an agreement of the direct-support organization to sell real property subject to final approval by the buyer of the real property. ~~The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.~~ All *other* records of the organization *are public records for the purpose of chapter 119* ~~other than the auditor's report, management letter, and any supplemental data requested by the Board of Regents and the Auditor General shall be confidential and exempt from the provisions of s. 119.07(1)~~. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 5. Subsection (4) of section 240.522, Florida Statutes, 1992 Supplement, is amended to read:

240.522 Establishment of university in Southwest Florida.—

(4) Upon certification by the Board of Regents of a direct-support organization *pursuant to s. 240.299* to serve as the foundation of the state university in Southwest Florida, the Board of Regents, in conjunction with the University of South Florida Foundation, shall develop and implement a plan to transfer to the new foundation assets derived from donations intended for the enhancement of the Ft. Myers branch of the University of South Florida.

Section 6. Subsection (3) of section 240.5285, Florida Statutes, 1992 Supplement, is amended to read:

240.5285 Florida Atlantic University campuses.—

(3) The Board of Regents shall take all actions necessary to assure that Florida Atlantic University Broward and Florida Atlantic University Boca Raton are partners in the overall policymaking and academic governance structures of the university. Annual legislative budget requests for operations and facilities shall separately identify those funds requested for Florida Atlantic University Broward and Florida Atlantic University Boca Raton. Florida Atlantic University Broward and Florida Atlantic University Boca Raton shall have local management authority over their campus faculty, staff, and programs, but there shall be universitywide standards and processes for evaluating requests for promotion and tenure; there shall be complete transferability of credits and uniform programs across campuses; and colleges operating on multiple campuses shall have only one dean for each college. Florida Atlantic University Broward shall establish a faculty senate and may establish a direct-support organization *pursuant to s. 240.299.*

Section 7. Subsection (1) of section 240.207, Florida Statutes, is amended to read:

240.207 Board of Regents; appointment of members; qualifications and terms of office.—

(1) The Board of Regents shall consist of the Commissioner of Education and 12 citizens of this state who shall be selected from the state at large, representative of the geographical areas of the state; who shall have been residents and citizens thereof for a period of at least 10 years prior to their appointment (one of whom shall be a member registered as a full-time student in the State University System and who shall have been a resident of this state for at least 5 years prior to appointment in lieu of the 10 years required of other members); and who shall be appointed by the Governor, approved by three members of the Cabinet, and confirmed by the Senate. However, no appointee shall take office until after his appointment has been approved by three members of the Cabinet. The State Board of Education shall develop rules and procedures for review and approval of the appointees. Except for the Commissioner of Education and except for the full-time student member, who shall serve for *2 years* ~~1 year~~, the terms of office for the members of the Board of Regents shall be 6 years and until their successors are appointed and qualified, except in case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term, and except as in this section otherwise provided. No member shall be selected from any county to serve with any other member from the same county, except that not more than two members may be selected from a county which has a population in excess of 900,000, and with the exceptions of the student member, who shall be selected at large, and the Commissioner of Education. The Governor shall fill all vacancies, subject to the above approval and confirmation, that may at any time occur on the board.

Section 8. Paragraph (e) is added to subsection (5) of section 240.209, Florida Statutes, 1992 Supplement, to read:

240.209 Board of Regents; powers and duties.—

(5) The Board of Regents is responsible for:

(e) Adopting standards for the oversight, preparation, and assistance by faculty of graduate teaching assistants.

Section 9. Section 240.214, Florida Statutes, is amended to read:

240.214 State University System accountability process.—It is the intent of the Legislature that an accountability process be implemented which provides for the systematic, ongoing evaluation of quality and effectiveness in the State University System. It is further the intent of the Legislature that this accountability process monitor performance at the system level in each of the major areas of instruction, research, and public service, while recognizing the differing missions of each of the state universities. The accountability process shall provide for the adoption of systemwide performance standards and *measurable* performance goals for each standard identified through a collaborative effort involving the State University System, the Legislature, and the Governor's Office. The accountability process shall be implemented in incremental phases.~~, as follows:~~

~~(1) No later than December 31, 1991, and annually thereafter, the board shall submit to the Legislature an evaluation of the production of classroom contact hours at each university pursuant to s. 240.243. The evaluation must include a specific analysis of the contact-hour expectations resulting from the multiplication of the requirements of s. 240.243 by the instructional man-years generated through the legislative enrollment formula. The analysis must, in addition, include the contact-hour expectations resulting from the multiplication of 84 percent of the positions provided for undergraduate enhancement by the contact-hour requirements of s. 240.243. The board may also conduct this analysis using alternative formulas. The board shall recommend to the Legislature any appropriate modifications to this section, s. 240.243, or other current policies. These recommendations shall be included in the annual accountability report submitted pursuant to subsection (3). The reports developed pursuant to this section shall be designed in consultation with the Legislature.~~

(1)~~(2)~~ By December 1993, the Board of Regents shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a plan for the implementation of ~~the balance of~~ the State University System accountability process. The plan shall be designed in consultation with the Legislature, the Governor's Office, and

the Office of the Auditor General. The plan must provide a timetable that identifies the specific performance standards and related *measurable* goals to be implemented each year and must provide for full implementation of the accountability process by December 31, 1993. The plan must also identify the data files that will be used to substantiate achievement of performance goals. If it is necessary to develop new data files or modify existing files, the plan must describe the content of such files and include a sample file format. The plan must include, at a minimum, data on the following performance standards:

(a) Total student credit hours produced, by institution and by discipline;

(b) Total number of degrees awarded, by institution and by discipline;

(c) Total number of contact hours of instruction produced by faculty, by institution, rank, and course level;

(d) Pass rates on professional licensure examinations, by institution;

(e) Institutional quality as assessed by followup surveys of alumni, parents, clients, and employers, *analyses of employment information on former students and institution's national ranking*;

(f) Length of time and number of academic credits required to complete an academic degree, by institution and by degree;

(g) Enrollment, progression, retention, and graduation rates by race, *and* gender~~, and disability~~;

(h) Student course demand *and the process used for analyzing student course demand* ~~analysis~~; ~~and~~

(i) Classroom utilization*; and*.

(j) An annual evaluation, conducted in consultation with the Legislature, of the production of classroom contact hours at each university. The evaluation must include a specific analysis of the contact-hour expectations resulting from the standard of 32 contact hours for each instructional full-time equivalent position generated through the legislative enrollment formula. The analysis must, in addition, include the contact-hour expectations resulting from the multiplication of 84 percent of the positions provided for undergraduate enhancement by 32 contact hours. "Classroom contact hours" means a regularly scheduled 1-hour period of classroom activity in a course of instruction which has been approved by the university.

(2)~~(3)~~ *By* ~~Beginning~~ December *31 of each year* ~~1, 1992~~, the Board of Regents shall submit an annual accountability report providing information on the implementation of performance standards, *actions taken to improve university achievement of performance goals,* ~~*achievement of performance goals during the prior year*~~, and initiatives to be undertaken during the next year. The accountability reports shall be designed in consultation with the Governor's Office, the Office of the Auditor General, and the Legislature.

(3) Beginning with the December 1995 accountability report, the board shall include in the report an analysis of the administrator-to-faculty ratio, the percent of funds for administrative costs in the total budget, and the percent of funds in support programs compared to the percent of funds in instructional programs, including such other indicators of administrative cost as are necessary. The reports shall provide for the identification of administration and support activities of faculty.

(4) Beginning with the 1994 accountability report and periodically thereafter, the board shall include in the report an analysis of the cumulative debt of undergraduate and graduate students.

Section 10. Section 240.245, Florida Statutes, is amended to read:

240.245 Evaluations of faculty members~~; report~~.—

(1) ~~For the purpose of evaluating faculty members,~~ Each university shall adopt procedures for *evaluating faculty members based on assigned* ~~the assignment of~~ duties and responsibilities ~~to faculty members~~. These assigned duties or responsibilities shall be conveyed to each faculty member at the beginning of each academic term, in writing, by his departmental chairman or other appropriate university administrator making the assignment. In evaluating the competencies of a faculty member, primary assessment shall be in terms of his performance of the assigned duties and responsibilities, and such evaluation shall be given adequate consideration for the purpose of salary adjustments, promotions, reemployment, and tenure.

(2) A faculty member who is assigned full-time teaching duties ~~as provided by law~~ shall be rewarded with salary adjustments, promotions, reemployment, or tenure for meritorious teaching and other *related* scholarly activities *consistent with the salary adjustments, promotions, reemployment, or tenure of faculty assigned other duties* ~~related thereto~~. *A full-time teaching assignment shall be based on a minimum of 12 classroom contact hours or instructional equivalents.*

(3)~~(2)~~ *Each university shall adopt and the Board of Regents shall review* ~~The Board of Regents shall establish~~ criteria for evaluating ~~the quantity and quality of service to public schools by university~~ faculty members *for the purpose of* ~~and shall require consideration of this service in~~ promotion, tenure, and other reward measures. *The Board of Regents shall adopt procedures for ensuring* ~~Each university shall ensure~~ that the following policies are implemented:

(a) Flexible criteria for rewarding faculty members, consistent with the educational goals and objectives of the university, shall be established, which criteria shall include quality teaching, *research,* and service ~~to public schools~~ as major factors in determining salary adjustments, promotions, reemployment, or tenure.

(b) Measures shall be taken to increase the recognition, reinforcements, and rewards given quality teaching ~~and service to public schools~~. Such measures might include grants for professional development, curriculum improvement, and instructional innovation, as well as awards of varying kinds for meritorious teaching.

(c) The means of identifying and evaluating quality teachers ~~and outstanding service to public schools~~ shall be determined in accordance with established guidelines of the university.

(4) The Board of Regents shall evaluate and adopt, as appropriate, promotional opportunities for faculty in addition to the promotion through faculty ranks and to administrative positions. Opportunities for promotion to be evaluated shall include doctoral directive status, the assumption of responsibility for the undergraduate curriculum, and the supervision of graduate teaching assistants.

~~(3) The vice presidents for academic affairs for the nine state universities shall disseminate information to all faculty members which clearly states that service to public schools is one of the criteria used to determine salary adjustments, promotions, reemployment, and tenure for faculty members.~~

Section 11. The University of Florida, Florida State University, and Florida A&M University are responsible for providing, statewide, programs and services that are not provided by any of the other state universities. The activities of the cooperative extension service continue to be the responsibility of the Institute of Food and Agricultural Sciences of the University of Florida without regard to the geographical areas in which those activities occur. A state university that has capability in specific disciplines not currently being provided by another state university may offer instruction in those disciplines in any part of the state without prior approval.

Section 12. Subsections (5) and (6) of section 240.271, Florida Statutes, 1992 Supplement, are amended to read:

240.271 State University System; funding.—

(5)*(a)* ~~If the actual enrollment for any university is less than the planned enrollment by 0 to 5 percent for any fiscal year, the university shall receive full funding as allocated.~~ If the actual enrollment is less than planned enrollment by more than 5 percent for any 2 fiscal *years* ~~year~~, the ~~allocation of the~~ university *enrollment plan* ~~for instruction~~ shall be reduced ~~proportionately to the difference between 5 percent and the actual percentage reduction in enrollment for any fiscal year. All such reductions in university allocations shall be reallocated in the fourth quarter of the fiscal year to all universities on a proportional basis based on actual enrollment by level, not including actual enrollment in excess of planned enrollment.~~ If actual enrollment exceeds target enrollment, ~~there shall be no increased allocation, and~~ an explanation of the excess shall be provided with the next year's enrollment plan.

(6) The enrollment planning *and* ~~plus~~ program cost data established by this section shall be used as the basis for preparing the legislative budget requests.

Section 13. Section 240.272, Florida Statutes, is amended to read:

240.272 Carryforward of unexpended funds.—Notwithstanding the provisions of s. 216.301 to the contrary, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated *or provided pursuant to s. 240.209 or s. 240.271* for the State University System. Any unexpended funds in the current year operating budget, including unexpended student fee revenues, shall be carried forward by the Board of Regents for use by the university to which the funds were allocated.

(1) Such carryforward shall not exceed 5 percent of the total operating budget of the university. Funds carried forward pursuant to this section shall be expended for nonrecurring expenses *or for maintaining course offerings in the event of a revenue shortfall* as approved by the Board of Regents.

(2) No university shall be penalized in the allocation of subsequent funds as a result of the carryforward of an unexpended balance.

Section 14. Subsection (5) of section 240.531, Florida Statutes, is amended to read:

240.531 Establishment of educational research centers for child development.—

(5) Each educational research center for child development shall be funded by a portion of the Capital Improvement Trust Fund fee established by the Board of Regents pursuant to s. 240.209(3)*(k)*~~(h)~~. Each university which establishes a center shall receive a portion of such fees collected from the students enrolled at that university, usable only at that university, equal to 22.5 cents per student per credit hour taken per term, based on the summer term and fall and spring semesters. This allocation shall be used by the university only for the establishment and operation of a center as provided by this section and rules promulgated hereunder. Said allocation may be made only after all bond obligations required to be paid from such fees have been met.

Section 15. Subsection (2) of section 282.308, Florida Statutes, 1992 Supplement, is amended to read:

282.308 State University System information resources management plan.—

(2) The Chancellor of the Board of Regents shall review, recommend modifications to, and approve each university plan and shall provide a copy of each university's approved plan and a copy of the approved State University System Strategic Information Resources Management Plan to the commission by May 1 of each even-numbered year. Such plans are not subject to approval by the commission, but shall support and further the goals and objectives of the master plan required pursuant to s. 240.209(3)*(m)*~~(j)~~, the policies and objectives of the functional plan prepared by the Department of Education pursuant to s. 186.021, and the goals and policies of the State Strategic Plan for Information Resources Management specified in s. 282.3061.

Section 16. Subsection (2) of section 447.203, Florida Statutes, is amended to read:

447.203 Definitions.—As used in this part:

(2) "Public employer" or "employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees or Selected Professional Service employees, the Governor shall be deemed to be the public employer; and the Board of Regents shall be deemed to be the public employer with respect to all public employees within the State University System as provided in s. 240.209(3)*(i)*~~(f)~~, except that such employees shall have the right, in elections to be conducted at each university by the commission pursuant to its rules, to elect not to participate in collective bargaining. In the event that a majority of such voting employees at any university elect not to participate in collective bargaining, they shall be removed from the applicable Board of Regents bargaining unit. If, thereafter, by election conducted by the commission pursuant to its rules, a majority of such voting employees elect to participate in collective bargaining, they shall be included again in the applicable Board of Regents bargaining unit for such purpose. The board of trustees of a community college shall be deemed to be the public employer with respect to all employees of the community college. The district school board shall be deemed to be the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind shall be deemed to be the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind. The Board of Correctional Education shall be deemed to be the public employer with respect to all officers and employees of the Correctional Education School Authority.

Section 17. Subsections (3) and (7) are amended, paragraph (q) is added to subsection (3), and subsection (8) is added to s. 240.311, Florida Statutes, to read:

240.311 State Board of Community Colleges; powers and duties.—

(3) The State Board of Community Colleges shall:

(a) Provide for each community college to offer educational training and service programs designed to meet the needs of both students and the communities served.

(b) Provide, through rule, for the coordination of the state community college system.

(c) Review new associate degree or certificate programs for relationship to student *and workforce* demand; conduct periodic reviews of existing programs; *provide for implementation of recommendations resulting from program reviews;* and provide rules for termination of associate degree or certificate programs when excessive duplication exists *or when programs are not meeting minimum standards.*

(d) Ensure that the rules and procedures of community college district boards relating to admission to, enrollment in, employment in, and programs, services, functions, and activities of each college provide equal access and equal opportunity for all persons.

(e) Advise presidents of community colleges of the fiscal policies adopted by the Legislature and of their responsibilities to follow such policies.

(f) Specify, by rule, procedures to be used by the boards of trustees in the *annual* ~~periodic~~ evaluations of presidents and formally review the evaluations of presidents by the boards of trustees. *Such evaluation shall include consideration of the institutional accountability plan as required by law, and the equity accountability plan as required in s. 240.3355. By January 31 of each year the State Board of Community Colleges shall review the annual presidential evaluations from the previous year and provide any comments or recommendations concerning the process used, including any deficiencies, to the district board of trustees. The review shall specifically indicate whether or not the evaluations satisfied the requirements and procedure established in rule.*

(g) Recommend to the State Board of Education minimum standards for the operation of each community college as required in s. 240.325, which standards may include, but are not limited to, general qualifications of personnel, budgeting, accounting and financial procedures, educational programs, student admissions and services, *articulation,* and community services.

(h) Establish an effective information system which will provide *comprehensive* ~~composite~~ data about the community colleges and *ensure that all reports and studies required by statute, as well as other special analyses about the community colleges, are conducted and that such reports provide accurate and valid information about the community colleges and about the State Community College System as a whole. A component of this information system shall be data requirements related to the accountability outcome measures report required under s. 240.324. The State Board of Community Colleges may require other such reports from each community college to the State Board of Community Colleges on its progress towards meeting goals related to the Five-Year Master Plan as well as other oversight areas. Such reports shall be based upon information from the prior reporting year.* ~~assure that special analyses and studies about the colleges are conducted, as necessary, for provision of accurate and cost-effective information about the colleges and about the community college system as a whole. A component of this information system shall be an annual report from each community college to the State Board of Community Colleges on its progress towards meeting state and institutional quality goals. Such reports shall be based upon information from the prior academic year and shall contain:~~

~~1. An interpretation and analysis of student progress, including grade point average data and college-level academic skills test information.~~

~~2. Followup information, including the success of graduates in upper-division university programs or placement rates of graduates in related employment fields.~~

~~3. Information on the needs of the community college and its students.~~

~~4. Information on college salaries and fringe benefits.~~

~~5. A report on college travel expenditures.~~

~~6. A report on the expenditure of funds raised by community college direct-support organizations.~~

These reports ~~The annual report~~ shall be submitted to the State Board of Community Colleges ~~by November 1~~ each *reporting* ~~academic~~ year *as determined by the State Board of Community Colleges or as prescribed in law,* and *they* ~~it~~ shall clearly show the progress in each area from one year to the next year. The *reports* ~~report~~ shall be reproduced and made available at the least possible cost and may be issued in a series or as part of existing college publications.

(i) Encourage the colleges and the system as a whole to cooperate with other educational institutions and agencies and with all levels and agencies of government in the interest of effective utilization of all resources, programs, and services.

(j) Establish criteria for making recommendations relative to modifying district boundary lines and for making recommendations upon all proposals for the establishment of additional centers or campuses for community colleges.

(k) Develop a plan in cooperation with the local school district and the Department of Education to include any and all counties in a community college service district.

(l) Assess the need to consolidate any community colleges.

(m) Develop and adopt guidelines relating to salary and fringe benefit policies for community college administrators, including community college presidents.

(n) Develop and adopt guidelines relating to official travel by community college employees.

(o) Receive an annual administrative review of each community college.

1. Such review shall include, but is not limited to, the administrator-to-faculty ratio, the percent of funds for administrative costs in the total budget, and the percent of funds in support programs compared to the percent of funds in instructional programs and may include such other indicators of quality as are necessary.

2. The review shall also include all courses offered by a community college outside its district. Courses offered outside the home district which are not approved by the State Board of Community Colleges shall not be counted for funding purposes or to meet enrollment assignments.

(p) Encourage and support activities which promote and advance college and statewide direct-support organizations.

(q) Beginning September 1, 1993, in consultation with the community college presidents, develop a Five-Year Systemwide Master Plan which specifies measurable goals and objectives to be achieved within that 5-year period for the State Community College System. The master plan shall address, at a minimum, the accountability process and outcome measures pursuant to s. 240.324. The master plan and an interim status report, upon approval by the State Board of Community Colleges, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(7) The State Board of Community Colleges shall adopt rules and procedures to be followed by district boards of trustees for the recruitment, consideration, and selection process for presidents of the colleges. The rules or procedures shall address, at a minimum, the following: composition of a search committee that provides for membership representing the diversity of the community, faculty, students, and staff; the program mix of the colleges and priorities of the community and board; and a recruitment and consideration process that provides a candidate pool with ethnic and gender diversity appropriate for the college district. Upon selection of a president by a board of trustees, the board shall submit a report to the State Board of Community Colleges documenting compliance with this paragraph. ~~The State Board of Community Colleges must be notified of the appointment of presidents of community colleges.~~

(8) Provide for programs to train new appointees to district boards of trustees. Such programs shall include at a minimum a review of the duties, responsibilities, powers, and authority of the board as stipulated in Florida Statutes, administrative rules, and policies as adopted by the State Board of Education and the Legislature, annual reviews of training provided, including a list of the participating trustees and the program topics and participants.

Section 18. Section 240.312, Florida Statutes, is amended to read:

240.312 Community colleges; program review.—*The State Board of Community Colleges shall conduct* ~~Program~~ reviews for the community college system, *which* shall be coordinated with the Postsecondary Education Planning Commission every year. ~~Every major program shall be reviewed every 5 years or whenever the effectiveness or efficiency of a program is jeopardized.~~ Indicators of quality and criteria for the program reviews shall be defined. *The program review process shall include, but not be limited to, an annual report to each college indicating the following:*

(1) The academic performance of community college students enrolled in the state university system.

(2) The performance of occupational and professional programs in meeting the performance standards as defined in 239.233.

(3) Recommendations for additional evaluation and improvement.

(4) Requirements that district boards of trustees develop systematic plans to improve inadequate programs and expand programs that are increasingly in demand by students.

The board shall also conduct state level program reviews. These reviews shall focus on specific programs and must include an evaluation of workforce needs, faculty qualifications, student services, facilities and equipment, articulation and acceleration mechanisms, program content and length, costs, and success and retention of students. The board shall annually report to the district boards of trustees on the recommendations contained within the state level reviews. Within 1 year after approval of any review, the state board, and each district board of trustees, shall approve a plan to implement the recommendations required in this section. The results of these program reviews shall be tied to the budget request for the community college system.

Section 19. A new subsection (8) is added to section 240.313, Florida Statutes, to read:

240.313 Community college districts; establishment and organization of boards of trustees.—

(8) Trustees shall participate in a trustee training program approved by the State Board of Community Colleges as required in s. 240.311. New trustees shall participate in at least one training program within 1 year after the date of their appointment. The State Board of Community Colleges shall annually provide to the Governor and the Legislature lists of the trustees who participated in the training programs during the previous year.

Section 20. Paragraph (a) of subsection (3) of section 240.319, Florida Statutes, is amended to read:

240.319 Community college district boards of trustees; duties and powers.—

(3) Such rules, procedures, and policies for the boards of trustees include, but are not limited to, the following:

(a) Each board ~~of trustees~~ shall appoint, suspend, or remove the president of the community college. The Board of trustees *shall follow rules or procedures adopted by the State Board of Community Colleges to establish a process to recruit and consider qualified candidates for the position of president* ~~may appoint a search committee~~. Periodic evaluations of the president shall be conducted in accordance with the rules of the State Board of Community Colleges; and such evaluations shall be submitted to the State Board of Community Colleges for review.

Section 21. Subsection (1) of section 240.324, Florida Statutes, 1992 Supplement, is amended, subsections (2) and (3) are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to said section, to read:

240.324 Community college accountability process.—

(1) It is the intent of the Legislature that a management and accountability process be implemented which provides for the systematic, ongoing improvement and assessment of the improvement of the quality and efficiency of the State Community College System. Accordingly, the State Board of Community Colleges and the community college boards of trustees shall develop and implement a *system* plan to improve and evaluate the instructional and administrative efficiency and effectiveness of the State Community College System. *The community college district boards of trustees shall develop institutional plans to include measurable goals, and strategies which are consistent with the system plan. The system and college plans* ~~This plan~~ must address the following issues:

(a) Graduation rates of AA and AS degree-seeking students compared to first-time enrolled students seeking the associate degree.

(b) Minority student enrollment and retention rates.

(c) Student performance, including student performance rates on college level academic skills tests, mean grade-point averages for community college AA transfer students, and community college student performance on state licensure examinations.

(d) Job placement rates of community college vocational students.

(e) Student progression by admission status and program.

(f) Vocational accountability standards identified in s. 239.229.

(g) Other measures as identified by the Postsecondary Education Planning Commission and approved by the State Board of Community Colleges.

(2) In accordance with ss. 240.325(9) and 240.347(3)(c), each community college shall develop and maintain an automated student records system which includes data necessary to track individual community college students, produce records, and provide information for the systemwide student outcome reports pursuant to this section.

Section 22. Subsection (9) of section 240.325, Florida Statutes, is renumbered and amended, and new subsections (9), (11), and (12) are added to said section, to read:

240.325 Minimum standards, definitions, and guidelines for community colleges.—The State Board of Education shall prescribe minimum standards, definitions, and guidelines for community colleges which will assure quality education, systemwide coordination, and that the purposes of the community college are attained. Such guidelines may include, but are not limited to, the following areas:

(9) Development and maintenance of an institutional-level comprehensive automated student records system capable of including and tracking data on student enrollment, matriculation, and graduation pursuant to s. 240.324.

(10)~~(9)~~ *Other* reports, surveys, and information systems, including forms and dates of submission.

(11) Contracts with other institutions for the provision of instruction or for awarding of credit for prior instruction or experience.

(12) Articulation.

Section 23. Subsection (3) of section 240.331, Florida Statutes, is amended to read:

240.331 Community college direct-support organizations.—

(3) ANNUAL AUDIT.—Each direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent certified public accountant in accordance with rules to be promulgated by the district board of trustees. The annual audit report shall be submitted to the Auditor General and the board of trustees for review. The board of trustees and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. All records of the organization, other than ~~the information necessary for the annual report required by s. 240.311(3)(h)6. and~~ the auditor's report and supplemental data requested by the board of trustees and the Auditor General, shall be confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 24. Section 240.347, Florida Statutes, is amended to read:

240.347 State Community College Program Fund.—

(1) There is established a State Community College Program Fund. This fund shall comprise all appropriations made by the Legislature for the support of the current operating program and shall be apportioned and distributed to the community college districts of the state on the basis of procedures established by law and regulations of the State Board of Education and the State Board of Community Colleges. The annual apportionment for each community college district shall be distributed monthly in payments as nearly equal as possible.

(2) Each community college which receives an allocation from the state appropriations for the State Community College Program Fund shall maintain a community college program which at minimum:

(a) Meets the standards prescribed by the State Board of Education in accordance with s. 240.325.

(b) Effectively fulfills the mission of the community colleges in accordance with s. 240.301.

(c) Establishes and maintains an ongoing institutional accountability plan and process which addresses systemwide goals and outcomes pursuant to s. 240.324.

~~(3) Beginning with the 1985-1987 legislative budget request, the prior year's June 30 salary rate and adjusted expenditure data base for salaries and benefits shall be included in the budget request for the State Community College Program Fund within the following categories: "Instructional" with subcategories including "Faculty," "Nonfaculty," "Faculty Other Personal Services," and "Nonfaculty Other Personal Services"; and "Noninstructional" with subcategories including "Administrative," "Professional," "Nonprofessional," and "Noninstructional Other Personal Services." Within the foregoing categories and subcategories, the following shall be reported: salaries and employer contributions for retirement, social security, health insurance, life insurance, and other employer paid personnel benefits.~~

Section 25. Section 240.359, Florida Statutes, 1992 Supplement, is amended to read:

240.359 *Community college budgets and procedures* ~~Procedure~~ for determining state financial support; ~~and~~ annual apportionment ~~of state funds~~ to each community college district.—~~The procedure for determining state financial support and the annual apportionment to each community college district authorized to operate a community college under the provisions of s. 240.313 shall be as follows:~~

(1) BUDGETS FOR COMMUNITY COLLEGES.—The president of each community college shall recommend to the board of trustees a budget of income and expenditures at such time and in such form as the State Board of Community Colleges may prescribe. Upon approval of a budget by the board of trustees, such budget shall be transmitted to the State Board of Community Colleges and the Department of Education for review, approval, and transmittal to the Governor and Legislature. Rules of the State Board of Education shall prescribe procedures for effecting budget amendments subsequent to the final approval of a budget for a given year.

(2) BUDGET CATEGORIES FOR COMMUNITY COLLEGES.—The prior year's June 30 adjusted expenditure base for salaries and benefits shall be included in the budget request for the State Community College Program Fund within the following categories: "Instructional" with subcategories including "Faculty," "Nonfaculty," "Faculty Other Personal Services," and "Nonfaculty Other Personal Services"; and "Noninstructional" with subcategories including "Administrative," "Professional," "Nonprofessional," and "Noninstructional Other Personal Services." Within such categories and subcategories, the following shall be reported: salaries and employer contributions for retirement; social security; health insurance; life insurance; and other employer-paid personnel benefits.

(3)~~(1)~~ DETERMINING THE AMOUNT TO BE INCLUDED IN THE STATE COMMUNITY COLLEGE PROGRAM FUND FOR THE CURRENT OPERATING PROGRAM.—*The procedure for determining state financial support and the annual apportionment to each community college district authorized to operate a community college under the provisions of s. 240.313 shall be as follows:*

(a) The Department of Education shall determine annually from an analysis of operating costs, prepared in the manner prescribed by rules of the State Board of Education, the costs per full-time equivalent student served in courses and fields of study offered in community colleges. This information and current college operating budgets shall be submitted to the Executive Office of the Governor with the legislative budget request prior to each regular session of the Legislature.

(b) The allocation of funds for community colleges shall be based on advanced and professional disciplines, vocational program areas, compensatory programs, and adult elementary and secondary programs. The vocational program areas shall be further subdivided into postsecondary, postsecondary adult, and supplemental vocational program areas.

(c) The funding category of lifelong learning is for students enrolled pursuant to s. 239.301. A student shall also be reported as a lifelong learning student for his enrollment in any course that he has previously taken, unless it is a credit course in which he earned a grade of D or F.

(d) If an adult student has been determined to be a disabled student eligible for an approved educational program for disabled adults provided pursuant to s. 239.301 and rules of the State Board of Education and is enrolled in a class with curriculum frameworks developed for the program, state funding for that student shall be provided at a level double that of a student enrolled in a special adult general education program provided by a community college.

(e) The State Board of Education shall adopt rules to implement s. 9(d)(8)f., Art. XII of the State Constitution. These rules shall provide for the use of the funds available under s. 9(d)(8)f., Art. XII by an individual community college for operating expense in any fiscal year during which the State Board of Education has determined that all major capital outlay needs have been met. Highest priority for the use of these funds for purposes other than financing approved capital outlay projects shall be for the proper maintenance and repair of existing facilities for projects approved by the State Board of Education. However, in any fiscal year in which funds from this source are authorized for operating expense other than approved maintenance and repair projects, the allocation of community college program funds shall be reduced by an amount equal to the sum used for such operating expense for that community college that year, and that amount shall not be released or allocated among the other community colleges that year.

(4)~~(2)~~ DETERMINING THE AMOUNT TO BE INCLUDED FOR CAPITAL OUTLAY AND DEBT SERVICE.—The amount included for capital outlay and debt service shall be as determined and provided in s. 18, Art. XII of the State Constitution of 1885, as adopted by s. 9(d), Art. XII of the 1968 revised State Constitution and State Board of Education rules.

(5)~~(3)~~ DETERMINING THE APPORTIONMENT FROM STATE FUNDS.—

(a) By December 15 of each year, the Department of Education shall estimate the annual enrollment of each community college for the current fiscal year and for the 6 subsequent fiscal years. These estimates shall be based upon prior years' enrollments, upon the initial fall term enrollments for the current fiscal year for each college, and upon each college's estimated current enrollment and demographic changes in the respective community college districts.

(b) The apportionment to each community college from the Community College Program Fund shall be determined annually in the General Appropriations Act. In determining each college's apportionment, the Legislature shall consider the following components:

1. Base budget, which includes the state appropriation to the Community College Program Fund in the current year plus the related student matriculation and tuition fees assigned in the current General Appropriations Act.

2. The cost-to-continue allocation, which consists of incremental changes to the base budget, including salaries, price levels, and other related costs.

3. Enrollment workload adjustment, which shall be determined as follows:

a. The actual full-time equivalent enrollment for the prior year, as accepted or modified by the Legislature, shall be the assigned enrollment and the basis for allocating appropriated funds for enrollment workload. If the enrollment workload allocation to a college is determined to be less than zero, the reduction in allocation shall be implemented over a 2-year period.

b. The systemwide average direct instructional cost level of each program of study shall be used to calculate the enrollment workload adjustment. This amount, multiplied by a factor of 1.3, for support services shall be multiplied by the change in enrollment as determined in subsubparagraph a. From this amount, student matriculation and tuition fees generated by the change in assigned enrollment shall be deducted and the remaining amount shall be the state allocation to each college for enrollment workload.

c. Students enrolled in a recreation and leisure program and students enrolled in a lifelong learning program may not be counted as full-time equivalent enrollments for purposes of enrollment workload adjustments.

4. Operating costs of new facilities adjustments, which shall be provided, from funds available, for each new facility that is owned by the college and is recommended in accordance with s. 235.15.

5. New and improved program enhancements, which shall be determined by the Legislature.

Student fees in the base budget plus student fee revenues generated by increases in fee rates shall be deducted from the sum of the components determined in subparagraphs 1.-5. The amount remaining shall be the net annual state apportionment to each college.

(c) No community college shall commit funds for the employment of personnel or resources in excess of those required to continue the same level of support for either the previously approved enrollment or the revised enrollment, whichever is lower.

(d) The apportionment to each community college district for capital outlay and debt service shall be the amount determined in accordance with subsection *(3)*~~(2)~~. This amount, less any amount determined as necessary for administrative expense by the State Board of Education and any amount necessary for debt service on bonds issued by the State Board of Education, shall be transmitted to the community college district board of trustees to be expended in a manner prescribed by rules of the State Board of Education.

(e) Colleges shall seek to maintain an unencumbered fund balance of between 4 percent and 10 percent of the funds available in the current general fund of the operating budget. If the 10-percent upper level is exceeded for 2 consecutive years, the appropriation to the college in a succeeding fiscal year shall be reduced by the average of the excess of the fund balance over the 10 percent for the 2 years. In exceptional cases, when fund balances greater than 10 percent are necessary for a college, prior approval shall be obtained from the State Board of Community Colleges.

(f) Expenditures for apprenticeship programs shall be reported separately.

(6)~~(4)~~ EXPENDITURE OF ALLOCATED FUNDS.—Any funds allocated herein to any district for a public community college shall be expended only for the purpose of supporting that college.

(7)~~(5)~~ REPORT OF REMEDIAL EDUCATION.—Each community college shall report the volume and cost of remedial education activities as a separate item in its annual cost accounting system.

Section 26. Paragraph (b) of subsection (1) of section 240.115, Florida Statutes, is amended to read:

240.115 Articulation agreement; acceleration mechanisms.—

(1)

(b) Any student who transfers among postsecondary institutions that participate in the common course designation and numbering system *and are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools* shall be awarded credit by the receiving institution for courses satisfactorily completed by the student at the pre-

vious institutions if the courses are judged by the appropriate common course designation and numbering system faculty task force to be equivalent to courses offered at the receiving institution. The award of credit may be limited to courses that are entered in the common course designation and numbering system. Credits awarded pursuant to this subsection shall satisfy institutional requirements on the same basis as credits awarded to native students.

Section 27. Sections 240.243, 240.257, 240.259, 240.349, and 240.361, Florida Statutes, are repealed.

Section 28. This act shall take effect July 1, 1993.

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 postsecondary education; amending s. 240.2601, F.S., relating to the State University System Facility Enhancement Challenge Grant Program; providing that a university may expend funds from private sources for certain fundraising activities; providing that the funds used for fundraising are eligible for matching funds if the facility project is initiated; amending s. 240.2605, F.S., relating to the Trust Fund for Major Gifts; providing for the trust fund to be administered by the Board of Regents as a part of the major gifts program; providing that moneys appropriated for the new donors program and the eminent scholars program shall be transferred into the Trust Fund for Major Gifts; providing that all real estate that is donated for the purposes of the major gifts program shall be administered under rules of the Board of Regents; providing for administration and for matching grants; requiring that foundations submit a report to the Board of Regents specifying the use of the proceeds of endowments established; deleting certain provisions relating to the trust fund; amending s. 240.207, F.S.; providing for a 2-year term of office for the student member of the Board of Regents; amending s. 240.253, F.S.; providing for confidentiality of certain personnel records of university direct-support organizations; amending s. 240.299, F.S.; providing for confidentiality of certain financial information of university direct-support organizations; amending s. 240.522, F.S.; providing for transfer of assets to the direct-support organization for the new state university in southwest Florida; amending s. 240.5285, F.S.; providing for a direct-support organization at the Broward County campus of Florida Atlantic University; prohibiting universities from assessing student fees not authorized by law; providing requirements for organizations that solicit financial support on university campuses; amending s. 240.209, F.S.; requiring the Board of Regents to adopt standards relating to graduate teaching assistants; amending s. 240.214, F.S.; revising provision relating to implementation of the State University System accountability process; requiring additional data in the implementation plan; revising provisions relating to the accountability report; amending s. 240.245, F.S.; revising provisions relating to evaluations of university faculty members; providing criteria for a full-time teaching assignment; revising duties of the Board of Regents and universities and deleting requirement of faculty service to public schools; requiring adoption of additional promotional opportunities; amending s. 240.271, F.S.; revising provisions relating to funding based on enrollment; amending s. 240.272, F.S.; revising provisions relating to the carryforward and expenditure of certain funds; amending ss. 240.531, 282.308, 447.203, F.S.; correcting cross-references; amending s. 240.311, F.S.; revising duties of the State Board of Community Colleges; providing procedures for selection of presidents of community colleges; amending s. 240.319, F.S.; prescribing requirements for rules, procedures, and policies; amending s. 240.324, F.S.; revising community college planning relating to the accountability process; requiring automated student records systems; amending s. 240.325, F.S.; revising provisions relating to guidelines for community colleges; amending s. 240.331, F.S.; conforming provisions; amending s. 240.347, F.S.; revising provisions relating to the State Community College Program Fund; providing community college program requirements; amending s. 240.359, F.S.; providing for community college budgets and budget categories; repealing s. 240.257, F.S., relating to the Florida Endowment Trust Fund for Eminent Scholars Act; repealing s. 240.259, F.S., relating to the Trust Fund for New Donors; repealing ss. 240.349 and 240.361, F.S., relating to requirements for participation in the Community College Program Fund and budgets for community colleges; amending s. 240.115, F.S.; providing an additional criterion for postsecondary institutions that award course credit for transferring students; repealing s. 240.243, F.S., relating to required number of classroom teaching hours for university faculty members; providing an effective date.

Senators Holzendorf, Thomas, Hargrett, Meadows, Turner, Jones, Dyer, Williams, Wexler, Burt, Childers, Jenne, Kirkpatrick, Boczar, Johnson, Siegel, Kurth, Forman and Weinstein offered the following amendment to **Amendment 1** which was moved by Senator Holzendorf:

Amendment 1A (with Title Amendment)—On page 37, between lines 19 and 20, insert:

Section 27. A new law school may not be established within the State University System unless the Board of Regents conducts a thorough study that considers locating such law school at a university where a law school was once located.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 41, line 17, after the semicolon (;) insert: requiring a study prior to the creation of any new state law school;

POINT OF ORDER

Senator Dudley raised a point of order that pursuant to Rule 7.1, **Amendment 1A** contained language of a bill not reported favorably by a Senate committee and was therefore out of order.

The point of order was referred to Senator Jennings, Chairman of the Committee on Rules and Calendar.

Further consideration of **CS for SB's 2078 and 1608** with pending **Amendment 1A** was deferred.

SPECIAL ORDER

On motion by Senator Thomas, by unanimous consent—

CS for HB 77—A bill to be entitled An act relating to the Department of Agriculture and Consumer Services; amending ss. 585.002, 372.921, and 372.922, F.S.; providing for exclusive jurisdiction of the department over the possession and maintenance of ostriches, emus, and rheas; providing exceptions; providing an effective date.

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

The Committee on Agriculture recommended the following amendment which was moved by Senator Thomas and adopted:

Amendment 1 (with Title Amendment)—On page 2, between lines 17 and 18, insert:

Section 1. Subsection (4) of section 585.95, Florida Statutes, is amended to read:

585.95 Dogs and cats transported or offered for sale; health requirements; consumer guarantee.—

(4)(a) *A* ~~No~~ person *may not* ~~shall~~ transport into the state for sale ~~or offer for sale within the state~~ any dog or cat that is less than 8 weeks of age.

(b) A person may not offer for sale within the state any dog or cat that is less than 6 weeks of age.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, strike all of lines 1 and 2 and insert: An act relating to animals; amending s. 585.95, F.S.; prohibiting transporting into the state or offering for sale dogs or cats less than a specified age; providing penalties; amending ss.

Senator Thomas moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 3, strike line 21 and insert:

Section 4. Subsections (22) and (23) are added to section 370.01, Florida Statutes, to read:

370.01 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(22) "Resident alien" shall mean those persons who have continuously resided in this state for at least one year and six months in the county and can provide documentation from the Immigration and Naturalization Service evidencing permanent residency status in the United States. For the purposes of this chapter, a "resident alien" shall be considered a "resident."

(23) "Nonresident alien" shall mean those individuals from other states who can provide documentation from the Immigration and Naturalization Service evidencing permanent residency status in the United States. For the purposes of this chapter, a "nonresident alien" shall be considered a "nonresident."

Section 5. Paragraph (a) of subsection (2) of section 370.0605, Florida Statutes, is amended to read:

370.0605 Saltwater fishing license required; fees.—

(2) Saltwater fishing license fees are as follows:

(a)1. For a resident of the state, $10 for a 10-day license and $12 for a 1-year license.

2. For a resident of the state, $60 for 5 consecutive years from the date of purchase.

3. For a nonresident of the state, $5 for a 3-day license, $15 for a 7-day license, and $30 for a 1-year license. ~~However, effective July 1, 1993, with respect to individuals who are residents of states contiguous to Florida, the fee for a 3-day license shall be $25, for a 7-day license shall be $75, and for a 1-year license shall be $150 unless such state has a reciprocal agreement with Florida and the fees are reduced pursuant to paragraph (c).~~

4. For purposes of this section, "resident" has the same meaning as that found in s. 372.001.

Section 6. Paragraphs (j) and (k) are added to subsection (3) of section 370.0605, Florida Statutes, to read:

370.0605 Saltwater fishing license required; fees.—

(3) A saltwater fishing license is not required for:

(j) Any Florida resident who is fishing for mullet in freshwater and has a valid Florida freshwater fishing license.

(k) Any Florida resident fishing for a saltwater species in freshwater from land or from a structure fixed to the land.

Section 7. There is created a special recreational crawfish license, to be issued to qualified persons as provided by this section for the recreational harvest of crawfish (spiny lobster) beginning August 5, 1994.

(1) The special recreational crawfish license shall be available to any individual crawfish trap number holder who also possesses a saltwater products license during the 1993-1994 license year. For the 1994-1995 license year and for each license year thereafter, a person issued a special recreational crawfish license may not also possess a trap number.

(2) Beginning August 5, 1994, the special recreational crawfish license is required in order to harvest crawfish from state territorial waters in quantities in excess of the regular recreational bag limit but not in excess of a special bag limit to be established by the Marine Fisheries Commission for these harvesters before the 1994-1995 license year. Such special bag limit does not apply during the 2-day sport season established by the commission.

(3) The holder of a special recreational crawfish license must also possess the recreational crawfish stamp required by section 370.14(11), Florida Statutes, and the license required by section 370.0605, Florida Statutes.

(4) As a condition precedent to the issuance of a special recreational crawfish license, the applicant must agree to file quarterly reports with the Division of Marine Resources of the Department of Natural Resources, in such form as the division requires, detailing the amount of the licenseholder's crawfish (spiny lobster) harvest in the previous quarter, including the harvest of other recreational harvesters aboard the licenseholder's vessel.

(5) The Department of Natural Resources shall issue special recreational crawfish licenses beginning in 1994 for the 1994-1995 license year. The fee for each such license is $100 per year. Each license issued in 1994 for the 1994-1995 license year must be renewed by June 30 of each subsequent year by the initial individual holder thereof. Noncompliance with the reporting requirement in subsection (4) or with the special recreational bag limit established under subsection (6) constitutes grounds for which the department may refuse to renew the license for a subsequent license year. The number of such licenses outstanding in any one license year may not exceed the number issued for the 1994-1995 license year. A license is not transferable by any method. Licenses that are not renewed expire and may be reissued by the department beginning in the 1995-1996 license year to new applicants otherwise qualified under this section.

(6) To promote conservation of the spiny lobster (crawfish) resource, consistent with equitable distribution and availability of the resource, the Marine Fisheries Commission shall establish a spiny lobster management plan incorporating the special recreational crawfish license, including, but not limited to, the establishment of a special recreational bag limit for the holders of such license as required by subsection (2). Such special recreational bag limit must not be less than twice the higher of the daily recreational bag limits.

(7) The proceeds of the fees collected under this section must be deposited as follows:

(a) Thirty-five percent must be deposited into the Marine Biological Research Trust Fund for research and the development of reliable recreational catch statistics for the crawfish (spiny lobster) fishery.

(b) Forty-five percent must be deposited into the Motorboat Revolving Trust Fund to be used by the Department of Natural Resources for administration and enforcement of this section.

(c) Twenty percent must be deposited in the Marine Fisheries Commission Trust Fund to be used for the purposes of this section.

Section 8. The Department of Natural Resources may adopt rules to carry out the purpose and intent of the special recreational lobster license program.

Section 9. Notwithstanding the provisions of Rule 46-24.001(4), Rule 46-24.002(2), and 46-24.004(4), Florida Administrative Code, designation of spiny lobster (crawfish) as a restricted species may not occur until August 1, 1994. To the extent that such provisions implement the restricted species designation for spiny lobster (crawfish) before that date, such implementation is hereby delayed until August 1, 1994.

Section 10. Paragraph (d) of subsection (2) of section 370.142, Florida Statutes, 1992 Supplement, is amended, paragraph (g) of subsection (4) of that section is amended, and present paragraph (h) of subsection (4) is redesignated as paragraph (i) and a new paragraph (h) is added to that subsection, to read:

370.142 Spiny lobster trap certificate program.—

(2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES; PENALTIES.—The Department of Natural Resources shall establish a trap certificate program for the spiny lobster fishery of this state and shall be responsible for its administration and enforcement as follows:

(d) Prohibitions; penalties.—

1. Effective July 1, 1991, it shall be unlawful for a person to possess or use a spiny lobster trap in or on state waters or adjacent federal waters without having affixed thereto the trap tag required by this section. *It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of spiny lobster by trapping that is not a trap as defined in chapter 46-24.006(2), Florida Administrative Code.*

2. Effective April 1, 1993, it shall be unlawful for a person to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. Unless otherwise provided in this section, a commercial harvester, as defined by chapter 46-24.002(1), Florida Administrative Code, who violates the provisions of this section, or the provisions of chapter 46-24, Florida Administrative Code, shall be punished as follows:

a. If the first violation is for violation of subparagraph 1. or subparagraph 2., the department shall assess a civil penalty of up to $1,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (7) may be suspended for the remainder of the current license year. For all other first violations, the department shall assess a civil penalty of up to $500.

b. For a second violation of subparagraph 1. or subparagraph 2. which occurs within 24 months of any previous such violation, the department shall assess a civil penalty of up to $2,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (7) may be suspended for the remainder of the current license year.

c. For a third or subsequent violation of subparagraph 1. or subparagraph 2. which occurs within 36 months of any previous two such violations, the department shall assess a civil penalty of up to $5,000 and may suspend the crawfish trap number issued pursuant to s. 370.14(2) or (7) for a period of up to 24 months or may revoke the crawfish trap number and, if revoking the crawfish trap number, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 370.021(2)(e).

d. Any person assessed a civil penalty pursuant to this section shall within 30 calendar days after notification:

(I) Pay the civil penalty to the department; or

(II) Request an administrative hearing pursuant to the provisions of s. 120.60.

e. The department shall suspend the crawfish trap number issued pursuant to s. 370.14(2) or (7) for any person failing to comply with the provisions of sub-subparagraph d.

4.a. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. It is unlawful for any person to knowingly have in his possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a spiny lobster trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a spiny lobster trap tag or certificate unless such action is duly authorized by the department as provided in this chapter or in the rules of the department.

5.a. Any person who violates the provisions of subparagraph 4., or any person who engages in the commercial harvest, trapping, or possession of spiny lobster without a crawfish trap number as required by s. 370.14(2) or (7) or during any period while such crawfish trap number is under suspension or revocation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. In addition to any penalty imposed pursuant to sub-subparagraph a., the department shall levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of the transferred certificates, as provided in subparagraph (a)1., on any person who violates the provisions of sub-subparagraph 4.c.

6. Any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the department. During any period of trap reduction, any certificates reverting to the department shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period. Otherwise, any certificates that revert to the department are to be reallotted in such manner as provided by the department.

7. The proceeds of all civil penalties collected pursuant to subparagraph 3. and all fines collected pursuant to sub-subparagraph 5.b. shall be deposited into the Marine Biological Research Trust Fund.

8. All traps shall be removed from the water during any period of suspension or revocation.

(4) TRAP CERTIFICATE TECHNICAL ADVISORY AND APPEALS BOARD.—There is hereby established the Trap Certificate Technical Advisory and Appeals Board. Such board shall consider and advise the department on disputes and other problems arising from the implementation of the spiny lobster trap certificate program. The board may also provide information to the department on the operation of the trap certificate program.

(g) In addition to those certificates allotted pursuant to the provisions of subparagraph (2)(a)1., up to *125,000* ~~50,000~~ certificates may be allotted by the board to settle disputes or other problems arising from implementation of the trap certificate program during the 1992-1993 and 1993-1994 license years. Any certificates not allotted by March 31, 1994, shall become permanently unavailable and shall be considered as part of the 1994-1995 reduction schedule. *All appeals for additional certificates or other disputes must be filed with the board before October 1, 1993.*

(h) Any trap certificates issued by the department as a result of the appeals process must be added to the existing number of trap certificates for the purposes of determining the total number of certificates from which the subsequent season's trap reduction is calculated.

(i)~~(h)~~ On and after July 1, 1994, the board shall no longer consider and advise the department on disputes and other problems arising from implementation of the trap certificate program nor allot any certificates with respect thereto.

Section 11. Paragraph (a) of subsection (2) of section 370.06, Florida Statutes, 1992 Supplement, is amended to read:

370.06 Licenses.—

(2) SALTWATER PRODUCTS LICENSE.—

(a) Every person, firm, or corporation which sells, offers for sale, barters, or exchanges for merchandise any saltwater products, or which harvests saltwater products with certain gear or equipment as specified by law, must have a valid saltwater products license. Each saltwater products license allows the holder to engage in any of the activities for which the license is required. The license must be in the possession of the licenseholder or aboard the vessel and shall be subject to inspection at any time that harvesting activities for which a license is required are being conducted. A restricted species endorsement on the saltwater products license is required to sell to a licensed wholesale dealer those species which the state, by law or rule, has designated as "restricted species." This endorsement may be issued only to a person *who is at least 16 years of age, or to a firm* ~~or firm~~ certifying that over 25 percent of its income or $5,000 of its income, whichever is less, is attributable to the sale of saltwater products pursuant to a license issued under this paragraph or a similar license from another state. This endorsement may also be issued to a for-profit corporation if it certifies that at least $5,000 of its income is attributable to the sale of saltwater products pursuant to a license issued under this paragraph or a similar license from another state. However, if at least 50 percent of the annual income of a person, firm, or for-profit corporation is derived from charter fishing, the person, firm, or for-profit corporation must certify that at least $2,500 of the income of the person, firm, or corporation is attributable to the sale of saltwater products pursuant to a license issued under this paragraph or a similar license from another state, in order to be issued the endorsement. Such income attribution must apply to at least 1 year out of the last 3 years. For the purpose of this section "income" means that income which is attributable to work, employment, entrepreneurship, pensions, retirement benefits, and social security benefits.

1. The department is authorized to require verification of such income. Acceptable proof of income earned from the sale of saltwater products shall be:

a. Copies of trip ticket records generated pursuant to this subsection (marine fisheries information system), documenting qualifying sale of saltwater products;

b. Copies of sales records from locales other than Florida documenting qualifying sale of saltwater products;

c. A copy of the applicable federal income tax return, including Form 1099 attachments, verifying income earned from the sale of saltwater products;

d. Crew share statements verifying income earned from the sale of saltwater products; or

e. A certified public accountant's notarized statement attesting to qualifying source and amount of income.

Any provision of this section or any other section of the Florida Statutes to the contrary notwithstanding, any person who owns a retail seafood market and/or restaurant at a fixed location for at least 3 years who has had an occupational license for 3 years prior to January 1, 1990, who harvests saltwater products to supply his retail store and has had a saltwater products license for 1 of the past 3 years prior to January 1, 1990, may provide proof of his verification of income and sales value at his retail seafood market and/or restaurant and in his saltwater products enterprise by affidavit and shall thereupon be issued a restricted species endorsement.

2. Exceptions from income requirements shall be as follows:

a. A permanent restricted species endorsement shall be available to those persons age 62 and older who have qualified for such endorsement for at least 3 out of the last 5 years.

b. Active military duty time shall be excluded from consideration of time necessary to qualify and shall not be counted against the applicant for purposes of qualifying.

c. Upon the sale of a used commercial fishing vessel owned by a person, firm, or corporation possessing or eligible for a restricted species endorsement, the purchaser of such vessel shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after purchase of the vessel.

d. Upon the death or permanent disablement of a person possessing a restricted species endorsement, an immediate family member wishing to carry on the fishing operation shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after the death or disablement.

e. A restricted species endorsement may be issued on an individual saltwater products license to a person age 62 or older who documents that at least $2,500 is attributable to the sale of saltwater products pursuant to the provisions of this paragraph.

f. A permanent restricted species endorsement may also be issued on an individual saltwater products license to a person age 70 or older who has held a saltwater products license for at least 3 of the last 5 license years.

At least one saltwater products license bearing a restricted species endorsement shall be aboard any vessel harvesting restricted species in excess of any bag limit or when fishing under a commercial quota or in commercial quantities, and such vessel shall have a commercial vessel registration. This subsection does not apply to any person, firm, or corporation licensed under s. 370.07(1)(a)1. or s. 370.07(1)(b) for activities pursuant to such licenses. A saltwater products license may be issued in the name of an individual or a valid boat registration number. Such license is not transferable. A decal shall be issued with each saltwater products license issued to a valid boat registration number. The saltwater products license decal shall be the same color as the vessel registration decal issued each year pursuant to s. 327.11(7) and shall indicate the period of time such license is valid. The saltwater products license decal shall be placed beside the vessel registration decal and, in the case of an undocumented vessel, shall be placed so that the vessel registration decal lies between the vessel registration number and the saltwater products license decal. Any saltwater products license decal for a previous year shall be removed from a vessel operating on the waters of the state. A resident shall pay an annual license fee of $50 for a saltwater products license issued in the name of an individual or $100 for a saltwater products license issued to a valid boat registration number. A nonresident shall pay an annual license fee of $200 for a saltwater products license issued in the name of an individual or $400 for a saltwater products license issued to a valid boat registration number. An alien shall pay an annual license fee of $300 for a saltwater products license issued in the name of an individual or $600 for a saltwater products license issued to a valid boat registration number. Any person who sells saltwater products pursuant to this license may sell only to a licensed wholesale dealer. A saltwater products license must be presented to the licensed wholesale dealer each time saltwater products are sold, and an imprint made thereof. The wholesale dealer shall keep records of each transaction in such detail as may be required by rule of the Department of Natural Resources not in conflict with s. 370.07(6), and shall provide the holder of the saltwater products license with a copy of the record. It is unlawful for any licensed wholesale dealer to buy saltwater products from any unlicensed person under the provisions of this section, except that a licensed wholesale dealer may buy from another licensed wholesale dealer. It is unlawful for any licensed wholesale dealer to buy saltwater products designated as "restricted species" from any person, firm, or corporation not possessing a restricted species endorsement on his saltwater products license under the provisions of this section, except that a licensed wholesale dealer may buy from another licensed wholesale dealer. The Department of Natural Resources shall be the licensing agency, may contract with private persons or entities to implement aspects of the licensing program, and shall establish by rule a marine fisheries information system in conjunction with the licensing program to gather fisheries data.

Section 12. Paragraph (c) of subsection (2) of section 370.142, Florida Statutes, as amended by section 2 of chapter 92-60, Laws of Florida, is repealed.

Section 13. This act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 1, strike all of lines 2 and 3 and insert: An act regulating activities with respect to animal and fish life; amending s. 370.01, F.S.; providing definitions; amending s. 370.0605, F.S.; deleting requirements for increased fees for residents of states contiguous to Florida; providing an exemption from requirements to obtain a saltwater fishing license; creating a special recreational crawfish license; providing eligibility requirements; prohibiting the use of traps by special recreational crawfish licenseholders during the 1994-1995 license year and thereafter; providing requirements for said license; requiring holders of the special recreational crawfish license to possess certain other license and stamp; providing reporting requirements; providing for a fee and license renewal; limiting the number of special recreational licenses which may be issued; providing for a crawfish management plan to be developed; providing for disposition of license fees; authorizing the development of rules; delaying the date when crawfish will become a restricted species; amending s. 370.142, F.S.; limiting gear that may be used; increasing the number of trap certificates that may be issued by the Trap Certificate Technical Advisory and Appeals Board; requiring appeals for additional certificates or other disputes to be filed with the board before a specified date; amending s. 370.06, F.S.; establishing a minimum age for holders of trap certificates; repealing s. 370.142(2)(c), F.S., relating to recreational trap tags; amending ss.

Reconsideration of Amendment

On motion by Senator Dantzler, the Senate reconsidered the vote by which **Amendment 1** was adopted. **Amendment 1** failed.

On motion by Senator Thomas, by two-thirds vote **CS for HB 77** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—32 Nays—1

Consideration of **CS for CS for HB 497** was deferred.

On motions by Senator Weinstein, by two-thirds vote **CS for HB 955** was withdrawn from the Committees on Professional Regulation; Finance, Taxation and Claims; and Appropriations.

On motion by Senator Weinstein—

CS for HB 955—A bill to be entitled An act relating to the Florida Motor Vehicle Repair Act; amending s. 559.901, F.S.; correcting a reference; amending s. 559.902, F.S.; providing for application; amending s. 559.903, F.S.; providing definitions; creating s. 559.904, F.S.; providing for motor vehicle repair shop registration; providing for an affidavit for exemption; providing fees; amending s. 559.907, F.S.; correcting a reference; amending s. 559.909, F.S.; revising provisions with respect to unlawful charges; amending s. 559.911, F.S.; providing for additional information on the required repair invoice; amending s. 559.915, F.S.; requiring the keeping of customer records for an additional time period; providing for access to records and inspection by the Department of Agriculture and Consumer Services; creating s. 559.916, F.S.; providing for required disclosure, signs, and notice to customers; amending s. 559.919, F.S.; correcting a reference; creating s. 559.920, F.S.; providing for unlawful acts and practices; renumbering and amending s. 559.923, F.S., relating to remedies; prescribing enforcement authorities; creating s. 559.9215, F.S.; providing for deposit of fees and fines; creating s. 559.922, F.S.; providing for financial assistance with respect to training; creating s. 559.9221, F.S.; creating a Motor Vehicle Repair Advisory Council; providing for memberships; prescribing duties of the council; amending s. 320.27, F.S.; revising the definition of "motor vehicle dealer"; prescribing grounds for denial, suspension or revocation of motor vehicle dealers' licenses; providing for injunctions; amending s. 320.60, F.S.; revising the definition of "motor vehicle dealer"; providing an appropriation; providing effective dates.

—a companion measure, was substituted for **CS for CS for CS for SB 398** and read the second time by title. On motion by Senator Weinstein, by two-thirds vote **CS for HB 955** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—None

Consideration of **CS for HJR 1579, CS for SB 152** and **CS for CS for SB 164** was deferred.

On motions by Senator Casas, by two-thirds vote **CS for HB 1423** was withdrawn from the Committees on Commerce; Professional Regulation; Finance, Taxation and Claims; and Appropriations.

On motion by Senator Casas—

CS for HB 1423—A bill to be entitled An act relating to debt collection agencies; creating a new part V of chapter 559, F.S.; creating the Florida Commercial Collection Practices Act; providing legislative intent; providing definitions; requiring commercial collection agencies to be registered by the Department of Banking and Finance; providing exemptions; providing procedures for registration; providing for fees; requiring a surety bond; providing for evidence of bond; providing for void registration; providing penalties; providing for future review and repeal; providing an appropriation; amending s. 559.55, F.S.; revising definitions; creating ss. 559.551, 559.552, 559.553, 559.555, 559.563, 559.565, 559.725, 559.730 and 559.785, F.S.; creating the Florida Consumer Collection Practices Act; providing for the relationship of state and federal law; requiring consumer collection agencies to be registered by the Department of Banking and Finance; providing exemptions; providing procedures and fees for registration; providing for void registration; providing for enforcement action against certain debt collection; amending ss. 559.715, 559.72, 559.77, and 559.78, F.S.; providing for consumer complaints and administrative duties; providing for administrative remedies; providing penalties; providing for judicial enforcement; providing for review and repeal; providing an appropriation; providing an effective date.

—a companion measure, was substituted for **CS for SB 994** and read the second time by title. On motion by Senator Casas, by two-thirds vote **CS for HB 1423** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SJR 1370—A joint resolution proposing an amendment to Section 1, Article VII of the State Constitution, relating to taxation.

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

That the following amendment to Section 1 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election.

ARTICLE VII
FINANCE AND TAXATION

SECTION 1. Taxation; appropriations; state expenses; *increases in appropriations.*—

(a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

(b) Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

(c) No money shall be drawn from the treasury except in pursuance of appropriation made by law.

(d) Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.

(e)(1) In any year, the rate of increase in appropriations from state funds may not exceed the rate of growth of the economy as measured by the average growth in total gross personal income of residents of the state over the previous five years, as reported by the United States Department of Commerce, Bureau of Economic Analysis, or its successor agency.

(2) This limitation does not apply to appropriations of funds from the federal government.

(3) An appropriation in excess of this limitation may be made only by a two-thirds vote of each house of the legislature, voting on a bill that contains no other subject and that sets forth the dollar amount and the rate by which the limit will be exceeded. The vote may not be taken less than seventy-two hours after the third reading of the bill.

(4) Any state revenues collected in excess of the limitation must be deposited in the Working Capital Trust Fund. If the balance of the Working Capital Trust Fund exceeds its allowable level, the legislature may, by general law, implement uniform tax relief not to exceed the amount of this excess.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTION 3

LIMITATION ON INCREASES IN STATE APPROPRIATIONS.—Proposing an amendment to the State Constitution to limit the rate of increase in state appropriations to the rate of growth in gross personal income of residents of the state over the previous 5 years, unless the Legislature enacts, by a two-thirds vote, legislation that exceeds this limitation.

—was read the second time in full. On motion by Senator Kiser, by two-thirds vote **SJR 1370** was read the third time by title, passed by the required constitutional three-fifths vote of the membership and was certified to the House. The vote on passage was:

Yeas—34 Nays—2

On motions by Senator Gutman, by two-thirds vote **CS for CS for HB 2203** was withdrawn from the Committees on Health Care; Health and Rehabilitative Services; and Appropriations.

On motion by Senator Gutman—

CS for CS for HB 2203—A bill to be entitled An act relating to nursing homes and long-term care facilities; amending s. 400.011, F.S.; modifying purpose of provisions relating to regulation of nursing homes and related facilities; amending s. 400.021, F.S.; revising definitions; amending s. 400.022, F.S.; revising residents' rights; creating s. 400.0255, F.S.; establishing procedures for transfer or discharge of resident; providing for notice and hearings; providing for disposition of accrued charges; providing a public records exemption; providing for review and repeal; amending s. 400.051, F.S.; modifying exemptions; providing an exemption for certain existing facilities; amending s. 400.062, F.S., relating to licensure requirements; providing that funds collected may be used to reduce licensure fees; amending s. 400.0625, F.S.; clarifying minimum standards for certain laboratory test results; amending s. 400.071, F.S.; revising licensure application requirements; amending s. 400.111, F.S.; revising renewal requirements; amending s. 400.121, F.S.; providing conditions for suspension of licenses; providing for hearing; providing for receivership; amending s. 400.126, F.S.; revising provisions relating to receivership; increasing the allowable amount of expenditures to correct deficiencies; amending s. 400.141, F.S.; revising administration and management of facilities; providing for transfer of personnel records between facilities; amending s. 400.145, F.S.; revising requirements for furnishing copies of records of care and treatment; specifying copying charges; amending s. 400.151, F.S., relating to contracts; amending s. 400.162, F.S.; revising authority with respect to property and personal affairs of residents; amending s. 400.165, F.S.; revising requirements for itemized billings; amending s. 400.176, F.S.; increasing a fine for unlawful rebates; amending s. 400.19, F.S.; providing for right of entry and inspection of a district nursing home unit in a hospital and certain freestanding facilities licensed under ch. 395, F.S.; modifying an inspection requirement; authorizing verification of correction of deficiencies without reinspection, under certain circumstances; amending s. 400.191, F.S.; revising requirements for making reports and records available; amending s. 400.20, F.S.; deleting limitation on the number of facilities to be subject to an administrator's supervision; amending s. 400.211, F.S.; revising requirements for certification and employment of nursing assistants; providing for screening of personnel; amending s. 400.23, F.S.; revising rulemaking requirements; creating the Nursing Home Advisory Committee; providing membership and duties; revising procedures for evaluating and rating

facilities; increasing penalties for deficiencies; deleting authority to delegate review of plans to a county or municipality; amending s. 400.317, F.S.; authorizing state and district ombudsman councils to seek immediate legal or administrative remedies, under certain conditions; renumbering and amending s. 400.3221, F.S., relating to emergency medication kits; creating s. 400.335, F.S.; requiring an audit of trust funds and related accounts by the Auditor General; creating s. 400.801, F.S.; providing for licensure of homes for special services; providing a fee; providing requirements and procedures; providing for violations; providing penalties; creating s. 400.805, F.S.; providing for licensure of transitional living facilities; providing fees; providing requirements and procedures; providing for violation; providing penalties; amending s. 408.035, F.S.; specifying additional criteria for review of certificate-of-need applications; amending s. 408.036, F.S.; providing that certain applications subject to expedited certificate-of-need review are subject to a specified base fee; amending s. 408.07, F.S.; revising the definition of "nursing home" for data collection purposes; amending ss. 400.023, 400.063, 400.102, 400.125, 400.179, 400.18, 400.25, 400.29, 400.33, and 400.331, F.S.; conforming language and references to transfer of responsibilities to the Agency for Health Care Administration; correcting cross references; deleting obsolete language; amending ss. 20.41, 393.0673, 393.0678, 397.021, 400.307, 400.308, and 413.602, F.S.; conforming language and correcting cross references; amending s. 413.614, F.S.; providing rulemaking authority of the Division of Vocational Rehabilitation of the Department of Labor and Employment Security, relating to transitional living facilities for spinal-cord-injured and head-injured persons; repealing s. 400.041, F.S., relating to nursing facility licensing categories; repealing s. 400.045, F.S., relating to transitional living facilities for spinal-cord-injured and head-injured persons; saving pt. I of ch. 400, F.S., from Sunset repeal; saving ss. 400.304 and 400.307, F.S., from Sundown repeal; providing for future review and repeal; providing effective dates.

—a companion measure, was substituted for **CS for CS for SB 164** and read the second time by title.

Senator Bankhead moved the following amendment which was adopted:

Amendment 1—On page 12, between lines 21 and 22, insert:

(k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.

(Renumber subsequent paragraphs.)

Senator Forman moved the following amendment which was adopted:

Amendment 2—On page 89, line 20, after "rules" insert: *in consultation with the division*

Senator Forman moved the following amendment:

Amendment 3—On page 89, line 23, after "rules" insert: *in consultation with the agency*

Further consideration of **CS for CS for HB 2203** with pending **Amendment 3** was deferred.

On motions by Senator Gutman, by two-thirds vote **CS for CS for HB 497** was withdrawn from the Committees on Governmental Operations; Finance, Taxation and Claims; and Appropriations.

CS for CS for HB 497—A bill to be entitled An act relating to Cuba; creating the "1993 Free Cuba Act"; requiring the State Board of Administration to divest certain investments; prohibiting specified investments; allowing local governing authorities to revoke or refuse to renew an occupational license; amending s. 542.34, F.S.; revising provisions relating to discriminatory trade practices; authorizing the Governor to waive the requirements of the act under certain circumstances; providing an effective date.

—was read the second time by title.

Senator Gutman moved the following amendment which was adopted:

Amendment 1—On page 3, line 25, strike "in violation of federal law"

On motion by Senator Gutman, by two-thirds vote **CS for CS for HB 497** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Senate resumed consideration of—

CS for SB's 1914, 2006, 1784 and 406—A bill to be entitled An act relating to health care; amending s. 20.42, F.S., relating to organization of the Agency for Health Care Administration; modifying the organization and responsibilities of the agency; delaying transfer to the agency of certain responsibilities relating to the regulation of health care professionals; creating the Health Care Advisory Commission within the agency; providing for membership of the commission; providing duties of the commission; renaming the Division of Health Policy and Planning as the Division of Health Policy and Cost Control; providing additional responsibilities relating to state and local health planning, certificate-of-need review, hospital budget review, and the administration of specified contracts; providing duties of the Division Director for State Health Purchasing; redesignating the Agency for Health Care Administration as the Department of Health Care Administration on a specified date; amending s. 20.30, F.S.; reinstating the Division of Medical Quality Assurance within the Department of Professional Regulation; reestablishing the Board of Nursing Home Administrators and the Board of Opticianry within the Division of Professions of the Department of Professional Regulation; reestablishing the Board of Medicine, the Board of Osteopathic Medicine, the Board of Acupuncture, the Board of Chiropractic, the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, the Board of Dentistry, the Board of Nursing, the Board of Optometry, the Board of Pharmacy, the Board of Physical Therapy Practice, the Board of Podiatric Medicine, the Board of Psychological Examiners, the Board of Speech-Language Pathology and Audiology, and the Board of Clinical Laboratory Personnel within the Division of Medical Quality Assurance; providing for future transfer of the Division of Medical Quality Assurance within the Department of Professional Regulation to the Division of Health Quality Assurance within the Department of Health Care Administration; amending s. 33, ch. 92-33, Laws of Florida; delaying the transfer of powers, duties, and funds of the Division of Medical Quality Assurance of the Department of Professional Regulation to the Department of Health Care Administration; amending s. 110.123, F.S., relating to the state group insurance program; providing legislative intent; providing agency responsibilities; transferring powers, duties, records, property, and unexpended allocations of funds associated with positions in the State Employees Health Insurance Program to the Division of State Health Purchasing of the Agency for Health Care Administration; transferring powers, duties, records, property, and unexpended allocations of funds of the Medicaid program within the Department of Health and Rehabilitative Services to the Division of State Health Purchasing of the Agency for Health Care Administration; amending s. 20.19, F.S.; conforming provisions to such transfer; amending s. 112.0455, F.S.; providing duties of the agency under the Drug-Free Workplace Act; providing for regulation of drug testing laboratories by the agency; amending ss. 154.011, 154.205, 154.245, 154.304, 154.306, 154.308, 154.309, 154.31, 154.3105, 154.312, F.S., relating to certificates of need and the Health Care Responsibility Act of 1988; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services to the agency; amending ss. 159.27, 186.003, F.S.; conforming cross-references; amending ss. 189.415, 196.1975, 205.1965, F.S., relating to certificate-of-need review and agency licensure of homes for the aged and adult congregate living facilities; amending s. 215.20, F.S.; conforming terminology relating to the name of a trust fund; amending s. 240.4067, F.S., relating to the Medical Education Reimbursement and Loan Repayment Program; providing for penalties for noncompliance; deleting a limitation on the payment period; providing additional categories of eligibility; amending s. 240.4075, F.S.; adding birth centers, community mental health centers, and alcohol and drug abuse programs to the list of eligible employing institutions for the Nursing Student Loan Forgiveness Program; amending s. 381.026, F.S., relating to the Florida Patient's Bill of Rights and Responsibilities; providing a penalty; amending s. 381.0261, F.S., relating to the distribution of summaries of health care information; conforming provisions to changes made by the act; amending s. 381.0302, F.S.; providing additional membership in the Florida Health Services Corps; authorizing the Department of Health and Rehabilitative Services to pro-

vide certain financial assistance to students in additional medical programs; providing additional requirements for corps members; authorizing use of certain appropriated funds as federal matching funds; creating s. 381.0406, F.S., relating to rural health networks; providing legislative findings and intent; providing definitions; providing for organization, administration, and nonprofit corporate status; specifying services to be provided; requiring participation of certain trauma agencies; providing for public and private financing; providing for phased-in implementation; specifying responsibilities of the agency and the State Health Office relating to establishment and certification of rural health networks; providing for rules; creating s. 381.0407, F.S.; authorizing special consideration under the certificate-of-need program for certain rural regional hospital systems; authorizing rural regional hospital systems to establish tax districts that cross county boundaries; creating s. 381.0408, F.S.; providing for designation of rural health care innovation zones by the Agency for Health Care Administration; providing special consideration of certificate-of-need applicants located in rural health care innovation zones; authorizing the Department of Health and Rehabilitative Services to seek funding to support health care facilities and providers in rural health care innovation zones; amending s. 381.045, F.S., relating to procedures and services for certain health care professionals infected with hepatitis B or human immunodeficiency virus; amending s. 381.0602, F.S., relating to the Organ Transplant Advisory Council; amending and renumbering s. 381.0605, F.S., relating to a survey of state hospital facilities; amending ss. 381.6021, 381.6022, 381.6023, 381.6024, 381.6025, F.S., relating to organ and tissue procurement; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services to the agency; amending and renumbering s. 381.695, F.S., relating to certificate-of-need exemption for health care facilities within the Department of Corrections; amending and renumbering s. 381.698, F.S., relating to the Florida Blood Transfusion Act; amending ss. 383.302, 383.305, 383.307, 383.308, 383.309, 383.31, 383.312, 383.313, 383.318, 383.32, 383.324, 383.325, 383.327, 383.33, 383.331, 383.335, F.S., relating to regulation and licensure of birth centers; amending ss. 390.001, 390.002, 390.011, 390.012, 390.014, 390.015, 390.016, 390.017, 390.018, 390.019, 390.021, F.S., relating to termination of pregnancies; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services to the Agency for Health Care Administration; amending s. 395.1055, F.S.; providing for separate standards for statutory rural hospitals; amending s. 395.403, F.S.; conforming provisions to changes made by the act; creating s. 395.606, F.S., relating to rural health network cooperative agreements; providing legislative intent with respect to antitrust laws; specifying conditions under which health care providers who are members of rural health networks may consolidate services or enter into cooperative agreements; requiring approval and oversight by the agency; providing for administrative and judicial review; amending s. 408.001, F.S.; revising requirements for the bylaws of the board of directors of the Florida Health Care Purchasing Cooperative; providing additional membership requirements for the board of directors; revising the membership of the board; conforming provisions to changes made by the act; amending s. 408.002, F.S., relating to the Florida Health Plan; amending s. 408.003, F.S., relating to appointment of the Health Care Board; providing for ethnic, geographic, and gender composition; providing for removal of members; providing for meetings, notice, and a quorum; providing for per diem and travel expenses; amending s. 408.01, F.S.; providing for a council advising the agency on health insurance and cost containment to include group health care purchasing organizations; amending s. 408.02, F.S.; revising requirements for the agency in establishing practice parameters; amending ss. 408.032, 408.033, 408.034, 408.035, 408.036, 408.037, 408.038, 408.039, 408.040, 408.041, 408.043, 408.044, 408.045, F.S., relating to certificate of need and authority to license health care facilities and health service providers; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services and the Health Care Board to the agency; providing an additional exemption from certificate-of-need review; providing for preference in certificate-of-need awards to rural health networks under certain conditions; amending s. 408.05, F.S., relating to the State Center for Health Statistics; amending s. 408.061, F.S., relating to health care data collection; providing additional data to be collected from health care facilities by the Agency for Health Care Administration; requiring nursing homes to submit to the agency audited actual experience and statistical profiles of nursing home residents; requiring the agency and the Department of Health and Rehabilitative Services to review the statistical profiles and include findings in the Florida Health Plan; requiring the agency to collect information on certain drugs and medical equipment and supplies; deleting a requirement with respect to the establishment of a health care data base; amending s. 408.062, F.S.; revising requirements of the Health Care Board in evaluating data from nursing home financial reports; amending s. 408.063, F.S.; requiring the agency to collect data on retail prices of certain drugs and medical equipment and supplies; requiring the agency to distribute brochures to pharmacies and retail sellers of medical equipment and supplies; amending s. 408.07, F.S.; redefining the term "banked points" for purposes of agency review of hospital budgets; amending ss. 408.072, 408.08, F.S.; modifying provisions relating to review of hospital budgets; amending s. 408.09, F.S., relating to assistance on cost containment strategies; clarifying provisions; amending s. 408.20, F.S.; conforming terminology relating to the name of a trust fund; creating s. 408.70, F.S.; providing legislative intent regarding the need to reform the state's health care delivery system; proposing the creation of managed competition throughout the state; proposing the creation of community health purchasing alliances; creating s. 408.701, F.S.; providing definitions; creating s. 408.702, F.S.; establishing community health purchasing alliance regions; providing for the merger of certain alliances; providing for alliance standards; providing for voluntary membership; providing duties, powers, and responsibilities; providing for membership fees; creating s. 408.703, F.S.; providing community health purchasing alliance membership requirements for small employers; creating s. 408.704, F.S.; providing agency responsibilities with respect to community health purchasing alliances; authorizing the agency to contract with alliances and provide startup funds; requiring an annual review; requiring alliances to submit certain data to the agency; establishing an advisory data committee and specifying membership; requiring a report to the Legislature; requiring the submission of data by health care providers; requiring the agency to adopt and implement recommendations of the advisory data committee; establishing an appeals process for grievances; exempting certain records from public disclosure requirements; providing for future legislative review of this exemption under the Open Government Sunset Review Act; creating s. 408.7045, F.S.; establishing community health purchasing alliance marketing requirements; creating s. 408.705, F.S.; providing for boards of directors for community health purchasing alliances; providing for membership, appointment, and terms; providing for staff; creating s. 408.706, F.S.; establishing standards for accountable health partnerships; providing for designation of accountable health partnerships by the agency; specifying standards and requirements; creating s. 408.90, F.S.; providing legislative findings and intent; creating s. 408.901, F.S.; providing definitions; creating s. 408.902, F.S.; creating the MedAccess program within the Agency for Health Care Administration; providing for a report; creating s. 408.903, F.S.; providing eligibility requirements; creating s. 408.904, F.S.; providing health care benefits; creating s. 408.905, F.S.; providing limitations and exclusions; creating s. 408.906, F.S.; providing for the payment of claims; creating s. 408.907, F.S.; providing for the collection of premiums; creating s. 408.908, F.S.; providing agency responsibilities for the administration of the MedAccess program; amending s. 409.335, F.S.; conforming provisions to changes made by the act; amending s. 409.701, F.S.; authorizing the Florida Health Access Corporation to provide subsidized or nonsubsidized coverage to small employers; expanding the program statewide; authorizing the corporation to serve businesses with fewer than a specified number of employees; changing the composition of the board of directors of the Florida Health Access Corporation; deleting a requirement that the Department of Insurance provide certain assistance to the corporation; amending s. 409.7015, F.S.; delaying the repeal of the corporation's access to certain data from the Department of Labor and Employment Security; amending ss. 409.901, 409.902, 409.903, 409.904, F.S.; conforming provisions and references to the transfer of responsibilities for the Medicaid program to the agency; amending s. 409.905, F.S.; providing for Medicaid nursing facility services for recipients in rural hospitals; amending ss. 409.906, 409.907, 409.910, F.S.; conforming provisions; amending s. 409.908, F.S.; revising the methodology for reimbursing providers for physician services under Medicaid; amending s. 409.911, F.S.; providing additional requirements for hospitals that receive distributions under the disproportionate share program; amending s. 409.9113, F.S.; providing an additional requirement for teaching hospitals that receive distributions under the disproportionate share program; amending ss. 409.9112, 409.9115, F.S., and s. 2, ch. 92-33, Laws of Florida; conforming provisions; creating s. 409.9116, F.S.; establishing a disproportionate share program for rural hospitals; providing requirements for rural hospitals that receive distributions under the program; amending s. 409.912, F.S.; providing for inclusion of health maintenance organizations and prepaid health plans in the agency's definition of a managed care provider; creating s. 409.9121, F.S.; providing legislative findings and intent; creating s. 409.9122, F.S.; providing for the expansion of the Medi-Pass program; directing the agency to encourage the enrollment of Medi-

caid recipients in managed care plans; providing for a study of the feasibility of managed care programs for Medicaid recipients with special needs; providing for funds for technical assistance in developing Medicaid prepaid health plans; requiring state agencies to provide access to managed health care providers to market their benefit plans in buildings owned, rented, or leased by the agencies; amending s. 409.913, F.S.; authorizing the agency to conduct certain investigations of Medicaid providers; providing circumstances under which the agency may withhold payments to a provider under the Medicaid program; providing for notice to the provider; providing that certain payments are due to the agency upon demand; amending ss. 409.914, 409.915, 409.916, 409.919, 409.920, 411.222, F.S.; conforming provisions; amending ss. 415.107, 415.51, F.S.; providing duties of the Agency for Health Care Administration with respect to the confidentiality of reports and records in cases of abuse, neglect, or exploitation of aged persons, disabled adults, and children; amending ss. 419.001, 419.002, F.S.; providing duties of the agency with respect to the regulation of community residential homes; amending s. 440.102, F.S., relating to requirements for the drug-free workplace program; conforming provisions to the transfer of certain duties and functions to the agency; amending ss. 455.201, 455.203, 455.205, 455.207, 455.208, 455.209, 455.211, F.S.; conforming provisions to changes made by the act; amending s. 43, ch. 92-33, Laws of Florida, relating to license renewal for certain medical professions; delaying the repeal of s. 455.213(6) and (7), F.S.; amending ss. 44 and 46, ch. 92-33, Laws of Florida, delaying the creation of ss. 455.2141, 455.2173, F.S., relating to duties of the Agency for Health Care Administration with respect to licensing; amending ss. 455.2175, 455.218, F.S.; conforming provisions to changes made by the act; revising licensure requirements for certain foreign-trained professionals; amending ss. 49 and 50, ch. 92-33, Laws of Florida, delaying the creation of ss. 455.220, 455.2205, F.S., relating to the Health Care Trust Fund; amending ss. 455.221, 455.223, 455.224, 455.225, 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.241, 455.243, 455.245, 455.26, F.S.; conforming provisions to changes made by the act; amending s. 455.25, F.S.; providing exceptions to the prohibition against an entity's providing items or services to a patient without making a specified written disclosure of certain financial relationships and fees and other matters; amending s. 464.009, F.S.; revising the requirements for applicants for licensure as a professional or practical nurse with respect to licensure by endorsement; amending ss. 483.610, 483.613, 483.614, 483.615, 483.616, 483.619, 483.620, 483.621, 483.622, 483.624, F.S., relating to the Cholesterol Screening Center Licensure Act; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services to the agency; amending s. 624.91, F.S.; increasing the membership of the board of directors of the Florida Healthy Kids Corporation; transferring the Florida Healthy Kids Trust Fund to the Agency for Health Care Administration; amending s. 626.9545, F.S.; requiring insurers to establish a financial incentive program for policy holders to report errors or overcharges; amending s. 627.613, F.S.; increasing the amount an insurer must pay to an insured for reporting improper billings that result in a reduction in the amount paid to a provider; amending ss. 641.21, 641.225, F.S.; conforming cross-references to changes made by the act; amending ss. 641.47, 641.48, 641.49, 641.495, 641.511, 641.512, 641.515, 641.52, 641.54, 641.55, 641.56, 641.57, 641.58, F.S., relating to health maintenance organizations and prepaid health clinics; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services to the agency; providing an exemption from the health maintenance organization and prepaid health clinic regulatory assessment; amending s. 651.118, F.S.; transferring responsibilities of the Department of Health and Rehabilitative Services with respect to certificates of need for sheltered beds and community beds to the Agency for Health Care Administration; amending s. 743.0645, F.S.; providing for consent for medical care of a minor in a facility licensed by the agency; amending s. 766.1115, F.S.; expanding the definition of the term "health care provider" under the Access to Health Care Act; amending s. 768.28, F.S.; conforming a cross-reference to changes made by the act; amending s. 15, ch. 91-178, Laws of Florida; revising the date that the prohibition against referrals by certain investors in designated health services applies; amending s. 627.410. F.S.: providing for filing certificates for certain groups for information purposes; amending s. 627.4106, F.S.; revising a definition; amending s. 627.6699, F.S.; providing definitions; requiring guarantee issue of all health plans to small employers; requiring modified community rating of health plans issued to small employers; revising definition of small employer; revising preexisting conditions requirements for certain groups; requiring Department of Insurance specification of geographic regions for rating purposes; providing for guaranteed renewability of small group health plans; requiring carriers to maintain records; providing confidentiality; providing for review and repeal; providing for revisions in the standard and basic health benefit plans; requiring the reinsurance board to report complaints of abuse and misrepresentation to the Department of Insurance; providing for alliance membership on the health benefit plan committee; amending s. 641.30, F.S.; specifying applicability for certain health maintenance organization contracts; requiring the Agency for Health Care Administration to develop a standardized claims form and an electronic claims format; requiring health care payers, insurers, and providers to use such claims form or claims format by a specified date; requiring the agency to develop an electronic medical information and billing system; providing for a pilot project; providing circumstances under which a participant in a health care program may use an alternate provider for the purpose of providing prescribed medicine services; requiring the agency to form a work group to examine licensing and training issues with respect to rural hospitals and health care professional shortages; providing membership of the work group; requiring the agency to establish an Interagency Work Group on Health Care Fraud and Abuse; providing for membership and duties; requiring a report; requiring the agency to conduct an assessment and a participation study of community health purchasing alliances; requiring the agency, in consultation with the Department of Legal Affairs, to assess the effects of antitrust laws on community health purchasing alliances and accountable health partnerships; requiring the agency to develop and implement a UB-92 based system; requiring the Governor to establish an interagency task force to study the most appropriate structure of governmental agencies for the delivery of health care and children's services; requiring a report; providing appropriations; repealing s. 409.9114, F.S., relating to the extraordinary disproportionate share program; repealing s. 407.60, F.S., relating to the Health Care Cost Containment Board; repealing s. 3, ch. 92-304, F.S., relating to directions for preparing a reviser's bill; repealing s. 455.238, F.S., relating to markup provisions; repealing s. 627.4106, F.S., relating to small group health insurance; providing effective dates.

—which had been considered April 1. Consideration of pending **Amendment 91** by Senator Forman was deferred.

Senator Gutman moved the following amendment which was adopted:

Amendment 92 (with Title Amendment)—On page 26, between lines 2 and 3, insert:

Section 6. Subsection (7) of section 408.01, Florida Statutes, 1992 Supplement, is amended to read:

408.01 Voluntary private health insurance coverage and insurance cost containment.—

(7) The agency shall establish an advisory council of employers, *group health care purchasing organizations,* providers, insurers, *insurance agents,* and consumers to aid in establishing the voluntary private health insurance coverage and cost containment program and to consider administrative and legislative reforms that will assist the private sector in meeting coverage and cost containment targets.

And the title is amended as follows:

In title, on page 219, line 9, after the semicolon (;) insert: amending s. 408.01, F.S.; revising the membership of the advisory council advising the agency;

Senator Forman moved the following amendment which was adopted:

Amendment 93—On page 45, strike all of lines 4-26 and insert:

Section 20. Paragraph (a) of subsection (2) of section 240.4067, Florida Statutes, 1992 Supplement, is amended, and new paragraphs (d) and (e) of subsection (2) of that section are added, to read:

240.4067 Medical Education Reimbursement and Loan Repayment Program.—

(2) From the funds available, the Department of Health and Rehabilitative Services shall make payments to selected medical professionals as follows:

(a) Up to $4,000 per year for licensed practical nurses and registered nurses, up to $10,000 per year for advanced registered nurse practitioners and physician's assistants, and up to $20,000 per year for physicians. *Penalties for noncompliance shall be the same as those in the National Health Services Corps Loan Repayment Program* ~~or an amount equivalent to one-third of the total of loans and other educational expenses that~~

~~were incurred by the health care professional during his enrollment in medical or nursing school, whichever is less, for a maximum of 3 years.~~ Educational expenses include costs for tuition, matriculation, registration, books, laboratory and other fees, other educational costs, and reasonable living expenses as determined by the Department of Health and Rehabilitative Services.

(d) A medical student who enters and completes a 3-year residency program in this state in family practice, general internal medicine, general pediatrics, or obstetrics/gynecology is eligible for loan forgiveness for educational loans in the amount of $10,000 upon beginning the practice of primary care in this state.

(e) A physician who practices family medicine, general internal medicine, or obstetrics/gynecology full-time in an underserved community in this state is eligible for loan forgiveness for educational loans in the amount of $25,000 per year for years one and two and $35,000 per year for years three and four. The loan forgiveness is in addition to salary and benefits.

Senator McKay moved the following amendments which were adopted:

Amendment 94 (with Title Amendment)—On page 60, strike all of lines 10-21 and insert:

Section 26. Subsections (5) and (8) of section 409.905, Florida Statutes, are amended to read:

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

(5) HOSPITAL INPATIENT SERVICES.—The department shall pay for all services provided for the medical care and treatment of a recipient who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395. However, payment for inpatient hospital services in excess of 45 days for a Medicaid recipient 21 years of age or older is dependent upon the availability of sufficient county contributions. A licensed hospital maintained primarily for the care and treatment of patients having mental disorders or mental diseases is not eligible to participate in the hospital inpatient portion of the Medicaid program except as provided in federal law. *The department shall apply for federal waivers necessary to implement competitive bidding and selective contracting as a cost-containment strategy for purchasing Medicaid services. The waivers shall be designed to test the cost-effectiveness of purchasing all Medicaid inpatient services, including psychiatric services and obstetrical services. Two initial pilot projects shall be tested in districts most demographically representative of the state's Medicaid population. All hospitals located in the pilot test sites are authorized to bid on the services, including free-standing psychiatric hospitals. The initial pilots may be limited to a specific set of services or to a specific set of providers or to certain Medicaid eligibility groups. One pilot test must include inpatient psychiatric services, which may be provided by both an acute care hospital and a free-standing psychiatric hospital for purposes of the pilot test.* However, the department shall apply for a waiver, within 9 months after June 5, 1991, designed to provide hospitalization services for mental health reasons to children and adults in the most cost effective and lowest cost setting possible. Such waiver shall include a request for the opportunity to pay for care in hospitals known under federal law as "institutions for mental disease" or "IMD's." The waiver proposal shall propose no additional aggregate cost to the state or federal government, and shall be conducted in District 6 of the Department of Health and Rehabilitative Services. The waiver proposal may incorporate competitive bidding for hospital services, comprehensive brokering, prepaid capitated arrangements, or other mechanisms deemed by the department to show promise in reducing the cost of acute care and increasing the effectiveness of preventive care. When developing the waiver proposal, the department shall take into account price, quality, accessibility, linkages of the hospital to community services and family support programs, plans of the hospital to ensure the earliest discharge possible, and the comprehensiveness of the mental health and other health care services offered by participating providers. The department is directed to monitor and evaluate the implementation of this waiver program if it is granted and report to the chairs of the appropriations committees of the Senate and the House of Representatives by February 1, 1992.

And the title is amended as follows:

In title, on page 221, line 21, after the semicolon (;) insert: providing for application for federal waivers necessary to implement competitive bidding and selective contracting for purchasing Medicaid hospital inpatient service; providing for pilot projects;

Amendment 95 (with Title Amendment)—On page 60, strike all of lines 10-21 and insert:

Section 26. Subsections (5) and (8) of section 409.905, Florida Statutes, are amended to read:

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

(5) HOSPITAL INPATIENT SERVICES.—The department shall pay for all services provided for the medical care and treatment of a recipient who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395. However, payment for inpatient hospital services in excess of 45 days for a Medicaid recipient 21 years of age or older is dependent upon the availability of sufficient county contributions. A licensed hospital maintained primarily for the care and treatment of patients having mental disorders or mental diseases is not eligible to participate in the hospital inpatient portion of the Medicaid program except as provided in federal law. *The prepaid mental health plan being piloted by the agency in District 6 is intended to provide hospitalization services, including inpatient services, for the mental health treatment of children and adults in the most cost-effective and lowest cost setting possible, thereby reducing the frequency and duration of acute care treatment while increasing the use of effective alternative interventions when clinically appropriate. In implementing the plan, the agency shall consider price, quality, accessibility, linkages of the hospital to community services and family support programs for persons who are acutely or severely and persistently mentally ill, plans of the hospital to ensure the earliest discharge possible, and the comprehensiveness of the mental health and other health care services offered by participating providers. The agency is directed to monitor and evaluate the implementation of this Medicaid waiver program if it is granted and report to the chairs of the appropriations and substantive committees of the Senate and the House of Representatives by December 31, 1994. This evaluation must include a report on the quality, quantity, and cost-effectiveness of the mental health services provided to mental health services delivery and costs under the current treatment systems. The agency shall also conduct the same prepaid mental health pilot plans for District 11 and District 2B and shall apply for the necessary federal waivers to do so.* ~~However, the department shall apply for a waiver, within 9 months after June 5, 1991, designed to provide hospitalization services for mental health reasons to children and adults in the most cost effective and lowest cost setting possible. Such waiver shall include a request for the opportunity to pay for care in hospitals known under federal law as "institutions for mental disease" or "IMD's." The waiver proposal shall propose no additional aggregate cost to the state or federal government, and shall be conducted in District 6 of the Department of Health and Rehabilitative Services. The waiver proposal may incorporate competitive bidding for hospital services, comprehensive brokering, prepaid capitated arrangements, or other mechanisms deemed by the department to show promise in reducing the cost of acute care and increasing the effectiveness of preventive care. When developing the waiver proposal, the department shall take into account price, quality, accessibility, linkages of the hospital to community services and family support programs, plans of the hospital to ensure the earliest discharge possible, and the comprehensiveness of the mental health and other health care services offered by participating providers. The department is directed to monitor and evaluate the implementation of this waiver program if it is granted and report to the chairs of the appropriations committees of the Senate and the House of Representatives by February 1, 1992.~~

And the title is amended as follows:

In title, on page 221, line 21, after the semicolon (;) insert: providing for application for federal waivers to implement competitive bidding and selective contracting for purchasing Medicaid hospital inservices; providing for pilot projects; deleting obsolete provisions;

Senator Silver moved the following amendments which were adopted:

Amendment 96—On page 130, line 3, strike "four" and insert: seven

Amendment 97—On page 130, line 5, after "physician" insert: licensed under chapter 458, one of whom is a physician licensed under chapter 459, one of whom is a physician licensed under chapter 460, and one of whom is a physician licensed under chapter 461

Senators Gutman and Jenne offered the following amendment which was moved by Senator Myers and adopted:

Amendment 98—On page 172, strike all of lines 11-19 and insert: However, *the term* "carrier" does not include a multiple-employer welfare arrangement established by an association of members ~~of the same profession~~, which multiple-employer welfare arrangement operates solely for the benefit of the members or the members and the employees of such members, *and* was in existence on January 1, 1992~~, and provides coverage for any member of the association with 11 or more employees or any such member and dependents of the member, upon the member's request for such coverage.~~

Senators Forman and Gutman offered the following amendment which was moved by Senator Forman and adopted:

Amendment 99—On page 210, between lines 16 and 17, insert:

i. coverage for terminally ill through hospice services.

Senator Sullivan moved the following amendment which was adopted:

Amendment 100 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. Subsection (8) is added to section 641.315, Florida Statutes, to read:

(8) For subscribers not covered by Medicare or Medicaid benefit plans, whenever a health maintenance organization authorizes services to be provided by a provider that is not under contract with the health maintenance organization, it is the responsibility of the health maintenance organization to negotiate the fees to be paid to the provider before the services are rendered. If such fees are not negotiated prior to medical services being provided to the subscriber, the health maintenance organization shall pay the usual and customary charges of the non-contracted provider.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 227, line 31, after "circumstances" insert: providing for payment to providers for medical services rendered

Senator Williams moved the following amendment which was adopted:

Amendment 101—On page 98, line 11, after "outpatient" insert: or ambulatory outpatient

Senator Forman moved the following amendment which was adopted:

Amendment 102 (with Title Amendment)—On page 60, between lines 27 and 28, insert:

Section 151. Section 409.915, Florida Statutes, is amended to read:

409.915 County *assessment* ~~contributions~~ to Medicaid.—~~Although~~ The state is responsible for the full portion of the state share of the matching funds required for the Medicaid program.~~,~~ In order to acquire a certain portion of these funds, *each county shall make payments to the Medicaid program for its residents* ~~the state shall charge the counties for certain items of care and service as provided in this section.~~

~~(1) Each county shall participate in the following items of care and service:~~

~~(a) Payments for inpatient hospitalization in excess of 12 days, but not in excess of 45 days, with the exception of pregnant women and children whose income is in excess of the federal poverty level and who do not participate in the Medicaid medically needy program.~~

~~(b) Payments for nursing home or intermediate facilities care in excess of $170 per month, with the exception of skilled nursing care for children under age 21.~~

~~(2) A county's participation must be 35 percent of the total cost of providing the items listed in subsection (1), except that the payments for items listed in paragraph (1)(b) may not exceed $55 per month per person.~~

~~(3) Each county shall set aside sufficient funds to pay for items of care and service provided to the county's eligible recipients for which county contributions are required, regardless of where in the state the care or service is rendered.~~

(1)(a)~~(4)~~ Each county shall pay into the General Revenue Fund, unallocated, its pro rata share of the total county participation based upon statements rendered by the *agency* ~~department in consultation with the counties~~. *Each county shall set aside sufficient funds to pay its assessment to the Medicaid program.*

(b) The last invoice to each county under the previous county billing system shall be for services rendered through September 30. This invoice is due and payable in October.

(c) The total of the 12 monthly payments shall be known as the annual county Medicaid assessment. Counties shall pay their assessment in 12 monthly installments effective October 1 of each year. Each monthly installment is due and payable no later than the fifth of the following month.

(d) If payment has not been received by the agency within 40 days after the date due, the county shall be assessed interest at a rate of 1 percent per month calculated on a daily basis of the unpaid balance from the 1st day of the month that payment was due until such time as the payment is received by the agency. Interest payments shall be paid within 15 days by the county after receipt of notice from the agency of the amount of interest due, after the payment is issued by the county.

(e)~~(5)~~ The Department of Banking and Finance shall withhold from the cigarette tax receipts or any other funds to be distributed to the counties the individual county share that has not been remitted within 60 days after billing.

(f)~~(6)~~ In any county in which a special taxing district or authority is located which will benefit from the medical assistance programs covered by this section, the board of county commissioners may divide the county's financial responsibility for this purpose proportionately, and each such district or authority must furnish its share to the board of county commissioners in time for the board to comply with the provisions of *paragraph (1)(c)* ~~subsection (3)~~. Any appeal of the proration made by the board of county commissioners must be made to the Department of Banking and Finance, which shall then set the proportionate share of each party.

(2) Eligibility certification procedure and assessment calculation is as follows:

(a) Annually, no later than the last business day in January, the agency shall certify to each county the average number of eligible Medicaid recipients, encompassing all eligibility categories, for the 12-month period ending the previous September 30. The average number of eligible recipients shall be determined by taking the sum of the average monthly caseloads and dividing by 12. The agency shall also certify to each county the percentage increase or decrease that this eligibility certification represents over the previous January eligibility certification. The eligibility percentage certification increase or decrease shall be limited to 15 percent. The initial eligibility percentage certification increase or decrease is equal to the quotient obtained by dividing the sum of the average monthly caseloads for October 1, 1991, to September 30, 1992, by 12, divided by the quotient obtained by dividing the sum of the average monthly caseloads for October 1, 1990, to September 30, 1991, by 12.

(b) Annually, no later than the 3rd Friday in October, the agency shall issue a preliminary estimate of each county's eligibility increase or decrease. The Auditor General shall audit selected Medicaid eligibility

records to verify actual county of residency. The Auditor General shall issue a report, no later than the last working day in December, detailing the findings of his audit. If the audit findings indicate that adjustments are necessary to the preliminary estimates, the agency shall make such adjustments.

(c) Annually, no later than the last business day in January, the agency shall certify to each county the proposed county Medicaid assessment for the period beginning October 1 of that same calendar year. The county Medicaid assessment shall be the current annual county Medicaid assessment, increased or decreased by the eligibility percentage certification as adjusted by the Auditor General's report. The first county assessment shall use the amount each county paid to the Medicaid program during the period October 1, 1991, through September 30, 1992, as the amount to be increased or decreased by the eligibility percentage certification. The amount paid by each county shall be the sum of 12 payments. If a county made less than 12 payments during the period October 1, 1991, through September 30, 1992, the agency shall include the amount billed for any month not paid by a county.

And the title is amended as follows:

In title, on page 221, line 23, after the semicolon (;) insert: amending s. 409.915, F.S.; reconfiguring county contributions to Medicaid;

Senator Gutman moved the following amendments which were adopted:

Amendment 103—On page 93, line 8 through page 103, line 2, strike all of said lines and insert:

Section 40. Effective July 1, 1993, section 408.90, Florida Statutes, is created to read:

408.90 Legislative findings and intent.—The Legislature finds that 2.5 million Floridians do not have access to health insurance coverage. It is the intent of the Legislature to provide a state health insurance program for those people who are without health insurance so that they may have access to preventive and primary care services. The state health insurance program shall offer basic, affordable health care services to those Floridians who have not had access to the private health insurance market. The Legislature intends that the state program shall target the uninsured and not those who currently have private health insurance coverage.

Section 41. Section 408.901, Florida Statutes, is created to read:

408.901 Definitions.—As used in ss. 408.901-408.908, except as otherwise specifically provided, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Agent" means a person who is licensed to sell insurance in this state pursuant to chapter 626.

(3) "Applicant" means a person who provides a written application to the agency for enrollment in the MedAccess program but whose application has not received final action.

(4) "Eligible person" means any person who meets the residency requirements of ss. 408.901-408.908.

(5) "Employer" means the state, its political subdivisions, any individual, partnership, association, corporation, or business trust, or any person or group of persons, acting in the interest of any employer in relation to an employee.

(6) "Fund" means the Licensure Fees Trust Fund.

(7) "Health services" means a set of basic health services covered by the MedAccess Program.

(8) "Member" means a state resident who has enrolled in the MedAccess program.

(9) "Participating provider" means any person who has a current provider agreement with the agency and who is authorized to furnish covered health services under ss. 408.901-408.908.

(10) "Premium" means the consideration paid or to be paid to the agency for the issuance of health insurance coverage provided by the MedAccess program.

(11) "MedAccess" means the state health program, including the Medicaid buy-in program, created under ss. 408.901-408.908.

Section 42. Section 408.902, Florida Statutes, is created to read:

408.902 MedAccess program; creation; program title.—

(1) Effective July 1, 1994, there is created the MedAccess program to be administered by the Agency for Health Care Administration. The MedAccess program is not subject to the requirements of the Department of Insurance or chapter 627.

(2)(a) The agency shall seek federal statutory or regulatory reforms to establish a Medicaid buy-in program to provide medical assistance to persons ineligible for Medicaid because of current income and categorical restrictions. The agency shall use funds provided by the Robert Wood Johnson Foundation to assist in developing the buy-in program, including, but not limited to, the determination of eligibility and service coverages; cost sharing requirements; managed care provisions; and changes needed to the Medicaid program's claims processing, utilization control, cost control, case management, and provider enrollment systems to operate a buy-in program.

(b) The agency shall seek federal authorization and financial support for a buy-in program that provides federally supported medical assistance coverage for persons with incomes up to 250 percent of the federal poverty level. The agency shall implement the Medicaid buy-in program on January 1, 1994, if the agency has received necessary federal authorization for waivers and has received federal financial participation and state appropriations. The premium subsidy for the Medicaid buy-in program must be structured according to a sliding scale of fees.

(c) If the agency has not received necessary federal waivers and if it has not received federal financial participation at a level equal to 250 percent of the federal poverty level, then the MedAccess program, created under this section, shall be implemented.

(3)(a) The agency shall prepare a report to be included in the Florida Health Plan due to the Legislature by December 31, 1993, on the implementation of the MedAccess program and the Medicaid buy-in program. The report must include the agency's plan for establishing administrative and accounting procedures for the operation of the MedAccess program and the Medicaid buy-in program, securing staff to administer the programs, establishing premiums, determining eligibility, enrolling individuals, billing and collecting premiums, establishing provider networks, enrolling providers, processing claims, marketing the programs, collecting data, establishing a case management program, controlling excess utilization, and containing costs. The report must also include an estimate of total start-up costs, ongoing administrative costs, and claims costs for the programs.

(b) For purposes of purchasing MedAccess services, including the Medicaid buy-in program services, through community health purchasing alliances and accountable health partnerships, it is the intent of the Legislature to maximize the choices of accountable health partnerships available to recipients consistent with the need to aggregate purchasing power in order to reduce costs and maximize access. The agency shall develop recommendations to be included in the Florida Health Plan due to the Legislature by December 31, 1993, which shall specify the procedures and methodologies to be used by the agency or the alliance to select from competing accountable health partnerships. At a minimum, the report must include recommendations on the following:

1. Methods for soliciting proposals from each accountable health partnership in each region;

2. Methods for evaluating each proposal based on quality and price, using objective criteria to be developed and adopted by rule;

3. Parameters for determining the maximum market share that may be awarded to any one accountable health partnership.

(c) The agency and participating community health purchasing alliances and accountable health partnerships shall use the services of licensed insurance agents for the solicitation of insurance or procurement of applications or any other activities for which a health insurance agent's license is required pursuant to the Florida Insurance Code or HMO law.

Section 43. Section 408.903, Florida Statutes, is created to read:

408.903 Eligibility.—

(1) Each resident of this state who has a gross family income that is equal to or below 250 percent of the federal poverty level and who meets the requirements of this section is eligible to enroll in the MedAccess program. For purposes of ss. 408.901-408.908, the term "resident" means a person who has established a domicile in the state for at least 6 months. As used in this section, the term "resident" means a United States citizen or United States legal permanent resident.

(2) A person or family who applies for enrollment in the MedAccess program must provide documentation that demonstrates he has not been covered by a health insurance policy in the 12-month period before the effective date of enrollment in the program.

(3) A person or family who is currently eligible for health care benefits under Medicare or the Florida Medicaid program is not eligible for enrollment in the MedAccess program. However, a person may convert to the program upon losing eligibility either for Medicare, Medicaid, or the Medicaid buy-in program.

(4) The agency may not use any information related to an applicant's assets in determining eligibility for the program.

(5) Each applicant for the program must complete an application form developed by the agency, provide information related to the family dependents to be enrolled, and supply documentation concerning family income and place of residence.

(6) Applications for enrollment in the MedAccess program must be submitted to the agency during a single 30-day open enrollment period semiannually. The agency shall review all completed applications within 45 days after receipt. Applicants who satisfy the eligibility criteria and have paid their initial premium shall be notified by the agency of the effective date of coverage.

(7) The agency may request verification of continued eligibility from members once every 12 months.

(8) The program may disenroll any member due to failure to meet eligibility criteria, nonpayment of premium, or good cause.

(9) Enrollment in the MedAccess program is subject to eligibility and fiscal limitations and must be renewed annually.

(10) The agency shall, to the extent possible, integrate county public health units and federally funded primary care centers as participating providers in the MedAccess program.

Section 44. Section 408.904, Florida Statutes, is created to read:

408.904 Benefits.—

(1) Each eligible person who enrolls in the MedAccess program may receive benefits for any covered service furnished within this state by a participating provider.

(2) Covered health services include:

(a) Physician services. Those services delivered by a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 463 which are medically necessary for the treatment of an injury, illness, or disease. Physician services may not include services that are clinically unproven, experimental, or purely for cosmetic purposes. Each member is limited to 12 physician visits per calendar year, excluding visits related to annual or periodic physical examinations for wellness pursuant to paragraph (h) or for immunizations. The limit on physician visits may be extended by $1,000 in lieu of services authorized under paragraph (c).

(b) Hospital inpatient services. Those services, including psychiatric and comprehensive rehabilitative services, provided for the treatment of a member who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395 up to a limit of 10 days per calendar year per member. In lieu of the 10-day limitation, 3 hospice days may be substituted for 1 inpatient hospital day.

(c) Hospital outpatient services. Those services provided to a member in the outpatient portion of a hospital licensed under part I of chapter 395, up to a limit of $1,000 per calendar year per member, which are preventive, diagnostic, therapeutic, or palliative.

(d) Laboratory services. Professional laboratory services ordered by a licensed physician or other licensed practitioner of the healing arts and provided in a laboratory that meets the requirements for Medicare participation and is licensed under chapter 483.

(e) Birth center services. Those services provided to a member in a birth center licensed under chapter 383, including, but not limited to, prenatal, labor and delivery, postpartum, well-woman gynecological services, annual physicals, family planning, educational services, and any laboratory, drugs, or supplies, as appropriate. These services may be provided by physicians licensed under chapter 458 or chapter 459, nurse practitioners licensed under chapter 464, or midwives licensed under chapter 467, according to their scope of practice.

(f) X-ray services. Radiological services ordered by a licensed physician or other licensed practitioner of the healing arts and that are provided by a licensed professional.

(g) Family planning services. Drugs and supplies that enable a member to plan family size.

(h) Health appraisals, including physician examinations and related tests. Routine annual physical examinations conducted by or under the direction of a licensed physician, without regard to medical necessity, in order to detect disease, disability, or other physical or mental conditions. These services include well-baby and well-child screening and diagnostic services provided periodically to members under the age of 21.

(i) Immunizations.

(j) Advanced registered nurse practitioner services.

(k) Outpatient mental health visits and substance abuse treatment. Outpatient mental health visits provided by a community mental health center as provided in chapter 394 and by a mental health therapist licensed under chapter 490 or chapter 491, and substance abuse treatment provided by a center licensed under chapter 396 or chapter 397, up to a total of five visits per calendar year per member.

(3) Covered health services do not include:

(a) Surgery solely for cosmetic purposes.

(b) Prescribed drugs.

(c) Nursing home services.

(d) Medical examinations conducted and medical reports prepared for either purchasing or renewing life insurance or participating as a plaintiff or defendant in a civil action for the recovery or settlement of damages.

(e) Clinically unproven or experimental procedures.

Section 45. Section 408.905, Florida Statutes, is created to read:

408.905 Limitations and exclusions.—

(1) The MedAccess program does not cover benefits that are provided as part of workers' compensation insurance.

(2) The MedAccess program must exclude coverage for preexisting conditions, except pregnancy, during a period of 12 months following the effective date of coverage if:

(a) The condition manifested itself within 6 months before the effective date of coverage; or

(b) Medical advice or treatment was recommended or received within 6 months before the effective date of coverage.

(3) In addition to the limitations otherwise provided in ss. 408.901-408.908, the MedAccess program may not include coverage for outpatient prescription drugs, eyeglasses, dental services, custodial care, or emergency services for nonemergency conditions.

(4) Any member of the MedAccess program who is determined to be at high risk by a participating primary care provider must, upon renewal, agree to be placed in a case management system if it is determined by the program to be in the best interest of the member and the MedAccess program.

(5) A person on whose behalf the program has paid out $500,000 in covered benefits is not eligible for continued coverage in the MedAccess program.

Section 46. Section 408.906, Florida Statutes, is created to read:

408.906 Payment of claims.—

(1) The agency is designated as the single state agency authorized to make payments for health services covered under the MedAccess program. These payments shall be made only for services included in the MedAccess program and shall be made only on behalf of eligible members in accordance with ss. 408.901-408.908.

(2) The agency shall pay claims for covered health services provided to members at the same reimbursement rates and fees that are provided under the Florida Medicaid program, pursuant to s. 409.908. If rates for a service have not been established under the Medicaid program, the agency shall develop a reimbursement system for such services.

Section 47. Section 408.907, Florida Statutes, is created to read:

408.907 Collection of premiums.—

(1) Premiums collected from members or from employers on behalf of members must be made in accordance with rules adopted by the agency.

(2) Premiums collected must be deposited into the Licensure Fees Trust Fund administered by the agency. Moneys in this fund shall be used solely for the administration of the MedAccess program.

(3) Employers are encouraged to participate in the payment of all or a portion of their employees' premium obligation. The agency may offer discounts to the premium obligation to employers who pay at least 50 percent of the premium and who collect the premium from the employees on behalf of the agency.

(4) The agency may contract with agents who may refer individuals to the MedAccess program and may pay those agents a referral fee if the individual's application is accepted for enrollment in the MedAccess program.

(5) The agency shall develop strategies for marketing MedAccess to increase public awareness about the state program.

Section 48. Section 408.908, Florida Statutes, is created to read:

408.908 Administration.—The agency shall:

(1) Develop a network of health care providers for providing managed health care services statewide.

(2) Perform all eligibility and administrative functions for claims payment relating to the program.

(3) Evaluate the eligibility of each claim for payment under the program.

(4) Establish a premium-billing-procedure for collecting premiums from insured persons.

(5) Develop a schedule of copayments and deductibles which encourages the use of preventive and primary care services, deters members from overutilizing services, and discourages the use of expensive, technology-driven services.

(6) Market the MedAccess program.

(7) Provide that the direct and indirect expenses of the program are fully covered by the collection of premiums from members of the MedAccess program.

(8) Establish policy and budget guidelines for the MedAccess program.

(9) Adopt rules to carry out ss. 408.901-408.908.

(10) Implement and administer the MedAccess program.

(11) Provide to the public and health care providers information concerning the MedAccess program.

(12) Ensure that the quality of service provided under the MedAccess program meets the standards of the community.

(13) Identify and disqualify health care providers who engage in fraudulent or abusive activities related to the MedAccess program.

(14) Evaluate the adequacy of the services covered by the MedAccess program, the accessibility of the program to the uninsured, and the effectiveness of the MedAccess program in reducing the number of uninsured persons in the state.

And the title is amended as follows:

In title, on page 224, strike all of lines 11-19 and insert: of premiums; creating s. 408.908, F.S.; providing agency responsibilities for the administration of the MedAccess program; amending s. 409.908, F.S.; providing for a new methodology for reimbursing for Medicaid physician services;

Amendment 104—On page 105, line 17 through page 106, line 27, strike all of said lines and renumber susequent sections.

Amendment 105 (with Title Amendment)—On page 110, between lines 10 and 11, insert:

Section 53. Effective July 1, 1993, section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The *agency* ~~department~~ shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The *agency* ~~department~~ shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies designed to facilitate the cost-effective purchase of a case-managed continuum of care. The *agency* ~~department~~ shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(1) The *agency* ~~department~~ may enter into agreements with appropriate agents of other state agencies or of any agency of the Federal Government and accept such duties in respect to social welfare or public aid as may be necessary to implement the provisions of Title XIX of the Social Security Act and ss. 409.901-409.920.

(2) The *agency* ~~department~~ may contract with health maintenance organizations certified pursuant to part I of chapter 641 for the provision of services to recipients.

(3) The *Agency* ~~department~~ may contract with county public health units and other entities authorized by chapter 154 to provide health care services on a prepaid or fixed-sum basis to recipients, which entities may provide such prepaid services either directly or through arrangements with other providers. Such prepaid health care services are exempt from the provisions of part I of chapter 641.

(4) The *agency* ~~department~~ may contract with any public or private entity on a prepaid or fixed-sum basis for the provision of health care services to recipients.

(a) An entity may provide prepaid services to recipients, either directly or through arrangements with other entities, if each entity involved in providing services:

1. Is organized primarily for the purpose of providing health care or other services of the type regularly offered to Medicaid recipients;

2. Ensures that services meet the standards set by the *agency* ~~department~~ for quality, appropriateness, and timeliness;

3. Makes provisions satisfactory to the *agency* ~~department~~ for insolvency protection and ensures that neither enrolled Medicaid recipients nor the *agency* ~~department~~ will be liable for the debts of the entity;

4. Submits to the *agency* ~~department~~, if a private entity, a financial plan that the *agency* ~~department~~ finds to be fiscally sound and that provides for working capital in the form of cash or equivalent liquid assets excluding revenues from Medicaid premium payments equal to at least the first 3 months of operating expenses or $200,000, whichever is greater;

5. Furnishes evidence satisfactory to the *agency* ~~department~~ of adequate liability insurance coverage or an adequate plan of self-insurance to respond to claims for injuries arising out of the furnishing of health care;

6. Provides, through contract or otherwise, for periodic review of its medical facilities and services, as required by the *agency* ~~department~~; and

7. Provides organizational, operational, financial, and other information required by the *agency* ~~department~~.

(b) Entities that provide no prepaid health care services other than Medicaid services under contract with the *agency* ~~department~~ are exempt from the provisions of part I of chapter 641.

(5) The *agency* ~~department~~ may contract on a prepaid or fixed-sum basis with any health insurer that:

(a) Pays for health care services provided to enrolled Medicaid recipients in exchange for a premium payment paid by the *agency* ~~department~~;

(b) Assumes the underwriting risk; and

(c) Is organized and licensed under applicable provisions of the Florida Insurance Code and is currently in good standing with the Department of Insurance.

(6) The *agency may* ~~department shall~~ not contract on a prepaid or fixed-sum basis for Medicaid services with an entity which knows or reasonably should know that any officer, director, agent, managing employee, or owner of stock or beneficial interest in excess of 5 percent common or preferred stock, or the entity itself, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere, or guilty, to:

(a) Fraud;

(b) Violation of federal or state antitrust statutes, including those prescribing price fixing between competitors and the allocation of customers among competitors;

(c) Commission of a felony involving embezzlement, theft, forgery, income tax evasion, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(d) Any crime in any jurisdiction which directly relates to the provision of health services on a prepaid or fixed-sum basis.

(7) The *agency* ~~department~~ may apply for waivers of applicable federal laws and regulations as necessary to implement more appropriate systems of health care for Medicaid recipients and reduce the cost of the Medicaid program to the state and federal governments and shall implement such programs, after legislative approval, within a reasonable period of time after federal approval. These programs must be designed primarily to reduce the need for inpatient care, custodial care and other long-term or institutional care, and other high-cost services.

(8) The *agency* ~~department~~ shall establish a postpayment utilization control program designed to identify recipients who may inappropriately overuse or underuse Medicaid services and shall provide methods to correct such misuse.

(9) The *agency* ~~department~~ shall develop and provide coordinated systems of care for Medicaid recipients and may contract with public or private entities to develop and administer such systems of care among public and private health care providers in a given geographic area.

(10) The *agency* ~~department~~ shall operate or contract for the operation of utilization management and incentive systems designed to encourage cost-effective use services.

(11) The *agency* ~~department~~ shall identify health care utilization and price patterns within the Medicaid program that are not cost-effective or medically appropriate and assess the effectiveness of new or alternate methods of providing and monitoring service, and may implement such methods as it considers appropriate.

(12) An entity contracting on a prepaid or fixed-sum basis shall, in addition to meeting any applicable statutory surplus requirements, also maintain at all times in the form of cash, short-term investments allowable as admitted assets by the Department of Insurance, and restricted funds or deposits controlled by the *agency* ~~department~~ or the Department of Insurance, ~~by January 1, 1992,~~ an amount equal to its monthly prepaid Medicaid revenues *if a public entity*; and ~~by and after January 1, 1993,~~ an amount equal to one-and-one-half times its monthly prepaid Medicaid revenues *if a private entity*. In the event an entity's surplus falls below any applicable statutory requirements, or an entity's total of cash, short-term investments allowable as admitted assets by the Department of Insurance, and restricted funds or deposits controlled by the *agency* ~~department~~ or the Department of Insurance falls below *the entity's monthly prepaid Medicaid revenues if a public entity or* one-and-one-half times *the entity's* ~~its~~ monthly prepaid Medicaid revenues *if a private entity*, the *agency* ~~department~~ shall prohibit the entity from engaging in enrollment activities, shall cease to process new enrollments for the entity, and shall not renew the entity's contract until the required balance is achieved. The requirements of this subsection shall not apply:

(a) Where a public entity agrees to fund any deficit incurred by the contracting entity; or

(b) Where the entity's performance and obligations are guaranteed in writing by a nonprofit guaranteeing organization which:

1. Has been in operation for at least 5 years and has assets in excess of $50 million; or

2. Submits a written guarantee acceptable to the *agency* ~~department~~ which is irrevocable during the term of the contracting entity's contract with the *agency* ~~department~~ and, upon termination of the contract, until the *agency* ~~department~~ receives proof of satisfaction of all outstanding obligations incurred under the contract.

(13) Each entity that contracts with the agency on a prepaid or fixed-sum basis for the provision of Medicaid services must reimburse any hospital or physician that provides emergency services to its members at the least of the following amounts:

(a) Usual charges made to the general public by the hospital or physician;

(b) The Medicaid per diem rate or reimbursement rate established for that hospital or physician service; or

(c) A rate negotiated with the hospital or physician before the provision of services.

(14) Each entity that contracts with the agency on a prepaid or fixed-sum basis for the provision of Medicaid services must reimburse any hospital or physician that is outside the entity's authorized service area as specified in its contract with the agency, and that provides services authorized by the entity to its members, at the least of the following amounts:

(a) Usual charges made to the general public by the hospital or physician;

(b) The Medicaid per diem rate or reimbursement rate established for the hospital or physician service; or

(c) A rate negotiated with the hospital or physician before the provision of services.

(15) The agency shall include, as a minimum in its definition of a managed care provider, health maintenance organizations licensed and in good standing with the Commissioner of Insurance and the prepaid health plans under contract with the agency.

And the title is amended as follows:

In title, insert: amending s. 409.912, F.S.; providing for inclusion of health maintenance organizations and prepaid health plans in the agency's definition of a managed care provider; providing for hospital and physician reimbursement rates applicable to prepaid Medicaid contractors;

Senator Forman moved the following amendment which was adopted:

Amendment 106—On page 112, line 30 through page 113, line 20, strike all of said lines and insert:

(3) The agency shall conduct a study of the feasibility of establishing managed care programs for the following special population groups:

(a) Pregnant women and infants.

(b) Chronically ill children.

(c) Elderly and disabled recipients, especially those at risk of nursing home placement.

(d) Persons with developmental disabilities.

(e) Qualified Medicare beneficiaries.

(f) Adults who have chronic, high-cost medical conditions.

(g) Adults and children who have mental health problems.

(h) Other recipients for whom managed care programs offer the opportunity for more cost effective care and greater access to qualified providers.

This study shall be conducted to the extent permitted by federal law, and report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 1994.

Senator Gutman moved the following amendments which were adopted:

Amendment 107—On page 114, line 27 through page 116, line 7, strike all of said lines and renumber subsequent sections.

Amendment 108 (with Title Amendment)—On page 116, between lines 7 and 8, insert:

Section 56. The Agency for Health Care Administation shall develop a home care program that includes infusion therapy to reimburse persons under the Medicaid program. The home care program shall encourage the replacement of current hospitalization utilization with lower-cost home care.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 225, line 5, after the semicolon (;) insert: requiring the agency to establish a Medicaid home care program;

Amendment 109 (with Title Amendment)—On page 218, strike all of lines 6-9 and insert:

Section 87. (1) Effective October 1, 1995, sections 458.307, 460.404, 461.004, 464.004, 465.004, 468.1135, 468.1665, 474.204, 484.003, 486.023, 490.004, and 491.004, Florida Statutes; section 457.103, Florida Statutes, as amended by section 1 of chapter 92-38, Laws of Florida; section 459.004, Florida Statutes, as amended by section 85 of chapter 92-149, Laws of Florida; section 463.003, Florida Statutes, as amended by section 43 of chapter 92-149, Laws of Florida; section 466.004, Florida Statutes, as amended by section 97 of chapter 92-149, Laws of Florida; and section 483.805, Florida Statutes, as created by section 32 of chapter 92-58, Laws of Florida, are repealed.

(2) The Legislature shall study the issue of health care delivery and regulation of health care providers. The study must specifically address whether:

(a) The Legislature should create a Department of Health;

(b) The Legislature should create a Department of Health Care Administration and transfer to that department the powers, duties, and functions of the Agency for Health Care Administration;

(c) The Division of Medical Quality Assurance should be transferred to a Department of Health or to a Department of Health Care Administration; and

(d) The Legislature should create a Department of Children and Family Services.

Section 88. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 227, line 31, after the semicolon (;) insert: providing for future repeal of ss. 457.103, 458.307, 459.004, 460.404, 461.004, 463.003, 464.004, 465.004, 466.004, 468.1135, 468.1665, 474.204, 482.805, 484.003, 486.023, 490.004, 491.004, F.S., relating to the Board of Acupuncture, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic, the Board of Podiatric Medicine, the Board of Optometry, the Board of Nursing, the Board of Pharmacy, the Board of Dentistry, the Board of Speech-Language Pathology and Audiology, the Board of Nursing Home Administrators, the Board of Veterinary Medicine, the Board of Clinical Laboratory Personnel, the Board of Opticianry, the Board of Physical Therapy Practice, the Board of Psychological Examiners, and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, respectively; requiring the Legislature to conduct a study and prescribing the elements thereof;

Senator Forman moved the following amendment which was adopted:

Amendment 110—On page 210, line 31, after "627.668" insert: *shall*

Senator Myers moved the following amendments which were adopted:

Amendment 111 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. Effective July 1, 1993, section 464.027, Florida Statutes, is created to read:

464.027 Registered nurse first assistant.—

(1) LEGISLATIVE INTENT.—The purposes of this section are to:

(a) Encourage more effective use of the skills of physicians by enabling them to delegate health-care functions to qualified registered nurse first assistants when such delegation is consistent with quality, cost-effective health care for the people of this state.

(b) Encourage the use of registered nurse first assistants by physicians and hospitals to the extent that the registered nurse first assistant can operate efficiently and effectively in the specialty areas in which the registered nurse first assistant has been educated.

(c) Provide for reimbursement for the registered nurse first assistant from managed health care agencies, state agencies, workers' compensation carriers, and private insurance companies.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Board" means the Florida Board of Nursing.

(b) "Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative, and postoperative nursing care to surgical patients.

(c) "Recognized program" means a program that addresses all contact areas of the modules in the Core Curriculum for the Registered Nurse First Assistant, which includes 1 academic year of didactic instruction and supervised clinical learning activities and which takes place in an institution approved by an accrediting agency recognized by the United States Office of Education or the board.

(d) "Registered nurse first assistant" means a person who meets the qualifications listed in this section.

(3) QUALIFICATIONS.—A registered nurse first assistant is any person who:

(a) Is licensed as a registered nurse under this chapter;

(b) Is certified in perioperative nursing; and

(c) Holds a certificate from, and has successfully completed, a recognized program or has achieved and maintained certification as a registered nurse first assistant.

(4) INSTITUTIONAL POWERS.—Each health-care institution must establish specific procedures for the appointment and reappointment of registered nurse first assistant staff members and for granting, renewing, and revising their clinical privileges.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 227, line 31, after the semicolon (;) insert: creating s. 464.027, F.S.; providing for recognition of registered nurses who meet specified criteria as "registered nurse first assistants"; providing duties of the Board of Nursing and of health-care institutions; providing legislative intent; providing definitions;

Amendment 112 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. Paragraph (m) of subsection (3) of section 455.236, Florida Statutes, 1992 Supplement, is amended to read:

455.236 Financial arrangements between referring health care providers and providers of health care services.—

(3) DEFINITIONS.—For the purpose of this section, the word, phrase, or term:

(m) "Referral" means any referral of a patient by a health care provider for health care services, including, without limitation:

1. The forwarding of a patient by a health care provider to another health care provider or to an entity which provides or supplies designated health services or any other health care item or service; or

2. The request or establishment of a plan of care by a health care provider, which includes the provision of designated health services or other health care item or service.

3. Except for the purposes of s. 455.239, the following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:

a. By a radiologist for diagnostic imaging services.

b. By a physician specializing in the provision of radiation therapy services for such services.

c. By a medical oncologist for drugs and solutions to be prepared and administered intravenously to such oncologist's patient, as well as for the supplies and equipment used in connection therewith to treat such patient for cancer and the complications thereof.

d. By a cardiologist for cardiac catheterization services.

e. By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another physician.

f. By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice.

g. By a health care provider for services provided by an ambulatory surgical center licensed under chapter 395.

h. By a health care provider for diagnostic clinical laboratory services where such services are directly related to renal dialysis.

i. By a urologist for lithotripsy services.

j. By a dentist for dental services performed by an employee of or health care provider who is an independent contractor with the dentist or group practice of which the dentist is a member.

k. By a physician for infusion therapy services to a patient of that physician or a member of that physician's group practice.

l. By a nephrologist for renal dialysis services and supplies.

m. By a health care provider for services provided by a nurse practitioner licensed under chapter 464 or a licensed midwife licensed under chapter 467 in a hospital licensed under chapter 395 or a birth center licensed under chapter 383.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 227, line 31, after the first semicolon (;) insert: redefining the term "referral" with respect to patients of a health care provider to exclude services provided by a nurse practitioner or midwife in a hospital or birth center;

Senators Kirkpatrick and Forman offered the following amendment which was moved by Senator Forman and adopted:

Amendment 113—On page 218, between lines 5 and 6, insert:

Section 87. The Legislature finds that the majority of costs in the health care system are driven by the consumption and utilization of health care resources by health care providers. The Legislature further finds that there is wide variance in the use of health care resources by health care providers with no appreciable difference in the quality of outcomes or the value of health care services provided. Therefore, the Agency for Health Care Administration shall develop and implement a UB-92 based system, with appropriate adjustments for illness severity and acuity, for comparing quality and value of health care services across the state, or, in the alternative, the Agency may purchase a data system to accomplish this task. This system shall include, at a minimum, an analysis of the 20 procedures and diagnoses that account for the most significant percentage of total statewide health services and health care costs. The system must take into account all relevant risk factors that contribute to the outcome of a patient's treatment. The Agency shall use appropriate data available from the Health Care Board and shall hereby have the authority to collect any necessary statistical data from health care providers, health care facilities, and health insurers. The Agency shall make available to the public, on a quarterly basis, the outcome of its analysis of this data. The Agency shall specifically target the release of its data to any community health purchasing alliances in the state. The Agency shall form a task force of users and providers of this type of data to determine the most useful and efficient means of disseminating the data to the public.

(Renumber subsequent sections.)

Senator Grant moved the following amendment which was adopted:

Amendment 114—On page 218, strike line 5 and insert:

Section 88. The Legislature recognizes that the state has a valuable resource and substantial investment in its medical schools, research institutions and teaching hospitals and that the best interests of the state will be served by preserving the research, teaching and patient care missions of the facilities described in sections 240.512, 240.513, and 408.07(49), Florida Statutes. Accordingly, the Agency for Health Care Administration is directed to study how those facilities will be affected by the new health care environment created by this act, and study how those facilities will maintain a sufficient patient flow and volume in order to adequately pursue each facility's research, teaching and patient care missions. The agency shall report its findings and recommendations in the final Florida Health Plan, to be submitted to the Legislature by December 31, 1993.

(Renumber subsequent sections.)

Senator Forman moved the following amendments which were adopted:

Amendment 115—On page 113, between lines 17 and 18, insert:

8. Persons in need of alcohol or other drug abuse treatment services.

(Renumber subsequent section.)

Amendment 116—On page 130, line 3, strike "four" and insert: *five*

Amendment 117—On page 130, line 5, after "physician," insert: *one of whom is an optometrist,*

Senator Jenne moved the following amendment which was adopted:

Amendment 118—On page 36, line 29, strike *"adust"* and insert: also reduce

Senator Gutman moved the following amendment which was adopted:

Amendment 119—On page 80, line 8, strike "and"

Senator Holzendorf moved the following amendment which was adopted:

Amendment 120—On page 1, line 26, before the period (.) insert: , *subject to confirmation by the Senate*

Senator Myers moved the following amendment which was adopted:

Amendment 121 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. The Agency for Health Care Administration, or any other agency or subdivision of the state, may not require prior authorization for, or in any way restrict the availability of, any prescription drug approved by the United States Food and Drug Administration.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 227, line 31, after the semicolon (;) insert: prohibiting the Agency for Health Care Administration or any other state agency or subdivision from requiring prior authorization for, or from restricting the availability of, federally approved prescription drugs;

Senator Silver moved the following amendment which was adopted:

Amendment 122—On page 45, between lines 3 and 4, insert:

5. An investment interest in a hospital licensed under Chapter 395 which was destroyed by a natural disaster on August 24, 1992.

Senator Forman moved the following amendment which was adopted:

Amendment 123—On page 89, between lines 25 and 26, insert:

(12) Notwithstanding any provision of this act to the contrary, if an accountable health partnership has entered into a contract with a provider or a facility licensed or permitted under chapter 465 for the purpose of providing prescribed medicine services, an individual may use an independent pharmacy that is not a party to the contract, if such independent pharmacy agrees to provide the service at a rate equal to or less than the rate set forth in the contract negotiated by the accountable health partnership with parties to the contract and such independent pharmacy meets all of the qualifications for participation in the accountable health partnership including, but not limited to, qualifications related to professional education, skills, and experience; documentation of the appropriateness, overuse, or under-use of services as identified by utilization review mechanisms and criteria; previous restrictions or sanctions imposed by licensing bodies; and favorable professional liability history. This subsection does not apply to any health maintenance organization established under part I of chapter 641, which maintains an in-house pharmacy that is permitted under chapter 465.

Senator Myers moved the following amendments which were adopted:

Amendment 124—On page 11, between lines 13 and 14, insert:

(9) Ensuring that any health plan reasonably available within the jurisdiction of an alliance, through a preferred provider network, a point-of-service product, an exclusive provider organization, a health maintenance organization, or a pure indemnity product, is offered to members of the alliance. For the purposes of this paragraph, "pure indemnity product", means a health insurance policy or contract that does not provide different rates of reimbursement for a specified list of physicians and a "point of service product" means a preferred provider network or a health maintenance organization which allows members to select at a higher cost a provider outside of the network or the health maintenance organization.

Amendment 125—On page 26, between lines 7 and 8, insert:

(c) Establish within an accountable health partnership a panel of providers licensed under chapters 458 and 459 from the provider networks to review and make recommendations to the accountable health partnerships on issues related to the health plans offered by the accountable health partnerships.

Senator Myers moved the following amendment:

Amendment 126—On page 26, between lines 29 and 30, insert:

Section 40. Section 408.707, Florida Statutes, is created to read:

408.707 Physician networks.—

(1) The agency shall by rule establish criteria and conditions for the formation and certification of physician networks that may provide physician input into the payment procedures, utilization review, administration, coverage, prepayment policies, and other operational and policy decisions, except prices or fees, to be made by accountable health partnerships.

(2) No physician shall be required to join a physician network in order to negotiate with any accountable health partnership.

(3) Nothing in this section shall authorize any physician network or any of its members to boycott or threaten to boycott any accountable health partnership that does not accept the proposals made by a physician network.

(4) The agency shall monitor and annually certify that each physician network complies with this section and any implementing rules enacted by the agency. The agency may decertify any physician network which fails to comply with this section or any implementing rules enacted by the agency.

Section 41. Section 641.311, Florida Statutes, is renumbered as section 408.709, Florida Statutes, and is amended to read:

408.709 ~~641.311~~ Statewide *Provider and* Subscriber Assistance Program.—

(1) The *Agency for Health Care Administration* ~~department~~ shall adopt and implement a program to provide assistance to subscribers, *and providers*, including those whose grievances are not satisfactorily resolved by the *accountable health partnership or* health maintenance organization. *The panel shall not consider grievances which relate to an accountable health partnership's or health maintenance organization's refusal to accept a provider into its network of providers.* The program shall include the following:

(a) A review panel which may periodically review, consider, and recommend to the *agency* ~~department~~ any actions the *agency or the Department of Insurance* ~~department~~ should take concerning individual cases heard by the panel as well as the types of ~~subscriber~~ grievances which have not been satisfactorily resolved after ~~the~~ subscribers *or providers have followed* ~~follow~~ the full grievance procedures of the *accountable health partnership or* health maintenance organizations. The proceedings of the grievance panel shall not be subject to the provisions of chapter 120. The review panel shall consist of members employed by the *agency* ~~department~~ and members employed by *Department of Insurance* ~~the Department of Health and Rehabilitative Services~~, chosen by their respective agencies. The *agency* ~~Department of Insurance~~ may contract with a medical director and a primary care physician who shall provide additional technical expertise to the review panel. The medical director shall be selected from a health maintenance organization with a current certificate of authority to operate in Florida.

(b) A plan to disseminate information concerning the program to the general public as widely as possible.

(2) Every *accountable health partnership or* health maintenance organization shall submit a quarterly report to the *agency and the Department of Insurance* ~~department~~ listing the number and the nature of all subscribers' grievances which have not been resolved to the satisfaction of the subscriber after the subscriber follows the full grievance procedure of the organization.

(3)(a) The *Agency for Health care administration* ~~Department of Health and Rehabilitative Services~~ may impose an administrative fine, after a formal investigation has been conducted on the *accountable health partnership's or* health maintenance organization's failure to comply with quality of health services standards set forth in statute or rule. The *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ may initiate such an investigation based on the recommendations related to the quality of health services received from the Statewide *Provider and* Subscriber Assistance Panel pursuant to paragraph (1)(a). The fine shall not exceed $2,500 per violation and in no event shall such fine exceed an aggregate amount of $10,000 for noncompliance arising out of the same action.

(b) In determining the amount to be levied for noncompliance under paragraph (a), the following factors shall be considered:

1. The severity of the noncompliance, including the probability that death or serious harm to the health or safety of the subscriber will result or has resulted, the severity of actual or potential harm and the extent to which provisions of this part were violated.

2. Actions taken by the *accountable health partnership or* health maintenance organization to resolve or remedy any quality of care grievance.

3. Any previous incidences of noncompliance by the *accountable health partnership or* health maintenance organization.

(c) All amounts collected pursuant to this subsection shall be deposited into the Health Maintenance Organization Quality Care Trust Fund.

Section 42. The agency shall provide administrative support to the Statewide Provider and Subscriber Assistance Panel within existing resources.

(Renumber subsequent sections.)

Senator Gutman moved the following amendment to **Amendment 126** which was adopted:

Amendment 126A—On page 26, between lines 29 and 30, insert:

Section 40. Section 408.707, Florida Statutes, is created to read:

408.707 Physician networks.—

(1) The agency shall by rule establish criteria and conditions for the formation and certification of physician networks that may provide physician input into utilization review, administration, coverage, and other operational and policy decisions, except prices or fees, to be made by accountable health partnerships.

(2) No physician shall be required to join a physician network in order to negotiate with any accountable health partnership.

(3) Nothing in this section shall authorize any physician network or any of its members to boycott or threaten to boycott any accountable health partnership that does not accept the proposals made by a physician network.

(4) The agency shall monitor and annually certify that each physician network complies with this section and any implementing rules enacted by the agency. The agency may decertify any physician network which fails to comply with this section or any implementing rules enacted by the agency.

Section 41. Section 641.311, Florida Statutes, is renumbered as section 408.709, Florida Statutes, and is amended to read:

408.709 ~~641.311~~ Statewide *Provider and* Subscriber Assistance Program.—

(1) The *Agency for Health Care Administration* ~~department~~ shall adopt and implement a program to provide assistance to subscribers, *and providers*, including those whose grievances are not satisfactorily resolved by the *accountable health partnership or* health maintenance organization. *The panel shall not consider grievances which relate to an accountable health partnership's or health maintenance organization's refusal to accept a provider into its network of providers.* The program shall include the following:

(a) A review panel which may periodically review, consider, and recommend to the *agency* ~~department~~ any actions the *agency or the Department of Insurance* ~~department~~ should take concerning individual cases heard by the panel as well as the types of ~~subscriber~~ grievances which have not been satisfactorily resolved after ~~the~~ subscribers *or providers have followed* ~~follow~~ the full grievance procedures of the *accountable health partnership or* health maintenance organizations. The proceedings of the grievance panel shall not be subject to the provisions of chapter 120. The review panel shall consist of members employed by the *agency* ~~department~~ and members employed by *Department of Insurance* ~~the Department of Health and Rehabilitative Services~~, chosen by their respective agencies. The *agency* ~~Department of Insurance~~ may contract with a medical director and a primary care physician who shall provide additional technical expertise to the review panel. The medical director shall be selected from a health maintenance organization with a current certificate of authority to operate in Florida.

(b) A plan to disseminate information concerning the program to the general public as widely as possible.

(2) Every *accountable health partnership or* health maintenance organization shall submit a quarterly report to the *agency and the Department of Insurance* ~~department~~ listing the number and the nature of all subscribers' grievances which have not been resolved to the satisfaction of the subscriber after the subscriber follows the full grievance procedure of the organization.

(3)(a) The *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ may impose an administrative fine, after a formal investigation has been conducted on the *accountable health partnership's or* health maintenance organization's failure to comply with quality of health services standards set forth in statute or rule. The *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ may initiate such an investigation based on the recommendations related to the quality of health services received from the Statewide *Provider and* Subscriber Assistance Panel pursuant to paragraph (1)(a). The fine shall not exceed $2,500 per violation and in no event shall such fine exceed an aggregate amount of $10,000 for noncompliance arising out of the same action.

(b) In determining the amount to be levied for noncompliance under paragraph (a), the following factors shall be considered:

1. The severity of the noncompliance, including the probability that death or serious harm to the health or safety of the subscriber will result or has resulted, the severity of actual or potential harm and the extent to which provisions of this part were violated.

2. Actions taken by the *accountable health partnership or* health maintenance organization to resolve or remedy any quality of care grievance.

3. Any previous incidences of noncompliance by the *accountable health partnership or* health maintenance organization.

(c) All amounts collected pursuant to this subsection shall be deposited into the Health Maintenance Organization Quality Care Trust Fund.

Section 42. The agency shall provide administrative support to the Statewide Provider and Subscriber Assistance Panel within existing resources.

(Renumber subsequent sections.)

Amendment 126 as amended was adopted.

Senator Boczar moved the following amendment:

Amendment 127—On page 1, after the enacting clause insert:

Section 1. The Legislature recognizes that free passage from one place to another is an integral part of the freedom that all citizens enjoy and have a right to expect in this country. It is the intent of the Legislature to protect citizens who are conducting lawful activity and seeking lawful medical care in this state from disruption, harrassment, intimidation, and terrorism.

Section 2. Section 870.08, Florida Statutes, is created to read:

870.08 Unlawful activities in or near medical facilities; definitions; penalties.—

(1) As used in this section:

(a) "Act" means a physical activity, but does not include constitutionally protected activity.

(b) "Medical facility" means any physical structure or conveyance in which licensed medical services are lawfully provided.

(2) No person may act alone or in concert with others to prevent or attempt to prevent any other person from entering or exiting a medical treatment facility for legitimate business purposes by activity which:

(a) Detains a person or a person's passage; or

(b) Obstructs, impedes, or hinders a person or a person's passage.

A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this subsection, after having been previously convicted three times of a violation of this subsection, commits a felony of the third degree, punishable as provided in s.775.082, s. 775.083, or s. 775.084.

(3) No person may commit any unlawful act in retaliation against any other person for having entered a medical facility. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this subsection, after having been previously convicted three times of a violation of this subsection, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who engages in any act as described in paragraph (1)(a), while on the property of or within fifteen feet of the property line of a medical facility.

(a) by which the health or life of an individual may be threatened or impaired, or

(b) by or through which directly or indirectly, disease may be caused.

creates a nuisance injurious to health in violation of s. 386.051, and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083,

(5) A person who engages in any act as described in paragraph (1)(a), while on the property of or within fifteen feet of the property line of a medical facility, which is of a nature to corrupt the public morals, outrage the sense of public decency, or affect the peace and quiet of persons who witness such act, or who engages in brawling and fighting or in such conduct as to constitute a breach of the peace or disorderly conduct, violates s. 877.03, and commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) A person who, while on the property of a medical facility, willfully and maliciously injures or damages, by any means, any real or personal property belonging to another, including, but not limited to, the place-

ment of graffiti thereon or other acts of vandalism thereto, commits the offense of criminal mischief in violation of s. 806.13(1)(a), punishable as provided in s. 806.13(1)(b).

(7) A person who, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance where a medical facility is located or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises or by a person authorized by the owner or lessee to depart, and refuses to do so, commits the offense of trespass in a structure or conveyance in violation of s. 810.08, punishable as provided in s. 810.08(2).

(8) A person who willfully, maliciously, and repeatedly follows or harasses another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury, commits the offense of aggravated stalking in violation of s. 784.048(3), a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) A person is justified in the use of force, except deadly force, against another when and to the extent the person reasonably believes that such use of force is necessary for self-defense or for the defense of another against imminent use of unlawful force. A person is justified in the use of deadly force only if the person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to that person or another or to prevent the imminent commission of a forcible felony.

(10) Nothing in this section shall be construed to preclude arrest, prosecution, or conviction for other criminal acts occurring on the property of or in the immediate vicinity of a medical facility.

Section 3. This act shall take effect upon becoming a law.

(Renumber subsequent sections.)

POINT OF ORDER

Senator Harden raised a point of order that pursuant to Rule 7.1 **Amendment 127** was not germane to the bill.

RULING ON POINT OF ORDER

On recommendation of Senator Jennings, Chairman of the Committee on Rules and Calendar, the President ruled the point well taken and the amendment out of order.

Motions

Senator Boczar moved that the rules be waived and **CS for SB 1714** be placed on the Special Order Calendar. The motion was adopted by the required two-thirds vote. The vote was:

Yeas—29 Nays—10

Senator Dudley moved the following amendment which was adopted:

Amendment 128 (with Title Amendment)—On page 41, between lines 14 and 15, insert:

Section 6. Paragraphs (k) and (l) are added to subsection (4) of section 455.236, Florida Statutes, 1992 Supplement, to read:

455.236 Financial arrangements between referring health care providers and providers of health care services.—

(4) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as provided in this section:

(k) Within 30 days after the end of each calendar quarter, each entity that owns or leases and operates a hospital licensed under chapter 395 in which one or more health care providers directly or indirectly are investors or own investment interests, within the meaning of this section, shall submit to the agency the name of each health care provider who directly or indirectly is an investor or owns an investment interest, the extent and value of that interest, and any dividend or other distribution of income made to the owner of that interest. The foregoing shall not be required to be reported by health care providers whose investment interests were acquired prior to May 1, 1992, or consist solely of securities described in subparagraph (b)1.

(l) An entity that receives a referred patient from a health care provider who owns an investment interest as provided for in paragraph (k) must provide and have the referred patient execute a written statement that this patient has been informed that the referring health care provider owns an interest, directly or indirectly, in the entity. The foregoing shall not be required if the investment interests were acquired prior to May 1, 1992, or consist solely of securities described in subparagraph (b)1.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 21, after the semicolon (;) insert: amending s. 455.236, F.S.; requiring health care providers who are investors in a hospital to report specified data;

Reconsideration of Amendment

On motion by Senator Silver, the Senate reconsidered the vote by which **Amendment 128** was adopted. **Amendment 128** failed.

The vote was:

Yeas—14 Nays—20

Senators Diaz-Balart, Casas and Gutman offered the following amendment which was moved by Senator Diaz-Balart and adopted:

Amendment 129 (with Title Amendment)—On page 41, between lines 14 and 15, insert:

Section 17. Section 109 of chapter 91-282, Laws of Florida, is amended to read:

Section 109. Each applicant who qualified to take, and before *1995* ~~1989~~ successfully completed, a course of study approved by the Department of Professional Regulation pursuant to chapter 86-90, Laws of Florida, relating to the subject matter within the jurisdiction of the board provided for in section 466.004, Florida Statutes, may apply for licensure as provided for under section 455.218, Florida Statutes, without having to meet the requirement under section 455.218(1)(f), Florida Statutes, if the applicant meets all other eligibility requirements for licensure under section 455.218, Florida Statutes. This provision shall take effect upon becoming law.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 227, line 6, after the semicolon (;) insert: amending s. 109, ch. 91-282, Laws of Florida; extending an exemption from the requirements of s. 455.218(1)(f), F.S., for certain applicants for licensure as foreign-trained professionals;

Senator Forman moved the following amendment which was adopted:

Amendment 130—On page 74, between lines 4 and 5, insert:

(25) "Independent pharmacy" means a pharmacy facility which is not part of a group of affiliated pharmacy facilities which are under common ownership directly or indirectly in which the group has more than 12 pharmacy facilities in the state or has directly or indirectly any interest in any facilities licensed under another state's laws for the purpose of providing prescribed medicine services.

(26) "Pharmacy facility" means a pharmacy facility which is permitted by the Board of Pharmacy in accordance with chapter 465.

Senator McKay moved the following amendment which was adopted:

Amendment 131 (with Title Amendment)—On page 60, between lines 9 and 10, insert:

Section 26. Paragraph (b) of subsection (1) of section 400.051, Florida Statutes, is amended to read:

400.051 Homes or institutions exempt from the provisions of this part.—

(1) The following shall be exempt from the provisions of this part:

(b) Any *hospital that* ~~institution which offers its services primarily for medical treatment or surgery and~~ is licensed *under chapter 395* ~~by the state~~.

Section 27. Subsections (8) of section 409.905, Florida Statutes, is amended to read:

(8) NURSING FACILITY SERVICES.—The department shall pay for 24-hour-a-day nursing and rehabilitative services for a recipient in a nursing facility licensed under part I of chapter 400 *or in a Medicare certified skilled nursing facility operated by a hospital licensed under part I of chapter 395*, which *services* are ordered by and provided under the direction of a licensed physician.

Section 28. Paragraph (a) of subsection (2) of section 409.908, Florida Statutes, 1992 Supplement, is amended to read:

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

(2)(a) Reimbursement to nursing homes licensed under part I of chapter 400 and intermediate care facilities for the mentally retarded licensed under chapter 393 must be made prospectively. Reimbursement to hospitals licensed under part I of chapter 395 for the provision of swing-bed nursing home services must be made on the basis of the average statewide nursing home payment. *Reimbursement to hospitals licensed under part I of chapter 395 for the provision of skilled nursing services must be made on the basis of the average county nursing home payment for those services in the county in which the hospital is located. When a hospital is located in a county that does not have any community nursing homes, reimbursement must be determined by averaging the nursing homes payments in counties that surround the county in which the hospital is located. Reimbursement to hospitals for skilled nursing services shall be limited to 30 days, unless a prior authorization has been obtained from the department. Medicaid reimbursement may be extended by the department beyond 30 days, and approval must be based upon verification by the patient's physician that the patient meets at least one of the following criteria: the patient requires short-term rehabilitative and recuperative services only, in which case an extension of no more than 15 days may be approved; or there is no available community nursing home bed, in which case an extension may be approved only until a community nursing home bed is located.*

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 221, line 20, after "review;" insert: amending s. 400.051, F.S.; prescribing exemptions from provisions regulating nursing homes; amending s. 409.905, F.S.; providing for Medicaid reimbursement for services provided in certain skilled nursing facilities operated by such hospitals; amending s. 409.908, F.S.; providing for the rate of payment of such reimbursement; providing a limitation;

Senator Williams moved the following amendment:

Amendment 132 (with Title Amendment)—On page 105, between lines 16 and 17, insert:

Section 51. Section 409.701, Florida Statutes, is amended to read:

409.701 The Florida Health Access Corporation Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Health Access Corporation Act."

(2) LEGISLATIVE INTENT.—The Legislature finds that there is insufficient *affordable* group health insurance coverage available to employees of small businesses in Florida, that uninsured employees of small businesses represent a significant portion of the uncompensated costs of health care providers, and that uninsured individuals have impaired access to health care services and correspondingly lower health status. It is the intent of the Legislature that a nonprofit corporation, to be known as the "Florida Health Access Corporation," be organized for the purpose of pooling *the purchasing power of* groups of individuals employed by small businesses, and the dependents of such employees, into larger groups in order to facilitate a program of affordable group health insurance coverage *and establish pooled purchasing arrangements* to uninsured individuals. *The health coverage provided by the corporation may be subsidized or nonsubsidized. Subsidies must be available only on a case-by-case basis for individual businesses as determined necessary by the board of directors.*

(3) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(a) There is authorized the "Florida Health Access Corporation." The Florida Health Access Corporation shall operate in Hillsborough County and a multicounty rural site and such other counties as may be designated by the corporation.

(b) The Florida Health Access Corporation shall:

1. Organize employers of *50* ~~24~~ or fewer full-time employees and facilitate the provision of group health *coverage* ~~insurance~~ to such employers and employees and their dependents;

2. Arrange for the collection of premiums, in an amount to be determined by the board of directors, from all insured individuals to provide for claims paid under group health *coverage* ~~insurance~~ arrangements and for the administrative expenses incurred or estimated to be incurred during the period for which the premium is paid;

3. Establish administrative and accounting procedures for the operation of the corporation;

4. Establish employer and employee eligibility criteria for participation in the program;

5. Establish participation criteria governing eligibility of insurers or any providers of health care services to participate in the program;

6. Establish procedures under which applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the board;

7. Contract with an authorized insurer or insurance administrator to provide administrative services to the corporation if desired or when such services are deemed necessary by the board;

8. Contract with authorized insurers or any provider of health care services for the provision of services to individuals covered through the program;

9. Develop and implement a plan to publicize the Florida Health Access Corporation, the eligibility requirements for the program, and the procedures for enrollment in the program, and to maintain public awareness of the corporation and the program;

10. Secure staff necessary to properly administer the corporation. *Administrative* ~~Staff~~ costs shall be funded from grant funds, state and local matching funds, administrative fees collected from employers and insurers, and other sources of funding arranged by the corporation. The board of directors is authorized to determine the number of staff necessary to administer the corporation~~, but shall include, at a minimum, an executive director, an assistant director, and a staff assistant~~; and

11. Enter into contracts with local agencies to provide onsite marketing and enrollment services necessary to the operation of the corporation.

(c) The corporation shall set business and employee eligibility standards which shall define a small business and further identify small businesses eligible for participation in the program. Small businesses eligible for participation *must* ~~shall~~ have *50* ~~24~~ or fewer full-time employees. Employer eligibility standards shall include a provision that the employer must attest to having offered or provided no other health insurance benefit program in the 6-month period prior to the effective date of participation in the program. The corporation shall make all necessary provisions to prevent the payment of or reimbursement for any claim or expense which may be covered under a separate health insurance or health care services plan under which an individual who participates in the program may be covered. Coverage arranged through the corporation's program is to be considered secondary to any other available coverage held by the individual participating in the program. ~~If such an individual is also eligible for Medicare coverage, the coverage arranged by the corporation shall not pay or reimburse any individual for expenses paid by Medicare.~~ No policy shall be arranged by the corporation which is deemed to be a Medicare supplemental policy as defined in s 627.672.

(d) The corporation, which shall be operated as a nonprofit private corporation organized pursuant to chapter 617, shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including, but not limited to, the power to receive and accept grants, loans, and, notwithstanding the provisions of ss. 215.42 and 215.422, advances of funds from any public or private agency, for, or in aid of, the purpose of this act, and to receive and accept contributions, from any source, of money, property, labor, or any other thing of value, to be held, used, and applied for said purposes.

(4) BOARD OF DIRECTORS.—

(a) The Florida Health Access Corporation shall operate subject to the supervision and approval of a seven-member board of directors, which shall consist of:

1. *Three* ~~Two~~ members~~, one from an urban county and one from a rural county,~~ who shall represent small businesses whose employees are eligible to participate in the Florida Health Access Corporation;

~~2. One member who shall represent consumers eligible to participate in the Florida Health Access Corporation;~~

2.~~3.~~ One member who shall be a representative of a ~~domestic health care insurer or of a~~ private company which offers a self-insured program of health benefits to employees;

3.~~4.~~ One member who shall be the *director* ~~secretary~~ of the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ or his designee;

4.~~5.~~ One member who shall be a representative of *an organized labor or business not-for-profit association* ~~the Florida Chamber of Commerce~~; and

5.~~6.~~ One member who shall be a representative of an employer health coalition.

(b) The board of directors shall be appointed and may be removed by the Governor, *subject to Senate confirmation.* Terms of appointment shall be for 3 years. The board shall appoint the *chief* executive *officer* ~~director~~, who shall be responsible for other staff as authorized by the board.

(c) Board members may be reimbursed from funds of the Florida Health Access Corporation for actual and necessary expenses incurred by them as members, according to state travel and per diem limitations, but may not otherwise be compensated for their services.

(d) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the board of directors, or its employees or agents, for any action taken by them in performance of their powers and duties under this act.

(5) LICENSING, FISCAL OPERATION.—

(a) The corporation shall not be deemed to be an insurer. The officers, directors, and employees of the corporation shall not be deemed to be agents of an insurer. Neither the corporation nor the officers, directors, or employees of the corporation shall be subject to the licensing requirements of the insurance code or the rules of the Department of Insurance. However, the Department of Insurance *shall* ~~may~~ require that the marketing representative utilized and compensated by the corporation be licensed as representatives of the insurers or health services providers with whom the corporation may contract.

(b) The Florida Health Access Corporation program shall be operated in accordance with sound actuarial principles. The board shall have complete fiscal control over the corporation and shall be responsible for all corporate operations.

(c) The Department of Insurance shall assist the program in determining that proposed premium levels will be sufficient to permit the corporation to operate in an actuarially sound manner.

(d) The corporation may expend funds through direct reinsurance, by purchasing reinsurance, or by other means approved by the board for the program of health care services and benefits arranged through the corporation. The amount of such expenditure shall not exceed funds allocated from the Public Medical Assistance Trust Fund or other sources of funding arranged by the corporation. Notwithstanding the provisions of s. 216.301, any amount so provided, which is not annually required for such purposes, shall remain available to the corporation, to be supplemented by an annual amount equal to the amount expended in the prior year, for the purpose of meeting funding requirements in succeeding years. Any amount remaining upon the liquidation or dissolution of the corporation shall be returned to the Public Medical Assistance Trust Fund.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 224, line 13, after the semicolon (;) insert: amending s. 409.701, F.S.; authorizing the Florida Health Access Corporation to provide subsidized or nonsubsidized coverage to small employers; expanding the program statewide; authorizing the corporation to serve businesses with fewer than a specified number of employees; changing the composition of the board of directors of the Florida Health Access Corporation;

Senators Forman and Myers offered the following amendment to **Amendment 132** which was moved by Senator Forman and adopted:

Amendment 132A—On page 2, line 1, after the period (.) insert: The eligibility standards in section 409.701(3)(c) shall not apply to an employer who receives no direct premium subsidy.

Amendment 132 as amended was adopted.

Senator Forman moved the following amendment which was adopted:

Amendment 133—On page 109, between lines 9 and 10, insert:

(k) Conduct a health survey within 6 months to form the basis for establishing the following goals:

1. With respect to maternal care:

a. A 10-percent reduction in maternal death rate;

b. A 10-percent increase in the number of pregnant women receiving prenatal care;

c. A reduction of at least 25 percent in the waiting time for access to comprehensive primary care services;

d. A 10-percent increase in the availability of health care screening services;

e. A 25-percent increase in the number of and access to health education classes;

f. A reduction in the frequency of admission to acute care hospitals; and

g. A 10-percent reduction in the number of inappropriate emergency room visits.

2. With respect to infant and child care:

a. A reduction in infant mortality rate;

b. A reduction in the incidence of low birth weight;

c. A reduction of at least 25 percent in the waiting time for access to comprehensive primary care services;

d. A 10-percent increase in availability of health care screening services;

e. An increase in the percentage of children immunized at ages 2 through 5; and

f. A 10-percent reduction in the number of inappropriate emergency room visits.

3. With respect to adult care:

a. A reduction of at least 10 percent in the waiting time for access to comprehensive primary care services;

b. A 10-percent increase in availability of health care screening services;

c. A 25-percent increase in the number of and access to health education classes;

d. A reduction in the frequency of admission to acute care hospitals; and

e. A 10-percent reduction in the number of inappropriate emergency room visits.

(l) Conduct a second health survey a year after the first survey is conducted, to determine the progress made in attaining the goals set for the first year. A third health survey must be conducted two years after the initial survey to determine the final results in attaining the goals set. For the second year, the goals must include:

1. A 10-percent reduction in maternal death rate;

2. A 33-percent reduction in the waiting time for access to comprehensive primary care services;

3. A 25-percent reduction in the number of inappropriate emergency room visits;

4. A 10-percent reduction in admissions to acute care hospitals;

5. A reduction in infant mortality rate;

6. A reduction in the incidence of low birth weight; and

7. An increase in the percentage of children immunized at ages 2 through 5.

(m) The hospital in cooperation with the appropriate district of the Department of Health and Rehabilitative Services, shall appoint one or more community ombudsmen. The duty of these persons is to secure sites at which educational programs, outreach programs, and disease prevention programs will be furnished and at which health care screenings, immunizations, and other health care services will be provided, subject to protocols established by the hospital.

Senator McKay moved the following amendments which were adopted:

Amendment 134 (with Title Amendment)—On page 111, between lines 29 and 30, insert:

(c) The agency shall apply by August 31, 1993, for the necessary federal waivers, including a federal freedom-of-choice waiver, to implement mandatory enrollment of Medicaid recipients in managed-care programs. It is the intent of the Legislature to have 50 percent of the Medicaid recipients enrolled in managed-care programs by December 31, 1994, 75 percent of Medicaid recipients enrolled in managed-care programs by December 31, 1995, and 100 percent of Medicaid recipients enrolled in managed-care programs by December 31, 1996. In counties where the MediPass program is not currently available, if private managed-care programs are not available for Medicaid recipients by December 31, 1994, MediPass shall be expanded to those counties.

And the title is amended as follows:

In title, on page 224, line 26, after the semicolon (;) insert: establishing expansion goals and deadlines;

Amendment 135—In title, on page 221, line 21, after the semicolon (;) insert: providing for application for federal waivers to implement competitive bidding and selective contracting for purchasing Medicaid hospital inservices; providing for pilot projects;

Amendment 136—On page 113, line 17, after the period (.) insert: A Medicaid managed-care program other than a health maintenance organization for children and adults having mental health problems must include specialized programs that use community mental health centers or speciality hospitals as preferred providers.

Senator Gutman moved the following amendments which were adopted:

Amendment 137 (with Title Amendment)—On page 119, line 12 through page 163, line 12, strike all of said lines and insert:

Section 62. Section 408.032, Florida Statutes, 1992 Supplement, is amended to read:

408.032 Definitions.—As used in ss. 408.031-408.045, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2)~~(1)~~ "Capital expenditure" means an expenditure, including an expenditure for a construction project undertaken by a health care facility as its own contractor, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or an expenditure which exceeds the minimum as specified in *s. 408.036(1)(c)* ~~s. 381.706(1)(e)~~, changes the bed capacity of the facility, or substantially changes the services or service area of the health care facility, health service provider, or hospice, and which includes the cost of the studies, surveys, designs, plans, working drawings, specifications, initial financing costs, and other activities essential to acquisition, improvement, expansion, or replacement of the plant and equipment. The *agency* ~~department~~ shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.

(3)~~(2)~~ "Certificate of need" means a written statement issued by the *agency* ~~department~~ evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.

(4)~~(3)~~ "Commenced construction" means initiation of and continuous activities beyond site preparation associated with erecting or modifying a health care facility, including procurement of a building permit applying the use of *agency-approved* ~~department approved~~ construction documents, proof of an executed owner/contractor agreement or an irrevocable or binding forced account, and actual undertaking of foundation forming with steel installation and concrete placing.

~~(4) "Department" means the Agency for Health Care Administration.~~

(5) "District" means a health service planning district composed of the following counties:

District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties.

District 2.—Holmes, Washington, Bay, Jackson, Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla, Jefferson, Madison, and Taylor Counties.

District 3.—Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua, Marion, Citrus, Hernando, Sumter, and Lake Counties.

District 4.—Baker, Nassau, Duval, Clay, St. Johns, Flagler, and Volusia Counties.

District 5.—Pasco and Pinellas Counties.

District 6.—Hillsborough, Manatee, Polk, Hardee, and Highlands Counties.

District 7.—Seminole, Orange, Osceola, and Brevard Counties.

District 8.—Sarasota, DeSoto, Charlotte, Lee, Glades, Hendry, and Collier Counties.

District 9.—Indian River, Okeechobee, St. Lucie, Martin, and Palm Beach Counties.

District 10.—Broward County.

District 11.—Dade and Monroe Counties.

(6) "Expedited review" means the process by which certain types of applications are not subject to the review cycle requirements contained in *s. 408.039(1)* ~~s. 381.709(1)~~, and the letter of intent requirements contained in *s. 408.039(2)* ~~s. 381.709(2)~~.

(7) "Health care facility" means a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.

(8) "Health maintenance organization" means a health care provider organization defined and authorized in part I of chapter 641.

(9) "Health services" means diagnostic, curative, or rehabilitative services and includes alcohol treatment, drug abuse treatment, and mental health services.

(10) "Home health agency" means an agency that is certified or seeks certification as a Medicare home health service provider as defined in part III of chapter 400.

(11) "Hospice" or "hospice program" means a hospice as defined in part V of chapter 400.

(12) "Hospital" means a health care facility licensed under chapter 395.

(13) "Institutional health service" means a health service which is provided by or through a health care facility and which entails an annual operating cost of $500,000 or more. The *agency* ~~department~~ shall, by rule, adjust the annual operating cost threshold annually using an appropriate inflation index.

(14) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services above the level of room and board.

(15) "Intermediate care facility for the developmentally disabled" means a residential facility licensed under chapter 393 and certified by the Federal Government pursuant to the Social Security Act as a provider of Medicaid services to persons who are mentally retarded or who have a related condition.

(16) "Major medical equipment" means equipment which is used to provide medical and other health services, which has been approved for general usage by the United States Food and Drug Administration for less than 3 years and which costs in excess of $1 million. The *agency* ~~department~~ shall, by rule, adjust the equipment threshold annually using an appropriate inflation index.

(17) "Multifacility project" means an integrated residential and health care facility consisting of independent living units, adult congregate living facility units, and nursing home beds certificated on or after January 1, 1987, where:

(a) The aggregate total number of independent living units and adult congregate living facility units exceeds the number of nursing home beds.

(b) The developer of the project has expended the sum of $500,000 or more on the certificated and noncertificated elements of the project combined, exclusive of land costs, by the conclusion of the 18th month of the life of the certificate of need.

(c) The total aggregate cost of construction of the certificated element of the project, when combined with other, noncertificated elements, is $10 million or more.

(d) All elements of the project are contiguous or immediately adjacent to each other and construction of all elements will be continuous.

(18) "Nursing home geographically underserved area" means:

(a) A county in which there is no existing or approved nursing home;

(b) An area with a radius of at least 20 miles in which there is no existing or approved nursing home; or

(c) An area with a radius of at least 20 miles in which all existing nursing homes have maintained at least a 95 percent occupancy rate for the most recent 6 months or a 90 percent occupancy rate for the most recent 12 months.

(19) "Skilled nursing facility" means an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(20) "Tertiary health service" means a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost-effectiveness of such service. Examples of such service include, but are not limited to, organ transplantation, specialty burn units, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service. The *agency* ~~department~~ shall establish by rule a list of all tertiary health services.

Section 63. Section 408.033, Florida Statutes, 1992 Supplement, is amended to read:

408.033 Local and state health planning.—

(1) LOCAL HEALTH COUNCILS.—

(a) Local health councils are hereby established as public or private nonprofit agencies serving the counties of a district ~~of the department~~. The members of each council shall be appointed in an equitable manner by the county commissions having jurisdiction in the respective district. Each council shall be composed of a number of persons equal to $1\frac{1}{2}$ times the number of counties which compose the district or 12 members, whichever is greater. Each county in a district shall be entitled to at least one member on the council. The balance of the membership of the council shall be allocated among the counties of the district on the basis of population rounded to the nearest whole number; except that in a district composed of only two counties, no county shall have fewer than four members. The appointees shall be representatives of health care providers, health care purchasers, and nongovernmental health care consumers, but not excluding elected government officials. The members of the consumer group shall include a representative number of persons over 60 years of age. A majority of council members shall consist of health care purchasers and health care consumers. The local health council shall provide each county commission a schedule for appointing council members to ensure that council membership complies with the requirements of this paragraph. The members of the local health council shall elect a chairman. Members shall serve for terms of 2 years and may be eligible for reappointment.

(b) Each local health council shall:

1. Develop a district health plan which is consistent with the objectives and strategies in the state health plan, but which shall permit each local health council to develop strategies and set priorities for implementation based on its unique local health needs. The district health plan must contain preferences for health services' and facilities' development which must be considered by the *agency* ~~department~~ in its review of certificate-of-need applications. The district health plan shall be submitted to the *agency* ~~department~~ and updated periodically. The district health plans shall use a uniform format and be submitted to the *agency* ~~department~~ according to a schedule developed by the *agency* ~~department~~ in conjunction with the Statewide Health Council and the local health councils. The schedule must provide for coordination between the development of the state health plan and the district health plans and for the development of district health plans by major sections over a multiyear period. The elements of a district plan which are necessary to the review of certificate-of-need applications for proposed projects within the district shall be adopted by the *agency* ~~department~~ as a part of its rules.

2. Advise the *agency and the* Department *of Health and Rehabilitative Services* on health care issues and resource allocations.

3. Promote public awareness of community health needs, emphasizing health promotion and cost-effective health service selection.

4. Collect data and conduct analyses and studies related to health care needs of the district, including the needs of medically indigent persons, and assist the *agency* ~~department~~ and other state agencies in carrying out data collection activities that relate to the functions in this subsection.

5. Monitor the onsite construction progress, if any, of certificate-of-need approved projects and report council findings to the *agency* ~~department~~ on forms provided by the *agency* ~~department~~.

6. Advise and assist regional planning councils within each district with the development of the health element of the comprehensive regional policy plan to address the health goals and policies in the State Comprehensive Plan.

7. Advise and assist local governments within each district on the development of an optional health plan element of the comprehensive plan provided in chapter 163, to assure compatibility with the health goals and policies in the State Comprehensive Plan and district health plan. To facilitate the implementation of this section, the local health council shall annually provide the local governments in its service area, upon request, with:

a. A copy and appropriate updates of the district health plan;

b. A report of hospital and nursing home utilization statistics for facilities within the local government jurisdiction; and

c. Applicable *agency* ~~department~~ rules and calculated need methodologies for health facilities and services regulated under *s. 408.034* ~~s. 381.704~~ for the district served by the local health council.

8. Monitor and evaluate the adequacy, appropriateness, and effectiveness, within the district, of local, state, federal, and private funds distributed to meet the needs of the medically indigent and other underserved population groups.

9. In conjunction with the Department of Health and Rehabilitative Services and Statewide Health Council, plan for services at the local level for persons infected with the human immunodeficiency virus.

10. Provide technical assistance to encourage and support activities by providers, purchasers, consumers, and local, regional, and state agencies in meeting the health care goals, objectives, and policies adopted by the local health council.

11. Provide the *agency* ~~department~~ with data required by rule for the review of certificate-of-need applications and the projection of need for health services and facilities in the district.

(c) Local health councils may conduct public hearings pursuant to *s. 408.039(3)(b)* ~~s. 381.709(3)(b)~~.

(d) Each local health council shall enter into a memorandum of agreement with each regional planning council in its district. In addition, each local health council shall enter into a memorandum of agreement with each local government that includes an optional health element in its comprehensive plan. Each memorandum of agreement must specify the manner in which each local government, regional planning council, and local health council will coordinate its activities to ensure a unified approach to health planning and implementation efforts.

(e) Local health councils may employ personnel to carry out the councils' purposes. Such personnel shall possess qualifications and be compensated in a manner commensurate with comparable positions in the Career Service System. However, such personnel shall not be deemed to be state employees.

(f) Personnel of the local health councils shall provide an annual orientation to council members about council member responsibilities. The orientation shall include presentations and participation by *agency* ~~department~~ staff.

(g) Each local health council is authorized to accept and receive, in furtherance of its health planning functions, funds, grants, and services from governmental agencies and from private or civic sources and to perform studies related to local health planning in exchange for such funds, grants, or services. Each local health council shall, no later than January 30 of each year, render an accounting of the receipt and disbursement of such funds received by it to the *agency* ~~department~~. The *agency* ~~department~~ shall consolidate all such reports and submit such consolidated report to the Legislature no later than March 1 of each year. Funds received by a local health council pursuant to this paragraph shall not be deemed to be a substitute for, or an offset against, any funding provided pursuant to subsection (3).

(2) STATEWIDE HEALTH COUNCIL.—The Statewide Health Council is hereby established as a state-level comprehensive health planning and policy advisory board. For administrative purposes, the council shall be located within the *agency* ~~department~~. The Statewide Health Council shall be composed of: the State Health Officer ~~and the Assistant Secretary for Medicaid~~ of the Department of Health and Rehabilitative Services; the *Division* ~~Deputy~~ Director for Health Policy and *Cost Control,* ~~Planning and~~ the *Division* ~~Deputy~~ Director for Health Quality Assurance, *and the Division Director of State Health Purchasing* of the *agency* ~~department; the director of the Health Care Board~~; the Insurance Commissioner or his designee; the Vice Chancellor for Health Affairs of the Board of Regents; three chairmen of regional planning councils, selected by the regional planning councils; five chairmen of local health councils, selected by the local health councils; four members appointed by the Governor, one of whom is a consumer over 60 years of age, one of whom is a representative of organized labor, one of whom is a physician, and one of whom represents the nursing home industry; five members appointed by the President of the Senate, one of whom is a representative of the insurance industry in this state, one of whom is the chief executive officer of a business with more than 300 employees in this state, one of whom represents the hospital industry, one of whom is a primary care physician, and one of whom is a nurse, and five members appointed by the Speaker of the House of Representatives, one of whom is a consumer who represents a minority group in this state, one of whom represents the home health care industry in this state, one of whom is an allied health care professional, one of whom is the chief executive officer of a business with fewer than 25 employees in this state, and one of whom represents a county social services program that provides health care services to the indigent. Appointed members of the council shall serve for 2-year terms commencing October 1 of each even-numbered year. The council shall elect a president from among the members who are not state employees. The Statewide Health Council shall:

(a) Advise the Governor, the Legislature, and the *agency* ~~department~~ on state health policy issues, state and local health planning activities, and state health regulation programs;

(b) Prepare a state health plan that specifies subgoals, quantifiable objectives, strategies, and resource requirements to implement the goals and policies of the health element of the State Comprehensive Plan. The plan must assess the health status of residents of this state; evaluate the adequacy, accessibility, and affordability of health services and facilities; assess government-financed programs and private health care insurance coverages; and address other topical local and state health care issues. Within 2 years after the health element of the State Comprehensive Plan is amended, and by July 1 of every 3rd year, if it is not amended, the Statewide Health Council shall submit the state health plan to the Executive Office of the Governor, the *director* ~~secretary~~ of the *agency* ~~department~~, the President of the Senate, and the Speaker of the House of Representatives;

(c) Promote public awareness of state health care issues and, in conjunction with the local health councils, conduct public forums throughout the state to solicit the comments and advice of the public on the adequacy, accessibility, and affordability of health care services in this state and other health care issues;

(d) Consult with local health councils, the Health Care ~~Cost Containment~~ Board, the Department of Insurance, the Department of Health and Rehabilitative Services, and other appropriate public and private entities, including health care industry representatives regarding the development of health policies;

(e) Serve as a forum for the discussion of local health planning issues of concern to the local health councils and regional planning councils;

(f) Review district health plans for consistency with the State Comprehensive Plan and the state health plan;

(g) Review the health components of agency functional plans for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to agency functional plans to make them consistent with the State Comprehensive Plan;

(h) Review the comprehensive regional plans for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to comprehensive regional policy plans to make them consistent with the State Comprehensive Plan;

(i) Assist the Department of Community Affairs in the review of local government comprehensive plans to ensure consistency with policy developed in the district health plans;

(j) With the assistance of the local health councils, conduct public forums and use other means to determine the opinions of health care consumers, providers, payers, and insurers regarding the state's health care goals and policies and develop suggested revisions to the health element of the State Comprehensive Plan. The council shall submit the proposed revisions to the health element of the State Comprehensive Plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 1993, and shall widely circulate the proposed revisions to affected parties. The council shall periodically assess the progress made in achieving the goals and policies contained in the health element of the State Comprehensive Plan and report to the *agency* ~~department~~, the Governor, the President of the Senate, and the Speaker of the House of Representatives; and

(k) Conduct any other functions or studies and analyses falling under the duties listed above.

(3) FUNDING.—

(a) The Legislature intends that the cost of local health councils and the Statewide Health Council be borne by application fees for certificates of need and by assessments on selected health care facilities subject to

facility licensure by the *agency* ~~department~~, including abortion clinics, adult congregate living facilities, ambulatory surgical centers, birthing centers, clinical laboratories except community nonprofit blood banks, home health agencies, hospices, hospitals, intermediate care facilities for the developmentally disabled, nursing homes, and multiphasic testing centers and by assessments on organizations subject to certification by the *agency* ~~department~~ pursuant to chapter 641, part III, including health maintenance organizations and prepaid health clinics.

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

2. All other facilities and organizations listed in paragraph (a) shall each be assessed an annual fee of $150.

3. Facilities operated by the Department of Health and Rehabilitative Services or the Department of Corrections and any hospital which meets the definition of rural hospital pursuant to s. 395.602 are exempt from the assessment required in this subsection.

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

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

3. The *agency* ~~department~~ shall, by rule, establish an annual fee of $150 for all other facilities and organizations listed in paragraph (a).

(d) The *agency* ~~department~~ shall, by rule, establish a facility billing and collection process for the billing and collection of the health facility fees authorized by this subsection.

(e) A health facility which is assessed a fee under this subsection is subject to a fine of $100 per day for each day in which the facility is late in submitting its annual fee up to maximum of the annual fee owed by the facility. A facility which refuses to pay the fee or fine is subject to the forfeiture of its license.

(f) There is created in the State Treasury the Local and State Health Trust Fund. Moneys in the fund shall be appropriated only to the *agency* ~~department~~ for the purposes of subsections (1) and (2) of this section.

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

(4) DUTIES AND RESPONSIBILITIES OF THE *AGENCY* ~~DEPARTMENT~~.—

(a) The *agency* ~~department~~, in conjunction with the Statewide Health Council and the local health councils, is responsible for the planning of all health care services in the state and for assisting the Statewide Health Council in the preparation of the state health plan.

(b) The *agency* ~~department~~ shall develop and maintain a comprehensive health care data base for the purpose of health planning and for certificate-of-need determinations. The *agency* ~~department~~ or its contractor is authorized to require the submission of information from health facilities, health service providers, and licensed health professionals which is determined by the *agency* ~~department~~, through rule, to be necessary for meeting the *agency's* ~~department's~~ responsibilities as established in this section.

(c) The *agency* ~~department~~ shall assist personnel of the local health councils in providing an annual orientation to council members about council member responsibilities.

(d) The *agency* ~~department~~ shall contract with the local health councils for the services specified in subsection (1). All contract funds shall be distributed according to an allocation plan developed by the *agency* ~~department~~ that provides for a minimum and equal funding base for each local health council. Any remaining funds shall be distributed based on adjustments for workload. The *agency* ~~department~~ may also make grants to or reimburse local health councils from federal funds provided to the state for activities related to those functions set forth in this section. The *agency* ~~department~~ may withhold funds from a local health council or cancel its contract with a local health council which does not meet performance standards agreed upon by the *agency* ~~department~~ and local health councils.

Section 64. Section 408.034, Florida Statutes, 1992 Supplement, is amended to read:

408.034 Duties and responsibilities of *agency* ~~department~~; rules.—

(1) The *agency* ~~department~~ is designated as the single state agency to issue, revoke, or deny certificates of need and to issue, revoke, or deny exemptions from certificate-of-need review in accordance with the district plans, the statewide health plan, and present and future federal and state statutes. The *agency* ~~department~~ is designated as the state health planning agency for purposes of federal law.

(2) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapters 393, 395, and 400, and to hospices, the *agency* ~~department~~ shall not issue a license to any health care facility, health service provider, hospice, or part of a health care facility which fails to receive a certificate of need for the licensed facility or service.

(3) The *agency* ~~department~~ shall establish, by rule, uniform need methodologies for health services and health facilities. In developing uniform need methodologies, the *agency* ~~department~~ shall, at a minimum, consider the demographic characteristics of the population, the health status of the population, service use patterns, standards and trends, geographic accessibility, and market economics.

(4) The *agency* ~~department~~ shall establish by rule a nursing home bed need methodology which reduces the community nursing home bed need for the areas of the state where the Department *of Health and Rehabilitative Services or the Department of Elderly Affairs* establishes pilot community diversion programs through the Title XIX aging waiver program.

(5) The *agency* ~~department~~ may adopt rules necessary to implement *ss. 408.031-408.045* ~~ss. 381.701-381.715~~.

Section 65. Section 408.035, Florida Statutes, 1992 Supplement, is amended to read:

408.035 Review criteria.—

(1) The *agency* ~~department~~ shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities and services, hospices, and health maintenance organizations in context with the following criteria:

(a) The need for the health care facilities and services and hospices being proposed in relation to the applicable district plan and state health plan, except in emergency circumstances which pose a threat to the public health.

(b) The availability, quality of care, efficiency, appropriateness, accessibility, extent of utilization, and adequacy of like and existing health care services and hospices in the service district of the applicant.

(c) The ability of the applicant to provide quality of care and the applicant's record of providing quality of care.

(d) The availability and adequacy of other health care facilities and services and hospices in the service district of the applicant, such as outpatient care and ambulatory or home care services, which may serve as alternatives for the health care facilities and services to be provided by the applicant.

(e) Probable economies and improvements in service that may be derived from operation of joint, cooperative, or shared health care resources.

(f) The need in the service district of the applicant for special equipment and services which are not reasonably and economically accessible in adjoining areas.

(g) The need for research and educational facilities, including, but not limited to, institutional training programs and community training programs for health care practitioners and for doctors of osteopathy and medicine at the student, internship, and residency training levels.

(h) The availability of resources, including health manpower, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation; the effects the project will have on clinical needs of health professional training programs in the service district; the extent to which the services will be accessible to schools for health professions in the service district for training purposes if such services are available in a limited number of facilities; the availability of alternative uses of such resources for the provision of other health services; and the extent to which the proposed services will be accessible to all residents of the service district.

(i) The immediate and long-term financial feasibility of the proposal.

(j) The special needs and circumstances of health maintenance organizations.

(k) The needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the service district in which the entities are located or in adjacent service districts. Such entities may include medical and other health professions, schools, multidisciplinary clinics, and specialty services such as open-heart surgery, radiation therapy, and renal transplantation.

(l) The probable impact of the proposed project on the costs of providing health services proposed by the applicant, upon consideration of factors including, but not limited to, the effects of competition on the supply of health services being proposed and the improvements or innovations in the financing and delivery of health services which foster competition and service to promote quality assurance and cost-effectiveness.

(m) The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction.

(n) The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent.

(o) The applicant's past and proposed provision of services that promote a continuum of care in a multilevel health care system, including, but not limited to, acute care, skilled nursing care, home health care, and adult living facilities.

(2) In cases of capital expenditure proposals for the provision of new health services to inpatients, the *agency* ~~department~~ shall also reference each of the following in its findings of fact:

(a) That less costly, more efficient, or more appropriate alternatives to such inpatient services are not available and the development of such alternatives has been studied and found not practicable.

(b) That existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner.

(c) In the case of new construction, that alternatives to new construction, for example, modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable.

(d) That patients will experience serious problems in obtaining inpatient care of the type proposed, in the absence of the proposed new service.

(e) In the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, that the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care, including home health services.

(3) For any application authorized by *s. 408.036(2)(j) or (k)* ~~s. 381.706(2)(j) or (k)~~ involving an approved facility based on a certificate-of-need application filed prior to December 31, 1984, the *agency* ~~department~~ *shall* approve such application unless the proposed consolidation or division would result in a facility or facilities not meeting the criterion of financial feasibility or unless the consolidation or division would result in beds or services being moved more than 15 miles from their original certificated location.

Section 66. Section 408.036, Florida Statutes, 1992 Supplement, is amended to read:

408.036 Projects subject to review.—

(1) APPLICABILITY.—Unless exempt pursuant to subsection (3), all health-care-related projects, as described in paragraphs (a)-(n), are subject to review and must file an application for a certificate of need with the *agency* ~~department~~. The *agency* ~~department~~ is exclusively responsible for determining whether a health-care-related project is subject to review under *ss. 408.031-408.045* ~~ss. 381.701-381.715~~.

(a) The addition of beds by new construction or alteration.

(b) The new construction or establishment of additional health care facilities.

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

(d) The conversion from one type of health care facility to another, including the conversion from one level of care to another, in a skilled or intermediate nursing facility, if such conversion effects a change in the level of care of 10 beds or 10 percent of total bed capacity of such skilled or intermediate nursing facility within a 2-year period. If such nursing facility is certified for both skilled and intermediate nursing care, the provisions of this paragraph do not apply.

(e) Any change in licensed bed capacity.

(f) The establishment of a home health agency or hospice, or the direct provision of such services by a health care facility or health maintenance organization for those other than the subscribers of the health maintenance organization.

(g) An acquisition by or on behalf of a health care facility or health maintenance organization, by any means, which acquisition would have required review if the acquisition had been by purchase, including an acquisition at less than fair market value if the fair market value is greater than the capital expenditure threshold.

(h) The establishment of inpatient institutional health services by a health care facility, or a substantial change in such services, or the obligation of capital expenditures for the offering of, or a substantial change in, any such services which entails a capital expenditure in any amount, or an annual operating cost of $500,000 or more. The *agency* ~~department~~ shall, by rule, adjust the annual operating cost threshold annually using an appropriate inflation index.

(i) The acquisition by any means of an existing health care facility by any person, unless such person provides the *agency* ~~department~~ with at least 30 days' written notice of the proposed acquisition, which notice is to include the services to be offered and the bed capacity of the facility, and unless the *agency* ~~department~~ does not determine, within 30 days of receipt of such letter of intent, that the services to be provided and the bed capacity of the facility will be changed.

(j) The acquisition, by any means, of major medical equipment by a health maintenance organization or health care facility to the extent that the health maintenance organization or health care facility is not exempt pursuant to *s. 408.043(1)* ~~s. 381.713(1)~~.

(k) An increase in the cost of a project for which a certificate of need has been issued when such increase in cost exceeds the limits set forth in paragraph (c), paragraph (h), or *s. 408.032* ~~s. 381.702~~, or 10 percent of the originally approved cost of the project, whichever is less, except that no cost overrun review is necessary when the cost overrun is less than $10,000.

(l) A change in the number of psychiatric or rehabilitation beds.

(m) The establishment of tertiary health services.

(n) A transfer of a certificate of need, in which case an expedited review shall be conducted according to rule and in accordance with *s. 408.042* ~~s. 381.712~~.

(2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt pursuant to subsection (3), projects subject to an expedited review shall include, but not be limited to:

(a) Cost overruns, unless such cost overruns are caused by a change in service or scope which the *agency* ~~department~~ determines are otherwise reviewable.

(b) Research, education, and training programs.

(c) Donations, when market value equals or exceeds the applicable capital expenditure thresholds for operating expenditures, or major medical equipment, as defined in this act.

(d) Acquisition of land which is to be used for the construction of a health care facility, or office facilities for health care providers.

(e) Termination of a health care service.

(f) Shared services contracts or projects.

(g) A transfer of a certificate of need.

(h) Emergency projects and unforeseen major public health hazards.

(i) A 50-percent increase in nursing home beds for a facility incorporated and operating in this state for at least 60 years on or before July 1, 1988, which has a licensed nursing home facility located on a campus providing a variety of residential settings and supportive services. The increased nursing home beds shall be for the exclusive use of the campus residents.

(j) Combination within one nursing home facility of the beds or services authorized by two or more certificates of need issued in the same planning subdistrict.

(k) Division into two or more nursing home facilities of beds or services authorized by one certificate of need issued in the same planning subdistrict. Such division shall not be approved if it would adversely affect the original certificate's approved cost.

The *agency* ~~department~~ shall develop rules to implement the provisions for expedited review, including time schedule, application content, and application processing.

(3) EXEMPTIONS.—Upon request, supported by such documentation as the *agency* ~~department~~ may require, the *agency* ~~department~~ shall grant an exemption from the provisions of subsection (1):

(a) For any expenditure by or on behalf of a health care facility for any part of the physical plant which is not to be directly utilized for providing health services or housing health care providers. This exemption shall apply to expenditures for parking facilities, meeting rooms, cafeterias, administrative data processing facilities, research buildings, landscaping, and similar projects, but shall not apply to expenditures for office facilities for health care providers.

(b) For any expenditure to eliminate or prevent safety hazards as defined by federal, state, or local codes.

(c) For any expenditure to replace any part of a facility or equipment which is destroyed as a result of fire, civil disturbance, or storm or any other act of God.

(d) For any expenditure to acquire major medical equipment which is a substantially identical replacement for existing equipment being taken out of service.

(e) For the initiation or expansion of obstetric services after July 1, 1988.

(f) For any expenditure to replace or renovate any part of a licensed nursing facility, provided that the number of licensed beds will not increase and, in the case of a replacement facility, the project site is the same as the facility being replaced.

(g) For providing respite care services. "Respite care" means short-term care in a licensed health care facility which is personal or custodial in nature and is provided by reason of chronic illness, physical infirmity, or advanced age for the purpose of temporarily relieving family members of the burden of providing care and attendance in the home. In providing respite care, the health care facility shall become the primary caregiver. An individual may be admitted to a respite care program in a hospital without regard to inpatient requirements relating to admitting order and attendance of a member of a medical staff.

(h) For hospice or home health services provided by a rural hospital, as defined in s. 395.602, or for swing beds in such rural hospital in a number that does not exceed one-half of its licensed beds.

(i) For the conversion of licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital, as defined in s. 395.602, if the conversion of the beds does not involve the construction of new facilities. The total number of skilled nursing beds, including swing beds, may not exceed one-half of the total number of licensed beds in the rural hospital on July 1, 1993. Certified skilled nursing beds designated under this paragraph, excluding swing beds, must be included in the community nursing home bed inventory. A rural hospital that subsequently decertifies any acute care beds exempted under this paragraph must notify the agency of the decertification, and the agency shall adjust the community nursing home bed inventory accordingly.

A request for exemption pursuant to this subsection may be made at any time and is not subject to the batching requirements of this section.

Section 67. Paragraph (a) of subsection (2) of section 408.037, Florida Statutes, 1992 Supplement, is amended to read:

408.037 Application content.—An application for a certificate of need shall contain:

(2) A statement of the financial resources needed by and available to the applicant to accomplish the proposed project. This statement shall include:

(a) A complete listing of all capital projects, including new health facility development projects and health facility acquisitions applied for, pending, approved, or underway in any state at the time of application, regardless of whether or not that state has a certificate-of-need program or a capital expenditure review program pursuant to section 1122 of the Social Security Act. The *agency* ~~department~~ may, by rule, require less-detailed information from major health care providers. This listing shall include the applicant's actual or proposed financial commitment to those projects and an assessment of their impact on the applicant's ability to provide the proposed project.

Section 68. Section 408.038, Florida Statutes, 1992 Supplement, is amended to read:

408.038 Fees.—The *agency* ~~department~~ shall assess fees on certificate-of-need applications. Such fees shall be for the purpose of funding the Statewide Health Council, the functions of the local health councils, and the activities of the *agency* ~~department~~ and shall be allocated as provided in *s. 408.033* ~~s. 381.703~~. The fee shall be determined as follows:

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

(2) In addition to the base fee of $5,000, 0.015 of each dollar of proposed expenditure, except that a fee may not exceed $22,000.

Section 69. Section 408.039, Florida Statutes, 1992 Supplement, is amended to read:

408.039 Review process.—The review process for certificates of need shall be as follows:

(1) REVIEW CYCLES.—The *agency* ~~department~~ by rule shall provide for applications to be submitted on a timetable or cycle basis; provide for review on a timely basis; and provide for all completed applications pertaining to similar types of services, facilities, or equipment affecting the same service district to be considered in relation to each other no less often than two times a year.

(2) LETTERS OF INTENT.—

(a) At least 30 days prior to filing an application, a letter of intent shall be filed by the applicant with the local health council and the *agency* ~~department~~, respecting the development of a proposal subject to review. No letter of intent is required for expedited projects as defined by rule by the *agency* ~~department~~.

(b) The *agency* ~~department~~ shall provide a mechanism by which applications may be filed to compete with proposals described in filed letters of intent.

(c) Letters of intent shall describe the proposal with specificity, including proposed capital expenditures, number of beds sought, if any, services, specific subdistrict location, identification of the applicant, including the names of those with controlling interest in the applicant, and such other information as the *agency* ~~department~~ may by rule prescribe. The letter of intent shall contain a certified copy of a resolution by the board of directors of the applicant, or other governing authority if not a corporation, authorizing the filing of the application described in the letter of intent; authorizing the applicant to incur the expenditures necessary to accomplish the proposed project; certifying that if issued a certificate, the applicant shall accomplish the proposed project within the time allowed by law and at or below the costs contained in the application; and certifying that the applicant shall license and operate the facility.

(d) Within 14 days after filing a letter of intent, the applicant shall publish a notice of filing to be published in a newspaper of general circulation in the area affected by the proposal. The notice of filing shall be published once a week for 2 consecutive weeks on forms and in the format and content specified by the *agency* ~~department~~ by rule. Within 21 days after the filing, the *agency* ~~department~~ shall publish notice of the filing of letters of intent in the Florida Administrative Weekly and notice that, if requested, a public hearing shall be held at the local level within 21 days after the application is deemed complete. Notices under this subsection shall contain due dates applicable to the cycle for filing applications and for requesting a hearing.

(3) APPLICATION PROCESSING.—

(a) An applicant shall file an application with the *agency* ~~department~~, and shall furnish a copy of the application to the local health council and the *agency* ~~department~~. Within 15 days after the applicable application filing deadline established by *agency* ~~department~~ rule, the staff of the *agency* ~~department~~ shall determine if the application is complete. If the application is incomplete, the staff shall request specific information from the applicant necessary for the application to be complete; however, the staff may make only one such request. If the requested information is not filed with the *agency* ~~department~~ within 21 days of the receipt of the staff's request, the application shall be deemed incomplete and deemed withdrawn from consideration.

(b) Upon the request of any applicant or substantially affected person within 14 days after notice that an application has been filed, a public hearing may be held at the *agency's* ~~department's~~ discretion if the *agency* ~~department~~ determines that a proposed project involves issues of great local public interest. The public hearing shall allow applicants and other interested parties reasonable time to present their positions and to present rebuttal information. A recorded verbatim record of the hearing shall be maintained. The public hearing shall be held at the local level within 21 days after the application is deemed complete.

(4) STAFF RECOMMENDATIONS.—

(a) The *agency's* ~~department's~~ review of and final agency action on applications shall be in accordance with the district plan, and statutory criteria, and the implementing administrative rules. In the application review process, the *agency* ~~department~~ shall give a preference, as defined by rule of the *agency* ~~department~~, to an applicant which proposes to develop a nursing home in a nursing home geographically underserved area.

(b) Within 60 days after all the applications in a review cycle are determined to be complete, the *agency* ~~department~~ shall issue its State Agency Action Report and Notice of Intent to grant a certificate of need for the project in its entirety, to grant a certificate of need for identifiable portions of the project, or to deny a certificate of need. The State Agency Action Report shall set forth in writing its findings of fact and determinations upon which its decision is based. If a finding of fact or determination by the *agency* ~~department~~ is counter to the district plan of the local health council, the *agency* ~~department~~ shall provide in writing its reason for its findings, item by item, to the local health council and the Statewide Health Council. If the *agency* ~~department~~ intends to grant a certificate of need, the State Agency Action Report or the Notice of Intent shall also include any conditions which the *agency* ~~department~~ intends to attach to the certificate of need. The *agency* ~~department~~ shall designate by rule a senior staff person, other than the person who issues the final order, to issue State Agency Action Reports and Notices of Intent.

(c) The *agency* ~~department~~ shall publish its proposed decision set forth in the Notice of Intent in the Florida Administrative Weekly within 14 days after the Notice of Intent is issued.

(d) If no administrative hearing is requested pursuant to subsection (5), the State Agency Action Report and the Notice of Intent shall become the final order of the *agency* ~~department~~. The *agency* ~~department~~ shall provide a copy of the final order to the appropriate local health council.

(5) ADMINISTRATIVE HEARINGS.—

(a) Within 21 days after publication of notice of the State Agency Action Report and Notice of Intent, any person authorized under paragraph (b) to participate in a hearing may file a request for an administrative hearing; failure to file a request for hearing within 21 days of publication of notice shall constitute a waiver of any right to a hearing and a waiver of the right to contest the final decision of the *agency* ~~department~~. A copy of the request for hearing shall be served on the applicant.

(b) Hearings shall be held in Tallahassee unless the hearing officer determines that changing the location will facilitate the proceedings. In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the *agency* ~~department~~ in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in such administrative hearing upon a showing that an established program will be substantially affected by the issuance of a certificate of need to a competing proposed facility or program within the same district, provided that existing health care providers, other than the applicant, have no standing or right to initiate or intervene in an administrative hearing involving a health care project which is subject to certificate-of-need review solely on the basis of *s. 408.036(1)(c)* ~~s. 381.706(1)(c)~~. The *agency* ~~department~~ shall assign proceedings requiring hearings to the Division of Administrative Hearings of the Department of Management Services within 10 days after the time has run to request a hearing. Except upon unanimous consent of the parties or upon the granting by the hearing officer of a motion of continuance, hearings shall commence within 60 days after the hearing officer has been assigned. All non-state-agency parties shall bear their own expense of preparing a transcript. In any application for a certificate of need which is referred to the Division of Administrative Hearings for hearing, the hearing officer shall complete and submit to the parties a recommended order as provided in s. 120.57(1)(b). The recommended order shall be issued within 30 days after the receipt of the proposed recommended orders or the deadline for submission of such proposed recommended orders, whichever is earlier. The division shall adopt procedures for administrative hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony.

(c) The *agency* ~~department~~ shall issue its final order within 45 days after receipt of the recommended order.

(d) If the *agency* ~~department~~ fails to take action within the time specified in paragraph (4)(a) or paragraph (5)(c), or as otherwise agreed to by the applicant and the *agency* ~~department~~, the applicant may take appropriate legal action to compel the *agency* ~~department~~ to act. When making a determination on an application for a certificate of need, the *agency* ~~department~~ is specifically exempt from the time limitations provided in s. 120.60(2).

(6) JUDICIAL REVIEW.—

(a) A party to an administrative hearing for an application for a certificate of need has the right, within not more than 30 days after the date of the final order, to seek judicial review in the District Court of Appeal pursuant to s. 120.68. The *agency* ~~department~~ shall be a party in any such proceeding.

(b) In such judicial review, the court shall affirm the final order of the *agency* ~~department~~, unless the decision is arbitrary, capricious, or not in compliance with *ss. 408.031-408.045* ~~ss. 381.701-381.715~~.

(c) The court, in its discretion, may award reasonable attorney's fees and costs to the prevailing party if the court finds that there was a complete absence of a justiciable issue of law or fact raised by the losing party.

Section 70. Section 408.040, Florida Statutes, is amended to read:

408.040 Conditions and monitoring.—

(1)(a) The *agency* ~~department~~ may issue a certificate of need predicated upon statements of intent expressed by an applicant in the application for a certificate of need. Any certificate of need issued for construction of a new hospital or for the addition of beds to an existing hospital shall include a statement of the number of beds approved by category of service, including rehabilitation or psychiatric service, for which the *agency* ~~department~~ has adopted by rule a specialty-bed-need methodology. All beds which are approved, but are not covered by any specialty-bed-need methodology, shall be designated as general. If the holder of a certificate of need demonstrates good cause why the certificate should be modified, the *agency* ~~department~~ shall reissue the certificate of need with such modifications as may be appropriate. The *agency* ~~department~~ shall by rule define the factors constituting good cause for modification.

(b) If the holder of a certificate of need fails to comply with a condition upon which the issuance of the certificate was predicated, the *agency* ~~department~~ may assess an administrative fine against the certificate-holder in an amount not to exceed $1,000 per failure per day. In assessing the penalty, the *agency* ~~department~~ shall take into account as mitigation the relative lack of severity of a particular failure. Proceeds of such penalties shall be deposited in the Public Medical Assistance Trust Fund.

(2)(a) Unless the applicant has commenced construction, if the project provides for construction, unless the applicant has incurred an enforceable capital expenditure commitment for a project, if the project does not provide for construction, or unless subject to paragraph (b), a certificate of need shall terminate 1 year after the date of issuance, except in the case of a multifacility project, as defined in *s. 408.032(17)* ~~s. 381.702(17)~~, where the certificate of need shall terminate 2 years after the date of issuance. The *agency* ~~department~~ may extend the period of validity of the certificate for an additional period of up to 6 months, upon a showing of good cause, as defined by rule, by the applicant for the extension. The *agency* ~~department~~ shall monitor the progress of the holder of the certificate of need in meeting the timetable for project development specified in the application with the assistance of the local health council as specified in *s. 408.033* ~~s. 381.703(1)(b)7.~~, and may revoke the certificate of need, if the holder of the certificate is not meeting such timetable and is not making a good faith effort, as defined by rule, to meet it.

(b) A certificate of need issued to an applicant holding a provisional certificate of authority under chapter 651 shall terminate 1 year after the applicant receives a valid certificate of authority from the Department of Insurance. The certificate-of-need validity period may be extended by the *agency* ~~department~~ for an additional period of up to 6 months upon a showing of good cause, as defined by rule, by the applicant for the extension.

(c) The certificate-of-need validity period for a project shall be extended by the *agency* ~~department~~, to the extent that the applicant demonstrates to the satisfaction of the *agency* ~~department~~ that good faith commencement of the project is being delayed by litigation or by governmental action or inaction with respect to regulations or permitting precluding commencement of the project.

(d) If an application is filed to consolidate two or more certificates as authorized by *s. 408.036(2)(j)* ~~s. 381.706(2)(j)~~ or to divide a certificate of need into two or more facilities as authorized by *s. 408.036(2)(k)* ~~s. 381.706(2)(k)~~, the validity period of the certificate or certificates of need to be consolidated or divided shall be extended for the period beginning upon submission of the application and ending when final agency action and any appeal from such action has been concluded. However, no such suspension shall be effected if the application is withdrawn by the applicant.

(3) The *agency* ~~department~~ shall require the submission of an executed architect's certification of final payment for each certificate-of-need project approved by the *agency* ~~department~~. Each project which involves construction shall submit such certification to the *agency* ~~department~~ within 30 days following completion of construction.

Section 71. Section 408.041, Florida Statutes, 1992 Supplement, is amended to read:

408.041 Certificate of need required; penalties.—It is unlawful for any person to undertake a project subject to review under *ss. 408.031-408.045* ~~ss. 381.701-381.715~~ without a valid certificate of need. Any person violating 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. Each day of continuing violation shall be considered a separate offense.

Section 72. Subsections (1) and (3) of section 408.043, Florida Statutes, 1992 Supplement, are amended, and subsection (4) is added to that section, to read:

408.043 Special provisions.—

(1) OSTEOPATHIC ACUTE CARE HOSPITALS.—When an application is made for a certificate of need to construct or to expand an osteopathic acute care hospital, the need for such hospital shall be determined on the basis of the need for and availability of osteopathic services and osteopathic acute care hospitals in the district. When a prior certificate of need to establish an osteopathic acute care hospital has been issued in a district, and the facility is no longer used for that purpose, the *agency* ~~department~~ may continue to count such facility and beds as an existing osteopathic facility in any subsequent application for construction of an osteopathic acute care hospital.

(3) VALIDITY OF CERTIFICATE OF NEED.—A certificate of need issued by the *agency* ~~department~~ for nursing home facilities of 100 beds or more prior to February 14, 1986, is valid, provided that such facility has expended at least $50,000 in reliance upon such certificate of need, excluding legal fees, prior to the initiation of proceedings under the Administrative Procedure Act subsequent to February 14, 1986, contesting the validity of the certificate of need. If such nursing home certificate of need includes beds that have not yet been licensed as of June 17, 1987, such beds shall not be considered or utilized in the determination of need or included in the inventory of licensed or approved nursing home beds by the *agency* ~~department~~, with respect to applications filed before June 17, 1987. This subsection shall only apply to nursing home beds. Nothing contained herein shall be construed to deny action pursuant to s. 120.69, or to eliminate any conditions of the certificate of need or time requirements to commence construction, including any authorized extensions.

(4) RURAL HEALTH NETWORKS.—Preference shall be given in the award of a certificate of need to a member of a certified rural health network, as provided for in s. 381.0406, subject to the following conditions:

(a) Need must be shown under s. 408.035.

(b) The proposed project must:

1. Strengthen health care services in the rural area through partnerships between rural health care providers; or

2. Increase access to inpatient health care services for Medicaid recipients or other low-income persons who live in the rural area.

(c) No preference shall be given under this section for the establishment of skilled nursing facility services by a hospital other than a rural hospital, as defined in s. 395.602.

Section 73. Section 408.044, Florida Statutes, 1992 Supplement, is amended to read:

408.044 Injunction.—Notwithstanding the existence or pursuit of any other remedy, the *agency* ~~department~~ may maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the pursuit of a project subject to review under *ss. 408.031-408.045* ~~ss. 381.701-381.715~~, in the absence of a valid certificate of need.

Section 74. Section 408.045, Florida Statutes, 1992 Supplement, is amended to read:

408.045 Certificate of need; competitive sealed proposals.—

(1) The application, review, and issuance procedures for a certificate of need for an intermediate care facility for the developmentally disabled may be made by the *agency* ~~department~~ by competitive sealed proposals.

(2) The *agency* ~~department~~ shall make a decision regarding the issuance of the certificate of need in accordance with the provisions of s. 287.057(15), rules adopted by the Department *of Health and Rehabilitative Services* relating to intermediate care facilities for the developmentally disabled, and the criteria in *s. 408.035* ~~s. 381.705~~, as further defined by rule.

(3) Notification of the decision shall be issued to all applicants not later than 28 calendar days after the date responses to a request for proposal are due.

(4) The procedures provided for under this section are exempt from the batching cycle requirements and the public hearing requirement of s. 408.039.

(5) The *agency* ~~department~~ may use the competitive sealed proposal procedure for determining a certificate of need for other types of health care facilities and services if the *agency* ~~department~~ identifies an unmet health care need and when funding in whole or in part for such health care facilities or services is authorized by the Legislature.

And the title is amended as follows:

In title, on page 225, line 21 through page 226, line 29, strike all of said lines and insert: F.S.; correcting a cross-reference; amending ss. 408.032, 408.033, 408.034, 408.035, 408.036, 408.037, 408.038, 408.039, 408.040, 408.041, 408.043, 408.044, 408.045, F.S., relating to certificate of need and authority to license health care facilities and health service providers; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services and the Health Care Board to the agency; providing an additional exemption from certificate-of-need review; providing for preference in certificate-of-need awards to rural health networks under certain conditions; amending ss.

Amendment 138—On page 105, line 17, through page 106, line 27, strike all of said lines and renumber subsequent sections.

Senator Forman moved the following amendment which was adopted:

Amendment 139—On page 133, line 17, strike all of said line and insert: prepaid health clinics, and other sources.

Senator Myers moved the following amendment which was adopted:

Amendment 140—On page 136, line 10, after "councils." insert: The legislature intends that local health councils should serve as a stimulus for the development of a partnership between community residents and state policy makers. To this end performance standards shall include, at a minimum, a requirement that local councils demonstrate success at generating local funds to support additional planning efforts.

Senators Myers and Brown-Waite offered the following amendment which was moved by Senator Myers and adopted:

Amendment 141—On page 146, line 2, before the period (.) insert: *or for the initiation of Level II neonatal intensive care services by hospitals delivering a yearly average of 1500 babies in counties of less than 1,000,000 population where the application to initiate Level II NICU services was pending and had not been finally acted upon by the agency as of March 1, 1993*

Senator Myers moved the following amendment which was adopted:

Amendment 142—On page 146, strike lines 23 and 24

Senator Forman moved the following amendment which was adopted:

Amendment 143—On page 148, strike lines 23 and 24 and insert: statement of the projected revenue and expenses for the period of construction and for the first 2 years of operation after

Senator Childers offered the following amendment which was moved by Senator Myers and adopted:

Amendment 144—On page 158, line 5, before the period (.) insert: *unless an administrative proceeding regarding the issuance or denial of the certificate of need was pending on the effective date of this act.*

Senator Silver moved the following amendment which was adopted:

Amendment 145—On pages 167, line 29, through page 170, line 18, strike all of said lines and insert:

Section 79. All powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Medicaid program within the Department of Health and Rehabilitative Services, as well as the infrastructure and support services that support the program, including, but not limited to, investigative, licensing, legal, and administrative activities, are transferred by a type four transfer, as defined in section 20.06(4), Florida Statutes, to the Division of State Health Purchasing of the Agency for Health Care Administration. Such transfer shall take effect July 1, 1993. Any rules promulgated by or for the Medicaid program are included in such transfer.

Section 81. There is hereby appropriated to the Agency for Health Care Administration: 104 full-time positions; $13,875,773 from the General Revenue Fund; $597,109 from the State Employees Health Insurance Trust Fund; $6,200,718 from the Medical Care Trust Fund; $1,740,522 from the Administrative Trust Fund; and $713,349 from the Health Care Trust Fund to be allocated as follows:

10 positions and $597,109 from the State Employees Health Insurance Trust Fund for the added responsibilities related to the State Employees Health Insurance Program.

2 positions and $147,955 from the General Revenue Fund for Deputy Director's Office for State Health Purchasing.

$1,000,000 from General Revenue Fund and $713,349 from the Health Care Trust Fund for Data Collection and Analysis.

21 positions and $927,919 from the General Revenue Fund for MedAccess development and consultants.

$50,000 from the General Revenue Fund for a fraud and abuse study.

25 positions and $503,670 from the General Revenue Fund and $503,670 from the Medical Care Trust Fund for Medipass expansion.

2 positions and $275,000 from the General Revenue Fund for the Community Health Purchasing Alliance Administration.

$3,025,000 from the General Revenue Fund for grants to 11 Community Health Purchasing Alliances.

$3,720,185 from the General Revenue Fund and $1,279,815 from the Medical Care Trust Fund for rural hospital Financial Assistance Program.

$3,826,044 from the General Revenue Fund and $4,417,233 from the Medical Care Trust Fund for Medicaid reimbursement for skilled nursing facility beds in acute care hospitals.

42 positions and $1,740,522 from the Administrative Trust Fund to support the Medicaid administrative infrastructure associated with finance and accounting, personnel, budget and general services activities.

2 positions and $100,000 from the General Revenue Fund for rural health network initiatives.

$300,000 from the General Revenue Fund for 4 rural health network development grants.

(Renumber subsequent sections.)

Senator Gutman moved the following amendment which failed:

Amendment 146 (with Title Amendment)—On page 170, between lines 18 and 19, insert:

Section 83. Section 464.009, Florida Statutes, is amended to read:

464.009 Licensure by endorsement.—

(1) The department shall issue the appropriate license by endorsement to practice professional or practical nursing to an applicant who, upon applying to the department and remitting a fee set by the board not to exceed $100, demonstrates to the board that he:

(a) Holds a valid license to practice professional or practical nursing in another state of the United States, *another national jurisdiction, or state or territory of another national jurisdiction,* provided that, when the applicant secured his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida at that time; or

(b) Meets the qualifications for licensure in *s. 464.008(1)(b)-(d)* ~~s. 464.008~~ and has successfully completed a state, *territorial,* regional, or national examination which is substantially equivalent to or more stringent than the examination given by the department.

(2) Such examinations and requirements from other states, *territories, or national jurisdictions* shall be presumed to be substantially equivalent to or more stringent than those in this state. Such presumption shall not arise until January 1, 1980. However, the board may, by

rule, specify states, *territories, or nations* the examinations and requirements of which shall not be presumed to be substantially equivalent to those of this state.

(3) The department shall not issue a license by endorsement to any applicant who is under investigation in another state, *territory, or nation* for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 464.018 shall apply.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 227, line 6, after "appropriations;" insert: amending s. 464.009, F.S.; revising the requirements for applicants for licensure as a professional or practical nurse with respect to licensure by endorsement;

Senator Grant moved the following amendment which was adopted:

Amendment 147—On page 160, lines 27-31, strike all of said lines

Senator Gutman moved the following amendment which was adopted:

Amendment 148 (with Title Amendment)—On page 170, between lines 18 and 19, insert:

Section 83. Paragraphs (d) and (e) of subsection (6) of section 627.410, Florida Statutes, 1992 Supplement, is added to read:

627.410 Filing, approval of forms.—

(6)*(d) Every individual health insurance filing made pursuant to this subsection shall be prohibited from applying the following rating practices:*

1. Select and ultimate premium schedules.

2. Premium class definitions which classify insureds based on year of issue or duration since issue.

3. Attained age premium structures on policy forms under which more than fifty percent of the policies are issued to persons age 65 or over.

(e) Except as provided in 627.410(6)(e)1., an insurer shall continue to make available for purchase any individual policy form issued on or after October 1, 1993. A policy form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous twelve (12) months.

1. An insurer may discontinue the availability of a policy form if the insurer provides to the Department in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Department, the insurer shall no longer offer for sale the policy form or certificate form in this State.

2. An insurer that discontinues the availability of a policy form pursuant to 627.410(6)(e)1. shall not file for approval a new policy form providing similar benefits as the discontinued form for a period of five (5) years after the insurer provides notice to the Department of the discontinuance. The period of discontinuance may be reduced if the Department determines that a shorter period is appropriate.

3. The experience of all policy forms providing similar benefits shall be combined for all rating purposes.

Section 84. Paragraph (e) of subsection (1) of section 627.411, Florida Statutes, is amended to read:

627.411 Grounds for disapproval.—

(1) The department shall disapprove any form filed under s. 627.410, or withdraw any previous approval thereof, only if the form:

(e) Is~~f~~ for health insurance, *and* provides benefits which are unreasonable in relation to the premium charged, ~~or~~ contains provisions which are unfair or inequitable or contrary to the public policy of this state or which encourage misrepresentation, *or which apply rating practices which result in premium escalations that are not viable for the policyholder market or result in unfair discrimination in sales practices.*

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 227, line 6, after "appropriations;" insert: amending s. 627.410, F.S.; providing restrictions of specified rating practices; specifying restrictions on discontinuance of sale of certain forms; amending s. 627.411, F.S.; adding ground for disapproval of form filings

Senator Forman moved the following amendment which was adopted:

Amendment 149—On page 170, line 19, insert:

Section 83. Section 483.041, Florida Statutes, 1992 Supplement, is amended to read:

483.041 Definitions.—As used in this part the term:

(6) "Licensed practitioner ~~of the healing arts~~" means a physician licensed *under* ~~pursuant to~~ chapter 458, chapter 459, ~~or~~ chapter 460 *or chapter 461;* a dentist licensed *under* ~~pursuant to~~ chapter 466; ~~or~~ a person licensed *under* ~~pursuant to chapter 461 or~~ chapter 462; *an optometrist licensed pursuant to chapter 463.*

Senator Grant moved the following amendment which was adopted:

Amendment 150 (with Title Amendment)—On page 171, between lines 4 and 5, insert:

Section 85. Section 627.4239, Florida Statutes, is created to read:

627.4239 Coverage for off label use of drugs in treatment of cancer.—

(1) DEFINITIONS.—As used in this section:

(a) "Standard reference compendia" means (a) the United States Pharmacopeia Drug Information; (b) the American Medical Association Drug Evalutions; or (c) the American Hospital Formulary Service Drug Information.

(b) "Medical literature" means scientific studies published in any peer-reviewed national professional journal.

(2) COVERAGE FOR TREATMENT OF CANCER.

(a) An insurer may not exclude coverage in any individual or group insurance policy issued, amended, delivered, or renewed in this state that covers treatment of cancer for any drug prescribed for the treatment of cancer on the ground that the drug has not been approved by the Federal Food and Drug Administration for a particular indication, if such drug is recognized for treatment of such indication in one of the standard reference compendia or in the medical literature.

(b) Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

(3) APPLICABILITY AND SCOPE.

(a) This section shall not be construed to alter existing law with regard to provisions limiting the coverage of drugs that have not been approved by the Federal Food and Drug Administration.

(b) This section shall not be construed to require coverage for any drug when the Federal Food and Drug Administration has determined its use to be contra-indicated.

(c) This section shall not be construed to require coverage for drugs not otherwise approved for any indication by the Federal Food and Drug Administration.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 227, line 9, after "insurance;" insert: creating s. 627.4239, F.S.; prohibiting coverage for certain drugs used to treat cancer;

Senator Kiser moved the following amendment which was adopted:

Amendment 151—On page 171, between lines 4 and 5, insert:

Section 85. Section 627.6515, Florida Statutes, 1992 Supplement, is amended to read:

627.6515 Out-of-state groups.—

(1)*(a)* Any group health insurance policy issued or delivered outside this state, *including those issued to an association group the composition of which is substantially as described in s. 627.654; an additional group the composition of which is substantially as described in s. 627.656; a group insured under a blanket health policy when the composition of the group is substantially in compliance with s. 627.659; a group insured under a franchise health policy when the composition of the group is substantially in compliance with s. 627.663; a trustee group the composition of which is substantially as described in s. 627.6516; an association group to cover persons associated in any other common group, which common group is formed primarily for purposes other than providing insurance; a group which is established primarily for the purpose of providing group insurance; or a group of insurance agents of an insurer, which insurer is the policyholder,* under which a resident of this state is provided coverage shall comply with the provisions of this part in the same manner as group health policies issued in this state.

(b) However, any group health insurance policy issued or delivered outside this state, including those issued to the groups referenced in (1)(a) above, under which a resident of this state is provided coverage and where the policy or a certificate evidencing coverage under the policy is marketed, solicited or issued directly to an individual shall be considered an individual health insurance policy and shall be subject to an comply with the provisions of parts II and VI and all other applicable provisions under the Insurance Code and applicable rules promulgated thereunder in the same manner as individual health insurance policies issued in this state.

(c) In connection with the requirements of paragraphs (a) and (b), the insurer shall provide that:

1. Benefits are reasonable in relation to the premiums charges thereunder and the issuance of the group policy has resulted or will result in economies of administration.

2. Prior to solicitation in this state, a copy of the master policy and a copy of the certificate evidencing coverage that will be issued to residents of this state be filed with the department.

3. Certificates of insurance issued to residents of this state designate one Florida-licensed resident agent as agent of record for the service of such policy.

(2) This part does not apply to a group health insurance policy issued or delivered outside this state under which a resident of this state is provided coverage if:

(a)*1.* The policy is issued to an employee group the composition of which is substantially as described in s. 627.653; *or*

2. The policy is issued to a labor union group ~~or~~ association group the composition of which is substantially as described in s. 627.654; *and* ~~an additional group the composition of which is substantially as described in s. 627.656; a group insured under a blanket health policy when the composition of the group is substantially in compliance with s. 627.659; a group insured under a franchise health policy when the composition of the group is substantially in compliance with s. 627.663; an association group to cover persons associated in any other common group, which common group is formed primarily for purposes other than providing insurance; a group which is established primarily for the purpose of providing group insurance, provided the benefits are reasonable in relation to the premiums charged thereunder and the issuance of the group policy has resulted, or will result, in economies of administration; or a group of insurance agents of an insurer, which insurer is the policyholder;~~

(b) *The insurer provides that:*

1. Certificates evidencing coverage under the policy are issued to residents of this state ~~and~~ contain in contrasting color and not less than 10-point type the following statement: "The benefits of the policy providing your coverage are governed primarily by the law of a state other than Florida"; ~~and~~

2.~~(c)~~ The policy provides the benefits specified in ss. 627.419, 627.6574, 627.6575, 627.6579, 627.6613, 627.667, and 627.6675;.

~~(3) Section 624.428 is not applicable when residents of this state are enrolled for coverage under a policy or certificate issued in accordance with subsection (2).~~

3.~~(4)~~ Prior to solicitation in this state, a copy of the master policy and a copy of the form of the certificate evidencing coverage that will be issued to residents of this state shall be filed with the department for informational purposes.*; and*

4.~~(5)~~ Prior to solicitation in this state, an officer of the insurer shall truthfully certify to the department that the policy and certificates evidencing coverage have been reviewed and approved by the state in which the group policy is issued.

~~(6) Any insurer who provides coverage under certificates of insurance issued to residents of this state shall designate one Florida-licensed resident agent as agent of record for the service of such certificates, unless the policy is issued to a group substantially as described in s. 627.653, s. 627.654, s. 627.656, s. 627.659, or s. 627.663.~~

(3) This section applies to all policies issued, amended, delivered or renewed in this state on or after October 1, 1993.

Section 86. Subsection (1) of section 627.410, Florida Statutes, 1992 Supplement, is amended to read:

627.410 Filing, approval of forms.—

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with the department at its offices in Tallahassee by or in behalf of the insurer which proposes to use such form and has been approved by the department. This provision does not apply to surety bonds or to specially rated inland marine risks, nor to policies, riders, endorsements, or forms of unique character which are designed for and used with relation to insurance upon a particular subject (other than as to health insurance), or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificateholder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state *for groups as specified in s. 627.6515(2)* shall be filed with the department for information purposes only.

(Renumber subsequent sections.)

Reconsideration of Amendment

On motion by Senator Kiser, the Senate reconsidered the vote by which **Amendment 151** was adopted.

POINT OF ORDER

Senator Holzendorf raised a point of order that pursuant to Rule 7.1, **Amendment 151** contained language of a bill not reported favorably by a Senate committee and was therefore out of order.

RULING ON POINT OF ORDER

On recommendation of Senator Jennings, Chairman of the Committee on Rules and Calendar, the President ruled the point well taken and the amendment out of order.

Senator Gutman moved the following amendment which was adopted:

Amendment 152—On page 174, line 21 and on page 189, line 1, strike *"family composition,"*

Senator Williams moved the following amendment which failed:

Amendment 153—On page 180, line 24, after "basis" insert: *, except that benefits purchased through riders as provided in paragraph (c) may be medically underwriten for the group, but may not be individually underwritten as to the employees or the dependents of such employees. Additional or increased benefits may only be offered by riders.*

Reconsideration of Amendment

On motion by Senator Williams, the Senate reconsidered the vote by which **Amendment 153** failed. **Amendment 153** was adopted.

Senators Silver and Holzendorf offered the following amendment which was moved by Senator Silver and adopted:

Amendment 154—On page 183, line 27, after "provided" insert: All eligible employees and their dependents of a small employer shall be offered an annual 30-day open enrollment period.

Senator Myers moved the following amendment which was adopted:

Amendment 155—On page 188, line 28, through page 189, line 7, strike all of said lines and insert: *community rating methodology, as defined in this section. Rating factors related to age, gender, family composition, tobacco use, or geographic location, and the methodology for considering other factors may be developed by each carrier to reflect the carrier's experience. The factors and methodology used by carriers are subject to department review and approval in accordance with ss. 627.410 and 627.411, Florida Statutes.*

2. The committees of substance of the House and the Senate responsible for legislation regulating health insurance rating shall, as interim projects, study and report to their respective committees not later than January 1, 1995, as to whether further modifications in community rating should be enacted. In conducting such study and report such staffs shall consult with and consider information provided by the Department of Insurance, the Agency for Health Care Administration, insurers, employers, and other interested parties, and shall specifically consider, among other matters, whether community rating will: (1) make health insurance coverage less affordable for currently uninsured employers and individuals; (2) encourage many employers that are currently insured to self-insure or partially self-insure; (3) break the linkage between an employer's cost and what it pays in premiums; and (4) cause carriers to seek lower-risk populations.

Reconsideration of Amendment

On motion by Senator Gutman, the Senate reconsidered the vote by which **Amendment 155** was adopted. **Amendment 155** was withdrawn.

Senator Myers moved the following amendment which failed:

Amendment 156—On page 188, line 28, through page 189, line 7, strike all of said lines and insert: *community rating methodology, as defined in this section. Rating factors related to age, gender, family composition, tobacco use, or geographic location, and the methodology for considering other factors, may be developed by each carrier to reflect the carrier's experience. The factors and methodology used by carriers are subject to departmental review and approval under ss. 627.410 and 627.411.*

2. The substantive committees of the House of Representatives and the Senate that are responsible for legislation regulating health insurance rating shall, as interim projects, study and report to their respective committees not later than January 1, 1995, whether further modifications in community rating should be enacted. In conducting the studies the committees shall consult with and consider information provided by the Department of Insurance, the Agency for Health Care Administration, insurers, employers, and other interested parties, and shall specifically consider whether community rating will make health insurance coverage less affordable for currently uninsured employers and individuals, encourage many employers that are currently insured to self-insure or partially self-insure, break the linkage between an employer's cost and what it pays in premiums, and cause carriers to seek lower-risk populations.

Senator Gutman moved the following amendments which were adopted:

Amendment 157—On page 203, lines 12 and 13, strike "Except as provided in paragraph (n), risk" and insert: Risk

Amendment 158—On page 207, line 6, strike "risk assuming carriers and" and insert: of all

Senator Foley moved the following amendment which was adopted:

Amendment 159 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. Section 641.28, Florida Statutes, is amended to read:

641.28 Civil remedy.—In any civil action, *after first exhausting all other remedies provided for by contract,* brought to enforce the terms and conditions of a health maintenance organization contract, the prevailing party is entitled to recover reasonable attorney's fees, *as provided in s. 627.428,* and court costs. This section shall not be construed to authorize a civil action against the department, its employees, or the Insurance Commissioner or against the Department of Health and Rehabilitative Services, its employees, or the secretary of that department.

Section 88. Subsection (8) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(8) A health maintenance organization providing medical benefits or payments to a subscriber who suffers injury, disease, or illness by virtue of the negligent act or omission of a third party is entitled to reimbursement from the subscriber *as provided in s. 768.76(4),* ~~on a fee-for-service basis, for the reasonable value of the benefits or payments provided. However, the health maintenance organization is not entitled to reimbursement for medical expenses rendered in excess of the subscriber's monetary recovery from the third party.~~

Section 89. Section 641.3108, Florida Statutes, is amended to read:

641.3108 Notice of cancellation of contract.—

(1)(a) A ~~Except for nonpayment of premium or termination of eligibility, no~~ health maintenance organization may *not* cancel or otherwise terminate or fail to renew a health maintenance contract without giving the *contract* subscriber at least *90* ~~45~~ days' notice in writing of the cancellation, termination, or nonrenewal of the contract, *unless the reason is the nonpayment of premium, which is governed by subsection (2).* The written notice shall *be sent to the contract subscriber at the address shown in the contract, by certified or registered mail, return receipt requested, and must* state the reason or reasons for the cancellation, termination, or nonrenewal. *Each* ~~All~~ health maintenance *contract must* ~~contracts shall~~ contain a clause *that* ~~which~~ requires that this notice be given. ~~In the case of a health maintenance contract issued to an employer or person holding the contract on behalf of the subscriber group, the health maintenance organization may make the notification through the employer or group contract holder, and, if the health maintenance organization elects to take this action through the employer or group contract holder, the organization shall be deemed to have complied with the provisions of this section upon notifying the employer or group contract holder of the requirements of this section and requesting the employer or group contract holder to forward to all subscribers the notice required herein.~~

(b) For a health maintenance contract issued to a group, the contract subscriber shall notify each subscriber in the group of the cancellation, termination, or nonrenewal by an individually addressed notice that is mailed or hand-delivered. A copy of each notice shall be retained by the group contract holder.

(c) The written notice sent by the health maintenance organization to the contract subscriber must include notice of the requirements of this subsection.

(2) A health maintenance organization shall include, at the bottom of each monthly premium notice, a written statement that failure to pay the premium will result in termination of the policy.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 227, line 31, after the semicolon (;) insert: amending s. 641.28, F.S.; revising the provisions providing for attorney's fees in actions brought to enforce the terms and conditions of health maintenance organization contracts; amending s. 641.31, F.S.; providing for reimbursement of health maintenance organizations in accordance with provisions relating to collateral sources of indemnity, including reimbursement for attorney's fees and costs; amending s. 641.3108, F.S.; revising requirements for cancellation and for notice of cancellation of a health maintenance organization contract;

Senator Myers moved the following amendment which was adopted:

Amendment 160—On page 218, strike lines 6-9 and insert:

Section 87. Section 20.42, Florida Statutes, as created by section 1 of chapter 92-33, Laws of Florida, is repealed.

Section 88. Section 20.43, Florida Statutes, is created to read:

20.43 Department of Health.—There is created a Department of Health.

(1) PURPOSE.—The purpose of the Department of Health is to promote and protect the health of all residents and visitors in this state through organized state and community efforts, including cooperative contractual agreements with the counties. The department shall:

(a) Prevent, to the fullest extent possible, the occurrence of communicable and noncommunicable diseases and disabilities.

(b) Maintain a constant surveillance of disease occurrence and accumulate health statistics necessary to establish disease trends and to design health programs.

(c) Conduct special studies of the causes of disease and formulate preventive strategies.

(d) Give special attention to those factors of the environment that affect public health and make recommendations for corrections where indicated.

(e) Promote and actively participate in programs that prevent the progression of illness.

(f) Promote the maintenance and improvement of health in the residents of the state.

(g) Provide health information to the public, with recommendations for self-help toward healthful living.

(h) Provide leadership, in cooperation with both the public and private sectors, in establishing statewide and community health and medical delivery systems.

(i) Regularly assess the quality, accessibility, availability, comprehensiveness, and costs of medical and health care in the state, including the adequacy of the health care workforce.

(j) Develop working associations with all agencies and organizations involved and interested in health and health care delivery.

(k) Provide or assure the provision of medical care for the indigent.

(l) Analyze trends in the evolution of the health care system, and identify and promote the use of innovative and cost-effective systems of care.

(m) Receive consumer complaints about the health care delivery system, conduct investigations, and respond as necessary, including acting as an ombudsman on behalf of health care consumers.

(n) Serve as the statewide repository of all aggregate data accumulated by state agencies related to the health care system; analyze that data and issue periodic reports and policy statements as appropriate; require that all data aggregated be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of the health care systems and the outcome of health care in the state.

(o) Actively promote, through public and private cooperation, the establishment of systems of health care for persons who are unable to find medical care within the current health care system.

(p) Pay for health and medical care in the most reasonably expeditious fashion, while promoting cost-effectiveness, quality, and patient dignity in medical payment programs authorized by the Legislature.

(q) Regulate health care facilities, to the extent authorized by the Legislature, in a manner that carefully balances considerations of cost, quality, and access and that provides for an expeditious and fair resolution of grievances.

(r) Supervise the implementation of ss. 403.850-403.864, the Florida Safe Drinking Water Act.

(s) Biennially publish, and annually update, a health plan for the state that assesses current programs, systems, and costs; makes projections of future problems and opportunities; and recommends changes needed in the health care system to improve the public health.

(2) DIRECTOR OF THE DEPARTMENT OF HEALTH.—The head of the department is the State Health Officer, who shall be appointed by the Governor, subject to confirmation by the Senate. The director shall serve at the pleasure of and report to the Governor. The State Health Officer must be a physician licensed under chapter 458 or chapter 459, and must have specialized training and experience in public health service and administration. The State Health Officer shall appoint a Deputy State Health Officer who shall act in the absence of the State Health Officer. The Deputy State Health Officer is directly responsible to the State Health Officer and shall perform such duties as are assigned to him by the State Health Officer. He shall serve at the pleasure of the State Health Officer.

(3) DUTIES OF THE STATE HEALTH OFFICER.—

(a) The State Health Officer shall be the chief administrative officer of the department and is responsible for carrying out the duties of the department.

(b) It is the responsibility of the State Health Officer to:

1. Act as state registrar of vital statistics.

2. Attend, and maintain the minutes of and provide the staff for, all meetings of the Department of Health Advisory Council, which minutes must contain the decisions, policies, recommendations, and all other official actions of the council and constitutes the State Health Officer's authority for administering the policies and directives of the council.

3. Administer and enforce laws and rules relating to environmental health, control of communicable diseases in humans and from animals to humans, quarantine, and the general health of the residents of the state.

4. Cooperate with municipal and county officials and employees in enforcing state health laws and rules adopted by the department.

5. Cooperate with and assist federal health officers in enforcing health laws and regulations.

6. Cooperate with other appropriate state, county, municipal, or private boards, departments, or agencies toward improving and preserving the public's health.

7. Prepare a budget, with input from the council, for presentation to the Governor by the department.

8. Prepare, and submit to the council for its recommendations, proposed health rules and legislation.

9. Perform any other duties prescribed by law or directed by the Governor.

(c) The State Health Officer is responsible for and has line authority over all programs, services, and institutions of the department.

(d) In addition to his other duties, the State Health Officer is responsible for legal services, internal audit functions, and administrative services. Those functions may be delegated to any appropriate office within the department.

(4) ORGANIZATION OF THE DEPARTMENT.—The department shall be organized under the following assistant state health officers, appointed by the State Health Officer:

(a) The Assistant Health Officer for Regulation, who is responsible for: facility licensure and inspection; certificate-of-need authorization; and the Health Care Board.

(b) The Assistant Health Officer for Service Delivery, who is responsible for: children's medical services; alcohol, drug abuse, and mental health services; environmental health; disease control; family health services; technical health services; and program analysis and quality assurance.

(c) The Assistant Health Officer for Health Policy and Planning, who is responsible for: implementation of the Healthy Communities, Healthy People Plan; health promotion and wellness; public health policy and research; the Statewide Health Council; local health councils; the Office of Rural Health; vital statistics; the State Center for Health Statistics; and the development of the Florida Health Plan.

(d) The Assistant Health Officer for Finance, who is responsible for the Medicaid Program and the administration of contracts with the Florida Health Access Corporation and the Florida Health Care Purchasing Cooperative.

(e) The Assistant Health Officer for Administration, who is responsible for revenue management, budget, personnel, and general services.

The offices of the assistant health officers shall operate as the staff of the State Health Officer, and the responsibilities of those offices include identifying health needs, monitoring programs and services, and providing technical assistance to the State Health Officer and the board.

(5) REGIONS.—

(a) For the purpose of providing technical assistance and administrative supervision by the State Health Officer, regions composed of the following counties are designated:

Region 1.—Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla, Jefferson, Madison, and Taylor Counties.

Region 2.—Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua, Marion, Citrus, Hernando, Sumter, and Lake Counties.

Region 3.—Baker, Nassau, Duval, Clay, St. Johns, Flagler, and Volusia Counties.

Region 4.—Pasco, Pinellas, Hillsborough, Manatee, Polk, Hardee, and Highlands Counties.

Region 5.—Seminole, Orange, Osceola, Brevard, Indian River, Okeechobee, St. Lucie, Martin, and Palm Beach Counties.

Region 6.—Sarasota, Desoto, Charlotte, Lee, Glades, Hendry, and Collier Counties.

Region 7.—Broward, Dade, and Monroe Counties.

(b) The State Health Officer shall appoint a regional health officer in each region who shall serve at the pleasure of and be directly responsible to the State Health Officer. The regional health officer must be a physician licensed under chapter 458 or chapter 459 with experience in public health.

(c) The duties of the regional health officer include:

1. Ensuring that the purposes of the department and the policies of the board are carried out at the regional and local level.

2. Serving as the regional medical director and providing supervision to the employees of county public health units established under part I of chapter 154.

3. Coordinating the health services provided in the region with those of other public and private agencies that provide health services within the region.

4. Appointing a core staff to provide technical assistance and administrative support to the region and approving all other personnel appointments within the region.

5. Establishing policies and procedures as required to discharge his duties and to implement and conform the policies, procedures, and guidelines established by the department to the needs of the region.

(d) The regional health officer shall have line authority over all county public health unit directors within his region.

(e) To assist him in the discharge of his duties, each regional health officer may appoint technical specialists necessary to carry out the programs within the region. Technical specialists must be appointed by the regional health officer in conformity with qualifications established through state personnel system procedures and may be employed on a full-time, part-time, or fee-for-service contractual basis.

(6) DEPARTMENT OF HEALTH ADVISORY COUNCIL; CREATION AND MEMBERSHIP.—

(a) A Department of Health Advisory Council is created. The council shall be composed of 11 members who shall be appointed by and serve at the pleasure of the Governor, subject to Senate confirmation. The council shall be composed of:

1. A physician licensed to practice medicine under chapter 458 or chapter 459.

2. The Secretary of Human and Social Services.

3. The chairman of the Statewide Health Council.

4. The dean of the College of Public Health at the University of South Florida.

5. A business person who has professional expertise in health care purchasing.

6. A registered nurse licensed under chapter 464.

7. The Director of the Florida Mental Health Institute.

8. A person who has professional expertise in environmental health.

9. A person who has professional experience in managing health care facilities.

10. A representative of local governments.

11. A health care consumer.

(b) The council shall advise the State Health Officer in carrying out the duties of the department, including:

1. Designing programs to carry out the purposes of the department, such programs to be implemented through the county public health units as appropriate, and ensuring the quality, efficiency, and adequacy of the programs in meeting the public health needs of the public.

2. Advising the State Health Officer in performing his duties and in formulating general policies that affect public health in the state.

3. Supervising generally the enforcement of laws and rules relating to environmental health, control of communicable diseases among humans and from animals to humans, quarantine, and the general health of the public.

4. Reviewing and providing recommendations for rules necessary to carry out the purposes of the department, in accordance with chapter 120, the Administrative Procedure Act.

(7) CONFORMITY WITH FEDERAL STATUTES AND REGULATIONS.—It is the intent of the Legislature that this section not conflict with any federal statute or implementing regulation governing federal grant-in-aid programs administered by the department. Whenever such a conflict is asserted by the applicable agency of the Federal Government, the department shall submit to the United States Department of Health and Human Services, or other applicable federal agency, a request for a favorable policy response or a waiver of the conflicting portions. If the request is denied, as certified in writing by the Secretary of the United States Department of Health and Human Services or the head of the other applicable federal agency, the department may adjust the organization and state service plan prescribed by this section as necessary to conform with federal statutes and regulations. Before making those adjustments, the department must provide to the President of the Senate and the Speaker of the House of Representatives an explanation and justification of the position of the department and must outline all feasible alternatives consistent with this section.

(8) PROCUREMENT OF HEALTH SERVICES.—Nothing contained in chapter 287 requires competitive bids for health services involving examination, diagnosis, or treatment.

(9) CONSULTATION WITH COUNTIES ON MANDATED PROGRAMS.—It is the intent of the Legislature that when county governments are required by law to participate in the funding of programs, the department must consult with designated representatives of county governments in developing policies and service delivery plans for those programs.

Section 89. Section 20.19, Florida Statutes, 1992 Supplement, is amended to read:

20.19 Department of *Human* ~~Health~~ and *Social* ~~Rehabilitative~~ Services.—There is created a Department of *Human* ~~Health~~ and *Social* ~~Rehabilitative~~ Services.

(1) PURPOSE.—

(a) The purposes of the Department of *Human* ~~Health~~ and *Social* ~~Rehabilitative~~ Services are to deliver, or provide for the delivery of, all *human and* ~~health,~~ social~~, and rehabilitative~~ services offered by the state to its citizens and include, but are not limited to:

1. Integrating the delivery of all *human and* ~~health,~~ social~~, and rehabilitative~~ services offered by the state to those citizens in need of assistance.

2. Providing *authorized* ~~such~~ assistance ~~as is authorized~~ to all eligible clients in order that they might achieve or maintain economic self-support and self-sufficiency to prevent, reduce, or eliminate dependency.

3. Preventing or remedying the neglect, abuse, or exploitation of children and of adults unable to protect their own interests.

4. Aiding in the preservation, rehabilitation, and reuniting of families.

5. Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care.

6. Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions when necessary.

~~7. Preventing the occurrence and spread of communicable diseases and other physical and mental diseases and disabilities to the maximum degree possible.~~

~~8. Conducting public health surveillance and investigative activities to protect citizens and visitors in the state from environmentally related disease.~~

~~9. Promoting the maintenance and improvement of health and mental health.~~

~~10. Disseminating health information to the public with recommendations for self-help aimed at the prevention of disease and the maintenance and improvement of the health of all residents of and visitors in this state.~~

~~11. Providing preventive and primary health care services through county public health units to ensure access to such services to facilitate a healthy start for children and to help prevent long-term disabling conditions.~~

~~12. Planning and developing health resources to assure effective and efficient delivery of high quality health services fully accessible to all citizens.~~

~~13. Paying for health care and medical care in the most reasonably expeditious fashion while promoting cost-effectiveness, quality, and patient dignity in those medical payment programs authorized by the Legislature.~~

7.~~14.~~ Participating as a partner in the improvement of schools through the support of families in the community.

(b) In fulfillment of these purposes, the department shall create a 5-year strategic plan *that* ~~which~~ reflects broad societal outcomes, sets forth a broad framework within which the district plans are developed, and establishes a set of measurable goals and objectives and operational performance standards.

(c) The secretary, deputy secretaries, district administrators, and assistant secretaries are authorized to appoint ad hoc advisory committees when necessary. The problem or issue that an ad hoc committee is asked to address, and the timeframe within which the committee is to complete its work, *must* ~~shall~~ be specified at the time of the initial appointment of the committee. Such ad hoc advisory committees *must* ~~shall~~ include representatives of individuals, groups, associations, or institutions that may be affected by the issue or problem that the ad hoc advisory committee is asked to examine. Members of ad hoc advisory committees shall receive no compensation, but may, within existing resources of the department, be reimbursed for travel expenses as provided for in s. 112.061. The department may adopt a rule *that* ~~which~~ establishes the general operating procedures for any ad hoc advisory committees that may be created *under* ~~pursuant to~~ this paragraph.

(2) SECRETARY OF *HUMAN* ~~HEALTH~~ AND *SOCIAL* ~~REHABILITATIVE~~ SERVICES; DEPUTY SECRETARY.—

(a) The head of the department is the Secretary of *Human* ~~Health~~ and *Social* ~~Rehabilitative~~ Services. The secretary is appointed by the Governor subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary is directly responsible to the secretary, performs *the* ~~such~~ duties ~~as are~~ assigned to him by the secretary, and serves at the pleasure of the secretary.

(c) In accordance with ~~the provisions of~~ s. 20.055, the chief internal auditor reports directly to the secretary.

(d) There is created under the Secretary of *Human* ~~Health~~ and *Social* ~~Rehabilitative~~ Services the Office of Evaluation. The Office of Evaluation has the following responsibilities:

1. Technical support and coordinated management of the department's outcome evaluation and program effectiveness efforts within each program office.

2. Development of policies and procedures to ensure the validity, reliability, and utility of the department's evaluations.

3. Ensuring the integrity and quality of program evaluations conducted by the department.

4. Development of procedures for the competitive procurement of external evaluations, including detailed specifications for all evaluation contracts.

5. Development of the budget for the department's evaluation efforts and identification of future evaluation needs, including infrastructure needs to support the outcome evaluation function.

6. Such other duties relating to evaluation as may be assigned to the Office of Evaluation by the secretary.

(e) The secretary shall ensure the establishment of statewide needs assessment methodologies for all departmental client service programs, to be applied uniformly across the state in order to identify the total statewide need for each service and ensure comparability of data from one service district to another. As appropriate, these methodologies shall include *human* ~~health~~, economic, and sociodemographic indicators of need and shall ensure the use of uniform waiting list criteria.

(f) The secretary has the authority and responsibility to ensure that the purpose of the department is fulfilled in accordance with state and federal laws, rules, and regulations.

(g) In addition to his other duties, the secretary is responsible for evaluation, departmental legal services, inspector general, and internal audit functions. The secretary may assign performance of evaluation functions or departmental legal services to any appropriate unit within the department but shall maintain internal auditing as the secretary's responsibility.

(h) The secretary may establish offices to provide selected administrative functions designed to support multiple districts. These offices may not have line authority over district offices and may not be interposed between district management and the secretary. These offices may be created, consolidated, restructured, or rearranged by the secretary, within the limitations provided for in chapter 216, in order to achieve more effective and efficient performance of service delivery and support functions to multiple districts. In the establishment of any administrative processing centers pursuant to this paragraph, the department is directed to avoid consolidation of functions that support service-delivery decision-making such as budgetary functions; discretionary decisions regarding procurement of goods and services; and decisions regarding recruitment, hiring, and evaluation of staff. This paragraph does not restrict local decisionmaking by supervisors or managers regarding discretionary functions. Any consolidation of administrative functions under this paragraph shall be designed to minimize any adverse impact on service districts or institutions.

~~(3) DEPUTY SECRETARY FOR HEALTH.—The secretary shall appoint a Deputy Secretary for Health who is the State Health Officer and serves at the pleasure of, and is directly responsible to, the secretary. The Deputy Secretary for Health is responsible for all programs, activities, and functions of the department relating to public health matters, including environmental health. The State Health Officer is responsible for declaring public health emergencies and issuing public health advisories. The State Health Officer must be a physician licensed under chapter 458 or chapter 459 who has specialized training or experience in public health programming and administration.~~

~~(a) The Deputy Secretary for Health has the following responsibilities:~~

~~1. Ensuring that public health programs are implemented according to legislative intent and as provided in state and federal laws, rules, and regulations.~~

~~2. Program planning and interprogram planning and development.~~

~~3. Departmental health planning and health statistics and information functions.~~

~~4. Ensuring that county public health units plan with schools for the development of supplemental school health programs to meet the needs of children and their families.~~

~~5. Reviewing, monitoring, and ensuring compliance with statewide program standards and performance objectives.~~

~~6. Conducting outcome evaluations and ensuring program effectiveness.~~

~~7. Monitoring district spending plans as they relate to public health.~~

~~8. Issuing any health advisory which is intended to warn the public of any situation that is potentially hazardous to public health and to protect the health and safety of the public.~~

~~9. Other duties as are assigned to him by the secretary.~~

~~(b) The secretary may appoint assistant health officers, as deemed appropriate, to assist the State Health Officer, at the request of the State Health Officer. Each assistant health officer serves at the pleasure of the secretary and is directly responsible to the State Health Officer. The offices of the assistant health officers shall operate in a staff capacity to the State Health Officer, and the responsibilities of the offices include needs identification, program and service monitoring, and technical assistance to the State Health Officer.~~

~~(c) State health institutions are managed as components of continuums of care. To that end, it is the intent of the Legislature that institutional resources and community based resources be managed in a coordinated and flexible manner to facilitate maximum development of community based continuums of care and minimum use of institutional services. Further, it is the intent of the Legislature that budget management of state health institutions include mechanisms to transfer institutional funds to service districts in order to successfully reduce the use by each district of its share of institutional resources.~~

~~(d) Prior to issuing any health advisory, the State Health Officer must consult with any state or local agency the areas of responsibility of which may be affected by such advisory. Upon determining that issuing a health advisory is necessary to protect the public health and safety, and prior to issuing the advisory, the State Health Officer must notify each county public health unit within the area which is affected by the advisory of his intent to issue the advisory. The State Health Officer is authorized to take any action appropriate to enforce any health advisory.~~

~~(e) The department may establish within existing resources an Office of Health Promotion and Wellness to be directed by the Assistant Health Officer for Health Promotion and Wellness, who shall report to the State Health Officer.~~

~~(f) The department may establish with existing resources the Office of Public Health Policy and Research to be supervised by the Assistant Health Officer for Public Health Policy and Research, who shall report directly to the State Health Officer. The assistant health officer shall direct all public health information systems, public health planning, public health research, and public health policy analysis activities administered by the State Health Office. The office shall seek constructive solutions to statewide public health problems and encourage the efficient and effective delivery of public health services. It shall assist in forming public health policies by coordinating, sponsoring, and conducting research on major public health issues; developing, implementing, and managing public health information systems, including the vital statistics system; and conducting analyses of public health policy issues, including manpower, cost, health status, environmental, family health, disease control, and health promotion issues. The office shall assist in developing model public health programs, including health promotion programs; secure grant funds to support the testing of model and innovative public health programs; and evaluate public health program impacts and client outcomes. The office shall produce periodic public health reports and comprehensive public health plans.~~

~~(g) On or before December 31, 1992, the department shall submit to the Legislature a plan for the establishment of the Office of Health Promotion and Wellness and the Office of Public Health Policy and Research.~~

(3)~~(4)~~ DEPUTY SECRETARY FOR HUMAN SERVICES.—The secretary shall appoint a Deputy Secretary for Human Services who serves at the pleasure of, and is directly responsible to, the secretary. The secretary shall appoint an Assistant Deputy Secretary for Human Services who serves at the pleasure of the secretary and is directly responsible to the Deputy Secretary for Human Services.

(a) The Deputy Secretary for Human Services has the following responsibilities:

1. Ensuring that human services programs are implemented according to legislative intent and as provided in state and federal laws, rules, and regulations.

2. Program planning, interprogram planning, and development.

3. Reviewing, monitoring, and ensuring compliance with statewide goals, objectives, and operational performance standards.

4. Conducting outcome evaluations and ensuring program effectiveness.

5. Monitoring of district human services programs and spending plans.

6. Interprogram policy development, short-term and long-term planning, standards setting, monitoring, quality control, staff development, training, and technical assistance.

7. Ensuring the continued interagency collaboration with the Department of Education for the development and integration of effective programs to serve children and their families.

8. Ensuring the development and implementation of a client-oriented, case management system in the service programs of the department.

9. Other duties as are assigned to him by the secretary.

(b)1. Program offices operate in a staff capacity to the Deputy Secretary for Human Services. Each program office is headed by an assistant secretary who is appointed by, and serves at the pleasure of, the secretary and is directly responsible to the Deputy Secretary for Human Services. ~~The Assistant Secretary for Children's Medical Services is responsible for all programs, activities, and functions of the department relating to all children's medical services programs operated by the department. The Assistant Secretary for Children's Medical Services must be a physician licensed under chapter 458 or chapter 459, and must have specialized training and experience in child health as defined in s. 391.051.~~ The Assistant Secretary for Delinquency Services is responsible for all programs, activities, and functions of the department relating to all delinquency services operated by the department. ~~The secretary shall appoint a Deputy Assistant Secretary for Alcohol and Drug Abuse and a Deputy Assistant Secretary for Mental Health, who both report directly to the Assistant Secretary for Alcohol, Drug Abuse, and Mental Health.~~ The Deputy Secretary for Human Services shall delegate to the program offices the following responsibilities, *without limitation* ~~which include, but are not limited to~~:

a. Establishment of program standards and performance objectives.

b. Development of program policies and rules, and provision of policy interpretations in order to achieve statewide consistency.

c. The review and monitoring of programs and the provision of technical assistance to programs in order to ensure compliance and accountability with statewide program standards, performance objectives, and state and federal laws, rules, and regulations.

d. Outcome evaluation and program effectiveness.

e. Development of staffing and workload standards.

f. Development of budget and resource allocation methodologies and strategies.

g. Compilation of reports, analyses, and assessments of client needs and services on a statewide basis.

h. Staff development and training.

i. General statewide supervision of the administration of service programs.

j. Any other program planning and development duties assigned by the secretary.

2. The following program offices are established and may be consolidated, restructured, or rearranged by the secretary; provided any such consolidation, restructuring, or rearranging is for the purpose of encouraging service integration through more effective and efficient performance of the program offices or parts thereof:

a. Child Support Enforcement Program Office.—The responsibilities of this program office encompass the administration of the child support enforcement program established in Title IV-D of the Social Security Act, 42 U.S.C. s. 1302, in accordance with the provisions of ss. 409.2551-409.2597.

~~b. Children's Medical Services Program Office.—The responsibilities of this office encompass all children's medical services programs operated by the department.~~

b.~~c.~~ Economic Services Program Office.—The responsibilities of this office encompass all income support programs within the department, such as aid to families with dependent children (AFDC), food stamps, and state supplementation of the supplemental security income (SSI) program.

c.~~d.~~ Developmental Services Program Office.—The responsibilities of this office encompass programs operated by the department for developmentally disabled persons. Developmental disabilities include any disability defined in s. 393.063.

~~e. Medicaid Program Office.—The responsibilities of this office include planning and development of policies and programs, program and provider monitoring, provider relations, interprogram planning, and program surveillance and utilization review.~~

d.~~f.~~ Aging and Adult Services Program Office.—The responsibilities of this office encompass all aging and adult programs operated by the department, including SSI-related program eligibility determinations.

e.~~g.~~ Children and Families Program Office.—The responsibilities of this program office encompass intake services for families-in-need-of-services and children-in-need-of-services programs; protective investigation services for abandoned, abused, and neglected children; interstate compact on the placement of children programs; children's protective services; adoption; child care; foster care programs; specialized services to families; and programs serving children through the Menninger Foundation, including the CHARLEE Program.

~~h. Alcohol, Drug Abuse, and Mental Health Program Office.—The responsibilities of this office encompass all alcohol, drug abuse, and mental health programs operated by the department. In addition, the responsibility for adult forensic programs and children's mental health programs and services, except programs serving children through the Menninger Foundation, including the CHARLEE Program, the Eckerd Family Youth Alternatives, Inc., and the Elaine Gordon Treatment Center, shall be located within this office.~~

f.~~i.~~ Delinquency Services Program Office.—The responsibilities of this office encompass all delinquency programs and services operated by the department, including, but not limited to, programs serving children through the Eckerd Family Youth Alternatives, Inc.; and the Elaine Gordon Treatment Center.

3. State institutions~~, other than health institutions,~~ are managed as components of related continuums of care. To that end, it is the intent of the Legislature that institutional resources and community-based resources be managed in a coordinated and flexible manner to facilitate maximum development of community-based continuums of care and minimum use of institutional services. Further, it is the intent of the Legislature that budget management of state institutions include mechanisms to transfer institutional funds to service districts in order to successfully reduce the use by the district of its share of institutional resources. Each ~~civil mental health and~~ developmental services institution must have an advisory board that includes representatives selected by each district served by that institution. The advisory board shall assist in policy development, participate in the institution's quality assurance process, and coordinate the delivery of services provided by the community and the institution.

(4)~~(5)~~ DEPUTY SECRETARY FOR ADMINISTRATION.—

(a) The secretary shall appoint a Deputy Secretary for Administration who serves at the pleasure of, and is directly responsible to, the secretary. The Deputy Secretary for Administration is responsible for:

1. Supervising all of the budget management activities of the department and serving as the chief budget officer of the department.

2. Providing administrative and management support services above the district level.

3. Monitoring administrative and management support services in the districts.

4. Developing and implementing uniform policies, procedures, and guidelines with respect to personnel administration, finance and accounting, budget, grants management and disbursement, contract administration, procurement, information and communications systems, management evaluation and improvement, and general services, including housekeeping, maintenance, and leasing of facilities.

5. Performing such other administrative duties as are assigned to him by the secretary.

(b) The Deputy Secretary for Administration may establish regional administration centers to manage those administrative functions which can be managed at a regional level more efficiently and cost effectively than at the district level.

(c) If reductions in a district's operating budget become necessary during any fiscal year, the department shall develop a formula to be used in its recommendations to the Governor and Legislature which equitably treats counties that have voluntarily appropriated funds to department programs and does not disproportionately reduce a district's operating budget because of such county appropriations.

(5)~~(6)~~ SERVICE DISTRICTS.—The department shall plan and administer its programs of *human and* ~~health,~~ social~~, and rehabilitative~~ services through service districts and subdistricts composed of the following counties:

District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties;

District 2, Subdistrict A.—Holmes, Washington, Bay, Jackson, Calhoun, and Gulf Counties;

District 2, Subdistrict B.—Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, and Taylor Counties;

District 3.—Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, and Alachua Counties;

District 4.—Baker, Nassau, Duval, Clay, and St. Johns Counties;

District 5.—Pasco and Pinellas Counties;

District 6.—Hillsborough and Manatee Counties;

District 7, Subdistrict A.—Seminole, Orange, and Osceola Counties;

District 7, Subdistrict B.—Brevard County;

District 8, Subdistrict A.—Sarasota and DeSoto Counties;

District 8, Subdistrict B.—Charlotte, Lee, Glades, Hendry, and Collier Counties;

District 9.—Palm Beach County;

District 10.—Broward County;

District 11, Subdistrict A.—Dade County;

District 11, Subdistrict B.—Monroe County;

District 12.—Flagler and Volusia Counties;

District 13.—Marion, Citrus, Hernando, Sumter, and Lake Counties;

District 14.—Polk, Hardee, and Highlands Counties; and

District 15.—Indian River, Okeechobee, St. Lucie, and Martin Counties.

(6)~~(7)~~ ~~HEALTH AND~~ HUMAN *AND SOCIAL* SERVICES BOARDS.—

(a) There is created a ~~health and~~ human *and social* services board in each service district or subdistrict. The initial membership and the authority to appoint the members shall be allocated among the counties of each district or subdistrict as follows:

1. District 1 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Escambia County, 6 members; Okaloosa County, 3 members; Santa Rosa County, 2 members; and Walton County, 1 member.

2. District 2 has a board composed of 23 members, with 5 at-large members to be appointed by the Governor, and 18 members to be appointed by the boards of county commissioners in the respective counties, as follows: Holmes County, 1 member; Washington County, 1 member; Bay County, 2 members; Jackson County, 1 member; Calhoun County, 1 member; Gulf County, 1 member; Gadsden County, 1 member; Franklin County, 1 member; Liberty County, 1 member; Leon County, 4 members; Wakulla County, 1 member; Jefferson County, 1 member; Madison County, 1 member; and Taylor County, 1 member.

3. District 3 has a board composed of 19 members, with 4 at-large members to be appointed by the Governor, and 15 members to be appointed by the boards of county commissioners of the respective counties, as follows: Hamilton County, 1 member; Suwannee County, 1 member; Lafayette County, 1 member; Dixie County, 1 member; Columbia County, 1 member; Gilchrist County, 1 member; Levy County, 1 member; Union County, 1 member; Bradford County, 1 member; Putnam County, 1 member; and Alachua County, 5 members.

4. District 4 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Baker County, 1 member; Nassau County, 1 member; Duval County, 7 members; Clay County, 2 members; and St. Johns County, 1 member.

5. District 5 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Pasco County, 3 members; and Pinellas County, 9 members.

6. District 6 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Hillsborough County, 9 members; and Manatee County, 3 members.

7. District 7 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners in the respective counties, as follows: Seminole County, 3 members; Orange County, 5 members; Osceola County, 1 member; and Brevard County, 3 members.

8. District 8 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners in the respective counties, as follows: Sarasota County, 3 members; DeSoto County, 1 member; Charlotte County, 1 member; Lee County, 3 members; Glades County, 1 member; Hendry County, 1 member; and Collier County, 2 members.

9. District 9 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the Board of County Commissioners of Palm Beach County.

10. District 10 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the Board of County Commissioners of Broward County.

11. District 11, Subdistrict A, and Subdistrict B, each have a board composed of 15 members, with 3 at-large members to be appointed to each board by the Governor, and 12 members to be appointed by each of the respective boards of county commissioners.

12. District 12 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Flagler County, 3 members; and Volusia County, 9 members.

13. District 13 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Marion County, 4 members; Citrus County, 2 members; Hernando County, 2 members; Sumter County, 1 member; and Lake County, 3 members.

14. District 14 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Polk County, 9 members; Highlands County, 2 members; and Hardee County, 1 member.

15. District 15 has a board composed of 15 members, with 3 at-large members to be appointed by the Governor, and 12 members to be appointed by the boards of county commissioners of the respective counties, as follows: Indian River County, 3 members; Okeechobee County, 1 member; St. Lucie County, 5 members; and Martin County, 3 members.

Notwithstanding any other provisions of this subsection, in districts or subdistricts consisting of two counties, the number of members to be appointed by any one board of county commissioners may not be fewer than 3 nor more than 9.

(b) At any time after the adoption of initial bylaws pursuant to paragraph (o), a district or subdistrict ~~health and~~ human *and social* services board may adopt a bylaw that enlarges the size of the board up to a maximum of 23 members, or otherwise adjusts the size or composition of the board, including a decision to change from a district board to subdistrict boards, or from a subdistrict board to a district board, if in the judgment of the board, such change is necessary to adequately represent the diversity of the population within the district or subdistrict. In the creation of subdistrict boards, the bylaws shall set the size of the board, not to exceed 15 members, and shall set the number of appointments to be made by the Governor and the respective boards of county commissioners in the subdistrict. The Governor shall be given the authority to appoint no fewer than one-fifth of the members. Current members of the district board shall become members of the subdistrict board in the subdistrict where they reside. Vacancies on a newly created subdistrict board shall be filled from among the list of nominees submitted to the subdistrict nominee qualifications review committee pursuant to subsection *(7)* ~~(8)~~.

(c) The appointments by the Governor and the boards of county commissioners are from nominees selected by the appropriate district or subdistrict nominee qualifications review committee pursuant to subsection *(7)* ~~(8)~~. Membership of each board must be representative of its district or subdistrict with respect to age, gender, and ethnicity. For boards having 15 members or fewer, at least two members must be consumers of the department's services. For boards having more than 15 members, there must be at least three consumers on the board. Members must have demonstrated their interest and commitment to, and have appropriate expertise for, meeting the ~~health and~~ human *and social* services needs of the community. The Governor shall appoint nominees whose presence on the ~~health and~~ human *and social* services board will help assure that the board reflects the demographic characteristics and consumer perspective of each of the service districts.

(d)1. Board members shall submit annually a disclosure statement of ~~health and~~ human *and social* services interests to the department's inspector general and the board. Any member who has an interest in a matter under consideration by the board must abstain from voting. Board members are subject to the provisions of s. 112.3145, relating to disclosure of financial interests.

2. Employees of provider agencies, other than employees of units of local or state government, may not serve as ~~health and~~ human *and social* services board members but may serve in an advisory capacity to the board. Salaried employees of units of local or state government occupying positions providing services under contract with the department may not serve as members of the board. Elected officials who have authority to appoint members to a ~~health and~~ human *and social* services board may not serve as a member of a board. The district administrator shall serve as a nonvoting ex officio member of the board. A department employee may not be a member of the board.

(e)1. In order to establish staggered terms for members of the board, all initial appointments by the boards of county commissioners of Escambia, Walton, Bay, Gadsden, Jackson, Leon, Alachua, Putnam, Marion, Lake, Duval, Brevard, Orange, Charlotte, Lee, Sarasota, Martin, and St. Lucie Counties are for 2-year terms. In addition, the boards of county

commissioners of Volusia, Pinellas, Polk, Hillsborough, Palm Beach, Broward, and Dade Counties are to designate seven of their respective initial appointments to the board to have 2-year terms. Thereafter, all appointments to each board shall be for 4-year terms.

2. Appointments to fill vacancies created by the death, resignation, or removal of a member are for the unexpired term. A member may not serve more than two full consecutive terms.

3. A member who is absent from three meetings within any 12-month period, without having been excused by the chairperson, is deemed to have resigned, and the board shall immediately declare the seat vacant. Members may be suspended or removed for cause by a majority vote of the board members or by the Governor.

(f) Members of the ~~health and~~ human *and social* services boards shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061. Payment may also be authorized for preapproved child care expenses or lost wages for members who are consumers of the department's services and for preapproved child care expenses for other members who demonstrate hardship.

(g) Appointees to the ~~health and~~ human *and social* services board are subject to the provisions of chapter 112, part III, Code of Ethics for Public Officers and Employees.

(h) Actions taken by the board must be consistent with departmental policy and state and federal laws, rules, and regulations.

(i) The department shall provide comprehensive orientation and training to the members of the boards to enable them to fulfill their responsibilities.

(j) Each ~~health and~~ human *and social* services board, and each of its subcommittees, shall hold periodic public meetings and hearings throughout the district to receive input on the development of the district service delivery plan, the legislative budget request, and the performance of the department.

(k) Responsibility and accountability for local human services planning rests with the ~~health and~~ human *and social* services boards. All local *human-and-social-services-related* ~~health and human services related~~ planning or advisory councils under the jurisdiction of the department shall submit their plans to the ~~health and~~ human *and social* services boards. The ~~health and~~ human *and social* services boards may establish subcouncils or technical advisory committees.

(l) It is the policy of the state to provide a family-centered constellation of services. The primary goal of these services is the preservation of families. District goals and objectives must be consistent with this statewide policy.

(m) The ~~health and~~ human *and social* services boards shall operate through an annual agreement negotiated between the secretary and the board. Such agreements must include expected outcomes and provide for periodic reports and evaluations of district and board performance and must also include a core set of service elements to be developed by the secretary and used by the boards in district needs assessments to ensure consistency in the development of district legislative budget requests.

(n) The annual agreement between the secretary and the board must include provisions that specify the procedures to be used by the parties to resolve differences in the interpretation of the agreement or disputes as to the adequacy of the parties' compliance with their respective obligations under the agreement.

(o) ~~Health and~~ Human *and social* services boards have the following responsibilities as developed jointly with the district administrator:

1. Establish district goals and objectives consistent with statewide policy parameters.

2. Conduct district needs assessments using methodologies consistent with those established by the secretary pursuant to paragraph (2)(e).

3. Develop and approve a district service delivery plan that:

a. Identifies current resources and services available;

b. Identifies unmet needs and gaps in services;

c. Establishes service and funding priorities; and

d. Recommends new services or deletion of existing services.

4. Provide budget oversight, including development and approval of the district's legislative budget request.

5. Provide policy oversight, including development and approval of district policies and procedures.

6. Act as a focal point for community participation in department activities such as:

a. Assisting in the integration of all *human* ~~health~~ and social services within the community;

b. Assisting in the development of community resources;

c. Advocating for community programs and services;

d. Receiving and addressing concerns of consumers and others; and

e. Advising the district administrator on the administration of service programs throughout the district or subdistrict.

7. Immediately upon appointment of the membership, develop bylaws that clearly identify and describe operating procedures for the board. The bylaws may authorize the chairpersons of subdistrict boards to designate one or more committees composed of members of both subdistrict boards to act on districtwide issues. At a minimum, the bylaws must specify notice requirements for all regular and special meetings of the board, the number of members required to constitute a quorum, and the number of affirmative votes of members present and voting that are required to take official and final action on a matter before the board.

8. Determine the board's internal organizational structure, including the designation of standing committees. In order to foster the coordinated and integrated delivery of human *and social* services in its community, a local board shall use a committee structure that is based on issues, such as children, housing, *or* transportation~~, or health care~~. Each such committee must include consumers, advocates, providers, and department staff from every appropriate program area. In addition, each board and district administrator shall jointly identify community entities, including, but not limited to, the Area Agency on Aging, and resources outside the department to be represented on the committees of the board.

9. Participate with the secretary in the selection of a district administrator according to the provisions of paragraph *(8)*~~(9)~~(b).

10. Complete an annual evaluation of the district or subdistrict and review the evaluation at a meeting of the board at which the public has an opportunity to comment.

11. Provide input to the secretary on the annual evaluation of the district administrator. The board may request that the secretary submit a written report on the actions to be taken to address negative aspects of the evaluation. At any time, the board may recommend to the secretary that the district administrator be discharged. Upon receipt of such a recommendation, the secretary shall make a formal reply to the board stating the action to be taken with respect to the board's recommendation.

12. Elect a chair and other officers, as specified in the bylaws, from among the members of the board.

(7)~~(8)~~ DISTRICT NOMINEE QUALIFICATIONS REVIEW COMMITTEES.—

(a) There is created a nominee qualifications review committee in each service district or subdistrict for the purpose of screening and evaluating applicants and recommending nominees for the ~~health and~~ human *and social* services board of the district or subdistrict. A member of a nominee qualifications review committee must be a resident of the district or subdistrict and is not eligible to be nominated for appointment to a ~~health and~~ human *and social* services board.

(b) The appointments to a nominee qualifications review committee are made as follows:

1. In a district or subdistrict composed of one county, the Governor shall appoint two members, the board of county commissioners shall appoint two members, the district school board shall appoint one member, the chief judge of the circuit shall appoint one member, and these appointees shall appoint three additional members.

2. In a district or subdistrict composed of two counties, the Governor shall appoint two members, each board of county commissioners shall

appoint two members, each district school board shall appoint one member, the chief judge of the circuit containing the most populous county shall appoint one member, and these appointees shall appoint three additional members.

3. In a district or subdistrict composed of three counties, the Governor shall appoint two members, each board of county commissioners shall appoint two members, each district school board shall appoint one member, the chief judge of the circuit containing the most populous county shall appoint one member, and these appointees shall appoint four additional members.

4. In a district or subdistrict composed of four counties, the Governor shall appoint two members, each board of county commissioners shall appoint one member, except that the board of county commissioners of the most populous county shall appoint two members, each district school board shall appoint one member, the chief judge of the circuit containing the most populous county shall appoint one member, and these appointees shall appoint four additional members.

5. In a district or subdistrict composed of five counties, the Governor shall appoint three members, each board of county commissioners shall appoint one member, except that the board of county commissioners of the most populous county shall appoint two members, each district school board shall appoint one member, the chief judge of the circuit containing the most populous county shall appoint one member, and these appointees shall appoint five additional members.

6. In a district or subdistrict composed of six counties, the Governor shall appoint three members, each board of county commissioners shall appoint one member, except that the board of county commissioners of the most populous county shall appoint two members, each district school board shall appoint one member, the chief judge of the circuit containing the most populous county shall appoint one member, and these appointees shall appoint three additional members.

7. In a district or subdistrict composed of eight counties, the Governor shall appoint three members, each board of county commissioners shall appoint one member, except that the board of county commissioners of the most populous county shall appoint two members, each district school board shall appoint one member, the chief judge of the circuit containing the most populous county shall appoint one member, and these appointees shall appoint three additional members.

8. In a district or subdistrict composed of 11 counties, the Governor shall appoint two members, each board of county commissioners shall appoint one member, except that the board of county commissioners of the most populous county shall appoint two members, each district school board shall appoint one member, the chief judge of the circuit containing the most populous county shall appoint one member, and these appointees shall appoint three additional members.

(c) Appointees to a district nominee qualifications review committee must have substantial professional or volunteer experience in planning, delivering, or evaluating ~~health and~~ human *and social* services within their communities. In addition to these qualifications, it is the intent of the Legislature that nominee qualifications review committees represent the diversity of their respective districts or subdistricts by the inclusion of representation of such groups as:

1. County government;

2. District school systems;

3. The judiciary;

4. Law enforcement;

5. Consumers of departmental services;

6. Advocates for persons receiving or eligible to receive services provided or funded by the department;

7. Funders of ~~health and~~ human *and social* services in the community;

8. The medical community;

9. Chambers of commerce;

10. Major cities; and

11. Universities and community colleges.

(d) The initial terms of persons appointed by the Governor or board of county commissioners are for 2 years. Persons initially appointed by other appointing authorities have 4-year terms. Thereafter, the terms of all appointees are 4 years. A person who, at the expiration of his term, has served on a nominee qualifications review committee for more than 5 years is not eligible for reappointment.

(e) Members of a nominee qualifications review committee shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061. Payment may also be authorized for preapproved child care expenses or lost wages for members who are consumers of the department and for preapproved child care expenses for other members who demonstrate hardship.

(f) Each district nominee qualifications review committee shall conduct its business according to the following procedures:

1. The public shall be provided reasonable advance notice of regular and special meetings;

2. A majority of the members, plus one, is necessary to constitute a quorum, and the affirmative vote of a majority of those present is necessary to take official action;

3. All meetings and records shall be open to the public pursuant to s. 286.011;

4. The deadline for submission of nominee applications may not be less than 30 days after the date of publication of a notice of vacancy and solicitation of nominee applications from interested persons; and

5. A person may not be nominated for appointment to a district ~~health and~~ human *and social* services board except by submission of a standard nominee application form, which shall be developed by the department and distributed to all nominee qualifications review committees.

(g) Each district nominee qualifications review committee shall submit to the appointing authorities in its respective district a pool of nominees equal to three times the number of vacancies on the district or subdistrict ~~health and~~ human *and social* services board. The pool of nominees submitted by each district nominee qualifications review committee must be balanced with respect to age, gender, ethnicity, and other demographic characteristics so that the appointees to the district ~~health and~~ human *and social* services board reflect the diversity of the population within its service district. It is the further intent of the Legislature that the Governor appoint nominees whose presence on the ~~health and~~ human *and social* services board will help assure that the board reflects the demographic characteristics and consumer perspectives of each of the service districts or subdistricts. If, following the appointments by the boards of county commissioners, the remaining nominees in the pool do not, in the judgment of the Governor, provide sufficient diversity to effectuate the intent of this paragraph, the Governor may request that the district or subdistrict nominee qualifications review committee submit the names of three additional nominees for each vacant position on the board.

(8)~~(9)~~ DISTRICT ADMINISTRATOR.—

(a) The secretary shall appoint a district administrator for each of the service districts, pursuant to paragraph (b). Each district administrator serves at the pleasure of the secretary, is directly responsible to the secretary, and has the same standing within the department as an assistant secretary. Each district administrator has direct line authority over all departmental programs assigned to the district. In addition to those responsibilities assigned by law, the district administrator shall carry out those duties delegated to him by the secretary.

(b) Upon the resignation or removal of a district administrator, the secretary shall notify the chairperson of the ~~health and~~ human *and social* services board in the district and shall advertise the position in accordance with departmental policy. The board, or a designated committee of the board, shall solicit applications for the position of district administrator, screen applicants, and submit the names of not more than five nor fewer than three qualified candidates to the secretary. The secretary shall appoint the district administrator from among the nominees submitted by the ~~health and~~ human *and social* services board. If the secretary determines that none of the nominees should be appointed, the secretary shall notify the board and request that additional recruitment efforts be initiated and that, following such efforts, the names of additional qualified nominees be submitted. Applications for the position of district adminis-

trator are public records; and meetings of the board or a committee of the board for the purpose of screening, evaluating, or interviewing an applicant for the position of district administrator are open to the public.

(c) The duties of the district administrator include, but are not limited to:

1. Ensuring jointly with the ~~health and~~ human *and social* services board that the administration of all service programs is carried out in conformity with state and federal laws, rules, and regulations, statewide service plans, and any other policies, procedures, and guidelines established by the secretary.

2. Administering the offices of the department within the district and directing and coordinating all personnel, facilities, and programs of the department located in that district, except as otherwise provided herein.

3. Applying standard information, referral, intake, diagnostic and evaluation, and case management procedures established by the secretary. Such procedures shall include, but are not limited to, an intake system for delinquency, families-in-need-of-services and children-in-need-of-services programs, and a protective investigation system for dependency programs serving abandoned, abused, and neglected children.

4. Centralizing to the greatest extent possible the administrative functions associated with the provision of services of the department within the district.

5. Coordinating the services provided by the department in the district with those of other districts and public and private agencies which provide *human* ~~health~~, social, *or* educational~~, or rehabilitative~~ services within the district.

6. Appointing district program managers, program supervisors, and the superintendent of each institution within the district and approving all other personnel appointments within the district.

7. Establishing, with the approval of the ~~health and~~ human *and social* services board, such policies and procedures as may be required to discharge his duties and implement and conform the policies, procedures, and guidelines established by the secretary to the needs of the district.

8. Transferring up to 10 percent of the total district budget, with the approval of the secretary, to maximize effective program delivery, the provisions of ss. 216.292 and 216.351 notwithstanding.

(d) To assist him in the discharge of his duties, each district administrator may appoint~~, in consultation with the Deputy Secretary for Health, a deputy district administrator for health, and may also appoint~~ a district program manager for social services. ~~The deputy district administrator for health may have line authority over all district programs, activities, and functions relating to public health, including environmental health matters, and other programs as may be assigned by the district administrator.~~ Each district administrator may appoint a district manager for administrative services. Each ~~deputy district administrator for health,~~ district program manager~~,~~ and the district manager for administrative services serves at the pleasure of the district administrator.

(e) There may be program supervisors in each district who serve in a line capacity to the district administrator and report directly to the district administrator or his designee. Program supervisors are appointed by the district administrator in conformity with qualifications established through state personnel system procedures. Program supervisors may be employed on a full-time, part-time, or fee-for-service contractual basis. The duties of a program supervisor include, but are not limited to:

1. Administering district service programs in conformity with statewide policies, procedures, and guidelines established by the secretary.

2. Recommending changes in district program policy.

3. Identifying and developing community resources.

4. Identifying district needs.

5. Serving as program spokesman in educating the public as to the availability of programs and the needs of clients.

6. Serving as primary staff development adviser in assessing the needs of staff and developing training and staff development programs.

(f) Programs at the district level are in the following areas: aging and adult services; ~~children's medical services; health; alcohol, drug abuse, and mental health;~~ developmental services; economic services; and children, youth, and family services. There may be a program supervisor for each program, or the district administrator may combine programs including children, youth, and families under a program manager or program supervisor if *the* ~~such~~ arrangement is approved by the secretary.

(g) The district manager for administrative services shall provide the following administrative and management support services to the district in accordance with the uniform policies, procedures, and guidelines established by the Deputy Secretary for Administration:

1. Finance and accounting.

2. Grants management and disbursement.

3. Personnel administration.

4. Purchasing and procurement.

5. General services, including housekeeping and maintenance of facilities.

6. Assisting the district administrator in preparation of the district budget request and administration of the approved operating budget.

7. The district manager for administrative services is the chief budget officer of the district.

8. Other administrative duties as assigned by the district administrator.

(9)~~(10)~~ STATEWIDE ~~HEALTH AND~~ HUMAN *AND SOCIAL* SERVICES BOARD.—There is created the Statewide ~~Health and~~ Human *and Social* Services Board consisting of the chairs of the ~~health and~~ human *and social* services boards or their designees. The statewide board shall meet at least twice annually and as needed, upon the call of the secretary, to advise the secretary on statewide issues and identify barriers to effective and efficient local service delivery. Each member attending these meetings is entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(10)~~(11)~~ DEPARTMENTAL BUDGET.—

(a) The secretary shall develop and submit annually to the Legislature a comprehensive departmental summary budget document which arrays each district budget request along program lines and, for the purpose of legislative appropriation, consists of five distinct budget entities:

1. Department Administration.

2. Statewide Services.

3. Multidistrict Services.

4. Entitlement Benefits and Services.

5. District Services.

The department shall revise its budget entity designations to conform with the five distinct budget entities. The department, in accordance with chapter 216, shall transfer, as necessary, funds and positions among budget entities to realign appropriations with the revised budget entity designations. Such authorized revisions must be consistent with the intent of the approved operating budget. The various district budget requests developed pursuant to paragraph (d) shall be included in the comprehensive departmental summary budget document. The department shall periodically review the appropriateness of the budget entity designations and the adequacy of its delegated authority to transfer funds between entities and submit the reviews to the Speaker of the House of Representatives and the President of the Senate.

(b) To fulfill this responsibility, the secretary may review, amend, and approve the annual budget request of all departmental activities pursuant to s. 216.023.

(c) It is the responsibility of the Deputy Secretary for Administration to promulgate the necessary budget timetables, formats, and data requirements for all departmental budget requests in accordance with the statewide budget requirements of the Executive Office of the Governor.

(d) It is the responsibility of the district administrator, jointly with the ~~health and~~ human *and social* services board, to develop an annual

budget request to be reviewed, amended, and approved by the secretary. Annual budget requests are based on units of service and the costs of those services.

(e)1. The department's program planning, budgeting, and information systems capabilities are required to be linked. Identification of resource requirements and legislative appropriations are based upon systematic identification of client needs and appropriate service arrays, defined units of measurement and data captured for unit costing purposes, and tracking services delivered in a manner so that program outcomes can be determined. The department shall implement an integrated, unit cost based budgeting system across program areas pursuant to the schedule in paragraph (f).

2. Pursuant to program budgets in the General Appropriations Act, the Letter of Intent, and the resources appropriated to fund this process and considering district requests submitted in accordance with paragraph (d), the secretary shall, to the maximum extent possible, contract with each district administrator for the maximum units of service possible. These contracts are translated into district budgets, and both the contracts and the district budgets are submitted to the Executive Office of the Governor and the legislative appropriations committees. All amendments to the contracts and district budgets pursuant to contract amendments must be provided to the Executive Office of the Governor and the legislative appropriations committees at least 7 days before the effective date of the change.

3. Funds may be made available to the districts only for actual services provided pursuant to the contracts. This does not preclude the advancement of funds if reconciliations based on actual units of service provided are made within 15 days after each quarter.

(f)1. The use of unit cost data as the basis for the department's budget is phased in beginning during the 1991-1992 fiscal year and shall be completed by the 1996-1997 fiscal year.

2. The programs of the department shall begin using this budget process on the following timetable:

~~a. Fiscal year 1991-1992: Alcohol, drug abuse, and mental health programs and developmental services programs.~~

a.~~b.~~ Fiscal year 1992-1993: Economic services programs and aging and adult services programs.

~~c. Fiscal year 1993-1994: Medicaid programs and children's medical services programs.~~

b.~~d.~~ Fiscal year 1994-1995: Children, youth, and families programs~~, health programs,~~ and all other programs.

3. For the first 2 years after each program begins using this budget process, subparagraph (e)3. does not apply to the program.

(g) The units of service are developed by the program offices from data provided pursuant to subsection *(12)* ~~(14)~~. The department shall prepare legislation to incorporate these units of service into the respective statutes not later than the legislative session 1 year after the fiscal year in which unit cost data is used as the basis for the program's budget.

(11)~~(12)~~ CONFORMITY WITH FEDERAL STATUTES AND REGULATIONS.—It is the intent of the Legislature that this section not conflict with any federal statute or implementing regulation governing federal grant-in-aid programs administered by the department. Whenever such a conflict is asserted by the applicable agency of the Federal Government, the secretary of the department shall submit to the United States Department of Health and Human Services, or other applicable federal agency, a request for a favorable policy response or a waiver of the conflicting portions. If such request is approved, as certified in writing by the Secretary of the United States Department of Health and Human Services or head of the other applicable federal agency, the secretary of the department is authorized to make the adjustments in the organization and state service plan prescribed by this section which are necessary for conformity to federal statutes and regulations. Prior to making such adjustments, the secretary shall provide to the Speaker of the House of Representatives and the President of the Senate an explanation and justification of the position of the department and shall outline all feasible alternatives consistent with the provisions of this section. These alternatives may include the state supervision of local service agencies by the department if such agencies are designated by the Governor. The Governor is hereby authorized to designate local agencies of county governments to provide services pursuant to federally required state plans administered by the department. These local agencies shall provide services for and on behalf of the county governments included within the geographic boundaries of the local agency. The board of commissioners of each county within the local agency shall annually approve the service plan to be provided by the local service agency. In order to assure coordination with other *human* ~~health~~ and *social* ~~rehabilitation~~ services provided to citizens within each county, local service agencies designated by the Governor pursuant to this section shall correspond to the service districts created pursuant to subsection *(5)* ~~(6)~~. The district administrator of each service district is designated the head of the local service agency. As head of the local service agency, the district administrator shall administer the service programs in conformity with statewide policies, procedures, and guidelines established by the department. The local agency shall administer its program pursuant to a written agreement with the department which:

(a) Indicates that the local agency will conduct its program under the supervision of the department in accordance with the state plan and in compliance with statewide standards as established by the department, including standards of organization and administration.

(b) Sets forth the methods to be followed by the department in its supervision of the local agency, including an evaluation of the effectiveness of the program of the local agency.

(c) Sets forth the basis on which the department participates financially in its locally administered programs.

(d) Indicates whether the local agency will utilize another local public or nonprofit agency in the provision of services and the arrangements for such utilization.

The local agency is responsible for the administration of all aspects of the program within the political subdivisions which it serves. In order to assure uniformity of personnel standards, the local agency shall utilize the state personnel rules and regulations, including provisions related to tenure, selection, appointment, and qualifications of personnel.

(12)~~(13)~~ INFORMATION SYSTEMS.—

(a) The secretary shall appoint a Chief Management Information Officer to serve as the department's information resource manager with the authority for agency development and management information systems maintenance, policies, and procedures as provided for in s. 282.311. The Chief Management Information Officer shall direct and promote information as a strategic asset and facilitate integration of data systems and agency and interagency resource sharing as allowed by applicable statutes. The Chief Management Information Officer serves at the pleasure of the secretary.

(b) The Chief Management Information Officer is directly responsible for the management of the management information systems service center that provides primary information systems support for all entities within the department and maintains fee-for-service provisions for use by other agencies. The Chief Management Information Officer shall negotiate service-level agreements between the management information systems service center and users and shall facilitate integrated information systems practices and procedures throughout the service districts and with local service providers.

(c) The secretary of the department shall implement a priority program aimed at the design, testing, and integration of automated information systems necessary for effective and efficient management of the department and clients. These systems shall contain, minimally, management data, client data, and program data deemed essential for the ongoing administration of service delivery, as well as for the purpose of management decisions. It is the intent of the Legislature that these systems be developed with the idea of providing maximum administrative support to the delivery of services and to allow for the development of a more logical alignment of programs, services, and budget structures to effectively address the problems of any person who receives the services of the department. It is also essential that these systems comply with federal program requirements and ensure confidentiality of individual client information.

(d) The department's information systems are developed to support a client outcome-based budget and management system. At a minimum, these systems must use a unit of service basis to measure contract performance, integrate client demographic and unit cost information, and provide for program outcome measurement.

(e) For the purpose of funding this effort, the department shall include in its annual budget request a comprehensive summary of costs involved, as well as manpower saved, and the availability of costs for private-sector systems in the establishment of these automated systems. *The* ~~Such~~ budget request shall also include a complete inventory of current staff, equipment, and facility resources available for completion of the desired systems. The department shall review all forms for duplicative content and, to the maximum extent possible, reduce, consolidate, and eliminate such duplication to provide for a uniform, integrated, and concise management information collection system.

(13)~~(14)~~ ELIGIBILITY REQUIREMENTS.—The department shall review the eligibility requirements of its various programs and, to the maximum extent possible, consolidate them into a single eligibility system.

(14)~~(15)~~ PURCHASE OF SERVICES.—Whenever possible, the department, in accordance with the established program objectives and performance criteria, shall contract for the provision of services by counties, municipalities, not-for-profit corporations, for-profit corporations, and other entities capable of providing needed services, if services so provided are more cost-efficient than those provided by the department.

(15)~~(16)~~ HEADQUARTERS; SERVICE FACILITIES.—

(a) The department shall maintain its headquarters and all offices above the district office level in Tallahassee.

(b) Within each of its service districts, the department shall locate its service facilities in the same place when it is possible to do so without removing service facilities from proximity to the clients they serve. The department shall implement a plan by which all or substantially all services within a district are moved, as existing leases expire, to centers located close to prospective users or clients. These centers may be shared with other public users and may be designated as community service centers.

~~(17) PROCUREMENT OF HEALTH SERVICES.—Nothing contained in chapter 287 requires competitive bids for health services involving examination, diagnosis, or treatment.~~

(16)~~(18)~~ CONSULTATION WITH COUNTIES ON MANDATED PROGRAMS.—It is the intent of the Legislature that when county governments are required by law to participate in the funding of programs, the department shall consult with designated representatives of county governments in developing policies and service delivery plans for those programs.

(17)~~(19)~~ OUTCOME EVALUATION AND PROGRAM EFFECTIVENESS.—

(a) It is the intent of the Legislature to:

1. Ensure that information be provided to decisionmakers so that resources are allocated to programs of the department under the Children, Youth, and Families Program; Aging and Adult Services Program; ~~Alcohol, Drug Abuse, and Mental Health Program;~~ Developmental Services Program; *and* Economic Services Program~~; Children's Medical Services Program; and Health Program~~ that achieve desired performance levels.

2. Provide information about the cost of such programs and their differential effectiveness so that the quality of *the* ~~such~~ programs can be compared and improvements made continually.

3. Provide information to aid in the development of related policy issues and concerns.

4. Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.

5. Provide a basis for a system of accountability so that each client is afforded the best programs to meet his needs.

6. Improve service delivery to clients.

7. Modify or eliminate activities that are not effective.

(b) As used in this subsection, the term:

1. "Client" means any person who is being provided treatment or services by the department or by a provider under contract with the department.

2. "Outcome" means the condition or circumstances of the client after services or treatment have been provided and the extent of change in modifying or stabilizing the original condition or need that led to client services or treatment.

3. "Program component" means an aggregation of generally related objectives which, because of their special character, related workload, and interrelated output, can logically be considered an entity for purposes of organization, management, accounting, reporting, and budgeting.

4. "Program effectiveness" means the ability of the program to achieve desired client outcomes, goals, and objectives.

5. "Program office" means any program office under the Deputy Secretary for Human Services ~~and all programs under the Deputy Secretary for Health~~.

(c) The department shall:

1. Establish within the Children, Youth, and Families Program; Aging and Adult Services Program; ~~Alcohol, Drug Abuse, and Mental Health Program;~~ Developmental Services Program; *and* Economic Services Program~~; Children's Medical Services Program; and Health Program~~ a comprehensive system to annually measure and report client outcome and program effectiveness for each program that each program office operates or contracts. Client-outcome measures are a required provision of all contracts entered into by the department with respect to the provision of services under the jurisdiction of the programs.

2.a. Provide operational definitions of and criteria for client outcome and program effectiveness for each specific program component, to include, but not be limited to, a definition of successful program completion.

b. The Children and Families Program Office shall define and report recidivism in addition to the requirements of this section.

c. As appropriate, program offices under this section shall report clients who reenter services and treatment within 1 year after release, discharge, or successful completion of a program.

3. Establish goals and objectives for each specific program component.

4. Establish the information and specific data elements required for the management of client-outcome measures.

5. Develop a program office-specific, standardized terminology and procedures manual to be followed by each program. The procedures shall include standard formats for the collection of data from the various program components with clearly defined documentation requirements.

6. Establish procedures for the continuous flow of client-outcome information.

7. Develop procedures to analyze client-outcome data in relation to program process.

8. Implement continuous longitudinal studies to determine the long-range effects of programs. The longitudinal studies shall track a cohort representative sample of clients at 5 years after their initial completion of a program. Whenever possible, longitudinal studies shall compare a representative sample of clients completing the program with a comparable cohort group that did not enter the program.

a. The Children and Families Program Office shall determine the long-range effect of prevention, residential and nonresidential delinquency commitment programs, programs for dependent children, and programs for children in need of services and families in need of services.

b. The Aging and Adult Services Program Office shall determine the long-range effects of programs, including, but not limited to, programs that provide community services, in-home care, and other nonresidential services, to determine their effect in preventing residential placement.

~~c. The Alcohol, Drug Abuse, and Mental Health Program Office shall determine the long-range effects of programs, including, but not limited to, prevention, community-based programs, outpatient programs, inpatient programs, and nonresidential and residential programs for children and adults.~~

~~d. The Children's Medical Services Program Office shall determine the long-range effects of programs, including, but not limited to, preven-~~

~~tion and early intervention programs, including infant metabolic screening, developmental evaluation, inpatient programs, and outpatient programs.~~

c.~~e.~~ The Developmental Services Program Office shall determine the long-range effects of programs, including, but not limited to, prevention, early intervention, family support services, developmental training programs, community-based supported employment, and community residential programs.

d.~~f.~~ The Economic Services Program Office shall determine the long-range effects of programs, including, but not limited to, programs that implement the provisions of the Family Support Act of 1988, Pub. L. No. 100-485, pursuant to s. 409.029.

~~g. The State Health Office shall determine the long-range effects of programs, including, but not limited to, maternal and child health; family planning; the Special Supplemental Food Program for Women, Infants, and Children; primary health care; dental health; communicable diseases; and environmental health.~~

9. Establish appropriate methodology and statistical analysis to ensure the reliability, validity, and utility of client-outcome data.

10. Establish appropriate interdistrict evaluation teams using private-sector experts to evaluate the quality of the services delivered by each program.

Each program office under this subsection shall submit an annual report to the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of each house of the Legislature, the appropriate substantive and appropriations committees of each house of the Legislature, and the Governor, no later than December 31 of each calendar year~~, beginning December 31, 1992~~. The annual program-outcome report shall contain, at a minimum, for each specific program component a comprehensive description of the population served by the program, a specific description of the services provided by the program, client-outcome measures, an assessment of program effectiveness, cost, a comparison of expenditures to federal and state funding, immediate and long-range concerns, the status or results of the longitudinal studies, and recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality. The department's Inspector General shall ensure the reliability and validity of the information contained in the report.

(d) The Auditor General shall periodically evaluate the client-outcome and program-effectiveness system to determine if the process is achieving the legislative intent of this section and shall prepare a report thereof, the initial report to be submitted on December 31, 1993, and a report to be submitted every 5 years thereafter to the persons specified in paragraph (c).

(18)~~(20)~~ INNOVATION ZONES.—The health and human services board may propose designation of an innovation zone for any experimental, pilot, or demonstration project that furthers the legislatively established goals of the department. An innovation zone is a defined geographic area such as a district, county, municipality, service delivery area, school campus, or neighborhood providing a laboratory for the research, development, and testing of the applicability and efficacy of model programs, policy options, and new technologies for the department.

(a)1. The district administrator shall submit a proposal for an innovation zone to the secretary. If the purpose of the proposed innovation zone is to demonstrate that specific statutory goals can be achieved more effectively by using procedures that require modification of existing rules, policies, or procedures, the proposal may request the secretary to waive or to otherwise authorize use of alternative procedures or practices. Such waivers must comply with applicable state or federal law.

2. For innovation zone proposals that the secretary determines require changes to state law, the secretary may submit proposed changes to state law to the chairmen of the appropriate legislative committees for consideration.

3. For innovation zone proposals that the secretary determines require waiver of federal law, the secretary may submit such waivers to the applicable federal agency.

(b) An innovation zone project may not have a duration of more than 2 years, but the secretary may grant an extension.

(c) The Statewide ~~Health and~~ Human *and Social* Services Board, in conjunction with the secretary, shall develop a ~~health and~~ human *and social* services innovation transfer network for the purpose of providing information on innovation zone research and projects or other effective initiatives in ~~health and~~ human *and social* services to the ~~health and~~ human *and social* services boards established under subsection *(6)*~~(7)~~.

(d) Prior to implementing an innovation zone pursuant to the requirements of this subsection and chapter 216, the secretary shall, in conjunction with the Auditor General, develop measurable and valid objectives for *the* ~~such~~ zone within a negotiated reasonable period of time. No more than fifteen innovative zones shall be in operation at any one time.

Section 90. Subsections (3) and (4) of section 20.04, Florida Statutes, 1992 Supplement, are amended to read:

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(3) For their internal structure, all departments, except for the *Department* ~~Departments~~ of Health, *the Department of Human and Social* ~~and Rehabilitative~~ Services, *the Department of* Corrections, and *the Department of* Transportation, shall adhere to the following standard terms:

(a) The principal unit of the department is the "division." Each division shall be headed by a "director."

(b) The principal unit of the division is the "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of the bureau is the "section." Each section shall be headed by an "administrator."

(d) If further subdivision is necessary, sections may be divided into units which shall be known as "subsections" which shall be headed by "supervisors."

(4) Within the Department of *Human* ~~Health~~ and *Social* ~~Rehabilitative~~ Services there shall be organizational units called "offices," integral to the positions of deputy secretary, assistant secretary, and deputy assistant secretary, and organizational units called "program offices," which shall operate in a staff capacity to the Deputy Secretary for Human Services.

Section 91. Section 33 of chapter 92-33, Laws of Florida, is repealed.

Section 92. Section 20.30, Florida Statutes, 1992 Supplement, as amended by section 32 of chapter 92-33, Laws of Florida, section 35 of chapter 92-58, Laws of Florida, sections 1, 72, and 159 of chapter 92-149, Laws of Florida, and sections 1 and 2 of chapter 92-292, Laws of Florida is amended to read:

20.30 Department of Professional Regulation.—There is created a Department of Professional Regulation.

(1) The head of the Department of Professional Regulation is the Secretary of Professional Regulation. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Professional Regulation are established:

(a) Division of Technology, Testing and Training.

(b) Division of Professions.

(c) Division of Medical Quality Assurance.

1. The director of the division shall be appointed by the Secretary of Professional Regulation.

2. The division shall concentrate sufficient resources and efforts on the investigation and discipline of health care practitioners regulated by the department who are in violation of the unprofessional conduct provisions of the applicable practice acts and other provisions of law, as are necessary to meet the challenge of identifying those health care practitioners who are not providing adequate medical care in order to take forceful corrective measures to assure quality medical care throughout the state.

3. The division shall coordinate closely with the Office of Health Planning and Regulation in the Department of Health and Rehabilitative Services to ensure that the state's regulation of health care facilities and the health care practitioners who practice therein is consistent and offers adequate protection to the public.

4. The division shall establish and maintain a disciplinary training program for division staff and board members designed to ensure the proper and appropriate administration of medical quality assurance. The program shall provide for initial and periodic training in the grounds for disciplinary action, the actions which may be taken, changes in any relevant law, sanctions which are most appropriate for specified types of unprofessional conduct, guidelines for the conduct of hearings, and any other matters which the division shall determine may be necessary or useful.

(d)~~(c)~~ Division of Real Estate.

1. The director of the division shall be appointed by the Secretary of Professional Regulation, subject to approval by a majority of the Florida Real Estate Commission.

2. The offices of the Division of Real Estate shall be located in Orlando.

(e)~~(d)~~ Division of Regulation.

(f)~~(e)~~ Division of Administration.

(g)~~(f)~~ Division of Certified Public Accounting.

1. The director of the division shall be appointed by the Secretary of Professional Regulation, subject to approval by a majority of the Board of Accountancy.

2. The offices of the division shall be located in Gainesville.

(3) There shall be a director for each division established within this section. Each division director shall directly administer the division and shall be responsible to the secretary of the department. The secretary of the department may appoint assistant secretaries as necessary to fulfill the secretary's statutory obligations.

(4) The following boards are established within the Department of Professional Regulation, Division of Professions:

(a) Board of Architecture and Interior Design, created under part I of chapter 481.

(b) Board of Auctioneers, created under part VI of chapter 468.

(c) Barbers' Board, created under chapter 476.

(d) Construction Industry Licensing Board, created under part I of chapter 489.

(e) Board of Cosmetology, created under chapter 477.

(f) Electrical Contractors' Licensing Board, created under part II of chapter 489.

(g) Board of Professional Engineers, created under chapter 471.

(h) Board of Funeral Directors and Embalmers, created under chapter 470.

(i) Board of Professional Geologists, created under chapter 492.

(j) Board of Hearing Aid Specialists, created under part II of chapter 484.

(k) Board of Professional Land Surveyors, created under chapter 472.

(l) Board of Landscape Architecture, created under part II of chapter 481.

(m) Board of Massage, created under chapter 480.

(n) Board of Nursing Home Administrators, created under part II of chapter 468.

(o) Board of Opticianry, created under part I of chapter 484.

(p)~~(n)~~ Board of Pilot Commissioners, created under chapter 310.

(q)~~(o)~~ Board of Employee Leasing Companies, created under part XI of chapter 468.

(r)~~(p)~~ Board of Veterinary Medicine, created under chapter 474.

(5) The following boards are established within the Department of Professional Regulation, Division of Medical Quality Assurance:

(a) Board of Medicine, created under chapter 458.

(b) Board of Osteopathic Medicine, created under chapter 459.

(c) Board of Acupuncture, created under chapter 457.

(d) Board of Chiropractic, created under chapter 460.

(e) Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

(f) Board of Dentistry, created under chapter 466.

(g) Board of Nursing, created under chapter 464.

(h) Board of Optometry, created under chapter 463.

(i) Board of Pharmacy, created under chapter 465.

(j) Board of Physical Therapy Practice, created under chapter 486.

(k) Board of Podiatric Medicine, created under chapter 461.

(l) Board of Psychological Examiners, created under chapter 490.

(m) Board of Veterinary Medicine, created under chapter 474.

(n) Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.

(o) Board of Clinical Laboratory Personnel, created by s. 483.805.

(6)~~(5)~~ The following board and commission are established within the Department of Professional Regulation, Division of Real Estate:

(a) Florida Real Estate Commission, created under part I of chapter 475.

(b) Florida Real Estate Appraisal Board, created under part II of chapter 475.

(7)~~(6)~~ The following board is established within the Department of Professional Regulation, Division of Certified Public Accounting.

(a) Board of Accountancy, created under chapter 473.

(8)~~(7)~~ The members of each board established pursuant to subsections (4), (5), ~~and~~ (6), *and (7)* shall be appointed by the Governor, subject to confirmation by the Senate. Consumer members on the board shall be appointed pursuant to subsection *(9)* ~~(8)~~. Members shall be appointed for 4-year terms, and such terms shall expire on October 31. However, a term of less than 4 years may be utilized to ensure the following:

(a) No more than two members' terms shall expire during the same calendar year for boards consisting of seven or eight members.

(b) No more than three members' terms shall expire during the same calendar year for boards consisting of nine to twelve members.

(c) No more than five members' terms shall expire during the same calendar year for boards consisting of thirteen or more members.

(d) A member whose term has expired shall continue to serve on the board until such time as a replacement is appointed.

A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member shall serve for more than the remaining portion of a previous member's unexpired term, plus two consecutive 4-year terms of the member's own appointment thereafter.

(9)~~(8)~~ Each board with five or more members shall have at least two consumer members who are not, and have never been, members or practitioners of the profession regulated by *the* ~~such~~ board or of any closely related profession. Each board with fewer than five members shall have at least one consumer member who is not, and has never been, a member or practitioner of the profession regulated by *the* ~~such~~ board or of any closely related profession.

(10)~~(9)~~ No board, with the exception of joint coordinatorships, shall be transferred from its present location unless authorized by the Legislature in the General Appropriations Act.

(11)~~(10)~~ It is legislative intent that all newly regulated professions, and all professions newly regulated under the department, shall be regulated directly under the department unless a compelling need for the existence of a board is documented. In an instance where a board is statutorily established, the department shall not create the board for a minimum of 1 full year after statutory authority regulating a profession becomes effective, and the profession shall initially be directly regulated by the department. Prior to implementing a new board or council, the department shall seek and receive specific legislative authorization. Such recommendation to establish a new board or council shall be included in the department's annual report to the Legislature required by s. 455.2285.

Section 93. Section 455.201, Florida Statutes, 1992 Supplement, as amended by section 36 of chapter 92-33,. Laws of Florida, and section 6 of chapter 92-149, Laws of Florida, is amended to read:

455.201 Professions and occupations regulated by Department of Professional Regulation ~~or Agency for Health Care Administration~~; legislative intent; requirements.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the Department of Professional Regulation ~~or the Agency for Health Care Administration~~ shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further *intends* ~~believes~~ that such professions *should* ~~shall~~ be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact *that* ~~which~~ may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further *the* legislative intent that the use of the term "profession" with respect to those activities licensed and regulated by the Department of Professional Regulation ~~or the Agency for Health Care Administration~~ shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4) No board, nor the department, ~~nor the Agency for Health Care Administration~~ shall create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. No board, nor the department, shall take any action *that* ~~which~~ tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation. The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.

Section 94. Section 455.203, Florida Statutes, 1992 Supplement, as amended by section 37 of chapter 92-33, Laws of Florida, and section 7 of chapter 92-149, Laws of Florida, is amended to read:

455.203 Department of Professional Regulation; ~~Agency for Health Care Administration;~~ powers and duties.—The Department of Professional Regulation ~~and the Agency for Health Care Administration, for the boards under their respective jurisdictions,~~ shall:

(1) Adopt rules establishing a procedure for the biennial renewal of licenses; provided, however, the department ~~or the Agency for Health Care Administration~~ may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. Fees for such renewal *may* ~~shall~~ not exceed the fee caps for individual professions on an annualized basis as authorized by law.

(2) Appoint the executive director of each board *within the department*, subject to the approval of the board.

(3) Submit a biennial budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department ~~or the Agency for Health Care Administration~~.

(5) Adopt all rules necessary to administer this chapter.

(6) Establish by rules procedures by which the department ~~and the Agency for Health Care Administration~~ shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of any board or panel thereof *within the department* and all formal or informal proceedings conducted by ~~either~~ the department ~~or the Agency for Health Care Administration~~ or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.

Section 95. Section 455.205, Florida Statutes, 1992 Supplement, as amended by section 38 of chapter 92-33, Laws of Florida, is amended to read:

455.205 Contacting boards through department ~~or agency~~.—Each board under the jurisdiction of the Department of Professional Regulation may be contacted through the headquarters of the Department of Professional Regulation in the City of Tallahassee or at any regional office of the department. ~~Each board under the jurisdiction of the Agency for Health Care Administration may be contacted through the headquarters of the Agency for Health Care Administration in the City of Tallahassee.~~

Section 96. Section 455.207, Florida Statutes, 1992 Supplement, as amended by section 39 of chapter 92-33, Laws of Florida, and section 9 of chapter 92-149, Laws of Florida, is amended to read:

455.207 Boards; organization; meetings; compensation and travel expenses.—

(1) Each board within the department ~~and each board within the Agency for Health Care Administration~~ shall comply with the provisions of this section.

(2) The board shall annually elect from among its number a chairperson and vice chairperson.

(3) The board shall meet at least once annually and may meet as often as is necessary. The chairperson or a quorum of the board shall have the authority to call other meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.

(4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated $50 for each day in attendance at an official meeting of the board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase "other business involving the board," but the phrase may not routinely be defined to include telephone conference calls. A board member also shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the secretary.

(5) When two or more boards have differences between them, the boards may elect to, or the secretary may request that the boards, establish a special committee to settle those differences. The special committee shall consist of three members designated by each board, who may be members of the designating board or other experts designated by the board, and of one additional person designated and agreed to by the members of the special committee. In the event the special committee cannot agree on the additional designee, upon request of the special committee, the secretary may select the designee. The committee shall recommend rules necessary to resolve the differences. If a rule adopted pursuant to this provision is challenged, the participating boards shall share the costs associated with defending the rule or rules. The department shall provide legal representation for any special committee established pursuant to this section.

Section 97. Section 455.208, Florida Statutes, 1992 Supplement, as amended by section 40 of chapter 92-33, Laws of Florida, and section 10 of chapter 92-149, Laws of Florida, is amended to read:

455.208 Publication of information.—The department ~~of Professional Regulation, the Agency for Health Care Administration,~~ and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter, about information that the department ~~of Professional Regulation, the Agency for Health Care Administration,~~ or the board determines is of interest to the industry. Unless otherwise prohibited by law, the department and the boards shall publish a summary of final orders resulting in fines, suspensions, or revocations, and any other information the department or the board determines is of interest to the public.

Section 98. Section 455.209, Florida Statutes, 1992 Supplement, as amended by section 41 of chapter 92-33, Laws of Florida, and section 11 of chapter 92-149, Laws of Florida, is amended to read:

455.209 Accountability and liability of board members.—

(1) Each board member shall be accountable to the Governor for the proper performance of duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department or a board concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony.

(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department ~~of Professional Regulation or the Agency for Health Care Administration, as appropriate,~~ or the Department of Legal Affairs shall defend any such member in any action against any board or member of a board arising from any such act or omission. In addition, the department or the Department of Legal Affairs may defend the member's company or business in any action against the company or business if the department or the Department of Legal Affairs determines that the actions from which the suit arises are actions taken by the member in the member's official capacity and were not beyond the member's statutory authority. In providing such defense, the department~~, the agency,~~ or the Department of Legal Affairs may employ or utilize the legal services of outside counsel.

Section 99. Section 455.211, Florida Statutes, 1992 Supplement, as amended by section 42 of chapter 92-33, Laws of Florida, and section 12 of chapter 92-149, Laws of Florida, is amended to read:

455.211 Board rules; final agency action; challenges.—

(1) The Secretary of Professional Regulation shall have standing to challenge any rule or proposed rule of a board ~~under its jurisdiction~~ pursuant to ss. 120.54 and 120.56. ~~The Director of Health Care Administration shall have standing to challenge any rule or proposed rule of any board under its jurisdiction, pursuant to ss. 120.54 and 120.56.~~ In addition to challenges for any invalid exercise of delegated legislative authority, the hearing officer, upon such a challenge by the secretary ~~of Professional Regulation or the Director of Health Care Administration~~, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary ~~of Professional Regulation, the Director of Health Care Administration,~~ or the board shall be a substantially interested party for purposes of s. 120.54(5). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 455.207(5).

Section 100. Section 43 of chapter 92-33, Laws of Florida, section 455.2141, Florida Statutes, as created by section 44 of chapter 92-33, Laws of Florida, and section 455.2173, Florida Statutes, as created by section 46 of chapter 92-33, Laws of Florida, are repealed.

Section 101. Section 455.2175, Florida Statutes, 1992 Supplement, as amended by section 47 of chapter 92-33, Laws of Florida, is amended to read:

455.2175 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed *under* ~~pursuant to~~ s. 455.227, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department ~~of Professional Regulation or the Agency for Health Care Administration~~, whether *the* ~~said~~ examination is reproduced or copied in part or in whole and by any means, shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 102. Section 455.218, Florida Statutes, 1992 Supplement, as amended by section 48 of chapter 92-33, Laws of Florida, and section 16 of chapter 92-149, Laws of Florida, is amended to read:

455.218 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, ~~within their respective jurisdictions, the Agency for Health Care Administration and~~ the department shall, by rule, provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:

(a) Immigrated to the United States after leaving the person's home country because of political reasons, provided *the* ~~such~~ country is located in the Western Hemisphere and lacks diplomatic relations with the United States;

(b) Applies to the department ~~of Professional Regulation or the Agency for Health Care Administration, as appropriate,~~ and submits a fee;

(c) Was a Florida resident immediately preceding the person's application;

(d) Demonstrates to the department ~~of Professional Regulation or the Agency for Health Care Administration~~, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university; however, the department ~~of Professional Regulation or the Agency for Health Care Administration~~ may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years;

(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department ~~and the Agency for Health Care Administration~~ shall develop rules for the approval of such programs ~~for their respective boards~~.

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department ~~of Professional Regulation or the Agency for Health Care Administration, for their respective boards,~~ shall provide a written practical examination which tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department ~~of Professional Regulation or the Agency for Health Care Administration~~ as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department ~~of Professional Regulation or the Agency for Health Care Administration~~ on such fundamentals.

(3) The fees charged for the examinations offered under subsection (2) shall be established by the department ~~and the Agency for Health Care Administration, for their respective boards,~~ by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.

(4) The department ~~of Professional Regulation and the Agency for Health Care Administration~~ shall *examine* ~~license~~ any applicant ~~within their respective boards~~ who meets the requirements of subsections (1) and (2). *Upon passing the examination and issuance of the license by the department, licensees* ~~All licenses so issued~~ are subject to the administrative requirements of this chapter and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this chapter and the respective practice act under which *the* ~~his~~ license was issued.

(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.

(6) The department ~~and the Agency for Health Care Administration, for their respective boards,~~ shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action *that* ~~which~~ would constitute a violation of this chapter or the professional practice acts administered by the department ~~or agency~~ and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

Section 103. Section 455.220, Florida Statutes, as created by section 49 of chapter 92-33, Laws of Florida, is repealed.

Section 104. Section 455.2205, Florida Statutes, 1992 Supplement, is transferred, renumbered as section 408.0011, Florida Statutes, and amended to read:

408.0011 ~~455.2205~~ Health Care Trust Fund; moneys to be deposited therein.—

(1) ~~There is hereby created in the State Treasury~~ A special fund *is created in the State Treasury,* to be designated ~~as~~ the Health Care Trust Fund, which shall be used in the operation of the *Department of* ~~Agency for~~ Health ~~Care Administration~~ in the performance of the various functions and duties required of *the department* ~~it~~ by law.

(2) All fees, license fees, and other charges collected by the *department* ~~agency~~ shall be deposited in the State Treasury to the credit of the Health Care Trust Fund, to be used in the operation of the *department* ~~agency~~ as authorized by the Legislature. However, penalties and interest assessed and collected by the *department may* ~~agency shall~~ not be deposited in the trust fund but shall be deposited in the General Revenue Fund. The Health Care Trust Fund shall be subject to the service charge imposed *under* ~~pursuant to~~ chapter 215.

~~(3) The agency shall maintain separate revenue accounts in the Health Care Trust Fund for every profession regulated by the agency. The agency shall, to the extent practicable, provide for the proportionate allocation among the accounts of expenses incurred by the agency in the performance of its duties with respect to each regulated profession. The agency shall provide each board with an annual report of revenue and allocated expenses related to the regulation of that profession, and these reports shall be used by the board to determine the amount of licensing fees for each profession regulated by the agency.~~

(3)~~(4)~~ All other moneys in the Health Care Trust Fund shall be for the use of the *department* ~~agency~~ in the performance of its functions and duties as provided by law, subject to the fiscal and budgetary provisions of general law.

Section 105. Section 455.221, Florida Statutes, 1992 Supplement, as amended by section 51 of chapter 92-33, Laws of Florida, is amended to read:

455.221 Legal and investigative services.—

(1) The Department of Legal Affairs shall provide legal services to each board within the Department of Professional Regulation ~~or the Agency for Health Care Administration,~~ but the primary responsibility of the Department of Legal Affairs *is* ~~shall be~~ to represent the interests of the citizens of the state by vigorously counseling the boards with respect to their obligations under the laws of the state. Subject to the prior approval of the Attorney General, any board may retain independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel ~~by the Department of Legal Affairs or independent legal counsel approved by the Attorney General~~ shall be paid from the Professional Regulation Trust Fund ~~or the Health Care Trust Fund, as appropriate~~.

(2) The Department of Professional Regulation ~~or the Agency for Health Care Administration~~ may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department *may* ~~of Professional Regulation or the Agency for Health Care Administration shall~~ prosecute a matter and provide legal services to the board with respect to the same matter.

Section 106. Section 455.223, Florida Statutes, 1992 Supplement, as amended by section 52 of chapter 92-33, Laws of Florida, is amended to read:

455.223 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the department ~~of Professional Regulation or the Agency for Health Care Administration~~, the department ~~or the agency~~ shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas, which *must* ~~shall~~ be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department ~~of Professional Regulation or the Agency for Health Care Administration~~ shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.58.

Section 107. Section 455.224, Florida Statutes, 1992 Supplement, as amended by section 53 of chapter 92-33, Laws of Florida, and section 20 of chapter 92-149, Laws of Florida, is amended to read:

455.224 Authority to issue citations.—

(1) Notwithstanding the provisions of s. 455.225, the board, or the department ~~or the Agency for Health Care Administration~~ when there is no board, shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, *the subject's* ~~his~~ license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department ~~or the agency, whichever has jurisdiction,~~ within 30 days after the citation is served, the citation shall become a final order of the board, *or the department when there is no board, and shall constitute discipline.* The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department ~~or the agency~~ when there is no board, shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare.

(3) The department ~~of Professional Regulation or the Agency for Health Care Administration~~ shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board *or*~~,~~ department~~, or agency~~ rule, as part of the penalty levied pursuant to the citation.

(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(5) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(6) *The department has* ~~Within their respective jurisdictions, the Department of Professional Regulation and the Agency for Health Care Administration have~~ exclusive authority to, and shall adopt rules to, designate those violations for which the licensee is subject to the issuance of a citation and designate the penalties for those violations if any board fails to incorporate this section into rules by January 1, 1992. *Any board created on or after January 1, 1992, shall have 6 months to enact rules designating violations and penalties appropriate for citation offenses. Failure to enact such rules shall give the department exclusive authority to adopt rules as required for the implementation of this section. A board shall have continuing authority to amend its rules adopted by January 1, 1992, pursuant to this section.*

Section 108. Section 455.225, Florida Statutes, 1992 Supplement, as amended by section 54 of chapter 92-33, Laws of Florida, section 21 of chapter 92-149, Laws of Florida, and section 132 of chapter 92-279, Laws of Florida, is amended to read:

455.225 Disciplinary proceedings.—~~Disciplinary proceedings for each board shall be within the jurisdiction of the Department of Professional Regulation or the Agency for Health Care Administration, as appropriate.~~

(1) The department ~~of Professional Regulation or the Agency for Health Care Administration, for the boards under their respective jurisdictions,~~ shall cause to be investigated any complaint which is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts *that* ~~which~~ show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department ~~or the agency~~, or of any rule *adopted* ~~promulgated~~ by the department~~, the agency,~~ or a regulatory board in the department ~~or the agency~~ has occurred. *In order to determine* ~~Prior to finding~~ legal sufficiency, the department ~~or the agency~~ may require supporting information or documentation ~~as necessary to determine legal sufficiency~~. The department ~~or the agency~~ may investigate ~~or continue to investigate~~, and the department~~, the agency,~~ or the appropriate ~~regulatory~~ board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates *a* ~~his~~ desire not to cause the complaint to be investigated or prosecuted to completion. The department ~~or the agency~~ may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department ~~or the agency~~ has reason to believe, after preliminary inquiry, that the alleged violations in the complaint are true. The department ~~or the agency~~ may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department ~~or the agency~~ has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. ~~Unless a complaint has been filed with the department or the agency, or the department or the agency has been specifically authorized by statute,~~ The department ~~or the agency~~ may ~~not~~ initiate an investigation *if* ~~unless~~ it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, ~~a rule of the agency,~~ or a rule of a board. Except as provided in ss. 458.331(9), 459.015(9), 460.413(5), and 461.013(6), when an investigation of any *subject* ~~person~~ is undertaken, the department ~~or the agency~~ shall promptly furnish to the *subject* ~~person~~ or *subject's* ~~his~~ attorney a copy of the complaint or document which resulted in the initiation of the investigation. The *subject* ~~person~~ may submit a written response to the information contained in *the* ~~such~~ complaint or document within 20 days after service to the *subject* ~~person~~ of the complaint or document. The *subject's* ~~person's~~ written response shall be considered by the probable cause panel. *This right to respond shall not prohibit the department from issuing a summary emergency order if necessary to protect the public.* However, if the secretary, or the secretary's designee, and the chairman of the respective board or the chairman of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department ~~or the agency~~ may withhold notification. The department ~~or the agency~~ may conduct an investigation without notification to any *subject* ~~person~~ if the act under investigation is a criminal offense. ~~The department or the agency may delegate, by rule, its investigative function regarding a given practice act to the regulatory board having regulatory power over the practice.~~

(2) The department ~~of Professional Regulation and the Agency for Health Care Administration~~ shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. When its investigation is complete and legally sufficient, the department ~~or the agency~~ shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department ~~or the agency~~. The report shall contain the investigative findings and the recommendations of the department ~~or the agency~~ concerning the existence of probable cause. At any time after legal sufficiency is found, the department ~~or the agency~~ may dismiss any case, or any part thereof, if the department ~~or the agency~~ determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department ~~or the agency~~ shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, *the* ~~such~~ report 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. The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of *the* ~~such~~ case. If the department ~~or the agency~~ dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department ~~or the agency~~ may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. Each board, or the department ~~or the agency~~ if there is no board, shall establish by rule those minor violations under this provision that do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department ~~of Professional Regulation or the Agency for Health Care Administration~~, as appropriate. Each regulatory board shall provide, by rule, that the determination of probable cause shall be made by a panel of its members or by the department ~~or the agency~~. *Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, is willing to serve, and is authorized to do so by the board chairman. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession.* ~~The panel, if any, shall be composed of board members, but not more than one of the panel members may be a lay member.~~ All proceedings of the panel are exempt from the provisions of s. 286.011 until *10 days after* probable cause has been found to exist by the panel or until the subject of the investigation waives his privilege of confidentiality. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. ~~In aid of its duty to determine the existence of probable cause,~~ The probable cause panel may make a reasonable request, and upon *the* ~~such~~ request the department ~~or the agency~~ shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department ~~or the agency~~. The probable cause panel or the department ~~or the agency~~, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department ~~or the agency~~. The secretary may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department ~~or the agency~~ may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. *In lieu of a finding of probable cause, the probable cause panel, or the department when there is no board, may issue a*

letter of guidance to the subject. If the probable cause panel finds that probable cause exists, it shall direct the department ~~or the agency~~ to ~~send the licensee a letter of guidance or to~~ file a formal complaint against the licensee. The department ~~or the agency~~ shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department ~~or the agency~~ shall file a formal complaint against the ~~regulated professional or~~ subject of the investigation and prosecute that complaint pursuant to the provisions of chapter 120. However, the department ~~or the agency~~ may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department ~~or the agency~~ shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. The department ~~or the agency~~ shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department ~~or the agency~~ within 1 year of the filing of a complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from ~~the Health Care Trust Fund or~~ the Professional Regulation Trust Fund~~, as appropriate~~. All proceedings of the probable cause panel shall be exempt from the provisions of s. 120.53(1)(d).

(5) A formal hearing before a hearing officer from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The hearing officer shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, *or the department when there is no board,* shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department ~~or the agency~~.

(7) The department ~~of Professional Regulation or the Agency for Health Care Administration, as appropriate,~~ shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(8) shall be conducted by the secretary ~~of Professional Regulation~~ or his designee, ~~or the Director of Health Care Administration or his designee, as appropriate,~~ who shall issue the final summary order.

(9) The department ~~of Professional Regulation or the Agency for Health Care Administration, as appropriate,~~ shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department ~~of Professional Regulation or the Agency for Health Care Administration~~ shall be confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department ~~or the agency~~, or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first. Upon completion of the investigation *and written request by the subject,* the department ~~or the agency~~ shall *provide the subject an opportunity to inspect or, at the subject's expense,* ~~upon written request,~~ forward *to the subject* a copy of the *department's* investigative file. *Notwithstanding the provisions of s. 455.241, the subject shall be entitled to inspect or receive a copy of any expert witness reports and patient records obtained by the department in connection with the investigation, provided the subject agrees in writing to maintain the confidentiality of any information received pursuant to this section until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 455.241. The subject* ~~to the subject, who~~ may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department ~~or the agency~~. Nothing in this subsection shall be construed to prohibit the department ~~of Professional Regulation or the Agency for Health Care Administration~~ from providing such information to any law enforcement agency or to any other regulatory agency. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

(12)(a) No person who reports in any capacity, whether or not required by law, information to the *department* ~~Division of Health Quality Assurance of the Agency for Health Care Administration~~ with regard to the incompetence, impairment, or unprofessional conduct of any health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466 shall be held liable in any civil action for reporting against such health care provider if such person acts without intentional fraud or malice.

(b) No facility licensed under chapter 395, health maintenance organization certificated under part I of chapter 641, physician licensed under chapter 458, or osteopathic physician licensed under chapter 459 shall discharge, threaten to discharge, intimidate, or coerce any employee or staff member by reason of such employee's or staff member's report to the *department* ~~division~~ about a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who may be guilty of incompetence, impairment, or unprofessional conduct so long as such report is given without intentional fraud or malice.

(c) In any civil suit brought outside the protections of paragraphs (a) and (b), where intentional fraud or malice is alleged, the person alleging intentional fraud or malice shall be liable for all court costs and for the other party's reasonable attorney's fees if intentional fraud or malice is not proved.

Section 109. Section 455.227, Florida Statutes, 1992 Supplement, as amended by section 55 of chapter 92-33, Laws of Florida, and section 22 of chapter 92-149, Laws of Florida, is amended to read:

455.227 Grounds for discipline; penalties; enforcement.—

(1) The board shall have the power to revoke, suspend, or deny the renewal of the license, or to reprimand, censure, or otherwise discipline a licensee, if the board finds that:

(a) The licensee has made misleading, deceptive, untrue, or fraudulent representations in the practice of his profession;

(b) The licensee has intentionally violated any rule adopted by the board *or,* the department ~~of Professional Regulation, or the Agency for Health Care Administration, as appropriate~~;

(c) The licensee has been convicted of a felony which relates to the practice of his profession;

(d) The licensee has been adjudicated mentally incompetent;

(e) The license has been obtained by fraud or material misrepresentation of a material fact;

(f) The licensee has used a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules promulgated pursuant to s. 501.122(2) governing the registration of such devices with the Department of Health and Rehabilitative Services;

(g) The licensee has failed to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome; or

(h) The licensee has had a license or the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(2) In addition to, or in lieu of, any other discipline imposed pursuant to this section, the board may impose an administrative fine not to exceed $1,000 for each violation. In any case where the board imposes a civil penalty and the penalty is not paid within a reasonable time, such reasonable time to be prescribed in the rules of the board, the Department of Legal Affairs shall bring, upon request by the board, a civil action to recover the penalty.

(3) In addition to, or in lieu of, any other remedy or criminal prosecution, the department ~~of Professional Regulation or the Agency for Health Care Administration, as appropriate,~~ may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this part, or any provisions of law with respect to professions regulated by the department ~~or the agency~~, and any board therein, or the rules adopted pursuant thereto.

(4) In the event the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish, by rule, requirements for reapplication by applicants whose licenses have been permanently revoked. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

Section 110. Section 455.2273, Florida Statutes, 1992 Supplement, as amended by section 56 of chapter 92-33, Laws of Florida, and section 23 of chapter 92-149, Laws of Florida, is amended to read:

455.2273 Disciplinary guidelines.—

(1) Each board, or the department when there is no board, shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department when there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department when there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department ~~of Professional Regulation or the Agency for Health Care Administration, as appropriate,~~ must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to ss. 120.54 and 120.56.

(5) The rules provided for in this section shall be promulgated no later than January 1, 1993.

(6) The hearing officer, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

Section 111. Section 455.2275, Florida Statutes, 1992 Supplement, as amended by section 57 of chapter 92-33, Laws of Florida, and section 24 of chapter 92-149, Laws of Florida, is amended to read:

455.2275 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed *under* ~~pursuant to~~ s. 455.227, the act of knowingly giving false information in the course of applying for or obtaining a license from the department ~~of Professional Regulation or the Agency for Health Care Administration,~~ or any board *within the department* ~~thereunder~~, with intent to mislead a public servant in the performance of his official duties, or the act of attempting to obtain or obtaining a license from ~~either~~ the department ~~or the agency~~, or any board *within the department* ~~thereunder~~, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 112. Section 455.228, Florida Statutes, 1992 Supplement, as amended by section 58 of chapter 92-33, Laws of Florida, and section 26 of chapter 92-149, Laws of Florida, is amended to read:

455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement.—

(1) When the department ~~of Professional Regulation or the Agency for Health Care Administration~~ has probable cause to believe that any person not licensed by the department ~~or the agency~~, or the appropriate regulatory board within the department ~~or the agency~~, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department ~~or the agency~~, or any rule adopted pursuant thereto, the department ~~or the agency~~ may issue and deliver to *the* ~~such~~ person a notice to cease and desist from such violation. In addition, the department ~~or the agency~~ may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing *an* ~~such~~ unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a s. 120.57 hearing may be sought. For the purpose of enforcing a cease and desist order, the department ~~or the agency~~ may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of *the* ~~such~~ order. In addition to the foregoing remedies, the department ~~or the agency~~ may impose an administrative penalty not to exceed $5,000 per incident, *under* ~~pursuant to~~ the provisions of chapter 120. If the department ~~or the agency~~ is required to seek enforcement of the agency order for a penalty *under* ~~pursuant to~~ s. 120.58, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department ~~or the agency~~ may seek the imposition of a civil penalty through the circuit court for any violation for which the department ~~or the agency~~ may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than $500 and no more than $5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department ~~or the agency~~ prevails, may also award reasonable costs of investigation.

(3) The provisions of this section *apply only* ~~only apply~~ to the provisions of s. 455.217 and the professional practice acts administered by the Department of Professional Regulation ~~or the Agency for Health Care Administration~~.

Section 113. Section 455.2285, Florida Statutes, 1992 Supplement, as amended by section 59 of chapter 92-33, Laws of Florida, and section 28 of chapter 92-149, Laws of Florida, is amended to read:

455.2285 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—The Department of Professional Regulation *is* ~~and the Agency for Health Care Administration are each~~ directed to prepare and submit a report to the President of the Senate and Speaker of the House of Representatives by November 1 of each year, beginning in 1993. In addition to finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

(1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.

(2) The number of complaints received and investigated.

(3) The number of findings of probable cause made.

(4) The number of findings of no probable cause made.

(5) The number of administrative complaints filed.

(6) The disposition of all administrative complaints.

(7) A description of disciplinary actions taken.

(8) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 455.2273.

(9) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

Section 114. Section 455.229, Florida Statutes, 1992 Supplement, as amended by section 60 of chapter 92-33, Laws of Florida, and section 29 of chapter 92-149, Laws of Florida, is amended to read:

455.229 Public inspection of information required from applicants; exceptions; examination hearing.—

(1) All information required by the department ~~of Professional Regulation or the Agency for Health Care Administration~~ of any applicant shall be a public record and shall be open to public inspection *under* ~~pur-~~

~~suant to~~ s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except members of the board, the department ~~of Professional Regulation or the Agency for Health Care Administration~~, and *its* staff ~~thereof~~, who have a bona fide need to know such information. Any information supplied to the department ~~of Professional Regulation or the Agency for Health Care Administration~~, by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential *under* ~~pursuant to~~ applicable law while in the custody of the department ~~or the agency~~. These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(2) The department ~~of Professional Regulation or the Agency for Health Care Administration~~ shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department ~~or the agency~~ shall provide challenged examination questions and answers to the hearing officer. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the hearing officer. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(3) Unless an applicant notifies the department ~~or the agency~~ at least 5 days prior to an examination hearing of the applicant's inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department ~~or the agency~~ may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department ~~or the agency~~ for the examination hearing.

Section 115. Section 455.232, Florida Statutes, 1992 Supplement, as amended by section 61 of chapter 92-33, Laws of Florida, and section 30 of chapter 92-149, Laws of Florida, is amended to read:

455.232 Disclosure of confidential information.—

(1) No officer, employee, or person under contract with the department ~~of Professional Regulation or the Agency for Health Care Administration~~, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 455.227, and, if applicable, shall be removed from office, employment, or the contractual relationship.

Section 116. Section 455.241, Florida Statutes, 1992 Supplement, as amended by section 62 of chapter 92-33, Laws of Florida, and section 32 of chapter 92-149, Laws of Florida, is amended to read:

455.241 Patient records; report or copies of records to be furnished.—

(1) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

(2) Except as otherwise provided in s. 440.13(2), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or *the patient's* ~~his~~ legal representative or other health care providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization to any person, firm, or corporation which has procured or furnished such examination or treatment with the patient's consent or when compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff. Such records may be furnished in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or *the patient's* ~~his~~ legal representative by the party seeking such records. Except in a medical negligence action when a health care provider is or reasonably expects to be named as a defendant, information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given. The Department of Professional Regulation ~~or the Agency for Health Care Administration, as appropriate,~~ may obtain patient records pursuant to a subpoena without written authorization from the patient if the department ~~of Professional Regulation or the Agency for Health Care Administration~~ and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of *this chapter or of any professional practice act of a profession regulated under the department* ~~s. 458.331(1)(q), s. 459.015(1)(u), s. 461.013(1)(p), s. 462.14(1)(q), s. 466.028(1)(q), or s. 474.214(1)(y), (z), (bb), or (ff)~~ or that a practitioner has practiced his profession below that level of care, skill, and treatment required as defined by *this chapter or by any professional practice act of a board regulated under the department* ~~s. 458.331(1)(t), s. 459.015(1)(y), s. 460.413(1)(s), s. 461.013(1)(t), s. 462.14(1)(t), s. 463.016(1)(n), s. 464.018(1)(h), s. 466.028(1)(y), or s. 474.214(1)(o) or (r)~~; ~~provided~~, however, the patient record obtained by the department ~~or the agency~~ pursuant to this subsection shall be used solely for the purpose of the department ~~or the agency~~ and the ~~appropriate regulatory~~ board in disciplinary proceedings. The record shall otherwise be 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. *This* ~~Nothing in this~~ section *does not* ~~shall be construed to~~ limit the assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed *under* ~~pursuant to~~ chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the practitioner shall release records of treatment for medical conditions even if the practitioner has also treated the patient for mental or nervous disorders. If the department ~~or the agency~~ has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department ~~or the agency~~ may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

(3) All patient records obtained by the Department of Professional Regulation ~~or the Agency for Health Care Administration~~ and any other documents maintained by the department ~~or the agency~~ which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the Department of Professional Regulation ~~or the Agency for Health Care Administration~~ and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department ~~or the Agency for Health Care Administration~~ or the appropriate board. These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(4) A health care practitioner furnishing copies of reports or records pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board.

Section 117. Section 455.243, Florida Statutes, 1992 Supplement, as amended by section 63 of chapter 92-33, Laws of Florida, and section 35 of chapter 92-149, Laws of Florida, is amended to read:

455.243 Authority to inspect.—In addition to the authority specified in s. 465.017, duly authorized agents and employees of the department ~~of~~

~~Professional Regulation and the Agency for Health Care Administration shall~~ have the power to inspect in a lawful manner at all reasonable hours:

(1) Any pharmacy; or

(2) Any establishment at which the services of a *licensee* ~~licensed~~ practitioner authorized to prescribe controlled substances specified in chapter 893 are offered,

for the purpose of determining if any of the provisions of *this* chapter *or any practice act of a professional regulated under the department* ~~458, chapter 459, chapter 461, chapter 466, or chapter 474~~ or any rule *adopted* ~~promulgated~~ thereunder is being violated; or for the purpose of securing such other evidence as may be needed for ~~administrative~~ prosecution ~~under chapter 458, chapter 459, chapter 461, chapter 466, or chapter 474~~.

Section 118. Section 455.245, Florida Statutes, 1992 Supplement, as amended by section 64 of chapter 92-33, Laws of Florida, and section 36 of chapter 92-149, Laws of Florida, is amended to read:

455.245 Health care practitioners; immediate suspension of license.—

(1) The department ~~of Professional Regulation or the Agency for Health Care Administration~~ shall issue an emergency order suspending the license of any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, chapter 474, or chapter 484 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

(2) If the board has previously found any physician or osteopathic physician in violation of the provisions of s. 458.331(1)(t) or s. 459.015(1)(y), in regard to his treatment of three or more patients, and the probable cause panel of the board finds probable cause of an additional violation of that section, then the *secretary* ~~Director of Health Care Administration~~ shall review the matter to determine if an emergency suspension or restriction order is warranted. ~~Nothing in~~ This section *does not* ~~shall be construed so as to~~ limit the *secretary's* authority ~~of the Secretary of Professional Regulation or the Director of Health Care Administration~~ to issue an emergency order.

Section 119. Section 455.26, Florida Statutes, 1992 Supplement, as amended by section 65 of chapter 92-33, Laws of Florida, and section 37 of chapter 92-149, Laws of Florida, is amended to read:

455.26 Impaired Practitioners Committee; duties.—

(1) There is created the Impaired Practitioners Committee to be composed of one representative *to be appointed by* ~~from~~ each *board* ~~practice licensed~~ under *the jurisdiction of the Division of Medical Quality Assurance within the department* ~~chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, chapter 465, chapter 466, chapter 474, chapter 490, or chapter 491, to be appointed by the board under which the practitioner is licensed,~~ and of one addictionologist, one lay member having an appropriate background in the area of impairment, and a representative of the *department* ~~Agency for Health Care Administration~~, each to be appointed by the ~~Director of Health Care Administration, and of one representative of the Department of Professional Regulation appointed by the~~ Secretary of Professional Regulation. Section 455.207 applies to the activities of the committee.

(2) The committee shall:

(a) Establish policies and guidelines to be used in approving treatment providers for preventive and rehabilitative programs directed to impaired practitioners;

(b) Act as liaison between approved treatment providers and the department ~~of Professional Regulation and the Agency for Health Care Administration~~;

(c) Advise the department ~~and the agency~~ on the continuation and expansion of treatment programs for impaired practitioners; and

(d) Disseminate information concerning the impairment program.

Section 120. All powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Agency for Health Care Administration are transferred by a type four transfer as defined in section 20.06, Florida Statutes, to the Department of Health.

Section 121. All powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Health and Rehabilitative Services relating to alcohol, drug abuse, and mental health; children's medical services; Medicaid; and public health, including environmental health, are transferred by a type four transfer as defined in section 20.06, Florida Statutes, to the Department of Health.

Section 122. All powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Agriculture and Consumer Services relating to the dog fly program, the mosquito control program, the pest control program, and all regulatory authority with respect to food establishments, food outlets, food service establishments, the Bottled Water Act, the Water Vending Machine Protection Act, and the Packaged Ice Act are transferred by a type four transfer as defined in section 20.06, Florida Statutes, to the Department of Health.

Section 123. All powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Education and the Florida Agricultural and Mechanical University relating to the John A. Mulrennan, Sr., Arthropod Research Laboratory are transferred by a type four transfer as defined in section 20.06, Florida Statutes, to the Department of Health.

Section 124. All powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Business Regulation relating to the regulation of public food service establishments are transferred by a type four transfer as defined in section 20.06, Florida Statutes, to the Department of Health.

Section 125. All powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Environmental Regulation relating to the administration of the Florida Safe Drinking Water Act are transferred by a type four transfer as defined in section 20.06, Florida Statutes, to the Department of Health.

Section 126. Except when inconsistent with other provisions of this act, all rules of the agencies involved in this reorganization which are in effect on July 1, 1993, remain in effect until they are specifically altered, amended, or revoked in the manner provided by law.

Section 127. This act does not affect the validity of any judicial or administrative proceeding pending as of the effective date of this act, and any department to which are transferred the powers, duties, and functions of any agency relating to the pending proceedings shall be substituted as a party in interest.

Section 128. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 129. The Division of Statutory Revision of the Joint Legislative Management Committee shall prepare a reviser's bill for submission during the 1995 Regular Session of the Legislature to correct any provisions in the Florida Statutes which are inconsistent with this act.

Section 130. This act shall take effect July 1, 1993.

Senator Myers moved the following amendment which was adopted:

Amendment 161 (with Title Amendment)—On page 218, line 6, insert new Section 87:

Section *87*. Section 409.701, Florida Statutes, is amended to read:

409.701 The Florida Health Access Corporation Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Health Access Corporation Act."

(2) LEGISLATIVE INTENT.—The Legislature finds that there is insufficient *affordable* group health ~~insurance~~ coverage available to employees of small businesses in Florida, that uninsured employees of small businesses represent a significant portion of the uncompensated costs of health care providers, and that uninsured individuals have impaired access to health care services and correspondingly lower health status. It is the intent of the Legislature that a nonprofit corporation, to

be known as the "Florida Health Access Corporation," be organized for the purpose of pooling *the purchasing power of* groups of individuals employed by small businesses, and the dependents of such employees, into larger groups in order to facilitate a program of affordable ~~group~~ health ~~insurance~~ coverage *and establish pooled purchasing arrangements* ~~to uninsured individuals~~. *The health coverage provided by the corporation may be subsidized or nonsubsidized. Subsidies must be available only on a case-by-case basis for individual businesses as determined necessary by the board of directors.*

(3) CORPORATION AUTHORIZATION, DUTIES, POWERS.—

(a) There is authorized the "Florida Health Access Corporation." The Florida Health Access Corporation shall operate in Hillsborough County and a multicounty rural site and such other counties as may be designated by the corporation.

(b) The Florida Health Access Corporation shall:

1. Organize employers of *50* ~~24~~ or fewer full-time *or part-time* employees and facilitate the provision of ~~group~~ health *coverage* ~~insurance~~ to such employers and employees and their dependents;

2. Arrange for the collection of premiums, in an amount to be determined by the board of directors, from all insured individuals to provide for claims paid under ~~group~~ health *coverage* ~~insurance~~ arrangements and for the administrative expenses incurred or estimated to be incurred during the period for which the premium is paid;

3. Establish administrative and accounting procedures for the operation of the corporation;

4. Establish employer and employee eligibility criteria for participation in the program;

5. Establish participation criteria governing eligibility of insurers or any providers of health care services to participate in the program;

6. Establish procedures under which applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the board;

7. Contract with an authorized insurer or insurance administrator to provide administrative services to the corporation if desired or when such services are deemed necessary by the board;

8. Contract with authorized insurers or any provider of health care services for the provision of services to individuals covered through the program;

9. Develop and implement a plan to publicize the Florida Health Access Corporation, the eligibility requirements for the program, and the procedures for enrollment in the program, and to maintain public awareness of the corporation and the program;

10. Secure staff necessary to properly administer the corporation. *Administrative* ~~Staff~~ costs shall be funded from grant funds, state and local matching funds, administrative fees collected from employers and insurers, and other sources of funding arranged by the corporation. The board of directors is authorized to determine the number of staff necessary to administer the corporation~~, but shall include, at a minimum, an executive director, an assistant director, and a staff assistant~~; and

11. Enter into contracts with local agencies to provide onsite marketing and enrollment services necessary to the operation of the corporation.

(c) The corporation shall set business and employee eligibility standards which shall define a small business and further identify small businesses eligible for participation in the program. Small businesses eligible for participation *must* ~~shall~~ have *50* ~~24~~ or fewer full-time employees. Employer eligibility standards *for employers who receive direct premium subsidy* shall include a provision that the employer must attest to having offered or provided no other health insurance benefit program in the 6-month period prior to the effective date of participation in the program. *However, this eligibility standard does not apply to an employer who receives nonsubsidized coverage arranged through the program.* The corporation shall make all necessary provisions to prevent the payment of or reimbursement for any claim or expense which may be covered under a separate health insurance or health care services plan under which an individual who participates in the program may be covered. Coverage arranged through the corporation's program is to be considered secondary to any other available coverage held by the individual participating in the program. ~~If such an individual is also eligible for Medicare coverage, the coverage arranged by the corporation shall not pay or reimburse any individual for expenses paid by Medicare.~~ No policy shall be arranged by the corporation which is deemed to be a Medicare supplemental policy as defined in s. 627.672.

(d) The corporation, which shall be operated as a nonprofit private corporation organized pursuant to chapter 617, shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including, but not limited to, the power to receive and accept grants, loans, and, notwithstanding the provisions of ss. 215.42 and 215.422, advances of funds from any public or private agency, for, or in aid of, the purpose of this act, and to receive and accept contributions, from any source, of money, property, labor, or any other thing of value, to be held, used, and applied for said purposes.

(4) BOARD OF DIRECTORS.—

(a) The Florida Health Access Corporation shall operate subject to the supervision and approval of a seven-member board of directors, which shall consist of:

1. *Three* ~~Two~~ members~~, one from an urban county and one from a rural county,~~ who shall represent small businesses whose employees are eligible to participate in the Florida Health Access Corporation;

~~2. One member who shall represent consumers eligible to participate in the Florida Health Access Corporation;~~

2. ~~3.~~ One member who shall be a representative of a ~~domestic health care insurer or of a~~ private company which offers a self-insured program of health benefits to employees;

3. ~~4.~~ One member who shall be the *director* ~~secretary~~ of the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ or his designee;

4. ~~5.~~ One member who shall be a representative of *an organized labor or business not-for-profit association* ~~the Florida Chamber of Commerce~~; and

5. ~~6.~~ One member who shall be a representative of an employer health coalition.

(b) The board of directors shall be appointed and may be removed by the Governor. Terms of appointment shall be for 3 years. The board shall appoint the *Chief Executive Officer* ~~executive director~~, who shall be responsible for other staff as authorized by the board.

(c) Board members may be reimbursed from funds of the Florida Health Access Corporation for actual and necessary expenses incurred by them as members, according to state travel and per diem limitations, but may not otherwise be compensated for their services.

(d) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the board of directors, or its employees or agents, for any action taken by them in performance of their powers and duties under this act.

(5) LICENSING, FISCAL OPERATION.—

(a) The corporation shall not be deemed to be an insurer. The officers, directors, and employees of the corporation shall not be deemed to be agents of an insurer. Neither the corporation nor the officers, directors, or employees of the corporation shall be subject to the licensing requirements of the insurance code or the rules of the Department of Insurance. However, the Department of Insurance may require that the marketing representative utilized and compensated by the corporation be licensed as representatives of the insurers or health services providers with whom the corporation may contract.

(b) The Florida Health Access Corporation program shall be operated in accordance with sound actuarial principles. The board shall have complete fiscal control over the corporation and shall be responsible for all corporate operations.

~~(c) The Department of Insurance shall assist the program in determining that proposed premium levels will be sufficient to permit the corporation to operate in an actuarially sound manner.~~

(c) ~~(d)~~ The corporation may expend funds through direct reinsurance, by purchasing reinsurance, or by other means approved by the board for the program of health care services and benefits arranged

through the corporation. The amount of such expenditure shall not exceed funds allocated from the Public Medical Assistance Trust Fund or other sources of funding arranged by the corporation. Notwithstanding the provisions of s. 216.301, any amount so provided, which is not annually required for such purposes, shall remain available to the corporation, to be supplemented by an annual amount equal to the amount expended in the prior year, for the purpose of meeting funding requirements in succeeding years. Any amount remaining upon the liquidation or dissolution of the corporation shall be returned to the Public Medical Assistance Trust Fund.

Section . Subsection (2) of section 409.7015, Florida Statutes, is amended to read:

409.7015 Unemployment compensation data availability.—

(1) In order to further the research and demonstration objectives of s. 409.701, the Division of Unemployment Compensation, Department of Labor and Employment Security, shall, notwithstanding the provisions of s. 443.171(7), make available to the Florida Health Access Corporation such information as the corporation requests so as to facilitate contact with employers who may be eligible for participation in the program of health insurance benefits arranged through the corporation. Such information as is obtained by the corporation through the provisions of this section is confidential and exempt from the provisions of s. 119.07(1). Neither the corporation nor the staff or agents of the corporation shall release to any state or federal agency, to any private business or person, or to any other entity any information received through the operation of this section. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Violation of this section shall be regarded as a violation of s. 443.171(7).

(2) This section *expires* ~~shall stand repealed on~~ October 1, *1995* ~~1993~~.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, insert: amending s. 409.701, F.S.; authorizing the Florida Health Access Corporation to provide subsidized or nonsubsidized coverage to small employers; authorizing the corporation to serve businesses with fewer than a specified number of employees; changing the composition of the board of directors of the Florida Health Access Corporation; deleting a requirement that the Department of Insurance provide certain assistance to the corporation; amending s. 409.7015, F.S.; delaying the repeal of the corporation's access to certain data from the Department of Labor and Employment Security;

Senator Grant moved the following amendment which was adopted:

Amendment 162 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. (1) A not-for-profit entity that provides diagnostic imaging services that was in existence prior to January 1, 1992, and which is owned 50 percent by a hospital or an affiliate of the hospital and 50 percent by physicians on or before that date is exempt from the provisions of chapter 92-178, Laws of Florida, as amended, provided that any such entity submits to utilization review and rate review by the Agency for Health Care Administration. After review, if the Agency for Health Care Administration finds that the rates being charged for services are above the average rate in the community, the agency may issue an administrative order, as provided under chapter 120, setting rates for each service being provided by the entity at the average level being charged for similar services in the community.

(2) Once the Agency for Health Care Administration has set rates, as provided in subsection (1), an affected entity may annually request a review of any rates set, and may present evidence to the agency on its own behalf to support its request for an increase in allowable rates for diagnostic imaging services. The Agency for Health Care Administration must adopt rules for the implementation of this section.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 227, line 31, after the semicolon (;) insert: exempting certain entities offering diagnostic imaging services from the provisions of chapter 92-178, Laws of Florida; authorizing the Agency for Health Care Administration to set rates for exempted entities pursuant to chapter 120, F.S.; providing for annual review of rates set upon request from an exempted entity; providing rulemaking authority;

Senator Brown-Waite moved the following amendment:

Amendment 163—On page 218, between lines 5 and 6, insert:

Section 87. Notwithstanding any provision of this act to the contrary, in receiving prescription drugs and services through a health care program, a program participant may use any pharmacy provider licensed or permitted under chapter 465, Florida Statutes, if such pharmacy provider has agreed to the administrative terms and conditions of such health care program. Reimbursement for prescription drugs and services provided shall be set at a fair and reasonable price; however, a pharmacy provider may bill the program at a lower price. Nothing in this section applies to an in-house pharmacy that is permitted under chapter 465, Florida Statutes, and maintained by a health maintenance organization established under part I of chapter 641, Florida Statutes.

(Renumber subsequent section.)

Senator McKay moved the following substitute amendment which was adopted:

Amendment 164—On page 218, between lines 5 and 6, insert:

Section 87. Notwithstanding any provision of this act to the contrary receiving prescription drugs and services through a health care program, a program participant may use any pharmacy provider licensed or permitted under chapter 465, F.S., if such pharmacy provider has agreed to the administrative terms and conditions of such health care program. Reimbursement for prescription drugs and services provided shall be set at a fair and reasonable price, however, a pharmacy may bill the program at a lower price. Nothing in this section applies to an in-house pharmacy that is permitted under chapter 465, F.S., and maintained by a health maintenance organization established under part I, chapter 641, F.S. This section shall become effective July 1, 1994. In the interim, the Agency for Health Care Administration shall conduct a study regarding the impact of this provision on the prescription services provided to the residents of this state, with particular emphasis on quality of care, cost of drugs or services, and competition for the provision of such services. The results of the study shall be delivered to the President of the Senate and the Speaker of the House of Representatives on or before January 15, 1994.

(Renumber subsequent section.)

Senator Forman moved the following amendment which was adopted:

Amendment 165 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. In the event that the federal government, subsequent to the enactment of this act, changes its regulations governing the Medicaid disproportionate share program in a manner that makes more federal funds available to the state, then the Agency for Health Care Administration may proceed, in the manner prescribed by chapter 216, Florida Statutes, with a budget amendment to increase total funding for disproportionate share hospitals, the provisions of chapter 216 notwithstanding. In proceeding with a budget amendment designed to increase overall federal revenue to the state, the Agency for Health Care Administration shall increase disproportionate share funds in the following priority order:

(1) Rural hospitals under section 409.9116, Florida Statutes.

(2) Disproportionate share hospitals under section 409.911, Florida Statutes.

(3) Mental hospitals under section 409.115, Florida Statutes.

(4) Such other disproportionate share hospitals as may be recommended by the Agency for Health Care Administration.

Prior to proceeding with a budget amendment, the Agency for Health Care Administration shall convene a meeting of staff of the Governor's Office of Planning and Budgeting and staff of the House and Senate Health Care, Health and Rehabilitative Services, and Appropriations committees to discuss the amendment and any potential ramifications on the budget or programs.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 501, line 7, following the semicolon (;) insert: providing for revising calculation of funding for the Medicaid disproportionate share program;

Senator Myers moved the following amendment which failed:

Amendment 166—On page 174, line 22, before the period (.) insert: *except that insurers may charge premiums above or below the community average for a particular small employer due to other factors so long as such premium is not increased due to other factors more than fifteen percent in any one year and the premium does not exceed the community average by more than twenty percent effective October 1, 1993; fifteen percent effective October 1, 1994; and ten percent effective October 1, 1995.*

Senator Forman moved the following amendments which were adopted:

Amendment 167—On page 170, line 28, after *"disease,"* insert: *individual hospital indemnity,*

Amendment 168—In title, on page 220, line 17, after the first semicolon (;) insert: providing loan forgiveness for certain medical students and physicians;

Senator McKay moved the following amendment which was adopted:

Amendment 169—On page 14, strike lines 8-10 and insert: The community health purchasing alliances shall not require that a small employer as defined in s. 672.6699, pay any portion of the premium for employees or dependents of employees as a condition of participating in an alliance. If the small employer voluntarily contributes any portion of the premium of employees or dependents of the employees, the premium contribution level shall be established by the employer.

Senators Kirkpatrick and Forman offered the following amendment which was moved by Senator Kirkpatrick and adopted:

Amendment 170 (with Title Amendment)—On page 218, between lines 5 and 6, insert:

Section 87. The Legislature finds that the majority of costs in the health care system are driven by the consumption and utilization of health care resources by health care providers. The Legislature further finds that there is wide variance in the use of health care resources by health care providers with no appreciable difference in the quality of outcomes or the value of health care services provided. Therefore, the Agency for Health Care Administration shall develop and implement a UB-92 based system, with appropriate adjustments for illness severity and acuity, for comparing quality and value of health care services across the state, or, in the alternative, the Agency may purchase a data system to accomplish this task. This system shall include, at a minimum, an analysis of the 20 procedures and diagnoses that account for the most significant percentage of total statewide health services and health care costs. The system must take into account all relevant risk factors that contribute to the outcome of a patient's treatment. The Agency shall use appropriate data available from the Health Care Board and shall hereby have the authority to collect any necessary statistical data from health care providers, health care facilities, and health insurers. The Agency shall make available to the public, on a quarterly basis, the outcome of its analysis of this data. The Agency shall specifically target the release of its data to any community health purchasing alliances in the state. The Agency shall form a task force of users and providers of this type of data to determine the most useful and efficient means of disseminating the data to the public.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 227, line 31 after the semicolon (;) insert: requiring the agency to develop and implement a UB-92 based system;

Senator Gutman moved the following amendments which were adopted:

Amendment 171—In title, on page 224, strike lines 16-19 and insert: physician services; amending s.

Amendment 172—In title, on page 225, strike lines 3-8 and insert: repealing s. 409.9114, F.S.;

Senator Myers moved the following amendment which was adopted:

Amendment 173—In title, on page 227, line 31, after the semicolon (;) insert: repealing s. 20.42, F.S., relating to the Agency for Health Care Administration; creating s. 20.43, F.S.; creating the Department of Health; providing duties of the department; providing for the department to be directed by the State Health Officer; providing duties of the State Health Officer; providing for organization of the department; providing for the appointment of assistant health officers; designating regions within the state to be supervised by the State Health Officers; providing for regional health officers; creating the Department of Health Advisory Council; providing duties of the council and membership; providing legislative intent; providing that certain health services are not subject to competitive bids; requiring the department to consult with county governments with respect to policies and service delivery plans; amending s. 20.19, F.S.; redesignating the Department of Health and Rehabilitative Services as the Department of Human and Social Services; revising purpose of the department; deleting responsibilities of the department with respect to public health; providing for a Secretary of Human and Social Services; providing duties of the secretary; deleting the position and duties of Deputy Secretary for Health; revising the duties of the Deputy Secretary for Human Services; redesignating the health and human services boards within the department as the human and social services boards; deleting the boards' responsibilities with respect to health services; conforming provisions to changes made by the act; amending s. 20.04, F.S., relating to the structure of the executive branch of government; conforming provisions to changes made by the act; repealing s. 33, ch. 92-33, Laws of Florida, abrogating the transfer of powers, duties, and funds of the Division of Medical Quality Assurance of the Department of Professional Regulation to the Agency for Health Care Administration; amending s. 20.30, F.S.; reinstating the Division of Medical Quality Assurance within the Department of Professional Regulation; reestablishing the Board of Nursing Home Administrators and the Board of Opticianry within the Division of Professions of the Department of Professional Regulation; reestablishing the Board of Medicine, the Board of Osteopathic Medicine, the Board of Acupuncture, the Board of Chiropractic, the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, the Board of Dentistry, the Board of Nursing, the Board of Optometry, the Board of Pharmacy, the Board of Physical Therapy Practice, the Board of Podiatric Medicine, the Board of Psychological Examiners, the Board of Veterinary Medicine, the Board of Speech-Language Pathology and Audiology, and the Board of Clinical Laboratory Personnel within the Division of Medical Quality Assurance; amending ss. 455.201, 455.203, 455.205, 455.207, 455.208, 455.209, 455.211, F.S.; conforming provisions to changes made by the act; repealing s. 43, ch. 92-33, Laws of Florida, relating to license renewal for certain medical professions; abrogating the repeal of s. 455.213 (6) and (7), F.S.; repealing ss. 455.2141, 455.2173, F.S., relating to duties of the Agency for Health Care Administration with respect to licensing; amending ss. 455.2175, 455.218, F.S.; conforming provisions to changes made by the act; repealing s. 455.220, F.S., relating to the Health Care Trust Fund; transferring, renumbering, and amending s. 455.2205, F.S., relating to the Health Care Trust Fund; providing for trust fund moneys to be used for operation of the Department of Health; amending ss. 455.221, 455.223, 455.224, 455.225, 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.241, 455.243, 455.245, 455.26, F.S.; conforming provisions to changes made by the act; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Agency for Health Care Administration to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Health and Rehabilitative Services with respect to alcohol, drug abuse, and mental health programs, children's medical services, Medicaid, public health, and environmental health to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Agriculture and Consumer Services relating to dog fly, mosquito, and pest control, and the regulation of food establishments, bottled water, water vending machines, and packaged ice to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Education relating to the John A. Mulrennan, Sr., Arthropod Research Laboratory to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Business Regulation relating to the regulation of public food service establishments to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Environmental Regulation with respect to administering the Florida Safe Drinking Water Act to the Department of Health; providing for continued effect of rules; providing for transfer of pending judicial and administra-

tive proceedings to the Department of Health; providing severability; directing the Division of Statutory Revision to prepare a reviser's bill to make certain changes consistent with the act;

Senator Dudley moved the following amendment which was adopted:

Amendment 174—On page 218, line 6, insert:

Section 87. Subsection (19) of Section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(19) Notwithstanding any other provision of law, health maintenance policies or contracts which provide coverage, benefits, or *other* services *comparable to those* as described in s. 463.002(5), *whether through a managed care system or otherwise,* shall offer to the subscriber the services of ~~an~~ *optometrists* ~~optometrist~~ licensed pursuant to chapter 463. *Whenever a subscriber to a managed care system selects the services of an optometrist, the optometrist shall be the primary eye care physician.*

Senator Williams moved the following amendment which was adopted:

Amendment 175—On page 178, line 26, insert: *provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section.*

2. Beginning April 15, 1994, offer and issue basic and standard small employer health benefit plans on a guarantee-issue basis to every eligible small employer, with one or two eligible employees, which elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section.

Motions to Reconsider Amendments

Senator Jenne moved that the Senate reconsider the vote by which **Amendment 14** was adopted. The motion failed.

Senator Jenne moved that the Senate reconsider the vote by which **Amendment 15** was adopted. The motion failed.

Reconsideration of Amendment

On motion by Senator Jones, the Senate reconsidered the vote by which **Amendment 28** failed. **Amendment 28** was adopted.

THE PRESIDENT PRESIDING

On motion by Senator Myers, by two-thirds vote **CS for SB's 1914, 2006, 1784 and 406** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—21 Nays—17

RECESS

On motion by Senator Jennings, the Senate recessed at 12:37 p.m. to reconvene at 1:30 p.m.

CALL TO ORDER

The Senate was called to order by the President at 1:45 p.m. A quorum present—37:

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Foley	Kirkpatrick	Turner
Brown-Waite	Forman	Kiser	Weinstein
Burt	Grant	Kurth	Wexler
Casas	Harden	McKay	Williams
Childers	Hargrett	Meadows	
Crist	Holzendorf	Myers	
Dantzler	Jenne	Siegel	

BILLS ON THIRD READING

The Senate resumed consideration of—

CS for SB's 2078 and 1608—A bill to be entitled An act relating to postsecondary education; amending s. 240.2601, F.S., relating to the State University System Facility Enhancement Challenge Grant Program; providing that a university may expend funds from private sources for certain fundraising activities; providing that the funds used for fundraising are eligible for matching funds if the facility project is initiated; amending s. 240.2605, F.S., relating to the Trust Fund for Major Gifts; providing for the trust fund to be administered by the Board of Regents as a part of the major gifts program; providing that moneys appropriated for the new donors program and the eminent scholars program shall be transferred into the Trust Fund for Major Gifts; providing that all real estate that is donated for the purposes of the major gifts program shall be administered under rules of the Board of Regents; providing for administration and for matching grants; requiring that foundations submit a report to the Board of Regents specifying the use of the proceeds of endowments established; deleting certain provisions relating to the trust fund; amending s. 240.207, F.S.; providing for a 2-year term of office for the student member of the Board of Regents; amending s. 240.253, F.S.; providing for confidentiality of certain personnel records of university direct-support organizations; amending s. 240.299, F.S.; providing for confidentiality of certain financial information of university direct-support organizations; amending s. 240.522, F.S.; providing for transfer of assets to the direct-support organization for the new state university in southwest Florida; amending s. 240.5285, F.S.; providing for a direct-support organization at the Broward County campus of Florida Atlantic University; prohibiting universities from assessing student fees not authorized by law; providing requirements for organizations that solicit financial support on university campuses; amending s. 215.16, F.S., relating to reductions in vacant positions; amending s. 240.209, F.S.; modifying provisions relating to the setting of fees by the Board of Regents; authorizing varying fee schedules and expenditures; requiring rules relating to financial aid fees; prescribing responsibilities of specified state universities for providing certain programs and services statewide; authorizing instruction in certain disciplines to be provided throughout the state; amending s. 240.2094, F.S.; authorizing an increase in salary rate under certain circumstances; amending s. 240.214, F.S.; revising data in the accountability process plan; requiring additional information in the accountability reports; amending s. 240.271, F.S.; revising provisions relating to funding based on enrollment; providing for the retention and expenditure of certain fee revenues; amending s. 240.272, F.S.; revising provisions relating to the carryforward and expenditure of certain funds; amending s. 240.278, F.S.; revising provisions relating to the required course program and the Quality Assurance Fund; amending ss. 240.531, 282.308, 447.203, F.S.; correcting cross-references; amending s. 240.311, F.S.; revising duties of the State Board of Community Colleges; providing procedures for selection of presidents of community colleges; amending s. 240.319, F.S.; prescribing requirements for rules, procedures, and policies; amending s. 240.324, F.S.; revising community college planning relating to the accountability process; requiring automated student records systems; amending s. 240.325, F.S.; revising provisions relating to guidelines for community colleges; amending s. 240.331, F.S.; conforming provisions; amending s. 240.347, F.S.; revising provisions relating to the State Community College Program Fund; providing community college program requirements; amending s. 240.359, F.S.; providing for community college budgets and budget categories; amending s. 240.363, F.S.; providing requirements for purchases generated from external funding; repealing s. 240.257, F.S., relating to the Florida Endowment Trust Fund for Eminent Scholars Act; repealing s. 240.259, F.S., relating to the Trust Fund for New Donors; repealing ss. 240.349 and 240.361, F.S., relating to requirements for participation in the Community College Program Fund and budgets for community colleges; providing an effective date.

—with pending **Amendment 1A** which was deferred on a point of order by Senator Dudley.

RULING ON POINT OF ORDER

On recommendation of Senator Jennings, Chairman of the Committee on Rules and Calendar, the President ruled the point not well taken.

The question recurred on **Amendment 1A** which failed to receive the required two-thirds vote. The vote was:

Yeas—21 Nays—16

Senator Hargrett moved the following amendment to **Amendment 1** which was adopted by two-thirds vote:

Amendment 1B (with Title Amendment)—On page 7, between lines 11 and 12, insert:

Section 5. Section 240.512, Florida Statutes, 1992 Supplement, is amended to read:

240.512 H. Lee Moffitt Cancer Center and Research Institute.—There is established the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida.

(1) The Board of Regents shall enter into an agreement for the utilization of the facilities on the campus of the University of South Florida to be known as the H. Lee Moffitt Cancer Center and Research Institute, including all furnishings, equipment, and other chattels used in the operation of said facilities, with a Florida not-for-profit corporation *organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute* ~~certified by the Board of Regents as a university direct-support organization pursuant to s. 240.299~~. This not-for-profit corporation, acting as an instrumentality of the State of Florida, shall govern and operate the H. Lee Moffitt Cancer Center and Research Institute in accordance with the terms of the agreement between the Board of Regents and the not-for-profit corporation. *The not-for-profit corporation may, with the prior approval of the Board of Regents, create not-for-profit corporate subsidiaries to fulfill its mission. The not-for-profit corporation and its subsidiaries are authorized to receive, hold, invest, and administer property and any moneys received from private, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the institute, for the benefit of the institute and the fulfillment of its mission.* The affairs of the corporation shall be managed by a board of directors who shall serve without compensation. The President of the University of South Florida and the chairman of the Board of Regents, or his designee, shall be directors of the not-for-profit corporation, together with 5 representatives of the State University System and no more than 14 nor fewer than 10 directors who are not medical doctors or state employees. Each director shall have only one vote, shall serve a term of 3 years, and may be reelected to the board. Other than the President of the University of South Florida and the chairman of the Board of Regents, directors shall be elected by a majority vote of the board. The chairman of the board of directors shall be selected by majority vote of the directors.

(2) The Board of Regents shall provide in the agreement with the not-for-profit corporation for the following:

(a) Approval of the articles of incorporation of the not-for-profit corporation by the Board of Regents.

(b) *Approval of the articles of incorporation of any not-for-profit corporate subsidiary created by the not-for-profit corporation.* ~~Certification of the not-for-profit corporation by the Board of Regents as a university direct-support organization pursuant to s. 240.299.~~

(c) Utilization of hospital facilities and personnel *by the not-for-profit corporation and its subsidiaries* for mutually approved teaching and research programs conducted by the University of South Florida or other accredited medical schools or research institutes.

(d) Preparation of an annual post audit of the not-for-profit corporation's financial accounts and the financial accounts of any subsidiaries to be conducted by an independent certified public accountant. The annual audit report shall include management letters and shall be submitted to the Auditor General and the Board of Regents for review. The Board of Regents and the Auditor General shall have the authority to require and receive from the not-for-profit corporation and any subsidiaries or from their independent auditor any detail or supplemental data relative to the operation of the not-for-profit corporation or subsidiary. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. All records of the not-for-profit corporation and its subsidiaries, other than the auditor's report, management letters, and supplemental data requested by the Board of Regents and the Auditor General, shall be confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(e) Provision by the not-for-profit corporation and its subsidiaries of equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(3) The Board of Regents is authorized to secure comprehensive general liability protection, including professional liability protection, for the not-for-profit corporation *and its subsidiaries* pursuant to s. 240.213.

(4) In the event that the agreement between the not-for-profit corporation and the Board of Regents is terminated for any reason, the Board of Regents shall resume governance and operation of said facilities.

(5) The *institute* ~~cancer center~~ shall be administered by a center director who shall serve at the pleasure of the board of directors of the *not-for-profit corporation* ~~H. Lee Moffitt Cancer Center and Research Institute, Inc.,~~ and who shall have the following powers and duties subject to the approval of the board of directors:

(a) The center director shall establish programs which fulfill the mission of the institute in research, education, treatment, prevention, and the early detection of cancer; however, the center director shall not establish academic programs for which academic credit is awarded and which terminate in the conference of a degree without prior approval of the Board of Regents.

(b) The center director shall have control over the budget and the dollars appropriated or donated to the *institute* ~~center~~ from private, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the *institute* ~~center~~. However, professional income generated by university faculty from practice activities at the *institute* ~~center~~ shall be shared between the *institute* ~~center~~ and the university as determined by the center director and the appropriate university department chairman.

(c) The center director shall appoint members to carry out the research, patient care, and educational activities of the *institute* ~~center~~ and determine compensation, benefits, and terms of service. Members of the *institute* ~~center~~ shall be eligible to hold concurrent appointments at affiliated academic institutions. University faculty shall be eligible to hold concurrent appointments at the *institute* ~~center~~.

(d) The center director shall have control over the use and assignment of space and equipment within the *facilities* ~~facility~~.

(e) The center director shall have the power to create the administrative structure necessary to carry out the mission of the *institute* ~~center~~.

(f) The center director shall have a reporting relationship to the Chancellor of the State University System.

(g) The center director shall provide a copy of the *institute's* ~~center's~~ annual report to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the chairman of the Board of Regents.

(6) The board of directors of the *not-for-profit* corporation shall create a council of scientific advisors to the center director comprised of leading researchers, physicians, and scientists. This council shall review programs and recommend research priorities and initiatives so as to maximize the state's investment in the *institute* ~~center~~. The council shall be appointed by the board of directors of the *not-for-profit* corporation and shall include five appointees of the Board of Regents. Each member of the council shall be appointed to serve a 2-year term and may be reappointed to the council.

(7) In carrying out the provisions of this section, the not-for-profit corporation and its subsidiaries are not "agencies" within the meaning of s. 20.03(11).

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 39, line 16, after the semicolon (;) insert: amending s. 240.512, F.S., relating to the H. Lee Moffitt Cancer Center and Research Institute; providing for creation of subsidiaries with approval of Board of Regents; providing duties; providing for annual post audit report; providing an exemption from public records requirements and providing for review and repeal of such exemption; providing for equal employment opportunity;

Senator Grant moved the following amendment to **Amendment 1** which was adopted by two-thirds vote:

Amendment 1C (with Title Amendment)—On page 17, between lines 3 and 4, insert:

Section 14. Subsection (4), the introductory paragraph of subsection (5), and paragraph (d) of subsection (7) of section 240.551, Florida Statutes, 1992 Supplement, are amended, and paragraph (e) is added to subsection (7) of said section to read:

240.551 Florida Prepaid Postsecondary Education Expense Program.—

(4) There is created within the *State Board of Administration* ~~State Treasury~~ the Prepaid Postsecondary Education Expense Trust Fund. The fund shall consist of state appropriations, moneys acquired from other governmental or private sources, and moneys remitted in accordance with advance payment contracts. All funds deposited into the trust fund may be invested pursuant to s. 215.47; however, such investment shall not be mandatory. Dividends, interest, and gains accruing to the trust fund shall increase the total funds available for the program. Any balance contained within the fund at the end of a fiscal year shall remain therein and shall be available for carrying out the purposes of the program. In the event that dividends, interest, and gains exceeds the amount necessary for program administration and disbursements, the board may designate an additional percentage of the fund to serve as a contingency fund. Moneys contained within the fund shall be exempt from the investment requirements of s. 18.10. Any funds of a direct-support organization created pursuant to paragraph (5)(j) shall be exempt from the provisions of this paragraph.

(5) The Florida Prepaid Postsecondary Education Expense Program shall be administered by the Prepaid Postsecondary Education Expense Board as an agency of the state. The Prepaid Postsecondary Education Expense Board is hereby created as a body corporate with all the powers of a body corporate for the purposes delineated in this section. For the purposes of s. 6, Art. IV of the State Constitution, the board shall be assigned to and administratively housed within the *State Board of Administration* ~~Division of Benefits of the Department of Insurance~~, but it shall independently exercise the powers and duties specified in this section. The board shall consist of seven members to be composed of the Insurance Commissioner and Treasurer, the Comptroller, the Chancellor of the Board of Regents, the Executive Director of the State Board of Community Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of accounting, actuary, risk management, or investment management. Each member of the board not appointed by the Governor may name a designee to serve the board on behalf of the member; however, any designee so named shall meet the qualifications required of gubernatorial appointees to the board. Members appointed by the Governor shall serve terms of 3 years except that, in making the initial appointments, the Governor shall appoint one member to serve for 1 year, one member to serve for 2 years, and one member to serve for 3 years. Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve for only the unexpired term. Any member shall be eligible for reappointment and shall serve until a successor qualifies. Members of the board shall serve without compensation but shall be reimbursed for per diem and travel in accordance with s. 112.061. Each member of the board shall file a full and public disclosure of his financial interests pursuant to s. 8, Art. II of the State Constitution and corresponding statute.

(7) At a minimum, the board shall make advance payment contracts available for three independent plans to be known as the community college plan, the university plan, and the dormitory residence plan, respectively.

(d) A qualified beneficiary may apply a community college plan, university plan, or dormitory residence plan toward any eligible independent college or university. An independent college or university which is located and chartered in Florida, is not for profit, is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Commission of the Association of Independent Colleges and Schools, and which confers degrees as defined in s. 246.021 shall be eligible for such application. ~~In order to be eligible for participation in the dormitory residence plan, an eligible independent college or university shall provide written certification to the board that it complies with the provisions of paragraph (e).~~ The board shall transfer or cause to have transferred to the eligible independent college or university designated by the qualified beneficiary an amount not to exceed the redemption value of the *advance payment contract* ~~plan~~ within a state postsecondary institution. In the event that the cost of registration or housing fees at the independent college or university is less than the corresponding fees at a state postsecondary institution, the amount transferred shall not exceed the actual cost of registration or housing fees. No transfer authorized pursuant to this paragraph shall exceed the number of semester credit hours or semesters of dormitory residence contracted on behalf of a qualified beneficiary.

(e) A qualified beneficiary may apply the benefits of an advance payment contract toward an eligible out-of-state college or university. An out-of-state college or university which is not for profit, is accredited by a regional accrediting association, and which confers baccalaureate degrees shall be eligible for such application. The board shall transfer, or cause to have transferred, an amount not to exceed the redemption value of the advance payment contract or the original purchase price plus 5 percent compounded interest, whichever is less, after assessment of a reasonable transfer fee. In the event that the cost of registration or housing fees charged the qualified beneficiary at the eligible out-of-state college or university is less than this calculated amount, the amount transferred shall not exceed the actual cost of registration or housing fees. Any remaining amount shall be transferred in subsequent semesters until the transfer value is depleted. No transfer authorized pursuant to this paragraph shall exceed the number of semester credit hours or semesters of dormitory residence contracted on behalf of a qualified beneficiary.

Section 2. The Florida Prepaid Postsecondary Education Expense Program is hereby transferred to and is administratively housed within the State Board of Administration. Such transfer does not affect the validity of any judicial or administrative proceeding pending on the effective date of the transfer. All powers, duties, and functions of the Prepaid Postsecondary Education Expense Board shall remain with the board and all records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the program are transferred to the State Board of Administration. This section does not affect any source of revenue, provided by law, for the program. Any administrative rule, related to the program, in effect at the time of the transfer shall remain in effect until changed as provided by law.

Section 3. Interlocal agreements.—An independent nonprofit college or university that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools is considered a local government entity for the sole purpose of entering into an interlocal agreement for pooling of risks as provided by section 440.575, Florida Statutes; however, no governmental entity shall be liable for any assessment for losses of any other local governmental entity.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 40, line 15, after the semicolon (;) insert: amending s. 240.551, F.S., relating to the Florida Prepaid Postsecondary Education Expense Program; transferring the program from the Department of Insurance to the State Board of Administration; revising provisions relating to the application of plans to independent colleges or universities; authorizing the application of benefits of an advance payment contract toward an eligible out-of-state college or university; providing conditions; preserving the validity of certain proceedings related to the program at the time of transfer; preserving certain powers and duties of the Prepaid Postsecondary Education Expense Board; transferring records, personnel, property, and certain funds of the program to the State Board of Administration; preserving revenue sources and administrative rules of the program; authorizing certain colleges and universities to enter into interlocal agreements for the purpose of pooling risks; restricting liability for assessments for losses; providing an effective date.

Senator Williams moved the following amendment to **Amendment 1** which failed:

Amendment 1D (with Title Amendment)—On page 37, between lines 21 and 22, insert:

Section 28. Subsection (2) of section 240.2475, Florida Statutes, 1992 Supplement, is amended to read:

240.2475 State University System equity accountability program.—

(2)(a) By October 31 of each year, each state university president shall submit an equity accountability report to the Chancellor and the Board of Regents which shows the number of administrative positions in the faculty and in the administrative and professional pay plans which were filled in the previous fiscal year. Administrative positions include faculty positions that, in whole or in part, are defined as academic admin-

istration under standard practice CM 87-17.1 and positions in the administrative and professional pay plans that are defined as administrative positions under the Board of Regents' classification of occupational groupings. The report must include the following information pertaining to the employees hired in those positions:

1. Job classification title;

2. Gender;

3. Ethnicity;

4. Appointment status pursuant to chapter 6C-5.105, Florida Administrative Code;

5. The salary at which the individual was hired;

6. Comparative information including, but not limited to, composite information regarding the total number of positions within the particular job title classification for the university by race, gender, and the average salary or salary range, where applicable, compared to the number of new hires;

7. Guidelines for ensuring a gender-balanced and ethnically balanced selection committee for each vacancy;

8. Steps taken to develop a diverse pool of candidates for each vacancy; and

9. An assessment of the university's accomplishment of annual goals and of long-range goals for hiring and promoting women and minorities in senior-level administrative positions.

(b) Each university's equity accountability report must also include the following information pertaining to candidates formally applying for tenure:

1. Rank;

2. Gender;

3. Ethnicity;

4. The salary at which the individual was hired; and

5. Comparative information including, but not limited to, composite information regarding the total number of positions within the particular classification for the university by race, gender, and the average salary or salary range, where applicable, compared to the number of new hires.

(c) The report must also include:

1. The requirements for achieving tenure;

2. The total number of faculty tenureships available for award each year must be determined annually by the Legislature.

3.~~2.~~ The gender and ethnic composition of the committees that review tenure recommendations at the department, college, and university levels;

4.~~3.~~ Guidelines for ensuring the equitable distribution of assignments that would enhance tenure opportunities for women and minority faculty; and

5.~~4.~~ Guidelines for obtaining feedback on the annual progress towards achievement of tenure by women and minorities.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 41, line 17, after the semicolon (;) insert: amending s. 240.2475, F.S.; providing for the Legislature to determine the total number of faculty tenureships available for award each year;

Senator Kirkpatrick moved the following amendments to **Amendment 1** which were adopted by two-thirds vote:

Amendment 1E (with Title Amendment)—On page 37, between lines 19 and 20, insert:

Section 5. Paragraph (b) of subsection (1) of section 240.115, Florida Statutes, is amended to read:

240.115 Articulation agreement; acceleration mechanisms.—

(1)

(b) Any student who transfers among postsecondary institutions that participate in the common course designation and numbering system *and are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools* shall be awarded credit by the receiving institution for courses satisfactorily completed by the student at the previous institutions if the courses are judged by the appropriate common course designation and numbering system faculty task force to be equivalent to courses offered at the receiving institution. *Similarly, students who transfer among postsecondary adult vocational institutions accredited by the Southern Association of Colleges and Schools shall be awarded vocational credit for courses deemed equivalent in the course numbering system.* The award of credit may be limited to courses that are entered in the common course designation and numbering system. Credits awarded pursuant to this subsection shall satisfy institutional requirements on the same basis as credits awarded to native students.

Section 6. This act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 4, line 3, insert: amending s. 240.115, F.S.; providing an additional criterion for postsecondary institutions that award course credit for transferring students;

Amendment 1F (with Title Amendment)—On page 37, between lines 19 and 20, insert:

Section 22. Section (3) of section 240.331, Florida Statutes, is amended to read:

(3) ANNUAL AUDIT*; CONFIDENTIALITY.*—

(a) Each direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent certified public accountant in accordance with rules ~~to be~~ promulgated by the *Auditor General* ~~district board of trustees~~. The annual audit report shall be submitted to the Auditor General and the board of trustees for review. The board of trustees and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization.

(b) All information about a donor or a prospective donor which, if released, would identify that donor is exempt from the provisions of s. 119.07(1). Except for expenditure information, marketing strategies and campaign plans are exempt from the provisions of s. 119.07(1). In any case in which a direct-support organization seeks to sell real property, all appraisals and other reports relating to value, offers, and counteroffers must be in writing and are exempt from the provisions of s. 119.07(1) until execution of a valid option contract or written offer to sell has been conditionally accepted by the buyer, at which time the exemption shall expire. For the purpose of this paragraph, "option contract" means an agreement of the direct-support organization to sell real property subject to final approval by the buyer of the real property. ~~The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.~~ All *other* records of the organization *are public records for the purpose of chapter 119* ~~, other than the information necessary for the annual report required by s. 240.311(3)(h)6. and the auditor's report and supplemental data requested by the board of trustees and the Auditor General, shall be confidential and exempt from the provisions of s. 119.07(1)~~. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 24. Subsection (3) of section 240.3315, Florida Statutes, is amended to read:

240.3315 Statewide community college direct-support organizations.—

(3) ANNUAL AUDIT*; CONFIDENTIALITY.*—

(a) A statewide community college direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent certified public accountant in accordance with rules *promulgated* ~~to be adopted~~ by the *Auditor General* ~~State Board of Community Colleges~~. The annual audit report shall be submitted to the Auditor General and the State Board of Community Colleges for review. The State Board of Community Colleges and the Auditor

General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization.

(b) Unless a donor requests anonymity in writing, names of donors are public record. All other information about a donor which, if released, would identify that donor is exempt from the provisions of s. 119.07(1). All information about a prospective donor which, if released, would identify that prospective donor is exempt from the provisions of s. 119.07(1). Except for expenditure information and data, marketing strategies and campaign plans are exempt from the provisions of s. 119.07(1). ~~The identity of donors who desire to remain anonymous shall be protected, and the anonymity shall be maintained in the auditor's report.~~ All *other* records of the organization *are public records for the purpose of chapter 119* ~~, other than the information necessary for the annual report required by s. 240.311 and the auditor's report and supplemental data requested by the State Board of Community Colleges and the Auditor General, shall be confidential and exempt from the provisions of s. 119.07(1)~~. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 25. Section 240.337, Florida Statutes, is amended to read:

240.337 Records of personnel.—Rules of the State Board of Community Colleges shall prescribe the content and custody of limited access records which a community college *or a community college direct-support organization* may maintain on its employees. Such records shall be limited to information reflecting evaluations of employee performance and shall be open to inspection only by the employee and by officials of the college *or direct-support organization* who are responsible for supervision of the employee. Such limited access employee records are confidential and exempt from the provisions of s. 119.07(1). Except as required for use by the president in the discharge of his official responsibilities, the custodian of limited access employee records may release information from such records only upon authorization in writing from the employee or the president or upon order of a court of competent jurisdiction. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 3, lines 21 and 22, strike "conforming provisions" and insert: revising provisions pertaining to confidentiality of records; amending 240.3315, F.S.; pertaining to confidentiality of certain audit records; amending 240.337, F.S.; permitting the Board of Community Colleges to prescribe the confidentiality of certain records of direct-support organizations

Amendment 1 as amended was adopted by two-thirds vote.

On motion by Senator Kirkpatrick, **CS for SB's 2078 and 1608** as amended was read by title, passed, ordered engrossed and then certified to the House.

Yeas—35 Nays—None

SPECIAL ORDER, continued

Consideration of **CS for SB 772** and **CS for SB 1500** was deferred.

CS for SB 2224—A bill to be entitled An act relating to commercial motor vehicles; amending s. 316.003, defining the term "tandem axle"; amending 316.302, F.S.; conforming to federal regulations; amending s. 316.515, F.S.; revising language with respect to maximum width, height, and length limitations for certain vehicles; amending s. 316.516, F.S.; revising language with respect to penalties for violation of width, height, and length limitation; providing for penalties by rule; amending s. 316.545, F.S.; revising language with respect to weight tolerance and the enforcement of weight laws; providing for weight inspection; amending s. 316.550, F.S.; prohibiting the operation of oversize or overweight vehicles without special permits; providing criteria to be contained in permits; providing penalties; providing for the disposition of penalties; amending s. 316.655, F.S.; conforming to the act with respect to penalties; amending s. 316.70, F.S.; providing a definition of "nonpublic-sector bus"; revising safety standards relating to nonpublic-sector buses; providing an effective date.

—was read the second time by title. On motion by Senator Johnson, by two-thirds vote **CS for SB 2224** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—30 Nays—5

CS for CS for SB 516—A bill to be entitled An act relating to alcoholic beverages; amending s. 561.025, F.S.; providing for deposit of fees collected; amending s. 561.19, F.S.; revising time limits for beverage license applicants to take certain actions; amending s. 561.20, F.S.; revising prohibitions against the award of new licenses to holders of existing licenses; amending s. 561.23, F.S.; deleting the requirement that a triplicate license be forwarded to the district office in the county in which the license is located; amending s. 561.33, F.S.; providing fees for change of licensee name or location; amending s. 561.501, F.S., revising the formula for assessing penalties; adding interest charges; establishing criteria for determining taxpayer liability; repealing s. 561.12, F.S., providing for deposit of revenues; amending s. 567.06, F.S.; specifying ballot contents; requiring the Department of Business Regulation to perform an alcoholic beverage surcharge study; requiring a report to the Governor, President of the Senate, and Speaker of the House of Representatives; providing appropriations; providing an effective date.

—was read the second time by title. On motion by Senator Forman, by two-thirds vote **CS for CS for SB 516** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—4

On motions by Senator Dantzler, by two-thirds vote **CS for CS for HB 1751** was withdrawn from the Committees on Natural Resources and Conservation; Governmental Operations; and Appropriations.

On motion by Senator Dantzler—

CS for CS for HB 1751—A bill to be entitled An act relating to the merging of the Department of Natural Resources and the Department of Environmental Regulation; providing a declaration of policy; creating the Department of Environmental Protection and transferring the Department of Natural Resources and the Department of Environmental Regulation to such department; providing for the appointment and establishment of the head of the department; establishing divisions within the department; providing for future review and repeal; amending ss. 253.002, 259.035, and 370.017, F.S.; conforming certain provisions; transferring the Department of Natural Resources, the Department of Environmental Regulation, including the Environmental Regulation Commission to the new department; transferring the Marine Fisheries Commission to the Board of Trustees of the Internal Improvement Trust Fund; organizing the Department of Environmental Protection as a single budget entity; requiring the department to report to the 1994 Legislature with certain recommendations; providing content of the report; mandating savings in the areas of executive direction and administration; repealing ss. 20.25 and 20.261, F.S., relating to the Department of Natural Resources and the Department of Environmental Regulation, respectively; providing a directive to the Division of Statutory Revision; providing an effective date.

—a companion measure, was substituted for **CS for SB 1500** and read the second time by title.

Senator Dantzler moved the following amendments which were adopted:

Amendment 1—On page 3, strike all of lines 12-16 and insert:

(1) *The head of the Department of Environmental Protection shall be a secretary, who shall be appointed by the Governor, with the concurrence of three or more members of the Cabinet. The secretary shall be confirmed by the Florida Senate. The secretary shall serve at the pleasure of the Governor.*

Amendment 2 (with Title Amendment)—On page 6, between lines 10 and 11, insert:

Section 4. There is created as a part of the Department of Environmental Protection an Environmental Regulation Commission. The commission shall be composed of seven citizens of this state appointed by the Governor, subject to confirmation by the Senate. The commission shall

include one, but not more than two, members from each water management district who have resided in the district for at least 1 year, and the remainder shall be selected from the state at large. Membership shall be representative of, but not limited to, interested groups including agriculture, real estate, environmentalists, the construction industry, and lay citizens. The Governor shall appoint the chairman, and the vice chairman shall be elected from among the membership. The members serving on the council on July 1, 1993 shall continue to serve on the commission for the remainder of their current terms. All appointments thereafter shall continue to be for 4-year terms. The Governor may at any time fill a vacancy for the unexpired term. The members of the commission shall serve without compensation, but shall be paid travel and per diem as provided in s. 112.061 while in the performance of their official duties. Administrative, personnel, and other support services necessary for the commission shall be furnished by the department.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 13, after the semicolon (;) insert: reestablishing the Environmental Regulation Commission

Senator Dantzler moved the following amendment:

Amendment 3 (with Title Amendment)—On page 10, between lines 12 and 13, insert:

Section 14. It is the intent of the Legislature to transfer the protection of wetlands and the permitting of wetlands impacts encompassed by the Warren S. Henderson Wetlands Protection Act of 1984 to chapter 373, Florida Statutes. It is the further intent of the Legislature that the Department of Environmental Regulation and the water management districts shall consolidate all permits for activities involving dredging and filling, management and storage of surface waters including stormwater control, and the alteration of mangroves into a single type of permit, which shall be known as an "environmental resource permit."

Section 15. Subsection (4) is added to section 373.016, Florida Statutes, to read:

373.016 Declaration of policy.—

(4) It is further declared the policy of the Legislature that each water management district, to the extent consistent with effective management practices, shall closely approximate its fiscal and budget policies and procedures to those of the state.

Section 16. Subsection (17) is added to section 373.019, Florida Statutes, to read:

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the following words shall, unless the context clearly indicates otherwise, mean:

(17) For the sole purpose of serving as the basis for the unified statewide methodology adopted pursuant to s. 373.421(1), as amended, "wetlands" means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. Upon legislative ratification of the methodology adopted pursuant to s. 373.421(1), as amended, the limitation contained herein regarding the purpose of this definition shall cease to be effective.

Section 17. Subsection (4) is added to section 373.046, Florida Statutes, to read:

373.046 Interagency agreements.—

(4) The Legislature recognizes and affirms the division of responsibilities between the department and the water management districts as set forth in sections III. and X. of each of the operating agreements codified as rules 17-101.040(12)(a)3., 4., and 5., Florida Administrative Code. Section IV.A.2.a. of each operating agreement regarding individual permit oversight is rescinded. The department shall be responsible for permitting those activities under part IV of this chapter which, because of their complexity and magnitude, need to be economically and efficiently evaluated at the state level, including, but not limited to, mining, hazardous waste management facilities and solid waste management facilities that do not qualify for a general permit under chapter 403, Florida Statutes. With regard to post-certification information submittals for activities authorized under chapters 341 and 403 siting act certifications, the department, after consultation with the appropriate water management district and other agencies having applicable regulatory jurisdiction, shall be responsible for determining the permittee's compliance with conditions of certification which were based upon the non-procedural requirements of part IV of this chapter. The Legislature authorizes the water management districts and the department to modify the division of responsibilities referenced in this section and enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, to provide for greater efficiency and to avoid duplication in the administration of part IV of this chapter by designating certain activities which will be regulated by either the water management districts or the department. In developing such interagency agreements, the water management districts and the department should take into consideration the technical and fiscal ability of each water management district to implement all or some of the provisions of part IV of this chapter. Nothing herein rescinds or restricts the authority of the districts to regulate silviculture and agriculture pursuant to part IV of chapter 373 or s. 403.927. By December 10, 1993, the secretary of the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the efficiency of the procedures and the division of responsibilities contemplated by this subsection and regarding progress toward the execution of further interagency agreements and the integration of permitting with sovereignty lands approval. The report also will consider the feasibility of improving the protection of the environment through comprehensive criteria for protection of natural systems.

Section 18. Paragraphs (a) and (b) of subsection (4) of section 373.079, Florida Statutes, are amended to read:

373.079 Members of governing board; oath of office; staff.—

(4)(a) The governing board of the district is authorized to employ an executive director and such engineers, other professional persons, and other personnel and assistants as it deems necessary and under such terms and conditions as it may determine and to terminate such employment. *The appointment of an executive director must be initially confirmed by the Florida Senate.* The governing board may delegate all or part of its authority under this paragraph to the executive director.

(b) *1. The governing board of each* ~~Any internal auditor employed by a~~ water management district shall *employ a chief internal auditor, who* ~~be hired by the governing board of the water management district and~~ shall report directly to the board. *However, the governing boards of the Suwannee River Water Management District and the Northwest Florida Water Management District may provide for internal audit services by contract, or may enter into an interagency agreement to jointly employ a chief internal auditor.*

2. A chief internal auditor must have the qualifications prescribed and conduct audits in the manner provided in s. 20.055.

3. Within 45 days of the adoption of the final budget, the governing board shall submit a 5 year capital improvement plan and fiscal report for the district to the Governor, the President of the Senate, Speaker of the House and Secretary of the Department of Environmental Regulation. The capital improvement plan must include expected sources of revenue for planned improvements and shall be prepared in a manner comparable to the fixed capital outlay format set forth in s. 216.043, Florida Statutes. The fiscal report shall cover the preceding fiscal year and shall include a summary statement of the financial operations of the district.

Section 19. Subsection (5) of section 373.536, Florida Statutes, is amended to read:

373.536 District budget and hearing thereon.—

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

1. The millage rates and the percentage increase above the rolled-back rate, *together with a summary of the reasons the increase is required,* and the percentage increase in taxable value resulting from new construction;

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

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

4. A 5-year capital improvements plan; and

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

(b) The department shall, by September 5 of the year in which the budget is submitted, after taking into account continuing and proposed program needs, provide its review and comments to the governing board and the Governor. *By September 5 of the year in which the budget is submitted, the Executive Office of the Governor and the House and Senate Appropriations Chairmen may transmit to each district comments and objections to the proposed budgets. Each district governing board shall include a response to such comments and objections in the record of the governing board meeting where final adoption of the budget takes place, and the record of this meeting shall be transmitted to the Executive Office of the Governor, the department, and the Chairmen of the House and Senate Appropriations Committees.*

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

Section 20. Section 373.109, Florida Statutes, is amended to read:

373.109 Permit application fees.—When a water management district governing board, *the department, or a local government* implements a regulatory system under this chapter or one which has been delegated ~~to it~~ pursuant to chapter 403, it may establish a schedule of fees for filing applications for the required permits. Such fees shall not exceed the cost to the district, *the department, or the local government* for processing, monitoring, and inspecting for compliance with the permit.

(1) All moneys received under the provisions of this section shall be allocated for the use of the water management district, *the department, or the local government, whichever processed the permit,* and shall be in addition to moneys otherwise appropriated in any general appropriation act. *All moneys received by the department under the provisions of this section shall be deposited in the Florida Permit Fee Trust Fund established by s. 403.0871 and shall be used by the department as provided therein. Moneys received by a water management district or the department under the provisions of this section shall be in addition to moneys otherwise appropriated in any general appropriation act.*

(2) The failure of any person to pay the fees established hereunder constitutes grounds for revocation or denial of the permit.

Section 21. Subsection (1) of section 373.114, Florida Statutes, is amended to read:

373.114 Land and Water Adjudicatory Commission; review of district rules and orders; department review of district rules.—

(1) Except as provided in subsection (2), the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district, other than a rule relating to an internal procedure of the district, to ensure consistency with the provisions and purposes of this chapter. *Subsequent to the legislative ratification of the delineation methodology pursuant to s. 373.421(1), this subsection also shall apply to an order of the department, or a local government exercising delegated authority, pursuant to ss. 373.403-373.443, except an order pertaining to activities or operations subject to conceptual plan approval pursuant to chapter 378.*

(a) Such review may be initiated by the department or by a party to the proceeding *below* by filing a request for review with the Land and Water Adjudicatory Commission and serving a copy on the department and on any person named in the rule or order within 20 days after adoption of the rule or the rendering of the order~~; however, when the rule or order to be reviewed has statewide or regional significance, as determined by the Land and Water Adjudicatory Commission within 60 days after receipt of a request for review, the commission may accept a request for review from any affected person within 30 days after adoption of the rule or the rendering of the order~~. *For the purposes of this section, the term "party" means any affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the rule or order that are cognizable within the scope of the provisions and purposes of this chapter, or any person who participated as a party in a proceeding instituted pursuant to chapter 120. In order for the commission to accept a request for review initiated by a party below, with regard to a specific order, four members of the commission must determine on the basis of the record below that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. Review of an order may also be accepted if four members of the commission determines that the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from the standpoint of agency precedent. The party requesting the commission to review an order must allege with particularity, and the commission must find, that:*

1. The order is in conflict with statutory requirements; or

2. The order is in conflict with the requirements of a duly adopted rule.

(b) Review by the Land and Water Adjudicatory Commission is appellate in nature and shall be based *solely* on the record below. *If there was no evidentiary administrative proceeding below, the facts contained in the proposed agency action, including any technical staff report, shall be deemed undisputed.* The matter shall be heard by the commission not more than 60 days after receipt of the request for review, *unless waived by the parties* ~~or the determination by the commission that the rule or order has statewide or regional significance, whichever is later~~.

(c) If the Land and Water Adjudicatory Commission determines that a rule *of a water management district* ~~or order~~ is not consistent with the provisions and purposes of this chapter, it may~~, in the case of a rule,~~ require the water management district to initiate rulemaking proceedings to amend or repeal the rule. *If the commission determines that an order is not consistent with the provisions and purposes of this chapter, the commission may* ~~or, in the case of an order,~~ rescind or modify the order or remand the proceeding ~~to the water management district~~ for further action consistent with the order of the Land and Water Adjudicatory Commission *only if the commission determines that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. In the case of an order which does not itself substantially affect natural resources of statewide or regional significance, but which raises issues of policy that have regional or statewide significance from the standpoint of agency precedent, the commission may direct the district to initiate rulemaking to amend its rules to assure that future actions are consistent with the provisions and purposes of this chapter without modifying the order.*

(d) In a review under this section of a construction permit issued pursuant to a conceptual permit under part IV, which conceptual permit is issued after July 1, 1993, a party to the review may not raise an issue which was or could have been raised in a review of the conceptual permit under this section.

(e) ~~(d)~~ A request for review under this section shall not be a precondition to the seeking of judicial review pursuant to s. 120.68 or the seeking of an administrative determination of rule validity pursuant to s. 120.56.

(f) By July 1, 1994 the Florida Land and Water Adjudicatory Commission shall adopt amendments to its procedural rules to include provisions for the scheduling of meetings to hear requests for review to assure maximum participation by members of the commission.

(g) For the purpose of this section, it shall be presumed that activity authorized by an order will not affect resources of statewide or regional significance if the proposed activity:

1. Occupies an area less than 10 acres in size, and

2. Does not create impervious surfaces greater than 2 acres in size, and

3. Is not located within 550 feet of the shoreline of a named body of water designated as Outstanding Florida Waters, and

4. Does not adversely affect threatened or endangered species.

This paragraph shall not operate to hold that any activity that exceeds these limits is presumed to affect resources of statewide or regional significance. The determination of whether an activity will substantially affect resources of statewide or regional significance shall be made on a case-by-case basis, based upon facts contained in the record below.

Section 22. Subsection (7) is added to section 373.129, Florida Statutes, to read:

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

(7) Enforce the provisions of part IV of this chapter in the same manner and to the same extent as provided in ss. 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

Section 23. Subsections (13), (14), (15), (16), and (17) are added to section 373.403, Florida Statutes, to read:

373.403 Definitions.—When appearing in this part or in any rule, regulation, or order adopted pursuant thereto, the following terms mean:

(13) "Dredging" means excavation, by any means, in surface waters or wetlands, as delineated in s. 373.421(1). It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in s. 373.421(1), directly or via an excavated water body or series of water bodies.

(14) "Filling" means the deposition, by any means, of materials in surface waters, as described in s. 403.031(13), or wetlands.

(15) "Estuary" means a semienclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(16) "Lagoon" means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(17) "Seawall" means a manmade wall or encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion.

Section 24. Section 373.4135, Florida Statutes, is created to read:

373.4135 Mitigation and mitigation banking.—The Legislature finds that the adverse impacts of activities regulated under this part may be offset by the creation and maintenance of regional mitigation areas or mitigation banks. Mitigation banks can minimize mitigation uncertainty and provide ecological benefits. Therefore, the department and the water management districts are directed to participate in and encourage the establishment of private and public regional mitigation areas and mitigation banks. The department and the districts are directed to adopt rules by January 1, 1994 governing the use of mitigation banks. Such rules shall include:

(1) Circumstances in which mitigation banking is appropriate or desirable;

(2) Provisions for the establishment of mitigation banks by governmental, nonprofit, or for-profit private entities with sufficient legal or equitable interest in the property proposed for mitigation banking;

(3) Procedures for the review of mitigation banking proposals in a timely manner pursuant to chapter 120;

(4) A framework for determining the value of a mitigation bank, considering the ecological value of the mitigation bank compared to the area where adverse impacts to wetlands or surface waters are proposed. Mitigation banks found to be successful prior to withdrawal of credit shall receive greater credit than mitigation which has not yet achieved success;

(5) Procedures for the administration of bank credits so that accounting responsibilities are not unnecessarily duplicated between a water management district and the department;

(6) Requirements to ensure the financial responsibility of nongovernmental entities proposing to develop mitigation banks;

(7) Measures required to ensure the long term management and protection of mitigation banks;

(8) Criteria for the withdrawal of mitigation credits by projects within or outside the regional watershed where the bank is located;

(9) Criteria governing the contribution of funds or land to an approved mitigation bank;

(10) Criteria allowing the withdrawal of credits by parties other than the party creating the bank; and

(11) Provisions for the consideration of creation, restoration, enhancement, and preservation of wetlands and uplands as part of a mitigation bank.

Section 25. Section 373.414, Florida Statutes, is amended to read:

373.414 *Additional criteria for activities in surface waters and* wetlands.—

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031(13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(a) In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

5. Whether the activity will be of a temporary or permanent nature;

6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or 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 regulated activity. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.

(c) Where activities for a single project regulated under this part occur in more than one local government jurisdiction, and where permit conditions or regulatory requirements are imposed by a local government for these activities which cannot be reconciled with those imposed by a permit under this part for the same activities, the permit conditions or regulatory requirements shall be controlled by the permit issued under this part.

(2) The governing board or the department is authorized to establish by rule ~~By March 31, 1987, for those water management districts to which the department has delegated the responsibility for administration of its stormwater rule, each district shall adopt a rule which establishes~~ specific permitting criteria *in addition to the other criteria in this part which provides* ~~for certain small isolated wetlands which are not within the jurisdiction of the department for purposes of regulation of dredging and filling. The rule shall include:~~

(a) One or more size thresholds of isolated wetlands below which impacts on fish and wildlife and their habitats will not be considered. These thresholds shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal.~~;~~

~~(b) Criteria for review of fish and wildlife and their habitats for isolated wetlands larger than the minimum size;~~

(b)~~(c)~~ Criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use ~~; and~~

~~(d) Provisions for consideration of the cumulative and offsite impacts of a project or projects.~~

(3) It is the intent of the Legislature to provide for the use of certain wetlands as a natural means of stormwater management and to incorporate these waters into comprehensive stormwater management when such use is compatible with the ecological characteristics of such waters and with sound resource management. To accomplish this, the governing board or the department is authorized to establish by rule performance standards for the issuance of permits for the use of certain wetlands for stormwater management. The compliance with such standards creates a presumption that the discharge from the stormwater management system meets state water quality standards.

(4) It is the intent of the Legislature to provide for the use of certain wetlands to receive and treat domestic wastewater that at a minimum has been treated to secondary standards. The department may, by rule, establish criteria for this activity, which criteria protect the type, nature, and function of the wetlands receiving the wastewater.

(5)(a) It is the intent of the Legislature to protect estuaries and lagoons from the damage created by construction of vertical seawalls and to encourage construction of environmentally desirable shore protection systems, such as riprap and gently sloping shorelines which are planted with suitable aquatic and wetland vegetation.

(b) No permit under this part to create a vertical seawall may be issued by the governing board or the department unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in s. 315.02 or s. 403.021;

2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;

3. The proposed construction is located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or

4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(c) When considering an application for a permit to repair or replace an existing vertical seawall, the governing board or the department shall generally require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in paragraph (b) exists.

(d) This subsection shall in no way hinder any activity previously exempt or permitted or those activities permitted pursuant to chapter 161.

(6)(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 section, such 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 part 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 part 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 regulated activities' adverse impacts on surface waters and wetlands.

(d) Onsite reclamation of the mine pit for limerock and sand mining shall be conducted in accordance with the requirements of chapter 378.

1. Mitigation activities for limerock and sand mining must offset the regulated activities' adverse impacts on surface waters and wetlands. Mitigation activities shall be located on site, unless onsite mitigation activities are not feasible, in which case, offsite mitigation as close to the activities as possible shall be required. However, mitigation banking may be an acceptable form of mitigation, whether on or off site, 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.

(7)~~(2)~~ This section *shall* ~~does~~ not *be construed to diminish* ~~affect~~ the *jurisdiction or* authority *granted prior to the effective date of this act to* ~~of~~ the water management districts *or the department pursuant to this part, including their jurisdiction and authority over isolated wetlands. The provisions of this section shall be deemed supplemental to the existing jurisdiction and authority under this part* ~~to regulate impacts on water quality and water quantity~~.

(8) The governing board or the department, in deciding whether to grant or deny a permit for an activity regulated under this part shall consider the cumulative impacts upon surface water and wetlands, as delineated in s. 373.421(1), within the same drainage basin as defined in s. 373.403(9), of:

(a) The activity for which the permit is sought.

(b) Projects which are existing or activities regulated under this part which are under construction or for projects which permits or determinations pursuant to s. 373.421 or s. 403.914 have been sought.

(c) Activities which are under review, approved, or vested pursuant to s. 380.06, or other activities regulated under this part which may reasonably be expected to be located within surface waters or wetlands, as delineated in s. 373.421(1), in the same drainage basin as defined in s. 373.403(9), based upon the comprehensive plans, adopted pursuant to chapter 163, of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate the provisions of this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(29) and may include the special criteria adopted pursuant to s. 403.061(35). Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

(10) The department in consultation with the water management districts, by rule, shall establish water quality criteria for wetlands, which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

(11) In addition to the statutory exemptions applicable to this part, dredging and filling permitted under or exempted from ss. 403.91-403.929 shall be exempt from the rules adopted pursuant to s. 373.414(9) if the dredging and filling activity did not require a permit under this part prior to the effective date of such rules. The exemption from such rules shall extend to:

(a) The activities approved by said chapter 403 permit for the term of the permit; or

(b) Dredging and filling exempted from the permitting requirements of ss. 403.91-403.929 which is commenced prior to the effective date of such rules, is completed within 5 years after the effective date of such rules, and regarding which, at all times during construction, the terms of the dredge and fill exemption continue to be met.

(12) Activities permitted pursuant to this part and which were either exempt or permitted pursuant to ss. 403.91-403.929 prior to the implementation of rules adopted pursuant to s. 373.414(9) shall be exempt from such rules. This exemption shall be for the plans, terms, and conditions approved in the permit issued under this part or in any permit issued under ss. 403.91-403.929, and shall be valid for the term of such permits.

(13) Any declaratory statement issued by the department under s. 403.914 or a water management district under s. 373.421 prior to the effective date of the rules adopted under s. 373.414(9) shall continue to be valid for the duration of such declaratory statement. In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under s. 373.414(9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(21), the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in Rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall remain in effect for a period of five years following the effective date of this act if proof of such validation is submitted to the department within six months after the effective date of this act. Activities proposed within the boundaries of a valid declaratory statement or revalidated jurisdictional determination prior to its expiration shall continue thereafter to be reviewed under the rules adopted pursuant to this part and part VIII of chapter 403 in existence prior to the effective date of the rules adopted under s. 373.414(9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with s. 373.414(9).

(14) An application under this part for dredging and filling or other activity, which is submitted and complete prior to the effective date of rules adopted pursuant to s. 373.414(9) shall be reviewed under the rules adopted pursuant to this part and part VIII of chapter 403 in existence prior to the effective date of the rules adopted pursuant to subsection (9) and shall be acted upon by the agency which received the application, unless the applicant elects to have such activities reviewed under the rules of this part as amended in accordance with s. 373.414(9).

(15) Activities associated with mining operations as defined by and subject to chapter 378 which are subject to an interagency agreement or water management district rule in effect as of January 1, 1993 pursuant to 373.046(3) shall continue to be reviewed under the rules of the department under part VIII of chapter 403, the rules of the water management districts under this part, and such interagency agreements, in effect on January 1, 1993, until such time as the department and the Department of Natural Resources are merged and such rules are modified or repealed or until January 1, 1996, whichever occurs first.

(16) Until October 1, 1994, permit applications for sand, limerock, and limestone mining activity which had qualified under the terms of s. 403.913(8) shall be reviewed under the rules adopted pursuant to this part and part VIII of chapter 403 in existence prior to the effective date of the rules adopted under s. 373.414(9), unless the applicant elects to have such activities reviewed under the rules of this part as amended in accordance with s. 373.414(9). Unless the applicant makes such an election, in reviewing an application under part VIII of chapter 403, the reviewing agency shall utilize the dredge and fill jurisdiction of the department as it existed prior to January 24, 1984.

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant hereto. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part.

Section 26. Section 373.421, Florida Statutes, is amended to read:

373.421 *Delineation methods;* formal ~~wetland~~ determinations.—

(1) By January 1, 1994, the Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019 (17). This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands for the purposes of regulation under s. 373.414. This methodology shall not become effective until ratified by the Legislature. Subsequent to legislative ratification, the wetland definition in s. 373.019(17) and the adopted wetland methodology shall be binding on the department, the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, the Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition and determines that the exclusive definition and delineation methodology for wetlands shall be that established pursuant to s. 373.019(17) and this section. Upon such legislative ratification, any existing wetlands definition or wetland delineation methodology shall be superceded by the wetland definition and delineation methodology established pursuant to this chapter. All existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. However, this shall not be construed to limit any power of the department, the water management districts and local governments to amend or adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

(2)~~(1)~~ A water management district *or the department* may provide a process by rule for formal ~~wetland~~ determinations *of the extent of surface waters and wetlands, as delineated in s. 373.421(1). By interagency agreement, the department and each water management district shall*

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

(3)~~(2)~~ A formal ~~wetland~~ determination is binding for a period not to exceed 5 years, as long as physical conditions on the property do not change so as to alter the ~~wetland~~ boundaries *of surface waters or wetlands, as delineated in s. 373.421(1)* ~~during that period~~.

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

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

(6)~~(5)~~ The district *or the department* may also issue *nonbinding* informal ~~wetland~~ determinations or otherwise institute ~~wetland~~ determinations on its own initiative as provided by law.

Section 27. Section 373.422, Florida Statutes, is created to read:

373.422 Applications for activities on state sovereignty lands or other state lands.—If sovereignty lands or other lands owned by the state are the subject of a proposed activity, the issuance of a permit by the department or a water management district shall be conditioned upon the receipt by the applicant of all necessary approvals and authorizations from the Board of Trustees of the Internal Improvement Trust Fund prior to the undertaking of such activity. The department or the governing board shall issue its permit conditioned upon the securing of the necessary consent or approvals from the Board of Trustees of the Internal Improvement Trust Fund by the applicant. If the approval or authorization of the board is required, the applicant may not commence any excavation, construction, or other activity until such approval or authorization has been issued.

Section 28. Section 373.430, Florida Statutes, is created to read:

373.430 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of part IV of this chapter, and it shall be prohibited for any person:

(a) To cause pollution, as defined in s. 403.031(7), except as otherwise provided in part IV of this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by part IV of this chapter or by rule or regulation adopted pursuant thereto, or to violate or fail to comply with any rule, regulation, order, or permit adopted or issued by a water management district, the department, or local government pursuant to their lawful authority under part IV of this chapter.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under part IV of this chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under part IV of this chapter or by any permit, rule, regulation, or order issued under part IV of this chapter.

(2) Whoever commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree, punishable as provided in ss. 775.082(3)(d) and 775.083(1)(g), by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g), by a fine of not more than $5,000 or 60 days in jail, or by both, for each offense.

(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree, punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000 or by six months in jail, or by both, for each offense.

(6) It is the intent of the Legislature that the civil penalties imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

(7) All moneys recovered under the provisions of this section shall be allocated to the use of the water management district, the department or the local government, whichever undertook and maintained the enforcement action. All monetary penalties and damages recovered by the department or the state under the provisions of this section shall be deposited in the Pollution Recovery Fund established by s. 403.165 and shall be used by the department as provided therein. All monetary penalties and damages recovered pursuant to this section by a water management district shall be deposited in the Water Management Lands Trust Fund established under s. 373.59 and used exclusively within the territory of the water management district which deposits the money into the fund. Any such monetary penalties and damages recovered after the expiration of such fund shall be deposited in the Pollution Recovery Fund created by s. 403.165 and used exclusively within the territory of the water management district which deposits the money into the fund. All monetary penalties and damages recovered pursuant to this subsection by a local government to which authority has been delegated pursuant to s. 373.103(8) shall be used to enhance surface water improvement or pollution control activities. Moneys recovered by a water management district or the department under the provisions of this section shall be in addition to moneys otherwise appropriated in any general appropriation act.

Section 29. Section 373.441, Florida Statutes, is created to read:

373.441 Role of counties, municipalities and local pollution control programs in permit processing.—

(1) The department in consultation with the water management districts shall, by December 1, 1994, adopt rules to guide the participation of counties, municipalities and local pollution control programs in an efficient, streamlined permitting system. Such rules shall seek to increase governmental efficiency, shall maintain environmental standards, and shall include consideration of the following:

(a) Provisions under which the environmental resource permit program shall be delegated, upon approval of the department and the appropriate water management districts, to a county, municipality or local pollution control program which has the financial, technical, and administrative capabilities and desire to implement and enforce the program;

(b) Provisions under which a locally delegated permit program may have stricter environmental standards than state standards;

(c) Provisions for identifying and reconciling any duplicative permitting by January 1, 1995;

(d) Provisions for timely and cost-efficient notification by the reviewing agency of permit applications, and permit requirements, to counties, municipalities, local pollution control programs, the department or water management districts, as appropriate;

(e) Provisions for insuring the consistency of permit applications with local comprehensive plans;

(f) Provisions for the partial delegation of the environmental resource permit program to counties, municipalities or local pollution control programs, and standards and criteria to be employed in the implementation of such delegation by counties, municipalities and local pollution control programs;

(g) Special provisions under which the environmental resource permit program may be delegated to counties or municipalities with, or local pollution control programs serving, populations of 50,000 or less; and

(h) Provisions for the applicability of chapter 120 to local government programs when the environmental resource permit program is delegated to counties, municipalities or local pollution control programs.

(2) Nothing in this section affects or modifies land development regulations adopted by a local government to implement its comprehensive plan pursuant to chapter 163.

(3) The Partners for a Better Florida Advisory Council may recommend more specific guidelines to the Legislature to further direct the local permitting rules. The Legislature authorizes the appointment by the Governor of two additional voting members to the council, one representing the interests of counties and one representing the interests of municipalities.

Section 30. Effective upon the legislative ratification of the wetland delineation methodology pursuant to s. 373.421(1), Florida Statutes, as amended, the introductory paragraph of subsection (13) of section 403.031, Florida Statutes, 1992 Supplement, is amended to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(13) "Waters" include, but are not limited to, rivers, lakes, streams, springs, impoundments, *wetlands,* and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural. Solely for purposes of this chapter, waters of the state also include the area bounded by the following:

Section 31. Paragraph (c) is added to subsection (11) of section 403.061, Florida Statutes, 1992 Supplement, subsection (27) is amended and subsection (35) is also added to said section to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules and regulations adopted and promulgated by it and, for this purpose, to:

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department is authorized to establish reasonable zones of mixing for discharges into waters.

(c) The department, by rule, shall establish water quality criteria for wetlands which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

Nothing in this act shall be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1).

(35) Adopt rules which may include stricter permitting and enforcement provisions within Outstanding Florida Waters, aquatic preserves, areas of critical state concern, and areas subject to chapter 380 resource management plans adopted by rule by the Administration Commission, when the plans for an area include waters that are particularly identified as needing additional protection, which provisions are not inconsistent with the applicable rules adopted for the management of such areas by the department and the Governor and Cabinet.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 32. Section 403.811, Florida Statutes, is created to read:

403.811 Dredge and fill permits issued pursuant to ss. 403.91-403.929 and s. 373.414.—Permits or other orders addressing dredging and filling in, on or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with ss. 373.414(13), (14), (15), or (16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

Section 33. Section 403.905, Florida Statutes, is created to read:

403.905 Removal of fill on sovereignty lands.—The department or the Board of Trustees of the Internal Improvement Trust Fund has the authority to direct an abutting upland owner to remove from submerged sovereignty lands or state-owned lands any fill created in violation of ss. 403.91-403.929 or part IV of chapter 373, except that the department or the board may consider the time at which the submerged land was filled, the length of upland ownership by the current owner, and any other equitable consideration. In the event that the abutting upland owner does not remove such fill as directed, the department or board may remove it at its own expense, and the costs of removal will become a lien upon the property of such abutting upland owner. However, the department and board may, if they choose, allow such fill to remain as state-owned land and may employ a surveyor to determine the boundary between such state land and that of the abutting upland owner. The amount of the cost of such survey will become a lien on the property of the abutting upland owner. Nothing herein may be construed to grant the department or the board authority to direct an upland owner to adjust, alter, or remove silt, fill, or other solid material which has accumulated or has been deposited seaward of his property, through no fault of the owner.

Section 34. Section 403.9311, Florida Statutes, is created to read:

403.9311 Declaration of Policy.—It is the intent of the Legislature that the Department of Environmental Regulation's mangrove protection rule, which governs the alteration of mangroves, be the sole rule by which the state regulates the alteration of mangroves on privately and publicly owned lands. It is the further intent of the Legislature that the administration and enforcement of the Department of Environmental Regulation's mangrove protection rule be delegated to local governments, including municipalities, provided that the local governments' regulations are consistent with the department's rule and provided local governmental resources are adequate for such administration and enforcement. Such delegation is not limited to the local pollution control programs approved under s. 403.182, and nothing pursuant to these delegations shall prevent the state from pursuing enforcement of the provisions of chapters 253, 258, and 403, when appropriate.

Section 35. Section 403.931, Florida Statutes, is amended to read:

403.931 Alteration of mangroves; permit procedure.—

(1) No person may alter or cause to be altered any mangrove in waters where a permit is required *under part IV of chapter 373* ~~for dredging or filling~~ except pursuant to *an individual site-specific* ~~a~~ permit issued by the department *or a water management district* or as otherwise provided by ss. 403.93-403.938. Any violation of this section shall be presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property upon which such violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

(2) No separate application is required for an alteration permit if the alteration is *part of an activity that is exempt under s. 403.813 or is addressed in an application under part IV of chapter 373.* ~~addressed in an application for a dredge or fill permit or certification or application for boat dock or walkway under this chapter;~~ The procedures for ~~dredge or fill~~ permitting *under part IV of chapter 373* will control in such instances.

(3) The department~~, on or before September 30, 1986,~~ shall adopt *by rule an exemption from the permitting requirements of this section for the following activities:* ~~a general permit in accordance with s. 403.814, which permit authorizes~~

(a) The alteration of mangroves in *all manmade canals that were totally dredged or excavated from uplands and that do not overlap historic natural waters of the state;* ~~accordance with procedures designed to protect the integrity of mangrove trees. The department, on or before September 30, 1986, shall establish a special general permit to allow for alteration of mangroves in manmade canals constructed after January 1, 1957, which were upland of waters of the state as defined in s. 403.817 and are not directly connected to a Class II water body or to Outstanding Florida Waters.~~

(b) The alteration of mangroves that are not located in or directly landward of waters that are designated as Outstanding Florida Waters, when the mangroves have been planted or when the mangroves have been altered according to a previously established pattern of regular maintenance;

(c) The alteration of dead mangroves and the dead portions of freeze-damaged mangroves that are not located in or directly landward of an aquatic preserve as designated in chapter 258.

(4) The department shall authorize by a general permit issued under s. 403.814 the following:

(a) The alteration of mangroves that are located in or directly landward of waters that are designated as Outstanding Florida Waters, except within aquatic preserves as designated in chapter 258, when the mangroves have been planted;

(b) The continued maintenance alteration of mangroves that are located in or directly landward of waters designated as Outstanding Florida Waters to the configuration that has been established in conformance with a department authorization on or after March 27, 1991;

(c) The continued alteration of mangroves that are located in waters designated as Outstanding Florida Waters, except within aquatic preserves as designated in chapter 258 in which the mangroves have been previously altered according to an established pattern of regular maintenance; and

(d) The alteration of dead mangroves and the dead portions of freeze-damaged mangroves that are located in or directly landward of an aquatic preserve as designated in chapter 258.

(5) Within an aquatic preserve, an individual site-specific permit is required to alter mangroves that were planted or were previously altered according to an established pattern of regular maintenance and without a department authorization. When evaluating an application for an individual permit for the alteration of mangroves within an aquatic preserve which have been previously altered according to an established pattern of regular maintenance, the department shall give special consideration to the existing configuration and current health of the mangroves. Mitigation is not required for the alteration of planted mangroves in an aquatic preserve.

(6)~~(4)~~ *Sections* ~~The provisions of ss.~~ 403.93-403.938 do not apply to any alteration that was addressed in a dredge and fill application *that* ~~which~~ was complete *before* ~~prior to~~ July 1, 1984, unless the applicant chooses to come under *these sections* ~~this act~~.

(7)~~(5)~~ *In addition to* ~~Notwithstanding the provisions in~~ subsection (3), a landowner *may* ~~has the right to~~ selectively trim ~~individual~~ mangrove plants in order to ~~better~~ enjoy the coastal water vistas and ~~other aesthetic~~ qualities associated with the ownership of riparian lands.

Section 36. Section 403.933, Florida Statutes, is amended to read:

403.933 Alteration of mangroves; criteria.—~~By June 1, 1985,~~ The department shall adopt a rule which specifies criteria for altering mangroves and a procedure for issuing permits to do so. Such criteria shall be based solely upon the ~~dredge and fill permit~~ criteria set forth in *s. 373.414(1)* ~~this chapter~~.

Section 37. In addition to the permit streamlining process created by this act, the Legislature recognizes that market-based incentives and disincentives may create positive improvements in the environmental quality of this state which cannot be fully achieved by the streamlining of the permitting process alone. The Partners for a Better Florida Advisory Council and the Department of Environmental Regulation are directed to review and analyze the potential role of market-based incentives and disincentives in the streamlined environmental protection program for this state and to issue a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 1994. The report shall include:

(1) Recommendations for improving or expanding any siting acts.

(2) Short-term and long-term recommendations to achieve environmental protections through techniques other than permitting, which would reduce or obviate the need for regulation, including the identification of new and emerging technologies to enhance or improve environmental quality.

(3) The feasibility of linking tax exemptions or credits to compliance with short-term and long-term state and federal environmental policies and programs, including the identification of specific tax exemptions or credits that could be applied.

(4) Recommendations for improving or enhancing environmental protection, including natural system protection.

The Legislature authorizes the appointment to the Partners for a Better Florida Advisory Council of three additional voting members representing environmental interests, one each by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 38. The repeal of any statutory sections under this act shall not be grounds for any dismissal or amendment of and shall have no effect on any administrative or judicial proceeding pending on the effective date of this act.

Section 39. Sections 403.931, and 403.933, Florida Statutes, as amended by this act, and sections 403.927, 403.93, 403.932, 403.935, 403.936, and 403.938, Florida Statutes, are transferred to part VII of chapter 403, Florida Statutes.

Section 40. Sections 403.91, 403.911, 403.912, 403.916, 403.919, 403.92, 403.921, 403.922, 403.923, 403.924, 403.925, and 403.929, Florida Statutes, and sections 403.914, and 403.918, Florida Statutes, 1992 Supplement, are hereby repealed.

Section 41. Section 403.913, Florida Statutes, is hereby repealed, except subsection (8) of said section which shall stand repealed on October 1, 1994.

Section 42. Sections 403.817 and 403.8171, Florida Statutes, are hereby repealed as of the effective date of the legislative ratification pursuant to section 373.421(1), Florida Statutes, as amended.

Section 43. Except as otherwise provided herein, this act shall take effect July 1, 1993.

And the title is amended as follows:

In title, on page 2, line 1, after the semicolon (;) insert: providing legislative intent; amending s. 373.016, F.S.; providing policy for fiscal and budget matters of water management districts; providing for consolidation of permit processing into a single environmental resource permit; amending s. 373.019, F.S.; providing a definition; amending s. 373.046, F.S.; authorizing the Department of Environmental Regulation and the governing boards of water management districts to enter into additional interagency agreements under certain circumstances; amending s. 373.079, F.S.; providing for Senate confirmation of executive directors of water management districts; providing requirements for internal auditors for districts; amending s. 353.536, F.S.; providing requirements for water management district budgets; amending s. 373.109, F.S.; authorizing the Department of Environmental Regulation and certain local governments to establish application fees under certain circumstances; providing for deposit and use of such fees; amending s. 373.114, F.S.; providing for review of certain rules of the department by the Land and Water Adjudicatory Commission; providing procedures for such review; amending s. 373.129, F.S.; providing for disposition and use of civil penalties under certain circumstances; amending s. 373.403, F.S.; providing definitions; creating s. 373.4135, F.S.; providing for mitigation and mitigation banking; requiring the department and water management districts to adopt rules governing mitigation banking; providing criteria; amending s. 373.414, F.S.; providing criteria for issuing permits for projects affecting surface waters and wetlands; amending s. 373.421, F.S.; requiring the Environmental Regulation Commission to adopt a unified statewide wetlands delineation methodology; providing for effectiveness of such methodology; preempting to the Legislature certain authority related to wetlands; creating s. 373.422, F.S.; providing for conditional issuance of certain permits under certain circumstances; creating s. 373.430, F.S.; prohibiting certain activities; providing penalties; providing legislative intent; creating s. 373.441, F.S.; specifying the role of local governments in permit processing; providing for rules by the reorganized Department of Environmental Regulation and Department of Natural Resources; specifying contents of such rules; amending s. 403.031, F.S.; including wetlands in the definition of waters; amending s. 403.061, F.S.; authorizing the department to adopt certain rules; creating s. 403.811, F.S.; providing for continuing validity of certain permits; creating s. 403.905, F.S.; authorizing the department or the Board of Trustees of the Internal Improvement Trust Fund to require certain landowners to remove fill

from certain sovereignty lands under certain circumstances; creating s. 403.9311, F.S.; providing legislative intent regarding regulation of the alteration of mangroves; amending s. 403.931, F.S.; specifying application of certain permit provisions relating to mangroves; revising an exception for separate application requirements; amending s. 403.933, F.S.; deleting obsolete language; specifying application of certain provisions to mangrove alteration permits; directing Partners for a Better Florida Advisory Council and the Department of Environmental Regulation to conduct a specified review and report to the Legislature; specifying contents of the report; transferring ss. 403.927, 403.93, 403.931, 403.932, 403.933, 403.935, 403.936, and 403.938, F.S., to part VII of chapter 403, F.S.; repealing ss. 403.91, 403.911, 403.912, 403.914, 403.916, 403.918, 403.919, 403.92, 403.921, 403.922, 403.923, 403.924, 403.925, and 403.929, F.S., relating to permitting of activities in wetlands; repealing s. 403.913, except subsection (8) which shall stand repealed on October 1, 1994; repealing ss. 403.817 and 403.8171, F.S., relating to permitting of activities in wetlands, as of the effective date of legislative ratification pursuant to s. 373.421(1), F.S., as amended;

Senator Dantzler moved the following amendments to **Amendment 3** which were adopted:

Amendment 3A—On page 1, line 28, strike "*closely*"

Amendment 3B—On page 12, line 29, strike the period (.) and insert: *, as delineated in s. 373.421(1).*

Amendment 3C—On page 21, strike all of lines 11 and 12 and insert: regulated under this part which are under construction or projects for which permits or determinations pursuant to s.

Senator Siegel offered the following amendment to **Amendment 3** which was moved by Senator Dantzler and adopted:

Amendment 3D (with Title Amendment)—On page 41, between lines 13 and 14, insert:

Section 38. Subsection (7) is added to section 403.086, Florida Statutes, to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(7) The expansion or modification of any domestic wastewater rapid rate land application effluent disposal system which obtained an initial operating permit requiring the discharged recovered water to receive advanced waste treatment followed by water hyacinth treatment, and which system obtained an initial operating permit prior to December 31, 1990, shall be permitted by the department in the same manner and under the same rules in effect on the date of the initial construction permit application.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 43, line 28, after "amended;" insert: amending s. 403.086, F.S.; providing requirements for domestic wastewater facilities;

Amendment 3 as amended was adopted.

Senator Dantzler moved the following amendment which was adopted:

Amendment 4 (with Title Amendment)—On page 10, between lines 12 and 13, insert:

Section 14. Legislative intent.—It is the intent of the Legislature to acknowledge the valuable activities of the Department of Natural Resources, the Canal Authority of the State of Florida, the Canal Lands Advisory Committee created under section 253.783(2)(f), Florida Statutes, and the University Planning Team of the University of Florida in proposing a variety of options for the future management of lands located within the corridor containing the former Cross Florida Barge Canal project. These options for the management of these lands, contained in the Cross Florida Greenway State Recreation and Conservation Area Management Plan published August 30, 1992, provide guidance and alternatives concerning the boundaries of the greenway, the development of recreational facilities within the greenway, the assignment of resource-management designations, recommendations for governance, suggestions for funding sources, recommendations as to the disposition of canal works, and other important considerations. Because of the unique nature of the greenway and the need to preserve flexibility in future management strategies, the Legislature further intends that the management plan should be considered as providing guidance for management decisions. While the Legislature intends that the plan be considered to encompass the full range of management options, subject to available funding, it is not required that any specific recommendation contained within the plan be implemented unless specified in sections 1-7 of this act. The Legislature finds that given limited financial resources for activities of the Cross Florida Greenway it is necessary to implement the greenway in a conservative manner.

Section 15. Greenway assigned to the Office of Greenway Management in the Office of the Executive Director of the Department of Natural Resources.—

(1) The Office of Greenway Management is initially assigned to the Office of the Executive Director of the Department of Natural Resources. The office shall manage the greenway in accordance with the department's authority to manage state lands, sections 1-7 of this act, and any other statutes authorizing the department's management activities in state parks and preserves. However, the provisions of sections 1-7 of this act prevail over any conflicting provisions of law or any other authority given the department.

(2) Before the 1995 regular session of the Legislature, legislative staff shall review the activities of the office in managing the greenway and recommend to the Legislature the most appropriate placement of greenway management functions within the department.

Section 16. Boundaries of the Cross Florida Greenway; coordination of management activities.—

(1) The initial boundaries of the greenway encompass the following lands, as described in the August 30, 1992, management plan published by the University of Florida Planning Team, excluding lands to be purchased with funds from the Conservation and Recreation Lands Trust Fund which are within the Crystal Bay and Heather Island projects:

(a) Segments 1, 2, 5, 6, 7, 8, and 9 of the Base Boundary; and

(b) Segments 3 and 4 of the Payback Boundary II provided that up to 250 acres may be excluded from the greenway for the establishment of a horsepark/agricultural center.

(2) The Board of Trustees of the Internal Improvement Trust Fund may include other contiguous lands acquired after July 1, 1993, that are suitable for recreation, for conservation, or as wildlife corridors and that will supplement the natural resource values of the greenway. The board may also modify the greenway boundaries as necessary to resolve boundary disputes, to comply with judicial decisions, and to reflect the sale of surplus lands; however, such modifications may not make the corridor discontinuous or less than 300 yards wide, except as provided for by federal law.

(3) If lands located outside the greenway boundaries are designated by the Board of Trustees of the Internal Improvement Trust Fund as important to the overall management of the greenway and are acquired by other programs, or are otherwise made available for management, the board may direct the greenway managing entity to coordinate management activities to enhance the greenway to the greatest extent possible, or direct the greenway managing entity to assume lead-agency responsibilities when appropriate. Decisions relating to the acquisition of lands to supplement the natural resource values of the greenway using funding from the Conservation and Recreation Lands program or the Preservation 2000 program must be evaluated based on existing conditions for those funding sources and overall statewide land acquisition needs.

(4) The Department of Natural Resources shall conduct a study of the options available to control the rhesus monkeys located within a 10-mile radius of the convergence of the Oklawaha and Silver Rivers. During the time the study is being conducted, the department may control monkeys that constitute a threat to visitors to such area. Control measures include, but are not limited to, the right to deny public access to any area where the monkeys are known to congregate. The department shall post adequate warning signs in areas to which the public is denied access. The department may consult with any other local or state agency while conducting the study and may subcontract with any such agency to complete the study. The study of the options shall be delivered to the Board of Trustees of the Internal Improvement Trust Fund. Nothing in this subsection affects the signed agreement between the department and the Silver Springs attraction regarding the relocation of rhesus monkeys from Silver River State Park to the attraction, and such agreement continues to be valid.

Section 17. Disposition of surplus lands; compensation of counties located within the Cross Florida Canal Navigation Districts; priorities for acquisition of lands and interests in lands.—

(1) The Department of Natural Resources shall identify parcels of former barge canal lands which may be sold or exchanged as needed to repay the counties of the Cross Florida Canal Navigation District any sums due them under section 253.783(2)(e), Florida Statutes. In identifying these surplus lands, the department must give priority to lands situated outside the greenway's boundaries, those not having high recreation values or high conservation values, and those having the greatest assessed valuations. Although the department must immediately begin to identify the parcels of surplus lands to be sold, the department must offer the lands for sale in a manner designed to maximize the amounts received over a reasonable period of time.

(2) Disbursements of amounts due the counties must be made annually.

(3) In addition to lands identified for sale to generate funds for repayment of counties under section 253.783(2)(e), Florida Statutes, the department may designate as surplus additional former canal lands that are unnecessary to effectively provide the type of recreational opportunities and conservation activities for which the greenway was created.

(4) Funds in the Cross Florida Barge Canal Trust Fund and revenues from the disposition of surplus lands must be used in the following order of priorities:

(a) The highest priority, once the annual costs of the administrative management activities have been met, must be repayment to the counties of the Cross Florida Canal Navigation District, unless a judicial decision requires the use of funds to resolve a decision over lands in the corridor which are owned in less than fee simple title, provided not less than 75 percent of the proceeds from the sale, exchange, or other disposition of surplus lands or from limerock sales in any fiscal year must be used to reimburse the counties of the Cross Florida Canal Navigation District until reimbursement to the counties has been completed in accordance with s. 253.783(5), Florida Statutes.

(b) The second priority must be the acquisition of lands necessary to attain a continuous greenway corridor, except as otherwise provided in this act.

(c) The third priority must be acquisitions necessary to create a corridor at least 300 yards wide throughout the greenway.

(d) Remaining funds may be used for greenway management and improvements, including the creation of a corridor as wide as possible that contains the existing significant natural resource areas, including high-aquifer recharge areas, and lands that join or extend state and federally designated recreational trails.

(5) The Board of Trustees of the Internal Improvement Trust Fund may, pursuant to section 253.034, Florida Statutes, permit the use of former canal lands by other state agencies, for any consideration the board considers appropriate, when those uses are compatible with the approved management plan. A state agency wishing to use former canal lands must do so by lease, but may, in extraordinary circumstances, purchase such lands. Accordingly, the Legislature declares that:

(a) A horsepark and agricultural center may be constructed by or on behalf of the Department of Agriculture and Consumer Services on not more than 250 acres of former canal lands which meet the criteria for surplus lands and which lie outside the greenway boundary.

(b) A multi-purpose visitor center may be constructed in conjunction with the horsepark and agricultural center on greenway lands compatible with such use.

(c) Resource-based recreational activities associated with the horsepark and agricultural center, including, but not limited to, recreational trails, trails for endurance or competitive riding, steeplechases, and other related activities may be permitted within the greenway boundary. The greenway managing entity shall retain jurisdiction over such activities occurring within the greenway boundary.

(d) Those activities and structures associated with the horsepark and agricultural center which are found by the greenway managing entity to be inappropriate uses of greenway lands must be sited on lands outside the greenway boundary.

(e) The proposed horsepark and agricultural center constitutes a public-private partnership project entitling the state to share in the profits generated from the horsepark and agricultural center, in lieu of the payment of lease fees.

(f) Hydroelectric power generation is a compatible and allowable use of greenway lands.

Section 18. Recreational uses.—

(1) The Cross Florida Greenway must be managed as a multiple-use area pursuant to section 253.034(1)(a), Florida Statutes. However, the University of Florida management plan provides a conceptual recreational plan that may ultimately be developed at various locations throughout the greenway corridor. A number of the larger, more comprehensive, and complex recreational facilities are located in sensitive natural resource areas. Future site-specific studies and investigations must be conducted by greenway management to determine the compatibility with existing resources, the advisability and need for the facility, and the proper specific site and location for complex facilities. Furthermore, it is appropriate, to allow, with the approval of the managing entity, more fishing docks, boat launches, and other user-oriented facilities to be developed and maintained by the local governments.

(2) In determining appropriate recreational uses of greenway lands, the promotion and development of resource-based activities must be given priority, although user-oriented activities must not be arbitrarily prohibited when site studies indicate that the proposed use is compatible with natural or cultural resources.

(3) For purposes of this section, user-oriented activities are those activities that can be provided in a variety of locations, including golf, tennis, baseball, archery, target shooting, and playground activities. Resource-based activities are those activities that are dependent on some particular element or combination of elements in the natural or cultural environment, including fishing, camping, hunting, boating, nature study, horseback riding, visiting historical sites, and hiking.

(4) A multi-purpose visitor center may be constructed in conjunction with the Horsepark/Agriculture Center on lands dedicated for the Horsepark/Agriculture Center.

Section 19. Canal structures.—

(1) Before making a final decision on the disposition of the Inglis Lock the department must gather the following additional information to assess the situation and justify the final decision.

(a) Determine and explain the functions of the current lock and flow control structures, especially their function in flood control and weed control.

(b) Determine the operating conditions of these structures and recommend alternative design strategies to improve the current functions provided by existing works that will result in efficient operating and maintenance costs.

(c) Determine the navigability options provided by the current works and determine how these features can be reasonably maintained by an alternative design of the works.

Based on the additional information gathered, the department's recommendations must be presented to the Governor and Cabinet and to the Legislature by December 15, 1993.

(2) Before making a final decision on the disposition of the works impounding the Oklawaha River at Rodman Reservoir, the department must gather at least the following information to justify its decision:

(a) A description of current hydrologic conditions in the Lower Oklawaha River Basin and predictions, using accepted modeling techniques, of hydrologic conditions in the basin given restoration of the river or maintenance and management of the reservoir, including predictions of impacts to adjacent groundwater levels resulting from either river restoration or reservoir management.

(b) Predictions, using accepted modeling techniques, of the following conditions given restoration of the river or management of the reservoir:

1. Hydraulic and sediment transport conditions during a major drawdown;

2. Downstream sediment-and-nutrient-loading and water-quality impacts as a result of a drawdown;

3. Given current levels of heavy metals, pesticides, and other pollutants present in reservoir sediments, predictions concerning their resuspension and transport downstream during a drawdown.

(c) Projections of positive and negative impacts to flora and fauna as a result of river restoration.

(d) Documentation concerning the need for aquatic plant control and tree planting during river restoration to promote the growth of the desired floodplain vegetation.

(e) Projections of specific methods and costs involved in restoring the Oklawaha River and in maintaining and managing Rodman Reservoir, including dredging and filling, structure modification or removal, timing of drawdowns, aquatic plant control, and floodplain reforestation.

(f) Projections of the positive and negative economic and recreational impacts given river restoration or reservoir retention.

(3) The current data and the projections required by subsection (2) must be obtained from at least the following:

(a) A hydrologic model to predict water elevations, flows, water-level fluctuations, and floodplain conditions for the Lower Oklawaha River Basin;

(b) A bathymetric map of water depths in Rodman Reservoir and the former river channel;

(c) A map of the depth and composition of sediments in the reservoir and former river channel;

(d) Measurements of the amounts of heavy metals, pesticides, and other pollutants in sediments;

(e) A study of the sedimentation rate in the reservoir;

(f) A study of the sources and species of plants likely to occur in exposed areas through natural vegetation;

(g) The monitoring of fish populations in the reservoir and river over a two-year period;

(h) If the completed sediment, bathymetric, and hydrologic studies show that a drawdown is both feasible and environmentally acceptable, an experimental drawdown for a period of not more than 9 months of not more than seven feet, that is, no lower than elevation 11 feet NGVD. Sediment conditions, water quality, the effects on fish and plants, and downstream conditions must be monitored both during and following the drawdown.

(i) A review of existing economic and recreational values information for the Oklawaha River and Rodman Reservoir. This must incorporate the review of recent information regarding structural operation and maintenance costs. Restoration and management costs must be calculated using the new environmental information obtained under this subsection.

(j) The monitoring of water quality in the Oklawaha River, Rodman Reservoir, and major tributaries.

(4) Based on all relevant information, including that obtained under subsections (2) and (3), options for restoration of the Oklawaha River and for maintaining Rodman Reservoir, as well as any other possible alternatives, must be summarized and evaluated by the department. The department's recommendations must be presented to the Governor and Cabinet and the Legislature by July 1, 1995.

Section 20. Transportation and Utility Crossings of Greenway Lands.—

(1) The Legislature recognizes that from time to time it may be necessary to serve statewide public needs by allowing transportation and utility uses to cross the greenway lands. When these crossings are needed, the location and design should consider and mitigate the impact on the environmental resources, and the value of the land must be paid based on fair market value.

(2) In furtherance of previous legislative decisions and policy, the Legislature recognizes the need for the extension of the Florida Turnpike from Wildwood to Lebanon Station, and the need for this extension to cross greenway lands at the intersection of State Road 200 and State Road 484. The Department of Transportation shall pay fair compensation for the lands needed to accomplish the crossing of greenway lands and shall mitigate the impacts of such crossings to the extent practicable.

(3) Furthermore, the Legislature recognizes the needs expressed by Marion County to provide for the southerly extension of Sixtieth Avenue between State Road 200 and Interstate 75, and for the extension to cross the greenway lands to allow for orderly growth and development of Marion County. Right-of-way for this extension across greenway lands must be designed to mitigate the impacts to the extent practicable, and the value of the lands must be paid based on fair market value or, at the option of Marion County, the value may be subtracted from the amount of reimbursement due the county under section 253.783, Florida Statutes.

Section 21. Section 253.781, Florida Statutes, is amended to read:

253.781 Retention of state-owned lands along former Cross Florida Barge Canal route; creation of Cross Florida *Greenway* ~~Greenbelt State Recreation and Conservation Area~~; authorizing transfer to the Federal Government for inclusion in Ocala National Forest.—

(1) It is the intent of the Legislature to conserve and protect the natural resources and scenic beauty of the Oklawaha River Valley and all lands and interests formerly acquired by the state or Federal Government for construction and operation of the Cross Florida Barge Canal. It is the finding of the Legislature that these areas have a significant impact upon environmental and recreational resources of statewide importance and that public ownership of and access to such areas are necessary and desirable to protect the health, welfare, safety, and quality of life of the residents of this state and to implement s. 7, Art. II of the State Constitution. It is further the finding of the Legislature that retention of ownership and control of the majority of the lands by the state and the ownership and control of additional portions by the Federal Government as part of the Ocala National Forest will properly protect and conserve the natural resources and scenic beauty of Florida, enhance recreational opportunities, and be in the public interest. To achieve these goals, the Legislature hereby creates the Cross Florida *Greenway* ~~Greenbelt State Recreation and Conservation Area, the specific boundaries of which shall be determined pursuant to s. 253.7829~~.

(2) The Department of Natural Resources is authorized to transfer for consideration ownership of all lands or interests in lands previously owned by the canal authority contained within the existing boundary of the Ocala National Forest and any extension of the boundary of the Ocala National Forest in Putnam County to the United States Department of Agriculture for the purpose of inclusion in the Ocala National Forest.

(3) The Governor and Cabinet as the head of the Department of Natural Resources *may* ~~are empowered, authorized, and directed to~~ acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to lands acquired in less-than-fee title *and to privately owned lands that break the continuity of publicly owned lands within the original canal corridor as specified in the University Planning Team Greenway Management Plan* along the canal route, *using* ~~utilizing~~ canal authority assets *transferred to the department, using state, local, or federal funds dedicated to acquiring lands for conservation and recreation,* or *using* funds from the Cross Florida Barge Canal Trust Fund. The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain *must* ~~shall~~ be exercised pursuant to ~~the provisions of~~ chapter 73.

(4) Lands transferred pursuant to this section by the Department of Natural Resources may reserve existing road rights-of-way.

Section 22. Subsections (2) and (3) of section 253.782, Florida Statutes, are amended to read:

253.782 Retention of state-owned lands in and around Lake Rousseau and the Cross Florida Barge Canal right-of-way from Lake Rousseau west to the Withlacoochee River.—

(2) The Department of Natural Resources *shall* ~~is authorized and directed to~~ retain ownership of and maintain all lands or interests in land owned by the Board of Trustees of the Internal Improvement Trust Fund including all fee and less-than-fee interests in lands previously owned by the canal authority in Lake Rousseau and the Cross Florida Barge Canal right-of-way from Lake Rousseau at U.S. Highway 41 west to and including the Withlacoochee River.

(3) The Governor and Cabinet as head of the Department of Natural Resources *may* ~~are empowered, authorized, and directed to~~ acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to any less-than-fee title interest in land owned by the Board of Trustees of the Internal Improvement Trust Fund, including interests previously owned by the canal authority, as described in subsection (2). The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain *must* ~~shall~~ be exercised pursuant to ~~the provisions of~~ chapter 73.

Section 23. Section 253.7829, Florida Statutes, 1992 Supplement, is amended to read:

253.7829 ~~Management plan for~~ Retention or disposition of former Cross Florida Barge Canal lands; authority to manage lands until disposition.—

~~(1)~~ It is declared to be in the public interest that the ~~canal authority, with the assistance of the~~ Department of Natural Resources~~,~~ shall do and is hereby authorized to do any and all things *for the public purposes described herein,* and *to* incur and pay from the Cross Florida Barge Canal Trust Fund or from the *former* canal authority assets, for *those* ~~the public~~ purposes ~~described herein~~, any ~~and all~~ expenses necessary, convenient, and proper to:

~~(a) Develop a management plan for the retention or disposition of lands acquired for the Cross Florida Barge Canal to be submitted to the Governor and Cabinet no later than 2 years after the date of enactment of the Cross Florida Barge Canal deauthorization act, which plan shall reflect a consideration of alternatives for disposition as provided in this section of all lands in fee or less than fee owned by the Board of Trustees of the Internal Improvement Trust Fund, including those lands previously owned by the canal authority and the United States Army Corps of Engineers, and lands to be transferred to the state by the United States Army Corps of Engineers. The management plan shall establish a plan for delineating the specific boundaries of the Cross Florida Greenbelt State Recreation and Conservation Area. The Legislature intends that such boundaries include, at a minimum, a 300-yard-wide corridor, except where the original corridor is a lesser width or except in areas where bridges and roads cross the canal corridor, on former canal lands within the original canal corridor extending from the St. Johns River to the Gulf of Mexico, including all of the Oklawaha River Valley and Rodman Reservoir, and all canal works in all areas whether completed and in use or not, but excluding all parts of Lake Rousseau. Such boundaries may include other former canal lands according to the following criteria:~~

~~1. The proximity of the lands to former canal corridor lands.~~

~~2. The environmental sensitivity or importance of the lands or its characteristics as a unique or significant wildlife habitat.~~

~~3. The proximity of the lands to existing state or federal land which is maintained, at least in part, as natural wildlife habitat, so that the addition of the parcel would function as a wildlife corridor, or as additional habitat.~~

~~4. The potential of the lands to be developed as outdoor recreation lands.~~

~~Commercially valuable parcels, including those parcels near road crossings, within the canal corridor which do not meet the criteria of subparagraphs 1.-4. and other former canal lands which are not included within the boundaries of the Cross Florida Greenbelt State Recreation and Conservation Area under the criteria of subparagraphs 1.-4., may be disposed of as surplus lands pursuant to s. 253.783(2)(a)-(d). Such alternatives for disposition will include retention by the state or any agency thereof for the specific public purposes outlined in this paragraph or by the counties or adjacent municipalities for recreational or conservation purposes, and a declaration of lands not to be retained as surplus lands to be disposed of pursuant to s. 253.783(2)(a)-(d). The management plan shall also address any remedial measures necessary to correct any environmental or economic damage caused by works constructed as a part of or as a result of the Cross Florida Barge Canal.~~

(1)~~(b)~~ Operate and maintain existing lands and interests in lands, appurtenances, structures, and facilities ~~until further disposition is directed by the Legislature pursuant to the management plan~~. Operation and maintenance of water control structures may be delegated by the department to the St. Johns River Water Management District or the Southwest Florida Water Management District, as necessary. Rights-of-way necessary for the construction and maintenance of electric transmission lines may be authorized ~~by the management plan~~.

(2) The Governor and Cabinet may authorize:

(a) The exchange of lands, or the disposal of surplus lands, within the greenway corridor; and

(b) The acquisition of privately owned lands or easements over such privately owned lands within the greenway corridor necessary for the purpose of completing a continuous corridor or for any other management purpose specified in sections 1 through 6 of this act, provided the acquisition is paid for out of the proceeds of the sale or exchange of surplus canal lands after repayment has been made to the counties as provided in s. 253.783(5) or out of moneys appropriated by the Legislature for that purpose.

~~(2) The management plan shall specifically and in sufficient detail address the canal corridor lands comprising the Oklawaha River Valley, identifying the recreational and scientific management options which are environmentally desirable and cost effective. The management plan shall be consistent with the ultimate aim of developing an overall integrated management plan for continued preservation of the entire Oklawaha River Valley ecosystem.~~

~~(3)(a) The management plan shall be prepared by the Canal Authority of the State of Florida, with the assistance of the Department of Natural Resources and the advisory committee established under s. 253.783(2)(f). The management plan shall be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the Senate and the House of Representatives, and the chairmen of the Senate Committee on Natural Resources and Conservation and the House Committee on Natural Resources, no later than 2 years from the deauthorization of the Cross Florida Barge Canal. Operation and maintenance of water control structures shall be delegated to the Southwest Florida Water Management District and the St. Johns River Water Management District or a responsible entity contracted by the districts during the period from November 28, 1992, until the management plan is completed by the canal authority and is adopted by the Legislature. The final disposition of the water control structures must be outlined in this management plan as adopted by the Legislature. Such plan shall not be implemented until state legislation specifically directing implementation of the submitted plan or a modified plan, as recommended, becomes effective.~~

~~(b) However, the advisory committee may recommend for approval by the canal authority the use of lands owned by the canal authority within the boundaries of the Cross Florida Greenbelt Recreation and Conservation Area before the management plan is completed if the advisory committee determines that:~~

~~1. The proposed use is sponsored by a local government or state agency;~~

~~2. The failure of the canal authority to act before the adoption of the management plan will create a significant financial hardship on that local government or state agency or cause the local government or state to permanently forgo significant public benefits; and~~

~~3. The proposed use meets all other federal, state, and local permitting and land use requirements.~~

~~The approval of a proposed land use under this paragraph requires an affirmative vote of at least five members of the canal authority. The advisory committee must report in the management plan all prior approved land uses.~~

Section 24. Section 253.783, Florida Statutes, 1992 Supplement, is amended to read:

253.783 Additional powers and duties of the Department of Natural Resources; disposition of surplus lands; payments to counties.—

~~(1) The Department of Natural Resources shall make no further expenditures for the purpose of acquiring land for constructing, operating, or promoting a canal across the peninsula of Florida connecting the waters of the Atlantic Ocean with the waters of the Gulf of Mexico via the St. Johns River.~~

~~(2)~~ It is declared to be in the public interest that the Department *of Natural Resources* shall do and is hereby authorized to do any and all

things *for the public purposes described herein,* and *to* incur and pay from the Cross Florida Barge Canal Trust Fund, for *those* ~~the public~~ purposes ~~described herein~~, any ~~and all~~ expenses necessary, convenient, and proper to:

(1)~~(a)~~ Offer any land declared to be surplus, at current appraised value, to the *county* ~~counties~~ in which the surplus land lies, for acquisition for specific public purposes. Any county, at its option, may elect to acquire any lands so offered without monetary payment. The fair market value of any parcels so transferred shall be subtracted from the county's reimbursement under *subsection (5)* ~~paragraph (c)~~. These offers *must* ~~will~~ be made within 3 calendar months after the date the management plan is adopted and will be valid for 180 days after the date of the offer.

(2)~~(b)~~ Extend the second right of refusal, at current appraised value, to the *former* ~~original~~ owner *of the land* from whom the Canal Authority of the State of Florida or the United States Army Corps of Engineers acquired the land or, *if that former owner has died, to* his heirs. These offers *must* ~~shall~~ be made by public advertisement in not fewer than three newspapers of general circulation within the area of the canal route, one of which *must* ~~shall~~ be a newspaper in the county in which the lands declared to be surplus are located. The public advertisements *must* ~~shall~~ be run for a period of 14 days. These offers will be valid for 30 days after the expiration date of any offers made under *subsection (1)* ~~paragraph (a)~~, or 30 days after the date publication begins, whichever is later.

(3)~~(c)~~ Extend the third right of refusal, at current appraised value, to any person having a leasehold interest in the land from the *former* canal authority. These offers *must* ~~shall~~ be advertised as provided in *subsection (2)* ~~paragraph (b)~~ and will be valid for 30 days after the expiration date of the offers made under *that subsection* ~~paragraph (b)~~, or 30 days after the date publication begins, whichever is later.

(4)~~(d)~~ Offer surplus lands not *sold* ~~purchased~~ or transferred under *subsections (1), (2), and (3)* ~~paragraphs (a)-(c)~~ to the highest bidder at public sale. Such surplus lands and the public sale *must* ~~shall~~ be described and advertised in a newspaper of general circulation within the county in which the lands are located not less than 14 calendar days prior to the date on which the public sale is to be held. The current appraised value of such surplus lands will be the minimum acceptable bid.

(5)~~(e)~~ Refund to the counties *that were included in* ~~of~~ the *former* Cross Florida Canal Navigation District moneys pursuant to this *subsection* ~~paragraph~~ from the funds remaining in the Cross Florida Barge Canal Trust Fund, ~~after the payment of the costs of acquiring lands under s. 253.781(3),~~ from the funds derived from the conveyance of lands of the project to the Federal Government or any agency thereof, pursuant to s. 253.781, and from the sales of surplus lands pursuant to this section. *These* ~~Following federal deauthorization of the project, such~~ refunds *must* ~~shall~~ consist of the $9,340,720 *in* principal in ad valorem taxes contributed by the counties and the interest which had accrued on that amount from the time of payment to June 30, 1985. *In no event may the counties be paid less than the aggregate sum of $32 million in cash or the equivalent in surplus lands, valued at their appraised value at the time of transfer. These* ~~Such~~ refunds *must* ~~shall~~ be *made* in proportion to the ad valorem tax share paid to the Cross Florida Canal Navigation District by the respective counties. *If* ~~Should~~ the remaining funds in the Cross Florida Barge Canal Trust Fund and the funds derived from the conveyance of lands of the project to the Federal Government for payment or from the sale of surplus land *are* ~~be~~ inadequate to pay the total of the principal plus interest, first priority *must* ~~shall~~ be given to repaying the principal and second priority *must* ~~shall~~ be given to repaying the interest. *The* interest to be refunded to the counties *must* ~~shall~~ be compounded annually at the following rates: 1937-1950, 4 percent; 1951-1960, 5 percent; 1961-1970, 6 percent; 1971-1975, 7 percent; 1976-June 30, 1985, 8 percent. In computing interest, amounts already repaid to the counties *are* ~~shall~~ not ~~be~~ subject to further assessments of interest. Any partial repayments provided to the counties under this act *must* ~~shall~~ be considered as contributing to the total repayment owed to the counties. *If* ~~Should~~ the *moneys raised* ~~funds generated~~ by conveyance to the Federal Government and sales of surplus lands *are* ~~be~~ more than sufficient to repay *the* ~~said~~ counties in accordance with this section, *the* ~~such~~ excess funds *may* ~~shall~~ be used for the maintenance of the *greenway* ~~greenbelt~~ corridor. ~~In no case shall~~ General revenue funds *may not* be used to repay interest owed to the counties.

~~(f) Establish an advisory committee to report to the canal authority regarding the development of the management plan. This committee shall be composed of one representative from each of the following: the canal authority, Department of Natural Resources, Department of Environmental Regulation, Department of Agriculture and Consumer Services, Game and Fresh Water Fish Commission, Department of Transportation, Department of Community Affairs, Southwest Florida Water Management District, St. Johns River Water Management District, Duval County, Clay County, Putnam County, Marion County, Levy County, and Citrus County; and it shall also be composed of six members of the public at large, two of whom shall be appointed by the Governor and Cabinet, two of whom shall be appointed by the Speaker of the House of Representatives, and two of whom shall be appointed by the President of the Senate. The canal authority, with the assistance of the department, shall conduct public hearings to receive comments and recommendations as to the disposition of lands under the management plan.~~

(6)~~(g)~~ Carry out the purposes of this act.

~~(3) The canal authority shall bear its own costs in preparing the management plan, and each agency or local government shall bear its own cost of participation in the advisory committee.~~

Section 25. (1) The sum of $628,500 is appropriated from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources for the 1993-1994 fiscal year to enable the department to contract with the St. Johns River Water Management District for up to 75 percent of the operating and maintenance costs of the Buckman Lock. In subsequent fiscal years the Legislature intends to phase out the sharing of these costs at the rate of 25 percent each year.

(2) The sum of $681,000 is appropriated from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources for the 1993-1994 fiscal year to enable the department to contract with the Southwest Florida Water Management District for up to 75 percent of the operating and maintenance costs of the Inglis Lock. In subsequent fiscal years the Legislature intends to phase out the sharing of these costs at the rate of 25 percent each year.

(3) The sum of $100,000 is appropriated from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources for the 1993-1994 fiscal year for carrying out the studies and analysis required before a final decision is made on the disposition of the Inglis Lock, required by section 6 of this act. The department may contract with water management districts and public or private agency consultants to complete the requirements of this section.

(4) The sum of $1.5 million is appropriated from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources for the 1993-1994 fiscal year for carrying out the studies and analysis required before a final decision is made on the disposition of the works impounding the Oklawaha River at Rodman Reservoir and required by section 6 of this act. The department may contract with water management districts and public or private agency consultants to complete the requirements of this section.

(5)(a) The Canal Authority of the State of Florida is transferred by a type three transfer, as defined in section 20.06(3), Florida Statutes, to the Department of Natural Resources, effective July 1, 1993.

(b) The sum of $672,511 is appropriated from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources, and 10 positions are authorized, to carry out the purposes of this act. At least three of these positions must be filled by persons who are experienced in real estate appraisals and real estate sales to assist in the timely disposition of surplus lands so that the corridor counties can be repaid as required by law.

Section 26. Notwithstanding any provision in the 1993 budget implementing bill to the contrary, it is the intent of the Legislature that the Canal Authority of the State of Florida be transferred to the Department of Environmental Protection on the effective date of this act, and that its activities not, except as specified in this act, continue to be directed by the Governor and Cabinet.

Section 27. Sections 14 through 27 shall take effect July 1, 1993.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 2, line 1, after the semicolon (;) insert: providing legislative intent; assigning the initial responsibility for managing that area to the Office of Greenway Management in the Office of the Executive

Director of the Department of Natural Resources; establishing the initial boundary of the greenway area; providing requirements for the Department of Natural Resources to conduct a study of management options for rhesus monkeys on certain lands; authorizing a horsepark/agricultural center; authorizing the Board of Trustees of the Internal Improvement Trust Fund to modify the boundary under certain circumstances; providing authority for coordinated management of greenway lands and other lands; providing for the identification and sale or exchange of former barge canal lands; providing for the payment of funds due specified counties; providing priorities for the use of funds in the Cross Florida Barge Canal Trust Fund; authorizing the lease of former canal lands; providing for recreational uses of greenway lands; authorizing the generation of hydroelectric power on greenway lands; requiring the Department of Natural Resources to perform certain studies prior to making recommendations to the Governor and Cabinet regarding the disposition of water control structures at Rodman Reservoir and Inglis Lock; specifying information that must be obtained; authorizing transportation and utility crossings of greenway lands; providing legislative intent; amending s. 253.781, F.S.; deleting an obsolete provision related to the boundary of the greenway area; replacing a requirement that the Governor and Cabinet acquire the fee title to specified lands with an authorization to acquire that fee; amending s. 253.782, F.S.; replacing a requirement that the Governor and Cabinet acquire the fee title to specified lands, with authorization to do so; amending s. 253.7829, F.S.; deleting obsolete provisions related to the management plan for the greenway area; authorizing the Governor and Cabinet to exchange, to dispose of as surplus, or to acquire certain lands and easements for specified purposes; restricting the use of funds for these transfers; amending s. 253.783, F.S.; deleting a requirement that repayment of funds to specified counties is secondary to the costs of acquiring lands pursuant to s. 253.781(3), F.S.; requiring the sum of at least $32 million in cash or surplus lands to be paid to the counties that were included in the former Cross Florida Canal Navigation District; deleting a requirement that certain excess funds be used for maintenance of the greenway corridor; providing authorization for such use; deleting obsolete provisions pertaining to the former canal authority, the Department of Natural Resources, and the preparation of the management plan for the greenway area; providing appropriations and authorizing positions; transferring the Canal Authority of the State of Florida to the Department of Natural Resources by a type three transfer;

Senator Dantzler moved the following amendment:

Amendment 5 (with Title Amendment)—On page 10, between lines 12 and 13, insert:

Section 14. Subsections (1) and (3) of section 288.514, Florida Statutes, are amended to read:

288.514 Effect of certification.—

(1) Subject to the conditions of certification set forth therein *and to the provisions of subsection (3),* any certification signed by the Governor as chairman of the board shall constitute the sole license of the state and any agency as to the approval of the construction and operation of the proposed project.

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 161, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 381, chapter 387, chapter 403, *except for permits issued pursuant to s. 403.0855, or* the Florida Transportation Code, or 33 U.S.C. s. 1341.

Section 15. Subsection (5) and the introductory paragraph of subsection (13) of section 403.031, Florida Statutes, 1992 Supplement, are amended to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(5) "Person" means the state or any agency or institution thereof, *the United States or any agency or institution thereof,* or any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity and includes any officer or governing or managing body of *the state, the United States, any agency,* any municipality, political subdivision, or public or private corporation.

(13) "Waters" include, but are not limited to, rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural. *Solely for purposes of s. 403.0885, waters of the state also include navigable waters or waters of the contiguous zone as used in s. 502 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., as in existence on January 1, 1993, except for those navigable waters seaward of the boundaries of the state set forth in s. 1, Art. II of the State Constitution.* Solely for purposes of this chapter, waters of the state also include the area bounded by the following:

Section 16. Paragraph (a) of subsection (2) of section 403.051, Florida Statutes, is amended to read:

403.051 Meetings; hearings and procedure.—

(2)(a) Any department planning, *permitting,* design, construction, modification, or operating standards, criteria, and requirements for treatment works, disposal systems, and sewerage systems for wastes from any source shall be promulgated as a rule or regulation.

Section 17. The introductory paragraph of subsection (4) and paragraph (a) of subsection (5) of section 403.086, Florida Statutes, are amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(4) For purposes of this section, the term "advanced waste treatment" means that treatment which will provide a *reclaimed* ~~recovered~~ water product that:

(5)(a) Notwithstanding any other provisions of this chapter or chapter 373, when a *reclaimed* ~~recovered~~ water product has been established to be in compliance with the standards set forth in subsection (4), that water shall be presumed to be allowable, and its discharge shall be permitted in the waters described in paragraph (c) of subsection (1) at a reasonably accessible point where such discharge results in minimal negative impact. This presumption may be overcome only by a demonstration that one or more of the following would occur:

1. That the discharge of *reclaimed* ~~recovered~~ water that meets the standards set forth in subsection (4) will be, by itself, a cause of considerable degradation to an Outstanding Florida Water or to other waters and is not clearly in the public interest.

2. That the *reclaimed* ~~recovered~~ water discharge will have a substantial negative impact on an approved shellfish harvesting area or a water used as a public domestic water supply.

3. That the increased volume of fresh water contributed by the *reclaimed* ~~recovered~~ water product will seriously alter the natural fresh-salt water balance of the receiving water after reasonable opportunity for mixing.

Section 18. Subsections (1) and (4) and paragraph (a) of subsection (5) of section 403.087, Florida Statutes, 1992 Supplement, are amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(1) No stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule. In no event shall a permit for a water pollution source be *issued for a term of* ~~valid for~~ more than 5 years, and in no event may an operation permit issued after July 1, 1992, for a major source of air pollution have a fixed term of more than 5 years. However, upon expiration, a new permit may be issued by the department in accordance with this act and the rules and regulations of the department. ~~The renewal of a permit issued under s. 403.088 for the operation of a sanitary sewage system may be issued for periods of up to 10 years, provided:~~

~~(a) The system is not currently operating under a temporary operating permit and does not have any enforcement action pending against it by the Environmental Protection Agency or the department;~~

~~(b) The department has reviewed the operation reports required under department rule, which reports include the levels of oxygen, suspended solids and percentage of removal, and phosphorus and acidity/alkalinity present in the discharge, and the department is satisfied that the report is accurate;~~

~~(c) The department has conducted, within the 12 months prior to issuance of the 10-year permit, an inspection of the system and verified, in writing to the operator of the system, that the system is not exceeding capacity and is in proper working order; and~~

~~(d) The system has met all water quality standards within the last 2 years prior to the issuance of the 10-year permit, except for violations not attributable to the sanitary sewage system or its operator.~~

~~The operator of a system operating under a 10-year permit shall report to the department, in writing, within 48 hours, of the existence of any malfunctioning equipment or other conditions which would, if allowed to continue, cause water quality standards to be violated or would violate any other department rule or standard. The report should state any corrective measures that have been taken or a plan for correcting the malfunctioning equipment or other conditions so that the department can determine whether the corrective measures or plan are appropriate.~~

(4) The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department, except as provided in s. 403.088 or s. 403.0872. *However, separate construction permits shall not be required for installations permitted under s. 403.0885, except that the department may require an owner or operator proposing to construct, expand, or modify such an installation to submit for department review, as part of application for permit or permit modification, engineering plans, preliminary design reports, or other information 90 days prior to commencing construction. The department may also require the engineer of record or another registered professional engineer, within 30 days after construction is complete, to certify that the construction was completed in accordance with the plans submitted to the department, noting minor deviations which were necessary because of site-specific conditions.*

(5)(a) The department shall require a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit or request for site-specific alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and other field services and related support activities associated with any permit issued pursuant to this chapter. However, when an application is received without the required fee, the department shall acknowledge receipt of the application and shall immediately return the unprocessed application to the applicant and shall take no further action until the application is received with the appropriate fee. The department shall adopt a schedule of fees by rule, subject to the following limitations:

1. The permit fee for any of the following permits may not exceed $32,500:

a. Hazardous waste, construction permit.

b. Hazardous waste, operation permit.

c. Hazardous waste, closure permit.

2. The permit fee for a Class I injection well construction permit may not exceed $12,500.

3. The permit fee for any of the following permits may not exceed $10,000:

a. Solid waste, construction permit.

b. Solid waste, operation permit.

c. Class I injection well, operation permit.

4. The permit fee for any of the following permits may not exceed $7,500:

a. Air pollution, construction permit.

b. Solid waste, closure permit.

c. Drinking water, construction or operation permit.

d. Domestic waste residuals, construction or operation permit.

e. Industrial waste, operation permit.

f. Industrial waste, construction permit.

5. The permit fee for any of the following permits may not exceed $5,000:

a. Domestic waste, operation permit.

b. Domestic waste, construction permit.

6. The permit fee for any of the following permits may not exceed $4,000:

a. Wetlands resource management—(dredge and fill), standard form permit.

b. Hazardous waste, research and development permit.

c. Air pollution, operation permit, for sources not subject to s. 403.0872.

d. Class III injection well, construction, operation, or abandonment permits.

7. The permit fee for Class V injection wells, construction, operation, and abandonment permits may not exceed $750.

8. The permit fee for any of the following permits may not exceed $500:

a. Domestic waste, collection system permits.

b. Wetlands resource management—(dredge and fill and mangrove alterations), short permit form.

c. Drinking water, distribution system permit.

9. The permit fee for stormwater operation permits may not exceed $100.

10. The general permit fees for permits that require certification by a registered professional engineer or professional geologist may not exceed $500. The general permit fee for other permit types may not exceed $100.

~~11. For applicants for a temporary operation permit, the department shall add a surcharge of 20 percent over the fees for the operation permit for the activity to be permitted.~~

11.~~12.~~ The fee for a permit issued pursuant to s. 403.816 is $5,000, and the fee for any modification of such permit requested by the applicant is $1,000.

12. The regulatory program and surveillance fees for facilities permitted pursuant to s. 403.088 or s. 403.0885, or for facilities permitted pursuant to s. 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and for which the department has been granted administrative authority, shall be limited as follows:

a. The fees for domestic wastewater facilities shall not exceed $7,500 annually. The department shall establish a sliding scale of fees based on the permitted capacity and shall ensure smaller domestic waste dischargers do not bear an inordinate share of costs of the program.

b. The annual fees for industrial waste facilities shall not exceed $11,500. The department shall establish a sliding scale of fees based upon the volume, concentration, or nature of the industrial waste discharge and shall ensure smaller industrial waste dischargers do not bear an inordinate share of costs of the program.

c. The department may establish a fee, not to exceed the amounts in subparagraphs 4. and 5., to cover additional costs of review required for permit modification or construction engineering plans.

Section 19. Paragraph (c) is added to subsection (2) of section 403.0876, Florida Statutes, 1992 Supplement, to read:

403.0876 Permits; processing.—

(2)

(c) Permits issued pursuant to s. 403.088 or s. 403.0885 shall be processed in accordance with s. 403.0885(4).

Section 20. Paragraphs (a), (c), and (d) of subsection (2) and subsection (3) of section 403.088, Florida Statutes, are amended, and paragraphs (e) and (f) are added to subsection (2) of said section, to read:

403.088 Water pollution operation permits; ~~temporary permits;~~ conditions.—

(2)(a) Any person intending to discharge wastes into ~~the~~ waters of the state shall make application to the department for *any appropriate permit required by this chapter* ~~an operation permit~~. Application shall be made on a form prescribed by the department and shall contain such information as the department requires.

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department;

3. Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters; ~~and~~

4. Be valid for the period of time specified therein*; and*

5. Constitute the State National Pollutant Discharge Elimination System permit when issued pursuant to the authority in s. 403.0885.

(d) An operation permit may be renewed upon application to the department *if the discharge complies with permit conditions and applicable statutes and rules.* No *operation* ~~renewal~~ permit shall be *renewed or* issued if the department finds that the ~~proposed~~ discharge will *not comply with permit conditions or applicable statutes and rules* ~~reduce the quality of the receiving waters below the classification established for them~~.

(e) However, if the discharge will not meet permit conditions or applicable statutes and rules, the department may issue, renew, or reissue the operation permit if:

1. The applicant is constructing, installing, or placing into operation, or has submitted plans and a reasonable schedule for constructing, installing, or placing into operation, an approved pollution abatement facility or alternative waste disposal system;

2. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternative waste disposal system;

3. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;

4. The granting of an operation permit will be in the public interest; or

5. The discharge will not be unreasonably destructive to the quality of the receiving waters.

(f) A permit issued, renewed, or reissued pursuant to paragraph (e) shall be accompanied by an order establishing a schedule for achieving compliance with all permit conditions. Such permit shall require compliance with the accompanying order.

~~(3)(a) A person who does not qualify for an operation permit or has been denied an operation permit under paragraph (b) of subsection (2) may apply to the department for a temporary operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department may require. The department may require such person to submit any additional information reasonably necessary for proper evaluation.~~

~~(b) The department shall give notice to people resident in the drainage area of the receiving waters for the proposed discharge concerning the period during which they may present objections to the proposed discharge.~~

~~(c) After consideration of the application, any additional information furnished, and all written objections submitted, the department shall grant or deny a temporary operation permit. No temporary permit shall be granted by the department unless it affirmatively finds:~~

~~1. The proposed discharge does not qualify for an operation permit;~~

~~2. The applicant is constructing, installing, or placing into operation, or has submitted plans and reasonable schedules for constructing, installing or placing into operation, an approved pollution abatement facility or alternate waste disposal system, or that the applicant has a waste for which no feasible and acceptable method of treatment or disposal is known or recognized but is making a bona fide effort through research and other means to discover and implement such a method;~~

~~3. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternate waste disposal system;~~

~~4. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;~~

~~5. The denial of a temporary operation permit would work an extreme hardship upon the applicant;~~

~~6. The granting of a temporary operation permit will be in the public interest; or~~

~~7. The discharge will not be unreasonably destructive to the quality of the receiving waters.~~

~~(d) A temporary operation permit issued shall:~~

~~1. Specify the manner, nature, volume, and frequency of the discharge permitted;~~

~~2. Require the proper operation and maintenance of any interim or temporary pollution abatement facility or system required by the department as a condition of the permit;~~

~~3. Require the permitholder to maintain such monitoring equipment and make and file such records and reports as the department deems necessary to ensure compliance with the terms of the permit and to evaluate the effect of the discharge upon the receiving waters;~~

~~4. Be valid only for the period of time necessary for the permit holder to place into operation the facility, system, or method contemplated in his application as determined by the department; and~~

~~5. Contain other requirements and restrictions which the department deems necessary and desirable to protect the quality of the receiving waters and promote the public interest.~~

Section 21. Section 403.0881, Florida Statutes, is amended to read:

403.0881 *Wastewater* ~~Sewage~~ or *reuse or* disposal systems or water treatment works; construction permits.—The department may issue construction permits *under s. 403.087* for *wastewater* ~~sewage~~ systems, treatment works, or *reuse or* disposal systems based upon review of a preliminary design report, application forms, and other required information, all of which shall be formulated by department rule. Detailed construction plans and specifications shall not be required prior to issuance of a ~~construction~~ permit *or a modification to a permit required under s. 403.087 or an operation permit required under s. 403.0885* unless such plans and specifications are required to secure federal funding and the project is expected to receive federal funding. Upon a demonstration that a *system* constructed *in accordance with a construction permit issued pursuant to s. 403.087* ~~system~~ operates as designed, the department shall issue a permit for operation of the system. *However, an operation permit may be issued prior to the initiation of discharge, provided the department has reasonable assurance, based on the system design, that the provisions of s. 403.088 will be met.*

Section 22. Subsections (3) and (4) of section 403.0885, Florida Statutes, 1992 Supplement, are amended to read:

403.0885 Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) program.—

(3) The department is empowered to establish a state NPDES program in accordance with s. 402 of the Clean Water Act, as amended. The department shall have the power and authority to *assume* ~~operate~~ the NPDES permitting program *from the United States Environmental Protection Agency and to implement the program, including the general permitting program under 40 C.F.R. s. 122.28 and the pretreatment program under 40 C.F.R. part 403,* in accordance with s. 402(b) of the Clean Water Act, as amended, and 40 C.F.R. part 123. *Variance, thermal vari-*

ance, and provisions for relief from criteria set forth in the Clean Water Act, as amended, and corresponding United States Environmental Protection Agency regulations shall be part of the assumed NPDES permitting program. The department may not accept authorization to administer a state NPDES program for municipal stormwater for a period of 4 years following federal approval of the state NPDES program. The provisions governing upset and bypass conditions contained in 40 C.F.R. s. 122.41 shall apply to the State National Pollutant Discharge Elimination System Program. The state NPDES permit shall be the sole permit issued by the state under this chapter regulating the discharge of pollutants or wastes into surface waters within the state for discharges covered by the *United States Environmental Protection Agency* ~~EPA~~ approved state NPDES program. This legislative ~~grant of~~ authority is intended to be sufficient to enable the department to qualify for delegation of the federal NPDES program to the state and operate such program in accordance with federal law. *Only that portion of the facility permit which authorizes a discharge pursuant to s. 402 of the Clean Water Act, as amended, shall be submitted to the United States Environmental Protection Agency for review under that section. To the extent other sections of chapter 403 apply and do not conflict with federal requirements, the application of such sections to discharges regulated under this section is not prohibited.*

(4) An application for an NPDES permit and other approvals from the state relating to the permitted activity shall be granted or denied by the department within the time allowed for permit review under 40 C.F.R. part *124* ~~123~~, subpart *A* ~~C~~. Other than for stormwater discharge permitting, the decision on issuance or denial of such permit may not be delegated to another agency or governmental authority. The department is specifically exempted from the time limitations provided in ss. 120.60 and 403.0876; *provided that upon timely application for renewal, a permit issued under this section shall not expire until the application has been finally acted upon or until the last day for seeking judicial review of the agency order or a later date fixed by order of the reviewing court.* However, if the department fails to render a permitting decision within the time allowed by 40 C.F.R. part *124* ~~123~~, subpart *A* ~~C~~, or a memorandum of agreement executed by the department and the United States Environmental Protection Agency, whichever is shorter, the applicant may apply for an order from the circuit court requiring the department to render a decision within a specified time.

Section 23. Subsection (3) is added to section 403.111, Florida Statutes, to read:

403.111 Confidential records.—

(3) Information submitted by or required of permit applicants or permittees pursuant to s. 403.0885 is not subject to the provisions of this section but is subject to the provisions of 40 C.F.R. s. 122.7.

Section 24. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) No variance shall be granted from any provision or requirement concerning *discharges of waste into waters of the state or* hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.7221.

Section 25. Section 403.5055, Florida Statutes, is created to read:

403.5055 Application for permits pursuant to s. 403.0885.—In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certificaion process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

(2) The department's proposed action pursuant to 40 C.F.R. s. 124.6, including any draft NPDES permit (containing the information required under 40 C.F.R. s. 124.6(d), shall within 130 days after the submittal of a complete application be publicly noticed and transmitted to the United States Environmental Protection Agency for its review pursuant to 33 U.S.C. s. 1342(d).

(3) The department shall include in its written analysis pursuant to s. 403.507(3) copies of the department's proposed action pursuant to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any corresponding comments received from the United States Environmental Protection Agency, the applicant, or the general public; and the department's response to those comments.

(4) The department shall not issue or deny the permit pursuant s. 403.0885 in advance of the issuance of the electric power plant certification under this part. The department's actions on an NPDES permit shall be based on the record and recommended order of the certification hearing and of any other proceeding held in connection with the application for an NPDES permit, timely public comments received with respect to the application, and the provisions of federal law. The department's action on an NPDES permit, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved state NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program. The permit, if issued, shall be valid for no more than 5 years.

(5) The department's action on an NPDES permit renewal, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations.

Section 26. Subsection (3) of section 403.506, Florida Statutes, is amended to read:

403.506 Applicability and certification.—

(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60. *However, permits issued pursuant to s. 403.0885 shall be processed in accordance with 40 C.F.R. part 123.*

Section 27. Subsection (3) of section 403.511, Florida Statutes, is amended to read:

403.511 Effect of certification.—

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, *except for permits issued pursuant to s. 403.0885 and except as provided in s. 403.509(3) and (6),* chapter 404, the Florida Transportation Code, or 33 U.S.C. s. 1341.

Section 28. Subsection (3) of section 403.707, Florida Statutes, as amended by section 1 of chapter 92-346, Laws of Florida, is amended to read:

403.707 Permits.—

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits ~~and temporary operation permits~~, apply to the control of solid waste management facilities.

Section 29. Section 403.805, Florida Statutes, is amended to read:

403.805 Secretary; powers and duties.—

(1) The secretary shall have the powers and duties of heads of departments set forth in chapter 20, including the power to adopt rules under chapter 25~~0~~, chapter 373, chapter 376, and this chapter, except that the Environmental Regulation Commission shall exercise the exclusive standard-setting authority of the department pursuant to s. 403.804. The secretary shall employ legal counsel to represent the department in matters affecting the department. Except for appeals on permits specifically assigned by this act to the Governor and Cabinet, and unless otherwise prohibited by law, the secretary may delegate the authority assigned to the department by this act to the assistant secretary, division directors, and district and branch office managers and to the water management districts.

(2) No person who is responsible for final agency action to approve any portion of a permit issued pursuant to s. 403.0885 shall receive or shall have received after appointment or during the 2 years prior to appointment directly or indirectly from such permitholders or applicants 10 percent or more of his gross personal income for a calendar year or 50 percent of his gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to a retirement pension or similar arrangement. "Permitholders" or "applicants for a permit" as used in this section shall not include any department or agency of state government. The term "income" shall include, but not be limited to, retirement benefits, consultant fees, and stock dividends. Income shall not be deemed received "directly or indirectly from permitholders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments, for which the recipient does not know the identity of the primary source of income.

Section 30. Paragraph (b) of subsection (3) of section 403.809, Florida Statutes, is amended to read:

403.809 Environmental districts; establishment; managers; functions.—

(3)

(b) The processing of all applications for permits, licenses, certificates, and exemptions shall be accomplished at the district center or the branch office, except for those applications specifically assigned elsewhere in the department pursuant to s. 403.805 or to the water management districts under s. 403.812 and those applications assigned by interagency agreement as provided in this act. However, the secretary, as head of the department, may not delegate to district or subdistrict managers, water management districts, or any unit of local government the authority to act on the following types of permit applications:

1. *Permits issued pursuant to s. 403.0885, except such permit issuance may be delegated to district managers.* ~~Certification of national pollutant discharge elimination system permits pursuant to Pub. L. No. 92-500, s. 401.~~

2. Construction of major air pollution sources.

3. Certifications under the Florida Electrical Power Plant Siting Act or the Transmission Line Siting Act *and the associated permit issued pursuant to s. 403.0885, if applicable, except that renewals of such permits may be delegated to district managers.*

4. Permits issued pursuant to s. 403.0885 to steam electric generating facilities regulated pursuant to 40 C.F.R. part 423.

Section 31. Paragraph (b) of subsection (4) of section 367.081, Florida Statutes, is amended to read:

367.081 Rates; procedure for fixing and changing.—

(4)

(b) The approved rates of any utility which receives all or any portion of its utility service from a governmental authority or from a water or wastewater utility regulated by the commission and which redistributes that service to its utility customers shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the governmental authority or other utility have changed. The approved rates of any utility which is subject to an increase or decrease in the rates *or fees* that it is charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, *the fees charged or assessed by the Department of Environmental Regulation in connection with the National Pollutant Discharge Elimination System,* or the regulatory assessment fees imposed upon it by the commission shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental authority, or the regulatory assessment fees imposed upon it by the commission have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority, other utility, or supplier of electric power, or the regulatory assessment fees imposed upon it by the commission. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 45 days prior to implementation of the increase that costs have been incurred for water-quality or wastewater-quality testing required by the Department of Environmental Regulation. The new rates authorized shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water-quality or wastewater-quality testing performed by laboratories approved by the Department of Environmental Regulation for that purpose. The new rates, however, shall not reflect the costs of any required water-quality or wastewater-quality testing already included in a utility's rates. A utility may not use this procedure to increase its rates as a result of water-quality or wastewater-quality testing or an increase in the cost of purchased water services, sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated more than 12 months before the filing by the utility. The provisions of this subsection do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2).

Section 32. The Department of Environmental Regulation is authorized 54 career service positions for administering the state NPDES program. Twenty-five career service positions are authorized for startup of the program beginning July 1, 1993, and the remaining 29 career service positions beginning January 1, 1994. The state NPDES program staffing shall start July 1, 1993, with completion targeted for 6 months following United States Environmental Protection Agency authorization to administer the National Pollutant Discharge Elimination System program. Implementation of positions is subject to review and final approval by the secretary of the Department of Environmental Regulation. The sum of $3.2 million is hereby appropriated from the Pollution Recovery Trust Fund to cover program startup costs. Such funds are to be repaid from a fund the Legislature deems appropriate, no later than July 1, 2000.

Section 33. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 34. The provisions of this act shall be implemented upon approval by the United States Environmental Protection Agency of the National Pollutant Discharge Elimination System program of the state. No state permit shall be issued pursuant to the provisions of this act before July 1, 1994.

Section 35. This act shall take effect July 1, 1993.

And the title is amended as follows:

In title, on page 2, line 1, after the comma (,) insert: pollution discharge elimination systems; amending s. 288.514, F.S.; exempting certain permits from certain certification requirements; amending s. 403.031, F.S.; revising definitions; amending s. 403.051, F.S.; requiring certain permitting standards, criteria, and requirements of the Department of Environmental Regulation to be adopted by rule; amending s. 403.086, F.S.; applying certain provisions to reclaimed water instead of recovered water; amending s. 403.087, F.S.; deleting provisions relating to renewal of certain permits; exempting certain installations from construction permit requirements; providing an exception; limiting the application of certain permit fees for industrial waste or domestic waste; deleting provision requiring a surcharge for temporary operation applicants; providing limitations on permit application and regulatory program fees for domestic and industrial waste facilities; amending s. 403.0876, F.S.; specifying the processing of certain permits; amending s. 403.088, F.S.; providing for reissuing water pollution operation permits under certain circumstances; deleting certain temporary permit authorization provisions; amending s. 403.0881, F.S.; providing for construction permits for wastewater or reuse systems; providing for issuing an operation permit under certain circumstances; amending s. 403.0885, F.S.; providing for application of certain provisions of ch. 403, F.S., to a pollutant discharge elimination system program; providing additional requirements for processing and noticing certain permits; amending s. 403.111, F.S.; exempting certain information from confidentiality provisions; subjecting such information to certain federal law; amending s. 403.201, F.S.; prohibiting variances for discharge of waste into state waters; creating s. 403.5055, F.S.; providing for processing certain permits associated with applications for electrical power plant certifications; amending s. 403.506, F.S.; providing for processing certain permits pursuant to federal guidelines; amending s. 403.511, F.S.; providing for separate processing of certain permits; amending s. 403.707, F.S.; deleting application of temporary operation permits to certain facilities; amending s. 403.805, F.S.; providing employment limitations for certain persons approving certain permits; amending s. 403.809, F.S.; pro-

hibiting delegation of authority to act on certain permit applications; amending s. 367.081, F.S.; providing for fees charged in connection with the National Pollutant Discharge Elimination System to be part of the approved rates of a utility; providing an appropriation for startup costs; providing severability; requiring certain pollutant discharge elimination system program costs to be paid from program fees; requiring a separate account for such fees; providing for implementation contingent on federal approval of such program;

Senator Dantzler moved the following amendments to **Amendment 5** which were adopted:

Amendment 5A—On page 21, lines 9 and 10, strike *", except that renewals of such permits may be delegated to district managers"*

Amendment 5B—On page 21, lines 30 and 31 and on page 22, line 1, strike all of said lines and insert: useful property, *the fees charged by the Department of Environmental Regulation in connection with the National Pollutant Discharge Elimination System Program,* or the

Amendment 5 as amended was adopted.

Senator Dantzler moved the following amendments which were adopted:

Amendment 6 (with Title Amendment)—On page 10, strike all of lines 8-12 and insert:

Section 13. Notwithstanding the provisions of section 11.611, Florida Statutes, the Sundown Act, or section 5 of chapter 83-134, Laws of Florida, sections 370.025, 370.026, 370.027, 370.028, and 370.029, Florida Statutes, shall not stand repealed on October 1, 1993, as scheduled by such laws, but those sections are revived and readopted.

Section 14. Section 5 of chapter 83-134, Laws of Florida, is repealed.

Section 15. Sections 370.025-370.029, F.S., are repealed October 1, 1995, and shall be reviewed by the Legislature prior to that date.

And the title is amended as follows:

In title, on page 1, line 31 and on page 2, line 1, strike all of said lines and insert: respectively; repealing s. 5, ch. 83-134, Laws of Florida; abrogating the repeal of ss. 370.025-370.029, F.S., under the Sundown Act; providing for future repeal of ss. 370.025-370.029, F.S.; providing for legislative review prior to that date; providing an effective date.

Amendment 7—In title, on page 1, strike all of lines 2-4 and insert: An act relating to environmental programs;

On motion by Senator Dantzler, by two-thirds vote **CS for CS for HB 1751** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

The Senate resumed consideration of—

CS for SB 152—A bill to be entitled An act relating to mobile home parks, lodging parks, recreational vehicle parks, and recreational camps; revising ss. 513.01-513.151, F.S., relating to the regulation and permitting of mobile home parks and recreational vehicle parks, and extending the applicability of certain of those provisions, as revised, to lodging parks, recreational camps; providing definitions; providing for enforcement of public health laws with respect to mobile home, lodging, and recreational vehicle parks and recreational camps; providing for applicability of recreational vehicle park provisions to certain mobile home parks and lodging parks; providing for permitting of private parks and camps; providing for issuance of a permit upon transfer of a park or camp; providing for application for and issuance of permits; providing for permit fees and providing for collection and dispostion of such fees; providing rulemaking authority to the Department of Health and Rehabilitative Services for purposes of the chapter; providing for state preemption of sanitary standards; providing for inspection of such parks and camps; providing for prosecution of operators who commit specified violations; prescribing penalties for such violations; providing for revocation and suspension of permits; authorizing administrative fines and providing for disposition of such fines; providing for enforcement of chapter and rules adopted under the chapter by issuance of citations by department personnel; providing for disposition of fines imposed by citation; regulating the disposal of sewage from mobile homes and recreational vehicles and at recreational campsites; providing penalties for operating without a permit; regulating posting, advertising, and charging of site rates and providing penalties for violations related thereto; requiring operators to maintain guest registers and current copies of the laws; prescribing liability of operators for property of guests; providing for disposition of unclaimed property left by guests of recreational vehicle parks; providing for park rules and regulations; authorizing refusal of services for specified conduct on the premises of a park; prescribing penalties for obtaining accommodations in a park with intent to defraud; providing penalties for theft of property from such a park and providing for detention and arrest of violators; providing penalties for resisting such an arrest; providing for eviction from such a park and specifying grounds therefor; prescribing an operator's rights and remedies against transient guests in such a park; repealing s. 15, ch. 83-321, Laws of Florida, which provides for the expiration of specified sections of ch. 513, F.S., effective October 1, 1993, pursuant to Regulatory Sunset Review; amending s. 381.006, F.S., pertaining to environmental health, to conform to the expansion of the scope of ch. 513, F.S., to include lodging parks and recreational camps; amending s. 509.502, F.S., pertaining to definitions of terms used in ch. 509, F.S., to exclude recreational camps from regulation as campgrounds under that chapter; amending s. 633.022, F.S., pertaining to uniform firesafety standards, to authorize the Department of Insurance to establish uniform firesafety standards for lodging parks and recreational camps; providing an effective date.

—which had been considered March 31 and deferred on a point of order by Senator Silver. Pending **Amendment 3** by Senator Kiser was withdrawn.

Senators Kiser and Silver offered the following amendment which was moved by Senator Kiser:

Amendment 4 (with Title Amendment)—On page 36, between lines 30 and 31, insert:

Section 30. Paragraph (b) of subsection (5) of section 723.006, Florida Statutes, is amended and paragraph (c) is created to read:

723.006 Powers and duties of division.—In performing its duties, the division has the following powers and duties:

(5) Notwithstanding any remedies available to mobile home owners, mobile home park owners, and homeowners' associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or any rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against a developer, mobile home park owner, or homeowners' association, or its assignee or agent, as follows:

(b) The division may issue an order requiring the mobile home park owner, or its assignee or agent, to cease and desist from an unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. *The affirmative action may include the following:*

1. Refunds of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons collected in violation of the terms of this chapter.

2. Filing and utilization of documents which correct a statutory or rule violation.

3. Reasonable action necessary to correct a statutory or rule violation.

(c) In determining the amount of civil penalty or affirmative action to be imposed under this section, if any, the division must consider the following factors:

1. The gravity of the violation.

2. Whether the person has substantially complied with the provisions of this chapter.

3. Any action taken by the person to correct or mitigate the violation of this chapter.

Section 31. Section 723.007, Florida Statutes, is amended to read:

723.007 Annual fees.—Each mobile home park owner shall pay to the division, on or before October 1 of each year, an annual fee *of $4* ~~in the amount of $3~~ for each mobile home lot within a mobile home park which

he owns. *The division may, after December 31, 1993, by rule, increase the amount of the annual fee to an amount not to exceed $5 for each mobile home lot to fund operation of the division.* If the fee is not paid by December 31, the mobile home park owner shall be assessed a penalty of 10 percent of the amount due, and he shall 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 32. Section 723.016, Florida Statutes, is amended to read:

723.016 Advertising materials; oral statements.—

(1) All advertising materials for, used by, or promoting any mobile home park shall be filed with the division by the developer, park owner, or mobile home dealer *within 30 days of the end of each calendar quarter in which it was used, unless the material has been previously filed. The calendar quarters shall end on March 31, June 30, September 30 and December 31 of each year* ~~10 days prior to use~~.

(2) The term "advertising materials" includes:

(a) Promotional brochures, pamphlets, advertisements, or other materials ~~to be~~ disseminated to the public in connection with the sale of a new mobile home or lease of a mobile home lot.

(b) Billboards and other signs posted on and off the premises.

(3) The following "advertising materials" are exempt from the filing requirements of this section: telephone directories, business cards, and correspondence in response to inquiries by individuals.

(4) ~~(3)~~ No advertising *materials* or oral statement made by any developer, park owner, or mobile home dealer shall:

(a) Misrepresent a fact or create a false or misleading impression regarding the mobile home or mobile home park.

(b) Contain any asterisk or other reference symbol as a means of contradicting or substantially changing any statement previously made or as a means of obscuring a material fact.

(c) Misrepresent the size, nature, extent, qualities, or characteristics of the offered facilities.

(d) Misrepresent the nature or extent of any service incident to the tenancy.

(5) The division shall not impose a civil penalty in excess of $250 per advertisement for each instance of the untimely filing of advertising materials.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 3, line 15, after the semicolon (;) insert: amending s. 723.006, F.S.; providing specified affirmative action which may be taken by the Division of Florida Land Sales, Condominiums, and Mobile Homes; amending s. 723.007, F.S.; providing for annual fees to be set by the division not to exceed a specified amount; amending s. 723.016, F.S.; providing for filing of advertising materials;

Senators Kiser and Silver offered the following amendment to **Amendment 4** which was moved by Senator Kiser and adopted:

Amendment 4A—On page 3, line 18, after "cards," insert: items placed solely on bulletin boards in a mobile home park,

Senator Kiser moved the following amendment to **Amendment 4** which was adopted:

Amendment 4B—On page 3, line 18, after "directories," insert: items placed on bulletin boards in a mobile home park,

Amendment 4 as amended was adopted.

Senators Kiser and Silver offered the following amendment which was moved by Senator Kiser and adopted:

Amendment 5—On page 7, line 14, after "parks" insert: *including, but not limited to chapter 723, if applicable*

Senator Kiser moved the following amendment which was adopted:

Amendment 6—On page 36, between lines 30 and 31, insert a new section:

Section 31. Mobile home cooperative homeowners' association; elections.—The provisions of section 719.106(1)(b), Florida Statutes, notwithstanding, the election of board members in a mobile home cooperative homeowners' association may be carried out in the manner provided for in the bylaws of the association. A mobile home cooperative is a residential cooperative consisting of real property to which 10 or more mobile homes are located or are affixed.

Senator Gutman moved the following amendment which was adopted:

Amendment 7—On page 6, line 28, after "under" insert: the provisions of

Senator Bankhead moved the following amendment which was adopted:

Amendment 8—On page 13, line 18 through page 15, line 2, strike all of said lines and insert:

(1) If the department reasonably believes that a permittee has committed a violation of this chapter which affects the public health, safety, or sanitation, then the department may serve a citation on the permittee for such violation. However, the department must have previously notified the permittee of the violation and the permittee must have failed to timely correct the violation. Citations issued under this section are proposed agency action.

(2) Citations shall be in writing and shall describe the particular violation, including a specific reference to the provision of this chapter or rule promulgated hereunder alleged to have been violated.

(3) The department may seek to impose a fine not to exceed $500 for each violation cited under this section. Each day a violation continues after an initial citation is issued is a separate violation for which a subsequent citation may be issued. However, if the initial citation is not upheld through an administrative hearing under chapter 120, any subsequent citation for the same violation is void.

(4) Citations shall contain a conspicuous written notice of the permittee's right to request a hearing under chapter 120 within 21 days after the date of receiving the citation and shall contain a description of the procedures to be followed to request such a hearing. Citations shall contain a conspicuous statement that if the permittee fails to timely request an administrative hearing, the permittee may be deemed to waived the right to an administrative hearing. The statement shall also warn that if the permittee does not request a hearing, the citation becomes final agency action and if the permittee fails to pay the fine within 60 days after the date of receiving the citation, the permittee will be required to pay maximum fine or penalty.

(5) The department may reduce or waive any civil penalty initially sought to be imposed through a citation. In determining whether to reduce or waive a fine under this section, the department shall use the criteria in s. 513.055(2)(b).

(6) This section is an alternative means of enforcing this chapter. Nothing contained in this section prohibits the department from enforcing this chapter or the rules adopted thereunder by any other means permitted under this chapter. However, the department may only use a single enforcement procedure for any one violation.

(7) Citations issued under this section shall be served on the permittee or individual at the park or camp designated by the permittee except that service may be made by a department designee if designated by rule to effect such service.

On motion by Senator Gutman, by two-thirds vote **CS for SB 152** 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—

CS for CS for HB 2203—A bill to be entitled An act relating to nursing homes and long-term care facilities; amending s. 400.011, F.S.; modifying purpose of provisions relating to regulation of nursing homes and related facilities; amending s. 400.021, F.S.; revising definitions; amending s. 400.022, F.S.; revising residents' rights; creating s. 400.0255, F.S.; establishing procedures for transfer or discharge of resident; provid-

ing for notice and hearings; providing for disposition of accrued charges; providing a public records exemption; providing for review and repeal; amending s. 400.051, F.S.; modifying exemptions; providing an exemption for certain existing facilities; amending s. 400.062, F.S., relating to licensure requirements; providing that funds collected may be used to reduce licensure fees; amending s. 400.0625, F.S.; clarifying minimum standards for certain laboratory test results; amending s. 400.071, F.S.; revising licensure application requirements; amending s. 400.111, F.S.; revising renewal requirements; amending s. 400.121, F.S.; providing conditions for suspension of licenses; providing for hearing; providing for receivership; amending s. 400.126, F.S.; revising provisions relating to receivership; increasing the allowable amount of expenditures to correct deficiencies; amending s. 400.141, F.S.; revising administration and management of facilities; providing for transfer of personnel records between facilities; amending s. 400.145, F.S.; revising requirements for furnishing copies of records of care and treatment; specifying copying charges; amending s. 400.151, F.S., relating to contracts; amending s. 400.162, F.S.; revising authority with respect to property and personal affairs of residents; amending s. 400.165, F.S.; revising requirements for itemized billings; amending s. 400.176, F.S.; increasing a fine for unlawful rebates; amending s. 400.19, F.S.; providing for right of entry and inspection of a district nursing home unit in a hospital and certain freestanding facilities licensed under ch. 395, F.S.; modifying an inspection requirement; authorizing verification of correction of deficiencies without reinspection, under certain circumstances; amending s. 400.191, F.S.; revising requirements for making reports and records available; amending s. 400.20, F.S.; deleting limitation on the number of facilities to be subject to an administrator's supervision; amending s. 400.211, F.S.; revising requirements for certification and employment of nursing assistants; providing for screening of personnel; amending s. 400.23, F.S.; revising rulemaking requirements; creating the Nursing Home Advisory Committee; providing membership and duties; revising procedures for evaluating and rating facilities; increasing penalties for deficiencies; deleting authority to delegate review of plans to a county or municipality; amending s. 400.317, F.S.; authorizing state and district ombudsman councils to seek immediate legal or administrative remedies, under certain conditions; renumbering and amending s. 400.3221, F.S., relating to emergency medication kits; creating s. 400.335, F.S.; requiring an audit of trust funds and related accounts by the Auditor General; creating s. 400.801, F.S.; providing for licensure of homes for special services; providing a fee; providing requirements and procedures; providing for violations; providing penalties; creating s. 400.805, F.S.; providing for licensure of transitional living facilities; providing fees; providing requirements and procedures; providing for violation; providing penalties; amending s. 408.035, F.S.; specifying additional criteria for review of certificate-of-need applications; amending s. 408.036, F.S.; providing that certain applications subject to expedited certificate-of-need review are subject to a specified base fee; amending s. 408.07, F.S.; revising the definition of "nursing home" for data collection purposes; amending ss. 400.023, 400.063, 400.102, 400.125, 400.179, 400.18, 400.25, 400.29, 400.33, and 400.331, F.S.; conforming language and references to transfer of responsibilities to the Agency for Health Care Administration; correcting cross references; deleting obsolete language; amending ss. 20.41, 393.0673, 393.0678, 397.021, 400.307, 400.308, and 413.602, F.S.; conforming language and correcting cross references; amending s. 413.614, F.S.; providing rulemaking authority of the Division of Vocational Rehabilitation of the Department of Labor and Employment Security, relating to transitional living facilities for spinal-cord-injured and head-injured persons; repealing s. 400.041, F.S., relating to nursing facility licensing categories; repealing s. 400.045, F.S., relating to transitional living facilities for spinal-cord-injured and head-injured persons; saving pt. I of ch. 400, F.S., from Sunset repeal; saving ss. 400.304 and 400.307, F.S., from Sundown repeal; providing for future review and repeal; providing effective dates.

—which had been previously considered this day. Pending **Amendment 3** by Senator Gutman was adopted.

Senator Gutman moved the following amendments which were adopted:

Amendment 4—On page 5, strike all of lines 27 and 28 and insert:

(6)~~(5)~~ "Department" means the Department of Health and Rehabilitative Services.

(Renumber subsequent subsections.)

Amendment 5—On page 6, strike all of lines 21-25 and insert:

(8) "Geriatric outpatient clinic" means a site for providing outpatient health care to persons 60 years of age or older, which is staffed by a registered nurse or a physician assistant.

(9) "Geriatric patient" means any patient who is 60 years of age or older.

(Renumber subsequent subsections.)

Amendment 6—On page 7, strike all of lines 8-11 and insert:

~~(12) "Related health care facility home" means a facility for the aged, home for special services, or other home as defined in rules and regulations of the department.~~

Amendment 7—On page 8, strike line 2 and insert: ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Council

Amendment 8—On page 12, strike all of lines 13 and 14 and insert: *Florida law or* ~~unless otherwise indicated by the resident's physician~~; *the right to be fully informed in advance of any*

Amendment 9 (with Title Amendment)—On page 17, strike line 17 and insert:

Section 4. Effective July 1, 1993, Section 400.023, Florida Statutes, is

And the title is amended as follows:

In title, on page 1, line 8, after "rights;" insert: amending s. 400.023, F.S.; revising civil enforcement;

Amendment 10 (with Title Amendment)—On page 19, strike line 28 and insert:

Section 5. Effective July 1, 1993, Section 400.0231, Florida Statutes, is

And the title is amended as follows:

In title, on page 1, line 8, after "rights;" insert: creating s. 400.0231, F.S.; providing criminal penalties for fraudulently handling medical or other nursing home records;

Amendment 11 (with Title Amendment)—On page 22, strike all of lines 1-17 and renumber subsequent subsections.

And the title is amended as follows:

In title, on page 1, strike all of lines 11 and 12 and insert: for notice and hearings; providing a

Amendment 12 (with Title Amendment)—On page 35, line 22, after the period (.) through line 30, strike all of said lines and insert: ~~A license renewed for a period of 4 months or less shall not be subject to late fees provided for in this section. Late fees shall be deposited and disbursed through the Resident Protection Trust Fund established by s. 400.063. New facilities which are in substantial compliance with this section and with the rules of the Department of Health and Rehabilitative Services, but which have deficiencies, may be issued conditional licenses pending correction of deficiencies.~~

And the title is amended as follows:

In title, on page 1, line 24, after "requirements;" insert: deleting requirements for applying for a license effective for 4 months or less;

Amendment 13 (with Title Amendment)—On page 56, line 12, before "department" insert: *agency or the*

And the title is amended as follows:

In title, on page 2, line 13, after "rebates;" insert: amending s. 400.179, F.S.; changing the advance notice requirement for change of ownership to 90 days; allocating liability relating to Medicaid overpayments and underpayments; providing for administrative action;

Amendment 14—On page 58, line 4, after "1993" insert: *, for each license renewal*

Amendment 15 (with Title Amendment)—On page 82, line 15 through page 85, line 2, strike all of said lines

And the title is amended as follows:

In title, on page 3, strike all of lines 5-8 and insert: renumbering and

Amendment 16 (with Title Amendment)—On page 86, strike all of lines 15-28

And the title is amended as follows:

In title, on page 3, strike line 31 and insert: 400.25, 400.29, and 400.33, F.S.;

Amendment 17 (with Title Amendment)—On page 92, strike all of lines 4-21

And the title is amended as follows:

In title, on page 4, strike line 5 and insert: amending ss. 393.0673, 393.0678,

Amendment 18 (with Title Amendment)—On page 94, between lines 25 and 26, insert:

Section 50. There is appropriated to the Department of Health and Rehabilitative Services the sum of $21,608 from general revenue and $21,605 from the Administrative Trust Fund for 1 hearing officer to conduct hearings under s. 400.0255.

And the title is amended as follows:

In title, on page 4, line 19, after the semicolon (;) insert: providing appropriations;

Amendment 19—On page 95, line 2, strike "*implement this act*" and insert: *conduct appeals hearings related to subsection 400.211(5)*

Amendment 20—On page 95, strike all of lines 3-5 and insert:

Section 52. *Sections 400.041, 400.045, and 400.331, F.S., are hereby repealed.*

Amendment 21—On page 95, line 10, after "*Statutes,*" insert: *and s. 413.614, Florida Statutes,*

Amendment 22 (with Title Amendment)—On page 95, line 13 through page 96, line 9, strike all of said lines and insert:

Section 54. Sections 4 and 5 of this act shall take effect July 1, 1993 and shall apply to causes of action accruing on or after said date. Subsections (2), (3), (4), and (5) of section 400.023, Florida Statutes, as created by section 4 of this act, shall not be relied upon for the purpose of ascertaining legislative intent as to the interpretation of section 400.023, Florida Statutes, as it existed prior to July 1, 1993.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, strike all of lines 19-21 and insert: from Sunset repeal; providing an effective date for causes of action; declaring legislative intent; providing

Senator Forman moved the following amendment which was adopted:

Amendment 23 (with Title Amendment)—On page 96, between lines 2 and 3, insert:

Section 57. Paragraph (o) is added to subsection (1) of section 408.035, Florida Statutes, 1992 Supplement, to read:

408.035 Review criteria.—

(1) The department shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities and services, hospices, and health maintenance organizations in context with the following criteria:

(o) The applicant's past and proposed provision of services that promote a continuum of care in a multilevel health care system, which may include, but is not limited to, acute care, skilled nursing care, home health care, and adult congregate living facilities.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, line 20, after the semicolon (;) insert: amending s. 408.035, F.S.; providing an additional criterion for department review of certificate-of-need determinations;

On motion by Senator Gutman, by two-thirds vote **CS for CS for HB 2203** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 173—A bill to be entitled An act relating to elections; amending s. 99.061, F.S.; allowing a candidate to pay his qualifying fee by cashier's check under certain circumstances; amending s.106.11, F.S., relating to expenditures from campaign accounts, to conform; providing an effective date.

—was read the second time by title.

Senator Dudley moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 2, between lines 2 and 3, insert a new section 2:

Section 2. Subsection (5) of section 106.04, Florida Statutes, is amended to read:

106.04 Committees of continuous existence.—

(5) No committee of continuous existence shall contribute to any candidate or political committee an amount in excess of the limits contained in s. 106.08(1) or participate in any other activity which is prohibited by this chapter. If any violation occurs, it shall be punishable as provided in this chapter for the given offense. No funds of a committee of continuous existence shall be expended on behalf of a candidate, except by means of a contribution made through the duly appointed campaign treasurer of a candidate. No such committee shall make expenditures in support of, or in opposition to, an issue unless such committee first registers as a political committee pursuant to this chapter and undertakes all the practices and procedures required thereof; provided such committee may make contributions in a total amount not to exceed 25 percent of its aggregate income, as reflected in the annual report filed for the previous year, to one or more political committees registered pursuant to s. 106.03 and formed to support or oppose issues *or candidates*.

And the title is amended as follows:

In title, insert: Amending s. 106.04(5), F.S., relating to certain activities by committees;

Senator Holzendorf moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 1, between lines 11 and 12, insert:

Section 1. Subsection (1) of section 99.095, Florida Statutes, is amended to read:

99.095 Alternative method of qualifying.—

(1) A person seeking to qualify for nomination to any office may qualify to have his name placed on the ballot for the first primary election by means of the petitioning process prescribed in this section. A person qualifying by this alternative method shall not be required to pay the qualifying fee or party assessment required by this chapter. A person using this petitioning process *must* ~~shall~~ file an oath with the officer before whom the candidate would qualify for the office stating that he intends to qualify by this alternative method for the office sought *and that he is unable to pay such fee without imposing an undue burden on his personal resources or on resources otherwise available to him.* If the person is running for an office *that* ~~which~~ will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate in his oath for which group or district office he is running. The oath *may* ~~shall~~ be filed at any time after the first Tuesday *following* ~~after~~ the first Monday in January of the year in which the first primary is held, but *before* ~~prior to~~ the 21st day preceding the first day of the qualifying period for the office sought. The Department of State shall prescribe the form to be used in administering and filing *the* ~~such~~ oath. ~~No~~ Signatures *may not* ~~shall~~ be obtained by a candidate on any nominating petition until he has filed the oath required in this section. If the person is running for an office *that* ~~which~~ will be grouped on the ballot with two or more similar offices to be filled at the same election and the petition does not indicate the group or district office for which he is running, the signatures obtained on *the* ~~such~~ petition will not be counted.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, strike line 2 and insert: An act relating to elections; amending s. 99.095, F.S.; requiring candidates qualifying by the alternative method to swear to an undue burden oath; amending s.

Senator Silver moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 4, between lines 13 and 14, insert:

Section 3. Notwithstanding section 100.061, Florida Statutes, or any other law to the contrary, the date of the first primary election in 1994 is changed from Tuesday, September 6, 1994 to Thursday, September 8, 1994.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 7, after the semicolon (;) insert: changing the date of the first primary election in 1994 because of a conflict with Rosh Hashanah, the Jewish New Year

On motion by Senator Myers, by two-thirds vote **HB 173** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—None

SENATOR BANKHEAD PRESIDING

On motions by Senator Forman, by two-thirds vote **HB 1817** was withdrawn from the Committees on Commerce; and Finance, Taxation and Claims.

On motion by Senator Forman—

HB 1817—A bill to be entitled An act relating to the disposition of unclaimed property; amending ss. 717.117 and 717.118, F.S.; decreasing the threshold level of value for property which must be reported or acted upon in certain ways; requiring the Department of Banking and Finance to develop and implement a limited-duration amnesty program concerning the disposition of unclaimed property; providing conditions for participation in the amnesty program; amending s. 717.132, F.S.; increasing the administrative fine for failure to report, pay, or deliver unclaimed property; providing an effective date.

—a companion measure, was substituted for **SB 1976** and read the second time by title. On motion by Senator Forman, by two-thirds vote **HB 1817** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

RECONSIDERATION

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

CS for CS for HB 1751—A bill to be entitled An act relating to the merging of the Department of Natural Resources and the Department of Environmental Regulation; providing a declaration of policy; creating the Department of Environmental Protection and transferring the Department of Natural Resources and the Department of Environmental Regulation to such department; providing for the appointment and establishment of the head of the department; establishing divisions within the department; providing for future review and repeal; amending ss. 253.002, 259.035, and 370.017, F.S.; conforming certain provisions; transferring the Department of Natural Resources, the Department of Environmental Regulation, including the Environmental Regulation Commission to the new department; transferring the Marine Fisheries Commission to the Board of Trustees of the Internal Improvement Trust Fund; organizing the Department of Environmental Protection as a single budget entity; requiring the department to report to the 1994 Legislature with certain recommendations; providing content of the report; mandating savings in the areas of executive direction and administration; repealing ss. 20.25 and 20.261, F.S., relating to the Department of Natural Resources and the Department of Environmental Regulation, respectively; providing a directive to the Division of Statutory Revision; providing an effective date.

—passed as amended this day.

On motion by Senator Dantzler, by two-thirds vote the Senate reconsidered the vote by which **CS for CS for HB 1751** was read the third time.

On motions by Senator Dantzler, the Senate reconsidered the vote by which **Amendment 3** as amended and **Amendment 3D** were adopted. **Amendment 3D** was withdrawn.

The question recurred on **Amendment 3** as amended which was adopted.

On motion by Senator Dantzler, by two-thirds vote **CS for CS for HB 1751** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

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

CS for HB 795—A bill to be entitled An act relating to underground facilities; creating the Underground Facility Damage Prevention and Safety Act; providing legislative intent; providing definitions; providing for the creation of the "Sunshine State One-Call of Florida, Inc."; providing for a board of directors; requiring annual reports to the Governor; providing for the establishment of a one-call toll-free telephone notification system; providing for participation by underground facility operators; providing procedures; requiring notice of excavations and demolitions; providing immunity for board members of the corporation; providing for liability of certain entities and the system; providing civil and criminal penalties; providing an exemption for single family residential owners; providing an exception for emergency excavations under certain circumstances; providing for the assessment of costs among member operators; providing for applicability and construction; providing severability; providing an effective date.

—a companion measure, was substituted for **SB 1276** and by two-thirds vote read the second time by title. On motion by Senator Silver, by two-thirds vote **CS for HB 795** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SB 1702—A bill to be entitled An act relating to articulation between education systems; amending s. 240.115, F.S.; providing an additional criterion for postsecondary institutions that award course credit for transferring students; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendment which was moved by Senator Kirkpatrick and adopted:

Amendment 1—On page 1, line 25, after "institution." insert: *Similarly, students who transfer among postsecondary adult vocational institutions accredited by the Southern Association of Colleges and Schools shall be awarded vocational credit for courses deemed equivalent in the course numbering system.*

Senators Hargrett and Grant offered the following amendment which was moved by Senator Hargrett:

Amendment 2 (with Title Amendment)—On page 1, between lines 10 and 11, insert:

Section 1. Subsections (1) and (10) of section 232.246, Florida Statutes, 1992 Supplement, are amended to read:

232.246 General requirements for high school graduation.—

(1) *Enrollment in a minimum of 24 academic credits and* successful completion of a minimum of *22* 24 academic credits in grades 9 through 12 shall be required for graduation. The *22 to* 24 credits shall be distributed as follows:

(a) Four credits in English, with major concentration in composition and literature.

(b) Three credits in mathematics.

(c) Three credits in science, two of which must have a laboratory component. The State Board of Education may grant an annual waiver of the laboratory requirement to a school district that certifies that its laboratory facilities are inadequate, provided the district submits a capital outlay plan to provide adequate facilities and makes the funding of this plan a priority of the school board.

(d) One credit in American history.

(e) One credit in world history, including a comparative study of the history, doctrines, and objectives of all major political systems.

(f) One-half credit in economics, including a comparative study of the history, doctrines, and objectives of all major economic systems. The Florida Council on Economic Education shall provide technical assistance to the department and local school boards in developing curriculum materials for the study of economics.

(g) One-half credit in American government.

(h)1. One credit in practical arts vocational education or exploratory vocational education. Any vocational course as defined in s. 228.041(22) may be taken to satisfy the high school graduation requirement for one credit in practical arts or exploratory vocational education provided in this subparagraph;

2. One credit in performing fine arts to be selected from music, dance, drama, painting, or sculpture. A course in any art form, in addition to painting or sculpture, that requires manual dexterity, or a course in speech and debate, may be taken to satisfy the high school graduation requirement for one credit in performing arts pursuant to this subparagraph; or

3. One-half credit each in practical arts vocational education or exploratory vocational education and performing fine arts, as defined in this paragraph.

Such credit for practical arts vocational education or exploratory vocational education or for performing fine arts shall be made available in the 9th grade, and students shall be scheduled into a 9th grade course as a priority.

(i) One-half credit in life management skills to include consumer education, positive emotional development, nutrition, prevention of human immunodeficiency virus infection and acquired immune deficiency syndrome and other sexually transmissible diseases, benefits of sexual abstinence and consequences of teenage pregnancy, information and instruction on breast cancer detection and breast self-examination, cardiopulmonary resuscitation, drug education, and the hazards of smoking. Such credit shall be given for a course to be taken by all students in either the 9th or 10th grade.

(j) One-half credit in physical education to include assessment, improvement, and maintenance of personal fitness.

(k) *Seven to* nine elective credits.

(Renumber subsequent sections.)

And the title is amended as follows:

On page 1, strike lines 2 and 3 and insert: An act relating to education; amending s. 232.246, F.S.; revising graduation credit requirements; amending s. 240.115, F.S.;

POINT OF ORDER

Senator Dudley raised a point of order that pursuant to Rule 7.1 **Amendment 2** contained language of a bill not reported favorably by a Senate committee and was therefore out of order.

The point of order was referred to Senator Jennings, Chairman of the Committee on Rules and Calendar.

On motion by Senator Kirkpatrick, further consideration of **SB 1702** with pending **Amendment 2** was deferred.

SB 1992—A bill to be entitled An act relating to education; amending s. 216.023, F.S.; providing an exception for filing legislative budget requests; amending s. 235.41, F.S.; providing that Commissioner of Education shall submit the capital outlay budget request for educational facilities 75 days prior to regular legislative session; providing for submitting preliminary data for developing 3-year capital outlay lists; amending s. 239.117, F.S.; providing the certain exemption from student fees does not apply to community college students; eliminating certain restrictions on fees for lifelong learning programs; providing range for matriculation fees and tuition; providing that financial aid fees be deposited in the school district fund; providing each school board may establish a separate fee for capital improvements, technology, or building equipment; authorizing a community college board of trustees to establish certain fees; amending s. 239.213, F.S.; providing for vocational preparatory instruction; amending s. 239.301, F.S.; providing that community colleges do not have to report lifelong learning expenditures unless the data is used for appropriations purposes; amending s. 240.319, F.S.; providing for certain leases, lease-purchase agreements, installment contracts for community college equipment; amending s. 240.35, F.S.; providing for college preparatory instruction fees; amending s. 240.359, F.S.; providing for apportionment of state funds to community colleges; requiring the Legislature not to consider certain student fees in apportioning funds; amending s. 240.36, F.S.; deleting a restriction on transferring monies from the state trust fund to the community college foundation; amending s. 240.367, F.S.; providing authority of board of trustees of a community college to request approval of the Executive Director of the State Community College System to negotiate a loan; amending s. 240.551, F.S.; providing that prepaid community college registration fees include student activity and service fees; repealing s. 240.138, F.S., relating to reporting of foreign gifts by universities and community colleges; repealing s. 240.311(3)(h), F.S., relating to establishment of an information system; repealing s. 240.335, F.S., relating to employment of community college personnel; repealing s. 240.347(2), F.S., relating to information included in community college budget requests; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendments which were moved by Senator Kirkpatrick and adopted:

Amendment 1—On page 3, line 13, strike "325.41(2)" and insert: 235.41(2)

Amendment 2 (with Title Amendment)—On page 3, line 18, strike "*75*" and insert: *90*

And the title is amended as follows:

In title, on page 1, line 7, strike "75" and insert: 90

Amendment 3—On page 20, line 8, strike "*must*" and insert: *may*

Senator Kirkpatrick moved the following amendment:

Amendment 4 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Subsection (1) of section 216.023, Florida Statutes, 1992 Supplement, is amended to read:

216.023 Legislative budget requests to be furnished by agencies.—

(1) The head of each state agency shall submit a final legislative budget request to the Legislature and to the Governor, as chief budget officer of the state, in the form and manner prescribed in the budget instructions and at such time as specified by the Executive Office of the Governor, based on the agency's independent judgment of its needs. However, *a* ~~no~~ state agency *may not* ~~shall~~ submit its final legislative budget request later than September 1 of each year, *except for the Fixed Capital Outlay Budget of the Department of Education that will be submitted under s. 235.41(2).*

Section 2. Subsections (2) and (3) of section 235.41, Florida Statutes, are amended to read:

235.41 Legislative capital outlay budget request.—

(2) The commissioner shall submit, to the Governor and to the Legislature *90 days before the regular legislative session each year,* an integrated, comprehensive budget request for educational facilities construc-

tion and fixed capital outlay needs for all boards, including the Board of Regents, pursuant to the provisions of s. 235.435 ~~and applicable provisions of chapter 216~~. Each board, including the Board of Regents, shall submit to the commissioner a 3-year plan and data required in the development of the annual capital outlay budget. No further disbursements shall be made from the Public Education Capital Outlay and Debt Service Trust Fund to a board that fails to timely submit the required data until such board submits the data.

(3) *The commissioner, upon request, shall submit to the Executive Office of the Governor preliminary data used in developing the 3-year capital outlay lists.* ~~The commissioner shall submit an integrated, comprehensive budget request to the Executive Office of the Governor and to the Legislature no later than 60 days prior to the legislative session each fiscal year.~~ Notwithstanding the provisions of s. 216.043, the integrated, comprehensive budget request shall include:

(a) For the Public Education Capital Outlay and Debt Service Trust Fund and all sinking and investment accounts which are in receipt of any portion of the revenue sources listed in s. 235.42(2)(a):

1. A schedule for each fund showing the actual beginning cash balance for each of the 2 prior fiscal years and showing for the current fiscal year the estimated beginning cash balance and a listing of all disbursements and receipts.

2. For the budget fiscal year for each fund, the projected beginning cash balance, a monthly projection of all receipts, and a monthly projection of all disbursements.

3. For the budget fiscal year, necessary forecasting data to enable the commissioner to prepare and submit a monthly gross receipts tax forecast, a monthly bond proceeds estimate, the interest rate assumption used in the bond proceeds estimate, a monthly interest earnings forecast, the interest rate assumption used in the calculation of interest to be received on the idle balances invested, and any other reports as deemed necessary by the Legislature.

(b) Recommendations for the priority of expenditure of funds in the state system of public education, with reasons for the recommended priorities, and other recommendations which relate to the effectiveness of the educational facilities construction program.

All items in s. 235.435 shall be part of the legislative budget request submitted by the commissioner.

Section 3. Paragraph (g) of subsection (2), pargraph (a) of subsection (5), subsection (7), and subsection (16) of section 239.117, Florida Statutes, 1992 Supplement, are amended, and subsection (17) is added to that section, to read:

239.117 Postsecondary student fees.—

(2) The following students are exempt from any requirement for the payment of registration, matriculation, and laboratory fees for instruction:

(g) A student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence for individuals intended to be institutionalized, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. *This exemption does not apply to students enrolled in community colleges.*

(5)(a) Each year the State Board of Community Colleges shall review and evaluate the percentage of the cost of adult programs and postsecondary adult vocational programs supported through student fees. If this review indicates that student fees generate less than the percentage targeted for the program, the State Board of Community Colleges shall adopt a schedule of fee increases by December 31 for the following fall semester. For students who are residents for tuition purposes, the schedule so adopted must produce revenues equal to 25 percent of the prior year's program cost for ~~college preparatory and~~ supplemental vocational programs and 10 percent of the prior year's program cost for postsecondary adult vocational and vocational preparatory programs. *Each board of trustees shall establish fees for lifelong learning that must be used to supplement the state appropriations for their program.* ~~The fee schedule for lifelong learning programs shall be based on student fees and nonstate funds necessary to produce 50 percent of the prior year's cost of lifelong learning programs. State funds may not exceed 50 percent of the prior year's cost of lifelong learning programs.~~ The state board may not increase fees more than 10 percent for students who are residents for tuition purposes. Unless otherwise specified in the General Appropriations Act, the fee schedule shall take effect and the college shall expend student fees on instruction. If the Legislature enacts a calculation different than that adopted by the state board, the state board shall adopt a fee schedule that generates the same revenues as the calculation contained in the General Appropriations Act. Each community college board of trustees shall establish matriculation, tuition, and noncredit fees that may vary no more than 10 percent from the schedule approved by the State Board of Education. *The sum of nonresident student matriculation and tuition fees must be sufficient to defray the full cost of each program. Each community college board of trustees shall establish tuition fees that vary no more than 10 percent from the schedule approved by the State Board of Community Colleges. The state board may not increase fees more than 25 percent for students who are not residents for tuition purposes.* ~~Fees for students who are not residents for tuition purposes must offset the full cost of instruction.~~

(7) Each school board and community college board of trustees may collect, for financial aid purposes, up to an additional 5 percent of the student fees collected for postsecondary adult vocational and supplemental vocational courses and programs. All fees collected shall be deposited into the student financial aid fee trust fund of the district ~~or community college~~. Of the fees collected annually, a minimum of 25 percent shall be invested pursuant to the provisions of s. 18.125. Any undisbursed balance remaining in the trust fund and interest income accruing to investments from the trust fund shall increase the total funds available for distribution to postsecondary adult vocational and supplemental vocational students. Awards shall be based on student financial need and distributed in accordance with a nationally recognized system of need analysis approved by the State Board for Vocational Education. Fees collected pursuant to this subsection shall be allocated in an expeditious manner.

(16) Each school board ~~and community college board of trustees~~ may establish a separate fee for capital improvements, technology enhancements, or equipping buildings which may not exceed 5 percent of the matriculation fee for resident students or 5 percent of the matriculation and tuition fee for nonresident students. Funds collected through these fees may not be bonded. The fee shall be collected as a component part of the registration and tuition fees, paid into a separate account, and expended only to maintain, improve, equip, or enhance the postsecondary adult vocational or adult education facilities of the school district ~~or community college~~. Projects funded through the use of the capital improvement fee must meet the survey and construction requirements of chapter 235. Pursuant to s. 216.0158, each school board ~~and community college board of trustees~~ shall identify each project, including maintenance projects, proposed to be funded in whole or in part by such fee. A maximum of 15 cents per credit hour may be allocated from the capital improvement fee for child care centers conducted by the school board ~~or community college board of trustees~~.

(17) Each community college board of trustees may establish a separate activity and service fee, a financial aid fee, and a capital improvement fee for each of these programs as specified in s. 240.35.

Section 4. Subsection (3) of section 239.213, Florida Statutes, 1992 Supplement, is amended to read:

239.213 Vocational preparatory instruction.—

(3) Exceptional students, as defined in s. 228.041, may be exempted from the provisions of this section. A student who possesses an associate ~~in arts~~, baccalaureate, or graduate-level degree, who has completed the college-level communication and computation skills examination pursuant to s. 240.107, or who is exempt from the college entry-level examination pursuant to s. 240.107 may be exempted from the provisions of this section.

Section 5. Paragraph (d) of subsection (5) of section 239.301, Florida Statutes, 1992 Supplement, is amended to read:

239.301 Adult general education.—

(5)

(d) Expenditures for college preparatory and lifelong learning students shall be reported separately. Allocations for college preparatory courses shall be based on proportional full-time equivalent enrollment. Program review results shall be included in the determination of subsequent allocations. College preparatory and lifelong learning courses do

not generate credit toward an associate or baccalaureate degree. *Community colleges do not have to report lifelong learning expenditures unless the data is used for appropriations purposes.*

Section 6. Paragraph (p) of subsection (3) of section 240.319, Florida Statutes, is amended to read:

240.319 Community college district boards of trustees; duties and powers.—

(3) Such rules, procedures, and policies for the boards of trustees include, but are not limited to, the following:

(p) Each board of trustees is authorized to contract for the purchase, lease, or acquisition in any manner (including purchase by installment or lease-purchase contract which may provide for the payment of interest on the unpaid portion of the purchase price and for the granting of a security interest in the items purchased) of equipment required by the college. The board of trustees may choose to have such equipment contracts consolidated under master equipment financing agreements made pursuant to s. 287.064. *Any such lease, lease-purchase, or installment contract that provides for the payment of the interest on the unpaid balance or grants a security interest may be authorized under s. 240.367(1) unless the lease, lease-purchase, or installment contract is subject to a consolidated master equipment financing agreement under s. 287.064.*

Section 7. Section 240.35, Florida Statutes, 1992 Supplement, is amended to read:

240.35 Student fees.—Unless otherwise provided, ~~the provisions of~~ this section *applies* ~~apply~~ only to fees charged for college-credit *and college preparatory* instruction.

(1) The State Board of Community Colleges shall establish the matriculation and tuition fees for credit instruction that may be counted toward an associate or higher degree. This instruction includes advanced programs, professional programs, and postsecondary vocational programs.

(2)(a) Any student for whom the state is paying a foster care board payment pursuant to s. 409.145(3) or parts III and V of chapter 39, for whom the permanency planning goal pursuant to part V of chapter 39 is long-term foster care or independent living, is exempt from the payment of all undergraduate fees, including fees associated with enrollment in college preparatory instruction or completion of the college-level communication and computation skills testing program. Before a fee exemption can be given, the student shall have applied for and been denied financial aid, pursuant to s. 240.404, which would have provided, at a minimum, payment of all student fees.

(b) Any student qualifying for a fee exemption under this subsection shall receive such an exemption for not more than 2 consecutive years or 4 semesters, unless the student is participating in college preparatory instruction or requires additional time to complete the college-level communication and computation skills testing program. Such a student is eligible to receive a fee exemption for a maximum of 3 consecutive years or 6 semesters.

(c) As a condition for continued fee exemption, a student shall earn a grade point average of at least 2.0 on a 4.0 scale for the previous term, maintain at least an overall 2.0 average for college work, or have an average below 2.0 for only the previous term and be eligible for continued enrollment in the institution.

(3) Students enrolled in dual enrollment and early admission programs pursuant to s. 240.116 and students enrolled in employment and training programs pursuant to s. 409.029 are exempt from the payment of registration, matriculation, and laboratory fees; however, such students may not be included within calculations of fee-waived enrollments. Students enrolled in programs pursuant to s. 409.029 shall be granted a fee exemption only if they have applied for student financial aid including Job Training Partnership Act or Family Support Act funds and did not receive financial assistance. Colleges shall assist these students in applying for financial aid, and these students shall not be denied participation in programs during the application process for financial aid. These students shall not be required to obtain loans as a part of their financial aid package. Fee-exempt instruction provided pursuant to this subsection shall generate an additional one-fourth full-time equivalent enrollment.

(4)(a) Fees shall be waived for certain members of the active Florida National Guard pursuant to the provisions of s. 250.10(6).

(b) Community colleges may waive fees for any fee-nonexempt student. A student whose fees are waived in excess of the amount authorized annually in the General Appropriations Act may not be included in calculations of full-time equivalent enrollments for state funding purposes. Any community college that waives fees and requests state funding for a student in violation of the provisions of this subsection shall be penalized at a rate equal to two times the value of the full-time equivalent student enrollment reported served. Such penalty shall be charged against the following year's allocation from the Community College Program Fund.

(5) Subject to review and final approval by the State Board of Education, the State Board of Community Colleges shall adopt by December 31 of each year a resident fee schedule for the following fall for advanced and professional, postsecondary vocational, and college-preparatory programs which produces revenues in the amount of 25 percent of the full prior year's cost of these programs. However, the board may not adopt an annual fee increase in any program for resident students which exceeds 10 percent. Beginning with fiscal year 1992-1993 and, in the absence of a provision to the contrary in an appropriations act, the fee schedule shall take effect and the colleges shall expend the funds on instruction. If the Legislature provides for an alternative fee calculation in an appropriations act, the board shall establish a fee schedule that produces the fee revenue established in the appropriations act based on the assigned enrollment.

(6) Each community college board of trustees shall establish matriculation and tuition fees, which may vary no more than 10 percent from the fee schedule adopted by the State Board of Community Colleges.

(7) The sum of nonresident student matriculation and tuition fees must be sufficient to defray the full cost of each program. Beginning with fiscal year 1992-1993, the annual fee increases for nonresident students established by the board, in the absence of legislative action to the contrary in an appropriations act, may not exceed 25 percent.

(8) The State Board of Community Colleges shall adopt a rule specifying the definitions and procedures to be used in the calculation of the percentage of cost paid by students. The rule must provide for the calculation of the full cost of educational programs based on the allocation of all funds provided through the general current fund to programs of instruction, and other activities as provided in the annual expenditure analysis. The rule shall be developed in consultation with the Legislature.

(9) Each community college district board of trustees may establish a separate activity and service fee not to exceed 10 percent of the matriculation fee, according to rules of the State Board of Education. The student activity and service fee shall be collected as a component part of the registration and tuition fees. The student activity and service fees shall be paid into a student activity and service fund at the community college and shall be expended for lawful purposes to benefit the student body in general. These purposes include, but are not limited to, student publications and grants to duly recognized student organizations, the membership of which is open to all students at the community college without regard to race, sex, or religion.

(10)(a) Each community college is authorized to collect for financial aid purposes an additional amount up to, but not to exceed, 5 percent of the total student tuition or matriculation fees collected. However, if the amount generated by the additional 5 percent is less than $125,000, a community college that charges tuition and matriculation fees at least equal to the average fees established by rule may transfer from the general current fund to the scholarship fund an amount equal to the difference between $125,000 and the amount generated by the additional 5 percent of the total student tuition and matriculation fees. No other transfer from the general current fund to the loan, endowment, or scholarship fund, by whatever name known, is authorized.

(b) All funds collected under this program shall be placed in the loan and endowment fund or scholarship fund of the college, by whatever name known. Such funds shall be disbursed to students as quickly as possible. An amount not greater than 40 percent of the fees collected in a fiscal year may be carried forward unexpended to the following fiscal year. However, funds collected prior to July 1, 1989, and placed in an endowment fund may not be considered part of the balance of funds carried forward unexpended to the following fiscal year.

(c) Up to 25 percent or $125,000, whichever is greater, of the fees collected may be used to assist students who demonstrate academic merit or who participate in athletics, public service, cultural arts, and other extracurricular programs as determined by the institution. A minimum of 50

percent of the balance of these funds shall be used to provide financial aid based on absolute need, and the remainder of the funds shall be used for academic merit purposes and other purposes approved by the district boards of trustees. Such other purposes shall include the payment of child care fees for students with financial need. The State Board of Community Colleges shall develop criteria for making financial aid awards. Each college shall report annually to the Department of Education on the criteria used to make awards, the amount and number of awards for each criterion, and a delineation of the distribution of such awards. Awards which are based on financial need shall be distributed in accordance with a nationally recognized system of need analysis approved by the State Board of Community Colleges. An award for academic merit shall require a minimum overall grade point average of 3.0 on a 4.0 scale or the equivalent for both initial receipt of the award and renewal of the award.

(d) These funds may not be used for direct or indirect administrative purposes or salaries.

(11) Any community college that reports students who have not paid fees in an approved manner in calculations of full-time equivalent enrollments for state funding purposes shall be penalized at a rate equal to two times the value of such enrollments. Such penalty shall be charged against the following year's allocation from the Community College Program Fund and shall revert to the General Revenue Fund. The State Board of Education shall specify, as necessary, by rule, approved methods of student fee payment. Such methods shall include, but not be limited to, student fee payment; payment through federal, state, or institutional financial aid; and employer fee payments. A community college may not charge any fee except as authorized by law or rules of the State Board of Education.

(12) Each community college shall report only those students who have actually enrolled in instruction provided or supervised by instructional personnel under contract with the community college in calculations of actual full-time equivalent enrollments for state funding purposes. No student who has been exempted from taking a course or who has been granted academic or vocational credit through means other than actual coursework completed at the granting institution shall be calculated for enrollment in the course from which he has been exempted or granted credit. Community colleges that report enrollments in violation of this subsection shall be penalized at a rate equal to two times the value of such enrollments. Such penalty shall be charged against the following year's allocation from the Community College Program Fund and shall revert to the General Revenue Fund.

(13) Each community college board of trustees may establish a separate fee for capital improvements or equipping student buildings which may not exceed $1 per credit hour or credit-hour equivalent for residents and which equals or exceeds $3 per credit hour for nonresidents. Funds collected through these fees may not be bonded. The fee shall be collected as a component part of the registration and tuition fees, paid into a separate account, and expended only to construct and equip, maintain, improve, or enhance the educational facilities of the community college. Projects funded through the use of the capital improvement fee shall meet the survey and construction requirements of chapter 235. Pursuant to s. 216.0158, each community college shall identify each project, including maintenance projects, proposed to be funded in whole or in part by such fee. A maximum of 15 cents per credit hour may be allocated from the capital improvement fee for child care centers conducted by the community college.

(14) Each community college is authorized to grant student fee exemptions from all fees adopted by the State Board of Community Colleges and the community college board of trustees for up to 40 full-time equivalent students at each institution.

Section 8. Paragraphs (b) and (c) of subsection (1) and paragraph (b) of subsection (3) of section 240.359, Florida Statutes, 1992 Supplement, are amended to read:

240.359 Procedure for determining state financial support and annual apportionment of state funds to each community college district.—The procedure for determining state financial support and the annual apportionment to each community college district authorized to operate a community college under the provisions of s. 240.313 shall be as follows:

(1) DETERMINING THE AMOUNT TO BE INCLUDED IN THE STATE COMMUNITY COLLEGE PROGRAM FUND FOR THE CURRENT OPERATING PROGRAM.—

(b) The allocation of funds for community colleges shall be based on advanced and professional disciplines, vocational program areas, *college and vocational preparatory* ~~compensatory~~ programs, and adult elementary and secondary programs. The vocational program areas shall be further subdivided into postsecondary, postsecondary adult, and supplemental vocational program areas. *A full-time equivalent student for the Community College Program Fund is as follows:*

1. For advanced and professional, postsecondary vocational and college preparatory programs, a full-time equivalent student equals 40 credit hours.

2. For postsecondary adult, supplemental vocational, vocational preparatory, adult elementary and secondary and lifelong learning programs, a full-time equivalent student equals 900 hours of instruction.

(c) The funding category of lifelong learning is for *certain* students *in adult basic and secondary education programs or in supplemental vocational program areas.*

1. A student in an adult basic and secondary education course is a lifelong learning student if he has received a high school diploma and does not demonstrate skills at or below the eighth-grade level.

2. A student in a supplemental vocational course is a lifelong learning student unless he fulfills one of the following criteria:

a. He currently holds wage-earning employment and is taking a course to enhance or upgrade skills related to the employment; or

b. He has a wage-earning employment history with intent to seek employment in an occupation directly related to that course and to that employment history.

3. A student shall be reported for funding as a lifelong learning student for enrollment in a consumer home economics course unless that course comprehensively addresses competencies identified in the program courses standards as home and family management competencies. Students in courses that comprehensively address such competencies may be reported as full-time equivalent students in the vocational supplemental category. ~~enrolled pursuant to s. 239.301. A student shall also be reported as a lifelong learning student for his enrollment in any course that he has previously taken, unless it is a credit course in which he earned a grade of D or F.~~

(3) DETERMINING THE APPORTIONMENT FROM STATE FUNDS.—

(b) The apportionment to each community college from the Community College Program Fund shall be determined annually in the General Appropriations Act. In determining each college's apportionment, the Legislature shall consider the following components:

1. Base budget, which includes the state appropriation to the Community College Program Fund in the current year plus the related student matriculation and tuition fees assigned in the current General Appropriations Act. *The calculation of assigned student fee revenues must exclude fees from students who have been determined to be exempt by law from the payment of fees.*

2. The cost-to-continue allocation, which consists of incremental changes to the base budget, including salaries, price levels, and other related costs.

3. Enrollment workload adjustment, which shall be determined as follows:

a. The actual full-time equivalent enrollment for the prior year, as accepted or modified by the Legislature, shall be the assigned enrollment and the basis for allocating appropriated funds for enrollment workload. If the enrollment workload allocation to a college is determined to be less than zero, the reduction in allocation shall be implemented over a 2-year period.

b. The systemwide average direct instructional cost level of each program of study shall be used to calculate the enrollment workload adjustment. *The systemwide average direct instructional cost must be* ~~This amount,~~ multiplied by a factor of 1.3, for support services *and added to the direct instructional cost of each program of study. The result for each program of study* shall be multiplied by the change in enrollment as determined in sub-subparagraph a. From this amount, student matriculation and tuition fees generated by the change in assigned enrollment shall be deducted and the remaining amount shall be the state allocation to each college for enrollment workload.

c. Students enrolled in a recreation and leisure program and students enrolled in a lifelong learning program may not be counted as full-time equivalent enrollments for purposes of enrollment workload adjustments.

4. Operating costs of new facilities adjustments, which shall be provided, from funds available, for each new facility that is owned by the college and is recommended in accordance with s. 235.15.

5. New and improved program enhancements, which shall be determined by the Legislature. *These may include equity adjustments and provision for a district cost differential.*

Student fees in the base budget plus student fee revenues generated by increases in fee rates shall be deducted from the sum of the components determined in subparagraphs 1.-5. The amount remaining shall be the net annual state apportionment to each college.

Section 9. Subsection (5) of section 240.36, Florida Statutes, 1992 Supplement, is amended to read:

240.36 Florida Academic Improvement Trust Fund for Community Colleges.—

(5) Funds sufficient to provide the match shall be transferred from the state trust fund to the community college foundation ~~in increments of $3,000~~ upon notification that a proportionate amount has been received and deposited by the community college in its own trust fund.

Section 10. Paragraph (h) of subsection (2) of section 240.551, Florida Statutes, 1992 Supplement, is amended to read:

240.551 Florida Prepaid Postsecondary Education Expense Program.—

(2) As used in this section:

(h) "Registration fee" means matriculation fee, financial aid fee, building fee, and Capital Improvement Trust Fund fee. *However, the prepaid community college registration fee also includes the student activity and service fee as established in s. 240.35(9) as a component part of the registration fee not to exceed 10 percent of the matriculation fee.*

Section 11. Sections 240.138, 240.311(3)(h), 240.335, and 240.347(2), Florida Statutes, are repealed.

Section 12. This act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 2, lines 9-13, strike all of those lines and insert: community college foundation;

Senator Kiser moved the following amendment to **Amendment 4** which was adopted:

Amendment 4A (with Title Amendment)—On page 3, between lines 16 and 17, insert:

Section 2. Paragraph (a) of subsection (2) of section 236.24, Florida Statutes, is amended to read:

236.24 Sources of district school fund.—

(2)(a) Unless otherwise authorized by law, ~~or by~~ ordinance, *or policy,* 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 commingled no-load investment fund, no-load common trust fund, or no-load mutual fund, 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 appropriate regulatory authority.

b. Substantially all of such fund's assets are expected to be invested in money market securities or other debt obligations.

c. Either the average weighted maturity of the portfolio of such fund is no greater than 7 years, or the interest rate on substantially all of such fund's portfolio securities are expected to be adjusted at least annually;

9. Repurchase agreements fully secured by United States Government obligations, provided that the school board takes delivery of the purchased securities either directly or through an authorized custodian; or

10. Such other investments which the school board deems prudent.

Any investments made by the School Board pursuant to this section must be held, either directly or through a third-party custodian or trustee, by the board, or by the intergovernmental pool or mutual fund or by the commingled investment fund in which the board is investing, unless such investments are made in the Local Government Surplus Funds Trust Fund. Each school board may enter into any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act as provided in s. 163.01.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 2, line 23, after the semicolon (;) insert: amending s. 236.24, F.S.; authorizing certain additional investments of surplus funds by school boards;

Senators Holzendorf, Hargrett, Meadows, Turner, Jones and Thomas offered the following amendment to **Amendment 4** which was moved by Senator Holzendorf and adopted:

Amendment 4B (with Title Amendment)—On page 21, between lines 24 and 25 insert:

Section 12. A new law school may not be established within the State University System unless the Board of Regents conducts a thorough study that considers locating such law school at a university where a law school was once located.

(Renumber subsequent sections.)

And title is amended as follows:

In title, on page 2, line 16 after the semicolon (;) insert: requiring the Board of Regents to conduct a study before the establishment of a new state law school;

The vote was:

Yeas—18 Nays—15

Amendment 4 as amended was adopted.

On motion by Senator Kirkpatrick, by two-thirds vote **SB 1992** 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—1

CS for CS for SB 1550—A bill to be entitled An act relating to funding of services for children and families; providing legislative intent; requiring the Governor to designate a Task Force for maximization of federal funding participation; requiring a report; authorizing simulated matching programs; establishing criteria and procedures; requiring each state agency that receives federal funds to be matched by the agency to set guidelines and standards for submitting claims for federal reimbursement; requiring that the Department of Health and Rehabilitative Services establish certain procedures; providing an effective date.

—was read the second time by title.

Senator Kirkpatrick moved the following amendments which were adopted:

Amendment 1—On page 2, line 5, after the period (.) insert: The task force shall be housed within the Executive Office of the Governor for administrative purposes. Members of the task force shall be entitled to per diem and travel expenses in accordance with section 112.061, Florida Statutes.

Amendment 2—On page 2, strike lines 22 and 23 and insert: Flagler, Gadsden, Highlands, Hillsborough, Lee, Marion, Martin, Palm Beach, Pinellas, Santa Rosa, and Seminole.

Amendment 3—On page 1, lines 5 and 29, and on page 3, line 20, strike "maximization" and insert: optimization

Amendment 4—On page 3, line 12, after "families." insert: The county commission and the district school board shall give consideration to designating an existing community council that meets the membership requirements.

On motion by Senator Kirkpatrick, by two-thirds vote **CS for CS for SB 1550** 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 1762—A bill to be entitled An act relating to hiring and promoting women and minorities within the State University System; amending s. 240.2475, F.S.; revising provisions relating to the State University System equity accountability program; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendment which was moved by Senator Kirkpatrick and failed:

Amendment 1 (with Title Amendment)—On page 1, line 10, insert:

Section 1. Subsection (3) is added to section 215.16, Florida Statutes, to read:

215.16 Appropriations from General Revenue Fund for public schools, state institutions of higher learning, and community colleges; reduction.—

(3) Reductions in the number of vacant positions in the State University System shall be counted towards parity in appropriations and reductions pursuant to this section.

Section 2. Paragraphs (f) through (s) of subsection (3) of section 240.209, Florida Statutes, 1992 Supplement, are redesignated as paragraphs (i) through (v), respectively, paragraph (e) is amended and redesignated, and a new paragraph (g) is added to said subsection, to read:

240.209 Board of Regents; powers and duties.—

(3) The board shall:

(e) By December 1 of each year, *after assessing the percent of the cost of education paid by students,* set the resident undergraduate matriculation and financial aid fees for the subsequent fall term, which will produce no more than 25 percent of the prior year's cost of undergraduate programs. *In the absence of action to the contrary by the Legislature, the board fee schedule shall go into effect and the board may approve the expenditure of any resulting fee revenues.* Fees charged for graduate, medical, veterinary, and dental programs may be increased by the Board of Regents in the same percentage as the increase in fees for resident undergraduates. However, in the absence of legislative action to the contrary in an appropriations act, the board may not approve annual fee increases for resident students in excess of 10 percent. The sum of nonresident student matriculation and tuition fees must be sufficient to defray the full cost of undergraduate education. Graduate, medical, veterinary, and dental fees charged to nonresidents may be increased by the board in the same percentage as the increase in fees for nonresident undergraduates. However, in implementing this policy and in the absence of legislative action to the contrary in an appropriations act, annual fee increases for nonresident students may not exceed 25 percent. ~~In the absence of legislative action to the contrary in the General Appropriations Act, the fees shall go into effect for the following fall term.~~

(f) If the Legislature provides for *a* ~~an alternative~~ fee calculation in an appropriations act, ~~the board shall~~ establish a fee schedule required to produce the *total* fee revenue established in the appropriations act based on the *product of the* assigned enrollment *multiplied by the fee schedule.* The board may approve the expenditure of any fee revenues resulting from the product of the fee schedule adopted pursuant to this section and the assigned enrollment unless otherwise provided in the General Appropriations Act.

(g) Approve a university request to implement a matriculation and out-of-state tuition fee schedule that is calculated to produce revenue that varies no more than 10 percent from the fee revenues produced by the product of the assigned enrollment multiplied by the fee schedule adopted by the board pursuant to paragraph (e) or paragraph (f). However, the total annual increase to matriculation and out-of-state tuition fees adopted as a result of this paragraph may not exceed 3 percent. The total annual increase to matriculation and out-of-state tuition fees adopted by the Board of Regents as a result of this paragraph in combination with the provisions of paragraph (e) is limited to 10 percent or, if adopted in combination with the provisions of paragraph (f), is limited to 15 percent. Matriculation and out-of-state tuition fee revenues produced by the product of the fee schedule adopted pursuant to this paragraph and the planned enrollment are appropriated for implementing strategies adopted pursuant to s. 240.214(3) for the achievement of accountability goals related to increasing and enhancing courses and improving student progression and graduation rates. The board shall adjust entries in the legislative budget request to conform the university salary rate and expenditure history to the appropriation.

(h) Adopt rules for purposes of establishing and collecting financial aid fees in ~~The board is authorized to collect for financial aid purposes~~ an amount not to exceed 5 percent of the student *out-of-state* tuition and matriculation fee per credit hour. The revenues from fees are to remain at each campus and replace existing financial aid fees. Such funds shall be disbursed to students as quickly as possible. The board shall specify specific limits on the percent of the fees collected in a fiscal year which may be carried forward unexpended to the following fiscal year. A minimum of 50 percent of funds from the student financial aid fee shall be used to provide financial aid based on absolute need. A student who has received an award prior to July 1, 1984, shall have his eligibility assessed on the same criteria that was used at the time of his original award.

Section 3. Subsection (3) of section 240.2094, Florida Statutes, 1992 Supplement, is amended to read:

240.2094 State University System management flexibility.—

(3) Notwithstanding the provisions of ss. 216.031, 216.181, 216.251, and 216.262 to the contrary and pursuant to the provisions of s. 216.351, but subject to any requirements imposed in the General Appropriations Act, the Board of Regents shall establish the authorized positions and initial approved salary rate and may amend such positions and rate, within the maximum number of total positions and salary rate authorized annually in the appropriations act. *The board may authorize a salary rate for a university in excess of the maximum salary rate authorized in the General Appropriations Act, based on a financial plan submitted by the university which demonstrates the ability of the university to fund*

the additional rate within existing resources. The authority to increase the salary rate is provided for achieving the accountability goals pursuant to s. 240.214 and may not be used to provide general salary increases for all employees. The board shall adjust entries in the legislative budget request to conform the university salary rate and expenditure history to the appropriation. A university may maintain vacant positions without a salary rate if justification is provided to the board.

Section 4. Section 240.214, Florida Statutes, is amended to read:

240.214 State University System accountability process.—It is the intent of the Legislature that an accountability process be implemented which provides for the systematic, ongoing evaluation of quality and effectiveness in the State University System. It is further the intent of the Legislature that this accountability process monitor performance at the system level in each of the major areas of instruction, research, and public service, while recognizing the differing missions of each of the state universities. The accountability process shall provide for the adoption of systemwide performance standards and performance goals for each standard identified through a collaborative effort involving the State University System, the Legislature, and the Governor's Office. The accountability process shall be implemented in incremental phases, as follows:

(1) No later than December 31 *of each year*, ~~1991, and annually thereafter,~~ the board shall submit to the Legislature an evaluation of the production of classroom contact hours at each university pursuant to s. 240.243. The evaluation must include a specific analysis of the contact-hour expectations resulting from the multiplication of the requirements of s. 240.243 by the instructional man-years generated through the legislative enrollment formula. The analysis must, in addition, include the contact-hour expectations resulting from the multiplication of 84 percent of the positions provided for undergraduate enhancement by the contact-hour requirements of s. 240.243. The board may also conduct this analysis using alternative formulas. The board shall recommend to the Legislature any appropriate modifications to this section, s. 240.243, or other current policies. These recommendations shall be included in the annual accountability report submitted pursuant to subsection (3). The reports developed pursuant to this section shall be designed in consultation with the Legislature.

(2) By October 1, 1991, the Board of Regents shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a plan for the implementation of the balance of the State University System accountability process. The plan shall be designed in consultation with the Legislature, the Governor's Office, and the Office of the Auditor General. The plan must provide a timetable that identifies the specific performance standards and related goals to be implemented each year and must provide for full implementation of the accountability process by December 31, 1993. The plan must also identify the data files that will be used to substantiate achievement of performance goals. If it is necessary to develop new data files or modify existing files, the plan must describe the content of such files and include a sample file format. The plan must include, at a minimum, data on the following performance standards:

(a) Total student credit hours produced, by institution and by discipline;

(b) Total number of degrees awarded, by institution and by discipline;

(c) Total number of contact hours of instruction produced by faculty, by institution, rank, and course level;

(d) Pass rates on professional licensure examinations, by institution;

(e) Institutional quality as assessed by followup, *such as analyses of employment information on former students, national rankings, and* surveys of alumni, parents, clients, and employers;

(f) Length of time and number of academic credits required to complete an academic degree, by institution and by degree;

(g) Enrollment, progression, retention, and graduation rates by race *and*, ~~,~~ gender, ~~and disability~~;

(h) Student course demand *and the process used for analyzing student course demand* ~~analysis~~; and

(i) Classroom utilization.

(3) *By* ~~Beginning~~ December *31 of each year* ~~1, 1992~~, the Board of Regents shall submit an annual accountability report providing information on the implementation of performance standards, *actions taken to improve university achievement of performance goals,* ~~and~~ achievement of performance goals during the prior year, and initiatives to be undertaken during the next year. The accountability reports shall be designed in consultation with the Governor's Office, the Office of the Auditor General, and the Legislature.

(4) Beginning with the December 1993 accountability report, the board shall include in the report an analysis of the administrator-to-faculty ratio, the percentage of funds expended for administrative costs in the total budget, and the percentage of funds expended in support programs compared to the percentage of funds expended in instructional programs, and any other indicators of administrative costs. The reports shall provide for the identification of administration and support activities of faculty.

(5) Beginning with the 1994 accountability report and periodically thereafter, the board shall include in the report an analysis of the cumulative debt of undergraduate and graduate students.

Section 5. Subsections (5) and (6) of section 240.271, Florida Statutes, 1992 Supplement, are amended to read:

240.271 State University System; funding.—

(5)*(a)* ~~If the actual enrollment for any university is less than the planned enrollment by 0 to 5 percent for any fiscal year, the university shall receive full funding as allocated.~~ If the actual enrollment is less than planned enrollment by more than 5 percent for any *2* fiscal *years* ~~year~~, the ~~allocation of the~~ university *enrollment plan* ~~for instruction~~ shall be reduced ~~proportionately to the difference between 5 percent and the actual percentage reduction in enrollment for any fiscal year. All such reductions in university allocations shall be reallocated in the fourth quarter of the fiscal year to all universities on a proportional basis based on actual enrollment by level, not including actual enrollment in excess of planned enrollment.~~ If actual enrollment exceeds target enrollment, ~~there shall be no increased allocation, and~~ an explanation of the excess shall be provided with the next year's enrollment plan.

(b) Beginning in fiscal year 1994-1995, each university shall, pursuant to the provisions of law and rule, especially the appropriations acts, retain and expend all fee revenues produced by the university except those fee revenues produced by an enrollment that is more than 5 percent in excess of the planned enrollment established by the Legislature. Revenues collected as a result of an enrollment that is between the planned enrollment and 5 percent above the planned enrollment must be used to increase course offerings. Revenues as a result of enrollment in excess of 5 percent above the planned enrollment established by the Legislature must be deposited in the Incidental Trust Fund to be available for appropriation by the Legislature.

(6) The enrollment planning *and* ~~plus~~ program cost data established by this section shall be used as the basis for preparing the legislative budget requests.

Section 6. Section 240.272, Florida Statutes, is amended to read:

240.272 Carryforward of unexpended funds.—Notwithstanding the provisions of s. 216.301 to the contrary, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated *or provided pursuant to s. 240.209 or s. 240.271* for the State University System. Any unexpended funds in the current year operating budget, including unexpended student fee revenues, shall be carried forward by the Board of Regents for use by the university to which the funds were allocated.

(1) Such carryforward shall not exceed *10* ~~5~~ percent of the total operating budget of the university. Funds carried forward pursuant to this section shall be expended for nonrecurring expenses *or for maintaining course offerings in the event of a revenue shortfall* as approved by the Board of Regents.

(2) No university shall be penalized in the allocation of subsequent funds as a result of the carryforward of an unexpended balance.

Section 7. Section 240.278, Florida Statutes, is amended to read:

240.278 Required course program; Quality Assurance Fund.—

(1) There is established a required course program funded by the Quality Assurance Fund, which is also hereby established, to be administered by the Board of Regents. *Within the reserve established pursuant to s. 240.272, the Board of Regents shall designate a minimum reserve that must be a priority for each university and must be established from student fee revenues in excess of the revenues provided through the system fee resulting from legislative action.* ~~The Legislature shall designate funds to be transferred to the fund from the General Revenue Fund.~~ All appropriated funds deposited into the fund shall be invested pursuant to the provisions of s. 18.125. Interest income accruing to such invested funds shall increase the total funds available under this section.

(2) Funds in the Quality Assurance Fund shall be distributed by the Board of Regents to the universities in the State University System to be used as provided in this section. The Board of Regents shall promulgate rules for the administration of this section, including requirements and procedures for application for funds and for equitable distribution of the funds.

(3) Funds allocated to a university under this section shall be utilized by that university to establish additional class sections ~~in the summer~~ for required courses that *are not available due to shortfalls in general revenue, lottery revenue, or student fee revenue or for courses that* have been closed because all regularly scheduled sections of the course have been filled. However, no additional class section shall be established with funds allocated under this section unless at least 10 students are enrolled in that section. As used in this section, a required course is any course in which a student must enroll in order to proceed with a required course of study ~~at the lower division level,~~ or any course in which a student must enroll ~~at the upper division level~~ to fulfill the requirements for a degree with a major in a specific field.

Section 8. Subsection (5) of section 240.531, Florida Statutes, is amended to read:

240.531 Establishment of educational research centers for child development.—

(5) Each educational research center for child development shall be funded by a portion of the Capital Improvement Trust Fund fee established by the Board of Regents pursuant to s. 240.209(3)*(k)*~~(h)~~. Each university which establishes a center shall receive a portion of such fees collected from the students enrolled at that university, usable only at that university, equal to 22.5 cents per student per credit hour taken per term, based on the summer term and fall and spring semesters. This allocation shall be used by the university only for the establishment and operation of a center as provided by this section and rules promulgated hereunder. Said allocation may be made only after all bond obligations required to be paid from such fees have been met.

Section 9. Subsection (2) of section 282.308, Florida Statutes, 1992 Supplement, is amended to read:

282.308 State University System information resources management plan.—

(2) The Chancellor of the Board of Regents shall review, recommend modifications to, and approve each university plan and shall provide a copy of each university's approved plan and a copy of the approved State University System Strategic Information Resources Management Plan to the commission by May 1 of each even-numbered year. Such plans are not subject to approval by the commission, but shall support and further the goals and objectives of the master plan required pursuant to s. 240.209(3)*(m)*~~(j)~~, the policies and objectives of the functional plan prepared by the Department of Education pursuant to s. 186.021, and the goals and policies of the State Strategic Plan for Information Resources Management specified in s. 282.3061.

Section 10. Subsection (2) of section 447.203, Florida Statutes, is amended to read:

447.203 Definitions.—As used in this part:

(2) "Public employer" or "employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees or Selected Professional Service employees, the Governor shall be deemed to be the public employer; and the Board of Regents shall be deemed to be the public employer with respect to all public employees within the State University System as provided in s. 240.209(3)*(i)*~~(f)~~, except that such employees shall have the right, in elections to be conducted at each university by the commission pursuant to its rules, to elect not to participate in collective bargaining. In the event that a majority of such voting employees at any university elect not to participate in collective bargaining, they shall be removed from the applicable Board of Regents bargaining unit. If, thereafter, by election conducted by the commission pursuant to its rules, a majority of such voting employees elect to participate in collective bargaining, they shall be included again in the applicable Board of Regents bargaining unit for such purpose. The board of trustees of a community college shall be deemed to be the public employer with respect to all employees of the community college. The district school board shall be deemed to be the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind shall be deemed to be the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind. The Board of Correctional Education shall be deemed to be the public employer with respect to all officers and employees of the Correctional Education School Authority.

(Renumber subsequent section.)

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 the State University System; amending s. 215.16, F.S., relating to reductions in vacant positions; amending s. 240.209, F.S.; modifying provisions relating to the setting of fees by the Board of Regents; authorizing varying fee schedules and expenditures; requiring rules relating to financial aid fees; amending s. 240.2094, F.S.; authorizing an increase in salary rate under certain circumstances; amending s. 240.214, F.S.; revising data in the accountability process plan; requiring additional information in the accountability reports; amending s. 240.271, F.S.; revising provisions relating to funding based on enrollment; providing for the retention and expenditure of certain fee revenues; amending s. 240.272, F.S.; revising provisions relating to the carryforward and expenditure of certain funds; amending s. 240.278, F.S.; revising provisions relating to the required course program and the Quality Assurance Fund; amending ss. 240.531, 282.308, and 447.203, F.S.; correcting cross references; providing an effective date.

Senator Kirkpatrick moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 5, between lines 2 and 3 insert:

Section 1. Subsection (4) of section 240.2601, Florida Statutes, is amended to read:

240.2601 State University System Facility Enhancement Challenge Grant Program.—

(4)*(a)* *A* ~~No~~ project *may not* ~~shall~~ be initiated unless all private funds for planning, construction, and equipping the facility have been received and deposited in the trust fund and the state's share for the minimum amount of funds needed to begin the project has been appropriated by the Legislature. The Legislature may appropriate the state's matching funds in one or more fiscal years for the planning, construction, and equipping of an eligible facility.

(b) A university may expend funds from private sources to develop a prospectus, architectural schematics, and models for use in its effort to raise private funds for a facility. Additionally, any private funds expended for this purpose are eligible for state matching funds if the facility project is initiated.

Section 2. Section 240.2605, Florida Statutes, is amended to read:

240.2605 Trust Fund for Major Gifts.—

(1) There is established a Trust Fund for Major Gifts, to be divided into challenge grants to be administered by the Board of Regents *as the major gifts program.* The Legislature shall designate funds to be transferred to the trust fund from the General Revenue Fund. *All moneys appropriated for the new donors program and the eminent scholars program must be transferred into the trust fund.* All appropriated funds deposited into the trust fund shall be invested pursuant to rules of the Board of Regents. *All real property that is donated for the purposes of*

this program must be administered under rules of the Board of Regents. Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any undisbursed balance remaining in the trust fund and interest income accruing to that portion of the trust fund not allocated shall remain in the trust fund and shall increase the total funds available for such challenge grants. If excess unencumbered funds exist in the Trust Fund for Eminent Scholars or the Trust Fund for Major Gifts, such funds may be transferred between such trust funds to be used for matching grants on the approved priority list.

(2) The Board of Regents shall specify the process for submission, documentation, and approval of requests for matching funds, accountability for endowments and proceeds of endowments, allocations to universities, restrictions on the use of the proceeds from endowments, and criteria used in determining the value of donations.

(3) The moneys appropriated to the trust fund shall be allocated by the Board of Regents to each state university and the New College, based on the amount of each donation and the restrictions applied to that donation. Donations for a specific purpose will be matched in the following manner:

(a) Each university that raises a contribution of at least $100,000 but no more than $600,000 from a private source will receive a matching grant equal to 50 percent of the private contribution.

(b) Each university that raises a contribution in excess of $600,000 but no more than $1 million from a private source will receive a matching grant equal to 70 percent of the private contribution.

(c) Each university that raises a contribution in excess of $1 million but no more than $1.5 million from a private source will receive a matching grant equal to 75 percent of the private contribution.

(d) Each university that raises a contribution in excess of $1.5 million but no more than $2 million from a private source will receive a matching grant equal to 80 percent of the private contribution.

(e) Each university that raises a contribution in excess of $2 million from a private source will receive a matching grant equal to 100 percent of the private contribution.

For the purpose of this schedule of matching private donations, a donation made by one individual that is divided among universities is considered one donation.

(4) A single donation made after July 1, 1993, for the establishment of a permanent endowment to be used at the discretion of the president of a university for improving the educational and academic programs of the university, which donation is not restricted for use by a specific college, department, discipline, or program and which donation is at least $100,000, will be matched at the rate of 70 percent of the private contribution. A donation for the establishment of a permanent endowment to be used at the discretion of the president of a university for improving the academic programs of the university, which donation is not restricted for use by a specific college, department, discipline, or program and which donation is in excess of $1 million will be matched pursuant to the provisions of subsection (3) for matching a restricted donation.

(5) Annually, each foundation shall submit to the Board of Regents a report specifying the use of the proceeds of endowments established pursuant to this section. The Board of Regents shall specify the format and content of the annual report.

(6) The Board of Regents shall specify conditions under which matching funds may be encumbered by a down payment and pledged schedule of future donations. Such conditions shall include conditions of default and reinstatement of defaulted pledges.

~~(2) The amount appropriated to the trust fund shall be allocated by the Board of Regents to each university on the basis of one $50,000 grant for each $100,000 contributed by private sources. Grants from the fund shall be allocated for contributions made after July 1, 1985. A contribution may also qualify for a matching grant if the donor makes an initial payment of $20,000 and provides a written pledge to pay the balance of the contribution within the subsequent 4 years in an annual amount equal to at least 25 percent of the written pledge. Payments on the balance shall be made on or before the anniversary date of the initial payment. No grant shall be allocated prior to collection of the total $100,000 contribution.~~

~~(3) Grants received pursuant to this section shall be placed in a restricted endowment by the university foundation. The interest income accrued to the endowment shall be expended exclusively for endowed professorships and scholarships other than athletic.~~

~~(4) The New College Foundation shall also establish a trust fund account for donors into which shall be deposited private, voluntary contributions and appropriated moneys appropriated thereto by the state. The foundation shall annually report to the board the amount of funds actually transferred to New College for programs identified in subsection (3).~~

Section 3. Section 240.253, Florida Statutes, is amended to read:

240.253 Personnel records.—The university may prescribe the content and custody of limited access records which the university *or the university's direct-support organizations* may maintain on its employees. Such records shall be limited to information reflecting evaluations of employee performance and shall be open to inspection only by the employee and by officials of the university *or direct-support organization* who are responsible for supervision of the employee. Such limited access employee records are confidential and exempt from the provisions of s. 119.07(1). Except as required for use by the president in the discharge of his official responsibilities, the custodian of limited access employee records may release information from such records only upon authorization in writing from the employee or upon order of a court of competent jurisdiction. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 4. Subsection (4) of section 240.299, Florida Statutes, is amended to read:

240.299 Direct-support organizations; use of property; board of directors; audit; status.—

(4) ANNUAL AUDIT; *CONFIDENTIALITY.*—

(a) Each direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent certified public accountant in accordance with rules ~~to be~~ promulgated by the *Auditor General* ~~Board of Regents~~. The annual audit report shall include a management letter and shall be submitted to the Auditor General and the Board of Regents for review. The Board of Regents and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization.

(b) All information about a donor or a prospective donor which, if released, would identify that donor is exempt from the provisions of s. 119.07(1). Except for expenditure information, marketing strategies and campaign plans are exempt from the provisions of s. 119.07(1). In any case in which a direct-support organization seeks to sell real property, all appraisals and other reports relating to value, offers, and counteroffers must be in writing and are exempt from the provisions of s. 119.07(1) until execution of a valid option contract or written offer to sell has been conditionally accepted by the buyer, at which time the exemption shall expire. For the purpose of this paragraph, "option contract" means an agreement of the direct-support organization to sell real property subject to final approval by the buyer of the real property. ~~The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.~~ All *other* records of the organization *are public records for the purpose of chapter 119* ~~other than the auditor's report, management letter, and any supplemental data requested by the Board of Regents and the Auditor General shall be confidential and exempt from the provisions of s. 119.07(1)~~. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 5. Subsection (4) of section 240.522, Florida Statutes, 1992 Supplement, is amended to read:

240.522 Establishment of university in Southwest Florida.—

(4) Upon certification by the Board of Regents of a direct-support organization *pursuant to s. 240.299* to serve as the foundation of the state university in Southwest Florida, the Board of Regents, in conjunction with the University of South Florida Foundation, shall develop and implement a plan to transfer to the new foundation assets derived from donations intended for the enhancement of the Ft. Myers branch of the University of South Florida.

Section 6. Subsection (3) of section 240.5285, Florida Statutes, 1992 Supplement, is amended to read:

240.5285 Florida Atlantic University campuses.—

(3) The Board of Regents shall take all actions necessary to assure that Florida Atlantic University Broward and Florida Atlantic University Boca Raton are partners in the overall policymaking and academic governance structures of the university. Annual legislative budget requests for operations and facilities shall separately identify those funds requested for Florida Atlantic University Broward and Florida Atlantic University Boca Raton. Florida Atlantic University Broward and Florida Atlantic University Boca Raton shall have local management authority over their campus faculty, staff, and programs, but there shall be universitywide standards and processes for evaluating requests for promotion and tenure; there shall be complete transferability of credits and uniform programs across campuses; and colleges operating on multiple campuses shall have only one dean for each college. Florida Atlantic University Broward shall establish a faculty senate and may establish a direct-support organization *pursuant to s. 240.299*.

Section 7. Subsection (1) of section 240.207, Florida Statutes, is amended to read:

240.207 Board of Regents; appointment of members; qualifications and terms of office.—

(1) The Board of Regents shall consist of the Commissioner of Education and 12 citizens of this state who shall be selected from the state at large, representative of the geographical areas of the state; who shall have been residents and citizens thereof for a period of at least 10 years prior to their appointment (one of whom shall be a member registered as a full-time student in the State University System and who shall have been a resident of this state for at least 5 years prior to appointment in lieu of the 10 years required of other members); and who shall be appointed by the Governor, approved by three members of the Cabinet, and confirmed by the Senate. However, no appointee shall take office until after his appointment has been approved by three members of the Cabinet. The State Board of Education shall develop rules and procedures for review and approval of the appointees. Except for the Commissioner of Education and except for the full-time student member, who shall serve for *2 years* ~~1 year~~, the terms of office for the members of the Board of Regents shall be 6 years and until their successors are appointed and qualified, except in case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term, and except as in this section otherwise provided. No member shall be selected from any county to serve with any other member from the same county, except that not more than two members may be selected from a county which has a population in excess of 900,000, and with the exceptions of the student member, who shall be selected at large, and the Commissioner of Education. The Governor shall fill all vacancies, subject to the above approval and confirmation, that may at any time occur on the board.

Section 8. Paragraph (e) is added to subsection (5) of section 240.209, Florida Statutes, 1992 Supplement, to read:

240.209 Board of Regents; powers and duties.—

(5) The Board of Regents is responsible for:

(e) Adopting standards for the oversight, preparation, and assistance by faculty of graduate teaching assistants.

Section 9. Section 240.214, Florida Statutes, is amended to read:

240.214 State University System accountability process.—It is the intent of the Legislature that an accountability process be implemented which provides for the systematic, ongoing evaluation of quality and effectiveness in the State University System. It is further the intent of the Legislature that this accountability process monitor performance at the system level in each of the major areas of instruction, research, and public service, while recognizing the differing missions of each of the state universities. The accountability process shall provide for the adoption of systemwide performance standards and *measurable* performance goals for each standard identified through a collaborative effort involving the State University System, the Legislature, and the Governor's Office. The accountability process shall be implemented in incremental phases.~~, as follows:~~

~~(1) No later than December 31, 1991, and annually thereafter, the board shall submit to the Legislature an evaluation of the production of classroom contact hours at each university pursuant to s. 240.243. The evaluation must include a specific analysis of the contact hour expectations resulting from the multiplication of the requirements of s. 240.243 by the instructional man-years generated through the legislative enrollment formula. The analysis must, in addition, include the contact hour expectations resulting from the multiplication of 84 percent of the positions provided for undergraduate enhancement by the contact hour requirements of s. 240.243. The board may also conduct this analysis using alternative formulas. The board shall recommend to the Legislature any appropriate modifications to this section, s. 240.243, or other current policies. These recommendations shall be included in the annual accountability report submitted pursuant to subsection (3). The reports developed pursuant to this section shall be designed in consultation with the Legislature.~~

(1)~~(2)~~ By December 1993, the Board of Regents shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a plan for the implementation of ~~the balance of~~ the State University System accountability process. The plan shall be designed in consultation with the Legislature, the Governor's Office, and the Office of the Auditor General. The plan must provide a timetable that identifies the specific performance standards and related *measurable* goals to be implemented each year and must provide for full implementation of the accountability process by December 31, 1993. The plan must also identify the data files that will be used to substantiate achievement of performance goals. If it is necessary to develop new data files or modify existing files, the plan must describe the content of such files and include a sample file format. The plan must include, at a minimum, data on the following performance standards:

(a) Total student credit hours produced, by institution and by discipline;

(b) Total number of degrees awarded, by institution and by discipline;

(c) Total number of contact hours of instruction produced by faculty, by institution, rank, and course level;

(d) Pass rates on professional licensure examinations, by institution;

(e) Institutional quality as assessed by followup surveys of alumni, parents, clients, and employers, *analyses of employment information on former students and institution's national ranking*;

(f) Length of time and number of academic credits required to complete an academic degree, by institution and by degree;

(g) Enrollment, progression, retention, and graduation rates by race, *and* gender~~, and disability~~;

(h) Student course demand *and the process used for analyzing student course demand* ~~analysis~~; ~~and~~

(i) Classroom utilization*; and*.

(j) An annual evaluation, conducted in consultation with the Legislature, of the production of classroom contact hours at each university. The evaluation must include a specific analysis of the contact-hour expectations resulting from the standard of 32 contact hours for each instructional full-time equivalent position generated through the legislative enrollment formula. The analysis must, in addition, include the contact-hour expectations resulting from the multiplication of 84 percent of the positions provided for undergraduate enhancement by 32 contact hours. "Classroom contact hours" means a regularly scheduled 1-hour period of classroom activity in a course of instruction which has been approved by the university.

(2)~~(3)~~ *By* ~~Beginning~~ December *31 of each year* ~~1, 1992~~, the Board of Regents shall submit an annual accountability report providing information on the implementation of performance standards, *actions taken to improve university achievement of performance goals,* ~~*achievement of performance goals during the prior year*~~, and initiatives to be undertaken during the next year. The accountability reports shall be designed in consultation with the Governor's Office, the Office of the Auditor General, and the Legislature.

(3) Beginning with the December 1995 accountability report, the board shall include in the report an analysis of the administrator-to-faculty ratio, the percent of funds for administrative costs in the total budget, and the percent of funds in support programs compared to the

percent of funds in instructional programs, including such other indicators of administrative cost as are necessary. The reports shall provide for the identification of administration and support activities of faculty.

(4) Beginning with the 1994 accountability report and periodically thereafter, the board shall include in the report an analysis of the cumulative debt of undergraduate and graduate students.

Section 10. Section 240.245, Florida Statutes, is amended to read:

240.245 Evaluations of faculty members~~; report~~.—

(1) ~~For the purpose of evaluating faculty members,~~ Each university shall adopt procedures for *evaluating faculty members based on assigned* ~~the assignment of~~ duties and responsibilities ~~to faculty members~~. These assigned duties or responsibilities shall be conveyed to each faculty member at the beginning of each academic term, in writing, by his departmental chairman or other appropriate university administrator making the assignment. In evaluating the competencies of a faculty member, primary assessment shall be in terms of his performance of the assigned duties and responsibilities, and such evaluation shall be given adequate consideration for the purpose of salary adjustments, promotions, reemployment, and tenure.

(2) A faculty member who is assigned full-time teaching duties ~~as provided by law~~ shall be rewarded with salary adjustments, promotions, reemployment, or tenure for meritorious teaching and other *related* scholarly activities *consistent with the salary adjustments, promotions, reemployment, or tenure of faculty assigned other duties* ~~related thereto~~. *A full-time teaching assignment shall be based on a minimum of 12 classroom contact hours or instructional equivalents.*

(3)~~(2)~~ *Each university shall adopt and the Board of Regents shall review* ~~The Board of Regents shall establish~~ criteria for evaluating ~~the quantity and quality of service to public schools by university~~ faculty members *for the purpose of* ~~and shall require consideration of this service in~~ promotion, tenure, and other reward measures. *The Board of Regents shall adopt procedures for ensuring* ~~Each university shall ensure~~ that the following policies are implemented:

(a) Flexible criteria for rewarding faculty members, consistent with the educational goals and objectives of the university, shall be established, which criteria shall include quality teaching, *research,* and service ~~to public schools~~ as major factors in determining salary adjustments, promotions, reemployment, or tenure.

(b) Measures shall be taken to increase the recognition, reinforcements, and rewards given quality teaching ~~and service to public schools~~. Such measures might include grants for professional development, curriculum improvement, and instructional innovation, as well as awards of varying kinds for meritorious teaching.

(c) The means of identifying and evaluating quality teachers ~~and outstanding service to public schools~~ shall be determined in accordance with established guidelines of the university.

(4) The Board of Regents shall evaluate and adopt, as appropriate, promotional opportunities for faculty in addition to the promotion through faculty ranks and to administrative positions. Opportunities for promotion to be evaluated shall include doctoral directive status, the assumption of responsibility for the undergraduate curriculum, and the supervision of graduate teaching assistants.

~~(3) The vice presidents for academic affairs for the nine state universities shall disseminate information to all faculty members which clearly states that service to public schools is one of the criteria used to determine salary adjustments, promotions, reemployment, and tenure for faculty members.~~

Section 11. The University of Florida, Florida State University, and Florida A&M University are responsible for providing, statewide, programs and services that are not provided by any of the other state universities. The activities of the cooperative extension service continue to be the responsibility of the Institute of Food and Agricultural Sciences of the University of Florida without regard to the geographical areas in which those activities occur. A state university that has capability in specific disciplines not currently being provided by another state university may offer instruction in those disciplines in any part of the state without prior approval.

Section 12. Subsections (5) and (6) of section 240.271, Florida Statutes, 1992 Supplement, are amended to read:

240.271 State University System; funding.—

(5)*(a)* ~~If the actual enrollment for any university is less than the planned enrollment by 0 to 5 percent for any fiscal year, the university shall receive full funding as allocated.~~ If the actual enrollment is less than planned enrollment by more than 5 percent for any *2* fiscal *years* ~~year~~, the ~~allocation of the~~ university *enrollment plan* ~~for instruction~~ shall be reduced ~~proportionately to the difference between 5 percent and the actual percentage reduction in enrollment for any fiscal year. All such reductions in university allocations shall be reallocated in the fourth quarter of the fiscal year to all universities on a proportional basis based on actual enrollment by level, not including actual enrollment in excess of planned enrollment.~~ If actual enrollment exceeds target enrollment, ~~there shall be no increased allocation, and~~ an explanation of the excess shall be provided with the next year's enrollment plan.

(6) The enrollment planning *and* ~~plus~~ program cost data established by this section shall be used as the basis for preparing the legislative budget requests.

Section 13. Section 240.272, Florida Statutes, is amended to read:

240.272 Carryforward of unexpended funds.—Notwithstanding the provisions of s. 216.301 to the contrary, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated *or provided pursuant to s. 240.209 or s. 240.271* for the State University System. Any unexpended funds in the current year operating budget, including unexpended student fee revenues, shall be carried forward by the Board of Regents for use by the university to which the funds were allocated.

(1) Such carryforward shall not exceed 5 percent of the total operating budget of the university. Funds carried forward pursuant to this section shall be expended for nonrecurring expenses *or for maintaining course offerings in the event of a revenue shortfall* as approved by the Board of Regents.

(2) No university shall be penalized in the allocation of subsequent funds as a result of the carryforward of an unexpended balance.

Section 14. Subsection (5) of section 240.531, Florida Statutes, is amended to read:

240.531 Establishment of educational research centers for child development.—

(5) Each educational research center for child development shall be funded by a portion of the Capital Improvement Trust Fund fee established by the Board of Regents pursuant to s. 240.209(3)*(k)*~~(h)~~. Each university which establishes a center shall receive a portion of such fees collected from the students enrolled at that university, usable only at that university, equal to 22.5 cents per student per credit hour taken per term, based on the summer term and fall and spring semesters. This allocation shall be used by the university only for the establishment and operation of a center as provided by this section and rules promulgated hereunder. Said allocation may be made only after all bond obligations required to be paid from such fees have been met.

Section 15. Subsection (2) of section 282.308, Florida Statutes, 1992 Supplement, is amended to read:

282.308 State University System information resources management plan.—

(2) The Chancellor of the Board of Regents shall review, recommend modifications to, and approve each university plan and shall provide a copy of each university's approved plan and a copy of the approved State University System Strategic Information Resources Management Plan to the commission by May 1 of each even-numbered year. Such plans are not subject to approval by the commission, but shall support and further the goals and objectives of the master plan required pursuant to s. 240.209(3)*(m)*~~(j)~~, the policies and objectives of the functional plan prepared by the Department of Education pursuant to s. 186.021, and the goals and policies of the State Strategic Plan for Information Resources Management specified in s. 282.3061.

Section 16. Subsection (2) of section 447.203, Florida Statutes, is amended to read:

447.203 Definitions.—As used in this part:

(2) "Public employer" or "employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees or Selected Professional Service employees, the Governor shall be deemed to be the public employer; and the Board of Regents shall be deemed to be the public employer with respect to all public employees within the State University System as provided in s. 240.209(3)*(i)*~~(f)~~, except that such employees shall have the right, in elections to be conducted at each university by the commission pursuant to its rules, to elect not to participate in collective bargaining. In the event that a majority of such voting employees at any university elect not to participate in collective bargaining, they shall be removed from the applicable Board of Regents bargaining unit. If, thereafter, by election conducted by the commission pursuant to its rules, a majority of such voting employees elect to participate in collective bargaining, they shall be included again in the applicable Board of Regents bargaining unit for such purpose. The board of trustees of a community college shall be deemed to be the public employer with respect to all employees of the community college. The district school board shall be deemed to be the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind shall be deemed to be the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind. The Board of Correctional Education shall be deemed to be the public employer with respect to all officers and employees of the Correctional Education School Authority.

Section 17. Sections 240.257, 240.259, 240.243, Florida Statutes, are repealed.

(Renumber subsequent sections.)

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 postsecondary education; amending s. 240.2601, F.S., relating to the State University System Facility Enhancement Challenge Grant Program; providing that a university may expend funds from private sources for certain fundraising activities; providing that the funds used for fundraising are eligible for matching funds if the facility project is initiated; amending s. 240.2605, F.S., relating to the Trust Fund for Major Gifts; providing for the trust fund to be administered by the Board of Regents as a part of the major gifts program; providing that moneys appropriated for the new donors program and the eminent scholars program shall be transferred into the Trust Fund for Major Gifts; providing that all real estate that is donated for the purposes of the major gifts program shall be administered under rules of the Board of Regents; providing for administration and for matching grants; requiring that foundations submit a report to the Board of Regents specifying the use of the proceeds of endowments established; deleting certain provisions relating to the trust fund; amending s. 240.207, F.S.; providing for a 2-year term of office for the student member of the Board of Regents; amending s. 240.253, F.S.; providing for confidentiality of certain personnel records of university direct-support organizations; amending s. 240.299, F.S.; providing for confidentiality of certain financial information of university direct-support organizations; amending s. 240.522, F.S.; providing for transfer of assets to the direct-support organization for the new state university in southwest Florida; amending s. 240.5285, F.S.; providing for a direct-support organization at the Broward County campus of Florida Atlantic University; prohibiting universities from assessing student fees not authorized by law; providing requirements for organizations that solicit financial support on university campuses; amending s. 240.209, F.S.; requiring the Board of Regents to adopt standards relating to graduate teaching assistants; amending s. 240.214, F.S.; revising provision relating to implementation of the State University System accountability process; requiring additional data in the implementation plan; revising provisions relating to the accountability report; amending s. 240.245, F.S.; revising provisions relating to evaluations of university faculty members; providing criteria for a full-time teaching assignment; revising duties of the Board of Regents and universities and deleting requirement of faculty service to public schools; requiring adoption of additional promotional opportunities; amending s. 240.271, F.S.; revising provisions relating to funding based on enrollment; amending s. 240.272, F.S.; revising provisions relating to the carryforward and expenditure of certain funds; amending ss. 240.531, 282.308, 447.203, F.S.; correcting cross-references; amending s. 240.311, F.S.; revising duties of the State Board of Community Colleges; providing procedures for selection of presidents of community colleges; amending s. 240.319, F.S.; prescribing requirements for rules, procedures, and policies; amending s. 240.324, F.S.; revising community college planning relating to the accountability process; requiring automated student records systems; amending s. 240.325, F.S.; revising provisions relating to guidelines for community colleges; amending s. 240.331, F.S.; conforming provisions; amending s. 240.347, F.S.; revising provisions relating to the State Community College Program Fund; providing community college program requirements; amending s. 240.359, F.S.; providing for community college budgets and budget categories; repealing s. 240.257, F.S., relating to the Florida Endowment Trust Fund for Eminent Scholars Act; repealing s. 240.259, F.S., relating to the Trust Fund for New Donors; repealing ss. 240.349 and 240.361, F.S., relating to requirements for participation in the Community College Program Fund and budgets for community colleges; amending s. 240.115, F.S.; providing an additional criterion for postsecondary institutions that award course credit for transferring students; repealing s. 240.243, F.S., relating to required number of classroom teaching hours for university faculty members; providing an effective date.

Senator Dudley moved the following amendment which was adopted:

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

Section 1. A new law school may not be established within the State University System unless the Board of Regents conducts a thorough study that considers locating such law school at a university where the greatest number of minorities can be served and operated by any state university in that area.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 2, line 16, after the semicolon (;) insert: requiring the Board of Regents to conduct a study before the establishment of a new state law school;

On motion by Senator Kirkpatrick, by two-thirds vote **SB 1762** 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 HB 565** and **CS for CS for SB 2038** was deferred.

SB 174—A bill to be entitled An act relating to state lotteries; amending s. 24.121, F.S.; revising provisions relating to the allocation of revenues and expenditure of funds in the Educational Enhancement Trust Fund; amending ss. 229.592 and 230.23, F.S.; correcting cross references; providing an effective date.

—was read the second time by title. On motion by Senator Jennings, by two-thirds vote **SB 174** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—None

SB 188—A bill to be entitled An act relating to lobbying; amending s. 11.062, F.S.; prohibiting departments of the executive branch, state universities, community colleges, and water management districts from using public funds to retain lobbyists to represent them before the legislative or executive branch; exempting full-time employees of these entities; prohibiting lobbyists from accepting compensation derived from public funds; providing penalties; authorizing complaints to be filed with and investigated by the Commission on Ethics; authorizing the commission to adopt rules; 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 McKay and failed:

Amendment 1—On page 2, line 11, after the period (.) insert: *Except as a full-time employee,*

Senator McKay moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 2, strike lines 8-11 and insert: *However, a full-time employee or the general counsel of a department of the executive branch, a state university, a community college, or a water management district may register as a lobbyist and represent that employer before the Legislative or executive branch. Except as a full-time employee, or general counsel, a*

And the title is amended as follows:

In title, on page 1, strike lines 8 and 9 and insert: executive branch; providing exceptions; prohibiting lobbyists from

On motion by Senator McKay, by two-thirds vote **SB 188** 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

The Senate resumed consideration of—

SB 1702—A bill to be entitled An act relating to articulation between education systems; amending s. 240.115, F.S.; providing an additional criterion for postsecondary institutions that award course credit for transferring students; providing an effective date.

—with pending **Amendment 2** which was deferred on a point of order by Senator Dudley.

RULING ON POINT OF ORDER

On recommendation of Senator Jennings, Chairman of the Committee on Rules and Calendar, the President ruled the point well taken and the amendment out of order.

SENATOR CHILDERS PRESIDING

Senator Grant moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 1, between lines 29 and 30, insert:

Section 2. Paragraph (n) of subsection (1) of section 246.041, Florida Statutes, 1992 Supplement, is amended to read:

246.041 Powers and duties of board.—

(1) The board shall:

(n) Serve as a central agency for collecting and distributing current information regarding colleges licensed by the board and colleges granted a certificate of exemption by the board.

1. The board shall annually collect information relating to the college administration, calendar system, admissions requirements, student costs and financial obligations, financial aid information, refund policy, placement services, degree programs, and off-campus academic programs. To the extent that such information is available in the institution's current catalog, a copy of the catalog accompanied by an index indicating where the information may be found shall be sufficient to demonstrate compliance with this provision. Financial information of a strictly proprietary, commercial nature is excluded from this requirement.

2. The board shall annually collect information on students, faculty, and degrees awarded. To the extent that data submitted to the Federal Government for compilation into the Integrated Postsecondary Education Data System (IPEDS) provide the information required pursuant to this paragraph, submission to the board of copies of such reports shall be sufficient to demonstrate compliance with this provision.

3. The board shall collect annually from each college *holding a certificate of exemption or a license* a descriptive inventory of consumer practices including:

a. *Admission and recruiting of students.*—A description of the college's policies and procedures regarding the recruitment and admission of students. *The college shall also file a copy of its policy relating to the assessment of a prospective student's ability to successfully complete the degree program of study for which the student had applied, and the policy which assures that students meet standards of academic progress in their degree programs.*

b. *Student financial assistance.*—The sources and kinds of student financial assistance available, and the specific manner by which students are informed of their responsibilities with respect to receiving assistance and repaying loans. *The college shall submit documentation to demonstrate that all financial assistance forms and information have been accurately translated into the individual student's language if the student is not fluent in English, and that it has been verbally explained and emphasized to the student.*

c. *Placement assistance.*—The placement assistance provided by the college, including any claims concerning job placement rates, *information relating to market and job availability for students in occupational and professional programs, and information regarding the relationship of programs of study to the state licensure standards for practicing specific occupations and professions.*

d. *Advertising.*—All advertising issued on behalf of the college, including copies of all published items. *The advertising and promotional literature shall clearly indicate the level of training and education. References to financial assistance availability shall include the phrase, "for those who qualify."*

e. *Refunding of tuition and fees.*—A copy of the college's refund policy. Such refund policy shall provide students with a minimum of 3 working days from the date a student signs an enrollment contract or financial agreement with a college for the student to cancel the contract and receive a full refund of any tuition or registration fees paid. This provision of the refund policy shall be prominently displayed on the contract form. The refund policy shall also provide for a full refund of tuition and registration fees paid by the student prior to the commencement of instruction if the student submits a written request to the institution within 3 working days of the payment.

f. *Transferability of academic credits.*—Evidence that the college has provided students with a clear and specific statement regarding the transferability of credits to and from other colleges.

g. Procedures for students complaints.—Evidence that the college has provided students with information and, if appropriate, forms relating to the filing, procedures for investigating, and resolving student complaints.

To the extent that such information is available in the institution's current catalog, *or student handbook,* a copy ~~of the catalog~~ accompanied by an index indicating where the information may be found shall be sufficient to demonstrate compliance with this provision. *The inventory shall also include a written affirmation, signed by the institution's chief administrative officer, stating that the nonpublic college will notify the board in writing of its intention to cease operating any campus or branch. The notification shall be submitted at least 60 days prior to the proposed date of closure, and it shall include a plan for all currently enrolled degree-seeking students to complete their programs.*

4. The board shall annually provide to each college the format, definitions, and instructions for submitting the required information.

5. Each college shall include with the information submitted a letter of certification, signed by its chief administrative officer, affirming that the information submitted is accurate, that the policies reported are provided in writing to all prospective students at least 1 week prior to enrollment or collection of tuition fees, and that the college observes the policies and practices as reported to the board.

6. The board shall include a summary of the information collected in the annual report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. This information may also be used by the Department of Education for such purposes as statewide master planning, state financial aid programs, and publishing directories; by the Legislature; and to respond to consumer inquiries received by the board.

7. If a college fails to provide the information required by the board under this paragraph, the board may impose a fine for every month the information is not made available. Repeated failure to supply the information required by this paragraph or to pay the fines imposed by the board may result in the revocation of the license or certificate of exemption. The board shall adopt rules for these actions.

Section 3. Subsections (1) and (2) of section 246.081, Florida Statutes, 1992 Supplement, are amended to read:

246.081 License, certificate of exemption, ~~or~~ authorization *to operate, or permission to operate* required; exceptions.—

(1) The following colleges are not under the jurisdiction of the board and do not need a license, a certificate of exemption, ~~or~~ an authorization to operate, *or permission to operate*:

(a) Any college provided, operated, and supported by the State of Florida or its political subdivisions or the Federal Government.

(b) Any college, school, or course licensed or approved for establishment and operation under chapter 464, chapter 466, or chapter 475, or any other chapter of the Florida Statutes, requiring licensing or approval as defined in ss. 246.011-246.151.

(2) No nonpublic college shall continue operation or be established within the state unless such college shall apply for, and obtain from the board, a license, a certificate of exemption, ~~or~~ authorization *to operate, or permission to operate* in the manner and form prescribed by the board. *Permission to operate shall apply solely to out-of-state colleges, as defined in s. 246.021(9), that either wish to provide college courses under a written contract with a business, industry, professional association, hospital, or other entity, which courses are solely for their employees and not open to nonemployees, or wish to operate an admissions, recruiting, or alumni office that does not provide instruction or academic programs.* Upon receipt of approved articles of incorporation from the Department of State that purport to be for a college as defined in s. 246.021, the newly formed corporation shall, within 60 days after such approval, make an application to the board for a license, a certificate of exemption, ~~or other~~ authorization *to operate, or permission to operate* as required by law. The approval of articles of incorporation by the Department of State shall not be deemed to be an approval to engage in the operation of an institution of higher learning. Such institution shall not advertise or operate until a license, certificate of exemption, ~~or~~ authorization to operate, *or permission to operate* has been obtained from the board. When articles of incorporation are issued to an institution of higher learning, the Department of State shall immediately furnish a copy of the articles of incorporation to the board.

Section 4. Subsections (1) and (6) of section 246.083, Florida Statutes, 1992 Supplement, are amended to read:

246.083 Authorization to operate.—

(1) Upon demonstration to the board that a nonpublic college affiliated with a religious institution meets the criteria listed in this section, the college shall be granted an authorization to operate. *Information and documentation may be submitted by an individual nonpublic college or by a group on behalf of a college or colleges designated by the board* The board shall notify an institution *or a designated group* within 30 days of receipt of materials of any failure to demonstrate compliance.

(a) The only purpose of the college is to prepare students for missionary, ministerial, or religious educational purposes.

(b) The degree offerings of the college are limited to programs within the disciplines of Religion, Theology, Divinity, Biblical Studies, Missions or Ministry, Pastoral Counseling, Pastoral Psychology, Sacred Music, and Religious Education.

(c) By October 1, 1995, the titles of degrees issued by the college must include a religious modifier, and the religious modifier must immediately precede, or be included within, any of the following titles: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Doctor of Philosophy.

. (d) The name of the college shall include a religious modifier or the name of a religious patriarch of the church.

(e) The catalog of the college shall contain a statement of institutional purpose which reflects that all degree programs of the college are designed for ecclesiastical purposes only; a description of all degrees, programs, and courses offered including requirements for degree completion; tuition costs; refund policies; a listing of all faculty; and a statement regarding the transferability of credits.

(f) The college shall be in compliance with chapter 501 and s. 817.06.

(6) Each authorization issued by the board shall be subject to an annual review by the board to determine if the college remains eligible. Colleges which have applied for and received an authorization to operate under this section may remain eligible for the authorization by annually submitting to the board the information required by this section to demonstrate that the college remains in compliance with the provisions of this section. *Any college issued an authorization to operate pursuant to the provisions of this section is exempt from the provisions of ss. 246.087 and 246.091.* Failure to demonstrate compliance with these provisions shall place the college on probation for 90 days. Continued failure by the college to demonstrate compliance shall result in the board's revocation of the college's authorization.

Section 5. Paragraph (b) of subsection (1) of section 246.085, Florida Statutes, 1992 Supplement, is amended to read:

246.085 Certificate of exemption.—

(1) As an alternative to applying for a license from the board, the following nonpublic colleges may apply for a certificate of exemption from the board:

(b) Colleges chartered in this state, the credits or degrees of which *were* ~~are~~ accepted for credit by at least three colleges that *were* ~~are~~ fully accredited by a member of the Council on Postsecondary Accreditation, ~~which were exempt through this category of exemption~~ prior to July 1, 1982, *the credits or degrees of which are currently accepted for credit by at least three colleges that are fully accredited by the United States Department of Education,* and which enroll no students who receive any state or federal financial aid for education. Each college seeking exemption pursuant to this paragraph shall submit to the board a current catalog and letters from the three colleges confirming acceptance of the credits.

Section 6. Subsection (1) of section 246.095, Florida Statutes, 1992 Supplement, is amended to read:

246.095 Disclosure to prospective students; condition of operation.—

(1) Every college which is ~~either~~ licensed, ~~by the board or has been~~ granted a certificate of exemption, *or authorized to operate,* by the board, and which either directly or indirectly solicits for enrollment any student shall disclose to each prospective student a statement of the purpose of such college, its educational programs and curricula, a description of its physical facilities, its status *with the board* ~~regarding licensure~~, its fee schedule and policies about retaining student fees if a student withdraws, *the rules and regulations of the college relating to students, the procedures of the college for receiving and investigating student complaints, the standards for academic progress,* and a statement regarding the transferability of credits to and from other colleges. In addition, colleges which are required to be licensed by the board shall disclose to prospective students that additional information regarding the college may be obtained by contacting the State Board of Independent Colleges and Universities, Department of Education, Tallahassee. The college shall make the required disclosures in writing at least 1 week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog *or student handbook.*

Section 7. Subsections (4) and (5) of section 246.101, Florida Statutes, 1992 Supplement, are amended to read:

246.101 Fees.—

(4) The cost of routine services of the board, such as data collection and dissemination, shall be supported through a base fee. The base fee applies to all nonpublic colleges, whether granted licensure *or,* a certificate of exemption, ~~or an authorization to operate~~.

(a) If the total appropriation for the board requires that one-half or more of the cost of operating the board be supported through fees, the board shall charge a base fee to all colleges under its jurisdiction *which have been granted licensure or a certificate of exemption.* The board may adjust the fee based on the enrollment of the college. However, the fee assessed to the largest college may not exceed one-half of 1 percent of the amount appropriated for the board or $1,500, whichever is less. The fee assessed to the largest college may not exceed *four* ~~three~~ times the amount of the fee assessed to the smallest college.

(b) If the total appropriation for the board requires that less than one-half of the total amount be supported through fees, the board shall

waive the fees for colleges that have been granted an authorization to operate or shall provide for lower base fees for smaller colleges. However, the fee assessed to the largest college may not exceed one-half of 1 percent of the amount appropriated for the board or $1,500, whichever is less. The fee assessed to the largest college may not exceed *four* ~~three~~ times the amount of the fee assessed to the smallest college.

(5) The board shall assess fees to defray the cost of workload for board activities that are specific to certain colleges. Such workload activities must relate to:

(a) Licensure.

(b) Annual reviews.

(c) Special reviews.

(d) Site visits.

(e) Resolution of complaints for violation of fair consumer practices.

(f) *Permission* ~~Authorization~~ to operate in Florida without offering educational programs.

(g) Approval to use the term "college" or "university."

(h) Authorization for religious colleges submitting applications.

(i) Application and information by a designated group on behalf of religious colleges.

(j)~~(h)~~ Other workload activities as approved by the Legislature.

Section 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, lines 2-7, strike all of those lines and insert: An act relating to higher education; amending s. 240.115, F.S.; providing an additional criterion for postsecondary institutions that award course credit for transferring students; amending s. 246.041, F.S.; revising provisions relating to duties of the State Board of Independent Colleges and Universities and requirements of colleges; amending s. 246.081, F.S.; providing for permission to operate; amending s. 246.083, F.S.; authorizing colleges to submit information through a designated group; providing certain exemptions; amending s. 246.085, F.S.; revising provisions relating to colleges eligible for a certificate of exemption; amending s. 246.095, F.S.; revising provisions relating to disclosure to prospective students; amending s. 246.101, F.S.; revising provisions relating to fees assessed to certain colleges; revising provisions relating to workload activities for which fees are assessed; providing for severability; providing an effective date.

On motion by Senator Kirkpatrick, by two-thirds vote **SB 1702** 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

On motions by Senator Meadows, by two-thirds vote **CS for HB 1235** was withdrawn from the Committees on Criminal Justice; Personnel, Retirement and Collective Bargaining; and Appropriations.

On motion by Senator Meadows—

CS for HB 1235—A bill to be entitled An act relating to criminal justice standards and training; amending s. 943.11, F.S.; increasing the membership of the Criminal Justice Standards and Training Commission; requiring the Governor to take certain action regarding the composition of such commission; amending s. 943.12, F.S.; creating s. 943.125, F.S.; expressing legislative direction and intent; requiring a report regarding feasibility and development status of law enforcement agency accreditation; providing duties of the commission relating to officer certification examinations; amending s. 943.13, F.S.; revising officers' minimum qualifications relating to basic training and the certification examination, and reenacting s. 943.173(2), F.S., relating to examinations, to incorporate said amendment in a reference thereto; amending s. 943.131, F.S.; revising provisions relating to temporary employment or appointment and training exemption, and reenacting ss. 258.024(1)(a)2. and 626.989(7), F.S., relating to park officers and insurance fraud investigators, to incorporate said amendment in a reference thereto; amending s. 943.133, F.S.; revising duties of the employing agency and authorizing electronic transmission of documents; amending s. 943.135, F.S.; providing duties of the employing agency and authorizing electronic transmission of documents; amending s. 943.139, F.S.; providing duties of the employing agency and authorizing electronic transmission of documents; amending s. 943.1395, F.S.; providing additional standards for reemployment or reappointment; creating s. 943.1397, F.S.; providing for officer certification examinations and examination fees; amending s. 943.14, F.S.; requiring criminal justice training courses to meet certain requirements; amending s. 943.16, F.S.; authorizing employing agencies to pay certain examination fees; amending s. 943.17, F.S.; requiring job-related officer certification examinations for each discipline; amending s. 943.25, F.S.; providing that officer certification examination fee revenues remain in the Criminal Justice Training Trust Fund; providing an effective date.

—a companion measure, was substituted for **CS for CS for SB 2038** and read the second time by title. On motion by Senator Meadows, by two-thirds vote **CS for HB 1235** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—None

RECONSIDERATION

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

SB 1992—A bill to be entitled An act relating to education; amending s. 216.023, F.S.; providing an exception for filing legislative budget requests; amending s. 235.41, F.S.; providing that Commissioner of Education shall submit the capital outlay budget request for educational facilities 75 days prior to regular legislative session; providing for submitting preliminary data for developing 3-year capital outlay lists; amending s. 239.117, F.S.; providing the certain exemption from student fees does not apply to community college students; eliminating certain restrictions on fees for lifelong learning programs; providing range for matriculation fees and tuition; providing that financial aid fees be deposited in the school district fund; providing each school board may establish a separate fee for capital improvements, technology, or building equipment; authorizing a community college board of trustees to establish certain fees; amending s. 239.213, F.S.; providing for vocational preparatory instruction; amending s. 239.301, F.S.; providing that community colleges do not have to report lifelong learning expenditures unless the data is used for appropriations purposes; amending s. 240.319, F.S.; providing for certain leases, lease-purchase agreements, installment contracts for community college equipment; amending s. 240.35, F.S.; providing for college preparatory instruction fees; amending s. 240.359, F.S.; providing for apportionment of state funds to community colleges; requiring the Legislature not to consider certain student fees in apportioning funds; amending s. 240.36, F.S.; deleting a restriction on transferring monies from the state trust fund to the community college foundation, amending s. 240.367, F.S.; providing authority of board of trustees of a community college to request approval of the Executive Director of the State Community College System to negotiate a loan; amending s. 240.551, F.S.; providing that prepaid community college registration fees include student activity and service fees; repealing s. 240.138, F.S., relating to reporting of foreign gifts by universities and community colleges; repealing s. 240.311(3)(h), F.S., relating to establishment of an information system; repealing s. 240.335, F.S., relating to employment of community college personnel; repealing s. 240.347(2), F.S., relating to information included in community college budget requests; providing an effective date.

—passed as amended this day.

On motion by Senator Holzendorf, by two-thirds vote the Senate reconsidered the vote by which **SB 1992** was read the third time.

On motion by Senator Holzendorf, the Senate reconsidered the vote by which **Amendment 4** as amended and **Amendment 4B** were adopted. **Amendment 4B** was withdrawn.

The question recurred on **Amendment 4** as amended which was adopted.

On motion by Senator Holzendorf, by two-thirds vote **SB 1992** 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

RECONSIDERATION

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

SB 1762—A bill to be entitled An act relating to hiring and promoting women and minorities within the State University System; amending s. 240.2475, F.S.; revising provisions relating to the State University System equity accountability program; providing an effective date.

—passed as amended this day.

On motion by Senator Dudley, by two-thirds vote the Senate reconsidered the vote by which **SB 1762** was read the third time.

On motion by Senator Dudley, the Senate reconsidered the vote by which **Amendment 3** was adopted. **Amendment 3** was withdrawn.

On motion by Senator Dudley, by two-thirds vote **SB 1762** 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

SB 356—A bill to be entitled An act relating to tax on sales, use, and other transactions; amending s. 212.06, F.S.; providing for retroactive application of the exemption from said tax for certain promotional materials which are exported outside the state; providing an effective date.

—was read the second time by title.

One amendment as amended was adopted to **SB 356** to conform the bill to **HB 2019**.

Pending further consideration of **SB 356** as amended, on motions by Senator Hargrett, by two-thirds vote **HB 2019** was withdrawn from the Committees on Finance, Taxation and Claims; and Appropriations.

On motion by Senator Hargrett—

HB 2019—A bill to be entitled An act relating to taxation; amending s 212.06, F.S.; providing for retroactive application of the exemption from said tax for certain promotional materials which are exported outside the state; amending s. 199.052, F.S.; providing that failure to timely file a consolidated intangible personal property tax return does not prejudice a taxpayer's right to file such return under certain conditions; providing for retroactive effect; amending s. 624.509, F.S.; exempting certain commercial motor vehicle insurance premiums from insurance premimum tax; amending s. 220.03, F.S.; updating references to the Internal Revenue Code for corporate income tax purposes; providing for retroactive effect; requiring certain studies; providing an effective date.

—a companion measure, was substituted for **SB 356** and read the second time by title.

Senator Kiser moved the following amendment:

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

Section 1. Paragraph (d) is added to subsection (11) of section 212.06, Florida Statutes, 1992 Supplement, to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(11)

(d) This subsection applies retroactively to July 1, 1987.

Section 2. Paragraph (c) of subsection (2) of section 201.17, Florida Statutes, 1992 Supplement, is amended to read:

201.17 Penalties for failure to pay tax required.—

(2) Any document, instrument, or paper upon which the tax under this chapter is imposed and which, upon audit or at time of recordation, does not show the proper amount of tax paid shall subject the person or persons liable for the tax upon the document, instrument, or paper to:

(c) Payment of interest to the Department of Revenue, accruing from the date *the tax is due* ~~of recordation~~ until paid, at the rate of 1 percent per month ~~or fraction thereof~~, based on the amount of tax not paid.

Section 3. Subsection (7) of section 203.01, Florida Statutes, 1992 Supplement, is amended to read:

203.01 Tax on gross receipts for utility services.—

(7) Any person who provides such services and who fails, neglects, or refuses to ~~collect or~~ remit the tax imposed in this part, either by himself or through his agents or employees, is liable for the tax and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Subsection (7) is added to section 212.14, Florida Statutes, 1992 Supplement, to read:

212.14 Departmental powers; hearings, subpoena *and subpoena duces tecum*; distress warrants; time for assessments.—

(7)(a) For purposes of collection and enforcement of taxes, penalties, and interest levied under this part, the department may issue subpoenas or subpoenas duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas shall be issued with the written and signed approval of the executive director or his designee on written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied under this part. A subpoena shall be served in the manner provided by law and by the Florida Rules of Civil Procedure and shall be returnable only during regular business hours and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies shall identify the taxpayer to whom the subpoena relates and to whom the records pertain and shall provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days of the day on which the service of the subpoena is made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the department shall not be entitled to inspect and copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena shall contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or records custodian must be accompanied by a copy of the provisions of this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses shall be paid mileage and witness fees as authorized for witnesses in civil cases.

(b)1. If any subpoena is served on any person who is a third-party recordkeeper, and the subpoena requires the production of any portion of records made or kept of the business transactions or affairs of any person other than the person subpoenaed who is identified in the description of the record contained in the subpoena, then notice of the subpoena shall be given to any person to whom the records pertain and the taxpayer to whom the subpoena relates within 3 days of the day on which the service on the third-party recordkeeper is made. The notice shall be accompanied by a copy of the subpoena which has been served and shall contain directions for staying compliance with the subpoena under subparagraph (c)2.

2. The notice shall be sufficient if, on or before the third day, the notice is delivered in hand to the person entitled to notice or is mailed by certified or registered mail to the last mailing address of the person or, in the absence of a last known address, is left with the person subpoenaed.

3. For purposes of this subsection, "third-party recordkeeper" means:

a. Any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under federal or state law; a bank as defined in s. 581 of the Internal Revenue Code; or any credit union within the meaning of s. 501(c)(14)(A) of the Internal Revenue Code;

b. Any consumer reporting agency as defined under s. 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f));

c. Any person extending credit through the use of credit cards or similar devices;

d. Any broker as defined in s. 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));

e. Any attorney;

f. Any accountant;

g. Any barter exchange as defined in s. 6045(c)(3) of the Internal Revenue Code; or

h. Any regulated investment company as defined in s. 851 of the Internal Revenue Code.

4. This paragraph does not apply to a subpoena served on the person with respect to whose liability the subpoena is issued or an officer or employee of the person; or to a subpoena to determine whether or not records of the business transactions or affairs of an identified person have been made or kept; or to a subpoena described in paragraph (f).

(c)1. Notwithstanding any other law or rule of law, a person who is entitled to notice of a subpoena under paragraph (b) and the taxpayer to whom the subpoena relates shall have the right to intervene in any proceeding with respect to the enforcement of the subpoena under paragraph (a).

2. Notwithstanding any other law or rule of law, a person who is entitled to notice of a subpoena under paragraph (b) and the taxpayer to whom the subpoena relates shall have the right to stay compliance with the subpoena if, not later than the 14th day after the day the notice is given in the manner provided in subparagraph (b)2.:

a. Notice in writing is given to the person subpoenaed not to comply with the subpoena.

b. A copy of the notice not to comply with the subpoena is mailed by registered or certified mail to the person and to the department.

c. Suit is filed against the department in the circuit court to stay compliance with the subpoena.

(d) No examination of any records required to be produced under a subpoena as to which notice is required under paragraph (b) may be made:

1. Before the expiration of the 14-day period allowed for the notice not to comply under subparagraph (c)2.; or

2. When the requirements of subparagraph (c)2. have been met, except in accordance with an order issued by the circuit court authorizing examination of the records or with the consent of the person staying compliance.

(e) Any subpoena issued under paragraph (a) that does not identify the person with respect to whose liability the subpoena is issued may be served only after a proceeding in any circuit court in which the department establishes that:

1. The subpoena relates to the investigation of a particular person or ascertainable group or class of persons.

2. There is reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of state law.

3. The information sought to be obtained from the examination of the records and the identity of the person or persons with respect to whose liability the subpoena is issued is not readily available from other sources.

(f) In the case of a subpoena issued under paragraph (a), the provisions of subparagraph (b)1. and paragraph (c) do not apply if, upon petition by the department, a circuit court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(g)1. Any circuit court has jurisdiction to hear and determine proceedings brought under paragraph (e) or paragraph (f). The determinations required to be made under paragraphs (e) and (f) shall be ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition shall be deemed a final order that may be appealed.

2. Except for cases the court considers of greater importance, any proceeding brought for the enforcement of any subpoena, or a proceeding under this subsection, and appeals, take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date.

(h) The department shall by rule establish the rates and conditions for payments to reimburse reasonably necessary costs directly incurred by third-party recordkeepers in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by subpoena upon request of the department. The reimbursement shall be in addition to mileage and fees paid under paragraph (a).

(i)1. Except as provided in subparagraph 2., an action initiated in circuit court pursuant to this subsection shall be filed in the circuit court in the county where:

a. The taxpayer to whom the subpoena relates resides or maintains his principal commercial domicile in this state;

b. The person subpoenaed resides or maintains his principal commercial domicile in this state; or

c. The person to whom the records pertain resides or maintains his principal commercial domicile in this state.

2. Venue in an action initiated in circuit court pursuant to this subsection by a person who is not a resident of this state or does not maintain a commercial domicile in this state shall be in Leon County.

3. Venue in an action initiated in circuit court pursuant to paragraph (e) shall be in the Second Judicial Circuit Court in and for Leon County.

Section 5. Subsection (2) of section 212.15, Florida Statutes, 1992 Supplement, is amended to read:

212.15 Taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review.—

(2) Any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or benefit thereof, fails to remit taxes collected *under this part* ~~pursuant to this chapter~~ is guilty of theft of state funds, punishable as follows:

(a) If the total amount of stolen revenue is less than *$300* ~~$100~~, the offense is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction ~~within a 3-year period~~, the offender is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction ~~within a 3-year period~~, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the total amount of stolen revenue is *$300* ~~$100~~ or more *but less than $20,000*, the offense is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the total amount of stolen revenue is $20,000 or more *but less than $100,000*, the offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the total amount of stolen revenue is $100,000 or more, the offense is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (7) is added to section 212.183, Florida Statutes, 1992 Supplement, to read:

212.183 Rules for self-accrual of sales tax.—Rule 12A-1.091(6) of the Department of Revenue is hereby repealed. However, the Department of Revenue is authorized to provide by rule for self-accrual of the sales tax under one or more of the following circumstances:

(7) For commercial rentals where the purchaser, who is required to remit sales tax electronically as provided under s. 213.755, rents from a number of independent property owners.

Section 7. Section 213.10, Florida Statutes, is amended to read:

213.10 Deposit of tax moneys collected.—Any and all tax moneys collected by the Department of Revenue shall be deposited in the appropriate fund as provided by law. *Except as otherwise provided, the Department of Revenue may use separate clearing trust funds to account for the collection and distribution of tax moneys.*

Section 8. Effective June 30, 1993, section 213.27, Florida Statutes, is amended to read:

213.27 Contracts with debt collection agencies.—

(1) The Department of Revenue may, for the purpose of collecting any delinquent taxes due from a taxpayer, *including taxes for which a bill or notice has been generated,* contract with any debt collection agency or attorney doing business within or without this state for the collection of such delinquent taxes including penalties and interest thereon. The department may also share confidential information pursuant to the contract necessary for the collection of delinquent taxes *and taxes for which a billing or notice has been generated.* Contracts will be made pursuant to chapter 287. The taxpayer must be notified by ~~certified~~ mail by the department, its employees, or its authorized representative 30 days prior to commencing any litigation to recover any delinquent taxes. The taxpayer must be notified by ~~certified~~ mail by the department 30 days prior to the department assigning the collection of any ~~delinquent~~ taxes to the debt collection agency.

(2) The department may enter into contracts with any individual or business for the purpose of identifying intangible personal property tax liability. Contracts may provide for the identification of assets subject to the tax on intangible personal property, the determination of value of such property, the requirement for filing a tax return and the collection of taxes due, including applicable penalties and interest thereon. The department may share confidential information pursuant to the contract necessary for the identification of taxable intangible personal property. Contracts shall be made pursuant to chapter 287. The taxpayer must be notified by mail by the department 30 days prior to the department assigning identification of intangible personal property to an individual or business.

(3)~~(2)~~ Any contract may provide, in the discretion of the executive director of the Department of Revenue, the manner in which the compensation for such services will be paid. Under standards established by the department, such compensation shall be added to the amount of the tax and collected as a part thereof by the agency or deducted from the amount of tax, penalty, and interest actually collected.

(4)~~(3)~~ All funds collected under the terms of the contract, less the fees provided in the contract, shall be remitted to the department within 30 days from the date of collection from a taxpayer. Forms to be used for such purpose shall be prescribed by the department.

(5)~~(4)~~ The department shall require a bond from the debt collection agency *or the individual or business contracted with under subsection (2)* not in excess of $100,000 guaranteeing compliance with the terms of the contract. However, a bond of $10,000 is required from a debt collection agency if the agency does not actually collect and remit delinquent funds to the department.

(6)~~(5)~~ The department may, for the purpose of ascertaining the amount of or collecting any ~~delinquent~~ taxes due from a person doing mail order business in this state, contract with any auditing agency doing business within or without this state for the purpose of conducting an audit of such mail order business; however, such audit agency may not conduct an audit on behalf of the department of any person domiciled in this state, person registered for sales and use tax purposes in this state, or corporation filing a Florida corporate tax return, if any such person or corporation objects to such audit in writing to the department and the auditing agency. The department shall notify the taxpayer by ~~certified~~ mail at least 30 days before the department assigns the collection of such ~~delinquent~~ taxes ~~to the debt collection or auditing agency~~.

(7)~~(6)~~ Confidential information shared *by the department* with debt collection or auditing agencies *or individuals or businesses with which the department has contracted under subsection (2)* is exempt from the provisions of s. 119.07(1), and debt collection or auditing agencies *and individuals or businesses with which the department has contracted under subsection (2)* shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by ss. 775.082 and 775.083. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 9. Paragraph (a)2. of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.—There shall be added to such taxable income:

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265~~(2)~~ of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

Section 10. Subsection (2) of section 403.718, Florida Statutes, is amended to read:

403.718 Waste tire fees.—

(2) The fee imposed by this section shall be reported to the Department of Revenue. The payment shall be accompanied by such form as the Department of Revenue may prescribe. The proceeds of the waste tire fee, less administrative costs, shall be transferred by the Department of Revenue into the waste tire account within the Solid Waste Management Trust Fund. For the purposes of this section, "proceeds" of the fee shall mean all funds collected and received by the department hereunder, including interest and penalties on delinquent fees. The amount deducted for the costs of administration shall not exceed 3 percent of the total revenues collected hereunder and shall be only those costs *reasonably attributable* ~~solely and directly attributed~~ to the fee.

Section 11. Subsection (2) of section 403.7185, Florida Statutes, is amended to read:

403.7185 Lead-acid battery fees.—

(2) The fee imposed by this section shall be reported to the Department of Revenue. The payment shall be accompanied by such form as the Department of Revenue may prescribe. The proceeds of the lead-acid battery fee, less administrative costs, shall be transferred by the Department of Revenue into the Water Quality Assurance Trust Fund. For the purposes of this section, "proceeds" of the fee shall mean all funds collected and received by the department hereunder, including interest and penalties on delinquent fees. The amount deducted for the costs of administration shall not exceed 3 percent of the total revenues collected hereunder and shall be only those costs *reasonably attributable* ~~solely and directly attributed~~ to the fee.

Section 12. Subsection (2) of section 403.7195, Florida Statutes, is amended to read:

403.7195 Waste newsprint disposal fees.—

(2) The product waste disposal fee imposed by this section shall be reported and paid to the Department of Revenue quarterly. A credit of 10 cents per ton of newsprint against the fee obligation may be taken by the producer or publisher for overruns or such similar products not actually circulated or delivered. The credit of 10 cents per ton is also allowed against the fee obligation for each ton of recycled newsprint used in publication of products. The payment shall be accompanied by such form as the Department of Revenue may prescribe. The proceeds of the product

waste disposal fee collected pursuant to this section, less administrative costs, shall be transferred to the Solid Waste Management Trust Fund. For the purposes of this section, "proceeds" of the fee shall mean all funds collected and received by the department hereunder, including interest and penalties on delinquent fees. The amount deducted for the costs of administration shall not exceed 3 percent of the total revenues collected hereunder and shall be only for those costs *reasonably* ~~solely and directly~~ attributable to the fee.

(a) The Department of Revenue shall administer, collect, and enforce the fee authorized under this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of this section regarding the authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The fees shall not be included in the computation of estimated taxes pursuant to s. 212.11 nor shall the dealer's credit for collecting taxes or fees provided in s. 212.12 apply to this fee.

(b) The Department of Revenue, under the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The department is empowered to adopt such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section. The department is authorized to establish audit procedures and to assess delinquent fees.

Section 13. Paragraph (b) of subsection (2) of section 624.5092, Florida Statutes, 1992 Supplement, is amended to read:

624.5092 Administration of taxes; payments.—

(2)

(b) Any taxpayer who fails to report and timely pay any installment of tax, who estimates any installment of tax to be less than 90 percent of the amount finally shown to be due in any quarter, or who fails to report and timely pay any tax due with the final return is in violation of this section and is subject to a penalty of 10 percent on any underpayment of taxes or delinquent taxes due and payable for that quarter or on any delinquent taxes due and payable with the final return~~; provided, however, for purposes of this calculation credits and deductions shall not apply~~. Any taxpayer *who pays* ~~paying~~, for each installment required in this section, 27 percent of the amount of the *net* ~~annual~~ tax *due as* reported on his return for the preceding year *is* ~~shall~~ not ~~be~~ subject to the penalty provided by this section *for underpayment of estimated taxes.*

Section 14. Subsection (2) of section 731.111, Florida Statutes, is amended to read:

731.111 Notice to creditors.—

(2) Notwithstanding the provisions of subsection (1), the Department of Revenue is not barred from filing a claim against the estate of a decedent for taxes due under chapter 199 after the expiration of the time for filing claims provided in subsection (1), provided the department files its claim within 30 days after the service of the inventory *or federal estate tax return* on the department *as provided in s. 198.13, whichever shall last occur.* Additionally, in the event that *the information contained therein is amended or supplemented* ~~an amended or supplementary inventory is prepared by the personal representative~~, the department has the right to file its claim or amend a previously filed claim within 30 days after the service of *such information* ~~the amended or supplementary inventory~~.

Section 15. Paragraph (d) of subsection (2) of section 125.0108, Florida Statutes, is amended to read:

125.0108 Areas of critical state concern; tourist impact tax.—

(2)

(d) The Department of Revenue, under the applicable rules of the Career Service *System* ~~Commission~~, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

Section 16. Paragraph (b) of subsection (6) of section 218.21, Florida Statutes, is amended to read:

218.21 Definitions.—As used in this part, the following words and terms shall have the meanings ascribed them in this section, except where the context clearly indicates a different meaning:

(6) "Guaranteed entitlement" means the amount of revenue which must be shared with an eligible unit of local government so that:

(b) No eligible municipality shall receive less funds from the Revenue Sharing Trust Fund for Municipalities in any fiscal year than the aggregate amount it received from the state in fiscal year 1971-1972 under the provisions of the then existing s. 210.20(2)(a), tax on cigarettes; s. 323.16(3), road tax; and s. 206.605, tax on motor fuel; except that, *for the 1993-1994 fiscal year,* any government exercising municipal powers pursuant to s. 6(f), Art. VIII of the State Constitution shall not receive less funds from any such revenue sharing trust fund than the aggregate amount it received from the state in the preceding state fiscal year under the provisions of this part, plus a 7 percent increase in such amount. *Effective in the 1994-1995 fiscal year and thereafter, any government exercising municipal powers under s. 6(f), Art. VIII of the State Constitution may not receive less than the aggregate amount it received from the Revenue Sharing Trust Fund for Municipalities in the preceding fiscal year, plus a percentage increase in such amount equal to the percentage increase of the Revenue Sharing Trust Fund for Municipalities for the preceding fiscal year.*

Section 17. Notwithstanding section 195.096(2), Florida Statutes, the Department of Revenue shall conduct an in-depth review of the assessment of those classes of property enumerated in section 195.096(3)(a)1., 2., and 6., Florida Statutes, as amended by this act, for the 1994 tax rolls of all counties. The requirement under section 195.096(2), Florida Statutes, to conduct an in-depth review of all counties no less frequently than once every 2 years is suspended with regard to the 1994 tax rolls.

Section 18. Section 213.28, Florida Statutes, is amended to read:

213.28 Contracts with private auditors.—

(1) It is the intent of the Legislature that the Department of Revenue be allowed to enter into contracts with certified public accountants to audit taxpayer accounts ~~on an "as-needed" basis~~. It is further the intent of the Legislature that contracts not be used to supplant existing departmental staff or as an alternative to hiring staff when that would be more efficient.

(2) *Subject to appropriations by the Legislature,* the Department of Revenue *shall* ~~may~~ contract with certified public accountants to conduct an audit of any person who is subject to a Florida revenue law. Furthermore, the Department of Revenue may contract with a private firm to facilitate the securing of the services of certified public accountants, licensed outside this state, to conduct audits on persons who are subject to the revenue laws of this state and who are located outside the state. ~~Those taxes administered under chapters 199, 206, 220, 221, and 336 and part II of chapter 212 shall be excluded from such contracts, unless the department and the Internal Revenue Service mutually agree to include them on a case-by-case basis.~~

(3) *Contracts for more than $25,000 but less than $100,000, shall be approved by the executive director of the Department of Revenue. Contracts for $100,000 or more* ~~Any contract may provide, in the discretion of the executive director of the Department of Revenue, the manner in which the compensation for such services will be paid. Under standards established by rule, such compensation shall be added to the amount of the tax and either collected as a part thereof by the agency or deducted from the amount of tax, penalty, and interest actually collected. Contracts in excess of $25,000 or in which hourly rates substantially exceed the department's costs per hour~~ must be approved by the head of the department. Contracts under this section shall be interpreted under Florida law and any action for resolution of any dispute related to any such contract shall be brought under Florida law. Contracts may contain such other terms and conditions as the department deems appropriate under the circumstances, *provided, no fee or any portion of a fee for audits contracted for pursuant to this section shall be based on the amount of tax assessed or collected as a result of the audit.*

(4) The department shall establish, by rule, procedures for the selection of certified public accounting firms wishing to enter into audit contracts pursuant to this section. Such procedures shall contain, but not be limited to, the development of a rating system that takes into account pertinent information, including the firms' fee proposal, and rank such firms participating in the process, to determine which firms will receive audit contracts.

(5) The department shall establish a training, certification, and review procedure that will ensure that audits performed pursuant to this section are of the highest quality.

(6)~~(4)~~ Certified public accountants entering into such contracts must be in good standing under the laws of the state in which they are licensed and in which the work is performed. They shall be bound by the same confidentiality requirements and subject to the same penalties as the department under s. 213.053. No return, return information, or documentation obtained from the Internal Revenue Service under an information-sharing agreement shall be divulged or disclosed in any manner by an officer or employee of the department or any certified public accountant under a contract authorized by this section, unless the department and the Internal Revenue Service mutually agree to such disclosure. Notwithstanding the provisions of ss. 192.105 and 213.053(2), any officer or employee of the department or certified public accountant under contract who willfully violates the provisions of this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(7) A portion of any appropriation available for contracting with private auditors shall be directed to Florida-based businesses that demonstrate quality of services in their audit approach as well as by the experience of their personnel. Quality of services shall be demonstrated by criteria established by the Department of Revenue including experience in Florida tax law, experience in federal tax law, academic qualifications of the business of its employees, and computer software, hardware and systems capabilities.

Section 19. Effective upon this act becoming a law, section 15 of Committee Substitute for House Bill 1543, which was enacted during the 1993 Regular Session of the Legislature, is amended to read:

Section 15. Subsection (3) of Section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be no less than one-quarter page in size of a standard-size or a tabloid-size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county *or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority.* It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week, *or that the advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week.* It is further the legislative intent that the newspaper selected be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50.

(a) For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1), the advertisement shall be in the following form:

NOTICE OF TAX INCREASE

The . . . (name of the taxing authority) . . . has tentatively adopted a measure to increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent.

All concerned citizens are invited to attend a public hearing on the tax increase to be held on . . . (date and time) . . . at . . . (meeting place) . . ..

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(b) In all instances in which the provisions of paragraph (a) are inapplicable for taxing authorities other than school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The . . . (name of taxing authority) . . . has tentatively adopted a budget for . . . (fiscal year) . . .. A public hearing to make a FINAL DECISION on the budget AND TAXES will be held on . . . (date and time) . . . at . . . (meeting place) . . ..

(c) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy nonvoted millage in excess of the minimum amount required pursuant to s. 236.02(7), the advertisement shall be in the following form:

NOTICE OF TAX INCREASE

The . . . (name of school district) . . . will soon consider a measure to increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent.

A portion of the tax levy is required under state law in order for the school board to receive $. . . (amount A) . . . in state education grants. The required portion has . . . (increased or decreased) . . . by . . . (amount B) . . . percent and represents approximately . . . (amount C) . . . of the total proposed taxes.

The remainder of the taxes is proposed solely at the discretion of the school board.

All concerned citizens are invited to a public hearing on the tax increase to be held on . . . (date and time) . . . at . . . (meeting place) . . ..

A DECISION on the proposed tax increase and the budget will be made at this hearing.

1. AMOUNT A shall be an estimate, provided by the Department of Education, of the amount to be received in the current fiscal year by the district from state appropriations for the Florida Education Finance Program.

2. AMOUNT B shall be the percent increase over the rolled-back rate necessary to levy only the required local effort in the current fiscal year, computed as though in the preceding fiscal year only the required local effort was levied.

3. AMOUNT C shall be the quotient of required local-effort millage divided by the total proposed nonvoted millage, rounded to the nearest tenth and stated in words; however, the stated amount shall not exceed nine-tenths.

(d) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy as nonvoted millage only the minimum amount required pursuant to s. 236.02(7), the advertisement shall be the same as provided in paragraph (c), except that the second and third paragraphs shall be replaced with the following paragraph:

This increase is required under state law in order for the school board to receive $. . . (amount A) . . . in state education grants.

(e) In all instances in which the provisions of paragraphs (c) and (d) are inapplicable for school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The . . . (name of school district) . . . will soon consider a budget for . . . (fiscal year) . . .. A public hearing to make a DECISION on the budget AND TAXES will be held on . . . (date and time) . . . at . . . (meeting place) . . ..

(f) In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice to each elector residing within the jurisdiction of the taxing authority.

(g) In the event that the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a tentative budget and millage rate in a newspaper of paid general circulation within that county, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c) not less than 2 days or more than 5 days thereafter, and not later than September 18. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (e):

NOTICE OF TAX INCREASE

The . . . (name of the taxing authority) . . . proposes to increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent.

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on . . . (date and time) . . . at . . . (meeting place) . . ..

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

(i) The advertisements required pursuant to paragraphs (b) and (e) need not be one-quarter page in size or have a headline in type no smaller than 18 point.

(j) The amounts to be published as percentages of increase over the rolled-back rate pursuant to this subsection shall be based on aggregate millage rates and shall exclude voted millage levies unless expressly provided otherwise in this subsection.

(k) Any taxing authority which will levy an ad valorem tax for an upcoming budget year but does not levy an ad valorem tax currently shall, in the advertisement specified in paragraph (a), paragraph (c), paragraph (d), or paragraph (g), replace the phrase "increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent" with the phrase "impose a new property tax levy of $. . . (amount) . . . per $1,000 value."

(l) Any advertisement required pursuant to this section shall be accompanied by an adjacent notice meeting the budget summary requirements of s. 129.03(3)(b). Except for those taxing authorities proposing to levy ad valorem taxes for the first time, the following statement shall appear in the budget summary in boldfaced type immediately following the heading, if the applicable percentage is greater than zero:

THE PROPOSED OPERATING BUDGET EXPENDITURES OF . . . (name of taxing authority) . . . ARE . . . (percent rounded to one decimal place) . . . MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

For purposes of this paragraph, "proposed operating budget expenditures" or "operating expenditures" means all moneys of the local government, including dependent special districts, that:

1. Were or could be expended during the applicable fiscal year, or

2. Were or could be retained as a balance for future spending in the fiscal year.

Provided, however, those moneys held in or used in trust, agency, or internal service funds, and expenditures of bond proceeds for capital outlay or for advanced refunded debt principal, shall be excluded.

Section 20. Except as otherwise provided herein, this act shall take effect July 1, 1993.

And the title is amended as follows:

In title, on page 1, strike everything before the enacting clause and insert: A bill to be entitled An act relating to taxation; amending s. 212.06, F.S.; providing for retroactive application of the exemption from said tax for certain promotional materials which are exported outside the state; amending s. 201.17, F.S.; revising the calculation of interest on documentary excise tax not paid; amending s. 203.01, F.S.; deleting liability for tax and criminal penalties for failure to collect tax; amending s. 212.14, F.S.; providing procedures and requirements for issuance of subpoenas and subpoenas duces tecum by the Department of Revenue; providing for enforcement; providing for service on third-party recordkeepers; providing requirements relating to right to stay compliance; providing for venue; amending s. 212.15, F.S.; revising penalties for the offense of theft of state funds in connection with failure to remit sales taxes; amending s. 212.183, F.S.; authorizing self-accrual of sales tax for certain commercial rentals; amending s. 213.10, F.S.; authorizing the department to use separate clearing trust funds; amending s. 213.27, F.S.; revising provisions which authorize the department to contract with debt collection agencies to collect delinquent taxes and with auditing agencies regarding taxes due from persons doing mail order business; deleting the requirement for notice by certified mail; authorizing the department to contract with individuals or businesses to identify intangible personal property tax liability and providing requirements with respect thereto; providing for confidentiality; providing a penalty; amending s. 220.13, F.S., relating to the definition of "adjusted federal income"; correcting a reference; amending ss. 403.718, 403.7185, and 403.7195, F.S.; revising provisions relating to determination of administrative costs for waste tire fees, lead-acid battery fees, and waste newsprint disposal fees; amending s. 624.5092, F.S.; revising provisions relating to penalties for underpayment of or failure to pay insurance premium taxes; providing for retroactive effect; amending s. 731.111, F.S.; revising provisions relating to filing of a claim against the estate of a decedent for estate taxes due; amending s. 125.0108, F.S.; revising obsolete language; amending s. 218.21, F.S.; prescribing distributions from the Revenue Sharing Trust Fund for Municipalities to certain governments exercising municipal powers; authorizing the department to conduct a review of the assessment of certain classes of property; amending s. 213.28, F.S.; clarifying provisions providing for contracts by the Department of Revenue with certified public accountants to audit taxpayer accounts; including certain taxes; providing for approval of certain contracts by the head of the department; prohibiting fees based upon the amount of tax assessed or collected; requiring the department to establish certain procedures for selecting private auditors; requiring the department to establish certain training, certification, and review procedures; amending section 15 of Committee Substitute for House Bill 1543, which was enacted during the 1993 Regular Legislative Session; authorizing area-specific information in advertisements for fixing millage; providing effective dates.

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

Amendment 1A (with Title Amendment)—On page 4, between lines 23 and 24, insert:

Section 6. Paragraph (g) of subsection (6) of section 212.20, Florida Statutes, 1992 Supplement, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this part shall be as follows:

(g) The proceeds of all other taxes and fees imposed pursuant to this part shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5 percent of all other taxes and fees imposed pursuant to this part shall be deposited in monthly installments into the General Revenue Fund.

2. Two-tenths of one percent shall be transferred to the Solid Waste Management Trust Fund.

3. After the distribution under subparagraphs 1. and 2., 9.664 percent for the remaining months of fiscal year 1992-1993, and 9.653 percent thereafter, of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund.

4. ~~Beginning July 1, 1992,~~ Of the remaining proceeds:

a. Beginning July 1, 1992, $166,667 shall be distributed monthly by the department to each applicant that has been certified by the Department of Commerce as a "facility for a new professional sports franchise" pursuant to s. 288.1162 and $41,667 shall be distributed monthly by the department to each applicant that has been certified by the Department of Commerce as a "new spring training franchise facility" pursuant to s. 288.1162. Distributions shall begin 60 days following such certification and shall continue for 30 years.

b. Beginning 30 days after notice by the Department of Commerce to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 360 months, to the applicant.

5. All other proceeds shall remain with the General Revenue Fund.

Section 7. Section 288.1168, Florida Statutes, is created to read:

288.1168 Professional golf hall of fame facility; department duties.—

(1) The Department of Commerce shall serve as the state agency for screening applicants for state funding pursuant to s. 212.20 and for certifying one applicant as the professional golf hall of fame facility in the state.

(2) Prior to certifying the professional golf hall of fame facility, the Department of Commerce must determine that:

(a) The professional golf hall of fame facility is the only professional golf hall of fame in the United States recognized by the PGA Tour, Inc.

(b) The applicant is a unit of local government as defined in s. 218.369 or a private sector group that has contracted to construct or operate the professional golf hall of fame facility on land owned by a unit of local government.

(c) The municipality in which the professional golf hall of fame facility is located, or the county if the facility is located in an unincorporated area, has certified by resolution after a public hearing that the application serves a public purpose.

(d) There are existing projections that the professional golf hall of fame facility will attract a paid attendance of more than 300,000 annually.

(e) There is an independent analysis or study, using methodology approved by the department, which demonstrates that the amount of the revenues generated by the taxes imposed under part I of chapter 212 with respect to the use and operation of the professional golf hall of fame facility will equal or exceed $2 million annually.

(f) The applicant has submitted an agreement to provide $2 million annually in national and international media promotion of the professional golf hall of fame facility, Florida, and Florida tourism, through the PGA Tour, Inc., or its affiliates, at the then-current commercial rate, during the period of time that the facility receives funds pursuant to s. 212.20. The Department of Commerce and the PGA Tour, Inc., or its affiliates, must agree annually on a reasonable percentage of advertising specifically allocated for generic Florida advertising. The Department of Commerce shall have final approval on all generic advertising. Failure on the part of the PGA Tour, Inc., or its affiliates to annually provide the advertising as provided in this paragraph or subsection (6) shall result in the termination of funding as provided in s. 212.20.

(g) Documentation exists that demonstrates that the applicant has provided, is capable of providing, or has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the facility.

(h) The application is signed by an official senior executive of the applicant and is notarized according to Florida law providing for penalties for falsification.

(i) An applicant that is a private sector group has filed a public entity crime affidavit as required by s. 287.133(3)(a).

(3) The unit of local government may use funds provided pursuant to s. 212.20 for the public purpose of paying for the construction, reconstruction, renovation, or operation of the professional golf hall of fame facility, or to pay or pledge for payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the construction, reconstruction, or renovation of the facility or for the reimbursement of such costs or the refinancing of bonds issued for such purpose.

(4) Upon determining that an applicant is or is not certifiable, the Secretary of Commerce shall notify the applicant of his status by means of an official letter. If certifiable, the secretary shall notify the executive director of the Department of Revenue and the applicant of such certification by means of an official letter granting certification. From the date of such certification, the applicant shall have 5 years to open the professional golf hall of fame facility to the public and notify the Department of Commerce of such opening. The Department of Revenue shall not begin distributing funds until 30 days following notice by the Department of Commerce that the professional golf hall of fame facility is open to the public.

(5) The Department of Revenue may audit as provided in s. 213.34 to verify that the distributions pursuant to this section have been expended as required by this section. Such information is subject to the confidentiality requirements of chapter 213. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(6) The Department of Commerce must recertify every 10 years that the facility is open, continues to be the only professional golf hall of fame in the United States recognized by PGA Tour, Inc., and is meeting the minimum projections for attendance or sales tax revenue as required at the time of original certification. If the facility is not certified as meeting the minimum projections, the PGA Tour, Inc., shall increase its required advertising contribution of $2 million annually to $2.5 million annually in lieu of reduction of any funds as provided by s. 212.20. The additional $500,000 must be allocated in its entirety for the use and promotion of generic Florida advertising as determined by the Department of Commerce. If the facility is not open to the public or is no longer in use as the only professional golf hall of fame in the United States recognized by PGA Tour, Inc., the entire $2.5 million for advertising must be used for generic Florida advertising as determined by the Department of Commerce.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 18, after the semicolon (;) insert: amending s. 212.20, F.S.; providing for distribution of a portion of revenues from the tax on sales, use, and other transactions to a professional golf hall of fame facility; creating s. 288.1168, F.S.; providing for certification of such facility by the Department of Commerce; providing requirements for certification and distribution of funds; providing for use of the funds distributed to the facility; providing for audits by the Department of Revenue; providing for confidentiality and for review and repeal; providing for recertification;

On motion by Senator Hargrett, further consideration of **HB 2019** with pending **Amendments 1** and **1A** was deferred.

On motions by Senator Bankhead the rules were waived and by two-thirds vote—

CS for HB 387—A bill to be entitled An act relating to juvenile offenders; amending s. 960.001, F.S.; authorizing release to victim of information as to whether the offense was committed by a juvenile; amending s. 960.003, F.S.; requiring disclosure of HIV test results on alleged juvenile offenders to the parent or guardian, and reenacting ss. 381.004(3)(g) and (i)6. and 951.27(2), F.S., relating to HIV testing and blood tests of inmates, to incorporate said amendment in references thereto; amending s. 39.0585, F.S.; requiring certain information from delinquency and dependency treatment agencies; deleting a restriction on release of information and requiring certain information sharing upon consent of the parent or guardian; amending and renumbering s. 39.016, F.S., as s. 743.015, F.S., relating to removal of disability of nonage; providing additional requirements for a petition; amending the effect of an order removing the disability of nonage; amending s. 39.01, F.S.; revising certain definitions; amending s. 39.047, F.S.; revising the duties of an intake counselor in screening a child; amending s. 39.052, F.S.; authorizing the court to extend the time for filing of a motion for transfer of a child for prosecution as an adult; expanding judicial control of commitment decisions at delinquency disposition hearings; amending s. 39.054, F.S., relating to powers of disposition; deleting a restriction relating to commitment orders; amending s. 743.0645, F.S.; authorizing certain additional persons to consent to medical treatment of a minor; amending s. 790.115, F.S.; prohibiting display of a dangerous weapon on a school bus or bus stop; prohibiting possession of a firearm on a school bus or bus stop; providing penalties; amending s. 784.07, F.S., relating to assault or battery on law enforcement and certain other officers; deleting intake officers; creating s. 784.075, F.S., relating to battery on a detention or commitment facility staff; providing definitions; providing penalties; amending s. 39.048, F.S.; deleting the 45-day limit on filing a petition; amending s. 216.136, F.S.; creating the Juvenile Justice Estimating Conference and providing its duties; amending s. 216.133, F.S., defining the consensus estimating conference; amending s. 39.057, F.S.; modifying criteria for admission to boot camp program; creating a task force; providing the membership of the task force; requiring the submission of a plan; amending s. 39.002, F.S.; providing intent to require interagency cooperation in the siting of facilities; amending s. 39.074, F.S.; requiring interagency cooperation in the siting of facilities; amending s. 39.042, F.S., providing aggravating circumstances that justify extended detention; creating a task force on use of detention resources; providing for membership of the task force; requiring a report and recommendations; amending s. 39.045, F.S.; authorizing law enforcement agencies to release the names of certain offenders; providing an effective date.

—a companion measure, was substituted for **CS for SB 1230** and by two-thirds vote read the second time by title. On motion by Senator Bankhead, by two-thirds vote **CS for HB 387** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

On motion by Senator Diaz-Balart, by two-thirds vote **CS for HB 699** was withdrawn from the Committee on Judiciary.

On motion by Senator Diaz-Balart—

CS for HB 699—A bill to be entitled An act relating to child custody; amending s. 61.13, F.S.; providing that in certain cases where the child is actually residing with a grandparent, the court shall recognize the grandparents standing as parents for evaluating what custody arrangements are in the best interest of the child; providing an effective date.

—a companion measure, was substituted for **CS for SB 780** and read the second time by title. On motion by Senator Diaz-Balart, by two-thirds vote **CS for HB 699** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—None

On motion by Senator Foley, by two-thirds vote **CS for HB 1685** was withdrawn from the Committee on Judiciary.

On motion by Senator Foley—

CS for HB 1685—A bill to be entitled An act relating to grandparental visitation rights; amending s. 752.01, F.S.; providing an additional ground for the granting of visitation rights; providing an effective date.

—a companion measure, was substituted for **SB 484** and read the second time by title. On motion by Senator Foley, by two-thirds vote **CS for HB 1685** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—None

On motion by Senator Williams, by two-thirds vote **HB 501** was withdrawn from the Committee on Judiciary.

On motion by Senator Williams—

HB 501—A bill to be entitled An act relating to judgments of adoption; amending s. 63.172, F.S.; providing for inheritance and grandparental rights when a child is adopted by a close relative; providing an effective date.

—a companion measure, was substituted for **CS for SB 1034** and read the second time by title. On motion by Senator Williams, by two-thirds vote **HB 501** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

On motions by Senator Weinstein, by two-thirds vote **CS for HB 975** was withdrawn from the Committees on Judiciary, Health Care and Commerce.

On motion by Senator Weinstein—

CS for HB 975—A bill to be entitled An act relating to collateral sources of indemnity; amending s. 768.76, F.S.; providing exceptions to a definition of collateral source; requiring notice of tort claims be provided to certain collateral sources; requiring certain subrogation rights to be asserted within a certain time; specifying rights of reimbursement; providing for resolution of certain disputes; requiring collateral source providers to cooperate with claimants under certain circumstances; amending s. 641.31, F.S.; providing that certain reimbursement of health maintenance organizations be in accord with certain collateral source provisions; repealing s. 627.7372, F.S., relating to collateral sources of indemnity; providing an effective date.

—a companion measure, was substituted for **CS for SB 1590** and read the second time by title.

Senator Grant moved the following amendment which failed:

Amendment 1—On page 2, strike line 18, and insert: insurance; automobile *liability or* accident *(including uninsured motorist benefits)* insurance that provides health

On motion by Senator Weinstein, by two-thirds vote **CS for HB 975** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—None

CS for HB 1085—A bill to be entitled An act relating to robbery; creating s. 812.133, F.S.; describing the criminal offense and providing escalating criminal penalties; creating s. 812.135, F.S.; describing the criminal offense and providing penalties; amending s. 782.04, F.S.; providing that commission of carjacking and home-invasion robbery are felony murder when death results; amending s. 16.56, F.S.; providing that the Office of Statewide Prosecution may investigate and prosecute the offenses of carjacking and home-invasion robbery; amending s. 776.08, F.S.; providing that the offenses of carjacking and home-invasion robbery are included in the term "forcible felony"; amending s. 905.34, F.S.; providing that the statewide grand jury has subject matter jurisdiction over the offenses of carjacking and home-invasion robbery; amending s. 907.041, F.S.; defining the term "dangerous crime" to include the offenses of carjacking and home-invasion robbery; amending s. 39.052, F.S.; requiring the state attorney to request criminal prosecution in certain circumstances; providing an effective date.

—was read the second time by title. On motion by Senator Jennings, by two-thirds vote **CS for HB 1085** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SENATOR BANKHEAD PRESIDING

LOCAL BILLS

Motions

On motions by Senator Jennings, by two-thirds vote **House Bills 581, 1057, 753** and **995** were placed on the Local Bill Calendar.

HB 109—A bill to be entitled An act relating to Lake County; providing career service status for certain employees of the Lake County Sheriff; providing an effective date.

—was read the second time by title. On motion by Senator Johnson, by two-thirds vote **HB 109** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 487—A bill to be entitled An act relating to the Construction Industry Licensing Board, Palm Beach County; amending s. 13, ch. 67-1876, Laws of Florida, as amended; making exemptions for work on certain infrastructure consistent with state law; providing an effective date.

—was read the second time by title. On motion by Senator Foley, by two-thirds vote **HB 487** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 893—A bill to be entitled An act relating to the City of West Palm Beach, Palm Beach County; relating to the West Palm Beach Police Pension and Relief Fund; amending section 16 of chapter 24981, Laws of Florida, 1947, as amended; amending subsection (1), regarding the creation of the pension fund; amending subsection (2), regarding definitions; amending subsection (3), relating to the Board of Trustees and the payment of expenses and per diem for trustees; amending subsection (4),

relating to professional and clerical services; amending subsection (5), regarding reports to the fund and other experience tables; amending subsection (6), relating to membership in the fund; amending subsection (7), regarding service credit; amending subsection (8), regarding requirements for retirement; providing for deferred retirement; providing for early retirement benefits; amending subsection (9), regarding calculations of benefits; relating to the payment of benefits; relating to forms of benefits and optional benefits; providing for designation of the beneficiary or beneficiaries; providing for payment of benefits in the event no beneficiary is named; incorporating subsection (10); providing for cost-of-living increases; amending subsection (11); providing for share accounts; adding a subsection (12); providing for a supplemental pension distribution; adding a new subsection (13); providing for a Deferred Retirement Option Plan; amending subsections (14), (15), and (16), regarding eligibility for disability benefits; regarding the final decision to award disability benefits; regarding minimum disability benefits; relating to the use of a medical committee; regarding the payment for medical examinations; regarding limitations on maximum disability benefits; providing for exclusions from disability pensions; providing for payment of disability retirement income; relating to the examination of a disability retirant; revising provisions for return to work after disability ends; amending subsection (17), regarding death benefits to beneficiaries; amending subsection (18), regarding workers' compensation offset; amending subsection (19), regarding members' contributions and refund of members' contributions; amending subsection (20), regarding sources of revenue; amending subsection (21), regarding investment provisions; providing for the payment of administrative expenses; amending subsection (22), regarding existing benefits; amending subsection (23), regarding the nonassignability of benefits; amending subsection (24), regarding subrogation rights; amending subsection (25), regarding applicability of ordinances and approval of changes to the Special Act; amending subsection (26); providing for review procedures; adding subsection (27); providing for lump-sum payments of small retirement income; adding subsection (28); providing for pickup or member contributions; adding subsection (29); providing for limitations on maximum pension benefits; adding subsection (31); providing miscellaneous requirements; repealing all laws in conflict herewith; providing an effective date.

—was read the second time by title. On motion by Senator Foley, by two-thirds vote **HB 893** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 897—A bill to be entitled An act relating to the City of West Palm Beach, Palm Beach County; amending section 17 of chapter 24981, Laws of Florida, 1947, as amended, relating to the West Palm Beach Firemen's Relief and Pension Fund; amending provisions regarding the creation of pension funds; revising definitions and revising provisions relative to the Board of Trustees, membership in the Fund, and the payment of expenses and per diem for trustees; amending provisions relating to professional and clerical services; amending provisions regarding sources of revenue; amending provisions regarding the custodian of the Fund; amending provisions relating to requirements for retirement; amending provisions relating to the deposit of moneys and securities and to disbursements; providing for the payment of administrative expenses; amending provisions relating to service pensions; amending the vesting provisions for deferred retirement; amending provisions relating to the payment of benefits and to forms of benefits and optional benefits; providing for designation of the beneficiary or beneficiaries; providing for payment of benefits in the event no beneficiary is named; providing for refund of contributions; providing for share accounts; amending provisions regarding eligibility for disability benefits, the final decision to award disability benefits, and minimum disability benefits; amending provisions relating to the use of a medical committee; providing for exclusions from disability pensions; providing for payment of disability pensions; amending provisions regarding limitations on maximum disability benefits; providing the normal form of disability retirement income; amending provisions relating to the examination of a disability retirant; revising provisions for return to work after disability ends; amending provisions regarding benefits to beneficiaries; amending provisions regarding the nonassignability of benefits; amending provisions regarding the transfer of funds; amending provisions regarding existing benefits; amending provisions regarding workers' compensation offset; amending provisions regarding actuarial valuations; providing for review procedures; providing for lump sum payment of small retirement income; providing for pick-up of employee contributions; providing restrictions on pension and disability benefits; providing for required distribution; declaring all laws in conflict repealed; providing an effective date.

—was read the second time by title. On motion by Senator Foley, by two-thirds vote **HB 897** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 1063—A bill to be entitled An act relating to the West Palm Beach Downtown Development Authority, Palm Beach County; amending chapter 67-2170, Laws of Florida, as amended; providing for an increase in board members; providing for mayoral appointment of board members; increasing the maximum millage rate for ad valorem taxation to 2 mills; providing representation requirements of the board members; providing for a referendum; providing an effective date.

—was read the second time by title. On motion by Senator Foley, by two-thirds vote **HB 1063** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 1697—A bill to be entitled An act relating to Martin County; providing non-probationary status for certain employees of the Martin County Sheriff; specifying rights of such employees; clarifying terms; specifying cause for suspension or dismissal; providing for transition, a complaint procedure, discipline, appeals and limitation on certain appeals, and procedures for appeal of disciplinary actions and complaints; providing for appointment of boards to hear appeals and procedures with respect thereto; providing for administration; providing an effective date.

—was read the second time by title. On motion by Senator Foley, by two-thirds vote **HB 1697** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 1911—A bill to be entitled An act relating to Broward County; amending chapter 65-1541, Laws of Florida, as amended, relating to the Downtown Development Authority of the City of Fort Lauderdale, Florida; amending section 9, chapter 65-1541, Laws of Florida, as amended; revising the terms of employment of the director; providing such position may be full or part time at the discretion of the board; requiring board approval for the director to conduct outside business activities; providing for severability; providing an effective date.

—was read the second time by title. On motion by Senator Forman, by two-thirds vote **HB 1911** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

HB 2355—A bill to be entitled An act relating to Jackson County; amending ch. 57-1418, Laws of Florida; providing for the governing and administration of the Jackson County agricultural center; repealing ch. 63-1445 and ch. 77-573, Laws of Florida, relating to revenues of the county paid to the agricultural center; providing an effective date.

—was read the second time by title. On motion by Senator Thomas, by two-thirds vote **HB 2355** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

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

HB 581—A bill to be entitled An act relating to Escambia County; amending chapter 92-248, Laws of Florida; providing for certain water service utilities to provide consumption information to the Escambia County Utilities Authority and to terminate water service on account of nonpayment of charges for utility services furnished by the Escambia County Utilities Authority; providing for reimbursement of the cost; providing an effective date.

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

Yeas—36 Nays—None

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

HB 1057—A bill to be entitled An act relating to Clay County; repealing ch. 89-522, Laws of Florida, which provides permanent status and certain rights of certain employees of the Clay County Sheriff and specifies certain actions that can be taken against them; providing an effective date.

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

Yeas—36 Nays—None

HB 753—A bill to be entitled An act relating to Palm Beach County; defining career service employees; providing permanent status for certain employees of the Palm Beach County Sheriff; providing applicability; specifying rights of such employees; providing cause for suspension or dismissal; providing for rules; providing procedures for appeal of disciplinary actions and complaints against employees of the Sheriff; providing for the appointment of boards to hear appeals and procedures with respect thereto; providing an effective date.

—was read the second time by title. On motion by Senator Myers, by two-thirds vote **HB 753** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

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

HB 995—A bill to be entitled An act relating to Martin County; amending ss. 10 and 17 of ch. 78-560, Laws of Florida, relating to the powers and duties of the Environmental Control Hearing Board; providing an effective date.

—was read the second time by title.

Senator Foley moved the following amendment which was adopted:

Amendment 1—In title, on page 1, line 5, insert: prescribing powers of the board to enforce the Martin County Enviromental Act, as amended; providing for civil penalties; providing for assessment of costs and expenses of investigating and prosecuting violations and costs and expenses of environmental restoration;

On motion by Senator Foley, by two-thirds vote **HB 995** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

SPECIAL ORDER, continued

THE PRESIDENT PRESIDING

On motions by Senator Grant, by two-thirds vote **HB 2345** was withdrawn from the Committees on Professional Regulation; Commerce; Finance, Taxation and Claims; and Appropriations.

On motion by Senator Grant—

HB 2345—A bill to be entitled An act relating to funeral, cemetery, and crematory services; merging chapter 470, F.S., relating to funeral directors, embalmers, and direct disposition, and chapter 639, F.S., relating to preneed funeral contracts, into chapter 497, F.S., relating to cemeteries, and placing them under the jurisdiction of the Department of Banking and Finance; creating s. 497.101, F.S.; providing a short title; amending and renumbering s. 470.001, F.S.; expanding legislative findings and intent; amending and renumbering s. 470.002, F.S.; revising and providing definitions; amending and renumbering s. 470.003, F.S.; renaming the Board of Funeral Directors and Embalmers as the Board of Funeral and Cemetery Services; providing procedure for appointment of members and for filling vacancies; providing qualifications for membership on the board; amending and renumbering s. 470.005, F.S.; providing rulemaking authority of the board and department; creating s. 497.111, F.S.; providing legislative intent with respect to the professions and occupations regulated by the department under the chapter; creating s. 497.113, F.S.; providing general powers and duties of the department with respect to such regulation; creating s. 497.115, F.S.; providing that the board may be contacted through the headquarters of the department in Tallahassee; creating s. 497.117, F.S.; providing for officers, meetings, official business, and compensation of the board; creating s. 497.119, F.S.; authorizing the board and department to publish an advisory newsletter; creating s. 497.121, F.S.; providing accountability and liability of board members; creating s. 497.123, F.S.; providing for board rules, final agency action, and challenges; creating s. 497.125, F.S.; providing general licensing provisions; creating s. 497.127, F.S.; providing general provisions relating to the procurement, administration, security, and recordkeeping requirements of examinations; providing exemptions from public records requirements relating to examination results and meetings held to create or review examination questions; providing for future review and repeal; creating s. 497.129, F.S.; prohibiting theft or reproduction of examinations and providing a penalty therefor; creating s. 497.131, F.S.; providing general requirements with respect to fees, receipts, disposition of such funds, and periodic management reports; creating s. 497.133, F.S.; providing for legal and investigative services, including duties of the Department of Legal Affairs with respect thereto; creating s. 497.135, F.S.; providing a mediation process applicable to certain violations of the chapter; creating s. 497.137, F.S.; providing for the issuance of citations applicable to certain violations of the chapter; creating s. 497.139, F.S.; providing powers to administer oaths and issue subpoenas; creating s. 497.141, F.S.; providing for the admission of financial examiners' worksheets, investigative reports, and other related documents as evidence under certain circumstances; creating s. 497.143, F.S.; providing for injunction; creating s. 497.145, F.S.; providing for cease and desist orders, civil penalties, and enforcement; creating s. 497.147, F.S.; providing disciplinary proceedings; providing exemptions from public records and public meetings requirements relating to probable cause investigations; providing for future review and repeal; creating s. 497.149, F.S.; providing disciplinary guidelines; creating s. 497.151, F.S.; prohibiting the giving of false information, misleading statements, or knowing misrepresentations relating to obtaining or attempting to obtain licensure under the chapter; providing a penalty; creating s. 497.153, F.S.; providing public access to records required by the department; providing exemptions from public records requirements relating to financial information, examination questions, answers, papers, grades, and grading keys, and challenged examination questions and answers; providing for future review and repeal; creating s. 497.155, F.S.; prohibiting the disclosure of confidential information; providing a penalty; amending and renumbering s. 470.006, F.S., relating to licensure as an embalmer by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.007, F.S., relating to licensure as an embalmer by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering s. 470.008, F.S.; correcting a cross reference; renumbering s. 470.0085, F.S., relating to the embalmer apprentice program; creating s. 497.208, F.S.; describing the functions that constitute the practice of funeral directing; amending and renumbering s. 470.009, F.S.; revising requirements for licensure as a funeral director by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.011, F.S., relating to licensure as a funeral director by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering ss. 470.012 and 470.013, F.S.; providing editorial changes; amending and renumbering s. 470.014, F.S.; amending and renumbering s. 470.015, F.S.; authorizing the board to prescribe by rule certain continuing education requirements for renewal of license of a funeral director or embalmer; amending and renumbering s. 470.016, F.S.; requiring a board-approved course on communicable diseases in addition to other continuing education requirements for reacti-

vation of an inactive license; providing for automatic expiration of any license not renewed or reactivated after one renewal cycle; requiring certain fees for reactivation; creating s. 497.222, F.S.; prescribing authorized duties of direct disposers; amending and renumbering s. 470.017, F.S., relating to registration as a direct disposer; revising registration and application fees; requiring applicants to have completed a course on communicable diseases and a college credit course on state mortuary law; requiring registrations to have a recent photograph of the registrant; providing for the registration of certain applicants who are not high school graduates; amending and renumbering s. 470.018, F.S.; requiring the board to prescribe by rule continuing education requirements, including a board-approved course on communicable diseases, for renewal of registration as a direct disposer; amending and renumbering s. 470.019, F.S.; including a ground for disciplinary action against a direct disposer or direct disposal establishment relating to discipline by other jurisdictions for violations relating to the disposition of dead human bodies; creating s. 497.228, F.S.; providing for health and safety education; amending and renumbering s. 470.021, F.S., relating to standards, location, and registration of direct disposal establishments; revising registration and inspection fees; eliminating the prohibition against reinspection fees; providing for automatic expiration of registration under certain circumstances; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of person identified in the application; requiring certain display of the establishment name and the name of the direct disposer in charge; restricting the direct disposer in charge to one establishment; requiring prior notification to the board of any change in ownership, name, or direct disposer in charge; requiring a direct disposer in charge and providing the requirements thereof; requiring the establishment to transact its business under the name by which it is registered; creating s. 497.230, F.S.; providing for regulation of removal services, refrigeration facilities, and centralized embalming facilities; renumbering s. 470.022, F.S.; relating to direct disposing; amending and renumbering s. 470.023, F.S., relating to the penalty for the practice of direct disposition without registration; providing editorial changes; amending and renumbering s. 470.024, F.S., relating to licensure as a funeral establishment; prescribing additional requirements for funeral establishments; revising licensure and inspection fees; providing for automatic expiration of license under certain circumstances; eliminating the prohibition against reinspection fees; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of persons identified in the application; requiring certain display of the establishment name and of the funeral director in charge; restricting the funeral director in charge to one establishment; amending and renumbering s. 470.025, F.S., relating to licensure as a cinerator facility; revising licensure and inspection fees; eliminating the prohibition against reinspection fees; requiring the board to establish by rule standards for cinerator facilities; expanding the contents of reports to the department; expanding facility inspection authorities to include the Department of Environmental Regulation; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the facility; authorizing the board to deny, suspend, or revoke a license based on the histories of persons identified in the application; requiring certain display of the facility name and of the direct disposer in charge; requiring the facility to transact business in the name by which it is licensed; amending and renumbering s. 470.0255, F.S.; providing a time within which cremation must be performed; amending and renumbering s. 470.026, F.S.; transferring from the department to the board rulemaking and regulation of solicitation of goods and services; prohibiting at-need solicitation of burial rights, merchandise, and services; amending and renumbering s. 470.029, F.S.; requiring the reporting of cases embalmed and bodies handled directly to the department and eliminating the local registrar of vital statistics as an intermediary; amending and renumbering s. 470.031, F.S., relating to prohibitions and penalties; providing editorial changes; amending and renumbering s. 470.036, F.S., relating to disciplinary proceedings; revising and providing grounds for disciplinary action, including having been disciplined in another jurisdiction for a violation relating to the disposition of dead human bodies; authorizing assessment of costs associated with investigation and prosecution; providing that license revocation is permanent; creating s. 497.243, F.S.; providing for cash advance and escrow refund accounts for funeral establishments; amending and renumbering s. 470.038, F.S., relating to reciprocity; revising terminology; amending and renumbering s. 470.039, F.S., relating to exceptions to regulation; providing editorial changes; amending and renumbering s. 470.0395, F.S.; updating saving clauses; amending and renumbering s. 497.003, F.S.; exempting certain family cemeteries and certain mausoleums; applying to all cemeteries laws relating to solicitation of goods and services, illegal tying arrangements, and abandoned cemeteries; requiring certain exempt cemeteries to submit to investigation and mediation by the department; amending and renumbering s. 497.006, F.S., relating to licensure as a cemetery company; requiring applicants to provide information necessary to determine eligibility; requiring a financial statement attesting to a specified minimum net worth; raising the minimum amount care and maintenance trust funds must contain; revising the requirements of savings and loan associations certifying care and maintenance trust funds; amending and renumbering s. 497.007, F.S.; revising requirements relating to the purchase or acquisition of control of an existing cemetery; requiring a financial statement attesting to a specified minimum net worth; amending and renumbering s. 497.008, F.S.; revising provisions relating to change of control of an existing cemetery company; requiring a financial statement attesting to a specified minimum net worth; requiring an investigation rather than an initial filing fee; amending and renumbering s. 497.009, F.S., relating to annual license fees; increasing the late renewal fee and providing for timely submission of renewal applications and fees; amending and renumbering s. 497.021, F.S., relating to care and maintenance trust funds; revising provisions relating to the entities with which such trust funds may be established; providing requirements and investment restrictions of trustees; amending and renumbering s. 497.023, F.S.; deleting reference to monument maintenance fees; raising the minimum amount per grave space required to be deposited in a care and maintenance trust fund; revising deposit requirements for cemeteries losing their exempt status; eliminating a provision relating to minimum deposits in new trust funds; amending and renumbering s. 497.025, F.S., relating to liability; amending and renumbering s. 497.029, F.S.; revising deposit requirements of preconstruction trust funds to conform to other cemetery trust funds; amending and renumbering s. 497.031, F.S.; eliminating a penalty applicable to failure to display the cemetery license; amending and renumbering s. 497.033, F.S.; requiring preneed burial contracts to disclose certain information relating to the opening and closing of a burial space; requiring cemeteries offering preneed contracts to offer opening and closing of the burial space as part of the contract; amending and renumbering s. 497.035, F.S.; authorizing cemetery companies to keep financial records at a location other than the principal place of business; authorizing the board to prescribe the minimum information required to be kept; creating s. 497.331, F.S.; authorizing charges for opening and closing a grave, transferring burial rights, certain taxes, credit life and disability insurance, and interest on unpaid balances; amending and renumbering s. 497.041, F.S.; prohibiting cemetery companies from requiring monument dealers to obtain insurance, bond, or surety as a condition of access to the cemetery; eliminating monument maintenance fees; deleting a provision authorizing a cemetery company to charge a fee for marking the grave and inspecting a monument not installed by the cemetery company or its agents; amending and renumbering s. 497.044, F.S., relating to illegal tying arrangements; eliminating a cemetery company's right to require monument dealers to maintain certain insurance; creating s. 497.337, F.S.; requiring registration of brokers of burial rights; amending and renumbering s. 497.048, F.S.; prohibiting the sale of personal property and services by a cemetery company under certain circumstances; amending and renumbering s. 497.0484, F.S., relating to alternatives to deposits in a merchandise trust fund; transferring regulation from the department to the board; amending and renumbering s. 497.049, F.S., relating to proof of compliance with law applicable to existing merchandise trust funds, to conform; amending and renumbering s. 497.054, F.S., relating to penalties; amending and renumbering s. 497.056, F.S., relating to civil remedies; revising terminology; creating s. 497.515, F.S.; providing additional prohibited acts; amending and renumbering s. 497.057, F.S., relating to attorney's fees; amending and renumbering s. 497.061, F.S., relating to burial without regard to race or color; providing editorial changes; amending and renumbering s. 497.071, F.S., relating to abandoned cemeteries; providing editorial changes; creating s. 497.345, F.S.; providing procedures applicable to inactive cemeteries; amending and renumbering s. 497.091, F.S.; conforming terminology and correcting cross references; creating s. 497.349, F.S.; providing for registration of exempt cemeteries; creating s. 497.351, F.S.; providing for registration of monument establishments; amending and renumbering s. 639.085, F.S.; including preneed burial merchandise and service contracts under regulation of the chapter; amending and renumbering s. 639.087, F.S., relating to insurance business not authorized, to conform; amending and renumbering s. 639.09, F.S., relating to certificate of authority

required to sell preneed contracts, to include reference to cemeteries; prohibiting the sale of preneed services, merchandise, or burial rights without a license or registration to sell on an at-need basis; amending and renumbering s. 639.10, F.S.; transferring from the department to the board rule and regulatory authority relating to certificates of authority; revising certification fees; revising the payee and depository of fees and other funds; amending and renumbering s. 639.105, F.S., relating to approval of forms; transferring responsibilities from the department to the board; amending and renumbering s. 639.107, F.S., relating to nonconforming contracts; correcting cross references; amending and renumbering s. 639.108, F.S., relating to the Preneed Funeral Contract Consumer Protection Trust Fund; transferring authority over the administration and regulation of the trust fund to the board; amending and renumbering s. 639.11, F.S., relating to disposition of proceeds received on preneed funeral and burial contracts; revising the amounts required to be deposited based on the merchandise or service sold or rented; providing for the holding of deposited funds in trust; providing for transfer of merchandise and burial rights; amending and renumbering s. 639.13, F.S.; revising provisions relating to cancellation of or default on preneed contracts; amending and renumbering s. 639.14, F.S.; relating to payment of funds upon death of named beneficiary; amending and renumbering s. 639.145, F.S., relating to evidence of financial responsibility as alternative to trust deposit; transferring from the department to the board such regulatory responsibility; amending and renumbering s. 639.149, F.S., relating to alternative preneed contracts; making the board the responsible regulatory party; amending and renumbering s. 639.15, F.S., relating to examinations and investigations; making the board the responsible regulatory party; authorizing the department to charge an examination fee and certain travel expenses; amending and renumbering s. 639.16, F.S., relating to grounds for discipline; making the board the responsible regulatory party; removing the requirement that certain violations be willful; amending and renumbering s. 639.162, F.S., relating to administrative fine in lieu of revocation or suspension of certificate of authority; making the board the responsible regulatory party; changing the fine depository; amending and renumbering s. 639.165, F.S., relating to dissolution or liquidation; making the board the responsible regulatory party; creating s. 497.439, F.S.; providing for registration of preneed sales agents; amending and renumbering s. 639.21, F.S., relating to acceptability of funeral and burial merchandise; amending and renumbering s. 639.22, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited; amending and renumbering s. 639.23, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined; amending and renumbering s. 639.25, F.S., relating to hearings, witnesses, appearances, production of books, and service of process relating to unfair methods of competition or unfair or deceptive acts or practices; making the board the responsible regulatory party; amending and renumbering s. 639.30, F.S., relating to civil liability; providing editorial changes; amending ss. 245.07, 381.0098, 382.002, 403.703, 406.02, 455.2226, 501.022, 624.01, 626.785, 628.4615, and 732.919, F.S.; correcting cross references; repealing s. 20.30(4)(h), F.S., relating to the Board of Funeral Directors and Embalmers; repealing ss. 470.027, 470.028, 497.001, 497.002, 497.004, 497.005, 497.011, 497.012, 497.014, 497.015, 497.016, 497.018, 497.026, 497.043, 497.0435, 497.046, 639.055, 639.07, 639.08, 639.106, 639.17, 639.185, 639.20, 639.24, 639.26, 639.27, 639.28, 639.29, and 639.33, F.S., relating to various aspects of funeral, cemetery, and crematory regulation rendered redundant or unnecessary by the other provisions of this act; repealing s. 501.604(16), F.S., relating to exemptions to the Florida Telemarketing Act; repealing s. 624.523(1)(m), F.S., relating to the Insurance Commissioner's Regulatory Trust Fund; transferring the Board of Funeral Directors and Embalmers to the Department of Banking and Finance; providing for termination of present terms on the board; providing for appointment of new members and for qualifications and terms thereof; continuing the validity of licenses, registrations, and certificates of authority issued under chapters 470, 497, and 639, F.S.; providing for transfer of funds in the Preneed Funeral Contract Consumer Protection Fund to the Division of Finance of the Department of Banking and Finance; preserving the validity of any judicial or administrative proceedings pending on the effective date of the act and substituting the Department of Banking and Finance as a party in interest, if applicable; saving chapters 470, 497, and 639, F.S., from Sunset repeal; providing for type four transfer of positions and funding from the Department of Insurance to the Department of Banking and Finance; providing effective dates.

—a companion measure, was substituted for **CS for CS for SB 396** and read the second time by title.

Senator Sullivan moved the following amendment which failed:

Amendment 1 (with Title Amendment)—On page 17, line 21, strike everything after the enacting clause and insert:

PART I
FLORIDA FUNERAL, CEMETERY, AND CREMATORY ADMINISTRATION ACT

Section 1. Short title.—

(1) This chapter may be cited as the "Florida Funeral, Cemetery, and Crematory Act."

(2) This part may be cited as the "Florida Funeral, Cemetery, and Crematory Administration Act."

Section 2. Definitions.—As used in this chapter:

(1) "Alternative container" means a receptacle, other than a casket or cremation container, in which human remains are transported to a crematory and placed in the cremation chamber for cremation. An alternative container shall not contain any chlorinated plastics, and shall be:

(a) Composed of readily combustible materials suitable for cremation.

(b) Able to be closed to provide a complete covering for the human remains.

(c) Resistant to leakage or spillage.

(d) Rigid enough for handling with ease.

(e) Able to provide for the health, safety, and personal integrity of crematory personnel.

(2) "At-need contract" means a contract or agreement pursuant to which funeral and cemetery merchandise, funeral services, cemetery services, cremation services, direct cremation services, monument services, and cash-advance items are purchased for a beneficiary who is deceased at the time that the contract or agreement is executed.

(3) "Below-ground crypt," "lawn crypt," "turf-top crypt," or "Westminster" means a space in a preplaced underground chamber, either side by side or multiple depth, covered by earth. A below-ground crypt shall be part of a bank of below-ground crypts, which shall consist of at least 10 contiguous crypts developed simultaneously.

(4) "Beneficiary" means the individual for whom the burial rights, merchandise, services, or cash advance items listed on a preneed contract or an at-need contract are purchased.

(5) "Board" means the Board of Funeral and Cemetery Services.

(6) "Burial" means the interment, entombment, or inurnment of human remains.

(7) "Burial right" means the right to use a grave space, crypt, below-ground crypt or niche for the interment, entombment, or inurnment of human remains, and shall be an item of personal property.

(8) "Burial transit permit" means a permit for the disposition of a dead human body as required by Florida law.

(9) "Casket" means a rigid receptacle, other than a cremation container or an alternative container, which is used for the encasement of human remains, is usually constructed of wood, metal, fiberglass, or like material, is ornamented and lined with fabric, and that may or may not be combustible.

(10) "Cemetery" means a place dedicated to, and used or intended to be used for, the interment, entombment, inurnment, or scattering of human remains, including all cemetery chapels, buildings, and structures located thereon, except funeral establishments, direct cremation establishments, refrigeration facilities, and centralized embalming facilities.

(11) "Cemetery authority" means the legal entity that owns or controls a cemetery, and that is licensed by the board.

(12) "Cemetery chapel" means a building or a portion of a building located on cemetery property that is used primarily for conducting committal services.

(13) "Cemetery services" means all functions customarily performed by cemetery personnel, including, but not limited to, any service performed in conjunction with making an interment, entombment, inurnment, scattering, or disinterment; in placing, setting or installing a monument or outer burial container; or in maintaining the cemetery.

(14) "Centralized embalming authority" means the legal entity that owns or controls a centralized embalming facility, and that is registered with the board.

(15) "Centralized embalming facility" means a facility, not physically connected with a funeral establishment, in which embalming takes place.

(16) "Certificateholder" means any entity that is authorized to maintain a trust account pursuant to this chapter.

(17) "Columbarium" means a structure containing niches.

(18) "Community mausoleum" means a mausoleum in which individual crypts are sold on a separate basis to members of the general public.

(19) "Comptroller" means the Comptroller of the State of Florida.

(20) "Controlled entity" means an entity in which 60 percent or more of the ownership, in terms of the combined voting power of all classes of stock entitled to vote in the case of a corporation or a comparable measurement if the entity is not a corporation, is held by another entity, either directly, or indirectly by means of one or more chains of corporations connected through stock ownership in the case of a corporation, or a comparable measurement if the entity is not a corporation.

(21) "Cremated remains" means the human remains recovered after the completion of the cremation, which possibly may include the residue of any foreign matter, including casket, cremation container, or alternative container material, bridgework or eyeglasses, that was cremated with the human remains.

(22) "Cremation" means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation may include the processing or the pulverization of the bone fragments.

(23) "Cremation chamber" means the enclosed space within which the cremation takes place.

(24) "Cremation container" means a receptacle, other than a casket or alternative container, which is used for the encasement of human remains solely in those instances that involve cremation. A cremation container shall not contain any chlorinated plastics, shall meet all of the minimum requirements of an alternative container, and shall also contain ornamentation and fabric lining.

(25) "Cremation room" means the room in which the cremation chamber is located.

(26) "Cremation services" means the transportation and transmittal of the human remains, the refrigeration of the human remains, the actual cremation of the human remains, any actions incidental to the cremation of the human remains, and the processing or pulverization of the cremated human remains.

(27) "Crematory" means the building or portion of a building that houses the cremation room and the holding facility.

(28) "Crematory authority" means the legal entity that owns or controls a crematory, and that is licensed by the board.

(29) "Crypt" means a space in a mausoleum for which entombment rights are granted.

(30) "Department" means the Department of Professional Regulation.

(31) "Direct cremation" means the cremation of human remains without the preparation of the human remains by embalming and without any attendant ceremonies or rites.

(32) "Direct cremation authority" means the legal entity that owns or controls a direct cremation establishment and that is registered with the board.

(33) "Direct cremation cash advance items" means any item of services or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the seller on the purchaser's behalf. Direct cremation cash advance items shall be limited to charges for death certificates, cremation authorizations, obituary notices, transportation of human remains to the crematory, transmittal of cremated remains to the place of final disposition, and cemetery services associated with the final disposition of the cremated remains. Direct cremation cash advance items shall not include funeral services.

(34) "Direct cremation establishment" means a place registered in this state where a direct cremationist practices direct cremation.

(35) "Direct cremation services" means all functions permitted or required to be performed by direct cremation establishment personnel.

(36) "Direct cremationist" means any individual who is registered in this state to practice direct cremation.

(37) "Disinterment" means the removal of human remains from a grave space, crypt, or below-ground crypt.

(38) "Embalmer" means any individual licensed in this state to practice embalming.

(39) "Embalmer intern" means any individual registered in this state to practice as an embalmer intern.

(40) "Entombment" means the placement of human remains in a crypt.

(41) "Entombment right" means the right to use a crypt for the entombment of human remains.

(42) "Final disposition" means the interment, entombment, or burial at sea of human remains; or, in the case of cremated remains, final disposition means any method of disposition set forth in this chapter or the delivery of the cremated remains to a legally authorized person.

(43) "Funeral" or "funeral service" means the observances, proceedings, or ceremonies held to commemorate the life of a specific deceased human being, and at which the human remains are present.

(44) "Funeral and cemetery merchandise" or "merchandise" means any merchandise commonly sold in connection with the funeral, final disposition, or memorialization of human remains, including, but not limited to, caskets, outer burial containers, alternative containers, cremation containers, urns, monuments, private mausoleums, flowers, shrubs, benches, vases, acknowledgment cards, register books, memory folders, prayer cards, and clothing.

(45) "Funeral authority" means the legal entity that owns or controls a funeral establishment and that is licensed by the board.

(46) "Funeral cash advance items" means any item of services or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the seller on the purchaser's behalf. Funeral cash advance items may include, but are not limited to, charges for crematory services, cemetery services, memorial services, monument services, monument cash advance items, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

(47) "Funeral director" means any individual licensed in this state to practice funeral directing.

(48) "Funeral director intern" means any individual registered in this state to practice as a funeral director intern.

(49) "Funeral establishment" means a facility licensed pursuant to this chapter.

(50) "Funeral services" means all functions performed or required to be performed by funeral establishment personnel.

(51) "Grave space" or "burial space" means a piece of land in a cemetery for which interment rights are granted.

(52) "Gross sales" means the total principal amount sold, net of trade-ins or discounts, of merchandise, services, and burial rights less endowment care charges.

(53) "Holding facility" means an area designated for the temporary retention of human remains.

(54) "Human remains," "dead human body," or "remains" means the body of a deceased human being for which a death certificate or fetal death certificate is required under chapter 382, Florida Statutes, and includes the body in any stage of decomposition and the residue of cremated human bodies.

(55) "Interment" means the placement of human remains in a grave space or below-ground crypt.

(56) "Interment right" means the right to use a grave space or below-ground crypt for the interment of human remains.

(57) "Inurnment" means the placement of cremated remains in a niche.

(58) "Inurnment right" means the right to use a niche for the inurnment of cremated remains.

(59) "Legally authorized person" means the surviving spouse, son or daughter who is 18 years of age or older, parent, brother or sister 18 years of age or over, grandchild who is 18 years of age or older, or grandparent; any person in the next degree of kinship; the guardian of the dead person at the time of death; the personal representative of the deceased; or a public health officer.

(60) "Licensee" means a funeral director, embalmer, funeral authority, cemetery authority, or crematory authority licensed under this chapter.

(61) "Mausoleum" means a structure or building that is substantially exposed and that is used for the entombment or inurnment of human remains.

(62) "Memorial service" means the observances, proceedings, or ceremonies held to commemorate the life of a specific deceased human being, and at which the human remains are not present.

(63) "Monument" means any tangible item used for the identification or memorialization of human remains.

(64) "Niche" means a space in a columbarium or mausoleum for which inurnment rights are granted.

(65) "Ossuary" means a depository for the bones or cremated remains of deceased human beings.

(66) "Outer burial container" means a rigid outer container composed of concrete, steel, fiberglass, or some similar material, into which a casket or urn is placed prior to being interred, and which is designed to withstand prolonged exposure to the elements and to support the earth above the casket or urn.

(67) "Person" means individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(68) "Practice of direct cremation" means engaging in those activities set forth in part V of this chapter.

(69) "Practice of embalming" or "embalming" means the attempted or actual disinfection, preservation, and restoration of human remains by replacing certain body fluids with disinfecting and preserving chemicals.

(70) "Practice of funeral directing" or "funeral directing" means engaging in those activities set forth in part III of this chapter.

(71) "Preneed contract" means a contract, agreement, or any other arrangement pursuant to which funeral and cemetery merchandise, funeral services, cemetery services, monument services, cremation services, direct cremation services, or cash advance items are purchased for a beneficiary who is alive at the time that the contract is executed. A preneed contract shall not include a preneed insurance contract or burial rights, unless otherwise specified.

(72) "Preneed sales agent" means any individual registered to sell preneed contracts or burial rights on a preneed basis.

(73) "Private mausoleum" means a mausoleum in which the entire structure, not to exceed 12 crypts, is sold to a specific person or persons.

(74) "Processing" means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual or mechanical means.

(75) "Pulverization" means the reduction of identifiable bone fragments after the completion of the cremation process to granulated particles by manual or mechanical means.

(76) "Purchase price" means the gross sales price paid by a purchaser for merchandise, funeral services, cemetery services, cremation services, direct cremation services, monument services, or cash advance items under a preneed contract, excluding taxes, credit life insurance premiums, and finance charges.

(77) "Purchaser" means the individual or individuals who execute a preneed contract, a preneed insurance contract, an at-need contract, or a contract for the purchase of burial rights.

(78) "Refrigeration authority" means the legal entity that owns or controls a refrigeration facility and that is registered with the board.

(79) "Refrigeration facility" means a facility that is not physically connected with a funeral establishment, crematory, or direct cremation establishment, that maintains space and equipment for the storage and refrigeration of dead human bodies, and that offers its service to funeral directors and funeral establishments for a fee.

(80) "Registrant" means every person, other than a licensee, that is regulated by this chapter, including, but not limited to, direct cremationists, direct cremation establishments, removal services, refrigeration facilities, preneed sales agents, funeral director interns, embalmer interns, and cemeteries exempt from licensure.

(81) "Reinterment" means the burial of human remains following a disinterment.

(82) "Removal authority" means the legal entity that owns or controls a removal service and that is registered with the board.

(83) "Removal service" means any service that operates independently of a funeral establishment, that handles the initial removal of dead human bodies, and that offers its service to funeral establishments and direct cremation establishments for a fee.

(84) "Sales contractor" means any person, other than a certificateholder, that contracts with a certificateholder to sell the merchandise and services of the certificateholder.

(85) "Scattering area" means an area designated by a cemetery and located on dedicated cemetery property where cremated remains, which have been removed from their container, can be mixed with, or placed on top of, the soil or ground cover.

(86) "Services" means cemetery services, cremation services, direct cremation services, and funeral services.

(87) "Servicing agent" means any person whose fiduciary responsibility is to assist both the trustee and the certificateholder in administering their responsibilities with respect to any trust account maintained pursuant to this chapter.

(88) "Solicitation" means seeking orders for burial rights, merchandise, funeral services, cemetery services, cremation services, direct cremation services, or cash advance items.

(89) "Temporary container" means a receptacle for cremated remains, usually composed of cardboard, plastic or similar material, that can be closed in a manner that prevents leakage or spillage of the cremated remains or the entrance of foreign material, and that is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered.

(90) "Urn" means a container that permanently encases the cremated remains.

(91) "Viewing" or "visitation" means a specific period of time during which no formal ceremony is scheduled, but during which human remains are placed on display. A visitation may be either private or public. The identification of human remains shall not be considered a viewing.

Section 3. Board of Funeral and Cemetery Services; membership; appointment; terms.—

(1) The Board of Funeral and Cemetery Services is created within the Department of Professional Regulation and shall consist of the following seven members to be appointed by the Governor and confirmed by the Senate. Two members must be funeral directors licensed under this chapter who are not associated with a cemetery company through ownership interests or through employment with a company that has an ownership interest in a cemetery. Two members must be owners or operators of a cemetery licensed under this chapter. The remaining three members must be residents of the state who have never been licensed as funeral directors or embalmers and who are in no way connected with a cemetery,

the death care industry, or the practice of embalming, funeral directing, or direct disposition. At least one consumer member of the board must be 60 years of age or older. No licensee on the board may be associated by employment or ownership with a funeral establishment or cemetery that is owned partly or wholly by a person, business, corporation, or other entity which is associated with another licensee on the board.

(2) The Governor shall appoint members for terms of 4 years, and such member shall serve until their successors are appointed.

(3) All provisions of chapter 455, relating to activities of regulatory boards shall apply to this board.

Section 4. Rulemaking authority of the board.—The board is authorized to make such rules not inconsistent with law as are necessary to carry out the duties and authority conferred upon the board by this chapter and as are necessary to protect the health, safety, and welfare of the public.

Section 5. Comptroller; functions and authority.—The Comptroller is authorized to perform the following functions:

(1) Administer and enforce the provisions of this chapter for which administration and enforcement are specifically delegated to the Comptroller.

(2) Make such rules not inconsistent with law as are necessary to carry out the duties conferred upon the Comptroller by this chapter.

(3) Review all annual reports submitted pursuant to this part.

(4) Conduct all trust fund examinations required by this part.

(5) Investigate all complaints forwarded by the board and report back to the board within 120 days of receipt of the complaint.

(6) Recommend to the board the fees that should be set for all functions performed by the Comptroller pursuant to this chapter.

(7) Prepare and furnish all forms necessary to fulfill the Comptroller's duties pursuant to this chapter.

(8) Conduct hearings as necessary to carry out the duties conferred upon the Comptroller by this chapter.

(9) Issue cease and desist orders and apply for injunctions as necessary to carry out the duties conferred upon the Comptroller by this chapter.

(10) Bring an action in any court of competent jurisdiction against any certificateholder or person to enjoin the certificateholder or person from violating the provisions of this chapter related to trusts.

(11) Subpoena witnesses or material and collect evidence pursuant to the Florida Rules of Civil Procedure. If material that the Comptroller seeks to obtain by subpoena is located outside the state, the person subpoenaed may make the material available to the Comptroller or his representative for examination at the place where such material is located. The Comptroller may designate a representative, including officials of the jurisdiction in which the material is located, to inspect the material on his behalf and may respond to similar requests from officials of other jurisdictions. Upon failure of a person, without lawful excuse, to obey a subpoena, and after reasonable notice to such person, the Comptroller may apply to any court of competent jurisdiction for an order compelling compliance.

(12) Bring an action in any court of competent jurisdiction against any certificateholder or its owners, officers, directors, employees, or agents to recover a deficiency in any trust account maintained pursuant to this chapter.

(13) If any matter is brought to or comes to the attention of the Comptroller that alleges a violation of any provision of this chapter, other than a provision that relates to any trust fund deposit, withdrawal, or investment requirement, immediately refer the matter to the department.

(14) Forward to the department copies of all reports and related documentation that indicate that a certificateholder is not, or may not be, in compliance with all of the trust fund deposit, withdrawal, and investment requirements of this chapter.

(15) After having formally conducted an investigation and hearing as to whether a certificateholder or any person has violated any trust fund deposit, withdrawal, or investment requirement of this chapter, provide a copy of any such conclusions, supporting documentation, and a recommendation for discipline, if applicable, to the department.

Section 6. Trust fund administration.—

(1) All trust accounts established under this chapter shall be administered in accordance with this section.

(2) All trust accounts shall be maintained at one of the following financial institutions, which shall serve as trustee of such accounts: a state or national bank holding trust powers and authorized to do business in Florida, or a trust company authorized to do business in Florida; however, no nonprofit cemetery corporation which has been incorporated and engaged in the cemetery business prior to and continuously since 1915, and which has current trust assets exceeding $2 million, shall be required to designate a corporate trustee.

(3) In the case of preneed trust funds and preconstruction trust funds, in addition to the options set forth in subsection (2), a certificateholder may utilize a national bank, state bank, or savings and loan association whose deposits are covered by a federal insurance program and that is authorized to do business in this state, as a custodian, and the certificateholder may serve as the trustee, provided that:

(a) No such trust account shall exceed $100,000.

(b) The certificateholder may utilize only one such preneed trust account, and one such preconstruction trust account per preconstruction project.

(c) All other provisions of this section shall apply to such accounts.

(4) All trust accounts shall be administered in accordance with a written trust agreement. The trust agreement shall specify the following: the name, location, and address of the certificateholder; the name, location, and address of the trustee or custodian; the date of the agreement; the permissible investments for the trust fund; the manner in which earnings and principal are to be withdrawn and expenses are to be paid; and the grounds and procedures for changing trustees or custodians.

(5) All trust agreements must be approved by the Comptroller before they may take effect. The Comptroller shall approve trust agreements submitted to him for review, or return the trust agreement to the certificateholder within 30 days of receipt with a list of deficiencies. Any trust agreement that has not been returned to the certificateholder by the Comptroller within 30 days of receipt shall be deemed to be approved. The Comptroller shall approve all trust agreements that comply with the requirements of this chapter.

(6) The certificateholder shall advise the Comptroller of the initial appointment of the trustee or custodian, and shall advise the Comptroller of any change in the trustee or custodian 30 days prior to such change taking effect.

(7) Trust income may be used to pay for all usual and customary services for the operation of a trust account, including, but not limited to: reasonable trustee and custodian fees, investment adviser fees, allocation fees, taxes, and annual examination fees. If the net income is not sufficient to pay the fees and other expenses, the fees and other expenses shall be paid by the certificateholder. Capital gains taxes shall be paid from the corpus.

(8) The custodian shall make regular valuations of the assets it holds in the trust account and shall provide a report of such valuations to the certificateholder at least quarterly.

(9) No purchaser shall have any interest whatsoever in, or power whatsoever over, any funds deposited in any trust account, unless specifically provided for in this chapter.

(10) In the event of the certificateholder's bankruptcy, insolvency or assignment for the benefit of creditors, the trust funds shall not be available to any creditor as assets of the certificateholder, but shall be managed by the trustee in bankruptcy, the receiver or the assignee, in order to fulfill the certificateholder's preneed or preconstruction obligations; or for the benefit of the cemetery in the case of endowment care funds.

(11) Without the necessity of having to obtain prior approval from any court in this state or from the Comptroller, any certificateholder may

designate a new trustee or custodian in accordance with this part, may invest the trust funds in accordance with this part, and may designate an investment adviser to direct the investment of the trust funds in accordance with this part, notwithstanding any contrary limitation contained in the trust agreement.

Section 7. Trust fund investments.—

(1) All trust accounts established under this chapter shall be invested in accordance with this section.

(2) Except as set forth in this section, all trust accounts shall be invested according to the provisions of s. 518.11, Florida Statutes.

(3) No trust funds shall be loaned to or invested in the certificateholder, any owner, officer, director, employee, or trustee of the certificateholder, or any firm, corporation, association, or partnership in which any owner, officer, director, employee, or trustee of the certificateholder has a controlling interest.

(4) No trust funds or certificateholder's interest in any trust funds or in any income from any trust funds shall be pledged as collateral for any loans, debts, or liabilities of the certificateholder, or for any loans, debts, or liabilities of any owner, officer, director, employee, or trustee of the certificateholder.

(5) No trust funds shall be invested in any real estate, or in any note, bond, mortgage, or deed of trust in which any owner, officer, director, employee, or trustee of the certificateholder has any financial interest.

(6) The assets of one or more trust funds may be commingled, for investment purposes, with any other trust funds maintained by one or more certificateholders under this chapter, provided that each certificateholder shall be able to provide the Comptroller with corresponding allocations and divisions of deposits, withdrawals, assets, liabilities, income, and expenses.

(7) The certificateholder shall have the right to appoint an independent investment advisor to direct the trustee in the investment of the trust funds, provided that the investment advisor is registered under the Investment Advisors Act of 1940, Title II of chapter 686, 54 Stat. 847, 15 U.S.C. 80b-1 to 80b-21 of the United States Code. An investment advisor shall be subject to the investment provisions of this section. The trustee shall not be liable for any loss resulting from acting upon any instructions, selections, or designations of the investment advisor.

Section 8. Annual report.—

(1) All trust accounts established under this chapter shall be subject to the reporting requirements set forth in this section.

(2) Annually, within 120 days of the end of the certificateholder's fiscal year, all certificateholders that maintain any trust funds regulated by this chapter shall file a report with the Comptroller. A separate report shall be prepared for each trust maintained by each certificateholder and shall cover the previous calendar year. Each report shall be accompanied by a fee, as set by the board. The report shall be on forms provided by the Comptroller or in any other format considered appropriate by the certificateholder and approved by the Comptroller.

(3) The annual report shall provide the following assurances:

(a) That deposits have been made in accordance with this chapter.

(b) That investments have been made in accordance with this chapter.

(c) That withdrawals have been made in accordance with this chapter.

(d) That no matters came to the attention of the certificateholder, in the course of preparing the report, that gave the certificateholder cause to believe that there was a failure to comply with any of the trust fund deposit, withdrawal, or investment provisions of this chapter, or if any matters did come to the certificateholder's attention, the certificateholder shall include an explanation of the matters that caused the certificateholder to believe that such a failure occurred.

(4) In addition, the report shall set forth the following for each trust account maintained by the certificateholder:

(a) The principal cost balance of the trust account as of the beginning and end of the previous calendar year.

(b) The amount required to be deposited into the trust account during the previous calendar year.

(c) The amount actually deposited into the trust account during the previous calendar year.

(d) The earnings withdrawn from the trust account during the previous calendar year, if applicable.

(e) The principal withdrawn from the trust account during the previous calendar year, if applicable.

(f) A list of the trust account's investments as of the end of the previous calendar year and their market value as of that date.

(5) The report shall also contain a representation, signed by the certificateholder, that the information contained in the report is true, to the best of the certificateholder's knowledge. If the certificateholder is an individual, the statement shall be signed by such individual. If the certificateholder is a partnership, the statement shall be signed by one of the partners. If the certificateholder is a corporation, the statement shall be signed by an authorized officer.

(6) A copy of the year-end statement for the trust account, prepared by the custodian, that lists the deposits and withdrawals that occurred during the previous calendar year, and the trust assets as of year-end, shall be attached to the annual report.

(7) In addition to any other penalty that may be provided for under this chapter, the Comptroller may levy a fine, as set by the board, for each day that the certificateholder fails to file its annual report. Upon notice to the certificateholder by the Comptroller that the certificateholder has failed to file its annual report, the certificateholder's ability to sell preneed contracts shall cease while such default continues.

Section 9. Trust fund examinations.—

(1) Biennially, the Comptroller shall examine the financial affairs of every certificateholder that maintains a trust account and charge an examination fee, as set by the board, for each examiner engaged in the examination. The examination shall be made by the designated representative or examiner of the Comptroller. The written report of each such examination, when completed, shall be filed in the office of the Comptroller and, when filed, shall constitute a public record.

(2) When examining trust accounts maintained pursuant to this chapter, the Comptroller shall not be required to review all contracts entered into by the certificateholder that required the certificateholder to make a deposit to any of its trust accounts, nor shall the Comptroller be required to review all receipts by the certificateholder of consumer funds or all trust fund deposits and withdrawals.

(3) When examining trust accounts maintained pursuant to this chapter, the Comptroller's examination shall be limited to determining whether the certificateholder made deposits, withdrawals, and investments in accordance with the provisions of this chapter. Except as stated, the Comptroller shall have no basis for evaluating the adequacy or the market value of any trust account or any individual security held in any trust account.

(4) Any examination may include an examination of the books and records of the certificateholder as well as the books and records of the trustee or custodian used by the certificateholder. Upon the request of the designated representative or the examiner, the certificateholder shall produce all of its financial records and authorize its trustee or custodian to open its records of the certificateholder's trust accounts.

(5) The examination shall be at the expense of the certificateholder.

(6) The Comptroller may annually waive the examination requirements of this section if the certificateholder submits audited financial statements.

Section 10. Licensure and registration.—

(1) All applicants shall apply for licensure or registration in writing on forms approved by the department which shall be accompanied by a nonrefundable fee as set by the board.

(2) All licenses and registrations shall be renewable biennially, according to board rules, and upon payment of a renewal fee as set by the board. The board may also establish a late renewal penalty fee. The department shall renew a license or registration upon receipt of the renewal application and fee.

(3) All licenses and registrations which are not renewed at the end of the biennium prescribed by the board shall automatically expire, or in accordance with board rules revert to inactive status.

(4) Sixty days prior to the end of the biennium, the department shall mail a notice of renewal, and, if applicable, reversion to inactive status, to the licensee's or registrant's last known address.

(5) The board shall set fees to provide for the reactivation of an inactive license or registration and for the renewal of an inactive license or registration.

(6) All entities licensed or registered under this chapter shall be located in a physical structure, at a specific street address, that is either owned or leased by the entity.

(7) All entities licensed or registered under this chapter shall be deemed to be separate entities and shall require separate licensure or registration and compliance with the requirements of this chapter.

(8) All persons licensed or registered as of the effective date of this chapter shall be exempt from the initial licensure or registration requirements of this section.

Section 11. Change of ownership.—

(1) No license or registration issued to any entity under this chapter shall be transferable or assignable, and no licensee or registrant shall operate any entity subject to licensure or registration pursuant to this chapter under any name or at any location other than that contained in the application for such license or registration, without having received the prior written consent of the board. The board shall adopt rules to provide for a licensee's or registrant's change of name or location.

(2) Any person that seeks to purchase or acquire control of any entity licensed or registered under this chapter shall first apply to the department for a certificate of approval for the proposed change of ownership. The application shall contain the name and address of the proposed new owner and other information as required by the board.

(3) Any existing stockholders or partners who intend to acquire control of an existing entity that is licensed or registered under this chapter from other stockholders or partners shall first apply to the department for a certificate of approval for the proposed change of ownership. The application shall contain the names and addresses of the stockholders or partners who own 5 percent or more of the entity and who are seeking to acquire control and other information as required by the board.

(4) Prior to recommending that a certificate of approval be issued to an applicant that has applied pursuant to subsection (2) or subsection (3), the department may conduct an investigation of the applicant and/or inspect the existing facility. If the entity being acquired is a certificateholder, then the Comptroller may examine the records of the entity as part of the investigation in accordance with applicable law and submit its findings to the board. The department, upon the board's or the Comptroller's recommendation, if applicable, shall issue a certificate of approval only after it has determined that the proposed new owner possesses the financial ability, experience, and integrity to operate the entity.

(5) The department shall waive the requirements of subsection (4) and automatically approve the proposed change in ownership, provided that the application meets the requirements of subsection (2) or subsection (3), and that the proposed new owner and the current owner are part of the same controlled entity.

(6) Any application that is submitted to the department pursuant to this section shall be deemed approved, if the department has not approved the application or rejected the application and provided the applicant with the basis for the rejection, within 90 days of the receipt of the application.

(7) The board shall establish filing fees for a change of ownership application.

Section 12. Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this part, in the event any person violates any provision of this chapter or any rule adopted or promulgated pursuant to this chapter, the department or the Comptroller are authorized to resort to proceedings for injunction in any court of competent jurisdiction, and therein apply for such temporary and permanent orders as the board or Comptroller may deem necessary to restrain the person from engaging in any such activities, until the person has complied with the provisions and rules.

Section 13. Receivers; administrators.—

(1) In the event that it is necessary for a court to appoint a receiver or administrator for any person regulated by this chapter, a court shall appoint the receiver or administrator from a list of candidates submitted by the board. The board shall submit the names of candidates who have experience in the day-to-day operation of such an entity and an understanding of the community in which the entity is located.

(2) A court-appointed receiver or administrator may take any action to implement the provisions of a court order, to ensure the performance of the order, and to remedy any breach thereof.

Section 14. Dissolution or liquidation.—Any dissolution or liquidation of a certificateholder shall be under the supervision of the board and Comptroller. The board and Comptroller shall have all powers with respect thereto generally granted to regulatory agencies in this state with respect to the dissolution and liquidation of any entities, in addition to all other powers specifically conferred upon the board and Comptroller pursuant to this chapter.

Section 15. Solicitation of burial rights, merchandise and services.—

(1) The board may adopt rules regulating, but not prohibiting, the solicitation of burial rights, merchandise, and services by certificateholders, licensees, and registrants and their agents that constitute an uninvited invasion of personal privacy. It is the express finding of the Legislature that people have a high expectation of privacy in their personal residences, and that the board may by rule restrict the hours of solicitation or otherwise regulate any such solicitation at personal residences, unless the solicitation has been previously and expressly requested by the person solicited.

(2) No certificateholder or its agent shall engage in any solicitation that is intimidating, overreaching, fraudulent, or misleading, which utilizes undue influence, or which takes undue advantage of a person's ignorance or emotional vulnerability.

(3) At-need solicitation of burial rights, merchandise, or services is prohibited. No certificateholder, licensee, registrant, or agent thereof shall contact the family or next of kin of a deceased individual to sell burial rights, merchandise, or services, until after the final disposition of the deceased has taken place, unless the certificateholder, licensee, registrant or an agent thereof was first called or contacted by the family, next of kin, or representative of such individual and requested to arrange for a funeral, burial, cremation, or final disposition, or to provide information on burial rights, merchandise, or services.

(4) Nothing in this chapter shall be construed to restrict the right of a person to lawfully advertise, send direct mail, or otherwise communicate in a manner not within the definition of solicitation, or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the burial rights, merchandise, or services being offered.

Section 16. Sale of merchandise and services; sales practices.—If a certificateholder, licensee, or registrant offers funeral and cemetery merchandise or services to the public, such person shall be subject to disciplinary action as set forth in this part if the person:

(1) Makes oral, written, or visual representations, directly or indirectly, that any merchandise or service is offered for sale when such representation is not a bona fide offer to sell said merchandise or service.

(2) Discourages the purchase of any merchandise or service that is advertised or offered for sale by:

(a) Disparaging its quality or appearance with the purpose of encouraging the purchase of additional or more expensive merchandise or service, except that true factual statements concerning features, design, or construction do not constitute disparagement;

(b) Misrepresenting its availability or any delay involved in obtaining it; or

(c) Suggesting directly or by implication that a purchaser's concern for price or expressed interest in inexpensive merchandise or services is improper, inappropriate, or indicative of diminished respect or affection for the deceased.

(3) Fails to have the price of any merchandise offered for sale clearly marked on the merchandise, whether the merchandise is displayed at the

certificateholder's primary place of business or at any other location, regardless of whether the certificateholder is in control of such location. If books, catalogs, brochures, or other printed display aids are used, then the price of each item of merchandise must be clearly marked.

Section 17. Unfair methods of competition and unfair or deceptive acts or practices prohibited.—No person shall engage in this state in any trade practice that is defined in this chapter as, or determined pursuant to this section to be, an unfair method of competition or an unfair or deceptive act or practice. Unfair methods of competition and unfair or deceptive acts or practices shall include the following:

(1) Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, dissemination, or circulation of, any oral or written statement, or any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person and that is calculated to injure such person.

(2) Making any false statements and entries, including:

(a) Filing any false statement with any supervisory or other public official;

(b) Making, publishing, disseminating, or circulating any false statement;

(c) Delivering any false statement to the public;

(d) Placing any false statement before the public;

(e) Causing, directly or indirectly, any false statement to be made, published, disseminated, circulated, delivered to any person, or placed before the public; or

(f) Making any false entry of a material fact in any book, report, or statement of any person.

Section 18. Information to public.—If a certificateholder, licensee, or registrant offers to provide burial rights, merchandise, or services to the public, such person shall be subject to disciplinary action as provided in this part if such person:

(1) Fails to reasonably provide by telephone, upon request, accurate information regarding the retail prices of burial rights, merchandise, and services offered for sale by such person.

(2) Fails to fully disclose all of their available burial rights, merchandise, and services, prior to the selection of any such burial rights, merchandise, or services. The full disclosure required shall identify the price range of all burial rights, merchandise, and services provided by the certificateholder, licensee, or registrant. Full disclosure shall also be made in the case of any merchandise that is not to be disposed of with the body, and written permission shall be obtained from the purchaser if such merchandise is used.

(3) Makes any false or misleading statement concerning the conditions under which the preservation of a dead human body is required by law or as to the legal necessity of a casket or outer burial container.

(4) Fails to disclose, when such disclosure is requested, the component prices for all burial rights, merchandise, and services sold on a packaged price basis, including the component prices for a graveside service, direct cremation, and a body donation without any rites or ceremonies prior to the delivery of the body and prices of services if there are to be such rites or ceremonies after the residue has been removed following the use thereof, if such items are offered.

(5) No aspect of this provision shall in any way eliminate the obligation of any person licensed or registered pursuant to part III from complying with the requirements of that part relating to itemized price lists and disclosures.

Section 19. Fees.—

(1) Except when a fee is specifically set forth in this chapter, all fees shall be established by the board in accordance with this section. In no case shall any fee established by the board be less than the amount required to cover all direct costs related to the functions performed by the board, department, or Comptroller in regulating the subject matter or activity covered by the fee; however, no such fee shall exceed any maximum limit set forth in this chapter. All fees set forth below shall be the maximum amount that the board may impose.

(2)(a) For funeral directors, the initial application fee shall not exceed $75, the examination fee shall not exceed $310, and the biennial renewal fee shall not exceed $250.

(b) For funeral director or embalmer interns, the registration fee shall not exceed $25 annually, and for funeral director/embalmer interns the registration fee shall not exceed $50 annually.

(c) For funeral establishments, the initial application fee shall not exceed $100, and the biennial renewal fee shall not exceed $100.

(d) For embalmers, the initial application fee shall not exceed $50, the examination fee shall not exceed $310, and the biennial renewal fee shall not exceed $250.

(e) For funeral director/embalmers the initial application fee shall not exceed $100, the examination fee shall not exceed $620, and the biennial renewal fee shall not exceed $250.

(f) For direct cremationists the initial application fee shall not exceed $50, the examination fee shall not exceed $250, and the biennial renewal fee shall not exceed $250.

(g) For direct cremation establishments the initial application fee shall not exceed $100 and the biennial renewal fee shall not exceed $100.

(h) For cemeteries the initial application fee shall not exceed $5,000 and the biennial renewal fee shall not exceed $2,000.

(i) For preneed certificateholders, the initial application fee shall not exceed $100, and the annual renewal fee shall not exceed $300.

(j) For preneed sales agents, the initial application fee shall not exceed $120, and the biennial renewal fee shall not exceed $60.

(k) For centralized embalming facilities, refrigeration facilities, and removal services, the biennial registration fee shall not exceed $100.

(l) The board may impose a late renewal fee for any license or registration, not to exceed $200.

(3) The application fee for a change of ownership shall be $1,000 if the change necessitates an examination by the Comptroller, and $250 if the change does not necessitate an examination by the Comptroller.

(4) The filing fee for the annual report shall be $25, and the board may impose a late fee of $50 per day.

(5) The fee for the inspection shall be $50.

(6) The fee charged by the Comptroller, per day, for each examiner engaged in an examination, shall be $140.

Section 20. Disposition of fees and penalties.—

(1) All fees and penalties assessed pursuant to this chapter shall be deposited in the Professional Regulation Trust Fund as provided in section 455.219, Florida Statutes, except for examination fees paid to the Comptroller.

(2) All expenses incurred by the Comptroller in carrying out the duties imposed under this chapter shall be reimbursed from the Professional Regulation Trust Fund from fees collected pursuant to regulation under this chapter.

Section 21. Attorney's fees.—

(1) In any civil litigation resulting from a transaction involving any provision of this chapter, the court may award to the prevailing party, after judgment in the trial court and exhaustion of any appeal, reasonable attorney's fees and costs from the nonprevailing party in an amount to be determined by the trial court.

(2) Any award of attorney's fees or costs shall become a part of the judgment and shall be subject to execution as the law allows.

(3) Subsections (1) and (2) shall not apply to any action initiated by the board, the department, or the Comptroller.

Section 22. Display of notice of regulation.—Each person that is licensed or registered pursuant to any provision of this chapter shall display in a place in which the public has a clear and unobstructed view a notice that the place of business is regulated by the board and that any questions or complaints may be directed to the board. The notice shall be in a form specified by the board. The board may levy a civil penalty of $50 per occurrence for the failure to comply with this provision.

Section 23. Recordkeeping.—All certificateholders shall keep accurate accounts, books, and records of all transactions, including all contracts executed, all payments received, all trust fund deposits and withdrawals, all merchandise invoices, the names and addresses of all purchasers, the names and addresses of all trustees and custodians utilized, and such other information as may readily be requested by the Comptroller or the board. All such materials shall be maintained in this state or outside this state provided that such materials are readily accessible as determined by the board. All such materials shall be retained by the certificateholder until at least 3 years have elapsed since the date that the certificateholder's obligations under the contract were performed.

Section 24. Inspections.—Every entity licensed or registered under this part shall at all times be subject to the inspection of all its buildings, equipment, and vehicles used in the conduct of its business by the department or any of its designated representatives or agents, or by the Department of Health and Rehabilitative Services or any of its designated representatives or agents. The board may require an inspection as a condition to issuing a license or registration. The board shall set an inspection fee.

Section 25. Multiple licenses and registrations permitted.—Nothing contained in this chapter shall be construed to prohibit any person from simultaneously holding multiple licenses or registrations granted by the department.

Section 26. Exceptions.—

(1) No provision of this chapter shall be construed to limit the sale of any funeral and cemetery merchandise by any licensed person on an at-need basis.

(2) No provision of this chapter shall be construed to override the written instructions or wishes of the deceased as to how his body is to be disposed of, if such instructions or wishes are:

(a) Reasonably available at the time of death.

(b) Contained in a valid will or made pursuant to a preneed authorization arrangement.

(c) Lawful and not in conflict with the rules and regulations of the place of final disposition.

Section 27. Violations.—The following acts constitute grounds for which the board may take disciplinary action against any person, including any officer, director, employee, or agent of an entity regulated by this chapter:

(1) Violating any provision of this chapter.

(2) Failing to comply with, or violating, any rule or lawful order of the board, department, or Comptroller.

(3) Failing to pay any of the fees required by this chapter.

(4) Attempting to procure, or procuring, a license or registration by fraudulent misrepresentation or through an error of the board, Comptroller, or department.

(5) Obtaining a license or registration under this chapter while lacking one or more of the necessary qualifications.

(6) Using or attempting to use a revoked, suspended, or inactive license.

(7) Using any license or registration obtained under this chapter to circumvent the provisions of this chapter.

(8) Employing unlicensed or unregistered persons to perform any activity regulated by this chapter.

(9) Using an individual as a preneed sales agent before that individual's application for registration is received by the department by certified mail, return receipt requested.

(10) Engaging in any conduct that is determined to be an unfair method of competition or an unfair or deceptive act or practice.

(11) Aiding or abetting an unlicensed or unregistered person in the practice of any regulated activity.

(12) Representing as one's own the license or registration of another.

(13) Permitting another to use one's own license or registration.

(14) Failing to make timely deposits to, making unlawful withdrawals from, or providing the Comptroller with, either orally or in writing, any false information regarding any trust account subject to this chapter.

(15) Engaging in fraud, deceit, negligence, or misconduct in connection with any activity regulated by this chapter.

(16) Concealing from the board or the department information relevant to any alleged violation of this chapter.

(17) Removing any dental gold, body parts, organs, or any item of value from a decedent, either before or after final disposition, without having received specific prior written consent from the legally authorized person and specific instructions for the subsequent delivery of such items after their removal. Under no circumstances shall any person regulated by this chapter profit from assisting in the unauthorized removal or subsequent delivery of any such items.

(18) Paying to any organization, agency or person, either directly or indirectly, any commission, bonus, kickback, or rebate, in any form whatsoever, in exchange for the referral of any business regulated by this chapter; however, this prohibition shall not be construed to prevent:

(a) Any payment by a certificateholder to a sales contractor or a registered preneed sales agent;

(b) Any payment made between certificateholders for the referral of business, on either an at-need or preneed basis;

(c) Any contribution or donation to a charitable, educational, or religious institution, given in conjunction with making a presentation to such institution; or

(d) Any discount or promotion offered to a preneed purchaser in exchange for the purchaser's providing the names of other potential preneed purchasers.

(19) Failing to comply with a subpoena lawfully issued by the board, Comptroller, or department.

(20) Making or filing a report or record that the certificateholder, licensee, or registrant knows to be false, intentionally or negligently failing to file a report or record required by state, local, or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those reports or records that are signed in the capacity of a certificateholder, licensee, or registrant.

(21) Having any license or registration, similar to any license or registration required by this chapter, revoked, suspended, or otherwise acted against, including the denial of licensure or registration, by the licensing authority of another jurisdiction.

(22) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to any activity regulated by this chapter. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges; however, the board shall allow the person being disciplined to present any evidence relevant to the underlying charges and circumstances surrounding the plea.

(23) Refusing to produce records upon being properly requested to do so.

(24) Refusing to remove any person serving as a trustee or custodian under any provision of this chapter, if the trustee or custodian is not acting in accordance with, or is violating, any proper order or rule of the board, the department, or the Comptroller, or is violating any provision of this chapter.

(25) Marketing or representing a cemetery chapel to the public as a funeral establishment.

(26) Offering free burial rights, merchandise, or services on the condition that the recipient be required to purchase additional burial rights, merchandise, or services, unless specifically permitted to do so by law. Any program offering free burial rights, merchandise, or services shall comply with s. 817.415, Florida Statutes.

Section 28. Administrative penalties.—

(1) When the board finds that any person that has applied for a license or registration pursuant to this chapter, or that is licensed or registered pursuant to this chapter, has violated any of the provisions of this chapter, it may enter an order imposing one or more of the following penalties:

(a) Denying, refusing to renew, suspending, or revoking any certificate, license, or registration.

(b) Imposing an administrative fine not to exceed $1,000 for nonwillful or technical violations and in an amount not to exceed $10,000 for willful violations that involve fraud or financial misconduct. The board may grant up to 30 days from the date of the order for the payment of any fine.

(c) Issuing a reprimand.

(d) Placing the certificateholder, licensee, or registrant on probation for a period of time and subject to such conditions as the board may specify.

(e) Restricting the certificateholder's, licensee's, or registrant's authorized scope of practice.

(2) In addition to the penalties set forth in subsection (1), the board may:

(a) Bring an action, in any court of competent jurisdiction, against any person to enjoin such person from violating any provision of this chapter.

(b) Upon a determination that a deficiency exists in any trust account required by this chapter, institute proceedings against any certificateholder, or any owner, officer, director, employee, or agent of a certificateholder, to recover the shortage.

(c) Refer any matter to the Attorney General or appropriate state attorney for criminal prosecution.

(3) In addition to any other penalty that may be provided for under this chapter, the board may levy a fine not to exceed $1,000 for each preneed contract offered or effected, if it is determined that the person charged has provided or offered to sell preneed contracts without being properly licensed or registered to do so.

(4) In assessing penalties under this section, the board shall consider all of the circumstances surrounding the violation in determining whether to assess the penalty against the entity that is licensed or registered under this chapter, the individual or individuals acting on behalf of the entity, or both.

(5) Any order imposing any penalty under this section shall recite the grounds upon which the penalty is based.

Section 29. Suspension and revocation.—

(1) The board may deny, refuse to renew, suspend, or revoke any license or registration issued under this chapter, upon a determination that a person has violated any provision of this chapter.

(2) The board shall adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the board.

(3) A suspension or revocation of any license or registration issued under this chapter shall be by order of the board. A person whose license or registration has been suspended may not engage in any activities for which such a license or registration is required by this chapter, and may not contract with any other person regulated by this chapter or with the public for the sale of any merchandise, services, or burial rights on either an at-need or preneed basis.

(4) The suspension of a license or registration shall be for such period, not to exceed 1 year, as is fixed by the board in the order of suspension. The board, however, subsequently may shorten or rescind such suspension by modifying or reversing the order upon which the suspension was originally based.

(5) During the period of suspension, the person whose license or registration has been suspended shall file all reports and pay all fees as required by this chapter as if the license or registration had continued in full force.

(6) Once the suspension period has expired, provided that during such period the license or registration has not otherwise been terminated, the license or registration that has been suspended shall be reinstated automatically, unless the board finds that the causes of the suspension have not been removed or that the person is otherwise not in compliance with the requirements of this chapter. If the license or registration is not reinstated automatically, the license or registration shall be deemed to have expired as of the end of the suspension period or upon the failure of the person whose license or registration was suspended to continue the license or registration during the suspension period, whichever event occurs first.

Section 30. Civil remedies; civil liability.—

(1) Any person may file a signed complaint with the department, against a certificateholder, licensee, or registrant, for handling pursuant to the provisions of chapter 455, Florida Statutes, and chapter 120, Florida Statutes, or may bring a civil action against a certificateholder, licensee, or registrant in any court of competent jurisdiction.

(2) The provisions of this chapter are cumulative to the rights afforded under the general civil and common law, and no action of the board or the department shall abrogate such rights to damages or other relief in any court.

Section 31. Criminal violations; penalties; misdemeanors; felonies.—

(1) The following actions, if knowingly and willfully committed, shall be criminal offenses, punishable as stated in subsection (2):

(a) Engaging in any activity that requires a license or registration under this chapter, without possessing the necessary license or registration.

(b) Operating any business that is required to be licensed or registered under this chapter, without possessing the required license or registration.

(c) Functioning or holding oneself out to the public as a preneed sales agent without having submitted a completed application to the department.

(d) Offering preneed contracts to the public on behalf of any person other than a certificateholder.

(e) Offering preneed contracts to the public on behalf of a certificateholder that contain merchandise or services that the certificateholder is not authorized to sell.

(f) Using any name or title that connotes licensure or registration under this chapter, without being so licensed or registered.

(g) Representing as one's own the license or registration of another.

(h) Giving false or forged evidence to the board, a member thereof, the Comptroller, or the department for the purpose of obtaining a license or registration.

(i) Using or attempting to use a license or registration that has been suspended or revoked.

(j) Concealing information relevant to any alleged violation of this chapter.

(k) Employing unlicensed or unregistered persons to perform any function for which a license or registration is required under this chapter.

(l) Removing any dental gold, body parts, organs or any item of value from a decedent, either before or after final disposition, without having received specific prior written consent from the legally authorized person and specific instructions for the subsequent delivery of such items after their removal.

(2) Any person who violates any of the provisions of subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(3) Any owner, officer, director, employee or agent of a certificateholder, who knowingly and willfully fails to make timely deposits to, makes unlawful withdrawals from, or provides the Comptroller with, either orally or in writing, any false information regarding any trust account regulated by this chapter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes. This provision shall not apply to conduct that results in a violation of any technical or administrative provision of this chapter, unless there was a clear intent on the part of the person to engage in fraudulent conduct.

(4) The department or the Comptroller shall report any apparent criminal violation of this chapter to the Attorney General or appropriate state attorney for criminal prosecution.

, Section 32. Discriminatory refusal to do business.—

(1) No certificateholder, licensee, or registrant shall refuse to sell, on either a preneed or an at-need basis, any burial rights, merchandise, or services, or shall refuse to conduct or perform any service because of an individual's race, color, religion, gender, national origin, age, handicap, or marital status.

(2) This provision shall not prevent a cemetery authority from designating part or parts of a cemetery for the specific use of persons whose religious code requires isolation, or who are members of a certain church or synagogue. Religious cemeteries may limit burials to members of that religion and their families.

(3) Any certificateholder, licensee, or registrant who violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes, and each violation of this section shall constitute a separate offense.

Section 33. Toll-free number.—The department shall establish and operate a statewide toll-free telephone hotline to receive complaints and provide information relating to the registration of funeral establishments, cemeteries, or crematories as provided under this chapter.

Section 34. Saving clauses.—

(1) No judicial or administrative proceeding pending on September 30, 1993, shall be abated as a result of the repeal of any of the provisions of chapter 470, chapter 497, or chapter 639, Florida Statutes, and the enactment of this chapter.

(2) All licenses and registrations valid on the effective date of this chapter shall remain in full force and effect. Thereafter, all new licenses and registrations shall be applied for, and all licenses and registrations shall be renewed, in accordance with the provisions of this chapter.

(3) Notwithstanding the provisions of this chapter to the contrary, any licensed funeral establishment operating a branch chapel on June 30, 1979, in accordance with the law then in effect, as determined by the board, may continue to operate such branch chapel for the sole and exclusive purpose of providing and holding funeral services.

PART II
FLORIDA PRENEED SALES ACT

Section 35. Short title.—This part may be cited as the "Florida Preneed Sales Act."

Section 36. Purpose.—Subject to certain interests of society, the Legislature finds that every competent adult has the right to control the decisions relating to his own funeral and cemetery arrangements. Accordingly, unless otherwise stated herein, it is the Legislature's express intent that nothing contained in this part should be construed or interpreted in any manner so as to subject preneed contract purchasers to federal income taxation under the grantor trust rules contained in ss. 671 et seq. of the Internal Revenue Code of 1986, as amended. To do otherwise could subject preneed contract purchasers, without their knowledge, to taxation on phantom income, thereby resulting in the undesirable result of either the cancellation of, or lack of use of, preneed contracts.

Section 37. Authorized preneed sellers; authorized preneed sales.—

(1) The following entities, and only the following entities, shall be permitted to sell preneed contracts, as set forth below:

(a) Funeral authorities may sell preneed contracts and include on such contracts funeral and cemetery merchandise, funeral services, the rental of their facilities, and funeral cash advance items.

(b) Cemetery authorities may sell preneed contracts and include on such contracts funeral and cemetery merchandise, cemetery services, and the rental of their facilities.

(c) Direct cremation authorities may sell preneed contracts and include in such contracts direct cremation services, cremation services, alternative containers, urns, and direct cremation cash advance items.

(2) In addition to the entities set forth in subsection (1), any entity that is licensed as a certificateholder pursuant to chapter 639, Florida Statutes, as of the effective date of this act, or that is a servicing agent as defined in chapter 639, Florida Statutes, as of the effective date of this act, shall be treated as a funeral authority for purposes of this section and part II. The board shall adopt rules to provide for the renewal of such licenses.

(3) A certificateholder may not contract with a noncertificateholder or with a certificateholder who is not in good standing with the board, for the purpose of permitting the certificateholder to sell merchandise and services on behalf of such entity to consumers on a preneed basis.

(4) A certificateholder may contract with a sales contractor for the purpose of allowing the merchandise and services of the certificateholder to be sold by the sales contractor on behalf of the certificateholder, on a preneed basis.

(5) No aspect of this section shall be construed to prevent any person from:

(a) Selling any funeral and cemetery merchandise on an at-need basis;

(b) Selling any services on an at-need basis, provided that such person is otherwise legally permitted to engage in such sales; or

(c) Delivering any merchandise, or performing any service, that was sold on a preneed basis prior to the effective date of this act.

Section 38. Preneed trust fund deposits.—

(1) Unless services are performed or merchandise is delivered in accordance with the provisions of this chapter, or the financial responsibility alternative set forth in this part is elected, all certificateholders shall deposit funds received pursuant to preneed contracts in trust as set forth in this section.

(2) Certificateholders shall place in trust 80 percent of the purchase price collected for all services sold, facilities rented, and merchandise sold pursuant to a preneed contract, and 100 percent of the purchase price collected or all cash advance items sold pursuant to a preneed contract.

Section 39. Preneed trust fund withdrawals.—

(1) A trustee shall permit withdrawals from a preneed trust fund only as set forth in this section.

(2) The principal amount required to be deposited in trust, along with all accumulated net earnings, shall remain intact until the preneed contract has been performed in accordance with this part, or the preneed contract has been canceled or revoked in accordance with this part.

(3) Upon performing the service, delivering the merchandise, or canceling or revoking the preneed contract, the certificateholder shall provide written certification of such facts to the trustee and request a withdrawal of a specific amount of money equal to the principal amount deposited and all accumulated earnings held in trust for the preneed contract. Upon receipt of such certification, the trustee shall pay the amount to the certificateholder.

(4) Upon providing written certification to the trustee, the certificateholder may, at any time, withdraw from a preneed trust fund any amounts that were deposited in excess of the amount required to be deposited.

(5) If a certificateholder determines from its records that the beneficiary of an unperformed preneed contract, if still alive, would have attained the age of 110 years old, and the certificateholder has attempted to contact both the beneficiary and the purchaser of the preneed contract by certified mail, return receipt requested, at the addresses maintained by the certificateholder, to inquire as to the status of such individual, but has been unable to contact either individual, then the preneed contract shall be declared abandoned. The certificateholder shall then provide written certification of such facts to the trustee and request a withdrawal of a specific amount of money equal to the principal amount deposited and all accumulated earnings held in trust for the preneed contract.

(a) Upon receipt of such certification, the trustee shall pay the amount to the certificateholder. Upon receipt of such funds, the certificateholder shall forward the principal portion of the amount received to the Comptroller for deposit into the preneed contract consumer protection fund and may retain the balance.

(b) Purchasers, beneficiaries, or their heirs shall have the right, at any time after a preneed contract has been declared abandoned, to obtain the merchandise and services originally specified on the preneed contract or a refund from the certificateholder equal to the amount originally deposited in trust, by providing the certificateholder with proof of their identity. Upon providing such a refund, a certificateholder may apply to the preneed contract consumer protection fund for a reimbursement equal to the amount refunded.

Section 40. Cancellation and refund.—

(1) A purchaser, by providing written notice to the certificateholder, may cancel a preneed contract within 30 days of the date that the contract was executed, regardless of whether any merchandise was delivered, during this time period, provided that the burial rights, merchandise, and services have not yet been used or requested for immediate use following a death. Upon providing such notice, the purchaser shall be entitled to a complete refund of the amount paid, except for the amount allocable to any burial rights, merchandise, or services that have been used, and shall be released from all obligations under the contract. This subsection shall apply to all items that are purchased as part of a preneed contract, including burial rights, regardless of whether such burial rights are purchased as part of a preneed contract or purchased separately.

(2) A purchaser, by providing written notice to the certificateholder, may cancel the preneed contract at any time, and shall be entitled to a refund of 100 percent of the purchase price allocable to the services, facilities, merchandise, and cash advance items, provided that this right of cancellation shall terminate upon the performance of the service or delivery of the merchandise, as set forth in this part. Any accumulated earnings allocable to such a preneed contract shall be paid to the certificateholder upon cancellation.

Section 41. Alternative preneed contracts.—

(1) Nothing in this part shall prevent the purchaser and the certificateholder from executing a preneed contract upon the terms stated in this section. Such contracts shall be subject to all provisions of this part, except where such provisions directly conflict with this section.

(2) The contract must require that a trust be established by the certificateholder on behalf of, and for the use, benefit, and protection of, the purchaser, with a trustee as required by part I. The certificateholder shall have the right to appoint a successor trustee.

(3) The contract must require that the purchaser make all payments required by the contract directly to the trustee or its qualified servicing agent and that the funds shall be deposited in this state, subject to the terms of a written trust instrument. A copy of the trust instrument shall be made available to the purchaser, at any reasonable time, upon request.

(4) The contract or trust instrument shall expressly state that the certificateholder does not have any dominion or control over the trust or its assets, except to the extent that is allowed by part I, until such time as the preneed contract is entirely completed or performed.

(5) The trust instrument shall prohibit the trustee from distributing any appreciation on the trust to any person and shall require that the trustee accumulate the entire net income of the trust, or its pro-rata share thereof. The accumulated net income shall be distributed to the certificate holder upon cancellation or performance of the contract.

(6) The contract and trust instrument may provide that the certificateholder shall receive a current distribution of not more than 10 percent of all funds paid or collected by the trustee, and may further provide for liquidated damages during the first 3 years after the execution of the contract of not more than 10 percent of all the funds paid on the preneed contract, except that no liquidated damages shall apply for cancellation within 15 days after the date of execution of the contract.

(7) Disbursement of funds discharging any preneed contract shall be made by the trustee to the person issuing or writing such contract upon receipt of a certified copy of the death certificate of the beneficiary and evidence satisfactory to the trustee that the contract has been fully performed. In the event of any contract default by the purchaser, or in the event that the merchandise or service contracted for is not provided, or is not desired by the purchaser or the heirs or personal representative of the beneficiary, then the trustee shall return, within 30 days after its receipt of a written request therefor, funds paid on the contract to the purchaser or to such person's assigns, heirs, or personal representative, subject to the lawful liquidated damage provision in the contract.

(8) The preneed contract shall provide, in conspicuous type, that the purchaser may receive, from the trustee, a federal income tax informational statement, pursuant to the grantor trust rules of ss. 671 et seq. of the Internal Revenue Code of 1986, as amended, reflecting all of the income earned by the trust; and, accordingly, that the purchaser should seek the advice of an independent tax professional for the tax impact upon the purchaser as a result of executing the preneed contract.

(9) In the event the parties execute a contract pursuant to this section, the purchaser shall be deemed and treated, for all purposes, as the settlor of the trust established thereunder.

(10) The preneed contract may provide that the certificateholder may cancel the contract, but only in the event that the purchaser is more than 90 days in default of the terms of the contract; and, unless the contract has been made irrevocable pursuant to the provisions of this chapter, the preneed contract must provide that the purchaser, or such person's representative, has the right, at any time prior to the performance of the contract, to cancel the preneed contract and revest in himself or herself title to all the funds paid on the preneed contract, except for applicable liquidated damages, and the certificateholder's rights in the net income of the trust.

(11) The contract or trust agreement may require the trustee to invest solely in tax-free investments.

(12) The trustee shall make regular valuations of the trust assets and provide the purchaser and the Comptroller a report at least annually.

Section 42. Evidence of financial responsibility as an alternative to trust deposit.—

(1) In lieu of depositing funds into a trust, a certificateholder may elect, at its discretion, to comply with the surety bond or letter of credit provisions of this section.

(2) A certificateholder may purchase a surety bond in an amount not less than the aggregate value of the outstanding liabilities under its preneed contracts. The surety bond shall be payable to the state for the benefit of the Comptroller and purchasers of preneed contracts.

(a) For purposes of this section, the term "outstanding liabilities" means the certificateholder's trust fund obligations pursuant to this part. Such trust fund obligations shall be calculated by assuming that all preneed contracts covered by the surety bond were executed on the last day of the certificateholder's fiscal year.

(b) The surety company issuing such surety bond shall be licensed to do business in the state and shall have been in business in this state with a record of successful operations for a period of at least 5 years prior to the execution of the bond, and such surety company shall not be exposed on any one risk in an amount exceeding 10 percent of its surplus to policyholders. The certificateholder shall not purchase a surety bond or enter into a letter of credit with any company or bank in which the certificateholder or its subsidiaries, employees, or family have an interest or serve as an officer on the board of directors of the surety company or bank issuing the letter of credit. Such surety company shall have at least the following minimum ratings in Best's Key Rating Guide or other similar rating service or publication.

BOND AMOUNT	POLICY HOLDER'S RATING	REQUIRED FINANCIAL RATING
0 to 100,000	B	Class VII
100,000 to 500,000	A	Class VIII
500,000 to 750,000	A	Class IX
750,000 to 1,000,000	A	Class X
1,000,000 to 1,500,000	A	Class XI
1,500,000 or more	A	Class XII

(c) The amount of the surety bond shall be based on a report submitted by the certificateholder to the Comptroller, documenting the certificateholder's liabilities, and signed by the certificateholder's chief financial officer. The report shall be compiled as of the end of the certificateholder's fiscal year, submitted within 90 days of the end of the certificateholder's fiscal year, and updated annually. The amount of the bond shall be increased or decreased as necessary to correlate with changes in the certificateholder's outstanding liabilities.

(d) The surety company must agree to give the Comptroller and the certificateholder at least 90 days' written notice if the surety company does not intend to renew the surety bond at the time of its expiration. The certificateholder must agree that within 80 days of its receipt of such notification it will:

1. Purchase another surety bond;

2. Secure a letter of credit;

3. Establish a preneed trust account, with an initial deposit equal to the certificateholder's trust fund obligations. Such trust fund obligations shall be calculated by assuming that all preneed contracts covered by the surety bond were executed on the date that the certificateholder received notice that the surety bond would not be renewed; or

4. Cease the sale of all preneed contracts if at the end of the 80-day period it has not complied with the requirements of subparagraph 1., subparagraph 2., or subparagraph 3.

(3) A certificateholder may file a letter of credit with the Comptroller in lieu of a surety bond, provided that the letter of credit may be revoked only with the express approval of the Comptroller.

(4) A purchaser or beneficiary of a preneed contract who does not receive the items covered by the preneed contract due to the economic failure, closing, or bankruptcy of the certificateholder must file a claim with the surety company as a prerequisite to payment of the claim, and if the claim is not paid, may bring an action based on the surety bond and recover against the surety. In the case of a letter of credit that has been filed with the Comptroller, the purchaser or beneficiary may file a claim with the Comptroller.

(a) In order to qualify for recovery on any claim under this subsection, the purchaser or beneficiary must file the claim no later than 1 year after the date that the certificateholder failed, closed, or filed bankruptcy.

(b) The Comptroller may file a claim with the surety company on behalf of any purchaser or beneficiary under this subsection. The surety company shall pay the amount of the claims to the Comptroller for distribution to the claimants entitled to restitution and shall be relieved of liability to that extent.

(c) The liability of the surety company under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed.

(d) If the total value of the claims filed exceeds the amount of the bond, the surety company shall pay the amount of the bond to the Comptroller for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(5) The certificateholder shall maintain accurate records of the surety bond or letter of credit and any premium or other payments made on same, which records shall be open to inspection by the Comptroller.

(6) The purchase of a surety bond or letter of credit does not relieve the certificateholder from liability for nonperformance of contractual obligations, unless the certificateholder cannot perform its obligations because of a national emergency, strike, or act of God.

(7) A purchaser and a certificateholder who are parties to a preneed contract executed prior to the effective date of this act may enter into an amended preneed contract that is made subject to this section.

Section 43. Performance and delivery.—

(1) Payments received by a certificateholder pursuant to a preneed contract shall be subject to the trust fund requirements of this part or the financial responsibility alternative set forth in this part, unless the preneed contract provides that the service will be performed or that the merchandise will be delivered, pursuant to this section, within 120 days from the date the preneed contract was executed. If the certificateholder fails to perform the service or deliver the merchandise within 120 days from the date the preneed contract was executed, the certificateholder shall immediately place in trust the full amount required by this part or comply with the alternative requirements of this part.

(2) The certificateholder may perform the service or deliver the merchandise as specified in the preneed contract. Performance or delivery shall serve as a substitute for the certificateholder depositing funds in a preneed trust account; this performance shall enable the certificateholder to withdraw the amount deposited together with any accumulated earnings allocable to such service or merchandise from a preneed trust account, if a deposit was already made.

(3) The actual, physical performance of any service sold pursuant to a preneed contract shall be considered performance for purposes of this section.

(4) Merchandise sold pursuant to a preneed contract may be delivered as follows:

(a) Below ground crypts may be delivered by installing them in the ground, subject to the rules and regulations of the cemetery;

(b) With the prior written approval of the purchaser, urns may be delivered by placing them in a niche in which the intended beneficiary of the urn has an inurnment right, subject to the rules and regulations of the cemetery, or by physically transferring the urn to such person;

(c) With the prior written approval of the purchaser, monuments may be delivered by physically installing them at the site of interment, entombment, inurnment, or scattering, subject to the rules and regulations of the cemetery; or

(d) With the prior written approval of the purchaser, monuments and urns may be delivered by storing them in a warehouse, provided that:

1. The warehouse is owned and maintained by a person other than the certificateholder.

2. The warehouse is insured and licensed (if applicable) in the state in which it is located.

3. The warehouse delivers to the certificateholder, upon receipt of the merchandise, a negotiable warehouse receipt.

4. The warehouse registers with the department on forms approved by the board and agrees to comply with any administrative rules promulgated by the board.

(5) The delivery of any merchandise other than the merchandise set forth in subsection (4) or the delivery of any merchandise set forth in subsection (4) in any manner other than that set forth in subsection (4) shall not be considered delivery, and shall not eliminate the need to comply with the trust fund requirements of this part.

(6) No aspect of this provision shall be deemed to prohibit merchandise that was sold prior to the effective date of this act from being delivered in a manner other than that set forth in subsection (4).

Section 44. Certificate of authority required.—

(1) No person shall sell a preneed contract without first having a valid certificate of authority.

(2)(a) No person may receive any funds for payment on a preneed contract who does not hold a valid certificate of authority.

(b) The provisions of paragraph (a) do not apply to any trust company or to any national or state bank or savings and loan association having trust powers which company, bank, or association receives any money in trust pursuant to the sale of a preneed contract.

Section 45. Certificate of authority; annual statement; renewal.—

(1) An application to the board for a certificate of authority shall be accompanied by the statement and other matters described in this section in the form prescribed by the board. Annually thereafter, within 3 months after the end of its fiscal period, or within an extension of time therefor, as the board for good cause may grant, the person authorized to engage in the sale of preneed contracts shall file with the department a full and true statement of his financial condition, transactions, and affairs, prepared on a basis as adopted by rule of the board, as of the preceding fiscal period or at such other time or times as the board may provide by rule, together with information and data which may be required by the board.

(2) The statement shall include the following:

(a) The types of preneed contracts proposed to be written.

(b) The name and address of the place of business of the person offering to write preneed contracts.

(c) Evidence that the person offering the statement:

1. Has the ability to discharge his liabilities as they become due in the normal course of business and has sufficient funds available during the calendar year to perform his obligations under his contract;

2. Has complied with the trust requirements for the funds received under contracts issued by himself as hereinafter described;

3. Has disbursed interest, dividends, or accretions earned by trust funds, in accordance with this chapter and rules promulgated thereunder; and

4. Has complied with this chapter and any rules of the board and the department.

(d) Any other information considered necessary by the board to meet its responsibilities under this chapter.

(3) If the person is an individual, the statement shall be sworn by him; if a firm or association, by all members thereof; or, if a corporation, by the president and secretary thereof.

(4) The fee payable to the department for issuance of the original certificate of authority and each annual renewal thereof shall be set by the board at an amount to recover, but not significantly exceed, the costs of regulating preneed contracts. The fee shall accompany each application for an original certificate and, thereafter, each annual statement.

(5) When the board is satisfied that the statement and matters that may accompany it meet the requirements of this chapter and of its rules, it shall issue or renew the certificate of authority if upon investigation by the board it appears that the principals, including directors, officers, stockholders, employees, and agents of such person, are of good moral character and have reputations for fair dealing in business matters.

(6) The certificate of authority shall expire annually on June 1, unless renewed, or at such other time or times as the board may provide by rule.

(7) An application for an initial certificate of authority or for the annual renewal of the certificate shall disclose the existence of all preneed contracts for service or merchandise funded by any method other than a method permitted by this chapter, which contracts are known to the applicant and name the applicant or his business as the beneficiary upon the death of the purchaser of the preneed contract. Such disclosure shall include the name and address of the contract purchaser, the name and address of the institution where such funds are deposited, and the number used by the institution to identify the account. With respect to contracts entered into before January 1, 1983, the board may not deny or refuse to renew a certificate of authority solely on the basis of such disclosure. The board may not require the purchaser of any such contract to liquidate the account if such account was established before July 1, 1965. The board may use the information disclosed to notify the contract purchaser and the institution in which such funds are deposited should the holder of a certificate of authority be unable to fulfill the requirements of the contract.

(8) On or before April 1 of each year, the certificateholder shall file with the board in the form prescribed by the board a full and true statement as to the activities of any trust established by it pursuant to this chapter for the preceding calendar year.

(9) In addition to any other penalty that may be provided for under this chapter, the board may levy a fine not to exceed $50 a day for each day the certificateholder fails to file the statement of activities of the trust. Upon notice to the certificateholder by the board that the certificateholder has failed to file the annual statement or the statement of activities of the trust, the certificateholder's authority to sell preneed contracts shall cease while such default continues. The board shall deposit all sums collected under this section to the credit of the Professional Regulation Trust Fund.

(10) To facilitate uniformity in financial statements and to facilitate department analysis, the board may by rule adopt the form for financial statements approved by the National Association of Insurance Commissioners or its successor organization and may by rule require each certificateholder to submit to the board all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system of the department.

Section 46. Preneed sales agents.—

(1) All individuals who offer preneed contracts to the public, or who execute preneed contracts on behalf of a certificateholder, including all individuals who offer, sell, or sign contracts for the preneed sale of burial rights, shall be registered with the board as preneed sales agents, pursuant to this section, unless such individuals are licensed as funeral directors pursuant to part III.

(2) All preneed sales agents and funeral directors acting as preneed sales agents must be affiliated with the certificateholder that they are representing.

(3) A certificateholder shall be responsible for the activities of all preneed sales agents and all funeral directors acting as preneed sales agents, who are affiliated with the certificateholder and who perform any type of preneed-related activity on behalf of the certificateholder. In addition to the preneed sales agents and funeral directors acting as preneed sales agents, each certificateholder shall also be subject to discipline if its preneed sales agents or funeral directors acting as preneed sales agents violate any provision of this chapter.

(4) A preneed sales agent and a funeral director acting as a preneed sales agent shall be authorized to sell, offer, and execute preneed contracts on behalf of all entities owned or operated by its sponsoring certificateholder.

(5) An individual may begin functioning as a preneed sales agent as soon as a completed application for registration, as set forth in subsection (7) is received by the department. Upon receipt of a rejected application, a certificateholder shall be prohibited from using the applicant as a preneed sales agent until the application for registration has been resubmitted and the certificateholder has received a certificate of registration for the applicant from the department.

(6) The qualifications for a preneed sales agent are as follows:

(a) The applicant must be at least 18 years of age.

(b) The applicant must be in good standing with the board.

(c) The applicant must not have any felony or misdemeanor convictions that relate to any activity regulated by this chapter.

(7) An application for registration as a preneed sales agent shall be made in accordance with this chapter and shall be submitted to the department either by certified mail, return receipt requested, or by facsimile transmission by the certificateholder on a form that has been approved by the board, and shall contain, at a minimum, the following:

(a) The name, address, social security number, and date of birth of the applicant, and such other information as the board may reasonably require of the applicant.

(b) The name, address, and license number of the sponsoring certificateholder.

(c) A representation, signed by the applicant, that the applicant meets the requirements set forth in subsection (6).

(d) A representation, signed by the certificateholder, that the applicant is authorized to offer, sell, and sign preneed contracts on behalf of the certificateholder, and that the certificateholder has trained the applicant in the provisions of this chapter, the provisions of the certificateholder's preneed contract, and the nature of the merchandise, services, or burial rights sold by the certificateholder.

(e) A statement indicating whether the applicant has any type of working relationship with any other certificateholder or insurance company.

(f) A photograph of the applicant taken within 6 months of the date that the application was submitted.

(8) An individual may be registered as a preneed sales agent on behalf of more than one certificateholder, provided that the individual has received the written consent of all such certificateholders and provided the department with copies of all such documents. The department shall notify all certificateholders, on whose behalf the preneed sales agent is currently authorized to sell, 21 days prior to approving an additional registration for an existing preneed sales agent.

(9) A certificateholder who has registered a preneed sales agent shall notify the department within 30 days after such individual's status as a preneed sales agent has been terminated.

(10) Upon receipt of an application that complies with all of the requirements of subsection (7), the department shall assign the applicant a registration number, issue the applicant a photo identification card that lists the name of the certificateholder on whose behalf the applicant is authorized to sell and the date the registration expires, and forward a certificate of registration to the certificateholder.

Section 47. Preneed contracts.—

(1) All preneed contracts shall be approved by the department before they may be offered to the public.

(2) The department shall approve all preneed contracts submitted to it for review or return the contract to the certificateholder within 30 days of receipt with a list of deficiencies. Any contract that has not been returned to the certificateholder by the department within 30 days of receipt shall be deemed to be approved.

(3) The department shall approve all preneed contracts that contain the disclosures set forth in subsection (9) and that otherwise comply with the requirements of this chapter.

(4) All preneed contracts shall contain the name, address, telephone number, and registration number of the certificateholder. In addition, they shall contain the name and registration number of the preneed sales agent or funeral director who signs the contract. If the preneed sales agent has not yet been assigned a registration number, the certificateholder's license or registration number shall be placed next to the preneed sales agent's signature.

(5) All preneed contracts that are sold on an installment basis shall comply with the requirements of s. 520.30, Florida Statutes, et seq., but shall be exempt from all registration requirements and fees set forth in s. 520.30, Florida Statutes, et seq.

(6) A certificateholder shall be permitted to assess interest on the unpaid balance of a preneed contract, provided that the interest charges comply with the requirements of chapter 687, Florida Statutes.

(7) Nothing shall prohibit a certificateholder that is authorized to sell preneed contracts from including the sale of burial rights as part of a preneed contract. Burial rights that are included as part of a preneed contract shall not be subject to the trust fund, refund, or cancellation requirements of this part, except where specifically set forth.

(8) A certificateholder may use a single preneed contract to sell services provided that the certificateholder is licensed or registered to engage in all such sales according to such sections, or has contracted with another certificateholder that possesses such a license or registration to sell on that certificateholder's behalf; and further provided that the preneed sales agent who offers or executes the preneed contract is registered to offer or execute a contract on behalf of all such certificateholders.

(9) All preneed contracts and contracts for the preneed sale of burial rights shall contain the following disclosures in 10 point type:

(a) You, the purchaser, may cancel this contract, by providing written notice to the seller, at any time within 30 days of the date of execution and receive a refund of the entire amount paid for all burial rights, merchandise and services that have not been requested for immediate use following a death.

(b) A statement specifying which items purchased under the preneed contract, including any cash advance items, are being purchased on a "guaranteed price" basis, and which items are being purchased on a "nonguaranteed price" basis. The words "guaranteed price" or "nonguaranteed price" shall be used in the disclosure. If any items are being purchased on a "nonguaranteed price" basis, the disclosure shall specify that the payment of additional moneys may be required at the time of performance.

(10) All certificateholders, who engage in the preneed sale of merchandise to be used or placed in a cemetery, shall determine and notify the purchaser in writing, prior to the completion of the contract, that the merchandise being considered for purchase will be accepted in the cemetery of the purchaser's choice at the time of sale. The failure to comply with this provision shall nullify the agreement and all moneys paid in shall be returned to the purchaser, notwithstanding the existence of any liquidated damages provision.

(11) All preneed contracts shall clearly set forth a summary of the refund and cancellation provisions contained in this part, and the certificateholder's policy with respect to the issues of delivery of merchandise and substitution of merchandise or services.

(12) All preneed contracts shall contain a disclosure regarding the certificateholder's ability to select either trust funding or the financial responsibility alternative as set forth in this part, in connection with the receipt of preneed contract proceeds.

(13) The execution by a purchaser of a preneed contract shall eliminate the obligation of the estate of the beneficiary of the preneed contract to pay for any funeral and cemetery merchandise or services for such beneficiary that are specified on such preneed contract, provided that such preneed contract has been paid in full.

(14) A preneed contract may provide that it is not legally binding until countersigned by an authorized individual designated by the certificateholder. Countersigning a preneed contract shall not subject the individual so signing to the requirements relating to registration of preneed sales agents, unless such requirements would otherwise be applicable.

(15) All preneed contracts shall reasonably identify the merchandise to be delivered and the services to be performed according to rules adopted by the board.

(16) All preneed contracts and all contracts for the purchase of burial rights shall contain a provision requiring the purchaser to provide the certificateholder with written notification of any change in the purchaser's residential address.

(17) No preneed contract shall restrict any contract purchaser from making the contract irrevocable, provided that all such contracts shall be subject to the cancellation provisions of subsection (1), and further provided that all such contracts may be modified by a lawfully authorized representative of the beneficiary, after the beneficiary's death, unless the beneficiary left contrary instructions as provided in this part.

(18) No preneed contract shall restrict any contract purchaser who is any applicant for or a recipient of supplemental security income, aid to families with dependent children, or Medicaid from making their preneed contract irrevocable.

(19) Any provision of any preneed contract under which the purchaser waives any provision of this part shall be void.

Section 48. Unfair methods of preneed competition and unfair or deceptive acts or practices.—No certificateholder, licensee, or registrant engaged in this state in offering to the public merchandise, services, or burial rights on a preneed basis shall utilize any trade practice that is defined in this chapter as, or determined pursuant to this section to be, an unfair method of competition or an unfair or deceptive act or practice. Unfair methods of preneed competition and unfair or deceptive acts or practices are defined as the following:

(1) Knowingly making or using or circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any contract;

(b) Is misleading, or is a misrepresentation as to the financial condition of any person;

(c) Uses any name or title of any contract that misrepresents the true nature of the contract; or

(d) Is a misrepresentation for the purpose of inducing, or intending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any contract.

(2) Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement containing any assertion, representation, or statement that is untrue, deceptive, or misleading with respect to any contract.

(3) Knowingly selling to consumers who have been declared legally incompetent by court-ordered guardianship or conservatorship.

(4) Misrepresenting pertinent facts or contract provisions relating to issues on coverage of merchandise or services.

(5) Failing to respect a purchaser's stated request for particular merchandise and services, after all alternatives have been presented.

(6) Failing to accurately represent the value of merchandise or services to consumers.

(7) Failing to provide a purchaser with a refund, upon receipt of a proper written request as set forth in this part.

(8) Suggesting to consumers that they cancel an existing preneed contract sold by another certificateholder.

Section 49. Preneed contract consumer protection fund.—

(1) There is hereby created in the Office of the Comptroller the Preneed Contract Consumer Protection Fund to be administered by the Comptroller and regulated by the board.

(2) Within 60 days after the end of each calendar quarter, for each preneed contract written during the quarter, the certificateholder shall remit to the Comptroller $2.50 for each preneed contract having a purchase price of $1,500 or less, and $5 for each preneed contract having a purchase price greater than $1,500.

(3) In addition to the amounts specified in subsection (2), each remittance shall contain such other additional information as needed by the Comptroller to carry out its responsibilities under this part and as described by rule.

(4) All funds received by the Comptroller pursuant to this section shall be deposited into the Preneed Contract Consumer Protection Fund.

(5) The amounts remitted to the Comptroller for deposit into the Preneed Contract Consumer Protection Fund shall not be deemed proceeds from the sale of a preneed contract within the meaning of this part.

(6) Upon the commencement of a delinquency proceeding against a certificateholder, the board may use up to 50 percent of the balance of the fund, not already committed to a prior delinquency proceeding, solely for the purpose of providing restitution to preneed contract purchasers and their estates due to a certificateholder's failure to provide the benefits of a preneed contract or failure to refund the appropriate principal due to a cancellation. The balance of the trust fund shall be determined as of the date of the delinquency proceeding.

(7) In any situation in which a delinquency proceeding has not commenced, the board, in its discretion, may use the Preneed Contract Consumer Protection Fund for the purpose of providing restitution to any consumer, purchaser, or beneficiary of a preneed contract or similar regulated arrangement under chapter 497, Florida Statutes, or chapter 639, Florida Statutes, entered into after June 30, 1977, if, after investigation, the board determines that the certificateholder has breached the preneed contract or other arrangement by failing to provide benefits or an appropriate refund, or that a provider who is a former certificateholder or an entity that previously has been regulated by chapter 470, Florida Statutes, chapter 497, Florida Statutes, or chapter 639, Florida Statutes, has sold a preneed contract or made a similar regulated arrangement, and has failed to fulfill the contract or arrangement or provide the appropriate refund, and such certificateholder or provider does not possess adequate funds to provide appropriate refunds. Such monetary relief shall be in an amount the board may determine and shall be payable in such manner and upon such conditions and terms as the board may prescribe. However, any restitution made pursuant to this subsection shall not exceed, as to any single contract or arrangement, the lesser of the gross amount paid under the contract or 4 percent of the uncommitted assets of the trust fund, and the total of all restitutions made to all applicants under this subsection in a single fiscal year shall not exceed the greater of 30 percent of the uncommitted assets of the trust fund as of the end of the most recent fiscal year or $120,000. The board may use moneys in the trust fund to contract with independent vendors pursuant to chapter 287, Florida Statutes, to administer the requirements of this subsection.

(8) All moneys deposited in the Preneed Contract Consumer Protection Fund, together with all accumulated income, shall be used only for the purposes expressed in this section and shall not be subject to any liens, charges, judgments, garnishments, or other creditor's claims against the certificateholder, any trustee utilized by the certificateholder, any company providing a letter of credit, or any purchaser of a preneed contract. No preneed contract purchaser shall have any vested rights in the Preneed Contract Consumer Protection Fund.

(9) If restitution is paid to a preneed contract purchaser or to such individual's estate in accordance with this section, the amount of restitution paid shall not exceed the gross amount of the principal payments made by the purchaser on his preneed contract.

(10) Whenever the board authorizes payment from the trust fund to a purchaser or to such individual's estate, the board shall be subrogated to the purchaser's rights under the preneed contract, and any amounts so collected by the board shall be deposited in the Preneed Contract Consumer Protection Fund.

(11) Notwithstanding the fee structure in subsection (2) the board shall review the status of the fund annually, and if it determines that the uncommitted fund balance exceeds $3 million, then the board by rule shall lower the required payments to the fund to an amount not less than $1 per preneed contract.

(12) No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement that uses the existence of the Preneed Contract Consumer Protection Fund for the purpose of selling, soliciting, or inducing the purchase of any preneed contract.

(13) All funds held in the Preneed Funeral Contract Consumer Protection Fund pursuant to s. 639.108, Florida Statutes, as of the effective date of this act, shall be transferred to the Preneed Contract Consumer Protection Fund, and shall thereafter be subject to the provisions of this section.

Section 50. Transfer of preneed trust funds.—A certificateholder's interest in any preneed trust funds may be transferred only to another certificateholder that is authorized to provide the merchandise and services covered by the trust funds. All certificateholders that accept such transfers of such trust funds shall assume all obligations to provide all of the merchandise and services specified on all preneed contracts covered by such trust funds. No such transfer shall take place without the prior written approval of the Comptroller, which approval shall not be unreasonably withheld. Any application for such transfer shall be submitted to the Comptroller, on forms approved by the Comptroller, and shall be deemed approved, if the Comptroller does not provide the certificateholder who filed the application with a written denial of the request, which sets forth the reasons for the denial, within 30 days of receipt of the application.

Section 51. Chapter exclusive.—The sale of preneed contracts shall be governed by this chapter, and shall be exempt from all provisions of the Florida Insurance Code.

Section 52. Existing preneed trust funds; existing merchandise funds; prior approval.—

(1) A certificateholder may petition the Comptroller to combine any preneed trust funds maintained prior to the effective date of this part with a preneed trust account established pursuant to this part. The Comptroller shall not approve any such petition until any deficiency that may exist in the trust funds that predate this part has been cured.

(2) Prior to combining such trust funds, a certificateholder may also petition the Comptroller to withdraw from any merchandise trust funds that predate this part any excess amounts that have accumulated in such merchandise trust, and that would not be required to remain in trust in order to meet the trust fund requirements applicable to the certificateholder under this part.

(3) No excess amounts may be withdrawn from any merchandise trust fund that predates this part, and no trust fund that predates this part may be combined with any preneed trust account established pursuant to this part, without the prior written approval of the Comptroller, which approval shall not be unreasonably withheld.

Section 53. Transfers of burial rights, merchandise and services.—

(1) A person owning burial rights, or merchandise and services purchased pursuant to a preneed contract, may sell or transfer them to a third party, or change the designated beneficiary of a preneed contract and such sale, transfer or change shall be considered valid upon the delivery, during business hours, of the original executed copy of the transfer form and applicable fee, to the office of the certificateholder currently obligated to provide the burial rights, merchandise, or services. The certificateholder, upon receipt of the transfer form and fee, shall effectuate the transfer unless the certificateholder, following an immediate examination of its records in the ordinary course of business, reasonably

believes that the sale, transfer, or change is illegal or fraudulent, or that the transfer form is incomplete, misrepresents the facts, or fails to comply with the requirements of this section.

(2) The certificateholder obligated to transfer the burial rights, merchandise, or services shall be prohibited from contacting the individual who currently owns the burial rights, merchandise, or services and who has executed the transfer form, or the individual to whom the burial rights, merchandise, or services are to be transferred, within 24 hours of the certificateholder's receipt of such transfer form and fee, for the purpose of encouraging such individuals not to complete the transfer of the burial rights, merchandise, or services.

(3) The certificateholder shall provide the person delivering the transfer form with a written receipt upon the delivery of the transfer form to the certificateholder, and within 45 days of the delivery of a transfer form to the certificateholder that complies with the requirements of this section, the certificateholder shall transmit all remaining documentation to the person designated on, and in accordance with, the instructions set forth on the transfer form. The processing of the remaining documentation shall not prevent the transferee from using the burial rights, merchandise, or services during this 45-day period.

(4) A certificateholder may assess a transfer fee, as disclosed on its price list, which fee shall not exceed $25. The transfer fee may be assessed any time that a certificateholder is instructed to transfer title or designate a new owner or beneficiary for any burial right or item of merchandise or service that was previously purchased. The simultaneous transfer from one owner to another owner of more than one burial right or item of merchandise or service to the same new owner or beneficiary shall be considered one transfer for purposes of this subsection.

(5) The board shall approve a uniform transfer form, including any applicable attachments, to be used for the transfer of all burial rights and all merchandise and services purchased pursuant to a preneed contract, and shall adopt rules for its use. If the certificateholder obligated to transfer the burial rights, merchandise, or services rejects the initial filing of the transfer form because the certificateholder reasonably believes that the sale, transfer, or change is illegal or fraudulent or that the transfer form is incomplete, misrepresents the facts, or fails to comply with the requirements of this section, the certificateholder may require the filing of additional documentation as it deems necessary.

(6) The certificateholder currently obligated to provide the burial rights, merchandise, or services may not assess any fee, other than the fees set forth in subsections (4) and (5).

(7) No person shall receive any compensation for facilitating the transfer of burial rights, merchandise, or services or for assisting in the preparation of a transfer form, unless such person is employed by, or affiliated with, a qualified certificateholder.

(8) No person may suggest to any consumer that he sell or transfer merchandise, or services purchased pursuant to a preneed contract, change the designated beneficiary of such a contract, or sell, or transfer burial rights or a contract for the purchase of burial rights, nor may any person solicit a consumer with the intention of encouraging such consumer to sell or transfer merchandise or services purchased pursuant to a preneed contract, to change the designated beneficiary of such a contract, or to sell or transfer burial rights or a contract for the purchase of burial rights; however, this subsection does not prevent a qualified certificateholder from lawfully advertising the availability of transfer services.

(9) No person shall knowingly make any misleading representation, present an incomplete or fraudulent comparison or fraudulent material, or omit a material fact, with respect to any contract for burial rights, merchandise, or services purchased pursuant to a preneed contract, for the purpose of inducing or intending to induce any person to sell or transfer burial rights, the merchandise, or the services purchased pursuant to a preneed contract or to change the beneficiary of such a contract.

(10) No certificateholder that has received an executed transfer form that complies with the provisions of this section and that has received any additional documentation required by law or regulation shall be liable for transferring burial rights, merchandise, or services, except in cases of its own gross negligence, provided that such transfer is performed in accordance with this section and the instructions on the transfer form.

(11) Any person who executes a transfer form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the ownership of the burial rights, merchandise, or services and such individual's authority to authorize the transfer. Any person who executes a transfer form shall be personally and individually liable for all damages occasioned by and resulting from such transfer.

(12) No certificateholder shall prevent or unreasonably delay the sale or transfer of burial rights, merchandise, or services, if such sale or transfer is made in accordance with this section and any rules adopted by the board. Any individual who prevents or unreasonably delays a transfer in violation of this section may be fined up to $500 for the first offense, and up to $1,000 for each subsequent offense. In addition, the certificateholder with which such individual is employed or affiliated may be fined similar amounts. In the event of repeated offenses, in addition to such fines, the license or registration of the individual or certificateholder with which such individual is employed or affiliated may be suspended or revoked by the board.

(13) Any individual who knowingly facilitates an invalid transfer or change of beneficiary in violation of this section may be fined up to $500 for the first offense, and up to $1,000 for each subsequent offense. In addition, the certificateholder with which such individual is employed or affiliated may be fined similar amounts. In the event of repeated offenses, in addition to such fines, the license or registration of the individual or certificateholder with which such individual is employed or affiliated may be suspended or revoked by the board.

PART III
FLORIDA FUNERAL DIRECTORS AND EMBALMERS LICENSING ACT

Section 54. Short title.—This part may be cited as the "Florida Funeral Directors and Embalmers Licensing Act."

Section 55. Purpose.—The Legislature finds that the practice of embalming and funeral directing requires skilled and competent practitioners to ensure the public health and safety and that the best way to protect the public is through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the law.

Section 56. Licensure of a funeral director by examination.—

(1) Any person desiring to be licensed as a funeral director shall apply to the department to take the licensure examination. The board shall examine each applicant whom the department certifies has met the requirements to qualify to take the examination to be a licensed embalmer, has been granted an Associate of Arts, Associate of Science, or Associate in Applied Science degree in mortuary science, and has completed a 1-year internship under a licensed funeral director before, during, or after obtaining the degree in mortuary science.

(2) If the board finds that an applicant meets the requirements of subsection (1) and any other provisions of this part, it shall license the person as a funeral director, provided that such person has passed an examination prepared by the department and approved by the board on the laws and rules of the state and Federal Government concerning funeral directing and embalming, disposition of dead human bodies, vital statistics, medical examiners, preneed contracts and preneed insurance contracts, offenses concerning dead human bodies, and the transportation, storage, and disinterment of dead human bodies.

Section 57. Licensure of a funeral director by endorsement.—

(1) The board shall issue a license by endorsement to practice funeral directing to an applicant who, upon applying to the department, demonstrates to the department that the applicant:

(a) Holds a valid license to practice funeral directing in another state of the United States, provided that when the applicant secured the original license the requirements for licensure were substantially equivalent to, or more stringent than, those existing in this state; or

(b) Meets the qualifications for licensure, and has successfully completed a state or national examination in mortuary science which is substantially equivalent to the examination given by the department within 10 years of the date of application.

(2) The board shall not issue a license by endorsement to any applicant who is under investigation in another jurisdiction for acts which would constitute a violation of this chapter, until such time as the investigation is complete.

(3) State or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to, or more stringent than, the examination and requirements in this state, unless found otherwise by rule of the board. Such presumption shall not arise until January 1, 1980.

(4) Each applicant for licensure by endorsement must pass the examination on state laws and rules relating to the disposition of dead human bodies which shall be given by the department.

(5) The board may adopt rules authorizing an applicant who has met the requirements of paragraph (1)(a) and who is awaiting an opportunity to take the examination required by subsection (4) to register as a temporary funeral director. A registered temporary funeral director may work as a funeral director in a licensed funeral establishment under the direct supervision of a licensed funeral director. Such registration shall expire 60 days after the date of the next available examination required under subsection (4) unless extended by the board for good cause. The fee for registration as a temporary funeral director shall be set by the board and shall be in addition to the fee required under subsection (1).

Section 58. Registration of a funeral director intern.—

(1) Any person desiring to become a funeral director intern shall apply to the department. The application shall indicate the name and address of the licensed funeral director under whose supervision the intern will receive training and the name of the licensed funeral establishment where such training will be conducted.

(2) The funeral director intern shall intern under the supervision of a licensed funeral director for a period of at least 1 year. Such supervision shall require that the licensed funeral director consult with the intern on at least a daily basis and regularly monitor the intern's activities.

(3) The board shall adopt rules establishing an internship program and criteria for intern-training agencies and intern supervisors. Any funeral establishment where funeral directing is conducted may apply to the board for approval as an intern-training agency.

(4) No funeral establishment designated as an intern-training agency shall exact a fee from any person obtaining intern training at such a funeral establishment.

(5) Any person who on September 30, 1993, is a duly registered funeral director intern shall immediately be granted registration as a funeral director intern and shall receive credit toward obtaining a license for the practice of funeral directing for all of the time spent by the intern prior to September 30, 1993.

Section 59. Licensure of an embalmer by examination.—

(1) Any person desiring to be licensed as an embalmer shall apply to the department to take the licensure examination. The board shall examine each applicant that the department certifies has:

(a) Completed the application form, applied to the department, and submitted the actual per-applicant cost to the department for purchase of portions of the examination from the Conference of Funeral Service Examining Boards or a similar national organization.

(b) Submitted proof satisfactory to the department that the applicant is not less than 18 years of age and is a recipient of a high school degree or equivalent.

(c) Has not been convicted or found guilty, regardless of adjudication, of a crime which directly relates to the ability to practice embalming or the practice of embalming.

(d) Completed a 12-month course of study in mortuary science approved by the board, which course embraces, at a minimum, all of the current requirements set forth by the American Board of Funeral Service Education, Inc., as may be modified from time to time.

(e) Completed a 1-year internship under a licensed embalmer, before, during or after finishing the 12-month course of study set forth in paragraph (1)(d).

(2) If the board finds that the applicant has met all requirements of subsection (1) and the other provisions of this part, it shall license the applicant provided that the applicant passes an examination on the subjects set forth by the Conference of Funeral Service Examining Boards. The board, however, may adopt by rule the use of a national examination, such as the science section of the examination prepared by the Conference of Funeral Service Examining Boards, in lieu of part of this examination requirement.

(3) No applicant shall be granted a license until the applicant has completed a 1-year internship under a licensed embalmer.

Section 60. Licensure of an embalmer by endorsement.—

(1) The board shall issue a license by endorsement to practice embalming to an applicant who, upon applying to the department, demonstrates to the department that the applicant:

(a) Holds a valid license to practice embalming in another state of the United States, provided that when the applicant secured the original license the requirements for licensure were substantially equivalent to, or more stringent than, those existing in this state.

(b) Meets the qualifications for licensure, except that the internship requirement shall be deemed to have been satisfied by 1 year's practice as a licensed embalmer in another state.

(c) Has successfully completed a state or national examination in mortuary science which is substantially equivalent to the examination given by the department within 10 years of the date of the application.

(2) State or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to the examination requirements in this state, unless found otherwise by rule of the board.

(3) The board shall not issue a license by endorsement to any applicant who is under investigation in another jurisdiction for an act that would constitute a violation of this chapter, until such time as the investigation is complete.

(4) Each applicant for licensure by endorsement must pass the examination on local and state laws relating to the disposition of dead human bodies which shall be given by the department.

(5) The board may adopt rules authorizing an applicant who has met the requirements of paragraph (1)(a) and who is awaiting an opportunity to take the examination required by subsection (4) to register as a temporary embalmer. A registered temporary embalmer may work as an embalmer in a licensed funeral establishment under the direct supervision of a licensed embalmer. Such registration shall expire 60 days after the date of the next available examination required under subsection (4) unless extended by the board for good cause. The fee for registration as a temporary embalmer shall be set by the board and shall be in addition to the fee required under subsection (1).

Section 61. Registration of an embalmer intern.—

(1) Any person who desires to become an embalmer intern shall apply to the department. The application shall indicate the name and address of the licensed embalmer under whose supervision the intern will receive training and the name of the licensed funeral establishment or registered centralized embalming facility where such training will be conducted.

(2) A registered embalmer intern shall intern under the direct supervision of a licensed embalmer. Such supervision shall require that when the embalmer intern is to perform any task related to embalming, the supervising licensed embalmer shall be on the premises, consult with the intern prior to the task being performed, and periodically review the work of the intern while the task is being performed. Provided that the registered embalmer intern works under the direct supervision of a licensed embalmer, the registered embalmer intern may perform all duties customarily performed by a licensed embalmer.

(3) An applicant for internship shall meet the requirements of paragraphs 60(1)(b) and (c), prior to being registered by the board as an intern.

(4) The internship may be served for a period of time not to exceed 4 years. A maximum of 3 years of the internship may be served before matriculation into an accredited college of funeral service. A minimum of 1 year of the internship must be served either concurrently with, or after completion of, a 12-month course of study of mortuary science as approved by the board or a program that results in an Associate of Arts, Associate of Science, or Associate in Applied Science degree in mortuary science.

(5) The board shall adopt rules establishing an internship program and criteria for intern-training agencies and intern supervisors. Any centralized embalming facility or funeral establishment where embalming is conducted may apply to the board for approval as an intern-training agency.

(6) No funeral establishment or centralized embalming facility designated as an intern-training agency shall exact a fee from any person obtaining intern training at such establishment or facility.

(7) Any person who on September 30, 1993, is a duly registered embalmer intern shall immediately be granted registration as an embalmer intern and shall receive credit toward obtaining a license for the practice of embalming for all of the time spent by the person as an intern prior to September 30, 1993.

Section 62. Concurrent internships; dual licenses; display of license.—

(1) Nothing in this part shall be construed to prohibit a person from concurrently serving his internship requirements for an embalmer's license and for a funeral director's license, pursuant to rules adopted by the board.

(2) Nothing in this part shall be construed to prohibit a person from holding a license as an embalmer and a license as a funeral director at the same time.

(3) Each license issued to a funeral director or embalmer shall include a recent photograph of the licensee. The board shall adopt rules which require each license issued under this part to be displayed in such a manner as to make the license visible to the public and to facilitate inspection by the department.

Section 63. Training by accredited institutions.—All academic funeral-service professional training required by this part shall be accomplished at or through institutions accredited by the American Board of Funeral Service Education and the Regional Association of Colleges and Schools.

Section 64. Renewal of funeral director and embalmer licenses.—

(1) The board shall adopt rules establishing a procedure for the biennial renewal of licenses.

(2) Any license which is not renewed at the end of the biennium prescribed by the board shall revert automatically to an inactive status. Such license may be reactivated if the licensee meets the other qualifications for reactivation set forth in this part.

Section 65. Inactive status.—

(1) All licenses that have become inactive may be reactivated pursuant to this part upon application to the department. The board shall prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive. Any such license which has been inactive for more than 4 years shall automatically expire if the licensee has not made application for renewal of the license. Once a license expires, it becomes null and void without further activity by the department. One year prior to the expiration of the license, the department must give notice to the licensee.

(2) The board shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses.

Section 66. Practice of funeral directing.—

(1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director:

(a) Selling or offering to sell funeral services on an at-need basis.

(b) Planning or arranging, on an at-need basis, the details of a funeral service with the family or friends of the decedent or any other person responsible for such service; setting the time of the service; establishing the type of service to be rendered; acquiring the services of the clergy and obtaining vital information for the filing of death certificates and the obtaining of burial transit permits.

(c) Making, negotiating, or completing the financial arrangements for a funeral service on an at-need basis, provided that nonlicensed personnel may assist the funeral director in performing such tasks.

(d) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, a visitation or viewing. Such functions shall not require that a licensed funeral director be physically present throughout the visitation or viewing, provided that the funeral director is readily available by telephone for consultation.

(e) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any funeral service held in a funeral establishment, cemetery, or elsewhere.

(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service held prior to or within 72 hours of the burial or cremation, if such memorial service is sold or arranged by a certificateholder or registrant.

(g) Using in connection with one's name or employment the words or terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which it is used would imply that the person is engaged in the practice of funeral directing or that the person is holding himself out to the public as being engaged in the practice of funeral directing; however, this provision does not prevent the use of the name of any owner, officer, or corporate director of a funeral establishment who is not a licensee in connection with the name of the funeral establishment with which the individual is affiliated, so long as such individual's affiliation is properly specified.

(h) Managing or supervising the operation of a funeral establishment, except for administrative matters such as budgeting, accounting and personnel, maintenance of buildings, equipment and grounds, and routine clerical and recordkeeping functions.

(2) The practice of funeral directing shall not be construed to consist of the following functions:

(a) The phoning-in or faxing of obituary notices; ordering of flowers or merchandise; delivery of death certificates to attending physicians; clerical preparation of death certificates, insurance forms, and any clerical tasks that record the information compiled by the funeral director or that are incidental to any of the functions specified above.

(b) Furnishing standard printed price lists and other disclosure information to the public by telephone or by providing such lists to persons making inquiry.

(c) Removing or transporting human remains from the place of death, or removing or transporting human remains from or to a funeral establishment, centralized embalming facility, refrigeration facility, cemetery, crematory, medical examiner's office, common carrier, or other location as authorized and provided by law.

(d) Arranging, coordinating, or employing registered removal services, registered refrigeration facilities, or registered centralized embalming facilities.

(e) Any aspect of making preneed funeral arrangements or entering into preneed contracts.

(f) Any functions normally performed by cemetery or crematory personnel.

Section 67. Funeral establishment; licensure standards.—

(1) No person shall conduct, maintain, manage, or operate a funeral establishment unless a funeral establishment license has been issued by the department for that funeral establishment. All facilities marketed or represented to the public as fulfilling the functions of a funeral establishment shall be licensed as funeral establishments. A licensed funeral director shall conduct the practice of funeral directing only under the auspices of a licensed funeral establishment, and with respect to the practice of funeral directing shall not list as his business address any address other than that of a licensed funeral establishment.

(2) Application for a funeral establishment license shall be made in accordance with part I, and shall include the name of the licensed funeral director who shall be in charge of that establishment.

(3) A funeral establishment shall be a physical structure that is either owned or leased by a funeral authority and that is located at a specific street address where the profession of funeral directing is practiced. No more than one funeral authority may be located at each funeral establishment. Any change in location of such establishment shall be reported promptly to the department as prescribed by rule of the board.

(4) Each funeral establishment shall consist of at least 1,500 contiguous interior square feet and shall contain the following designated and segregated facilities: an office to conduct business, a chapel or parlor in which funeral services may be held, and a display room containing a stock of no less than six adult caskets.

(5) Each funeral establishment shall:

(a) Contain a preparation room equipped with a sanitary floor and necessary drainage and ventilation, and containing the necessary instruments and supplies for the preparation and embalming of dead human bodies; or

(b) Contain a refrigerated storage facility that accommodates at least two dead human bodies; or

(c) Maintain a written contract with a registered storage facility, registered centralized embalming facility, or funeral establishment that contains a preparation room or refrigerated storage facility that allows the funeral establishment to utilize the facilities and services of such an entity.

(6) Each licensed funeral establishment shall have at least one full-time funeral director in charge, who is reasonably available to the public at that establishment. No funeral director shall be in charge of more than one funeral establishment; however, nothing shall prevent a funeral director who is in charge of one funeral establishment from working at another funeral establishment.

(7) The issuance of a license to operate a funeral establishment to an individual who is not personally licensed as a funeral director does not entitle that individual to practice funeral directing as defined in this part, it being the intent, that such practice may be performed only by individuals licensed as funeral directors.

(8) A funeral establishment license shall be renewable in accordance with part I.

(9) Every funeral establishment licensed under this part shall at all times be subject to the inspection of all its buildings, equipment, and vehicles used in the conduct of its business by the department or any of its designated representatives or agents or by Department of Health and Rehabilitative Services inspectors.

(10) If the practice of embalming is conducted at a funeral establishment, it shall be conducted only by a licensed embalmer or by a registered embalmer intern under the direct supervision of a licensed embalmer, as set forth in this part.

(11) This part does not prevent a funeral establishment from being operated in conjunction with a cemetery, mausoleum, chapel, crematory, monument or outer-burial-container manufacturing or assembling facility, greenhouse, flower shop, office, or any other facility incidental to the funeral, burial, or final disposition of dead human bodies, or from being located on or adjacent to property on which such a facility is located.

(12) No funeral establishment that is licensed and in existence as of the effective date of this part shall be required to comply with the requirements set forth in subsections (4) and (5); however, 1 year after a change in the ownership or control of the funeral authority that holds the license for such funeral establishment, the funeral establishment shall be subject to such requirements.

(13) A change in ownership of a funeral establishment shall be promptly reported to the department and may require the relicensure of the funeral establishment, including reinspection and payment of applicable fees.

Section 68. Unauthorized conduct.—

(1) Any individual, who is not a licensed embalmer or registered embalmer intern, and who is employed by or affiliated with a funeral establishment or who performs any function on behalf of a funeral establishment, shall be prohibited from performing any function that is within the scope of practice of an embalmer. Any individual who engages in such activities, and the funeral establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function, may be fined up to $2,500 for the first offense. In the event of a second offense, in addition to such fine the license of the funeral establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function may be suspended. In the event of a third offense, in addition to such fine the license of the funeral establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function may be revoked.

(2) Any individual who is not a licensed funeral director or registered funeral director intern and who is employed by or affiliated with a funeral establishment or who performs any function on behalf of a funeral establishment shall be prohibited from performing any function that is within the scope of practice of a funeral director. Any individual who engages in such activities, and the funeral establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function, may be fined up to $2,500 for the first offense. In the event of a second offense, in addition to such fine, the license of the funeral establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function may be suspended. In the event of a third offense, in addition to such fine, the license of the funeral establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function may be revoked.

Section 69. Health and safety education.—All individuals who intend to function as operational personnel affiliated with a removal authority, refrigeration authority, or centralized embalming authority, as well as all nonlicensed individuals who intend to be involved in the removal or transportation of human remains on behalf of a funeral authority, shall complete one course approved by the board on health and safety issues within 10 days after the date that they begin functioning as operational personnel on behalf of any entity that is regulated by this chapter. The course shall not exceed 3 hours and shall be offered at approved locations throughout the state. Such locations may include establishments that are licensed or registered under this chapter. The board shall adopt rules to implement and enforce this provision, which rules shall include provisions that provide for the use of approved videocassette courses and other types of audio, video, or home study courses to fulfill the continuing education requirements of this section.

Section 70. Continuing education.—

(1) As a condition of renewal of a license or registration, as set forth below, and in order to protect the health and safety of the public and the licensees and registrants themselves, as well as to require such individuals to periodically demonstrate their professional competency, the board shall prescribe by rule continuing education requirements.

(2) All entities subject to licensure or registration under this chapter shall submit as part of their renewal application a signed affidavit listing all of their operational personnel subject to continuing education requirements.

(3) Failure to document compliance with the continuing education requirements or the furnishing of false or misleading information regarding compliance shall be grounds for disciplinary action up to and including revocation of a license or registration.

(4) In the case of licensed funeral directors and embalmers, the board shall require such individuals to complete no more than 6 hours of continuing education every 2 years.

(5) In the case of all operational personnel affiliated with a removal authority, refrigeration authority, or centralized embalming authority, and all nonlicensed operational personnel affiliated with a funeral authority who are involved in the removal or transportation of human remains, the board shall require that such individuals complete no more than 3 hours of continuing education every 2 years.

(6) The criteria for, and content of, all continuing education courses shall be established by the board. Any person that wishes to conduct a course that qualifies for continuing education credit shall submit an application to the board. The board may grant approval for specific courses on a case-by-case basis, or may grant general approval to particular providers that the board determines are qualified to conduct such continuing education courses. The board shall consider equivalent national and state education courses, including those offered by industry associations, to fulfill part or all of the requirements of this section.

(7) The board shall adopt rules to provide for the use of approved videocassette courses and other types of audio, video, or home study courses to fulfill the continuing education requirements of this section.

Section 71. Reciprocity; temporary license; removal services; refrigeration facilities; centralized embalming facilities.—

(1) In order to ensure that funeral directors and embalmers who are licensed in this state may be considered for licensure in other states, the board may enter into reciprocity agreements with other states.

(2) In order to ensure that there are sufficient funeral directors and embalmers to service the needs of a community in the event of a disaster, the board shall adopt rules to provide for the temporary licensure, in the event of a disaster, of funeral directors and embalmers who are licensed and in good standing in other states.

(3) In order to ensure that the removal and storage of all dead human bodies is conducted in a manner that properly protects the public's health and safety, the board shall adopt rules to provide for the registration of removal services and refrigeration facilities operated independently of funeral establishments.

(4) In order to ensure that all funeral establishments have access to embalming facilities that comply with all applicable health and safety requirements, the board shall adopt rules to provide for the registration of centralized embalming facilities. Such rules shall provide, at a minimum, that all centralized embalming facilities shall contain all of the equipment and meet all of the requirements that a preparation room located in a funeral establishment is required to meet, but such facilities shall not be required to comply with any of the other requirements for funeral establishments, as set forth in this part. Each licensed centralized embalming facility shall have at least one full-time embalmer in charge. Any person, regardless of whether such person is otherwise regulated by this chapter, may own such a facility, provided that such facility is operated in accordance with the rules established by the board. A centralized embalming facility may provide services only to funeral establishments.

Section 72. Disclosure of identity.—All licensed funeral directors who accompany a funeral procession to a cemetery shall identify themselves to cemetery personnel upon receiving a reasonable request to do so by cemetery personnel.

Section 73. Itemized price lists; disclosures.—

(1) A licensed funeral director shall be subject to disciplinary action, as set forth in part I, if such person fails to comply with the disclosure and documentation requirements contained in this chapter and any rules adopted by the board.

(2) A funeral establishment shall furnish, for retention, to each purchaser of merchandise or services, a written agreement which lists the merchandise and services purchased, together with the prices for the merchandise and services purchased, the terms of payment, the name, address and telephone number of the funeral authority, the signatures of the purchaser and a representative of the funeral establishment, and the date the agreement was signed.

(3) A funeral establishment shall clearly disclose on its itemized price list and on all written agreements and contracts that embalming is not required by law, except as provided in this part. All funeral establishments must offer arrangements that do not require embalming.

Section 74. Cash advance accounts; escrow refund accounts.—

(1) Funeral establishments may elect to maintain special, segregated bank accounts to be used in conjunction with making cash advances to vendors. The money in such accounts may be used by the funeral establishments to pay third-party vendors when such amounts must be paid before the funeral establishment has been paid by the purchaser.

(2) Funeral establishments may elect to maintain special, segregated escrow accounts to be used in conjunction with making cash refunds to their purchasers. The funeral establishment may deposit in such accounts any amounts paid by their purchasers that were in excess of the actual funeral costs incurred and cash advances made by the funeral establishment.

Section 75. Affidavit of cases embalmed and bodies handled.—Each funeral establishment or direct cremation establishment shall report monthly on a form prescribed and approved by the board the name of the deceased and such other information as may be required with respect to each dead human body embalmed by the funeral establishment or otherwise handled by the funeral establishment or direct cremation establishment. Such forms shall be signed by the embalmer who performs the embalming and the funeral director in charge of the establishment or by the direct cremationist who disposes of the body. These reports, in affidavit form, shall be submitted to the board within 5 working days after the end of each month.

Section 76. Unlawful to remove or embalm body without consent of proper official when crime is suspected.—It is unlawful for anyone licensed or registered pursuant to this part to remove or embalm a dead human body when such individual has information indicating that a crime or violence of any sort occurred in connection with the cause of death, until permission of the medical examiner or other lawfully authorized official has first been obtained.

Section 77. Embalming and refrigeration.—The board may establish by rule standards for embalming and refrigeration of dead human bodies. All dead human bodies must be either embalmed or refrigerated within a period of 24 hours following death. If refrigeration is available, it may be used in the place of embalming. A dead human body may be held in any place or in transit more than 24 hours after death only if the body is embalmed or maintained under refrigeration at a temperature of 40 degrees Fahrenheit or below.

Section 78. Violations.—The following acts constitute grounds for which disciplinary action may be taken by the board.

(1) Violating any state law or rule or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(2) Refusing to surrender promptly the custody of a dead human body upon the express order of the legally authorized person; however, this provision shall be subject to any state laws or rules governing handling, custody, care, or transportation of dead human bodies.

(3) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person.

(4) Requiring that a casket or cremation container be purchased for cremation or claiming directly or by implication that a casket or cremation container is required for cremation.

(5) Embalming a deceased human body without first having obtained written or oral permission from a legally authorized person, except if a funeral director is unable to contact a family member or other authorized person after exercising due diligence and has no reason to believe that the family does not want embalming to be performed. Washing and other public health procedures, such as closing of the orifices by placing cotton soaked in a disinfectant in such orifices until authorization to embalm is received, shall not be precluded by this provision.

(6) Representing that the price being charged for a cash advance item is the same as the cost to the funeral establishment for the item when such is not the case, or failing to disclose that the price being charged for a cash advance item is not the same as the cost to the funeral establishment for the item when such is the case.

(7) Making any false or misleading statement or claim that natural decomposition or decay of human remains can be prevented or substantially delayed by embalming, use of a sealed or unsealed casket, or use of a sealed or unsealed outer burial container.

(8) Making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the preparation, transportation or, disposition of dead human bodies.

(9) Making any false or misleading statement, oral or written, directly or indirectly, to the public, regarding any medical examiner's examination.

(10) Storing at a funeral establishment an unembalmed and unrefrigerated human body that has been dead for more than 24 hours.

(11) Any violation of chapter 382, Florida Statutes.

PART IV
FLORIDA CEMETERY ACT

Section 79. Short title.—This part may be cited as the "Florida Cemetery Act."

Section 80. Scope.—

(1) This part and all rules adopted pursuant to this part shall apply to all cemeteries except for:

(a) Church cemeteries of less than 5 acres, which provide only single-level ground burial, and which do not sell merchandise.

(b) County and municipal cemeteries dedicated or operating prior to the effective date of this part.

(c) Community and nonprofit association cemeteries, which provide only single-level ground burial and which do not sell burial rights or merchandise;

(d) Cemeteries owned and operated or dedicated by churches.

(e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.

(f) A columbarium which is owned by and located contiguous to an existing church facility and subject to local government zoning. The church establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this part. If the church relocates, the church shall relocate all of the urns and remains placed in the columbarium that were placed therein during its use by the church.

(g) A mausoleum consisting of two acres or less which is owned by and immediately contiguous to an existing church or synagogue facility and is subject to local government zoning. The church or synagogue establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter. The church or synagogue establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.

(2) Nothing shall prevent a cemetery that is exempt from this part, pursuant to subsection (1) from applying for licensure.

(3) The cemeteries described in this section shall only be subject to sections 32, 95, 96, and 105 of this chapter.

Section 81. Existing cemeteries, effect of this part.—Cemetery licenses that were issued as of July 1, 1959, shall continue in full force and effect, but such cemeteries shall be operated in accordance with the provisions of this part.

Section 82. Cemetery authorities; license; application; fee.—

(1) No person shall operate a cemetery without first obtaining a license from the department, unless specifically exempted from this part.

(2) Any person desiring to establish a cemetery shall first:

(a) File an application with the department stating the exact location of the proposed cemetery, which site shall contain not less than 15 contiguous acres of land.

(b) File with the department a site plan outlining the plans for the proposed development, as cemetery property, of at least 15 such acres.

(c) Pay an application fee pursuant to part I.

(d) Create a legal entity to own the cemetery.

(e) Demonstrate to the satisfaction of the board that such person possesses the ability, experience, and integrity to operate a cemetery.

(f) Demonstrate to the satisfaction of the board that such person possesses sufficient financial resources to operate the cemetery for at least 2 years.

(3) Pursuant to rules adopted by the board, the department shall determine the need for a new cemetery in the county in which the proposed cemetery is to be located by considering the adequacy of existing cemetery facilities, licensed and unlicensed, within the county, the solvency of the trust funds of the existing facilities, and the relationship between population, rate of population growth, death rate, and ratio of burials to deaths to meet the projected need for burial spaces for a period of 30 years. In order to promote competition, the department may waive the criteria of this subsection so that each county may have at least six cemeteries operated by different licensees.

(4) If the department finds that the applicant meets the criteria set forth in subsection (2) and has determined that there is a need for the new cemetery according to the criteria set forth in subsection (3), the department shall notify the applicant that a license will be issued when:

(a) The establishment of an irrevocable endowment care trust fund containing not less than $50,000 has been certified by the designated trustee.

(b) The applicant has filed with the department development plans that have been approved by the appropriate local governmental agency regulating zoning in the area of the proposed cemetery, and by the local Department of Health, if applicable.

(c) The applicant holds an unencumbered fee simple title to at least 15 contiguous acres of land and has dedicated at least 15 of those acres in accordance with this part.

(d) The applicant has designated as general manager a person who has integrity and at least 2 years' experience managing a cemetery.

(e) The applicant has fully developed not less than 2 acres for use as burial space. Such development shall include a paved road from a public roadway to the developed section, proper landscaping, and an office that may or may not be located at the cemetery.

(5) The department shall issue a license to operate a cemetery to any applicant who, within 12 months after notice that a license may be issued, meets the criteria of subsection (4). With respect to any application for which the department has notified the applicant that a license will be issued under subsection (4) on or after September 30, 1993, the board, for good cause shown, may grant one 12-month extension, within which time period the applicant must meet the criteria of subsection (4).

(6) Upon receipt of an application under subsection (2)(a), the department shall publish notice of such application in the Florida Administrative Weekly, and all interested parties may enter the application review process at that time, pursuant to chapter 120, Florida Statutes. After the department has determined whether there is a need for a new cemetery, pursuant to subsection (3), the board shall publish its findings in the Florida Administrative Weekly, giving the applicant and other interested parties the opportunity to request a hearing pursuant to chapter 120, Florida Statutes.

Section 83. Endowment care trust fund; remedy of board for noncompliance.—

(1) No cemetery authority shall establish a cemetery, or operate a cemetery if already established, without providing for the future endowment care of the cemetery, for which an endowment care trust fund shall be established, to be known as "the endowment care trust fund of . . . ." If a cemetery authority refuses or otherwise fails to provide or maintain an adequate endowment care trust fund in accordance with the provisions of this part, the board, after reasonable notice, shall enforce compliance.

(2) All endowment care trust funds established and maintained under this section shall be subject to the administration, investment, annual report, examination, and deficiencies provisions contained in part I.

Section 84. Disposition of income of endowment care trust fund; notice to purchasers and depositors.—

(1) The net income of the endowment care trust fund shall be used solely for the maintenance and care of the cemetery and of the lots, graves, crypts, below ground crypts, niches, and private mausoleums therein. Reasonable expenses may include the cutting and trimming of the lawn, shrubs, and trees at reasonable intervals; repairing the drains, water lines, roads, buildings, fences, and other structures in keeping with a well-maintained cemetery; overhead expenses necessary for such purposes, including maintenance of machinery, tools and equipment for such care; compensation of employees, payment of property and liability insurance premiums, state and municipal license fees, reasonable payments for employee pension and other benefit plans; maintaining necessary records of lot ownership, transfers, and burials; reasonable costs of administering the endowment care trust fund; reasonable costs for the maintenance and care of monuments; and reasonable costs to provide security services and cover damages from vandalism to the cemetery and monuments. Supplies, equipment, and personnel paid for out of the endowment care trust fund shall not be used nor income from the fund allocated for the care, maintenance, or administration of facilities or funeral homes located off cemetery property.

(2) At the time of making a sale or receiving an initial deposit, the cemetery authority shall deliver to the person to whom the sale is made, or to the person who makes a deposit, a written instrument that specifically shall state that the income from the endowment care trust fund shall be used for the care and maintenance of the cemetery.

Section 85. Endowment care trust fund, percentage of payments for burial rights and monument maintenance to be deposited.—

(1) Each cemetery authority shall set aside and deposit in its irrevocable endowment care trust fund the following percentages or amounts for all sums received from the sale of burial rights and from the assessment of any monument endowment care fee:

(a) Ten percent of the purchase price collected, net of sales tax, finance charges, and documentary stamps, shall be deposited in the endowment care trust fund for all interment rights, entombment rights, inurnment rights, and scattering rights sold. The minimum deposit, which shall also apply when each such right is sold or provided without charge, shall be $25.

(b) For general endowments for the endowment care of the cemetery, the full amount of sums received when received.

(c) For special endowments for a specific lot or grave or a private mausoleum or monument, the cemetery authority may set aside the full amount received for this individual special care in a separate trust fund with a bank or trust company located within and authorized to do business in this state. However, if the cemetery authority does not set up a separate trust fund for the special endowment, the full amount thereof shall be deposited into the endowment care trust fund as required of general endowments.

(d) For monument endowment care, the full amount of such sum when received.

(2) The cemetery authority shall deposit into its endowment care trust fund the required percentage received from the sale, no later than 30 days following the close of the calendar month in which any payment was received on the sale. The percentage payment shall be computed by dividing the deferred payment price into the amount that will be required to be deposited in the endowment care trust fund. This percentage will then be applied to all payments received, including the down payment, to determine the amount to be deposited in the endowment care trust fund. The percentage required to be deposited on each payment shall be carried out two places and the amount of deposit required may be rounded off to the nearest dollar as long as the total amount required to be deposited has been fully deposited when the contract has been fully paid. If a purchaser pays a certain sum for a burial right and an additional sum for endowment care, then the cemetery authority shall pay into its endowment care trust fund both the required percentage on the sum paid for the burial right and the entire sum paid for endowment care.

(3) If an installment contract for the purchase of burial rights is sold or discounted to a third party, then the entire amount due the endowment care trust fund shall be payable no later than 30 days following the close of the calendar month in which the contract was sold or discounted.

(4) Any payments made to the endowment care trust fund on contracts that subsequently are canceled shall be credited against future obligations to the endowment care trust fund.

(5) In each contract, reservation, or agreement wherein burial rights are priced separately, the purchase price of the burial rights shall be the only item subject to the endowment care trust fund requirements provided herein, but if the burial rights are not priced separately, the full amount of the contract, reservation, or agreement shall be subject to the endowment care trust fund requirements provided herein, unless the purchase price of the burial rights can be determined from the accounting records of the cemetery authority.

(6) When a cemetery, which is exempt from the provisions of this part, changes ownership so as to lose its exempt status, it shall establish and maintain an endowment care trust fund pursuant to this part. The initial deposit for establishment of this trust fund shall be $25 per space for all spaces either previously sold or contracted for sale in the cemetery at the time of conversion or $50,000, whichever amount is greater.

(7) Each cemetery hereafter established shall create an irrevocable endowment care trust fund, depositing therein an initial deposit of not less than $50,000, and shall submit proof thereof to the department prior to offering for sale any burial rights or any other merchandise or services. Initially, payments required under subsection (1) may be retained by the cemetery authority and shall be credited against this initial deposit until the sum of $50,000 is reached.

(8) In the event of the cemetery authority's bankruptcy, insolvency, or assignment for the benefit of creditors, the endowment care trust fund shall not be available to any creditor as assets of the cemetery authority, but shall be managed for the benefit of the cemetery by the trustee in bankruptcy, the receiver, or the assignee, as the case may be.

(9) A trustee may rely upon all certifications made to it by a cemetery authority in requesting a withdrawal of income from an endowment care trust fund, and a trustee shall not be liable to any person for such reliance.

Section 86. Liability for endowment care trust fund income.—The cemetery owners, or the officers or directors of a cemetery authority, may be held jointly and severally liable for any income from the endowment care trust fund that is not used for the care and maintenance of the cemetery as set forth in this part. The department or any receiver or administrator who has been duly appointed may bring suit in the appropriate court to recover such funds.

Section 87. Minimum acreage; sale or disposition of cemetery lands.—

(1) Each cemetery authority shall set aside a minimum of 15 contiguous acres of land for use as a cemetery and shall not sell, mortgage, lease, or encumber that property.

(2) Any lands that are owned by a cemetery authority and dedicated for use by it as a cemetery and that are contiguous, adjoining, or adjacent to the minimum of 15 contiguous acres described in subsection (1) may be sold, conveyed, or disposed of by the cemetery authority, or used by the cemetery authority for purposes other than as a cemetery, after obtaining written approval of the board, which approval shall not be unreasonably withheld, and removing the dedication. All of the human remains which previously may have been interred therein shall first have been removed, and any and all titles, interests, or burial rights, which may have been sold or contracted to be sold in such lands, shall have been reconveyed to, and revested in, the cemetery authority, prior to the consummation of any such sale. The requirements of this provision shall not apply to any lands owned by a cemetery authority and dedicated for use by it as a cemetery which are contiguous, adjoining, or adjacent to the minimum of 15 contiguous acres described in subsection (1) if such lands are to be used solely for agricultural purposes.

(3) Any lands owned by a cemetery authority which are contiguous, adjoining, or adjacent to the minimum 15 contiguous acres described in subsection (1) may be mortgaged or sold at the discretion of the cemetery authority, provided that such lands are not dedicated. Within 30 days of the sale or mortgage of such land the cemetery authority shall inform the board by providing it with a legal description of the land that was sold or mortgaged.

(4) A cemetery authority may convey and transfer to a municipality or county its real and personal property, together with moneys deposited in trust funds pursuant to this part, provided that the municipality or county will accept responsibility for maintenance thereof and prior written approval of the board is obtained.

(5) The provisions of subsection (1) which relate to a requirement for minimum acreage shall not apply to any cemetery licensed by the department on or before July 1, 1965, which owns a total of less than 15 acres of land.

(6) Cemetery authorities may purchase or accept by donation or devise real property consisting of lands that may or may not be properly dedicated for cemetery use.

(7) Mere ownership of adjacent property does not constitute dedication of such property as cemetery property.

Section 88. Dedication of cemetery property.—

(1) A cemetery authority shall dedicate land owned by the cemetery authority by filing a declaration of dedication, which declaration shall include a legal description of the property to be dedicated, with the appropriate county clerk for recording, and by providing a copy of the recorded document to the board.

(2) Upon the acceptance and recording of the written declaration, the dedication shall be complete for all purposes and thereafter the property shall be used exclusively for burial purposes, including that of a cemetery, mausoleum, offices, or any other purposes incidental to the final disposition and burial of dead human beings, unless such dedication is removed in accordance with this section.

(3) The filing of a copy of the recorded declaration of dedication with the board shall constitute constructive notice to all persons of the dedication of such property for burial purposes.

(4) Dedication for burial purposes in accordance with this section shall not be invalid as violating any law against the rule of perpetuities or the suspension of the power of alienation of title, but is expressly permitted, and shall be deemed to be in respect for the dead, a provision for the burial of human remains, and a duty to and for the benefit of the general public.

(5) All property dedicated in accordance with the requirements of this section and used or intended to be used for burials, cemetery offices, cemetery chapels, or maintenance facilities shall forever be exempt from taxes, judgments, and all other liens and executions.

(6) A cemetery authority may not petition a court or any other local agency to remove the dedication on a portion of dedicated cemetery property without first having received the permission of the board. The board shall grant such permission provided that the property has been dedicated for at least 10 years and that any human remains that may have been previously interred therein shall first have been removed in accordance with applicable law, and any and all titles, interests, or burial rights that may have been sold or contracted to be sold in the land shall have been reconveyed to, and revested in, the cemetery authority.

(7) Only when land owned by a cemetery authority is dedicated for cemetery use, pursuant to this section, shall such land be governed by this part.

Section 89. Construction of mausoleums and preconstruction trust fund; compliance requirements.—

(1) A cemetery authority shall start construction of that section of a mausoleum in which sales, contracts for sales, reservations for sales, or agreements for sales have been made within 4 years from the date of the first such sale or after the entombment rights in at least 50 percent of the crypts in the mausoleum have been sold, and the full purchase price has been received, whichever occurs first. The construction shall be completed within 5 years from the date that the first sale was made. However, extensions for completion, not to exceed 1 year, may be granted by the board for good cause shown. If the units have not been completely constructed at the time of need or the time specified herein, all moneys paid by the purchaser, plus all interest earned thereon for that portion of the moneys deposited in the trust fund and an amount equal to the interest that would have been earned on that portion of the moneys that were not in trust, shall be refunded upon request.

(2) A cemetery authority that plans to offer for sale space in a section of a mausoleum prior to construction shall establish a preconstruction trust fund to be known as "the preconstruction trust fund of . . . . . ." A cemetery authority shall maintain a preconstruction trust fund that is separate from all other types of trust funds maintained by the cemetery authority. A cemetery authority may use a single preconstruction trust fund to deposit funds related to multiple preconstruction projects, provided that the cemetery authority maintains accurate records that substantiate the deposits, earnings, and withdrawals allocable to each such project.

(3) All preconstruction trust funds established and maintained under this section shall be subject to the administration, investment, annual report, examination and deficiencies provisions contained in part I.

(4) Before a preconstruction sale, contract for sale, reservation for sale, or agreement for sale in a mausoleum may be made, the cemetery authority shall compute the total amount to be deposited in the preconstruction trust fund per crypt. This amount shall be computed by dividing the cost of the project plus 10 percent of the cost, as computed by a licensed contractor, engineer, or architect, by the number of crypts in the project.

(5) Preconstruction trust fund deposits shall be made within 30 days after the end of the month in which payment is received by the cemetery authority or its agent.

(6) In the case of a preconstruction sale made on an installment basis, the percentage of each payment to be deposited in trust shall be computed by dividing the deferred payment price into the amount that will be required to be deposited into the preconstruction trust fund. This percentage will then be applied to all payments received including the down payment to determine the amount to be deposited into the preconstruction trust fund. The percentage required to be deposited on each payment shall be carried out two places and the amount of deposit required may be rounded off to the nearest dollar as long as the total amount required to be deposited has been fully deposited when the contract has been fully paid.

(7) If an installment contract is sold or discounted to a third party, then the entire amount due the preconstruction trust fund shall be payable no later than 30 days following the close of the calendar month in which the contract was sold or discounted.

(8) If a cemetery authority obtains a certificate signed by a purchaser stating that such person has accepted a completed crypt in another structure in lieu of the crypt purchased prior to construction, or the cemetery authority has canceled a contract for the preconstruction purchase of a crypt due to default, then all sums deposited in the preconstruction trust fund for that purchaser, together with all applicable earnings, shall be withdrawn from the trust fund and paid to the cemetery authority.

(9) Each cemetery authority may design its own procedure for making withdrawals from any preconstruction trust fund. The amount and frequency of withdrawals shall be at the sole discretion of the cemetery authority. However, at no time shall withdrawals exceed the actual amounts of on-site construction costs, as certified by the architect or the licensed contractor.

(10) If the mausoleum section is not completed within the time limits set forth in this section, then the trustee shall contract for and cause the project to be completed, and pay for such construction from the trust funds deposited in the project's account, paying any balance, less cost and expenses, to the cemetery authority.

(11) In the event of the cemetery authority's bankruptcy, insolvency, or assignment for the benefit of creditors, the preconstruction trust funds shall not be available to any creditor as assets of the cemetery authority, but shall be distributed to purchasers who made preconstruction purchases that were covered by the trust, or managed for their benefit by the trustee in bankruptcy, the receiver, or the assignee, as the case may be.

(12) In lieu of the payments outlined to the preconstruction trust fund, the cemetery authority may deliver to the board a performance bond in an amount equal to 110 percent of the total cost to construct the mausoleum or section of the mausoleum in which preconstruction sales are being made, from a surety company acceptable to the Comptroller.

(13) A trustee may rely upon all certifications made to it by a cemetery authority in requesting a withdrawal from a preconstruction trust fund, and a trustee shall not be liable to any person for such reliance.

Section 90. Cemetery authorities; authorized functions.—In order to provide for the proper maintenance and preservation of the cemetery, and for the protection of the rights of all lot owners in the cemetery, and to ensure that all cemetery records are properly maintained and that all cemetery services are provided to the public in an efficient and timely manner, within the boundaries of the cemetery lands it owns, a cemetery authority may perform the following functions:

(1) The exclusive care and maintenance of the cemetery and the maintenance of all records required by this part.

(2) The exclusive interment, entombment, inurnment, scattering, and disinterment of human remains, and all functions incidental thereto, including the exclusive right to open, prepare for burial, and close all ground, mausoleum, and urn burials, the nonexclusive right to install outer burial containers, and the exclusive right to maintain all records that pertain to such activities. A licensed funeral director, however, shall be present at all interments and entombments.

(3) The exclusive initial preneed and at-need sale of burial rights, subject to the provisions of this chapter and the exclusive preneed and at-need rental of cemetery facilities or cemetery equipment.

(4) The exclusive right to correct any errors that may be made by it in making any burials by removing and transferring the human remains to the burial space that was originally purchased or to other burial space of equal or greater value in a similar location.

(5) The preneed and at-need sale of funeral and cemetery merchandise for use within the cemetery.

(6) The cremation of human remains, subject to the provisions of part V.

Section 91. Monuments; installation and maintenance; fees.—

(1) A person other than a cemetery and its agents shall have the right to sell monuments and to perform or to provide monument services on cemetery property, subject to the rules and regulations of the cemetery and the provisions of this section.

(2) A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, or surety, or to make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property.

(3) A cemetery may establish rules and regulations regarding the style and size of a monument or its foundation, provided that such rules are applicable to all monuments, regardless of whether the monument was purchased or obtained from the cemetery or from a person other than the cemetery and its agents, and provided that such rules are enforced uniformly as to all monuments.

(4) A person, other than a cemetery or its agents, shall have reasonable access to cemetery property during regular business hours, to install monuments or provide monument services, upon providing the cemetery with 2 weekdays' notice. Such access may not be unreasonably denied.

(5) If a cemetery authority requires that a person, other than the cemetery or its agents, submit an application to the cemetery for permission to install a monument or provide monument services, and that such application be approved before such person can perform such work, then the cemetery authority shall either approve or disapprove the application, in writing, and provide notice to such person, within 5 working days of the date that the application was received.

(6) To verify that a monument is installed on the proper grave in accordance with the cemetery's rules and regulations, the cemetery shall flag the grave where the monument is to be installed and shall inspect the installation when completed. This subsection does not imply or require that a cemetery shall have to lay out or engineer a grave site or grave sites for the installation of a monument.

(7) No cemetery authority or its agents shall:

(a) Require the payment of an installation, setting, or service charge, by whatever name known, for the installation of a monument purchased or obtained from, and to be installed by, a person other than the cemetery or its agents, except as provided in this section.

(b) Refuse to provide care or maintenance for any portion of a burial space on which a monument has been placed.

(c) Waive liability with respect to damage to a monument caused by the actions of the cemetery authority after installation, where the monument or installation is not purchased from the cemetery or its agents.

(d) Be held liable for the improper installation of a monument where the monument is not installed by the cemetery authority or its agents, unless the cemetery authority fails to notify the person who installed the monument that the installation was improper under this subsection. A cemetery authority shall provide a person that installs a monument in the cemetery with written notice of any improper installation within 5 working days from the date of the installation.

Section 92. Outer burial container installation; fees.—A cemetery may charge a fee, as disclosed on its price list, not to exceed $100, for the installation of an outer burial container. The cemetery shall assess the same fee for the installation of an outer burial container, regardless of whether the outer burial container was purchased or obtained from the cemetery or from an outside source. Nothing in this section is intended to imply or require that a cemetery authority must install an outer burial container that was purchased or obtained from an outside source.

Section 93. Illegal tying arrangements.—No cemetery shall tie the purchase of any burial right to the purchase of any merchandise sold through the cemetery or any other designated person; however, this section does not prevent a cemetery from selling below-ground burial crypts or designating a particular section or sections in a cemetery in which a specific type of monument must be used.

Section 94. Abandoned cemeteries; immunity; actions.—

(1) Notwithstanding any provision of law to the contrary, a county or municipality that has within its jurisdiction an abandoned cemetery or a cemetery that has not been reasonably maintained for a period in excess of 6 months, upon giving notice to the board, may take such action as is necessary and appropriate to provide for the maintenance and security of the cemetery. The solicitation of private funds and the expenditure of public funds for the purposes enumerated in this subsection are hereby authorized, provided that no action taken by a county or municipality under this subsection shall establish an ongoing obligation or duty to provide continuous security or maintenance for any cemetery.

(2) No county or municipality, nor any person under the supervision or direction of a county or municipality providing good faith assistance in securing or maintaining a cemetery under subsection (1) shall be subject to civil liabilities or penalties of any type for damages to property at the cemetery.

(3) A county or municipality that has maintained or secured a cemetery pursuant to the provisions of subsection (1) may maintain an action at law against the owner of the cemetery to recover an amount equal to the value of such maintenance or security.

Section 95. Owners to provide addresses.—All owners of burial rights in any cemetery located in this state, regardless of whether such cemetery is licensed under or exempt from the provisions of this part, shall have the legal duty to keep the cemetery informed in writing of their residential address.

Section 96. Presumption of abandonment; abandonment procedures; sale of abandoned unused burial rights.—

(1) There is hereby created a presumption that burial rights in any cemetery in this state have been abandoned when an owner of unused burial rights has failed to provide the cemetery with a current residential address for a period of 50 consecutive years and the cemetery is unable to communicate by certified mail, return receipt requested, with said owner of unused burial rights for lack of address. No such presumption of abandonment shall exist for burial rights held in common ownership, if any such burial rights have been used within such common ownership.

(2) Upon the occurrence of a presumption of abandonment as set forth in subsection (1), a cemetery authority may file with the board a certified notice attesting to the abandonment of the burial rights. Irrespective of diversity of ownership of the burial rights, a cemetery may include in its certification burial rights of as many owners as are certified to have been abandoned. The notice shall do the following:

(a) Describe the burial rights certified to have been abandoned.

(b) Set forth the name of the owner or owners of the burial rights, or if the owner is known to the cemetery to be deceased, then the names, if known to the cemetery, of such claimants as are heirs at law, next of kin, or specific devisees under the will of the owner.

(c) Detail the facts with respect to the failure of the owner or survivors as outlined herein to keep the cemetery informed of the owner's address for a period of 50 consecutive years or more.

(d) Certify that no burial right has been exercised which is held in common ownership with any abandoned burial rights as set forth in subsection (1).

(e) Certify that the notice required under subsection (3) has been published, and state the results of such publication.

(3) The cemetery authority shall publish a notice of the abandoned burial in a newspaper of general circulation in the county in which the cemetery is located. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Cemetery Property" and shall contain the following:

(a) The names in alphabetical order and last known address, if any, of persons listed in the certification.

(b) A statement that information concerning the cemetery property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the cemetery.

(c) A statement that if proof of claim is not presented by the owner to the cemetery and the owner's right to the cemetery property is not established within 90 days of the date that the notice was published, then the cemetery property will be resold, and that all further claims should be directed to the board.

(4) Within 120 days from the notice and publication as provided in subsection (3), the cemetery authority shall notify the board as to whether any claims have been made with respect to any such burial rights. As to any burial rights for which no claim has been made, the cemetery authority shall have the right to sell such burial rights at a public sale subject to the approval of the sales price by the board.

(5) Notice of the time and place of any sale held pursuant to the provisions of this section shall be published by the cemetery authority one time in a newspaper of general circulation in the county in which the cemetery is located. Such notice shall be published no less than 30 days prior to the date of sale.

(6) The proceeds derived from any sale shall be disbursed as follows:

(a) In the case of a cemetery authority, an amount as specified in this part shall be deposited into the cemetery authority's endowment care trust fund; an amount equal to the cemetery's actual and necessary costs incurred pursuant to this section, but not to exceed 10 percent of the selling price of the abandoned burial rights, shall be deposited to the cemetery authority's operating account; and the balance of the proceeds shall be deposited into the preneed cemetery consumer protection fund within 20 days of the cemetery authority's receipt of such funds.

(b) In the case of a cemetery that is not licensed pursuant to this part, the proceeds shall be distributed as determined by the board.

(7) Persons, or their heirs, who were owners of burial rights which were sold under this section shall have the right at any time to obtain equivalent burial rights in the cemetery without further charge. If no such burial rights are desired or available, then such persons or their heirs may obtain a refund of the amount paid to the preneed cemetery consumer protection fund.

(8) The cemetery shall set aside equivalent burial rights equal to 10 percent of the abandoned burial rights sold under this section for the exclusive use of persons or their heirs who were owners of burial rights which were sold under this section.

(9) Persons who purchase burial rights at a sale pursuant to this section shall have the right to sell, alienate, or otherwise transfer said burial rights subject to, and in accordance with, the rules and regulations of the cemetery, and the payment of a transfer fee, as set forth in this part.

Section 97. Disclosures.—

(1) A cemetery shall furnish, for retention, to anyone who inquires in person about burial rights, merchandise, or services, before any discussion or selection of specific items takes place, a printed or typewritten list specifying the range of retail prices for any such burial rights, merchandise, and services. The list shall include the name, address, and telephone number of the cemetery authority and statements that the purchaser may choose only the items that the purchaser desires; that the purchaser will be charged for only those items purchased, with the exception of a charge for the cemetery's professional services and overhead, and that there may be extra charges for other items or services such as those provided by funeral directors. The list shall clearly specify any burial rights, merchandise, or cemetery services that are available for purchase on only an at-need or preneed basis.

(2) A cemetery shall furnish for retention to each purchaser of burial rights, merchandise, or services a written agreement that lists the burial rights, merchandise, and services purchased, together with the prices for the burial rights, merchandise, and services purchased; the terms of payment; the name, address, and telephone number of the cemetery authority; the signatures of the purchaser and a representative of the cemetery; and the date the agreement was signed.

Section 98. Disinterment.—

(1) The disinterment and reinterment of human remains shall require the physical presence of a licensed funeral director, unless the reinterment is to be made in the same cemetery.

(2) A disinterment shall not be performed until the cemetery has received all of the following:

(a) A disinterment permit, unless the reinterment is to be made in the same cemetery.

(b) Written authorization from the individual or individuals who currently own the burial rights for the burial space from which the disinterment of the decedent is to take place.

(c) Written authorization from the legally authorized person who, at the time the disinterment is to be made, would be permitted to authorize the burial of the decedent.

(3) Unless the cemetery is provided with all of the documentation specified in subsection (2), the cemetery shall not perform the disinterment unless it receives a court order instructing it to do so.

(4) The removal of human remains from a designated temporary storage area to a place of permanent burial shall not be considered a disinterment or reinterment.

(5) No disinterment may take place, without a court order, if the decedent authorized the decedent's own burial, unless the reinterment is to be made in the same cemetery.

Section 99. Private mausoleums.—

(1) Private mausoleums may be installed only on those sections or portions of sections of a cemetery designated by the cemetery authority. No aspect of this provision shall require a cemetery authority to permit private mausoleums to be installed in the cemetery.

(2) The obligation of a cemetery that is not licensed under this part to maintain a private mausoleum shall be as set forth in the contract or agreement between the cemetery and the purchaser of the private mausoleum.

(3) If the private mausoleum becomes a hazard, and if there is insufficient income from the trust fund to perform the necessary repairs and the descendants of those entombed in the private mausoleum cannot be contacted or are unable or unwilling to pay for the necessary repairs, the cemetery authority shall petition an appropriate court for permission to dismantle and remove the private mausoleum and to reinter the human remains of those entombed in the private mausoleum elsewhere in the cemetery.

Section 100. Rules and regulations.—

(1) A cemetery authority, and only a cemetery authority, may adopt rules and regulations, consistent with this part, regulating the activities conducted within its boundaries and establishing minimum standards for merchandise and the installation thereof.

(2) No such rules and regulations may unreasonably restrict the use of burial rights, unreasonably restrict competition, unreasonably increase the cost to the owner of the burial rights in utilizing such burial rights, or deny any funeral director access to any cemetery to conduct a funeral or to supervise a disinterment of human remains during the cemetery's regular business hours without the approval of the board.

(3) All rules and regulations provided adopted under this part shall be subject to the approval of the board under the provisions of chapter 120, Florida Statutes, prior to becoming effective.

Section 101. Records.—A cemetery authority shall maintain a permanent record of every interment, entombment, inurnment, scattering, and disinterment performed in the cemetery. Such records shall show the date the activity took place, the specific location at which the activity took place, and the name of the deceased person.

Section 102. Right of ingress and egress for visiting or maintenance.—

(1) The relatives and descendants of any person buried in any cemetery shall have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner, consistent with the cemetery's rules and regulations.

(2) If the cemetery is not licensed pursuant to this part, the owner of the land on which the cemetery is located may designate the easement.

(3) If the cemetery is not licensed pursuant to this part, and if the cemetery is abandoned or is otherwise not being maintained, the relatives and descendants of those buried in the cemetery may request the owner of the land on which the cemetery is located to provide for reasonable maintenance of the cemetery, and, if the owner refuses or fails to maintain the cemetery, the relatives and descendants shall have the right to maintain the cemetery.

PART V
FLORIDA CREMATORY AND CREMATION ACT

Section 103. Short title.—This part may be cited as the "Florida Crematory and Cremation Act."

Section 104. Purpose.—The Legislature finds that the operation of crematories and the cremation of human remains requires oversight to properly protect the public health and safety, and that the best way to protect the public is through the establishment of licensure for such facilities, the establishment of minimum standards of conduct, and the use of effective discipline for those practitioners who violate the law.

Section 105. Registration of a direct cremationist.—

(1) Any person who is not a licensed funeral director and who engages in the direct cremation of dead human bodies on behalf of a direct cremation establishment shall be registered pursuant to this section as a direct cremationist.

(2) Any person who desires to be registered as a direct cremationist shall file an application with the department in accordance with part I and meet the following requirements:

(a) Be 18 years of age.

(b) Be a high school graduate or equivalent.

(c) Have no conviction or finding of guilt, regardless of adjudication, for a crime which directly relates to the functions and duties of a direct cremationist or the practice of direct cremation.

(d) Have passed an examination prepared by the board on the subjects of the signs of death, the manner in which death may be determined, and the laws and rules of the state and Federal Government concerning disposition of dead human bodies, vital statistics, medical examiners, and offenses concerning dead human bodies.

Section 106. Renewal of registration of direct cremationist.—The board shall adopt rules establishing a procedure for the biennial renewal of direct cremationist registrations.

Section 107. Direct cremations; duties.—

(1) Those individuals registered as direct cremationists may perform only those functions set forth below:

(a) Remove human remains from the place of death and store human remains in registered direct cremation establishments.

(b) Secure pertinent information from the decedent's next of kin in order to complete the death certificate and to file for the necessary permits for cremation.

(c) Obtain the necessary permits for cremation and arrange for obituaries and death notices to be placed in newspapers; however, the name of the direct cremation establishment may not appear in any death notice or obituary if any funeral service, memorial service, or graveside service is to take place and such service is mentioned in the death notice or obituary.

(d) Refrigerate human remains prior to direct cremation and transport human remains to a crematory for direct cremation.

(e) Contract with a removal service or refrigeration facility to provide such services or facilities to a direct cremation establishment.

(2) Direct cremationists or funeral directors functioning as direct cremationist may not, in their capacity as direct cremationists, sell, conduct, or arrange for funeral services, memorial services, visitations, or viewings; hold themselves out to the public as funeral directors; or use any name, title, or advertisement that may tend to connote that they are funeral directors. These prohibitions shall apply regardless of the fact that such individuals may be licensed as funeral directors.

(3) Provided that direct cremationists limit their activities to those functions set forth in subsection (1), those activities shall not be deemed to constitute funeral directing or embalming or the functions performed by a funeral director or embalmer as otherwise set forth in this part.

Section 108. Direct cremationist; continuing education.—

(1) As a condition of renewal of a license or registration as set forth below, and in order to protect the health and safety of the public and the licensees and registrants themselves, as well as to require such individuals to periodically demonstrate professional competency, the board shall require direct cremationists to complete no more than 6 hours of continuing education every 2 years.

(2) Direct cremationists, as part of their renewal application, shall submit a signed affidavit documenting their compliance with the continuing education requirements.

(3) Failure to document compliance with the continuing education requirements or the furnishing of false or misleading information regarding compliance shall be grounds for disciplinary action up to and including revocation of a license.

(4) The criteria for, and content of, all continuing education courses shall be established by the board. Any person that wishes to conduct a course that qualifies for continuing education credit shall submit an application to the board. The board may grant general approval to particular providers that the board determines are qualified to conduct continuing education courses. The board shall consider equivalent national and state education courses, including those offered by industry associations, to fulfill part or all of the requirements of this section.

(5) The board shall adopt rules to provide for the use of approved videocassette courses and other types of audio, video, or home study courses to fulfill the continuing education requirements of this section.

Section 109. Direct cremation establishment; registration standards; location.—

(1) No person shall conduct, maintain, manage, or operate a direct cremation establishment unless such an establishment is registered with the board. A direct cremationist shall practice only at a direct cremation establishment which has been registered with the board and which may be a cremation facility.

(2) Application for registration as a direct cremation establishment shall be made in accordance with this chapter and shall include the name of the registered direct cremationist who shall be in charge of that establishment.

(3) A direct cremation establishment shall be a physical structure that is either owned or leased by a direct cremation authority and that is located at a specific street address where direct cremation activities are practiced. No more than one direct cremation authority may be located at each direct cremation establishment. Any change in location of such establishment shall be reported promptly to the department.

(4) Each registered direct cremation establishment shall have at least one full-time registered direct cremationist in charge, who is reasonably available to the public at that establishment. No direct cremationist shall be in charge of more than one direct cremation establishment; however, nothing shall prevent a direct cremationist who is in charge of one direct cremation establishment from working at another direct cremation establishment.

(5) Each direct cremation establishment must contain a refrigerated storage facility that accommodates at least two dead human bodies, or must maintain a written contract, with a registered storage facility, registered centralized embalming facility, or funeral establishment or funeral establishment that contains a preparation room or refrigerated storage facility, under which the direct cremation establishment may use the facilities and services of such an entity.

(6) A direct cremation establishment cannot be physically located in, physically connected to, or operated out of the same facility or structure as a licensed funeral establishment. However, no direct cremation establishment that has been incorporated and engaged in the direct cremation business prior to and continuously since 1984 and which has arranged over 18,000 direct cremations shall be required to maintain a facility that is physically distinct and separate from a licensed funeral establishment.

(7) A direct cremation establishment shall include the word "cremation" as part of the name under which it files its application for registration with the department, and shall use the full name under which it is registered in all of its advertisements and promotional materials. The name of a direct cremation establishment shall not contain the words "funeral," "chapel," or "memorial."

(8) The issuance of a registration to operate a direct cremation establishment to an individual who is not personally registered as a direct cremationist does not entitle that individual to practice direct cremation as defined in this part, it being the intent of this part that such practice may be performed only by individuals registered as direct cremationists.

(9) A direct cremation establishment registration shall be renewable biennially pursuant to procedures, and upon payment of a renewal fee, as set by board rule.

(10) Every direct cremation establishment registered under this part shall at all times be subject to the inspection of all of its buildings, equipment, and vehicles used in the conduct of its business by the department of any of its designated representatives or agents, or local or Department of Health and Rehabilitative Services inspectors. The board shall by rule establish requirements for inspection of direct cremation establishments.

(11) The board shall set by rule an inspection fee, payable upon application for registration and upon each renewal of such registration. The initial inspection fee shall not exceed $50 and all subsequent inspection fees shall not exceed $35. No reinspection fee may be charged.

(12) Each direct cremation establishment located at a specific address shall be deemed to be a separate entity and shall require separate registration and compliance with the requirements of this part.

Section 110. Establishment of crematory and licensure of crematory authority.—

(1) No person shall conduct, maintain, manage, or operate a crematory unless a crematory authority operating license has been issued by the department for that crematory. Any person doing business in this state, or any cemetery authority, funeral authority, direct cremation authority, monument authority, or any other entity, may apply for a license to erect, maintain, and operate a crematory in this state and provide the necessary appliances and facilities for the cremation of human remains in accordance with this part.

(2) An application for licensure as a crematory authority shall be made in accordance with part I.

(3) A crematory may be constructed on or adjacent to any cemetery, or adjacent to any funeral establishment, or at any other location consistent with local zoning regulations.

(4) No license shall be issued unless the crematory has been inspected and approved as meeting all requirements as set forth by the board, the Department of Health and Rehabilitative Services, the Department of Environmental Regulation, and any local ordinance regulating the same.

(5) Each crematory located at a specific address shall be deemed to be a separate entity and shall require separate licensing and compliance with the requirements of this part.

(6) Every crematory licensed under this part shall at all times be subject to the inspection of all its buildings, equipment, and vehicles used in the conduct of its business by the department or any of its designated representatives or agents, or by local or Department of Health and Rehabilitative Services inspectors.

(7) The board shall adopt rules requiring each crematory authority to submit periodic reports to the board that include the names of individuals cremated and the types of receptacles used.

(8) Each crematory shall be under the general supervision of a licensed funeral director or registered direct cremationist, who shall be responsible for making sure that the facility, its operations, and all individuals employed in the facility comply with all applicable federal and state laws and rules.

Section 111. Health and safety education.—All individuals who intend to function as operational personnel affiliated with a direct cremation authority or crematory authority shall complete one course approved by the board on health and safety issues within 10 days of the date that they begin functioning as operational personnel on behalf of any entity that is regulated by this part. The course shall not exceed 3 hours and shall be offered at approved locations throughout the state. Such locations may include establishments that are licensed or registered under this part. The board shall adopt rules to implement and enforce this provision, which rules shall include provisions for the use of approved videocassette courses to fulfill the continuing education requirement of this section.

Section 112. Unauthorized conduct.—Any individual, regardless of whether such individual is a licensed funeral director or embalmer, who is employed by or affiliated with a direct cremation authority or performs any function on behalf of a direct cremation authority, shall be prohibited from performing any function on behalf of such direct cremation authority that is outside the scope of practice of a direct cremationist, and that is within the scope of practice of a funeral director or embalmer. Any individual who engages in such activities, and the direct cremation authority with which such individual is employed or affiliated or on whose behalf such individual performed the function, may be fined up to $2,500 for the first offense. In the event of a second offense, in addition to such fine, the registration of the direct cremation establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function may be suspended. In the event of a third offense, in addition to such fine, the registration of the direct cremation establishment with which such individual is employed or affiliated or on whose behalf such individual performed the function may be revoked.

Section 113. Cremation requirements.—

(1) At the time of the arrangement for a cremation performed by any person licensed pursuant to this chapter, the person contracting for cremation services shall be required to designate his intentions with respect to the disposition of the cremated remains of the deceased in a signed declaration of intent which shall be provided by and retained by the funeral or direct cremation establishment. A cremation may not be performed until a legally authorized person gives written authorization for such cremation.

(2) With respect to any person who intends to provide for the cremation of the deceased, if, after a period of 120 days from the time of cremation the cremated remains have not been claimed, the funeral or direct cremation establishment may dispose of the cremated remains. Such disposal shall include scattering them at sea or placing them in a licensed cemetery scatter garden or pond or in a church columbarium or otherwise disposing of the remains as provided by rule of the board.

Section 114. Recordkeeping.—

(1) The crematory authority shall furnish to the individual who delivers such human remains to the crematory a receipt signed by both the crematory authority and the individual who delivers the human remains, showing the date and time of the delivery, the type of casket, cremation container, or alternative container that was delivered, the name of the individual from whom the human remains were received, and the name of the funeral establishment, direct cremation establishment, or other entity with whom such individual is affiliated, the name of the individual who received the human remains on behalf of the crematory, and the name of the decedent. The crematory authority shall retain a copy of this receipt in its permanent records.

(2) Upon its release of cremated remains, the crematory authority shall furnish to the individual who receives such cremated remains from the crematory a receipt signed by both the crematory authority and the individual who receives the cremated remains, showing the date and time of the release, the name of the individual to whom the cremated remains were released, and the name of the funeral establishment, direct cremation establishment, cemetery, or other entity with whom such individual is affiliated, the name of the individual who released the cremated remains on behalf of the crematory, and the name of the decedent. The crematory authority shall retain a copy of this receipt in its permanent records.

(3) A crematory authority shall maintain at its place of business a permanent record of each cremation that took place at its crematory, which record shall contain the name of the decedent, the date and time of the cremation, the type of receptacle cremated, and the designated final disposition of the cremated remains.

(4) The crematory authority shall maintain a record of all cremated remains disposed of by the crematory in accordance with this part.

(5) Upon completion of the cremation, the crematory authority shall file the burial transit permit with the Department of Health and Rehabilitative Services and transmit a copy of the burial transit permit along with the cremated remains to whoever receives the cremated remains from the authorizing agent. The burial transit permit shall specify the designated final disposition of the cremated remains.

(6) All cemeteries shall maintain a record of all cremated remains that are disposed of on their property, provided that such cremated remains were properly transferred to the cemetery and the cemetery issued a receipt acknowledging the transfer of the cremated remains.

(7) All records that are required to be maintained under this part shall be subject to inspection by the board upon reasonable notice.

Section 115. Cremation receptacles.—

(1) No crematory authority shall make or enforce any rules requiring that any human remains be placed in a casket or cremation container before cremation or that human remains be cremated in a casket or cremation container, nor shall any crematory authority refuse to accept human remains for cremation for the reason that they are not in a casket.

(2) No crematory authority shall accept human remains unless they are delivered to the crematory in a casket, cremation container, or an alternative container. If the human remains are delivered to the crematory in a cremation container or alternative container, then the cremation container or alternative container shall comply with all aspects of the definitions set forth in this chapter.

Section 116. Cremation procedures.—

(1) Human remains shall not be cremated within 48 hours after death as indicated on the death certificate. In the event that the death comes under the authority of the medical examiner, the human remains shall not be cremated by the crematory until authorization to cremate has been received, either orally or in writing, from the medical examiner of the district in which the death occurred, and the crematory authority has received a cremation authorization form, executed by the legally authorized person. In no instance shall the lapse of time between the death and the cremation be less than 48 hours, pursuant to s. 872.03, Florida Statutes.

(2) Absent extenuating circumstances, a crematory authority shall perform a cremation within 5 working days of the receipt of the human remains, the necessary paperwork and authorizations, and the payment for the cremation.

(3) Except as set forth in subsections (1) and (2), a crematory authority shall have the right to schedule the actual cremation to be performed at its own convenience at any time after the human remains have been delivered to the crematory, unless the crematory authority has received specific instructions to the contrary on the cremation authorization form.

(4) No crematory authority shall cremate human remains when it has actual knowledge that the human remains contain a pacemaker or any other material or implant that may be potentially hazardous to the person performing the cremation.

(5) No crematory authority shall refuse to accept human remains for cremation because such human remains are not embalmed.

(6) A crematory authority shall hold human remains, prior to their cremation, according to the following provisions of this subsection:

(a) Whenever a crematory is unable or unauthorized to cremate human remains immediately upon taking custody thereof, the crematory shall place the human remains in a holding facility.

(b) Whenever human remains which are not embalmed are received by a crematory and they will not be cremated until at least 6 hours after receipt, they shall be placed within a refrigerated facility.

(7) A crematory authority shall not accept a casket, cremation container or, alternative container from which there is any evidence of the leakage of body fluids.

(8) Human remains delivered to a crematory shall not be removed from the casket, cremation container, or the alternative container, and the casket, cremation container, or the alternative container shall be cremated in its entirety with the human remains, unless the crematory authority has notified the legally authorized person to the contrary on the cremation authorization form and obtained the written consent of the legally authorized person.

(9) A crematory authority shall maintain an identification system that shall ensure that it shall be able to identify the human remains in its possession throughout all phases of the cremation process.

(10) No unauthorized individual shall be permitted in the holding facility or cremation room while any human remains are being held in such facility or room awaiting cremation, being cremated, or being removed from the cremation chamber.

(11) The simultaneous cremation of the human remains of more than one individual within the same cremation chamber is prohibited. Nothing in this provision, however, shall prevent the use of cremation equipment that contains more than one cremation chamber.

(12) A crematory shall not remove any dental gold, precious metals, body parts, organs, or any item of value from the decedent or the cremated remains, either prior to or subsequent to a cremation, without previously having received specific written authorization from the legally authorized person. Under no circumstances shall a crematory authority profit from making or assisting in any such removal.

(13) Upon the completion of each cremation, and insofar as is practically feasible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber.

(14) If all of the recovered cremated remains will not fit within the urn or temporary container that has been selected, the remainder of the cremated remains shall be returned to the legally authorized person or such agent's designee in a separate container. The crematory shall not return to a legally authorized person, or to such agent's designee, more or less cremated remains than were removed from the cremation chamber, insofar as is practically feasible.

(15) A crematory shall not knowingly represent to the legally authorized person, or such agent's designee, that a temporary container or urn contains the cremated remains of a specific decedent when it does not.

(16) Cremated remains shall be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

(17) A crematory shall receive only dead human remains for cremation. A crematory may not receive other materials, such as medical, hazardous and biohazardous waste, for the purpose of disposal in a cremation chamber.

Section 117. Disposition of cremated remains.—

(1) The legally authorized person shall be responsible for the final disposition of the cremated remains.

(2) Cremated remains may be disposed of by placing them in a grave, crypt, below-ground crypt, niche, or ossuary; or by scattering them at sea, in a scattering area as defined in this part, or in a scattering area that is in existence and located on church property as of the effective date of this act.

(3) Upon the completion of the cremation process, and except as provided for in this part, if the crematory has not been instructed to arrange for the final disposition of the cremated remains, the crematory shall deliver the cremated remains to the certificateholder, licensee, or registrant that delivered the human remains to the crematory. After such delivery the crematory authority shall be discharged from any legal obligation or liability concerning such cremated remains. The certificateholder, licensee, or registrant receiving the cremated remains shall then deliver the cremated remains to the individual specified on the cremation authorization form, or if no individual is specified, to the legally authorized person. Such delivery shall be made in person or by registered mail. Upon receipt of the cremated remains, the individual receiving them may transport them in any manner without a permit, and may dispose of them in accordance with this section. After such delivery, the certificateholder, licensee, or registrant delivering the cremated remains to such individual shall be discharged from any legal obligation or liability concerning such cremated remains.

(4) One hundred and twenty days after providing the notice specified in this part, if the legally authorized person or such person's designee has not instructed the certificateholder, licensee, or registrant that is in possession of the cremated remains to arrange for the final disposition of the cremated remains, then the certificateholder, licensee or registrant may dispose of the cremated remains in any manner permitted by this section, including in any manner that prevents the subsequent recovery of the cremated remains; provided that such certificateholder, licensee, or registrant keeps a permanent record identifying the site of final disposition. The legally authorized person shall be responsible for reimbursing the certificateholder, licensee, or registrant for all reasonable expenses incurred in disposing of the cremated remains. Upon disposing of the cremated remains, the certificateholder, licensee, or registrant, or any other person that complies with this provision shall be discharged from any legal obligation or liability concerning such cremated remains. Any person who was in possession of cremated remains prior to the effective date of this part may dispose of them in accordance with this section.

(5) Except with the express written permission of the legally authorized person, no person shall:

(a) Dispose of cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This prohibition shall not apply to the scattering of cremated remains at sea or by air or in an area located in a dedicated cemetery or on church property as of the effective date of this act and used exclusively for such purposes, or to the incidental or inadvertent commingling of minuscule amounts of cremated remains that may occur as part of the normal cremation or final disposition process.

(b) Place cremated remains of more than one person in the same temporary container or urn.

(6) Upon the written direction of the legally authorized person the cremated remains may be divided and final disposition may take various forms.

Section 118. Limitation of liability.—

(1) A crematory authority which has received an executed cremation authorization form that complies with the provisions set forth in this part and which has received any additional documentation required by this part shall not be liable for cremating the designated human remains, except for in cases of its own gross negligence, provided that such cremation is performed in accordance with this part and the instructions on the cremation authorization form.

(2) A funeral authority or direct cremation authority that delivers an executed cremation authorization form that complies with the provisions set forth in this part, along with any additional documentation required by this part, to a crematory authority, shall not be liable for the cremation of the designated human remains, except in cases of its own gross negligence in completing or obtaining such documentation.

(3) A crematory authority shall not be liable for refusing to accept human remains or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled, if:

(a) It is aware of any dispute concerning the cremation of the human remains.

(b) It has a reasonable basis for questioning any of the representations made by the legally authorized person.

(c) It refuses to accept the human remains for any other lawful reason. This provision shall not be construed as placing any affirmative obligation, not otherwise required by law, on any crematory to accept any human remains for cremation.

(4) A crematory authority shall not be liable for refusing to release cremated remains or to arrange for their final disposition until it receives a court order or other suitable confirmation that a dispute has been settled, if it is aware of any dispute concerning the release or final disposition of the cremated remains.

(5) A crematory authority shall not be responsible or liable for any valuables delivered to the crematory with human remains, unless the crematory has received written instructions pursuant to this part.

(6) No cemetery authority shall be liable for any cremated remains that are dumped, scattered, or otherwise deposited on the cemetery in violation of this part, if such action is taken without the cemetery authority's consent.

Section 119. Pacemakers and hazardous implants.—If a legally authorized person informs the funeral director or direct cremationist of the presence of a pacemaker or other hazardous materials or implants in the human remains, the funeral director or direct cremationist shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or other hazardous materials or implants. Should the funeral director or direct cremationist who delivers the human remains to the crematory fail to ensure that the pacemaker or other hazardous materials or implants have been removed from the human remains prior to such delivery, and should the human remains be cremated with such pacemaker or other hazardous materials or implants, the funeral director or direct cremationist who delivered the human remains to the crematory shall be liable for all damages occasioned thereby and resulting therefrom.

Section 120. Rules.—

(1) The board may adopt, amend, or repeal such rules, not inconsistent with this part, as may be necessary to enable it to administer and enforce the provisions of this part. Such rules specifically shall include the conditions under which human remains of individuals dying from infectious, contagious, communicable, or dangerous diseases can be transported from any portion of the state to a crematory for the purpose of cremation; minimum standards of sanitation; required equipment and fire protection for all crematories; and requirements for inspection of crematories that the board may deem necessary for the protection of the public.

(2) A crematory authority may enact reasonable rules, not inconsistent with this part, for the management and operation of a crematory. Nothing in this provision shall prevent a crematory authority from enacting rules that are more stringent than the provisions contained in this part.

Section 121. Scope of act.—This part shall be construed and interpreted as a comprehensive cremation statute, and the provisions of this part shall take precedence over any existing laws that govern dead human bodies and human remains that do not specifically address cremation or the disposition of cremated remains.

Section 122. Sections 470.001, 470.003, 470.0085, 470.014, 470.015, 470.016, 470.017, 470.018, 470.019, 470.021, 470.022, 470.0255, 470.026, 470.027, 470.028, 470.029, 470.032, 470.033, 470.034, 470.035, 470.036, 470.037, 470.038, 470.039, and 470.0395, Florida Statutes; sections 470.006, 470.009, and 470.024, Florida Statutes, as amended by chapter 91-137, Laws of Florida; section 470.023 and 470.031, Florida Statutes, as amended by chapter 91-224, Laws of Florida; sections 470.002, 470.005, 470.007, 470.011, and 470.013, Florida Statutes, as amended by chapter 92-149, Laws of Florida; and sections 470.008, 470.012, and 470.025, Florida Statutes, as amended by chapters 91-137 and 92-149, Laws of Florida, are hereby repealed.

Section 123. Sections 497.001, 497.002, 497.003, 497.004, 497.005, 497.006, 497.007, 497.008, 497.009, 497.011, 497.012, 497.014, 497.015, 497.016, 497.018, 497.019, 497.021, 497.022, 497.023, 497.024, 497.025, 497.026, 497.027, 497.029, 497.031, 497.033, 497.035, 497.041, 497.043, 497.0435, 497.044, 497.046, 497.048, 497.049, 497.054, 497.056, 497.057, 497.061, 497.071, and 497.091, Florida Statutes, and section 497.0484, Florida Statutes, as amended by chapter 91-220, Laws of Florida, are hereby repealed.

Section 124. Sections 639.055, 639.07, 639.08, 639.085, 639.087, 639.09, 639.10, 639.105, 639.107, 639.109, 639.11, 639.13, 639 14, 639.145, 639.149, 639.15, 639.162, 639.165, 639.17, 639.20, 639.21, 639.22, 629.23, 639.24, 639.25, 639.26, 639.27, 639.28, 639.29, 639.30, and 639.33, Florida Statutes; section 639.106, Florida Statutes, as amended by chapter 91-106, Laws of Florida; section 639.108, Florida Statutes, as amended by chapter 92-97, Laws of Florida; section 639.16, Florida Statutes, as amended by chapter 91-110, Laws of Florida; and section 639.185, Florida Statutes, as amended by chapter 91-108, Laws of Florida, are hereby repealed.

Section 125. Section 245.07, Florida Statutes, is amended to read:

245.07 Retention of bodies before use; unfit or excess number of bodies, disposition procedure.—All bodies received by the Division of Universities shall be retained in receiving vaults for a period of not less than 48 hours before allowing their use for medical science; if at any time more bodies are made available to the division than can be used for medical science under its jurisdiction, or if a body shall be deemed by the division to be unfit for anatomical purposes, the division may notify, in writing, the county commissioners of the county where such person died, who shall direct some person to take charge of such body and cause it to be buried or cremated in accordance with the already existing rules, laws, and practices for disposing of such unclaimed bodies within the confines of the said county. However, prior to having any body buried or cremated, the county shall make a reasonable effort to determine the identity of the body and shall further make a reasonable effort to contact any relatives of the deceased person. If a relative of the deceased person is contacted and expresses a preference for either burial or cremation, the county shall make a reasonable effort to accommodate the request of the relative. For purposes of this section, the county commissioners of the county where such person died shall be considered a "legally authorized person" ~~pursuant to s. 470.002(18)~~.

Section 126. Paragraph (m) of subsection (1) of section 624.523, Florida Statutes, is amended to read:

624.523 Insurance Commissioner's Regulatory Trust Fund.—

(1) There is created in the State Treasury a trust fund designated "Insurance Commissioner's Regulatory Trust Fund" to which shall be credited all payments received on account of the following items:

(m) All sums received under the Florida Preneed Sales Act for the issuance of a certificate or renewal ~~s. 639.10(4)~~.

Section 127. Paragraph (d) of subsection (1) and subsection (3) of section 626.785, Florida Statutes, are amended to read:

626.785 Qualifications for license.—

(1) The department shall not grant or issue a license as life agent to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

(d) Must not be a funeral director or direct disposer, or an employee or representative thereof, or have an office in, or in connection with, a funeral establishment, except that a funeral establishment may contract with a life insurance agent to sell a preneed contract as defined in the Florida Funeral, Cemetery, Crematory, and Monument Administration Act ~~chapter 639~~. Notwithstanding other provisions of this chapter, such insurance agent may sell limited policies of insurance covering the expense of final disposition or burial of an insured in an amount not to exceed $7,500.

(3) Notwithstanding any other provisions of this chapter, a funeral director, a direct disposer, or an employee of a funeral establishment which holds a certificate of authority ~~pursuant to s. 639.09~~ may obtain an agent's license to sell only policies of life insurance covering the expense of a prearrangement for funeral services or merchandise so as to provide funds at the time the services and merchandise are needed. The face amount of insurance covered by any such policy shall not exceed $7,500.

Section 128. Paragraph (h) of subsection (1) of section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term "specialty insurer" means any person holding a license or certificate of authority as:

(h) A licensed direct disposer or a licensed funeral director authorized to issue preneed contracts as those terms are defined in *the Florida Funeral, Cemetery, and Crematory Administration Act* ~~s. 639.07(2), (4), and (6)~~;

Section 129. Section 704.08, Florida Statutes, is repealed.

Section 130. This section and sections 3, 4, and 5 of this act shall take effect upon this act becoming a law. All other sections of this act shall take effect January 1, 1994.

And the title is amended as follows:

In title, on page 1, line 1, through page 17, line 17, strike all of said lines and insert: A bill to be entitled An act relating to funeral homes, cemetery companies, and crematory companies; creating the Florida Funeral, Cemetery, and Crematory Administration Act; providing definitions; creating the Board of Funeral, and Cemetery Services within the Department of Professional Regulation; providing for membership; providing rule making authority; providing for the functions and authority of the Comptroller; providing for the administration of trust funds; providing for trust fund investments; providing for an annual report; providing for trust fund examinations; providing for licensure and registration; providing for change of ownership; providing for injunctive proceedings; providing for receivers and administrators; providing for dissolution or liquidation; providing for solicitation of burial rights, merchandise, and services; providing requirements with respect to sales practices on merchandise and services; prohibiting unfair methods of competition and unfair or deceptive acts or practices; providing for information to the public; providing for fees; providing for the disposition of fees and penalties; providing for attorney's fees; providing for display of notice of regulation; providing a penalty for failure to comply; providing for recordkeeping; providing for inspections; permitting multiple licenses and registrations; providing exceptions; providing grounds for disciplinary action; providing for administrative penalties; providing for suspension and revocation; providing for civil remedies and civil liability; providing for criminal penalties; prohibiting discriminatory refusal to do business; providing a penalty; providing for a toll-free complaint number; providing a savings clause; creating the Florida Preneed Sales Act; providing legislative purpose; providing for authorized preneed sellers and preneed sales; providing for preneed trust fund deposits; providing for preneed trust fund withdrawals; providing for cancellation and refund; providing for alternative preneed contracts; providing for evidence of financial responsibility as an alternative to trust deposit; providing for performance and delivery; providing for issuance of preneed certificate of authority; providing for preneed sales agents; providing for preneed contracts; prohibiting unfair methods of preneed competition and unfair or deceptive acts or practices; creating a Preneed Contract Consumer Protection Trust Fund; providing for the transfer of preneed trust funds; providing for the application of the act; providing for existing preneed trust funds and merchandise funds; providing for transfers of burial rights, merchandise, and services; creating the Florida Funeral Directors and Embalmers Licensing Act; providing legislative purpose; providing for the licensure of a funeral director by examination or endorsement; providing for the registration of funeral director interns; providing for the licensing of an embalmer by examination or endorsement; providing for the registration of embalmer interns; providing for concurrent internships, dual licenses, and display of license; providing for training by accredited institutions; providing for renewal of funeral director and embalmer licenses; providing for inactive status; providing for the practice of funeral directing; providing for licensing standards for funeral establishments; prohibiting unauthorized conduct; providing for health and safety education; providing for continuing education; providing for reciprocity, temporary license, removal services, refrigeration facilities, and centralized embalming facilities; providing for disclosure of identity; providing for itemized price lists and disclosure; providing for cash advance and escrow refund accounts; providing for affidavit of cases embalmed and bodies handled; providing that it is unlawful to remove or embalm a body under certain circumstances; providing for embalming and refrigeration; prohibiting violations; creating the Florida Cemetery Act; providing for scope; providing for the effect of the act on existing cemeteries; providing for licenses, applications, and fees for cemetery authorities; providing for endowment care trust funds; providing for remedy of the board; providing for disposition of income of endowment care trust funds; providing for notice; providing for a percentage of payments for burial rights and monument maintenance; providing liability for endowment care trust fund income; providing for minimum acreage and the sale or disposition of cemetery lands; providing for the dedication of cemetery property; providing for construction of mausoleums and preconstruction trust funds; providing compliance requirements; providing for authorized functions of cemetery authorities; providing for the installation and maintenance of monuments; providing for outer burial container installation; providing fees; prohibiting illegal tying arrangements; providing for immunity and actions with respect to abandoned cemeteries; requiring the provision of addresses; providing for a presumption of abandonment, procedures, and sale of abandoned unused burial rights; providing for disclosures; providing for disinterment; providing for private mausoleums; providing for rules; providing for records; providing for the right of ingress and egress for visiting or maintenance; creating the Florida Crematory and Cremation Act; providing legislative purpose; providing for the registration of direct cremationists; providing for registration renewal; providing duties of direct cremationists; providing for continuing education for direct cremationists; providing registration standards for direct cremation establishments; providing for the establishment of a crematory and for licensure of a crematory authority; providing for health and safety education for operational personnel; providing for recordkeeping; providing for cremation receptacles; providing for cremation procedures and requirements; providing for the disposition of cremated remains; providing for limitation of liability; providing requirements with respect to pacemakers and hazardous implants; providing for rules; providing for scope; repealing ch. 470, F.S., relating to funeral directing, embalming, and direct disposition of bodies; repealing chapter 497, F.S., relating to the Florida Cemetery Act; repealing ch. 639, F.S., relating to preneed funeral merchandise or service contracts; amending ss. 245.07, 624.523, 626.785, 628.4615, F.S.; correcting statutory cross-references; repealing s. 704.08, F.S., relating to the right of ingress or egress for visiting or maintenance in cemeteries; providing an effective date.

Senator Sullivan moved the following amendment which was adopted:

Amendment 2—On page 160, strike all of lines 3-9 and insert: , *facilities rented, and merchandise sold; and 100 percent of the purchase price collected for all cash advance items sold. Such deposits shall be made* ~~or paid on the preneed~~

The vote was:

Yeas—21 Nays—13

Reconsideration of Amendment

On motion by Senator Hargrett, the Senate reconsidered the vote by which **Amendment 1** failed. **Amendment 1** was adopted.

On motion by Senator Sullivan, the Senate reconsidered the vote by which **Amendment 2** was adopted. **Amendment 2** was withdrawn.

Further consideration of **HB 2345** as amended was deferred.

On motions by Senator Jones, by two-thirds vote **HB 1679** was withdrawn from the Committees on Governmental Operations and Appropriations.

On motion by Senator Jones—

HB 1679—A bill to be entitled An act relating to information technology resources; amending s. 287.073, F.S.; expanding the membership of the Information Technology Resource Procurement Advisory Council; requiring agencies to provide the advisory council with statements of compliance or noncompliance with council recommendations; eliminating specified approval of certain agency information technology resources procurements; amending s. 287.063, F.S.; removing an exemption from specified approval of equipment acquisition through a lease or deferred payment purchase arrangement; amending s. 282.313, F.S.; eliminating specified data processing councils and establishing data processing policy boards; providing board membership and functions; amending s. 216.272, F.S.; authorizing the creation of reserve accounts within the Working Capital Trust Fund; authorizing the Division of Purchasing of the Department of Management Services to implement a pilot project; requiring the division to develop specified criteria with respect to the purchasing of information technology resources; requiring the division to develop model contracts for information technology resources acquisitions; providing for reports by the division; providing an effective date.

—a companion measure, was substituted for **CS for SB 1594** and read the second time by title. On motion by Senator Jones, by two-thirds vote **HB 1679** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

CS for SB 1742—A bill to be entitled An act relating to education; amending s. 228.041, F.S.; revising definitions for the Florida School Code to replace the term "handicapped" with "students with disabilities" and expanding definition of exceptional student; providing definition of year-round school; amending s. 228.195, F.S.; revising provisions relating to availability of breakfast programs; amending s. 229.808, F.S.; changing the annual nonpublic school survey to a biennial survey; amending ss. 229.8341, 230.15, 230.16, 230.21, 230.2303, 230.2305, 232.26, 234.041, 236.0835, 236.145, 242.332, F.S.; revising terminology to provide for gender neutrality; replacing the term "handicapped" with "students with disabilities" and providing related terminology; requiring demonstration of certain knowledge by principals and other school district administrative and supervisory personnel having direct responsibility for the prekindergarten early intervention program; revising the membership of the district interagency coordinating councils; amending s. 230.23, F.S.; revising provisions relating to school board provision of special instruction and services for exceptional students; amending and renumbering s. 235.439, F.S.; providing for school board monitoring of full school utilization programs; amending s. 230.2316, F.S.; requiring each program to include individual and group counseling each day, rather than as an activity for a minimum of two class periods daily; amending s. 230.2318, F.S.; revising requirements for a school resource officer program plan; amending s. 230.33, F.S.; providing requirements for school district planned school programs; amending s. 232.01, F.S.; clarifying language relating to eligibility for special education programs; amending s. 232.2462, F.S.; providing student requirements relating to the awarding of credits for full-year courses; amending ss. 233.056 and 233.25, F.S.; replacing the term "visually handicapped" with "visually impaired"; amending s. 233.16, F.S.; authorizing a cash deposit in lieu of a bond for contracts relating to instructional materials; amending s. 233.18, F.S.; revising provisions relating to the deposit of specimen copies of textbooks; amending s. 234.01, F.S.; authorizing transportation for other persons under certain circumstances; amending s. 234.02, F.S.; expanding conditions under which motor vehicles other than school buses may be used; amending s. 236.013, F.S.; revising provisions relating to student membership in certain programs; amending s. 236.081, F.S.; revising provisions relating to determination of full-time equivalent membership; deleting a definition; revising provisions relating to district required local effort; amending s. 236.0815, F.S.; revising funding for additional educational services for certain students; amending s. 236.083, F.S.; revising provisions relating to funding for certain student transportation and authorizing rules for funding for transportation to year-round-school programs; amending s. 236.135, F.S.; deleting a requirement that each district school board, community college board of trustees, and the Board of Regents secure approval from the Commissioner of Education before purchasing or leasing electronic data processing equipment or software; authorizing those boards to obtain the equipment or software to maintain the comprehensive management information systems; requiring that the boards, rather than the commissioner, ensure that the software or equipment is compatible with the Florida Information Resources Network and that costs are reduced by making the best use of existing hardware and software; requiring that the commissioner request supplemental funding for school districts to accomplish the objectives of the comprehensive management information systems; amending s. 236.25, F.S.; revising provisions relating to use of the tax levy for capital outlay purposes; amending s. 237.041, F.S.; revising provisions relating to examination of annual budgets; amending s. 237.081, F.S.; revising provisions relating to transmission of adopted budgets; amending s. 237.161, F.S.; conforming provisions relating to obligations for certain purchases; amending s. 240.405, F.S.; revising provisions relating to eligibility for grants and courses for certain teachers for training in exceptional student education; amending s. 200.065, F.S.; conforming provisions relating to tax levy and notice for certain purchases; amending s. 413.011, F.S.; revising provisions relating to the Advisory Council for the Blind; providing an effective date.

—was read the second time by title.

Senator Grant moved the following amendments which were adopted:

Amendment 1 (with Title Amendment)—On page 30, between lines 15 and 16, insert:

Section 18. Paragraph (b) of subsection (1) of section 232.46, Florida Statutes, is amended to read:

232.46 Administration of medication by school district personnel.—

(1) Notwithstanding the provisions of the Nurse Practice Act, chapter 464, school district personnel shall be authorized to assist students in the administration of prescription medication when the following conditions have been met:

(b) Each district school board shall adopt policies and procedures governing the administration of prescription medication by school district personnel. The policies and procedures shall include, but not be limited to, the following provisions:

1. For each prescribed medication, the student's parent or guardian shall provide to the school principal a written statement which shall grant to the principal or his designee permission to assist in the administration of such medication and which shall explain the necessity for such medication to be provided during the school day, including any occasion when the student is away from school property on official school business. The school principal or his trained designee shall assist the student in the administration of such medication.

2. Each prescribed medication to be administered by school personnel shall be received and stored in its original container. When the medication is not in use, it shall be stored in its original container in a secure fashion under lock and key in a location designated by the principal.

3. An asthmatic student shall be able to carry a metered dose inhaler on their person when they have approval from their parent and their physician. The school principal shall be provided with a copy of the parent's and physician's approval.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 2, line 13, after the semicolon (;) insert: amending s. 232.46, F.S.; authorizing asthmatic students to carry an inhaler under certain circumstances;

Amendment 2 (with Title Amendment)—On page 50, between lines 12 and 13, insert:

Section 40. Subparagraph 3. of section 232.46(1)(b), Florida Statutes, is created to read:

3. An asthmatic student shall be able to carry a metered dose inhaler on his person when he has approval from his parent and his physician. The school principal shall be provided with a copy of a parent's and physician's approval.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, line 11, after the semicolon (;) insert: amending s. 232.46, F.S.;

Senator Dyer moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 50, line 13, insert:

Section 40. Subsection (5) of section 235.193, Florida Statutes, is amended, subsections (6) through (9) are renumbered as subsections (7) through (10), respectively, and a new subsection (6) is added to said section, to read:

235.193 Coordination of planning with local governing bodies.—

(5) The School Board shall file with the local governing body which regulates land use, a notice of intent 90 days prior to bidding the award of an educational facility. *The notice of intent shall not be required for temporary relocatable educational facilities.* The notice of intent must include a description of the proposed educational facility, proposed location or locations, capacity of the facility, and anticipated completion date. Any local governing body that regulates land use may, solely at its option, waive all or part of the 90-day notice period.

(6) At least 30 days prior to the placement of a temporary relocatable educational facility, the school board shall notify by letter of intent the local governing body which regulates the land use on which the temporary relocatable educational facility, the estimated number of students which the temporary relocatable educational facility is estimated to serve, and the estimated amount of time the temporary relocatable educational facility shall be in place, if known at the time the notice is given. The placement of temporary relocatable educational facilities shall be on school grounds and the infrastructure impacts of the placement and hookup of these facilities shall be the responsibility of the local school district.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, line 11 after the semicolon (;) insert: amending s. 235.193, F.S.; providing requirements regarding notice by a school board to the local governing body with respect to temporary relocatable educational facilities;

Senator McKay moved the following amendments which were adopted:

Amendment 4—On page 48, lines 4 and 5, strike "number of school buses" and insert: motor vehicles

Amendment 5—On page 48, line 11, strike "bus purchases" and insert: motor vehicles

On motion by Senator Grant, by two-thirds vote **CS for SB 1742** 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

On motions by Senator Kirkpatrick, the rules were waived and by two-thirds vote—

CS for HB 899—A bill to be entitled An act relating to education; amending s. 232.426, F.S.; revising provisions relating to conformance of athletic activities to postsecondary scholarship opportunities; amending s. 228.2001, F.S., relating to the Florida Educational Equity Act; providing additional functions of the Office of Equal Educational Opportunity; providing for a task force on gender equity; providing duties; requiring rules; providing for the withholding of funds; amending s. 240.533, F.S.; requiring each state university to develop a gender equity plan; providing for the withholding of funds; amending ss. 240.5335 and 212.04, F.S.; correcting cross references; amending s. 240.35, F.S.; revising provisions relating to community college fees collected for financial aid purposes; providing an effective date.

—a companion measure, was substituted for **CS for CS for SB 1716** and by two-thirds vote read the second time by title. On motion by Senator Kirkpatrick, by two-thirds vote **CS for HB 899** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Senate resumed consideration of—

HB 2019—A bill to be entitled An act relating to taxation; amending s 212.06, F.S.; providing for retroactive application of the exemption from said tax for certain promotional materials which are exported outside the state; amending s. 199.052, F.S.; providing that failure to timely file a consolidated intangible personal property tax return does not prejudice a taxpayer's right to file such return under certain conditions; providing for retroactive effect; amending s. 624.509, F.S.; exempting certain commercial motor vehicle insurance premiums from insurance premimum tax; amending s. 220.03, F.S.; updating references to the Internal Revenue Code for corporate income tax purposes; providing for retroactive effect; requiring certain studies; providing an effective date.

—which had been previously considered this day. Pending **Amendment 1A** by Senator Bankhead was adopted.

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

Amendment 1B (with Title Amendment)—On page 27, line 12, insert:

Section 20. Subsection (6) of section 196.012, Florida Statutes, is amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(6) Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. *For purposes of the preceding sentence, an activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce shall be deemed an activity which serves a governmental, municipal or public purpose or function.* The term "governmental purpose" also includes a direct use of property on federal lands in connection with the Federal Government's Space Exploration Program. Real property and tangible personal property owned by the Federal Government and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt. *"Owned by the lessee" as used in this chapter does not include personal property, buildings, or other real property improvements used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed based operation which provides goods and services to the general aviation public in the promotion of air commerce provided that the real property is designated as an aviation area on an airport layout plan approved by the Federal Aviation Administration. For purposes of determination of "ownership", buildings and other real property improvements which will revert to the airport authority or other governmental unit upon expiration of the term of the lease shall be deemed "owned" by the governmental unit and not the lessee.*

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 30, line 5, after the semicolon (;) insert: amending s. 196.012(6), F.S.; expanding the definition of governmental, municipal or public purpose to include certain aviation activities; defining the term "owned by the lessee";

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

Amendment 1C (with Title Amendment)—On page 27, line 12, insert:

Section 20. Paragraph (n) of subsection (3) of section 125.0104, Florida Statutes, 1992 Supplement, is renumbered as section 212.0306, Florida Statutes, and amended to read:

212.0306 Local option food and beverage tax; procedure for levying; authorized uses; administration.—

(1)~~(n)1.~~ Any county, as defined in s. 125.011(1), ~~which, on January 1, 1989, imposes a tourist development tax on leases and rentals,~~ may impose *the following additional taxes* ~~an additional tax~~, by ordinance adopted by a majority vote of the governing body.~~:~~

(a) At the rate of 2 percent on the sale of food, beverages, or alcoholic beverages in hotels and motels only.

(b) At the rate of 1 percent on the sale of food, beverages, or alcoholic beverages in establishments that are licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels; however, the tax shall not apply to any item sold by the package for off-premises consumption.~~, or in hotels, motels, and any establishment which is licensed under s. 565.02 except any establishment, other than a hotel or motel, licensed under s. 563.02 or s. 564.02. However, if on January 1, 1989, the county is not administering the tourist development tax pursuant to subsection (10), the governing body of the county shall not adopt the ordinance authorized in this paragraph until January 1, 1990.~~

(2)(a) Beginning July 1 of each year, and effective until the following June 30, the sales in any establishment licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels, that had gross annual revenues of $400,000 or less in the previous calendar year, are exempt from the tax authorized by paragraph (1)(b).

(b) Sales in any veterans', fraternal, or other chartered or incorporated club licensed under s. 565.02(4) are exempt from the tax authorized by paragraph (1)(b).

(c) All transactions that are exempt from the state sales tax are exempt from the taxes authorized by subsection (1).

(d) Sales in cities or towns presently imposing a municipal resort tax as authorized by chapter 67-930, Laws of Florida, are exempt from the taxes authorized by subsection (1).

(3)(a)~~2.a. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels and motels only,~~ The proceeds of *the* ~~such~~ tax *authorized by paragraph (1)(a)* shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3~~. *If* ~~In the event~~ the county is not or is no longer a party to such an interlocal agreement and contract with a countywide convention and visitors bureau, the county shall allocate the proceeds of such tax for the purposes described in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3~~.

(b)~~b. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels, motels, and any establishment which is licensed under s. 565.02,~~ The proceeds from the tax *authorized by paragraph (1)(b)* shall be allocated as follows:

1.~~(I)~~ For the first *12 months* ~~2 years~~ after the tax is imposed, *90 percent of the revenues shall be used by the county solely for the purpose of assisting persons who have become, or are about to become, homeless, and 10 percent of the revenues shall be used exclusively for AIDS care, with the first priority given to programs for homeless persons that are tested HIV positive and participate in currently unfunded programs.*

2. Thereafter:

a. Twenty percent shall be used by the county to support economic development activities for developing new or expanded businesses or establishing other projects that stimulate new employment opportunities. However, one-third of this amount shall be used for international trade promotion by recognized not-for-profit organizations which are focused on the economic development of the county through international business promotion. In the distribution of these funds, special consideration shall be given to the support of organizations with global networks of members, services, and facilities to most fully assist small and mid-sized businesses in Dade County to increase their sales in international markets.

b. Forty-five percent shall be used by the county to support culture and cultural activities, including visual arts, performing arts, science and historical museums and exhibitions, historic preservation, literary and media arts, festivals and special events, and marketing funds for county zoos and historic properties.

c. Thirty ~~35~~ percent ~~shall be used by the county to revitalize economically blighted areas, 20 percent shall be used by the county as provided by law, and 45 percent~~ shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in *s. 125.0104(5)(a)2. or 3* ~~subparagraph (5)(a)2. or 3~~. *If* ~~In the event~~ the county is not or is no longer a party to such an interlocal agreement and contract with a convention and visitors bureau, the county shall allocate the *30* ~~45~~ percent of the proceeds for the purposes described in *s. 125.0104(5)(a)2. or 3* ~~subparagraph (5)(a)2. or 3~~.

d. Five percent of the revenues shall be used exclusively for AIDS care, with the first priority given to programs for homeless persons that are tested HIV positive and participate in currently unfunded programs.

~~(II) Thereafter, an amount equal to the average of the proceeds collected from such tax during each of the first 2 years after the tax is imposed shall be allocated as provided in sub-sub-subparagraph (I) and any excess above such amount shall be allocated to the county to be used as provided by law.~~

(c) The county shall continue to contribute each year at least 60 percent of its aggregate expenditures from the county's general fund budget for the Department of Cultural Affairs programs and services at or above the average level of such expenditures in the two fiscal years preceding the date of levying this tax.

(4) A certified copy of the ordinance that authorizes the imposition of a tax authorized by this section shall be furnished by the county to the Department of Revenue within 10 days after the adoption of the ordinance.

(5) A tax authorized by this section may take effect on the first day of any month, but may not take effect until at least 60 days after the adoption of the ordinance levying the tax.

(6) Any county levying a tax authorized by this section must locally administer the tax using the powers and duties enumerated for local administration of the tourist development tax by s. 125.0104, Florida Statutes, 1992 Supplement. The county's ordinance shall also provide for brackets applicable to taxable transactions.

(7) This section is repealed on October 1, 2008.

~~3. The penalties provided in subsection (8) apply to the tax on the sale of food, beverages, or alcoholic beverages authorized in this paragraph.~~

Section 21. The use of the tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by this act, for the purposes provided in s. 212.0306(3)(b)1., Florida Statutes, as created by this act, shall be consistent with the countywide plan provided in House Bill 2257, 1993 Regular Session, or similar legislation.

Section 22. This act shall take effect July 1, 1993, except that this section and the preceding two sections that renumber section 125.0104(3)(n), Florida Statutes, as section 212.0306, Florida Statutes, amend that section, and provide for the uses of the tax authorized by that section shall take effect upon becoming a law, if House Bill 2257, or similar legislation, is adopted by the 1993 Legislature. However, a county may not levy the tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by this act, unless the tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by House Bill 2257, or similar legislation, is levied by the county. If House Bill 2257, or similar legislation, is adopted by the 1993 Legislature, it is the legislative intent that a county is authorized to

levy both the 1 percent tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by this act, and the 1 percent tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by House Bill 2257, or similar legislation. The Division of Statutory Revision of the Joint Legislative Management Committee is directed to conform the statutes to reflect this legislative intent.

(Renumber subsequent sections.)

And the title is amended to read:

In title, on page 30, line 5, strike "providing an effective date." and insert: amending and renumbering s. 125.0104(3)(n), F.S., which authorizes certain counties to impose an additional tax on the sale of food, beverages, or alcoholic beverages in specified establishments; revising the establishments to which the tax applies; authorizing levy of an additional tax on sales in establishments licensed to sell alcoholic beverages for consumption on the premises, except hotels and motels; providing exemptions; providing that the proceeds of the additional tax shall be used to assist the homeless, for economic development and cultural activities, and to promote tourism; providing requirements for imposition of such taxes; requiring local administration of such taxes; providing for repeal; providing legislative intent; providing effective dates, including a contingent effective date.

Amendment 1D (with Title Amendment)—On page 27, line 12, strike the effective date and insert:

Section 20. Effective upon becoming a law, paragraph (n) of subsection (3) of section 125.0104, Florida Statutes, 1992 Supplement, is renumbered as section 212.0306, Florida Statutes, and amended to read:

212.0306 Local option food and beverage tax; procedure for levying; authorized uses; administration.—

(1)~~(n)1.~~ Any county, as defined in s. 125.011(1), ~~which, on January 1, 1989, imposes a tourist development tax on leases and rentals,~~ may impose *the following additional taxes* ~~an additional tax~~, by ordinance adopted by a majority vote of the governing body:~~,~~

(a) At the rate of 2 percent on the sale of food, beverages, or alcoholic beverages in hotels and motels only.

(b) At the rate of 1 percent on the sale of food, beverages, or alcoholic beverages in establishments that are licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels; however, the tax shall not apply to any item sold by the package for off-premises consumption. ~~, or in hotels, motels, and any establishment which is licensed under s. 565.02 except any establishment, other than a hotel or motel, licensed under s. 563.02 or s. 564.02. However, if on January 1, 1989, the county is not administering the tourist development tax pursuant to subsection (10), the governing body of the county shall not adopt the ordinance authorized in this paragraph until January 1, 1990.~~

(2)(a) Beginning July 1 of each year, and effective until the following June 30, the sales in any establishment licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels, that had gross annual revenues of $400,000 or less in the previous calendar year, are exempt from the tax authorized by paragraph (1)(b).

(b) Sales in any veterans', fraternal, or other chartered or incorporated club licensed under s. 565.02(4) are exempt from the tax authorized by paragraph (1)(b).

(c) All transactions that are exempt from the state sales tax are exempt from the taxes authorized by subsection (1).

(d) Sales in cities or towns presently imposing a municipal resort tax as authorized by chapter 67-930, Laws of Florida, are exempt from the taxes authorized by subsection (1).

(3)(a)~~2.a. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels and motels only,~~ The proceeds of *the* ~~such~~ tax *authorized by paragraph (1)(a)* shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3~~. *If* ~~In the event~~ the county is not or is no longer a party to such an interlocal agreement and contract with a countywide convention and visitors bureau, the county shall allocate the proceeds of such tax for the purposes described in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3~~.

(b)~~b.~~ *For the first 12 months,* ~~If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels, motels, and any establishment which is licensed under s. 565.02,~~ the proceeds from the tax *authorized by paragraph (1)(b)* shall be *used by the county to assist persons who have become, or are about to become, homeless. These funds shall be made available for emergency homeless shelters, food, clothing, medical care, counseling, alcohol and drug abuse treatment, mental health treatment, employment and training, education, and housing. Thereafter, not less than 15 percent of these funds shall be made available for construction and operation of a spouse abuse emergency treatment and shelter facility, and the remainder shall be used for the other purposes set forth in this paragraph. Prior to enactment of the ordinance levying and imposing the tax provided for by paragraph (1)(b), the county shall appoint a representative task force including, but not limited to, service providers, homeless advocates, and impacted jurisdictions to prepare and submit to the governing board of the county for its approval a plan for addressing the needs of persons who have become, or are about to become, homeless. The governing board of the county shall adopt this countywide plan for addressing homeless needs as part of the ordinance levying the tax.* ~~allocated as follows:~~

~~(I) For the first 2 years after the tax is imposed, 35 percent shall be used by the county to revitalize economically blighted areas, 20 percent shall be used by the county as provided by law, and 45 percent shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in subparagraph (5)(a)2. or 3. In the event the county is not or is no longer a party to such an interlocal agreement and contract with a convention and visitors bureau, the county shall allocate the 45 percent of the proceeds for the purposes described in subparagraph (5)(a)2. or 3.~~

~~(II) Thereafter, an amount equal to the average of the proceeds collected from such tax during each of the first 2 years after the tax is imposed shall be allocated as provided in sub-sub-subparagraph (I) and any excess above such amount shall be allocated to the county to be used as provided by law.~~

(c) The county and each municipality in that county shall continue to contribute each year at least 85 percent of aggregate expenditures from the respective county or municipal general fund budget for county or municipal operated homeless shelter services at or above the average level of such expenditures in the two fiscal years preceding the date of levying this tax.

(4) A certified copy of the ordinance that authorizes the imposition of a tax authorized by this section shall be furnished by the county to the Department of Revenue within 10 days after the adoption of the ordinance.

(5) A tax authorized by this section may take effect on the first day of any month, but may not take effect until at least 60 days after the adoption of the ordinance levying the tax.

(6) Any county levying a tax authorized by this section must locally administer the tax using the powers and duties enumerated for local administration of the tourist development tax by s. 125.0104, Florida Statutes, 1992 Supplement. The county's ordinance shall also provide for brackets applicable to taxable transactions.

(7) This section is repealed on October 1, 2008.

~~3. The penalties provided in subsection (8) apply to the tax on the sale of food, beverages, or alcoholic beverages authorized in this paragraph.~~

And the title is amended as follows:

In title, on page 30, line 5, strike "providing an effective date" and insert: amending and renumbering s. 125.0104(3)(n), F.S., which authorizes certain counties to impose an additional tax on the sale of food, beverages, or alcoholic beverages in specified establishments; revising the

establishments to which the tax applies; authorizing levy of an additional tax on sales in establishments licensed to sell alcoholic beverages for consumption on the premises, except hotels and motels; providing exemptions; providing that the proceeds of the additional tax shall be used to assist the homeless and for spouse abuse centers; providing for a task force to prepare a plan to address homeless needs; providing requirements for imposition of such taxes; requiring local administration of such taxes; providing for repeal; providing effective dates.

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

Amendment 1E—On page 27, between lines 11 and 12, insert:

Section 20. Paragraph (e) of subsection (5) of section 212.08, Florida Statutes, 1992 Supplement, is amended, and paragraph (ee) is added to subsection (7) of that section, 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.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(e) Gas used for certain agricultural purposes.—Butane gas, propane gas, *natural gas,* and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper is also deemed an exempt use.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 30, line 5, after the semicolon (;) insert: amending s. 212.08, F.S.; exempting natural gas used for certain agricultural purposes from sales taxes;

Amendment 1 as amended was adopted.

On motion by Senator Kiser, by two-thirds vote **HB 2019** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—30 Nays—5

CS for HJR 1579—A joint resolution proposing an amendment to Section 16 of Article III of the State Constitution relating to legislative and congressional redistricting.

—was read the second time by title.

Senators Crenshaw and Kiser offered the following amendment which was moved by Senator Kiser:

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

That the repeal of section 16 of Article III of the State Constitution and the addition of the following section 10 of Article II of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE II
GENERAL PROVISIONS

SECTION 10. Legislative apportionment and congressional redistricting.—

(a) REAPPORTIONMENT MANDATE.—By the end of each year that ends in one, the state shall be divided by the commission herein created into: as many congressional districts as there are United States Representatives apportioned to the state; forty consecutively numbered senate districts; and one-hundred-and-twenty consecutively numbered representative districts. All legislative districts shall be single-member districts.

(b) REAPPORTIONMENT COMMISSION.—

(1) In each year that ends in zero and at any other time of court-ordered reapportionment, a commission shall be established to prepare a redistricting plan for congressional districts and a reapportionment plan for legislative districts. The commission shall consist of eleven electors, none of whom may be an elected public official, party officer, registered lobbyist, legislative employee, or congressional employee, as such terms are defined by law. No more than six members may be of the same political party. Any other person may serve on the commission. By March 1 of the same year, the governor, the president of the senate, the senate minority leader, the speaker of the house of representatives, and the house minority leader in this state shall each appoint one member to the commission who otherwise meets qualifications of this section. In February of the same year, each chief judge of each district court of appeal shall recommend to the chief justice of the supreme court at least three individuals who otherwise meet the qualifications of this section and are domiciled in the district. By April 1, but not before March 1, of the same year, the chief justice of the supreme court shall appoint five members to serve on the commission. The chief justice of the supreme court shall appoint the five members from the recommendations made by the chief judge of each district court of appeal in this state. In appointing the five members, the chief justice of the supreme court shall ensure that the membership of the commission reasonably reflects the geographic, gender, racial, and language diversity, and the political party affiliations of the citizens of this state. Further, the chief justice shall ensure that at least one member of the commission is from each racial and language minority group that comprises at least 10 percent of the population of this state as shown by the most recent federal decennial census. If the recommendations from the chief judges do not permit such appointments, the chief justice shall disregard the recommendations to the extent necessary to ensure such representation.

(2) By April 20, the ten commissioners shall select, by a vote of at least six commissioners, an eleventh commissioner, who shall serve as chairperson.

(3) Should the number of appellate court districts in this state be increased or decreased by the legislature, the number of members on the commission shall increase or decrease accordingly, with the method of appointment remaining unchanged except as herein modified. The chairperson of the commission shall be selected by a two-thirds vote of the commissioners. The chief justice shall appoint an additional member to serve on the commission if the number of commissioners prior to the selection of the chairperson is an odd number.

(4) As a condition of appointment, each commissioner shall take an oath that such commissioner will agree not to seek public office in any of the newly redistricted legislative or congressional districts for a period of two years after the effective date thereof.

(5) Vacancies shall be filled by the chief justice based on the same criteria as the original appointment including domicile within a district of an appellate court within the state, except that the chairperson shall be selected in the manner set forth in paragraph (2).

(6) The legislature shall, by general appropriations, provide adequate funds to enable the commission to carry out its duties.

(7) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall adopt its plans by majority vote. No ex parte communication relative to the merits, threat, or offer of reward shall be made to a commissioner. A commissioner who receives an ex parte communication shall place on the record or otherwise make known the existence of, and disclose, all written communications received and all written responses to such communications, and all oral communications received and all oral responses made thereto. The ex parte prohibition shall not apply to commission staff except that such ex parte communications between commission staff and the following shall be prohibited: any interested party to any proposed plan; any lobbyist as defined in section 112.3148(2)(b), Florida Statutes, or section 112.3215(1)(a), Florida Statutes; and any officer or employee of a political party or its agent or designee. The provisions of section 24 of Article I of this constitution regarding access to public records and meetings shall apply to the commission.

(c) REAPPORTIONMENT STANDARDS.—

(1) Congressional districts and state legislative districts for each respective house shall be as nearly equal in population as is practicable,

based on the population reported in the federal decennial census, taken in each year ending in zero. No congressional district shall have a population that varies by more than one percent from the average population of all congressional districts in the state. No legislative district shall have a population that varies by more than ten percent from the average population of all districts of the respective house. The average of the absolute values of the population deviations of all districts of the respective house shall not vary by more than five percent from the average population of all districts. Any population variance must be justifiable as necessary for compliance with the other standards in this section.

(2) Districts should be composed of convenient contiguous territory and, consistent with paragraph (1), should be drawn to coincide with the boundaries of local political subdivisions, as such terms are defined by general law.

(3) Districts should be compact in form.

(4) No district shall be drawn for the purpose of favoring any political party, incumbent legislator, representative to Congress, or other person. In preparing a plan, the commission shall not take into account the addresses of incumbent legislators or representatives to Congress.

(5) A district shall not be drawn to dilute the voting strength of any racial or language minority group.

On applying the reapportionment standards prescribed in this subsection, the prohibition against drawing a district to dilute the voting strength of any racial or language minority groups shall be controlling over the standards prescribed in paragraphs (2) and (3).

(d) JUDICIAL REVIEW.—Within five days after completion of a plan of apportionment or redistricting, the commission shall file such plan with the secretary of state. Within fifteen days after the filing of an apportionment or redistricting plan by the commission, the attorney general shall petition the state supreme court for a declaratory judgment determining the validity of the plan, including its compliance with all criteria herein specified, applicable federal law, and the constitution of the United States. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within sixty days after the filing of the petition, shall enter its judgment. If the supreme court determines the apportionment or redistricting plan to be invalid in whole or in part, the commission shall forthwith reconvene and shall, within thirty days, adopt a revised plan that conforms to the judgment of the supreme court. The revised plan shall be subject to judicial review by the supreme court in the same manner as the original plan. Upon approval of the supreme court, a plan of apportionment or redistricting shall be filed with the secretary of state, and upon filing, shall be the official plan for the state.

(e) JUDICIAL REAPPORTIONMENT.—If the commission fails to adopt a plan or a revised plan by the end of each year that ends in one, the commission shall, within five days, notify the secretary of state in writing of its inability to adopt a plan. Within five days after the filing of such notice, the attorney general shall petition the supreme court to prepare a plan of apportionment or redistricting. The court shall, not later than sixty days after receiving the petition of the attorney general, file with the secretary of state an order making such apportionment or redistricting.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENTS
ARTICLE II, SECTION 10;
ARTICLE III, SECTION 16

LEGISLATIVE APPORTIONMENT AND CONGRESSIONAL REDISTRICTING.—Proposing amendments to the State Constitution replacing existing provisions providing for legislative apportionment with new provisions that establish reapportionment standards and provide for the creation of a eleven-member commission to prepare an apportionment plan for the state legislature and a redistricting plan for the congressional districts of the state.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert:

House Joint Resolution No. 1579

A joint resolution proposing the repeal of section 16, Article III of the State Constitution, relating to legislative apportionment, and the addition of section 10, Article II of the State Constitution, relating to the establishment of a commission to reapportion the state legislative districts and redistrict congressional districts; prescribing guidelines for such reapportionment and redistricting; and providing for judicial review thereof.

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

Amendment 1A—On page 4, strike all of lines 14-16 and insert: party to any proposed plan; any person who is a lobbyist as defined by law; and any officer or employee of a political

Amendment 1 as amended was adopted.

On motion by Senator Kiser, by two-thirds vote **CS for HJR 1579** as amended was read the third time in full as follows:

CS for HJR 1579—A joint resolution proposing the repeal of section 16, Article III of the State Constitution, relating to legislative apportionment, and the addition of section 10, Article II of the State Constitution, relating to the establishment of a commission to reapportion the state legislative districts and redistrict congressional districts; prescribing guidelines for such reapportionment and redistricting; and providing for judicial review thereof.

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

That the repeal of section 16 of Article III of the State Constitution and the addition of the following section 10 of Article II of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE II
GENERAL PROVISIONS

SECTION 10. Legislative apportionment and congressional redistricting.—

(a) REAPPORTIONMENT MANDATE.—By the end of each year that ends in one, the state shall be divided by the commission herein created into: as many congressional districts as there are United States Representatives apportioned to the state; forty consecutively numbered senate districts; and one-hundred-and-twenty consecutively numbered representative districts. All legislative districts shall be single-member districts.

(b) REAPPORTIONMENT COMMISSION.—

(1) In each year that ends in zero and at any other time of court-ordered reapportionment, a commission shall be established to prepare a redistricting plan for congressional districts and a reapportionment plan for legislative districts. The commission shall consist of eleven electors, none of whom may be an elected public official, party officer, registered lobbyist, legislative employee, or congressional employee, as such terms are defined by law. No more than six members may be of the same political party. Any other person may serve on the commission. By March 1 of the same year, the governor, the president of the senate, the senate minority leader, the speaker of the house of representatives, and the house minority leader in this state shall each appoint one member to the commission who otherwise meets qualifications of this section. In February of the same year, each chief judge of each district court of appeal shall recommend to the chief justice of the supreme court at least three individuals who otherwise meet the qualifications of this section and are domiciled in the district. By April 1, but not before March 1, of the same year, the chief justice of the supreme court shall appoint five members to serve on the commission. The chief justice of the supreme court shall appoint the five members from the recommendations made by the chief judge of each district court of appeal in this state. In appointing the five members, the chief justice of the supreme court shall ensure that the membership of the commission reasonably reflects the geographic, gender, racial, and language diversity, and the political party affiliations of the citizens of this state. Further, the chief justice shall ensure that at least one member of the commission is from each racial and language minority group that comprises at least 10 percent of the population of this state as shown by the most recent federal decennial census. If the recommendations from the chief judges do not permit such appointments, the chief justice shall disregard the recommendations to the extent necessary to ensure such representation.

(2) By April 20, the ten commissioners shall select, by a vote of at least six commissioners, an eleventh commissioner, who shall serve as chairperson.

(3) Should the number of appellate court districts in this state be increased or decreased by the legislature, the number of members on the commission shall increase or decrease accordingly, with the method of appointment remaining unchanged except as herein modified. The chairperson of the commission shall be selected by a two-thirds vote of the commissioners. The chief justice shall appoint an additional member to serve on the commission if the number of commissioners prior to the selection of the chairperson is an odd number.

(4) As a condition of appointment, each commissioner shall take an oath that such commissioner will agree not to seek public office in any of the newly redistricted legislative or congressional districts for a period of two years after the effective date thereof.

(5) Vacancies shall be filled by the chief justice based on the same criteria as the original appointment including domicile within a district of an appellate court within the state, except that the chairperson shall be selected in the manner set forth in paragraph (2).

(6) The legislature shall, by general appropriations, provide adequate funds to enable the commission to carry out its duties.

(7) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall adopt its plans by majority vote. No ex parte communication relative to the merits, threat, or offer of reward shall be made to a commissioner. A commissioner who receives an ex parte communication shall place on the record or otherwise make known the existence of, and disclose, all written communications received and all written responses to such communications, and all oral communications received and all oral responses made thereto. The ex parte prohibition shall not apply to commission staff except that such ex parte communications between commission staff and the following shall be prohibited: any interested *party to any proposed plan; any person who is a lobbyist as defined by law; and any officer or employee of a political* ~~party to any proposed plan; any lobbyist as defined in section 112.3148(2)(b), Florida Statutes, or section 112.3215(1)(a), Florida Statutes; and any officer or employee of a political~~ party or its agent or designee. The provisions of section 24 of Article I of this constitution regarding access to public records and meetings shall apply to the commission.

(c) REAPPORTIONMENT STANDARDS.—

(1) Congressional districts and state legislative districts for each respective house shall be as nearly equal in population as is practicable, based on the population reported in the federal decennial census, taken in each year ending in zero. No congressional district shall have a population that varies by more than one percent from the average population of all congressional districts in the state. No legislative district shall have a population that varies by more than ten percent from the average population of all districts of the respective house. The average of the absolute values of the population deviations of all districts of the respective house shall not vary by more than five percent from the average population of all districts. Any population variance must be justifiable as necessary for compliance with the other standards in this section.

(2) Districts should be composed of convenient contiguous territory and, consistent with paragraph (1), should be drawn to coincide with the boundaries of local political subdivisions, as such terms are defined by general law.

(3) Districts should be compact in form.

(4) No district shall be drawn for the purpose of favoring any political party, incumbent legislator, representative to Congress, or other person. In preparing a plan, the commission shall not take into account the addresses of incumbent legislators or representatives to Congress.

(5) A district shall not be drawn to dilute the voting strength of any racial or language minority group.

On applying the reapportionment standards prescribed in this subsection, the prohibition against drawing a district to dilute the voting strength of any racial or language minority groups shall be controlling over the standards prescribed in paragraphs (2) and (3).

(d) JUDICIAL REVIEW.—Within five days after completion of a plan of apportionment or redistricting, the commission shall file such plan with the secretary of state. Within fifteen days after the filing of an apportionment or redistricting plan by the commission, the attorney general shall petition the state supreme court for a declaratory judgment determining the validity of the plan, including its compliance with all criteria herein specified, applicable federal law, and the constitution of the United States. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within sixty days after the filing of the petition, shall enter its judgment. If the supreme court determines the apportionment or redistricting plan to be invalid in whole or in part, the commission shall forthwith reconvene and shall, within thirty days, adopt a revised plan that conforms to the judgment of the supreme court. The revised plan shall be subject to judicial review by the supreme court in the same manner as the original plan. Upon approval of the supreme court, a plan of apportionment or redistricting shall be filed with the secretary of state, and upon filing, shall be the official plan for the state.

(e) JUDICIAL REAPPORTIONMENT.—If the commission fails to adopt a plan or a revised plan by the end of each year that ends in one, the commission shall, within five days, notify the secretary of state in writing of its inability to adopt a plan. Within five days after the filing of such notice, the attorney general shall petition the supreme court to prepare a plan of apportionment or redistricting. The court shall, not later than sixty days after receiving the petition of the attorney general, file with the secretary of state an order making such apportionment or redistricting.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENTS
ARTICLE II, SECTION 10;
ARTICLE III, SECTION 16

LEGISLATIVE APPORTIONMENT AND CONGRESSIONAL REDISTRICTING.—Proposing amendments to the State Constitution replacing existing provisions providing for legislative apportionment with new provisions that establish reapportionment standards and provide for the creation of a eleven-member commission to prepare an apportionment plan for the state legislature and a redistricting plan for the congressional districts of the state.

—and as amended passed by the required constitutional three-fifths vote of the membership, and was certified to the House. The vote on passage was:

Yeas—33 Nays—4

BILLS ON THIRD READING

The Senate resumed consideration of—

SB 270—A bill to be entitled An act relating to the Marine Fisheries Commission; amending ss. 370.025, 370.027, F.S.; deleting the requirement that the Governor and Cabinet approve rules of the commission; amending s. 370.026, F.S.; revising the expiration dates of commission members' terms of office; amending s. 370.0608, F.S.; revising the distribution of funds from the saltwater fishing license fees that are used for marine research; repealing s. 5, ch. 83-134, Laws of Florida; abrogating the repeal of ss. 370.025-370.029, F.S., under the Sundown Act; providing an effective date.

—which had been considered and amended April 1.

Reconsideration of Amendment

On motion by Senator Kiser, by two-thirds vote the Senate reconsidered the vote by which **SB 270** was read the third time.

On motion by Senator Kiser, the Senate reconsidered the vote by which **Amendment 2** as amended was adopted.

Senator Gutman moved the following amendment to **Amendment 2** which was adopted:

Amendment 2B (with Title Amendment)—On page 1, between lines 22 and 23, insert:

Section 4. There is created a special recreational crawfish license, to be issued to qualified persons as provided by this section for the recreational harvest of crawfish (spiny lobster) beginning August 5, 1994.

(1) The special recreational crawfish license shall be available to any individual crawfish trap number holder who also possesses a saltwater products license during the 1993-1994 license year. For the 1994-1995 license year and for each license year thereafter, a person issued a special recreational crawfish license may not also possess a trap number.

(2) Beginning August 5, 1994, the special recreational crawfish license is required in order to harvest crawfish from state territorial waters in quantities in excess of the regular recreational bag limit but not in excess of a special bag limit to be established by the Marine Fisheries Commission for these harvesters before the 1994-1995 license year. Such special bag limit does not apply during the 2-day sport season established by the commission.

(3) The holder of a special recreational crawfish license must also possess the recreational crawfish stamp required by section 370.14(11), Florida Statutes, and the license required by section 370.0605, Florida Statutes.

(4) As a condition precedent to the issuance of a special recreational crawfish license, the applicant must agree to file quarterly reports with the Division of Marine Resources of the Department of Natural Resources, in such form as the division requires, detailing the amount of the licenseholder's crawfish (spiny lobster) harvest in the previous quarter, including the harvest of other recreational harvesters aboard the licenseholder's vessel.

(5) The Department of Natural Resources shall issue special recreational crawfish licenses beginning in 1994 for the 1994-1995 license year. The fee for each such license is $100 per year. Each license issued in 1994 for the 1994-1995 license year must be renewed by June 30 of each subsequent year by the initial individual holder thereof. Noncompliance with the reporting requirement in subsection (4) or with the special recreational bag limit established under subsection (6) constitutes grounds for which the department may refuse to renew the license for a subsequent license year. The number of such licenses outstanding in any one license year may not exceed the number issued for the 1994-1995 license year. A license is not transferable by any method. Licenses that are not renewed expire and may be reissued by the department beginning in the 1995-1996 license year to new applicants otherwise qualified under this section.

(6) To promote conservation of the spiny lobster (crawfish) resource, consistent with equitable distribution and availability of the resource, the Marine Fisheries Commission shall establish a spiny lobster management plan incorporating the special recreational crawfish license, including, but not limited to, the establishment of a special recreational bag limit for the holders of such license as required by subsection (2). Such special recreational bag limit must not be less than twice the higher of the daily recreational bag limits.

(7) The proceeds of the fees collected under this section must be deposited as follows:

(a) Thirty-five percent must be deposited into the Marine Biological Research Trust Fund for research and the development of reliable recreational catch statistics for the crawfish (spiny lobster) fishery.

(b) Forty-five percent must be deposited into the Motorboat Revolving Trust Fund to be used by the Department of Natural Resources for administration and enforcement of this section.

(c) Twenty percent must be deposited in the Marine Fisheries Commission Trust Fund to be used for the purposes of this section.

Section 5. The Department of Natural Resources may adopt rules to carry out the purpose and intent of the special recreational lobster license program.

Section 6. Notwithstanding the provisions of Rule 46-24.001(4), Rule 46-24.002(2), and 46-24.004(4), Florida Administrative Code, designation of spiny lobster (crawfish) as a restricted species may not occur until August 1, 1994. To the extent that such provisions implement the restricted species designation for spiny lobster (crawfish) before that date, such implementation is hereby delayed until August 1, 1994.

Section 7. Subsection (2) of section 370.142, Florida Statutes, 1992 Supplement, is amended, paragraph (g) of subsection (4) of that section is amended, and present paragraph (h) of subsection (4) is redesignated as paragraph (i) and a new paragraph (h) is added to that subsection, to read:

370.142 Spiny lobster trap certificate program.—

(2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES; PENALTIES.—The Department of Natural Resources shall establish a trap certificate program for the spiny lobster fishery of this state and shall be responsible for its administration and enforcement as follows:

(a) Transferable trap certificates.—Effective April 1, *1994* ~~1993~~, each holder of a saltwater products license who uses traps for taking or attempting to take spiny lobsters shall be required to have a certificate on record for each trap possessed or used therefor, except as otherwise provided in this section.

1. The department shall initially allot such certificates to each licenseholder with a current crawfish trap number who uses traps. The number of such certificates allotted to each such licenseholder shall be based on the trap/catch coefficient established pursuant to trip ticket records generated under the provisions of s. 370.06(2)(a) over a 3-year base period ending June 30, 1991. The trap/catch coefficient shall be calculated by dividing the sum of the highest reported single license-year landings up to a maximum of 30,000 pounds for each such licenseholder during the base period by 700,000. Each such licenseholder shall then be allotted the number of certificates derived by dividing his highest reported single license-year landings up to a maximum of 30,000 pounds during the base period by the trap/catch coefficient. Nevertheless, no licenseholder with a current crawfish trap number shall be allotted fewer than 10 certificates. However, certificates may only be issued to individuals; therefore, all licenseholders other than individual licenseholders shall designate the individual or individuals to whom their certificates will be allotted and the number thereof to each, if more than one. After initial issuance, trap certificates are transferable on a market basis and may be transferred from one licenseholder to another for a fair market value agreed upon between the transferor and transferee. Each such transfer shall, within 72 hours thereof, be recorded on a notarized form provided for that purpose by the department and hand delivered or sent by certified mail, return receipt requested, to the department for recordkeeping purposes. In addition, in order to cover the added administrative costs of the program and to recover an equitable natural resource rent for the people of the state, a transfer fee of $2 per certificate transferred shall be assessed against the purchasing licenseholder and sent by money order or cashier's check with the certificate transfer form. Also, in addition to the transfer fee, a surcharge of 25 percent of the fair market value given to the transferor shall be assessed the first time a certificate is transferred outside the original transferor's immediate family. No transfer of a certificate shall be effective until the department receives the notarized transfer form and the transfer fee, including any surcharge, is paid. No sooner than April 1, 1994, the Governor and Cabinet may direct the department to establish by rule an amount of equitable rent per trap certificate that shall be recovered as partial compensation to the state for the enhanced access to its natural resources. In determining whether to establish such a rent and, if so, the amount thereof, the Governor and Cabinet shall consider the amount of revenues annually generated by certificate fees, transfer fees, surcharges, trap license fees, and sales taxes, the demonstrated fair market value of transferred certificates, and the continued economic viability of the commercial lobster industry. The proceeds of equitable rent recovered shall be deposited in the Marine Biological Research Trust Fund and used by the department for research, management, and protection of the spiny lobster fishery and habitat.

2. No person, firm, corporation, or other business entity may control, directly or indirectly, more than 1.5 percent of the total available certificates in any license year.

3. The department shall maintain records of all certificates and their transfers and shall annually provide each licenseholder with a statement of certificates held.

4. Beginning April 1, *1994* ~~1993~~, and applicable to the *1994-1995* ~~1993-1994~~ season and thereafter, the number of trap tags issued annually to each licenseholder shall not exceed the number of certificates held by the licenseholder at the time of issuance, and such tags and a statement of certificates held shall be issued simultaneously.

(b) Trap tags.—Each trap used to take or attempt to take spiny lobsters in state waters or adjacent federal waters shall, in addition to the crawfish trap number required by s. 370.14(2), have affixed thereto an annual trap tag issued by the department. Each such tag shall be made of durable plastic or similar material and shall, beginning with those tags issued for the *1994-1995* ~~1993-1994~~ season based on the number of certificates held, have stamped thereon the owner's license number. To facili-

tate enforcement and recordkeeping, such tags shall be issued each year in a color different from that of each of the previous 3 years. A fee of 50 cents per tag issued other than on the basis of a certificate held shall be assessed through March 31, *1994* ~~1993~~. Until 1995, an annual fee of 50 cents per certificate shall be assessed, and thereafter, until 1998, an annual fee of 75 cents per certificate shall be assessed upon issuance in order to recover administrative costs of the tags and the certificate program. Beginning in 1998, the annual certificate fee shall be $1 per certificate. Replacement tags for lost or damaged tags may be obtained as provided by rule of the department.

(c) Recreational trap tags.—Effective July 1, *1994* ~~1993~~, a person holding a recreational saltwater fishing license may use up to three crawfish traps. Recreational trap tags may be issued by the department to a person holding a recreational saltwater fishing license at a fee of 50 cents per tag. It is unlawful for any person to fish with or possess on the water any recreational crawfish trap unless the trap has a valid trap tag properly attached to it. The traps must have a trap number permanently attached to the trap and the buoy. The trap number may be issued by the department at no charge. A person holding a recreational saltwater fishing license who is using the traps must comply with the rules of the department and the Marine Fisheries Commission for people holding recreational saltwater fishing licenses and using up to three crawfish traps. The traps are not subject to the trap reduction schedule provided by this section unless the commission determines that the number of traps issued under this subsection is detrimental to the goals and effectiveness of the overall trap reduction program. The number of traps allowed under this provision does not affect the number of tags authorized under s. 370.14(3).

(d) Prohibitions; penalties.—

1. Effective July 1, 1991, it shall be unlawful for a person to possess or use a spiny lobster trap in or on state waters or adjacent federal waters without having affixed thereto the trap tag required by this section. *It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of spiny lobster by trapping that is not a trap as defined in chapter 46-24.006(2), Florida Administrative Code.*

2. Effective April 1, 1993, it shall be unlawful for a person to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. Unless otherwise provided in this section, a commercial harvester, as defined by chapter 46-24.002(1), Florida Administrative Code, who violates the provisions of this section, or the provisions of chapter 46-24, Florida Administrative Code, shall be punished as follows:

a. If the first violation is for violation of subparagraph 1. or subparagraph 2., the department shall assess a civil penalty of up to $1,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (7) may be suspended for the remainder of the current license year. For all other first violations, the department shall assess a civil penalty of up to $500.

b. For a second violation of subparagraph 1. or subparagraph 2. which occurs within 24 months of any previous such violation, the department shall assess a civil penalty of up to $2,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (7) may be suspended for the remainder of the current license year.

c. For a third or subsequent violation of subparagraph 1. or subparagraph 2. which occurs within 36 months of any previous two such violations, the department shall assess a civil penalty of up to $5,000 and may suspend the crawfish trap number issued pursuant to s. 370.14(2) or (7) for a period of up to 24 months or may revoke the crawfish trap number and, if revoking the crawfish trap number, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 370.021(2)(e).

d. Any person assessed a civil penalty pursuant to this section shall within 30 calendar days after notification:

(I) Pay the civil penalty to the department; or

(II) Request an administrative hearing pursuant to the provisions of s. 120.60.

e. The department shall suspend the crawfish trap number issued pursuant to s. 370.14(2) or (7) for any person failing to comply with the provisions of sub-subparagraph d.

4.a. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. It is unlawful for any person to knowingly have in his possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a spiny lobster trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a spiny lobster trap tag or certificate unless such action is duly authorized by the department as provided in this chapter or in the rules of the department.

5.a. Any person who violates the provisions of subparagraph 4., or any person who engages in the commercial harvest, trapping, or possession of spiny lobster without a crawfish trap number as required by s. 370.14(2) or (7) or during any period while such crawfish trap number is under suspension or revocation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. In addition to any penalty imposed pursuant to sub-subparagraph a., the department shall levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of the transferred certificates, as provided in subparagraph (a)1., on any person who violates the provisions of sub-subparagraph 4.c.

6. Any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the department. During any period of trap reduction, any certificates reverting to the department shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period. Otherwise, any certificates that revert to the department are to be reallotted in such manner as provided by the department.

7. The proceeds of all civil penalties collected pursuant to subparagraph 3. and all fines collected pursuant to sub-subparagraph 5.b. shall be deposited into the Marine Biological Research Trust Fund.

8. All traps shall be removed from the water during any period of suspension or revocation.

(4) TRAP CERTIFICATE TECHNICAL ADVISORY AND APPEALS BOARD.—There is hereby established the Trap Certificate Technical Advisory and Appeals Board. Such board shall consider and advise the department on disputes and other problems arising from the implementation of the spiny lobster trap certificate program. The board may also provide information to the department on the operation of the trap certificate program.

(g) In addition to those certificates allotted pursuant to the provisions of subparagraph (2)(a)1., up to *125,000* ~~50,000~~ certificates may be allotted by the board to settle disputes or other problems arising from implementation of the trap certificate program during the 1992-1993 and 1993-1994 license years. Any certificates not allotted by March 31, 1994, shall become permanently unavailable and shall be considered as part of the 1994-1995 reduction schedule. *All appeals for additional certificates or other disputes must be filed with the board before October 1, 1993.*

(h) Any trap certificates issued by the department as a result of the appeals process must be added to the existing number of trap certificates for the purposes of determining the total number of certificates from which the subsequent season's trap reduction is calculated.

(i)~~(h)~~ On and after July 1, 1994, the board shall no longer consider and advise the department on disputes and other problems arising from implementation of the trap certificate program nor allot any certificates with respect thereto.

Section 8. Paragraph (a) of subsection (2) of section 370.06, Florida Statutes, 1992 Supplement, is amended to read:

370.06 Licenses.—

(2) SALTWATER PRODUCTS LICENSE.—

(a) Every person, firm, or corporation which sells, offers for sale, barters, or exchanges for merchandise any saltwater products, or which harvests saltwater products with certain gear or equipment as specified by law, must have a valid saltwater products license. Each saltwater products license allows the holder to engage in any of the activities for which the license is required. The license must be in the possession of the licenseholder or aboard the vessel and shall be subject to inspection at

any time that harvesting activities for which a license is required are being conducted. A restricted species endorsement on the saltwater products license is required to sell to a licensed wholesale dealer those species which the state, by law or rule, has designated as "restricted species." This endorsement may be issued only to a person *who is at least 16 years of age, or to a firm* ~~or firm~~ certifying that over 25 percent of its income or $5,000 of its income, whichever is less, is attributable to the sale of saltwater products pursuant to a license issued under this paragraph or a similar license from another state. This endorsement may also be issued to a for-profit corporation if it certifies that at least $5,000 of its income is attributable to the sale of saltwater products pursuant to a license issued under this paragraph or a similar license from another state. However, if at least 50 percent of the annual income of a person, firm, or for-profit corporation is derived from charter fishing, the person, firm, or for-profit corporation must certify that at least $2,500 of the income of the person, firm, or corporation is attributable to the sale of saltwater products pursuant to a license issued under this paragraph or a similar license from another state, in order to be issued the endorsement. Such income attribution must apply to at least 1 year out of the last 3 years. For the purpose of this section "income" means that income which is attributable to work, employment, entrepreneurship, pensions, retirement benefits, and social security benefits.

1. The department is authorized to require verification of such income. Acceptable proof of income earned from the sale of saltwater products shall be:

a. Copies of trip ticket records generated pursuant to this subsection (marine fisheries information system), documenting qualifying sale of saltwater products;

b. Copies of sales records from locales other than Florida documenting qualifying sale of saltwater products;

c. A copy of the applicable federal income tax return, including Form 1099 attachments, verifying income earned from the sale of saltwater products;

d. Crew share statements verifying income earned from the sale of saltwater products; or

e. A certified public accountant's notarized statement attesting to qualifying source and amount of income.

Any provision of this section or any other section of the Florida Statutes to the contrary notwithstanding, any person who owns a retail seafood market and/or restaurant at a fixed location for at least 3 years who has had an occupational license for 3 years prior to January 1, 1990, who harvests saltwater products to supply his retail store and has had a saltwater products license for 1 of the past 3 years prior to January 1, 1990, may provide proof of his verification of income and sales value at his retail seafood market and/or restaurant and in his saltwater products enterprise by affidavit and shall thereupon be issued a restricted species endorsement.

2. Exceptions from income requirements shall be as follows:

a. A permanent restricted species endorsement shall be available to those persons age 62 and older who have qualified for such endorsement for at least 3 out of the last 5 years.

b. Active military duty time shall be excluded from consideration of time necessary to qualify and shall not be counted against the applicant for purposes of qualifying.

c. Upon the sale of a used commercial fishing vessel owned by a person, firm, or corporation possessing or eligible for a restricted species endorsement, the purchaser of such vessel shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after purchase of the vessel.

d. Upon the death or permanent disablement of a person possessing a restricted species endorsement, an immediate family member wishing to carry on the fishing operation shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after the death or disablement.

e. A restricted species endorsement may be issued on an individual saltwater products license to a person age 62 or older who documents that at least $2,500 is attributable to the sale of saltwater products pursuant to the provisions of this paragraph.

f. A permanent restricted species endorsement may also be issued on an individual saltwater products license to a person age 70 or older who has held a saltwater products license for at least 3 of the last 5 license years.

At least one saltwater products license bearing a restricted species endorsement shall be aboard any vessel harvesting restricted species in excess of any bag limit or when fishing under a commercial quota or in commercial quantities, and such vessel shall have a commercial vessel registration. This subsection does not apply to any person, firm, or corporation licensed under s. 370.07(1)(a)1. or s. 370.07(1)(b) for activities pursuant to such licenses. A saltwater products license may be issued in the name of an individual or a valid boat registration number. Such license is not transferable. A decal shall be issued with each saltwater products license issued to a valid boat registration number. The saltwater products license decal shall be the same color as the vessel registration decal issued each year pursuant to s. 327.11(7) and shall indicate the period of time such license is valid. The saltwater products license decal shall be placed beside the vessel registration decal and, in the case of an undocumented vessel, shall be placed so that the vessel registration decal lies between the vessel registration number and the saltwater products license decal. Any saltwater products license decal for a previous year shall be removed from a vessel operating on the waters of the state. A resident shall pay an annual license fee of $50 for a saltwater products license issued in the name of an individual or $100 for a saltwater products license issued to a valid boat registration number. A nonresident shall pay an annual license fee of $200 for a saltwater products license issued in the name of an individual or $400 for a saltwater products license issued to a valid boat registration number. An alien shall pay an annual license fee of $300 for a saltwater products license issued in the name of an individual or $600 for a saltwater products license issued to a valid boat registration number. Any person who sells saltwater products pursuant to this license may sell only to a licensed wholesale dealer. A saltwater products license must be presented to the licensed wholesale dealer each time saltwater products are sold, and an imprint made thereof. The wholesale dealer shall keep records of each transaction in such detail as may be required by rule of the Department of Natural Resources not in conflict with s. 370.07(6), and shall provide the holder of the saltwater products license with a copy of the record. It is unlawful for any licensed wholesale dealer to buy saltwater products from any unlicensed person under the provisions of this section, except that a licensed wholesale dealer may buy from another licensed wholesale dealer. It is unlawful for any licensed wholesale dealer to buy saltwater products designated as "restricted species" from any person, firm, or corporation not possessing a restricted species endorsement on his saltwater products license under the provisions of this section, except that a licensed wholesale dealer may buy from another licensed wholesale dealer. The Department of Natural Resources shall be the licensing agency, may contract with private persons or entities to implement aspects of the licensing program, and shall establish by rule a marine fisheries information system in conjunction with the licensing program to gather fisheries data.

Section 9. Paragraph (c) of subsection (2) of section 370.142, Florida Statutes, as amended by section 2 of chapter 92-60, Laws of Florida, is repealed.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 2, line 17, after the semicolon (;) insert: creating a special recreational crawfish license; providing eligibility requirements; prohibiting the use of traps by special recreational crawfish licenseholders during the 1994-1995 license year and therafter; providing requirements for said license; requiring holders of the special recreational crawfish license to possess certain other license and stamp; providing reporting requirements; providing for a fee and license renewal; limiting the number of special recreational licenses which may be issued; providing for a crawfish management plan to be developed; providing for disposition of license fees; authorizing the development of rules; delaying the date when crawfish will become a restricted species; amending s. 370.142, F.S.; delaying dates for implementation of the spiny lobster trap certificate program; limiting gear that may be used; increasing the number of trap certificates that may be issued by the Trap Certificate Technical Advisory and Appeals Board; requiring appeals for additional certificates or other disputes to be filed with the board before a specified date; amending s. 370.06, F.S.; establishing a minimum age for holders of trap certificates; repealing s. 370.142(2)(c), F.S., relating to recreational trap tags;

Amendment 2 as amended was adopted.

On motion by Senator Kiser, by two-thirds vote **SB 270** 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

SPECIAL ORDER, continued

On motions by Senator Jenne, by unanimous consent—

HB 1487—A bill to be entitled An act relating to governmental reorganization; providing regulatory purpose; abolishing the Department of Business Regulation and the Department of Professional Regulation and transferring their duties to the Department of Business and Professional Regulation; creating s. 20.165, F.S.; creating the Department of Business and Professional Regulation; amending ss. 455.01, 455.02, and 561.01, F.S.; providing definitions and correcting cross references and terminology, to conform; creating s. 455.116, F.S.; providing for placement of certain trust funds into the department; creating s. 455.117, F.S.; authorizing the department to provide services and information to other levels of government and private entities; amending s. 20.42, F.S., relating to the Agency for Health Care Administration; delaying transfer to the agency of certain responsibilities relating to health care professionals; delaying amendment and repeal of specified sections of ch. 455, F.S., to conform; requiring submission of a reorganization plan to the Department of Management Services for recommendations and for subsequent submission to the Executive Office of the Governor for approval and inclusion in the 1994-1995 fiscal year budget request; requiring a reviser's bill to conform the Florida Statutes to the provisions of this act; creating the Consumer Affairs Task Force; providing membership; providing powers and duties, including a report; providing for staff; providing for certain compensation and reimbursement of expenses and for certain per diem and travel expenses; repealing ss. 20.16 and 20.30, F.S., relating to the Departments of Business Regulation and Professional Regulation, to conform; providing severability; providing effective dates.

—was taken up out of order and by two-thirds vote read the second time by title.

Senator Jenne moved the following amendments which were adopted:

Amendment 1 (with Title Amendment)—On page 12, line 7, through page 13, line 29, strike all of said lines

And the title is amended as follows:

In title, on page 1, line 17, after the semicolon (;) through the semicolon (;) on line 23, strike all of said lines

Amendment 2 (with Title Amendment)—On page 14, line 16, through page 15, line 26, strike all of said lines and renumber subsequent sections.

And the title is amended as follows:

In title, on page 1, line 31, through the semicolon (;) on page 2, line 5, strike all of said lines

On motion by Senator Jenne, by two-thirds vote **HB 1487** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

On motions by Senator Dantzler, by unanimous consent—

CS for HB 461—A bill to be entitled An act relating to waste management and regulation; amending ss. 125.01, 166.021, 381.0098, 403.702, 403.704, 403.7084, 403.727, and 483.615, F.S.; redesignating "biohazardous waste" as "biomedical waste"; amending s. 403.727, F.S.; providing for a right to contribution between certain parties under certain circumstances; amending s. 212.055, F.S.; providing additional uses for the local government infrastructure surtax; amending s. 287.045, F.S.; providing for purchase of materials with recycled content by agencies that use state contracts; allowing an additional price preference to bidders using certain materials relative to purchase of products or materials by the state; providing limitations on renewing certain contracts; providing an exception; requiring agencies to use certain contracts; requiring agencies to consider the life-cycle of products in making purchases; authorizing the Division of Purchasing of the Department of Management Services to adopt rules; creating s. 288.1185, F.S.; creating the Recycling Markets Advisory Committee; providing purposes; providing for membership; providing duties and responsibilities; requiring the committee to develop a plan to develop markets for recycled materials; providing considerations for the plan; requiring the committee to submit a report; authorizing the committee to hire staff; amending s. 403.703, F.S.; revising and adding definitions; creating s. 403.7031, F.S.; limiting the content of certain local ordinances; amending s. 403.7045, F.S.; deleting provisions providing for regulation of recovered materials; creating s. 403.7046, F.S.; providing for regulation of recovered materials; requiring the Department of Environmental Regulation to adopt rules; requiring the department to appoint a technical advisory committee; providing for membership; providing for the duties and responsibilities of the committee; authorizing a fee; providing for deposit of the fee; providing for an exception; providing confidentiality for certain trade secrets; providing for review and repeal; prohibiting local governments from imposing certain registration or reporting requirements; exempting certain recovered materials processing facilities from regulation under certain circumstances; providing for the distribution of grants to local mosquito control agencies; providing an exception; providing definitions; amending s. 403.7049, F.S.; encouraging counties and municipalities to charge certain fees; providing for grants to such local governments under certain circumstances; amending s. 403.705, F.S.; changing the date for preparation of a report on solid waste management; amending s. 403.706, F.S.; revising certain local government solid waste responsibilities; including composting plans under such responsibilities; authorizing certain counties to provide alternate recycling programs; requiring counties to include in certain reports progress on composting programs; providing credits toward the county waste reduction goal; authorizing local governments to enact ordinances to require separation of recyclable materials; amending s. 403.7065, F.S.; providing additional criteria for procurement of products or materials with recycled content; amending s. 403.707, F.S.; changing a reference from "clean debris" to "construction and demolition debris"; exempting certain composting operations from certain permit requirements; prohibiting the Department of Environmental Regulation from permitting expansions of certain landfills; amending s. 403.708, F.S.; modifying the required coding design for certain plastic bottles and containers; exempting the disposal of incidental yard trash; amending s. 403.709, F.S.; prescribing research projects for which Solid Waste Management Trust Fund moneys may be used; authorizing the secretary of the department to reserve certain portions of appropriations to fund certain solid waste projects; amending s. 403.7095, F.S.; providing requirements to be considered in continuing grants to local governments; revising the criteria for certain grants; amending s. 403.7125, F.S.; requiring audit of landfill escrow accounts by independent certified public accountants; amending s. 403.713, F.S.; excluding recovered materials from local government authority to regulate the flow of solid waste across certain boundaries; specifying restrictions on local government regulation of recovered materials; revising authority of local governments; providing confidentiality; providing for review and repeal; amending s. 403.714, F.S.; requiring state institutions to participate in certain recycling programs; requiring the Department of Agriculture and Consumer Services to coordinate the development of specifications for use of compost by the state; requiring certain entities and persons to report to the department on expenditures and use of compost; requiring the department to report compost use summaries to the Governor and the Legislature; amending s. 403.716, F.S.; providing for training of operators of waste-to-energy facilities, biohazardous waste incinerators, and mobile soil thermal treatment units or facilities; amending s. 403.717, F.S.; revising provisions providing waste tire and lead-acid battery requirements; revising certain fees; revising department rulemaking authority; providing for an exemption; amending s. 403.719, F.S.; requiring certain counties to file an annual report of waste tire grant moneys; creating s. 403.7191, F.S.; regulating the use of certain materials in packaging; prohibiting the use of certain elements in packaging; providing exemptions; requiring certificates of compliance; prohibiting certain activities; providing a penalty; providing for review and a report; providing rulemaking authority; creating s. 403.7192, F.S.; regulating the manufacture and disposition of certain batteries; prohibiting the sale or distribution of certain batteries; providing criteria for selling or distributing products containing rechargeable batteries; providing a penalty; providing rulemaking authority; creating s. 403.7193, F.S.; prohibiting certain environmental representations on consumer products; providing a penalty; creating the Florida Packaging Waste Reduction Council; providing duties; providing an appropriation; providing for confidentiality; providing an exemption from open government Sunset requirements; amending

s. 403.7195, F.S.; providing for minimum recycled content for newsprint; specifying certain content by certain dates; providing criteria for such newsprint; amending s. 403.7197, F.S.; revising provisions of the advance disposal fee program; providing definitions; requiring the department to consider certain proposals for designation of additional containers; requiring the department to determine the recycling rates of container types; providing an exemption from the advance disposal fee for recycled content; providing for collection of the fee; authorizing a collection allowance; excluding the advance disposal fee from estimated tax payments; authorizing the department to adopt emergency rules; requiring the Department of Environmental Regulation to adopt certain rules; providing for confidentiality of certain taxpayer information; providing that the proceeds of the fee be deposited into the Solid Waste Management Trust Fund; requiring the department to develop a grant program for recycling and litter prevention; providing requirements of the program; providing legislative intent with respect to uses of the advance disposal fee; specifying uses; requiring the department to evaluate establishing certain advance disposal fees; requiring a report; establishing a litter-reduction goal; requiring the Department of Environmental Regulation to contract with the Center for Solid and Hazardous Waste Management for an annual litter survey; providing for designation of additional containers or product packaging to be subject to the advance disposal fee; abolishing the Clean Florida Commission; repealing s. 403.7198, F.S.; relating to container deposits; amending ss. 403.7225, 403.7226, 403.7234, and 403.7236, F.S.; clarifying provisions requiring local hazardous waste management assessments; applying such requirements to small quantity generators of hazardous waste; revising provisions relating to regional planning council's regional hazardous waste management facility needs assessments; deleting a requirement that the department report to the Legislature; clarifying provisions of the small quantity generator notification and verification program; clarifying provisions relating to information sent to the department by local governments; creating s. 403.7238, F.S.; providing for expanded local hazardous waste management programs; providing for grants for start-up costs; amending s. 403.7265, F.S.; clarifying provisions relating to local hazardous waste collection programs; deleting a requirement that the department prepare a plan for collecting small quantities of hazardous waste from certain persons; requiring the department to establish a cooperative collection center arrangement grant program; providing for grants; providing limitations; amending s. 403.75, F.S.; revising certain definitions related to processing and rerefining oil; creating s. 403.7531, F.S.; requiring certain retail dealers to post a notice related to disposal of used oil; amending s. 403.754, F.S.; revising provisions requiring certain persons to register to transport, collect, or recycle used oil; amending s. 403.7545, F.S.; authorizing the department to regulate used oil consistently with certain federal requirements; amending s. 403.758, F.S.; providing for additional enforcement authority for the department; amending s. 403.769, F.S.; providing for a permit for used oil processing facilities; prohibiting state agencies from requiring certain labels relating to biomedical wastes; prohibiting incinerating or disposing of certain mercury-containing devices; prohibiting incineration of spent lamps; specifying uses of the Solid Waste Management Trust Fund; specifying moneys to be deposited into the trust fund; requiring the department to adopt rules; requiring certain public information and warning signs related to mercury contamination; providing a penalty; requiring the department to organize and coordinate a public-private demonstration project for collecting and recycling mercury-containing devices and spent lamps; providing an appropriation; providing requirements for review of new waste-to-energy facilities capacity by the Department of Environmental Regulation; providing a review process for certain waste-to-energy facilities; providing applicant requirements; requiring the department to study the use of incineration for waste disposal; prohibiting the department from issuing a permit for a construction of hazardous waste incinerators for a certain time; providing legislative findings; creating s. 403.7895, F.S.; providing requirements for permitting and certification of commercial hazardous waste incinerators; providing legislative intent; providing applicability; requiring a certificate of need; requiring the Governor and Cabinet, sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board, to make certain determinations regarding such certificate of need; specifying additional permitting conditions; requiring the department to conduct a hazardous waste needs and capacity study; specifying criteria for the study; requiring a report to the Legislature; providing an appropriation; creating s. 403.4133, F.S.; creating the Adopt-a-Shore Program; providing purposes; amending s. 316.2045, F.S.; providing an exception to the prohibition on obstruction of public streets, highways, and roads for solid waste or recyclable or recovered materials collection vehicles; creating the phosphogypsum management program; providing definitions; providing for rules relating to construction and permitting criteria; providing for fees; providing for review and repeal; providing exceptions to mandatory closing of certain phosphogypsum stack systems; providing an appropriation; amending s. 72.011, F.S.; authorizing taxpayers to contest the assessment of a certain fee, penalties, and interest; amending s. 213.05, F.S.; authorizing the Department of Revenue to collect the advance disposal fee; amending s. 213.053, F.S.; providing for confidentiality of information obtained by the Department of Revenue pursuant to collecting the advance disposal fee; providing a finding of important state interest; amending s. 376.3071, F.S.; specifying additional conditions for entitlement to reimbursements for certain cleanup expenses; authorizing Enterprise Florida to contract with a plastic products manufacturer in a plastic recycling business venture; providing for the Departments of Corrections and Health and Rehabilitative Services to participate in the business venture; providing requirements and criteria for the business venture; authorizing other governmental entities to participate under certain circumstances; providing intent; requiring the departments to identify certain costs associated with plastic products; specifying the term of the business venture; requiring a report; providing appropriations; amending s. 403.7145, F.S.; requiring state agencies, the judicial branch, and the State University System to collect and sell recyclable materials; authorizing the use of sale proceeds for certain purposes; providing an effective date.

—was taken up out of order and by two-thirds vote read the second time by title.

Senator Dantzler moved the following amendments which were adopted:

Amendment 1—On page 13, line 5, after the period (.) insert: *Any use of such proceeds or interest for purposes of landfill closure prior to July 1, 1993, is ratified.*

Amendment 2—On page 15, lines 26 and 27, strike "*and enforcing*"

Amendment 3—On page 29, strike all of lines 11-16 and insert: *pollution control facility, or* ~~includes~~ garbage, *rubbish,* refuse, ~~yard trash, clean debris, white goods,~~ special waste, ~~ashes, sludge,~~ or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. *Recovered materials as defined in s. 403.703(7) are not solid waste.*

Amendment 4—On page 31, line 14, strike "*403.7046(4)*" and insert: *403.7045(1)(f)*

Amendment 5—On page 55, lines 12-30 and on page 56, lines 1 and 2, strike all of said lines and insert:

(9) *A* ~~On or after July 1, 1990, no~~ person *may not* ~~shall~~ distribute, sell, or expose for sale in this state any plastic *bottle or rigid* container ~~product~~ *intended for single use* unless *such container* ~~the product~~ has a molded label indicating the plastic resin used to produce the plastic container ~~product~~. The label must appear on *or near* the bottom of the plastic container product and be clearly visible. This label must consist of a number placed inside a triangle and letters placed below the triangle. *The triangle must be equilateral and must be formed by three arrows, and, in the middle of each arrow, there must be a rounded bend that forms one apex of the triangle. The pointer, or arrowhead, of each arrow must be at the midpoint of a side of the triangle, and a short gap must separate each pointer from the base of the adjacent arrow. The three curved arrows that form the triangle must depict a clockwise path around the code number.* ~~All~~ Plastic *bottles* ~~beverage containers and all nonsolid food liquid containers~~ of less than 16 ounces, ~~and all~~ rigid plastic containers of less than 8 ounces, *and plastic casings on lead-acid storage batteries are* ~~shall~~ not ~~be~~ required to be labeled under this section. The numbers and letters *must* ~~shall~~ be as follows:

Amendment 6—On page 61, line 22, strike "if justified, temporary" and insert: ~~if justified, temporary~~

Amendment 7—On page 63, between lines 14 and 15, insert:

(g) The recycling *or waste reduction* program shall contain at a minimum:

1. An explanation of the manner in which the recycling *or waste reduction* program will be implemented.

2. A timetable for the continued development and implementation of the recycling *or waste reduction* program.

3. Any contracts or agreements entered into or summaries of contemplated agreements or contracts to develop and implement the recycling *or waste reduction* program.

4. The estimated costs of the recycling *or waste reduction* program, including a description of the estimated avoided *or added* costs of solid waste disposal or processing resulting from the implementation of the recycling program.

The recycling *or waste reduction* program shall serve as the primary means of meeting the goals established for municipal solid waste reduction in s. 403.706(4).

(h) A description of a public education program for the recycling *or waste reduction* program.

(i) A description for a program for the management of special wastes. The county or municipality shall work with the construction industry to plan for and identify suitable construction and demolition debris disposal sites.

(j) A description of how the private recycling infrastructure has been used in carrying out the recycling program. If the department finds that the local government recycling program has failed to consider the use of recycling efforts of the private sector, the department may restrict the grants to that local government.

Amendment 8—On page 73, strike all of lines 9-14 and insert: section. *Any person who contracts with a waste tire collector for the transportation of more than 25 waste tires per month from a single business location must maintain records for that location and make them available for review by the department or by law enforcement officers, which records must contain the date when the tires were transported, the quantity of tires, the registration number of the collector, and the name of the driver.*

Amendment 9—On page 89, line 12 through page 93, line 26, strike all of said lines and insert:

403.7195 Waste newsprint disposal fees.—

(1) ~~On and after January 1, 1989,~~ There is ~~hereby~~ imposed upon every producer or publisher within the state a product waste disposal fee of *50* ~~10~~ cents per ton of newsprint consumed. The waste disposal fee imposed by this section shall be collected from producers or publishers based upon the total weight of newsprint actually consumed in their publications.

(2) The product waste disposal fee imposed by this section shall be reported and paid to the Department of Revenue quarterly. A credit of *50* ~~10~~ cents per ton of newsprint against the fee obligation may be taken by the producer or publisher for overruns or such similar products not actually circulated or delivered. The credit of *50* ~~10~~ cents per ton is also allowed against the fee obligation for each ton of recycled newsprint used in publication of products. The payment shall be accompanied by such form as the Department of Revenue may prescribe. The proceeds of the product waste disposal fee collected pursuant to this section, less administrative costs, shall be transferred to the Solid Waste Management Trust Fund. For the purposes of this section, *the proceeds* "~~proceeds~~" of the fee *include* ~~shall mean~~ all funds collected and received by the department *under this section* ~~hereunder~~, including interest and penalties on delinquent fees. The amount deducted for the costs of administration *may* ~~shall~~ not exceed 3 percent of the total revenues collected *under this section* ~~hereunder~~ and *may* ~~shall~~ be *used* only for those costs solely and directly attributable to the fee.

(a) The Department of Revenue shall administer, collect, and enforce the fee authorized under this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of this section regarding the authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees ~~shall~~ apply. The fees *may* ~~shall~~ not be included in the computation of estimated taxes *under* ~~pursuant to~~ s. 212.11 nor *does* ~~shall~~ the dealer's credit for collecting taxes or fees provided in s. 212.12 apply to this fee.

(b) The Department of Revenue, under the applicable rules of the Career Service Commission, *may* ~~is authorized to~~ employ persons and incur other expenses for which funds are appropriated by the Legislature. The department *shall* ~~is empowered to~~ adopt such rules and shall prescribe and publish such forms as *are* ~~may be~~ necessary to effectuate the purposes of this section. The department *may* ~~is authorized to~~ establish audit procedures and ~~to~~ assess delinquent fees.

(3) If the Department of Environmental Regulation determines on October 1, *1993, and each successive year thereafter until October 1, 1999,* ~~1992,~~ by *a* ~~the~~ preponderance of *the* evidence, that newsprint sold within the state is being recycled at a rate of 50 percent or more of the quantity sold within the state, the product waste disposal fee on newsprint shall be rescinded *for the year following that determination.* If the department determines on that date, by a preponderance of *the* evidence, that newsprint sold within the state is being recycled at a rate of less than 50 percent of the quantity sold within the state, the product waste disposal fee on newsprint shall be increased to *$1* ~~50 cents~~ per ton and the credits authorized by subsection (2) shall be increased to *$1* ~~50 cents~~ per ton, effective *January 1 of the following year* ~~October 1, 1992~~. If the product waste disposal fee on newsprint is increased ~~on October 1, 1992~~, ~~the provisions of~~ subsections *(5)*~~(4)~~ and *(6)*~~(5)~~ shall *simultaneously* ~~also~~ be implemented ~~effective on October 1, 1992~~.

(4) If the department determines on October 1, 1999, and each successive year thereafter, by a preponderance of the evidence, that newsprint sold within the state is being recycled at a rate of 60 percent or more of the quantity sold within the state, the product waste disposal fee on newsprint shall be rescinded for the year following that determination. If the department determines on that date, by a preponderance of the evidence, that newsprint sold within the state is being recycled at a rate of less than 60 percent of the quantity sold within the state, the product waste disposal fee on newsprint shall be increased to $2 per ton, effective January 1 of the following year, and the credits authorized by subsection (2) shall be increased to $2 per ton when the statewide annual aggregate consumption of recycled fiber is equal to or exceeds 30 percent. If the product waste disposal fee on newsprint is increased, subsections (5) and (6) shall simultaneously be implemented.

(5)~~(4)~~ Any producer or publisher using newsprint in publications shall accept from a person for recycling purposes reasonably clean newsprint previously produced, published, or offered for sale by that producer or publisher. Publications accepted for recycling shall be accepted at the place where they were produced or published or at other convenient sites offered by the producers or publishers.

(6)~~(5)~~ The producer or publisher may claim a credit of 25 cents per ton of newsprint *used* ~~utilized~~ in publications by their facility that have been returned and made available for recycling. Such claims shall be made quarterly to the Department of Revenue and shall be accompanied by such documentation of the claim as the Department of Revenue requires.

(7)~~(6)~~ *A credit under* ~~In no event shall credits pursuant to~~ this section *may not* exceed the fee obligation.

(8)~~(7)~~ For purposes of this section, *the term* "newsprint" means paper, the primary use of which is for the printing of newspapers.

(9)(a) To ensure that newsprint consumed in the state contains sufficient amounts of recycled fiber, the statewide annual aggregate consumption of recycled fiber must equal or exceed the following percentages, calculated by dividing the weight of recycled fiber consumed annually in the state by the weight of the total newsprint consumed in the state:

1. After December 31, 1993, 20 percent;

2. After December 31, 1994, 25 percent; and

3. After December 31, 1995, 30 percent.

(b) If the department determines that the established recycled fiber consumption goals are not reflective of the production and availability of recycled newsprint fiber in the southeast, the department may, by rule, annually adjust the recycled fiber consumption goals to reflect the actual availability of recycled fiber.

(10) The department shall annually review the progress toward achievement of these goals. Each producer and publisher shall document its use of recycled newsprint in a report that it submits to the department beginning December 31, 1994, and each December 31 thereafter.

(11) If producers and publishers in the state fail to meet a statewide collective goal provided in subsection (9), the annual aggregate goal must be applied individually to each producer and publisher in the state. However, if one or more of the following conditions occurs during any calendar year quarter, the individual producer or publisher to which the condition or conditions apply is relieved of the requirement to meet the goal for that quarter:

(a) The required percentage of recycled-content newsprint is unavailable to the producer or publisher within a reasonable period of time, and the producer or publisher demonstrates to the satisfaction of the department that recycled-content newsprint is unavailable and that the producer or publisher has made reasonable efforts to obtain recycled-content newsprint in compliance with this section;

(b) The average delivered price for recycled-content newsprint available to the producer or publisher exceeds by more than 5 percent the average delivered price for virgin-fiber newsprint normally used by the producer or publisher; or

(c) The average printing opacity, brightness level, or break performance of the recycled-content newsprint available to the producer or publisher is of lesser quality by more than 5 percent of the average printing opacity, brightness level, or break performance of virgin-fiber newsprint normally used by the producer or publisher.

(12) A producer or publisher to which subsection (11) applies which does not achieve the required goal is subject to a fine of $5 per short ton of the number of tons of recycled-content newsprint representing the shortfall. This penalty does not apply for any quarter in which the shortfall is due to one or more of the conditions specified in paragraphs (a)-(c) of subsection (11).

Amendment 10—On page 98, line 18, strike "*calendar*"

Amendment 11—On page 99, line 4, strike "*will remove*" and insert: *or its designee demonstrates that there will be removed*

Amendment 12—On page 99, lines 8 and 11, after "*containers*" and on line 12, after "*products*" insert: *subject to the advance disposal fee*

Amendment 13—On page 99, line 13, strike "*(5)(b)1.*" and insert: *(5)(b)*

Amendment 14—On page 99, lines 17 and 18, strike "*in such paper products*" and insert: *in their paper products in the aggregate*

Amendment 15—On page 99, line 19, strike "*and aseptic*"

Amendment 16—On page 101, lines 2 and 3, strike "*person receiving the exemption*" and insert: *petitioner*

Amendment 17—On page 117, line 24, after the comma (,) insert: *the Florida Recyclers Association,*

Senator Kirkpatrick moved the following amendment which was adopted:

Amendment 18—On page 107, line 3, strike "*State Park Trust Fund*" and insert: *Small Community Sewer Construction Assistance Trust Fund*

Senator Dantzler moved the following amendments which were adopted:

Amendment 19—On page 156, strike all of lines 8-12 and insert:

(b) The use of capacity at existing waste-to-energy facilities within reasonable transportation distance of the proposed facility must have been evaluated and found not to be economically feasible when compared to the use of the proposed facility for the expected life of the proposed facility. This paragraph does not apply to:

1. Applications to build or expand waste-to-energy facilities received by the department before March 1, 1993, or amendments to such applications that do not increase combustion capacity beyond that requested as of March 1, 1993; or

2. Any modification to waste-to-energy facility construction or operating permits or certifications or conditions thereto, including certifications under sections 403.501-403.518, Florida Statutes, that do not increase combustion capacity above that amount applied for before March 1, 1993.

Amendment 20 (with Title Amendment)—On page 157, between lines 23 and 24, insert:

(5)(a) The Department of Environmental Regulation shall fund a pilot project designed to evaluate the effectiveness of efforts to reduce emissions from waste-to-energy facilities through front-end separation or waste cleaning programs. The pilot project must:

1. Be conducted in a local government jurisdiction or jurisdictions served by a waste-to-energy facility;

2. Include design and implementation of one or more programs for removing toxic materials from the waste stream or treating such wastes before they are incinerated, considering existing recycling, composting, and pollution prevention programs, existing or anticipated pollution control equipment, and existing or anticipated hazardous waste collection programs; and

3. Include methodologies for evaluating the effectiveness of the pilot program, including analyses of air emissions from the waste-to-energy facility before, during, and after the implementation of the pilot program.

(b) The pilot project must be concluded by October 1, 1995. By December 1, 1995, the department shall provide a final report.

(c) The sum of $100,000 is appropriated to the department from the Solid Waste Management Trust Fund to conduct pilot projects. The department shall seek matching in-kind or cash contributions from local governments and the waste-to-energy industry for the purpose of conducting pilot projects.

And the title is amended as follows:

In title, on page 8, lines 28-30, strike "requiring the department to study the use of incineration for waste disposal;" and insert: requiring the department to fund a pilot project to evaluate the effectiveness of efforts to reduce emissions from waste-to-energy facilities; providing for a report; providing an appropriation;

Senator Kirkpatrick moved the following amendment:

Amendment 21—On page 159, between lines 20 and 21, insert:

(e)1. No permit under s. 403.722 or certification under ss. 403.78-403.7893 shall be issued or denied for any commercial hazardous waste incinerator until the secretary has determined whether the applicant has provided reasonable assurance of technical compliance with the applicable rules of the department and a determination of need has been made as provided in this subsection.

2. For an application for a permit under section 403.722, the secretary shall issue a statement of initial position as to whether the proposed incinerator will be in technical compliance with the applicable rules of the department, and the statement shall set forth those conditions necessary to ensure such compliance. Such statement shall be subject to review under chapter 120; provided, however that the secretary shall not issue a final order until after final agency action on any certificate of need issued pursuant to this subsection, and the applicable time limits in chapter 120 shall be tolled pending final agency action on the certificate of need. At that time, based upon the certificate and any recommendation of a hearing officer as to the statement of compliance, the secretary shall issue a final order either granting or denying the permit.

3. For an application for certification under ss. 403.78-403.7893, the secretary's statement shall be subject to review pursuant to said law and the final order shall be issued by the Siting Board.

Senators Brown-Waite and Hargrett offered the following amendment to **Amendment 21** which was moved by Senator Brown-Waite and adopted:

Amendment 21A—On page 2, line 7, insert:

4. It is the intent of the Legislature that the election by any applicant to utilize the provisions of this paragraph to process an incinerator permit or certification does not constitute a guarantee as to any agency action by the department or the siting board to issue the permit or certification, and the costs of such processing to the applicant shall be the exclusive risk of the applicant.

Amendment 21 as amended was adopted.

Senator Dantzler moved the following amendment which was adopted:

Amendment 22—On page 161, strike all of lines 24-27 and on page 175, between lines 18 and 19, insert:

Section 75. The sum of $500,000 is hereby appropriated from the Solid Waste Management Trust Fund to the Department of Environmental Regulation to conduct the study required by section 57 of this act.

(Renumber subsequent sections.)

Senator Dyer moved the following amendments which were adopted:

Amendment 23—On page 159, lines 22-24, strike "In addition to the requirements of 403.722 and 403.78-.7893, the following permitting conditions shall apply to commerical hazardous waste incinerators." and insert: The following additional requirements shall apply to the Department's review of an application for a permit or certification for the construction of a commercial hazardous waste incinerator:

Amendment 24—On page 160, line 19, after "1994," insert: or the date by which phase 2 of the next capacity assurance plan must be submitted to the U.S. Environmental Protection Agency, whichever date occurs first,

Senator Kiser moved the following amendment which was adopted:

Amendment 25—On page 27, line 24, after the period (.) insert: *Acute care hospitals, licensed under chapter 395, which utilize a certified on-site treatment process involving grinding and sterilization, may dispose of such treated biomedical waste in the normal municipal solid waste stream upon notifying the local governments that are responsible for solid waste collection and disposal. Rules shall also be adopted to implement the provisions of 381.0098(3) amended by this act.*

Senator Williams moved the following amendment which failed:

Amendment 26 (with Title Amendment)—On page 159, strike all of lines 8-18 and insert: *of need, issued by the Environmental Regulation Commission.*

(b) The commission shall make a determination of the need for hazardous waste incinerators, based upon the best available evidence of existing and projected need and available capacity, as presented by the applicant, and as determined by the study required by subsection (5).

(c) No hazardous waste incinerator shall be certified for capacity that is larger than that determined to be needed by the commission.

(d) The commission shall not make a determination of need

And the title is amended as follows:

In title, on page 9, strike all of lines 8-10 and insert: Environmental Regulation Commission to make certain determinations regarding

Senator Hargrett moved the following amendment which was adopted:

Amendment 27—On page 160, line 20, after "comprehensive" insert: *independent*

Senators Hargrett and Brown-Waite offered the following amendment which was moved by Senator Hargrett and failed:

Amendment 28—On page 148, line 24, after "state" insert: or adequately deal with such waste through regional or national solutions

On motion by Senator Dantzler, by two-thirds vote **CS for HB 461** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—5

The Senate resumed consideration of—

HB 2345—A bill to be entitled An act relating to funeral, cemetery, and crematory services; merging chapter 470, F.S., relating to funeral directors, embalmers, and direct disposition, and chapter 639, F.S., relating to preneed funeral contracts, into chapter 497, F.S., relating to cemeteries, and placing them under the jurisdiction of the Department of Banking and Finance; creating s. 497.101, F.S.; providing a short title; amending and renumbering s. 470.001, F.S.; expanding legislative findings and intent; amending and renumbering s. 470.002, F.S.; revising and providing definitions; amending and renumbering s. 470.003, F.S.; renaming the Board of Funeral Directors and Embalmers as the Board of Funeral and Cemetery Services; providing procedure for appointment of members and for filling vacancies; providing qualifications for membership on the board; amending and renumbering s. 470.005, F.S.; providing rulemaking authority of the board and department; creating s. 497.111, F.S.; providing legislative intent with respect to the professions and occupations regulated by the department under the chapter; creating s. 497.113, F.S.; providing general powers and duties of the department with respect to such regulation; creating s. 497.115, F.S.; providing that the board may be contacted through the headquarters of the department in Tallahassee; creating s. 497.117, F.S.; providing for officers, meetings, official business, and compensation of the board; creating s. 497.119, F.S.; authorizing the board and department to publish an advisory newsletter; creating s. 497.121, F.S.; providing accountability and liability of board members; creating s. 497.123, F.S.; providing for board rules, final agency action, and challenges; creating s. 497.125, F.S.; providing general licensing provisions; creating s. 497.127, F.S.; providing general provisions relating to the procurement, administration, security, and recordkeeping requirements of examinations; providing exemptions from public records requirements relating to examination results and meetings held to create or review examination questions; providing for future review and repeal; creating s. 497.129, F.S.; prohibiting theft or reproduction of examinations and providing a penalty therefor; creating s. 497.131, F.S.; providing general requirements with respect to fees, receipts, disposition of such funds, and periodic management reports; creating s. 497.133, F.S.; providing for legal and investigative services, including duties of the Department of Legal Affairs with respect thereto; creating s. 497.135, F.S.; providing a mediation process applicable to certain violations of the chapter; creating s. 497.137, F.S.; providing for the issuance of citations applicable to certain violations of the chapter; creating s. 497.139, F.S.; providing powers to administer oaths and issue subpoenas; creating s. 497.141, F.S.; providing for the admission of financial examiners' worksheets, investigative reports, and other related documents as evidence under certain circumstances; creating s. 497.143, F.S.; providing for injunction; creating s. 497.145, F.S.; providing for cease and desist orders, civil penalties, and enforcement; creating s. 497.147, F.S.; providing disciplinary proceedings; providing exemptions from public records and public meetings requirements relating to probable cause investigations; providing for future review and repeal; creating s. 497.149, F.S.; providing disciplinary guidelines; creating s. 497.151, F.S.; prohibiting the giving of false information, misleading statements, or knowing misrepresentations relating to obtaining or attempting to obtain licensure under the chapter; providing a penalty; creating s. 497.153, F.S.; providing public access to records required by the department; providing exemptions from public records requirements relating to financial information, examination questions, answers, papers, grades, and grading keys, and challenged examination questions and answers; providing for future review and repeal; creating s. 497.155, F.S.; prohibiting the disclosure of confidential information; providing a penalty; amending and renumbering s. 470.006, F.S., relating to licensure as an embalmer by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.007, F.S., relating to licensure as an embalmer by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering s. 470.008, F.S.; correcting a cross reference; renumbering s. 470.0085, F.S., relating to the embalmer apprentice program; creating s. 497.208, F.S.; describing the functions that constitute the practice of funeral directing; amending and renumbering s. 470.009, F.S.; revising requirements for licensure as a funeral director by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.011, F.S., relating to licensure as a funeral director by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering ss. 470.012 and 470.013, F.S.; providing editorial changes; amending and renumbering s. 470.014, F.S.; amending and renumbering s. 470.015, F.S.; authorizing the board to pre-

scribe by rule certain continuing education requirements for renewal of license of a funeral director or embalmer; amending and renumbering s. 470.016, F.S.; requiring a board-approved course on communicable diseases in addition to other continuing education requirements for reactivation of an inactive license; providing for automatic expiration of any license not renewed or reactivated after one renewal cycle; requiring certain fees for reactivation; creating s. 497.222, F.S.; prescribing authorized duties of direct disposers; amending and renumbering s. 470.017, F.S., relating to registration as a direct disposer; revising registration and application fees; requiring applicants to have completed a course on communicable diseases and a college credit course on state mortuary law; requiring registrations to have a recent photograph of the registrant; providing for the registration of certain applicants who are not high school graduates; amending and renumbering s. 470.018, F.S.; requiring the board to prescribe by rule continuing education requirements, including a board-approved course on communicable diseases, for renewal of registration as a direct disposer; amending and renumbering s. 470.019, F.S.; including a ground for disciplinary action against a direct disposer or direct disposal establishment relating to discipline by other jurisdictions for violations relating to the disposition of dead human bodies; creating s. 497.228, F.S.; providing for health and safety education; amending and renumbering s. 470.021, F.S., relating to standards, location, and registration of direct disposal establishments; revising registration and inspection fees; eliminating the prohibition against reinspection fees; providing for automatic expiration of registration under certain circumstances; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of person identified in the application; requiring certain display of the establishment name and the name of the direct disposer in charge; restricting the direct disposer in charge to one establishment; requiring prior notification to the board of any change in ownership, name, or direct disposer in charge; requiring a direct disposer in charge and providing the requirements thereof; requiring the establishment to transact its business under the name by which it is registered; creating s. 497.230, F.S.; providing for regulation of removal services, refrigeration facilities, and centralized embalming facilities; renumbering s. 470.022, F.S.; relating to direct disposing; amending and renumbering s. 470.023, F.S., relating to the penalty for the practice of direct disposition without registration; providing editorial changes; amending and renumbering s. 470.024, F.S., relating to licensure as a funeral establishment; prescribing additional requirements for funeral establishments; revising licensure and inspection fees; providing for automatic expiration of license under certain circumstances; eliminating the prohibition against reinspection fees; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of persons identified in the application; requiring certain display of the establishment name and of the funeral director in charge; restricting the funeral director in charge to one establishment; amending and renumbering s. 470.025, F.S., relating to licensure as a cinerator facility; revising licensure and inspection fees; eliminating the prohibition against reinspection fees; requiring the board to establish by rule standards for cinerator facilities; expanding the contents of reports to the department; expanding facility inspection authorities to include the Department of Environmental Regulation; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the facility; authorizing the board to deny, suspend, or revoke a license based on the histories of persons identified in the application; requiring certain display of the facility name and of the direct disposer in charge; requiring the facility to transact business in the name by which it is licensed; amending and renumbering s. 470.0255, F.S.; providing a time within which cremation must be performed; amending and renumbering s. 470.026, F.S.; transferring from the department to the board rulemaking and regulation of solicitation of goods and services; prohibiting at-need solicitation of burial rights, merchandise, and services; amending and renumbering s. 470.029, F.S.; requiring the reporting of cases embalmed and bodies handled directly to the department and eliminating the local registrar of vital statistics as an intermediary; amending and renumbering s. 470.031, F.S., relating to prohibitions and penalties; providing editorial changes; amending and renumbering s. 470.036, F.S., relating to disciplinary proceedings; revising and providing grounds for disciplinary action, including having been disciplined in another jurisdiction for a violation relating to the disposition of dead human bodies; authorizing assessment of costs associated with investigation and prosecution; providing that license revocation is permanent; creating s. 497.243, F.S.; providing for cash advance and escrow refund accounts for funeral establishments; amending and renumbering s. 470.038, F.S., relating to reciprocity; revising terminology; amending and renumbering s. 470.039, F.S., relating to exceptions to regulation; providing editorial changes; amending and renumbering s. 470.0395, F.S.; updating saving clauses; amending and renumbering s. 497.003, F.S.; exempting certain family cemeteries and certain mausoleums; applying to all cemeteries laws relating to solicitation of goods and services, illegal tying arrangements, and abandoned cemeteries; requiring certain exempt cemeteries to submit to investigation and mediation by the department; amending and renumbering s. 497.006, F.S., relating to licensure as a cemetery company; requiring applicants to provide information necessary to determine eligibility; requiring a financial statement attesting to a specified minimum net worth; raising the minimum amount care and maintenance trust funds must contain; revising the requirements of savings and loan associations certifying care and maintenance trust funds; amending and renumbering s. 497.007, F.S.; revising requirements relating to the purchase or acquisition of control of an existing cemetery; requiring a financial statement attesting to a specified minimum net worth; amending and renumbering s. 497.008, F.S.; revising provisions relating to change of control of an existing cemetery company; requiring a financial statement attesting to a specified minimum net worth; requiring an investigation rather than an initial filing fee; amending and renumbering s. 497.009, F.S., relating to annual license fees; increasing the late renewal fee and providing for timely submission of renewal applications and fees; amending and renumbering s. 497.021, F.S., relating to care and maintenance trust funds; revising provisions relating to the entities with which such trust funds may be established; providing requirements and investment restrictions of trustees; amending and renumbering s. 497.023, F.S.; deleting reference to monument maintenance fees; raising the minimum amount per grave space required to be deposited in a care and maintenance trust fund; revising deposit requirements for cemeteries losing their exempt status; eliminating a provision relating to minimum deposits in new trust funds; amending and renumbering s. 497.025, F.S., relating to liability; amending and renumbering s. 497.029, F.S.; revising deposit requirements of preconstruction trust funds to conform to other cemetery trust funds; amending and renumbering s. 497.031, F.S.; eliminating a penalty applicable to failure to display the cemetery license; amending and renumbering s. 497.033, F.S.; requiring preneed burial contracts to disclose certain information relating to the opening and closing of a burial space; requiring cemeteries offering preneed contracts to offer opening and closing of the burial space as part of the contract; amending and renumbering s. 497.035, F.S.; authorizing cemetery companies to keep financial records at a location other than the principal place of business; authorizing the board to prescribe the minimum information required to be kept; creating s. 497.331, F.S.; authorizing charges for opening and closing a grave, transferring burial rights, certain taxes, credit life and disability insurance, and interest on unpaid balances; amending and renumbering s. 497.041, F.S.; prohibiting cemetery companies from requiring monument dealers to obtain insurance, bond, or surety as a condition of access to the cemetery; eliminating monument maintenance fees; deleting a provision authorizing a cemetery company to charge a fee for marking the grave and inspecting a monument not installed by the cemetery company or its agents; amending and renumbering s. 497.044, F.S., relating to illegal tying arrangements; eliminating a cemetery company's right to require monument dealers to maintain certain insurance; creating s. 497.337, F.S.; requiring registration of brokers of burial rights; amending and renumbering s. 497.048, F.S.; prohibiting the sale of personal property and services by a cemetery company under certain circumstances; amending and renumbering s. 497.0484, F.S., relating to alternatives to deposits in a merchandise trust fund; transferring regulation from the department to the board; amending and renumbering s. 497.049, F.S., relating to proof of compliance with law applicable to existing merchandise trust funds, to conform; amending and renumbering s. 497.054, F.S., relating to penalties; amending and renumbering s. 497.056, F.S., relating to civil remedies; revising terminology; creating s. 497.515, F.S.; providing additional prohibited acts; amending and renumbering s. 497.057, F.S., relating to attorney's fees; amending and renumbering s. 497.061, F.S., relating to burial without regard to race or color; providing editorial changes; amending and renumbering s. 497.071, F.S., relating to abandoned cemeteries; providing editorial changes; creating s. 497.345, F.S.; providing procedures applicable to inactive cemeteries; amending and renumbering s. 497.091, F.S.; conforming terminology and correcting cross references; creating s. 497.349, F.S.; providing for registration of exempt cemeteries; creating s. 497.351, F.S.; providing for registration of monument establishments; amending and renumbering s.

639.085, F.S.; including preneed burial merchandise and service contracts under regulation of the chapter; amending and renumbering s. 639.087, F.S., relating to insurance business not authorized, to conform; amending and renumbering s. 639.09, F.S., relating to certificate of authority required to sell preneed contracts, to include reference to cemeteries; prohibiting the sale of preneed services, merchandise, or burial rights without a license or registration to sell on an at-need basis; amending and renumbering s. 639.10, F.S.; transferring from the department to the board rule and regulatory authority relating to certificates of authority; revising certification fees; revising the payee and depository of fees and other funds; amending and renumbering s. 639.105, F.S., relating to approval of forms; transferring responsibilities from the department to the board; amending and renumbering s. 639.107, F.S., relating to nonconforming contracts; correcting cross references; amending and renumbering s. 639.108, F.S., relating to the Preneed Funeral Contract Consumer Protection Trust Fund; transferring authority over the administration and regulation of the trust fund to the board; amending and renumbering s. 639.11, F.S., relating to disposition of proceeds received on preneed funeral and burial contracts; revising the amounts required to be deposited based on the merchandise or service sold or rented; providing for the holding of deposited funds in trust; providing for transfer of merchandise and burial rights; amending and renumbering s. 639.13, F.S.; revising provisions relating to cancellation of or default on preneed contracts; amending and renumbering s. 639.14, F.S.; relating to payment of funds upon death of named beneficiary; amending and renumbering s. 639.145, F.S., relating to evidence of financial responsibility as alternative to trust deposit; transferring from the department to the board such regulatory responsibility; amending and renumbering s. 639.149, F.S., relating to alternative preneed contracts; making the board the responsible regulatory party; amending and renumbering s. 639.15, F.S., relating to examinations and investigations; making the board the responsible regulatory party; authorizing the department to charge an examination fee and certain travel expenses; amending and renumbering s. 639.16, F.S., relating to grounds for discipline; making the board the responsible regulatory party; removing the requirement that certain violations be willful; amending and renumbering s. 639.162, F.S., relating to administrative fine in lieu of revocation or suspension of certificate of authority; making the board the responsible regulatory party; changing the fine depository; amending and renumbering s. 639.165, F.S., relating to dissolution or liquidation; making the board the responsible regulatory party; creating s. 497.439, F.S.; providing for registration of preneed sales agents; amending and renumbering s. 639.21, F.S., relating to acceptability of funeral and burial merchandise; amending and renumbering s. 639.22, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited; amending and renumbering s. 639.23, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined; amending and renumbering s. 639.25, F.S., relating to hearings, witnesses, appearances, production of books, and service of process relating to unfair methods of competition or unfair or deceptive acts or practices; making the board the responsible regulatory party; amending and renumbering s. 639.30, F.S., relating to civil liability; providing editorial changes; amending ss. 245.07, 381.0098, 382.002, 403.703, 406.02, 455.2226, 501.022, 624.01, 626.785, 628.4615, and 732.919, F.S.; correcting cross references; repealing s. 20.30(4)(h), F.S., relating to the Board of Funeral Directors and Embalmers; repealing ss. 470.027, 470.028, 497.001, 497.002, 497.004, 497.005, 497.011, 497.012, 497.014, 497.015, 497.016, 497.018, 497.026, 497.043, 497.0435, 497.046, 639.055, 639.07, 639.08, 639.106, 639.17, 639.185, 639.20, 639.24, 639.26, 639.27, 639.28, 639.29, and 639.33, F.S., relating to various aspects of funeral, cemetery, and crematory regulation rendered redundant or unnecessary by the other provisions of this act; repealing s. 501.604(16), F.S., relating to exemptions to the Florida Telemarketing Act; repealing s. 624.523(1)(m), F.S., relating to the Insurance Commissioner's Regulatory Trust Fund; transferring the Board of Funeral Directors and Embalmers to the Department of Banking and Finance; providing for termination of present terms on the board; providing for appointment of new members and for qualifications and terms thereof; continuing the validity of licenses, registrations, and certificates of authority issued under chapters 470, 497, and 639, F.S.; providing for transfer of funds in the Preneed Funeral Contract Consumer Protection Fund to the Division of Finance of the Department of Banking and Finance; preserving the validity of any judicial or administrative proceedings pending on the effective date of the act and substituting the Department of Banking and Finance as a party in interest, if applicable; saving chapters 470, 497, and 639, F.S., from Sunset repeal; providing for type four transfer of positions and funding from the Department of Insurance to the Department of Banking and Finance; providing effective dates.

—which had been previously considered and amended this day.

Reconsideration of Amendment

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

Further consideration of **HB 2345** was deferred.

RECESS

The Senate recessed at 6:45 p.m. to reconvene at 7:30 p.m.

EVENING SESSION

The Senate was called to order by the President at 8:08 p.m. A quorum present—39:

Mr. President	Diaz-Balart	Jenne	Scott
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams
Dantzler	Holzendorf	Myers	

CONSIDERATION OF RESOLUTIONS

On motion by Senator Diaz-Balart, the rules were waived by unanimous consent and the following resolution was introduced out of order:

By Senators Diaz-Balart, Casas, Hargrett, Gutman, Meadows, Turner and Jones—

SR 2428—A resolution urging the President of the United States and the Congress to support a mandatory international embargo and other action against the repressive governments in Cuba and Haiti.

WHEREAS, despite the persistent and continuing diplomatic efforts of the United States and other concerned member states of the United Nations to help bring about democracy in Cuba and Haiti, the repressive governments in those countries continue to deny their citizens the fundamental freedoms and basic human rights guaranteed under law in the United States and many other countries around the world and expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights, and

WHEREAS, the Congress has most recently expressed the concern of the citizens of this country for the sufferings of our neighbors living under the appalling conditions in Cuba and Haiti, which conditions are a direct result of such repression, by passing the Cuban Democracy Act of 1992 and by supporting the current embargo against Haiti imposed by the Organization of American States, and

WHEREAS, the support of President Clinton was instrumental in the passage of the Cuban Democracy Act, and the President has also shown a willingness to meet with Haitian President Jean-Bertrand Aristide to explore opportunities to negotiate a settlement for the restoration of democracy in Haiti, and

WHEREAS, the United Nations in recent years has determined that massive and systematic violations of human rights have constituted "threats to peace" under Article 39 of Chapter VII of its charter and has, accordingly, imposed international sanctions against such countries as the former Rhodesia, South Africa, Iraq, and the former Yugoslavia, and

WHEREAS, the long-suffering citizens of Cuba and Haiti are no less deserving of international efforts on their behalf than those for whom the United States and other member states of the United Nations have already exerted themselves, NOW, THEREFORE,

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

That the members of the Florida Senate, on behalf of the citizens of Florida, consider the current, repressive governments in Cuba and Haiti not only illegal, but also, as a result of their extreme political intolerance, pervasive abuse of human rights, and appalling indifference to the continuing decline in living conditions in their countries, threats to international peace.

BE IT FURTHER RESOLVED that the members of the Florida Senate, on behalf of the citizens of Florida, urge the President of the United States and the Congress to do all in their power to alleviate the sufferings of the citizens of Cuba and Haiti, beginning with support for a mandatory international embargo against the repressive governments in those countries, under the auspices of Article 39 of Chapter VII of the Charter of the United Nations, and continuing with stronger action, as necessary.

BE IT FURTHER RESOLVED that a copy of this resolution be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

On motion by Senator Diaz-Balart, **SR 2428** was read by title and was read the second time in full and adopted.

On motion by Senator Diaz-Balart, the rules were waived by unanimous consent and the following resolution was introduced out of order:

By Senators Diaz-Balart, Casas, Silver, Forman, Gutman, Jones and Turner—

SR 2430—A resolution expressing gratitude to Mayor Vincent A. Cianci, Jr., of the City of Providence, Rhode Island, zookeepers Dan Miller and John Brangan, and the Rhode Island Zoological Society for their efforts in helping to reconstruct facilities damaged in the Miami Zoo and the Monkey Jungle by Hurricane Andrew.

WHEREAS, the tremendous damage caused by Hurricane Andrew devastated a great portion of South Florida, causing not only human suffering but damage to property of a magnitude which has not been seen before, and

WHEREAS, the Miami Zoo suffered a tremendous amount of damage to its facilities, and

WHEREAS, Mayor Vincent A. Cianci, Jr., the Mayor of the City of Providence, Rhode Island, sent zookeepers Dan Miller and John Brangan of the Williams Park Zoo to assist the City of Miami in reconstructing the facilities damaged by Hurricane Andrew at the Miami Zoo and the Monkey Jungle, and

WHEREAS, the zookeepers provided their services by working towards stabilizing the situations at both facilities, helping recapture lost animals, repairing fences and exhibits, and caring for the surviving animals on a day-to-day basis, and

WHEREAS, the cost of the trip was underwritten by the Rhode Island Zoological Society which donated airfare and by the Miami Zoo which provided housing for the zookeepers, NOW, THEREFORE,

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

That the Florida Senate expresses its heartfelt gratitude to the Mayor of the City of Providence, Rhode Island, Vincent A. Cianci, Jr., zookeepers Dan Miller and John Brangan, and the Rhode Island Zoological Society for their efforts in assisting the Miami Zoo and the Monkey Jungle in reconstructing the facilities damaged by Hurricane Andrew.

BE IT FURTHER RESOLVED that a copy of this resolution, signed by the President of the Senate and with the Seal of the Senate affixed, be presented to Mayor Vincent A. Cianci, Jr., zookeepers Dan Miller and John Brangan, and the Rhode Island Zoological Society as a tangible token of the sentiments of the Florida Senate.

On motion by Senator Diaz-Balart, **SR 2430** was read by title and was read the second time in full and adopted.

On motion by Senator Kirkpatrick, by two-thirds vote **SR 1852** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Kirkpatrick—

SR 1852—A resolution commending the Williston High School Future Farmers of America meat-judging team for placing first in national competition.

WHEREAS, the Future Farmers of America is an organization that prepares students for a career in agricultural services, and

WHEREAS, the F.F.A. has a long-standing tradition of developing the leadership capabilities and the quest for learning of our youth, and

WHEREAS, the Future Farmers of America chapter at Williston High School began participating in national competitions in 1987, placing third in their inaugural competition, and

WHEREAS, the Williston High School F.F.A. won its first national competition in 1990, and

WHEREAS, the 1992 Williston High School F.F.A. meat-judging team claimed first place in competition at the annual Future Farmers of America convention in Kansas City, Missouri, and

WHEREAS, Williston High School's F.F.A. team is the first F.F.A. team in Florida to win this title, and

WHEREAS, the tradition of excellence in the Williston High School F.F.A. program continues, NOW, THEREFORE,

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

That the Williston High School Future Farmers of America meat-judging team is commended for winning first place in the national competion held in Kansas City, Missouri and thereby bringing acclaim to Williston High School, the people of Williston, and the people of this State.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to the Williston High School Future Farmers of America meat-judging team as a tangible 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 Kirkpatrick, by two-thirds vote **SR 2354** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Kirkpatrick—

SR 2354—A resolution recognizing Don Duden and his services to the state.

WHEREAS, Don Duden has been a faithful employee of the Department of Natural Resources since 1969, and

WHEREAS, in 1975 he became the assistant executive director of the agency, a position he presently holds, and

WHEREAS, as assistant executive director, he is responsible for assisting in the overall management and direction of the Department of Natural Resources, which has more than 2,000 employees and an annual budget in excess of $150 million, and

WHEREAS, in 1989, former Governor Bob Martinez asked Don Duden to head a team to inspect the *Exxon Valdez* oil spill in Alaska and make recommendations as to the steps Florida could take to be better prepared for such a disaster, and

WHEREAS, thanks to those efforts, Florida now has a spill response-coastal protection law and a system of evaluating environmental damages associated with such a spill, and

WHEREAS, Don Duden has worked tirelessly to assist the members of the Legislature and the people of this state, and

WHEREAS, the natural resources of Florida are the true beneficiaries of Don Duden's service, NOW, THEREFORE,

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

That the Florida Senate recognizes the contributions that Don Duden has made and continues to make to the State of Florida and expresses its appreciation to him for a job well done.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to Don Duden as a token of the esteem held by this body.

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

On motion by Senator Foley, the rules were waived by unanimous consent and the following resolution was introduced out of order:

By Senator Foley—

SR 2432—A resolution recognizing April 2, 1993, as Red Nose Day USA and commending the Sudden Infant Death Syndrome Alliance on its efforts to end Sudden Infant Death Syndrome.

WHEREAS, April 2, 1993, marks the occasion of the second annual Red Nose Day USA presented by the Sudden Infant Death Syndrome Alliance and its affiliates to generate public awareness of SIDS and support for programs of research and family service, and

WHEREAS, Red Nose Day USA has established the Red Nose as a national symbol of the hope for a future free of the tragedy of Sudden Infant Death Syndrome (SIDS), and

WHEREAS, Red Nose Day USA is a celebration of life to combat Sudden Infant Death Syndrome, and

WHEREAS, SIDS is the major cause of death in the U.S. for infants 1 week to 1 year old, claiming the lives of over 7,000 babies every year at a rate of one baby per 500 live births and nearly one baby every hour of every day, and

WHEREAS, more children die of SIDS in 1 year than all those who die of cancer, heart disease, pneumonia, child abuse, AIDS, cystic fibrosis, and muscular dystrophy combined during their first 14 years, and

WHEREAS, the Sudden Infant Death Syndrome Alliance and its affiliates work to unite parents, caregivers, and researchers with governmental, business, and community service organizations in a nationwide movement to advance the support of SIDS families and hasten the elimination of SIDS, and

WHEREAS, the SIDS Alliance and its affiliates fund medical research to discover the causes and cure for SIDS; offer emotional support programs to families who have suffered the loss of a beloved baby to SIDS; and supply up-to-date information on SIDS to the public, particularly new and expectant parents, and

WHEREAS, the SIDS Alliance and its affiliates hope, through Red Nose Day USA, to stimulate the public and elevate SIDS to the level of societal concern which it rightly deserves, NOW, THEREFORE,

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

That the Florida Senate recognizes Friday, April 2, 1993, as Red Nose Day USA and commends the Sudden Infant Death Syndrome Alliance on presenting the second annual Red Nose Day USA and conveys its sincere best wishes to the alliance for the successful completion of its mission to end Sudden Infant Death Syndrome.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to the Sudden Infant Death Syndrome Alliance as a tangible token of the sentiments of the Florida Senate.

On motion by Senator Foley, **SR 2432** was read by title and was read the second time in full and adopted.

On motion by Senator Holzendorf, the rules were waived by unanimous consent and the following resolution was introduced out of order:

By Senator Holzendorf—

SR 2434—A resolution honoring the memory and accomplishments of James E. Davis.

WHEREAS, as a youth, James Elsworth Davis and his brothers tended the family general store in Burley, Idaho, and, after the family moved to Miami in 1925, assisted their father in the first store of what was to become Winn-Dixie Stores, Inc., and

WHEREAS, James E. Davis worked his way up from delivery boy and produce buyer to chairman of the company that today operates more than 1,166 stores in 13 states and is the 5th largest supermarket chain in the nation, and

WHEREAS, interrupting his career to serve his country during World War II, Mr. Davis advanced to Officer in Charge of the Quartermaster Market Center in New York City, shipping food to support U.S. operations in Europe, the Mediterranean, and North Africa, and was awarded the Legion of Merit before being discharged with the rank of Lieutenant Colonel, and

WHEREAS, a staunch supporter of both free enterprise and education, Mr. Davis initiated development of The Institution For World Capitalism at Jacksonville University and, in the 1950's, began his longtime support of colleges aimed at improving the education of minorities, including Bethune-Cookman College in Daytona Beach, Edward Waters College in Jacksonville, Rust College in Mississippi, and Meharry Medical School in Tennessee, and

WHEREAS, Mr. Davis was a founder and chairman of American Heritage Life Insurance Company of Jacksonville, served on the Board of Trustees of St. Luke's Hospital Association, played an instrumental role in bringing the Mayo Clinic to Jacksonville, and, in his lifetime, was legendary for his leadership, philanthropy, and service in his home city, and

WHEREAS, Mr. Davis is survived by his wife, Florence, his daughter, Dorothy D. Smith, his son A. Dano Davis, seven grandchildren, and ten great-grandchildren, NOW, THEREFORE,

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

That the Florida Senate pauses in its deliberations to pay its respects to James E. Davis and to honor the legacy of his numerous accomplishments.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to the family of James E. Davis as a tangible token of the sentiments expressed of the Florida Senate.

On motion by Senator Holzendorf, **SR 2434** was read by title and was read the second time in full and adopted.

SPECIAL ORDER, continued

The Senate resumed consideration of—

HB 2345—A bill to be entitled An act relating to funeral, cemetery, and crematory services; merging chapter 470, F.S., relating to funeral directors, embalmers, and direct disposition, and chapter 639, F.S., relating to preneed funeral contracts, into chapter 497, F.S., relating to cemeteries, and placing them under the jurisdiction of the Department of Banking and Finance; creating s. 497.101, F.S.; providing a short title; amending and renumbering s. 470.001, F.S.; expanding legislative findings and intent; amending and renumbering s. 470.002, F.S.; revising and providing definitions; amending and renumbering s. 470.003, F.S.; renaming the Board of Funeral Directors and Embalmers as the Board of Funeral and Cemetery Services; providing procedure for appointment of members and for filling vacancies; providing qualifications for membership on the board; amending and renumbering s. 470.005, F.S.; providing rulemaking authority of the board and department; creating s. 497.111, F.S.; providing legislative intent with respect to the professions and occupations regulated by the department under the chapter; creating s. 497.113, F.S.; providing general powers and duties of the department with respect to such regulation; creating s. 497.115, F.S.; providing that the board may be contacted through the headquarters of the department in Tallahassee; creating s. 497.117, F.S.; providing for officers, meetings, official business, and compensation of the board; creating s. 497.119, F.S.; authorizing the board and department to publish an advisory newsletter; creating s. 497.121, F.S.; providing accountability and liability of board members; creating s. 497.123, F.S.; providing for board rules, final agency action, and challenges; creating s. 497.125, F.S.; providing general licensing provisions; creating s. 497.127, F.S.; providing general provisions relating to the procurement, administration, security, and recordkeeping requirements of examinations; providing exemptions from public records requirements relating to examination results and meetings held to create or review examination questions; providing for future review and repeal; creating s. 497.129, F.S.; prohibiting theft or reproduction of examinations and providing a penalty therefor; creating s. 497.131, F.S.; providing general requirements with respect to fees, receipts, disposition of such funds, and periodic management reports; creating s. 497.133, F.S.; providing for legal and investigative services, including duties of the Department of Legal Affairs with respect thereto; creating s. 497.135, F.S.; providing a mediation process applicable to certain violations of the chapter; creating s. 497.137, F.S.; providing for the issuance of citations applicable

to certain violations of the chapter; creating s. 497.139, F.S.; providing powers to administer oaths and issue subpoenas; creating s. 497.141, F.S.; providing for the admission of financial examiners' worksheets, investigative reports, and other related documents as evidence under certain circumstances; creating s. 497.143, F.S.; providing for injunction; creating s. 497.145, F.S.; providing for cease and desist orders, civil penalties, and enforcement; creating s. 497.147, F.S.; providing disciplinary proceedings; providing exemptions from public records and public meetings requirements relating to probable cause investigations; providing for future review and repeal; creating s. 497.149, F.S.; providing disciplinary guidelines; creating s. 497.151, F.S.; prohibiting the giving of false information, misleading statements, or knowing misrepresentations relating to obtaining or attempting to obtain licensure under the chapter; providing a penalty; creating s. 497.153, F.S.; providing public access to records required by the department; providing exemptions from public records requirements relating to financial information, examination questions, answers, papers, grades, and grading keys, and challenged examination questions and answers; providing for future review and repeal; creating s. 497.155, F.S.; prohibiting the disclosure of confidential information; providing a penalty; amending and renumbering s. 470.006, F.S., relating to licensure as an embalmer by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.007, F.S., relating to licensure as an embalmer by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering s. 470.008, F.S.; correcting a cross reference; renumbering s. 470.0085, F.S., relating to the embalmer apprentice program; creating s. 497.208, F.S.; describing the functions that constitute the practice of funeral directing; amending and renumbering s. 470.009, F.S.; revising requirements for licensure as a funeral director by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.011, F.S., relating to licensure as a funeral director by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering ss. 470.012 and 470.013, F.S.; providing editorial changes; amending and renumbering s. 470.014, F.S.; amending and renumbering s. 470.015, F.S.; authorizing the board to prescribe by rule certain continuing education requirements for renewal of license of a funeral director or embalmer; amending and renumbering s. 470.016, F.S.; requiring a board-approved course on communicable diseases in addition to other continuing education requirements for reactivation of an inactive license; providing for automatic expiration of any license not renewed or reactivated after one renewal cycle; requiring certain fees for reactivation; creating s. 497.222, F.S.; prescribing authorized duties of direct disposers; amending and renumbering s. 470.017, F.S., relating to registration as a direct disposer; revising registration and application fees; requiring applicants to have completed a course on communicable diseases and a college credit course on state mortuary law; requiring registrations to have a recent photograph of the registrant; providing for the registration of certain applicants who are not high school graduates; amending and renumbering s. 470.018, F.S.; requiring the board to prescribe by rule continuing education requirements, including a board-approved course on communicable diseases, for renewal of registration as a direct disposer; amending and renumbering s. 470.019, F.S.; including a ground for disciplinary action against a direct disposer or direct disposal establishment relating to discipline by other jurisdictions for violations relating to the disposition of dead human bodies; creating s. 497.228, F.S.; providing for health and safety education; amending and renumbering s. 470.021, F.S., relating to standards, location, and registration of direct disposal establishments; revising registration and inspection fees; eliminating the prohibition against reinspection fees; providing for automatic expiration of registration under certain circumstances; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of person identified in the application; requiring certain display of the establishment name and the name of the direct disposer in charge; restricting the direct disposer in charge to one establishment; requiring prior notification to the board of any change in ownership, name, or direct disposer in charge; requiring a direct disposer in charge and providing the requirements thereof; requiring the establishment to transact its business under the name by which it is registered; creating s. 497.230, F.S.; providing for regulation of removal services, refrigeration facilities, and centralized embalming facilities; renumbering s. 470.022, F.S.; relating to direct disposing; amending and renumbering s. 470.023, F.S., relating to the penalty for the practice of direct disposition without registration; providing editorial changes; amending and renumbering s. 470.024, F.S., relating to licensure as a funeral establishment; prescribing additional requirements for funeral establishments; revising licensure and inspection fees; providing for automatic expiration of license under certain circumstances; eliminating the prohibition against reinspection fees; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of persons identified in the application; requiring certain display of the establishment name and of the funeral director in charge; restricting the funeral director in charge to one establishment; amending and renumbering s. 470.025, F.S., relating to licensure as a cinerator facility; revising licensure and inspection fees; eliminating the prohibition against reinspection fees; requiring the board to establish by rule standards for cinerator facilities; expanding the contents of reports to the department; expanding facility inspection authorities to include the Department of Environmental Regulation; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the facility; authorizing the board to deny, suspend, or revoke a license based on the histories of persons identified in the application; requiring certain display of the facility name and of the direct disposer in charge; requiring the facility to transact business in the name by which it is licensed; amending and renumbering s. 470.0255, F.S.; providing a time within which cremation must be performed; amending and renumbering s. 470.026, F.S.; transferring from the department to the board rulemaking and regulation of solicitation of goods and services; prohibiting at-need solicitation of burial rights, merchandise, and services; amending and renumbering s. 470.029, F.S.; requiring the reporting of cases embalmed and bodies handled directly to the department and eliminating the local registrar of vital statistics as an intermediary; amending and renumbering s. 470.031, F.S., relating to prohibitions and penalties; providing editorial changes; amending and renumbering s. 470.036, F.S., relating to disciplinary proceedings; revising and providing grounds for disciplinary action, including having been disciplined in another jurisdiction for a violation relating to the disposition of dead human bodies; authorizing assessment of costs associated with investigation and prosecution; providing that license revocation is permanent; creating s. 497.243, F.S.; providing for cash advance and escrow refund accounts for funeral establishments; amending and renumbering s. 470.038, F.S., relating to reciprocity; revising terminology; amending and renumbering s. 470.039, F.S., relating to exceptions to regulation; providing editorial changes; amending and renumbering s. 470.0395, F.S.; updating saving clauses; amending and renumbering s. 497.003, F.S.; exempting certain family cemeteries and certain mausoleums; applying to all cemeteries laws relating to solicitation of goods and services, illegal tying arrangements, and abandoned cemeteries; requiring certain exempt cemeteries to submit to investigation and mediation by the department; amending and renumbering s. 497.006, F.S., relating to licensure as a cemetery company; requiring applicants to provide information necessary to determine eligibility; requiring a financial statement attesting to a specified minimum net worth; raising the minimum amount care and maintenance trust funds must contain; revising the requirements of savings and loan associations certifying care and maintenance trust funds; amending and renumbering s. 497.007, F.S.; revising requirements relating to the purchase or acquisition of control of an existing cemetery; requiring a financial statement attesting to a specified minimum net worth; amending and renumbering s. 497.008, F.S.; revising provisions relating to change of control of an existing cemetery company; requiring a financial statement attesting to a specified minimum net worth; requiring an investigation rather than an initial filing fee; amending and renumbering s. 497.009, F.S., relating to annual license fees; increasing the late renewal fee and providing for timely submission of renewal applications and fees; amending and renumbering s. 497.021, F.S., relating to care and maintenance trust funds; revising provisions relating to the entities with which such trust funds may be established; providing requirements and investment restrictions of trustees; amending and renumbering s. 497.023, F.S.; deleting reference to monument maintenance fees; raising the minimum amount per grave space required to be deposited in a care and mainte-

nance trust fund; revising deposit requirements for cemeteries losing their exempt status; eliminating a provision relating to minimum deposits in new trust funds; amending and renumbering s. 497.025, F.S., relating to liability; amending and renumbering s. 497.029, F.S.; revising deposit requirements of preconstruction trust funds to conform to other cemetery trust funds; amending and renumbering s. 497.031, F.S.; eliminating a penalty applicable to failure to display the cemetery license; amending and renumbering s. 497.033, F.S.; requiring preneed burial contracts to disclose certain information relating to the opening and closing of a burial space; requiring cemeteries offering preneed contracts to offer opening and closing of the burial space as part of the contract; amending and renumbering s. 497.035, F.S.; authorizing cemetery companies to keep financial records at a location other than the principal place of business; authorizing the board to prescribe the minimum information required to be kept; creating s. 497.331, F.S.; authorizing charges for opening and closing a grave, transferring burial rights, certain taxes, credit life and disability insurance, and interest on unpaid balances; amending and renumbering s. 497.041, F.S.; prohibiting cemetery companies from requiring monument dealers to obtain insurance, bond, or surety as a condition of access to the cemetery; eliminating monument maintenance fees; deleting a provision authorizing a cemetery company to charge a fee for marking the grave and inspecting a monument not installed by the cemetery company or its agents; amending and renumbering s. 497.044, F.S., relating to illegal tying arrangements; eliminating a cemetery company's right to require monument dealers to maintain certain insurance; creating s. 497.337, F.S.; requiring registration of brokers of burial rights; amending and renumbering s. 497.048, F.S.; prohibiting the sale of personal property and services by a cemetery company under certain circumstances; amending and renumbering s. 497.0484, F.S., relating to alternatives to deposits in a merchandise trust fund; transferring regulation from the department to the board; amending and renumbering s. 497.049, F.S., relating to proof of compliance with law applicable to existing merchandise trust funds, to conform; amending and renumbering s. 497.054, F.S., relating to penalties; amending and renumbering s. 497.056, F.S., relating to civil remedies; revising terminology; creating s. 497.515, F.S.; providing additional prohibited acts; amending and renumbering s. 497.057, F.S., relating to attorney's fees; amending and renumbering s. 497.061, F.S., relating to burial without regard to race or color; providing editorial changes; amending and renumbering s. 497.071, F.S., relating to abandoned cemeteries; providing editorial changes; creating s. 497.345, F.S.; providing procedures applicable to inactive cemeteries; amending and renumbering s. 497.091, F.S.; conforming terminology and correcting cross references; creating s. 497.349, F.S.; providing for registration of exempt cemeteries; creating s. 497.351, F.S.; providing for registration of monument establishments; amending and renumbering s. 639.085, F.S.; including preneed burial merchandise and service contracts under regulation of the chapter; amending and renumbering s. 639.087, F.S., relating to insurance business not authorized, to conform; amending and renumbering s. 639.09, F.S., relating to certificate of authority required to sell preneed contracts, to include reference to cemeteries; prohibiting the sale of preneed services, merchandise, or burial rights without a license or registration to sell on an at-need basis; amending and renumbering s. 639.10, F.S.; transferring from the department to the board rule and regulatory authority relating to certificates of authority; revising certification fees; revising the payee and depository of fees and other funds; amending and renumbering s. 639.105, F.S., relating to approval of forms; transferring responsibilities from the department to the board; amending and renumbering s. 639.107, F.S., relating to nonconforming contracts; correcting cross references; amending and renumbering s. 639.108, F.S., relating to the Preneed Funeral Contract Consumer Protection Trust Fund; transferring authority over the administration and regulation of the trust fund to the board; amending and renumbering s. 639.11, F.S., relating to disposition of proceeds received on preneed funeral and burial contracts; revising the amounts required to be deposited based on the merchandise or service sold or rented; providing for the holding of deposited funds in trust; providing for transfer of merchandise and burial rights; amending and renumbering s. 639.13, F.S.; revising provisions relating to cancellation of or default on preneed contracts; amending and renumbering s. 639.14, F.S.; relating to payment of funds upon death of named beneficiary; amending and renumbering s. 639.145, F.S., relating to evidence of financial responsibility as alternative to trust deposit; transferring from the department to the board such regulatory responsibility; amending and renumbering s. 639.149, F.S., relating to alternative preneed contracts; making the board the responsible regulatory party; amending and renumbering s. 639.15, F.S., relating to examinations and investigations; making the board the responsible regulatory party; authorizing the department to charge an examination fee and certain travel expenses; amending and renumbering s. 639.16, F.S., relating to grounds for discipline; making the board the responsible regulatory party; removing the requirement that certain violations be willful; amending and renumbering s. 639.162, F.S., relating to administrative fine in lieu of revocation or suspension of certificate of authority; making the board the responsible regulatory party; changing the fine depository; amending and renumbering s. 639.165, F.S., relating to dissolution or liquidation; making the board the responsible regulatory party; creating s. 497.439, F.S.; providing for registration of preneed sales agents; amending and renumbering s. 639.21, F.S., relating to acceptability of funeral and burial merchandise; amending and renumbering s. 639.22, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited; amending and renumbering s. 639.23, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined; amending and renumbering s. 639.25, F.S., relating to hearings, witnesses, appearances, production of books, and service of process relating to unfair methods of competition or unfair or deceptive acts or practices; making the board the responsible regulatory party; amending and renumbering s. 639.30, F.S., relating to civil liability; providing editorial changes; amending ss. 245.07, 381.0098, 382.002, 403.703, 406.02, 455.2226, 501.022, 624.01, 626.785, 628.4615, and 732.919, F.S.; correcting cross references; repealing s. 20.30(4)(h), F.S., relating to the Board of Funeral Directors and Embalmers; repealing ss. 470.027, 470.028, 497.001, 497.002, 497.004, 497.005, 497.011, 497.012, 497.014, 497.015, 497.016, 497.018. 497.026, 497.043, 497.0435, 497.046, 639.055, 639.07, 639.08, 639.106, 639.17, 639.185, 639.20, 639.24, 639.26, 639.27, 639.28, 639.29, and 639.33, F.S., relating to various aspects of funeral, cemetery, and crematory regulation rendered redundant or unnecessary by the other provisions of this act; repealing s. 501.604(16), F.S., relating to exemptions to the Florida Telemarketing Act; repealing s. 624.523(1)(m), F.S., relating to the Insurance Commissioner's Regulatory Trust Fund; transferring the Board of Funeral Directors and Embalmers to the Department of Banking and Finance; providing for termination of present terms on the board; providing for appointment of new members and for qualifications and terms thereof; continuing the validity of licenses, registrations, and certificates of authority issued under chapters 470, 497, and 639, F.S.; providing for transfer of funds in the Preneed Funeral Contract Consumer Protection Fund to the Division of Finance of the Department of Banking and Finance; preserving the validity of any judicial or administrative proceedings pending on the effective date of the act and substituting the Department of Banking and Finance as a party in interest, if applicable; saving chapters 470, 497, and 639, F.S., from Sunset repeal; providing for type four transfer of positions and funding from the Department of Insurance to the Department of Banking and Finance; providing effective dates.

—which had been previously considered this day.

Senator Sullivan moved the following amendment which was previously adopted and reconsidered:

Amendment 2—On page 160, strike lines 3-9 and insert: *, facilities rented, and merchandise sold; and 100 percent of the purchase price collected for all cash advance items sold. Such deposits shall be made* ~~*or paid on the preneed*~~

Amendment 2 was adopted.

Senator Sullivan moved the following amendment:

Amendment 3—On page 165, line 19, through page 167, line 25, strike all of said lines and insert:

(3) Subject to paragraphs (a) through (d) a purchaser may cancel the merchandise portion of a preneed contract by providing written notice to the certificateholder, and shall be entitled to a full refund of the purchase price allocable to the specific item or items of merchandise that the certificateholder cannot or does not deliver in accordance with this subsection.

(a) Below ground crypts may be delivered by installing them in the ground, subject to the rules and regulations of the cemetery;

(b) With the prior written approval of the purchaser, urns may be delivered by placing them in a niche in which the intended beneficiary of the urn has an inurnment right, subject to the rules and regulations of the cemetery, or by physically transferring the urn to such person;

(c) With the prior written approval of the purchaser, monuments may be delivered by physically installing them at the site of interment, entombment, inurnment, or scattering, subject to the rules and regulations of the cemetery; or

(d) With the prior written approval of the purchaser, monuments and urns may be delivered by storing them in a warehouse, provided that:

1. The warehouse is owned and maintained by a person other than the certificateholder.

2. The warehouse is insured and licensed (if applicable) in the state in which it is located.

3. The warehouse delivers to the certificateholder, upon receipt of the merchandise, a negotiable warehouse receipt.

4. The warehouse registers with the department on forms approved by the board and agrees to comply with any administrative rules promulgated by the board.

(4) The delivery of any merchandise other than the merchandise set forth in subsection (3) or the delivery of any merchandise set forth in subsection (3) in any manner other than that set forth in subsection (3) shall not be considered delivery, and shall not eliminate the need to comply with the trust fund requirements of this part.

(5)~~(3)~~ Each certificateholder shall provide in conspicuous type in its contract that the contract purchaser may cancel the contract *and receive a full refund* ~~without payment of liquidated damages~~ within 30 days of the date of execution of the contract. The failure to make such provision shall not impair the contract purchaser's right to cancellation and refund as provided in this section.

(6)~~(4)~~ Upon breach of contract or failure of the certificateholder to provide funeral merchandise or services under a preneed contract, the contract purchaser shall be entitled to a refund of all money paid on the contract. Such refund shall be made within 30 days after receipt by the certificateholder of the contract purchaser's written request for refund.

(7) If a purchaser is 90 days past due in making payments on a preneed contract, the contract shall be considered to be in default, and the certificateholder shall be entitled to cancel the contract, withdraw all funds in trust allocable to merchandise items and retain such funds as liquidated damages. Upon making such withdrawal, the certificateholder shall return all funds in trust allocable to services, facilities or cash advance items to the purchaser, provided that the certificateholder has provided the purchaser with 30 days' written notice of its intention to exercise any of its rights under this provision.

~~(5) Except upon cancellation by the contract purchaser under subsection (1), if the contract purchaser is more than 60 days in default on the preneed contract, the certificateholder may cancel the contract and retain as liquidated damages the percentage of the contract amount as authorized in subsection (2); any funds in excess of that amount shall be refunded to the contract purchaser or to the estate of the contract beneficiary. Such refund shall be made within 30 days of cancellation by the certificateholder. The seller of a preneed contract may not cancel the contract unless the purchaser is in default.~~

(8)~~(6)~~ No preneed contract shall restrict any contract purchaser who is an applicant for, or a recipient of, supplemental security income, aid to families with dependent children, or Medicaid from making his contract irrevocable.

(9)~~(7)~~ This section, as amended by s. 7 of chapter 83-316, Laws of Florida, applies only to preneed contracts entered into on or after October 1, 1983.

(10) Persons who purchase merchandise or burial rights pursuant to this chapter shall have the right to sell, alienate, or otherwise transfer the merchandise or burial rights subject to and in accordance with rules adopted by the board.

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

Amendment 3A—On page 2, between lines 19 and 20, insert:

(5) The board shall determine by rule what constitutes delivery under this section.

(Renumber subsequent subsections.)

Amendment 3 as amended was adopted.

Senator Harden moved the following amendment which was adopted:

Amendment 4 (with Title Amendment)—On page 193, between lines 11 and 12 insert:

Section 137. Section 628.371, Florida Statutes, is amended to read:

628.371 Dividends to stockholders.—

(1) A domestic stock insurer shall not pay any dividend or distribute cash or other property to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains. ~~Dividend payments or distributions to stockholders shall not exceed 10 percent of such surplus in any one year unless otherwise approved by the department. In addition to such limited payments, an insurer may make dividend payments or distributions out of the insurer's entire net operating profits and realized net capital gains derived during the immediately preceding calendar year.~~

(2) Dividend payments or distributions to stockholders, without prior written approval of the department, shall not exceed the larger of:

(a) The lesser of 10 percent of surplus or net gain from operations (life and health companies) or net income (property and casualty companies), not including realized capital gains, plus a 2-year carryforward for property and casualty companies;

(b) Ten percent of surplus, with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains;

(c) The lessor of 10 percent of surplus or net investment income (net gain before capital gains for life and health companies) plus a 3-year carryforward (2-year carryforward for life and health companies) with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains.

(3) In lieu of the provisions in subsection (2), an insurer may pay a dividend or make a distribution without the prior written approval of the department when:

(a) The dividend is equal to or less than the greater of:

1. Ten percent of the insurers surplus as to policyholders derived from realized net operating profits on its business and net realized capital gains; or

2. The insurer's entire net operating profits and realized net capital gains derived during the immediately preceding calendar year; and

(b) The insurer will have surplus as to policyholders equal to or exceeding 115 percent of the minimum required statutory surplus as to policyholders after the dividend or distribution is made; and ,

(c) The insurer has filed notice with the department at least 10 business days prior to the dividend payment or distribution, or such shorter period of time as approved by the department on a case-by-case basis. Such notice shall not create a right in the department to approve or disapprove a dividend otherwise properly payable hereunder; and,

(d) The notice includes a certification by an officer of the insurer attesting that after payment of the dividend or distribution the insurer will have at least 115 percent of required statutory surplus as to policyholders.

~~(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus advanced to the insurer under s. 628.401.~~

~~(3) A dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.~~

(4) The department shall not approve a dividend or distribution in excess of the maximum amount allowed in subsection (1) unless, considering the following factors, it determines that the distribution or dividend would not jeopardize the financial condition of the insurer:

(a) The liquidity, quality, and diversification of the insurer's assets and the effect on its ability to meet its obligations.

(b) Reduction of investment portfolio and investment income.

(c) Effects on the written premium to surplus ratios as required by the Florida Insurance Code.

(d) Industrywide financial conditions.

(e) Prior dividend distributions of the insurer.

(f) Whether the dividend is only a "pass-through" dividend from a subsidiary of the insurer.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 16, line 31 after the semicolon (;) insert: amending s. 628.371, F.S.; revising requirements for the payment of dividends by domestic stock insurers;

On motion by Senator Sullivan, by two-thirds vote **HB 2345** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

On motions by Senator Williams, by two-thirds vote **CS for CS for HB 2013** was withdrawn from the Committees on International Trade, Economic Development and Tourism; Natural Resources and Conservation; Community Affairs; and Appropriations.

On motion by Senator Williams, by unanimous consent—

CS for CS for HB 2013—A bill to be entitled An act relating to environmental permitting; creating part IX of Chapter 403, F.S.; creating the Florida Jobs Siting Act; providing legislative intent; providing definitions; providing for eligibility criteria for projects under the act; providing for the powers and duties of the Department of Commerce; providing for the powers and duties of the Department of Environmental Regulation; providing for the powers and duties of affected local governments; providing for applicability and certification; providing for the application process; providing for the determination of completeness and sufficiency; providing for an initial public meeting; providing for the assignment of a hearing officer; providing for statements of issues and reports and for written analysis; providing for comprehensive plan amendments; providing for certification hearing, cancellation, and parties; providing for the final disposition of application; providing for the alteration of time limits; providing for superseded laws, regulations, and certification power; providing for the effect of certification; providing for notice and costs of proceeding; providing for review; providing for compliance and enforcement; providing for revocation of certification; providing for availability of information; providing for modification of certification; providing for fees and the disposition of fees; repealing ss. 288.501-288.518, F.S., relating to the Florida Industrial Siting Act; providing legislative intent; providing for consolidation of permit processing into a single environmental resource permit; amending s. 373.019, F.S.; providing a definition; amending s. 373.046, F.S.; authorizing the Department of Environmental Regulation and the governing boards of water management districts to enter into additional interagency agreements under certain circumstances; amending s. 373.109, F.S.; authorizing the Department of Environmental Regulation and certain local governments to establish application fees under certain circumstances; providing for deposit and use of such fees; amending s. 373.114, F.S.; providing for review of certain rules of the department by the Land and Water Adjudicatory Commission; providing procedures for such review; amending s. 373.129, F.S.; providing for disposition and use of civil penalties under certain circumstances; amending s. 373.403, F.S.; providing definitions; creating s. 373.4135, F.S.; providing for mitigation and mitigation banking; requiring the department and water management districts to adopt rules governing mitigation banking; providing criteria; amending s. 373.414, F.S.; providing criteria for issuing permits for projects affecting surface waters and wetlands; amending s. 373.421, F.S.; requiring the Environmental Regulation Commission to adopt a unified statewide wetlands delineation methodology; providing for effectiveness of such methodology; preempting to the Legislature certain authority related to wetlands; creating s. 373.422, F.S.; providing for conditional issuance of certain permits under certain circumstances; creating s. 373.430, F.S.; prohibiting certain activities; providing penalties; providing legislative intent; creating s. 373.441, F.S.; specifying the role of local governments in permit processing; providing for rules by the reorganized Department of Environmental Regulation and Department of Natural Resources; specifying contents of such rules; amending s. 403.031, F.S.; including wetlands in the definition of waters; amending s. 403.061, F.S.; authorizing the department to adopt certain rules; creating s. 403.811, F.S.; providing for continuing validity of certain permits; amending s. 403.924, F.S.; authorizing the department or the Board of Trustees of the Internal Improvement Trust Fund to require certain landowners to remove fill from certain sovereignty lands under certain circumstances; amending s. 403.931, F.S.; specifying application of certain permit provisions relating to mangroves; revising an exception for separate application requirements; amending s. 403.933, F.S.; deleting obsolete language; specifying application of certain provisions to mangrove alteration permits; directing Partners for a Better Florida Advisory Council and the Department of Environmental Regulation to conduct a specified review and report to the Legislature; specifying contents of the report; transferring ss. 403.924, 403.927, 403.93, 403.931, 403.932, 403.933, 403.935, 403.936, and 403.938, F.S., to part VII of chapter 403, F.S.; repealing ss. 403.812, 403.91, 403.911, 403.912, 403.914, 403.916, 403.918, 403.919, 403.92, 403.921, 403.922, 403.923, 403.925, and 403.929, F.S., relating to permitting of activities in wetlands; repealing s. 403.913, except subsection (8) which shall stand repealed on October 1, 1994; repealing ss. 403.817 and 403.8171, F.S., relating to permitting of activities in wetlands, as of the effective date of legislative ratification pursuant to s. 373.421(1), F.S., as amended; providing an appropriation; providing effective dates.

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

Senator Williams moved the following amendments which were adopted:

Amendment 1—On page 13, between lines 3 and 4, insert:

(6) Projects not eligible include those projects which include as a primary purpose the final disposal through incineration of solid waste, biomedical waste, or hazardous waste in Florida. Such projects must obtain appropriate permits as otherwise provided by law.

Amendment 2—On page 36, strike lines 1-7, and insert:

(b) Except as provided in subsection (4), the certification may include conditions, to the extent authorized by the applicable law or rule, which constitute variances, exemptions, or exceptions from nonprocedural standards of the Department of Environmental Regulation, the local government, or any agency that were expressly considered during the proceeding unless waived by the agency as provided in s. 403.961(6) and that otherwise would be

Amendment 3 (with Title Amendment)—On page 44, line 22 through page 77, line 16, strike all of said lines

And the title is amended as follows:

In title, on page 2, line 3, through page 4, line 21, strike all of said lines and insert: to the Florida Industrial Siting Act;

On motion by Senator Williams, by two-thirds vote **CS for CS for HB 2013** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

RECONSIDERATION

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

HB 2019—A bill to be entitled An act relating to taxation; amending s 212.06, F.S.; providing for retroactive application of the exemption from said tax for certain promotional materials which are exported outside the state; amending s. 199.052, F.S.; providing that failure to timely file a consolidated intangible personal property tax return does not prejudice a taxpayer's right to file such return under certain conditions; providing for retroactive effect; amending s. 624.509, F.S.; exempting certain commercial motor vehicle insurance premiums from insurance premimum tax; amending s. 220.03, F.S.; updating references to the Internal Revenue Code for corporate income tax purposes; providing for retroactive effect; requiring certain studies; providing an effective date.

—passed as amended this day.

On motion by Senator Kiser, by two-thirds vote the Senate reconsidered the vote by which **HB 2019** was read the third time.

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

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

Amendment 1F (with Title Amendment)—On page 27, between lines 11 and 12, insert:

Section 20. (1) A nonprofit association that is exempt from federal income tax under s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, which publishes a magazine, newspaper, newsletter, or other publication directed to its members shall not be liable for sales or use tax on sales of such publication to its members if:

(a) The only charge to the member for the publication is an imputed charge that is contained within the amount paid as membership dues by the member to the association, regardless of whether the association has established a price for the publication in order to comply with postal regulations; and

(b) The association has not collected sales tax or paid use tax on the transaction.

(2) This section does not apply to subscriptions or single copies sold to nonmembers of the association, or to additional subscriptions or copies sold to members at a specified charge.

(3) This section shall take effect upon this act becoming a law, shall be deemed remedial in nature and shall apply retroactively to July 1, 1987, and shall remain applicable to taxable periods through July 1, 1993.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 30, line 5, after the semicolon (;) insert: providing that sales of certain publications by a nonprofit association to its members are not subject to sales or use tax under certain conditions; providing for retroactive application to a specified period;

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

Amendment 1G (with Title Amendment)—On page 27, between lines 11 and 12, insert:

Section . Paragraph (ff) is added to subsection (7) of section 212.08, Florida Statutes, 1992 Supplement, is amended 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.—

(ff) The charge by the owner of utility or transmission poles to anyone for the privilege of attaching wires and other equipment thereto is exempt from tax.

And the title is amended as follows:

In title, on page 30, line 5, insert: amending s. 212.08, F.S., exempting from sales tax the charges by a utility for attaching wires to a transmission pole;

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

Amendment 1H—On page 27, between lines 11 and 12, insert:

Section 20. Subsection (1) of section 212.02, Florida Statutes, 1992 Supplement, is amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) The term "admissions" means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including, but not limited to, theaters, outdoor theaters, shows, exhibitions, games, races, or any place where charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees, or other fees or receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation, and all dues and fees paid to private clubs and membership clubs including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities, except physical fitness facilities owned or operated by any hospital licensed under chapter 395. *The money for admitting a person to a passenger vessel for carriage to the high seas on a cruise known as a "cruise to nowhere" is not an admission for the purposes of this chapter.*

(Renumber subsequent section.)

Amendment 1I—In title, on page 30, line 5, after the semicolon (;) insert: amending s. 212.02, F.S.; providing an additional exemption from the definition of the term "admission";

Amendment 1 as amended was adopted.

On motion by Senator Kiser, by two-thirds vote **HB 2019** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—30 Nays—2

The Senate resumed consideration of—

CS for HB 565—A bill to be entitled An act relating to state lands; amending s. 253.002, F.S.; authorizing the Board of Trustees of the Internal Improvement Trust Fund to delegate certain duties or obligations to the Division of State Lands of the Department of Natural Resources; amending s. 253.025, F.S.; clarifying procedures and duties related to acquiring state lands; authorizing reimbursement of certain costs related to the purchase of lands by the state; amending s. 259.101, F.S.; providing for disposition or alternate use of certain public lands; prohibiting disposition of such lands under certain circumstances; authorizing the Department of Community Affairs to conduct a pilot project; authorizing the Department of Community Affairs and Walton County to enter into a contract with a non-profit organization; providing an effective date.

—which had been read the second time April 1.

Senator Williams moved the following amendment:

Amendment 1 (with Title Amendment)—On page 7, strike all of lines 21 and 22 and insert:

Section 5. The introductory paragraph of subsection (3) and subsection (11) of section 253.023, Florida Statutes, 1992 Supplement, are amended, subsection (13) is renumbered as subsection (15), and new subsections (13) and (14) are added to said section, to read:

253.023 Conservation and Recreation Lands Trust Fund; purpose.—

(3) The Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, may allocate moneys from the fund in any one year to acquire the fee or any lesser interest, *such as development rights and conservation easements,* in lands for the following public purposes:

(11)(a) The Legislature recognizes that acquiring lands pursuant to this section and s. 259.101 serves the public interest by protecting land, air, and water resources which contribute to the public health and welfare, providing areas for natural resource based recreation, and ensuring the survival of unique and irreplaceable plant and animal species. The Legislature intends for these lands to be managed and maintained for the purposes for which they were acquired and for the public to have access to these lands where it is consistent with acquisition purposes and would not harm the resources the state is seeking to protect on the public's behalf.

(b) ~~For fiscal year 1992-1993, 15 percent of the moneys credited to the fund, and~~ Beginning in fiscal year 1993-1994, 15 percent of the fund or an amount equal to 1 percent of the cumulative total of funds ever

deposited into the Florida Preservation 2000 Trust Fund, whichever is greater, shall be *available* ~~reserved~~ from the fund ~~by the board of trustees~~ for the purposes of management, maintenance, and capital improvements, and for associated contractual services, for lands acquired pursuant to this section and s. 259.101 to which title is vested in the board of trustees. Capital improvements shall include, but need not be limited to, perimeter fencing, signs, firelanes, access roads and trails, and minimal public accommodations, such as primitive campsites, garbage receptacles, and toilets. ~~In allocating these funds, the board of trustees shall pay particular attention to protecting the natural resources for which lands are acquired under this section.~~

(c) Up to one-fifth of the funds provided for in paragraph (b) shall be *available* ~~reserved by the board of trustees~~ for interim management of acquisitions and for associated contractual services, to ensure the conservation and protection of natural resources on project sites and to allow limited public recreational use of lands. Interim management activities may include, but not be limited to, resource assessments, control of invasive exotic species, habitat restoration, fencing, law enforcement, controlled burning, and public access consistent with preliminary determinations made pursuant to subsection (8). The board of trustees shall make these interim funds available immediately upon purchase and until a management plan is complete pursuant to subsection (10).

(d) *In requesting funds provided for in paragraph (b) for long-term management of acquisitions and for associated contractual services, the board of trustees shall recognize the following categories of lands needs:*

1. Lands which are low-need tracts, requiring basic resource management and protection, such as state reserves, state preserves, state forests, and wildlife management areas. These lands generally are open to the public but have no more than minimum facilities development.

2. Lands which are moderate-need tracts, requiring more than basic resource management and protection, such as state parks and state recreation areas. These lands generally have extra restoration or protection needs, higher concentrations of public use, or more highly developed facilities.

3. Lands which are high-need tracts, with identified needs requiring unique site-specific resource management and protection. These lands generally are sites with historic significance, unique natural features, or very high intensity public use, or sites that require extra funds to stabilize or protect resources.

~~1. Beginning in fiscal year 1992-1993, not more than one-fourth of the funds reserved pursuant to paragraph (b) shall be reserved annually by the board of trustees for payment in lieu of taxes to qualifying counties for actual tax losses incurred as a result of board of trustees acquisitions for state agencies under the Florida Preservation 2000 Program during any year. Reserved funds not used for payments in lieu of taxes in any year shall revert to the fund to be used for management purposes or land acquisition in accordance with the provisions of this section.~~

~~2. Payment in lieu of taxes shall be available to counties which levy an ad valorem tax of at least nine mills or the amount of the tax loss from all completed Preservation 2000 acquisitions in the county exceeds 0.01 percent of the county's total taxable value, and have a population of 75,000 or less and to counties with a population of less than 100,000 which contain all or a portion of an area of critical state concern designated pursuant to chapter 380.~~

~~3. If insufficient funds are available in any year to make full payments to all qualifying counties, such counties shall receive a pro rata share of the moneys available.~~

~~4. The payment amount shall be based on the average amount of actual taxes paid on the property for the 3 years preceding acquisition. For lands purchased prior to July 1, 1992, applications for payment in lieu of taxes shall be made to the Department of Revenue by January 1, 1993. For lands purchased after July 1, 1992, applications for payment in lieu of taxes shall be made no later than January 31 of the year following acquisition. No payment in lieu of taxes shall be made for properties which were exempt from ad valorem taxation for the year immediately preceding acquisition. Payment in lieu of taxes shall be limited to a total of 10 years of annual payments.~~

~~5. Payment in lieu of taxes pursuant to this paragraph shall be made annually to qualifying counties after certification by the Department of Revenue that the amounts applied for are appropriate, based on the amount of actual taxes paid on the eligible property, and after the Department of Natural Resources has provided supporting documents to the Comptroller and has requested that payment be made in accordance with the requirements of this section.~~

~~6. If the board of trustees conveys to a local government title to any land owned by the board, any payments in lieu of taxes on the land made to the local government shall be discontinued as of the date of the conveyance.~~

~~(e) Moneys credited to the fund each year which are not used for management, maintenance, or capital improvements, for payment in lieu of taxes, or for the purposes of subsection (5) shall be available for the acquisition of land pursuant to this section.~~

(13)(a) Beginning in fiscal year 1993-1994, not more than 3.75 percent of the fund shall be made available annually by the board of trustees for payment in lieu of taxes to qualifying counties for actual tax losses incurred as a result of board of trustees acquisitions for state agencies under the Florida Preservation 2000 Program during any year. Funds made available but not used for payments in lieu of taxes in any year shall revert to the fund to be used for management purposes or land acquisition in accordance with the provisions of this section.

(b) Payment in lieu of taxes shall be available to counties which levy an ad valorem tax of at least nine mills or the amount of the tax loss from all completed Preservation 2000 acquisitions in the county exceeds .01 percent of the county's total taxable value, and have a population of 75,000 or less and to counties with a population of less than 100,000 which contain all or a portion of an area of critical state concern designated pursuant to chapter 380.

(c) If insufficient funds are available in any year to make full payments to all qualifying counties, such counties shall receive a pro rata share of the moneys available.

(d) The payment amount shall be based on the average amount of actual taxes paid on the property for the 3 years preceding acquisition. For lands purchased prior to July 1, 1992, applications for payment in lieu of taxes shall be made to the Department of Revenue by January 1, 1993. For lands purchased after July 1, 1992, applications for payment in lieu of taxes shall be made no later than January 31 of the year following acquisition. No payment in lieu of taxes shall be made for properties which were exempt from ad valorem taxation for the year immediately preceding acquisition. Payment in lieu of taxes shall be limited to a total of 10 years of annual payments.

(e) Payment in lieu of taxes pursuant to this subsection shall be made annually to qualifying counties after certification by the Department of Revenue that the amounts applied for are appropriate, based on the amount of actual taxes paid on the eligible property, and after the Department of Natural Resources has provided supporting documents to the Comptroller and has requested that payment be made in accordance with the requirements of this section.

(f) If the board of trustees conveys to a local government title to any land owned by the board, any payments in lieu of taxes on the land made to the local government shall be discontinued as of the date of the conveyance.

(14) Moneys credited to the fund each year which are not used for management, maintenance, or capital improvements, for payment in lieu of taxes, or for the purposes of subsection (5) shall be available for the acquisition of land pursuant to this section.

Section 6. There is established a committee to study alternatives to acquiring full title to state lands that will satisfy the state's purpose of maintaining this state's unique natural resources, protecting air, land, and water quality, and providing lands for natural-resource-based recreation. Among the study topics shall be ways to determine the value of separable possessory or fee rights in the land, including development rights and conservation easement rights. The committee shall be composed of nine members, three each to be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The committee shall deliver a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than December 1, 1993.

Section 7. Paragraphs (a) and (c) of subsection (2) of section 259.035, Florida Statutes, 1992 Supplement, are amended, and subsection (4) is added to said section, to read:

259.035 Advisory council; powers and duties.—

(2)(a) The council shall, by the time of the first board meeting in February of each year, establish or update a list of acquisition projects selected for purchase pursuant to this chapter or s. 253.023. Acquisition projects shall be ranked, in order of priority, individually as a single group or individually within up to 10 separate groups. For each project on an acquisition list, the council shall include in its report to the board of trustees the stated purpose for acquiring the project, an estimate of land value based on county tax assessed values, a map delineating project boundaries, a brief description of the important natural and cultural resources to be protected, preacquisition planning and budgeting, coordination with other public and nonprofit public-lands acquisition programs, a preliminary statement of the extent and nature of public use, an interim management budget, and designation of a management agency or agencies. The Department of Natural Resources shall prepare the information required by this section for each acquisition project selected for purchase pursuant to this chapter or s. 253.023.

(c) All proposals for acquisition projects pursuant to this chapter or s. 253.023 shall be developed and adopted by the council. The council shall consider and evaluate in writing the merits and demerits of each project that is proposed for acquisition and shall ensure that each proposed acquisition project will meet a stated public purpose for the preservation of environmentally endangered lands, for the development of outdoor recreation lands, or as provided in s. 253.023(3) and shall determine whether each acquisition project conforms with the comprehensive plan developed pursuant to s. 259.04(1)(a), the comprehensive outdoor recreation and conservation plan developed pursuant to s. 375.021, and the state lands management plan adopted pursuant to s. 253.03(7). *The council shall, for any proposed project greater in size than 20,000 acres or within a county with a population of 50,000 or less, conduct a timely review limited to the project's impact on local infrastructure needs and ad valorem taxes. The council shall, within a county with a population of 50,000 or less, identify those proposed projects or parcels within a project for which the public's interest may best be served through less than fee simple acquisition pursuant to s. 253.023(3). The council shall include in its report to the board of trustees recommendations regarding the feasibility and efficacy of acquiring development rights or other less-than-fee-simple title to the proposed projects meeting the criterion.* Copies of a written report describing each project proposed for acquisition shall be submitted to the board of trustees. The council shall consider and include in each project description its assessment of a project's ecological value, vulnerability, endangerment, ownership pattern, utilization, location, and cost and other pertinent factors in determining whether to recommend a project for state purchase.

(4) By June 30, 1994, the council shall submit to the board of trustees a land acquisition plan and map of the ecosystems, rare and threatened habitats, endangered species habitats, endangered plant communities, essential wildlife corridors, and other natural features of this state which should be selected for prioritized protection.

Section 8. The Suwannee River Water Management District shall conduct a pilot program for acquisition of less than fee simple interest in land or acquiring properties for the subsequent purpose of subdivision, deed restriction, and resale of remaining rights pursuant to s. 373.089, Florida Statutes. By January 1, 1995, the district shall provide to the President of the Senate, the Speaker of the House of Representatives, and the Secretary of the Department of Environmental Regulation a report providing baseline information and analysis of the value of such deed restricted land.

Section 9. Section 373.089, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

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

Section 10. Subsections (3), (5), and (6) of section 704.06, Florida Statutes, are amended to read:

704.06 Conservation easements; creation; acquisition; enforcement.—

(3) Conservation easements *and development rights* may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include *protecting natural, scenic, or open-space values of real property, assuring its availability for forest, recreation, or open-space use, protecting natural resources, maintaining or enhancing air or water quality,* ~~the conservation of land or water areas~~ or the preservation of sites or properties of historical, architectural, archaeological, or cultural significance.

(5) All conservation easements *and development rights* shall be recorded and indexed in the same manner as any other instrument affecting the title to real property.

(6) The provisions of this section shall not be construed to imply that any restriction, easement, covenant, *development right,* or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable.

Section 11. The sum of $154,222 is hereby appropriated from the Conservation and Recreation Lands Trust Fund to the Department of Natural Resources and two positions are authorized to effect the development by the Land Acquisition Advisory Council of the land acquisition plan and map and the acquisition impacts and analyses required by section 4 of this act.

Section 12. The Executive Office of the Governor may approve changes in the amounts appropriated from trust funds for Conservation and Recreation Land Management to provide for interim land management activities. Any changes in trust fund appropriations pursuant to this section must be consistent with the provisions of section 253.023, Florida Statutes.

Section 13. This act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 1, strike all of lines 2-20 and insert: An act relating to public lands; amending s. 253.002, F.S.; providing for delegation of duties of the Board of Trustees of the Internal Improvement Trust Fund; amending s. 253.025, F.S.; specifying procedures for acquisition of state lands; allowing state agencies other than the Division of State Lands to perform certain functions that only the division currently may perform; amending confidentiality provisions relating to appraisals; expanding the types of costs for which the state may reimburse the owner of lands that the state proposes to acquire; amending s. 259.101, F.S.; authorizing the

disposition and alternate governmental use of lands acquired through the Florida Preservation 2000 program; providing criteria for such disposition or use; providing for retroactive application; authorizing the Department of Community Affairs to conduct a pilot project; authorizing the Department of Community Affairs and Walton County to enter into a contract with a nonprofit organization; providing an appropriation; amending s. 253.023, F.S.; providing for purchase of development rights by the Board of Trustees of the Internal Improvement Trust Fund; providing requirements with respect to allocation of funds from the Conservation and Recreation Lands Trust Fund for management of acquisitions; revising the portion of the fund reserved for payments in lieu of taxes to qualifying counties; establishing a committee to study alternatives to acquiring full title to state lands; requiring a report; amending s. 259.035, F.S.; requiring the council to identify certain projects for inclusion on a Conservation and Recreation Lands list for acquisition programs; requiring the Land Acquisition Advisory Council to review certain land acquisition projects for certain purposes; requiring the council to submit a plan and map of certain natural systems or features of the state for prioritized protection; requiring the Suwannee River Water Management District to conduct a study of certain water management lands for certain purposes; amending s. 373.089, F.S.; clarifying provisions related to sale or exchange of certain lands; deleting certain requirements for sales or exchanges of public lands under certain circumstances; amending s. 704.06, F.S.; providing for acquisition of certain development rights for certain purposes; providing the Governor and Cabinet with authority to change certain trust fund appropriations; authorizing positions; providing appropriations; providing an effective date.

Senator Foley moved the following amendment to **Amendment 1** which was adopted by two-thirds vote:

Amendment 1A—On page 10, lines 6 and 7, strike "*best*" and "*and terms*" and insert: highest

Amendment 1 as amended was adopted by two-thirds vote.

On motion by Senator Kirkpatrick, by two-thirds vote **CS for HB 565** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

On motions by Senator Sullivan, by two-thirds vote **HB 1375** was withdrawn from the Committees on Professional Regulation and Judiciary.

On motion by Senator Sullivan—

HB 1375—A bill to be entitled An act relating to commercial weight-loss practices; creating s. 501.057, F.S.; providing a short title; creating s. 501.0571, F.S.; providing definitions; creating s. 501.0573, F.S.; providing requirements for weight-loss providers; creating s. 501.0575, F.S.; providing the Weight-Loss Consumer Bill of Rights; creating s. 501.0577, F.S.; providing exemptions; creating s. 501.0579, F.S.; establishing failure to comply unlawful and an unfair and deceptive trade practice; creating s. 501.0581, F.S.; providing civil remedies; providing an effective date.

—a companion measure, was substituted for **SB 1628** and read the second time by title. On motion by Senator Sullivan, by two-thirds vote **HB 1375** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

On motions by Senator Silver, by two-thirds vote **CS for HB 1199** was withdrawn from the Committees on Health Care and Judiciary.

On motion by Senator Silver, by unanimous consent—

CS for HB 1199—A bill to be entitled An act relating to the Florida Birth-Related Neurological Injury Compensation Act; amending s. 766.313, F.S.; changing the period of limitations on claims from 7 years to 5 years; amending s. 766.302, F.S.; revising definitions; amending s. 766.304, F.S.; providing for determination of claims by hearing officers of the Division of Administrative Hearings of the Department of Management Services, providing for rules; amending s. 766.305, F.S.; providing for fees for filing of claims to be paid to the division; amending s. 766.308, F.S.; providing for appointments of medical advisory panels by the Insurance Commissioner; specifying duties of the Department of Insurance; amending s. 766.311, F.S.; providing for determination of claims by hearing officer; providing a directive to the Division of Statutory Revision of the Joint Legislative Management Committee; providing an effective date.

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

Senator Silver moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 4, strike all of lines 26-31 and insert:

Section 7. Section 766.307, Florida Statutes, is amended to read:

766.307 Hearing; parties; discovery.—

(1) The *hearing officer* ~~judge of compensation claims~~ shall set the date for a hearing no sooner than 60 days and no later than 120 days after the filing by a claimant of a petition in compliance with s. 766.305. The *hearing officer* ~~judge of compensation claims~~ shall immediately notify the parties of the time and place of such hearing, which shall be held in the county where the injury occurred unless otherwise agreed to by the parties and authorized by the division.

(2) The parties to the hearing shall include the claimant and the association.

(3) Any party to a proceeding under ss. 766.301-766.316 may, upon application to the *hearing officer* ~~judge of compensation claims~~ setting forth the materiality of the evidence to be given, serve interrogatories or cause the depositions of witnesses residing within or without the state to be taken, the costs thereof to be taxed as expenses incurred in connection with the filing of a claim. Such depositions shall be taken after giving notice and in the manner prescribed for the taking of depositions in actions at law, except that they shall be directed to the *hearing officer* ~~judge of compensation claims~~ before whom the proceedings may be pending.

Section 8. Section 766.309, Florida Statutes, is amended to read:

766.309 Determination of claims; presumption; findings of *hearing officer* ~~judge of compensation claims~~ binding on participants.—

(1) The *hearing officer* ~~judge of compensation claims~~ shall make the following determinations based upon all available evidence:

(a) Whether the injury claimed is a birth-related neurological injury. If the claimant has demonstrated, to the satisfaction of the *hearing officer* ~~judge of compensation claims~~, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired, a rebuttable presumption shall arise that the injury is a birth-related neurological injury as defined in s. 766.302(2).

(b) Whether obstetrical services were delivered by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital; or by a certified nurse midwife in a teaching hospital supervised by a participating physician in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.

(c) How much compensation, if any, is awardable pursuant to s. 766.31.

(2) If the *hearing officer* ~~judge of compensation claims~~ determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at the birth, he shall enter an order and shall cause a copy of such order to be sent immediately to the parties by registered or certified mail.

(3) By becoming a participating physician, a physician shall be bound for all purposes by the finding of the *hearing officer* ~~judge of compensation claims~~ or any appeal therefrom with respect to whether such injury is a birth-related neurological injury.

Section 9. Section 766.31, Florida Statutes, is amended to read:

766.31 *Hearing officer* ~~Judge of compensation claims~~ awards for birth-related neurological injuries; notice of award.—

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the *hearing officer* ~~judge of compensation claims~~ shall make an award providing compensation for the following items relative to such injury:

(a) Actual expenses for medically necessary and reasonable medical and hospital, habilitative and training, residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel. However, such expenses shall not include:

1. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state or the Federal Government, except to the extent *that* such exclusion may be prohibited by federal law.

2. Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity.

3. Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or the Federal Government, except to the extent *that* such exclusion may be prohibited by federal law.

4. Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

Expenses included under this paragraph shall be limited to reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

(b) Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award shall not exceed $100,000. However, at the discretion of the *hearing officer* ~~judge of compensation claims~~, such award may be made in a lump sum.

(c) Reasonable expenses incurred in connection with the filing of a claim under ss. 766.301-766.316, including reasonable attorney's fees, which shall be subject to the approval and award of the *hearing officer* ~~judge of compensation claims~~. In determining an award for attorney's fees, the *hearing officer* ~~judge of compensation claims~~ shall consider the following factors:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

2. The fee customarily charged in the locality for similar legal services.

3. The time limitations imposed by the claimant or the circumstances.

4. The nature and length of the professional relationship with the claimant.

5. The experience, reputation, and ability of the lawyer or lawyers performing services.

6. The contingency or certainty of a fee.

(2) The award shall require the immediate payment of expenses previously incurred and shall require that future expenses be paid as incurred.

(3) A copy of the award shall be sent immediately by registered or certified mail to each person served with a copy of the petition under s. 766.305(2).

Section 10. Section 766.312, Florida Statutes, is amended to read:

766.312 Enforcement of awards.—

(1) The *hearing officer* ~~judge of compensation claims~~ shall have full authority to enforce his awards and to protect himself from any deception or lack of cooperation in reaching his determination as to any award. Such authority shall include the power to petition the circuit court for an order of contempt.

(2) A party may, if the circumstances so warrant, petition the circuit court for enforcement of a final award by the *hearing officer* ~~judge of compensation claims~~.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, strike all of lines 19-21 and insert: claims by a hearing officer; amending ss. 766.307, 766.309, 766.31, and 766.312, F.S.; providing for hearings by hearing officers rather than by judges of compensation claims;

On motion by Senator Silver, by two-thirds vote **CS for HB 1199** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38 Nays—None

Reconsideration

On motion by Senator Silver, the Senate reconsidered the vote by which **CS for HB 1199** passed.

On motion by Senator Silver, by two-thirds vote the Senate reconsidered the vote by which **CS for HB 1199** was read the third time.

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

On motion by Senator Silver, by two-thirds vote **CS for HB 1199** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—1

SB 2024—A bill to be entitled An act relating to the Florida Education Finance Program; amending s. 236.081, F.S.; providing for a classrooms-first entitlement to be added annually to the basic amount for current operation of school districts; providing guidelines for using the entitlement; providing restrictions; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendments which were moved by Senator Dyer and failed:

Amendment 1—On page 2, line 8, strike "*the following guidelines*" and insert: *school board guidelines which shall include the following*

Amendment 2—On page 2, line 12, after "needs" insert: , interests, and abilities

The Committee on Appropriations recommended the following amendment which was moved by Senator Dyer:

Amendment 3—On page 1, lines 13-31; on page 2, lines 1-31; and on page 3, lines 1 and 2, strike all of said lines and insert:

Section 1. Classrooms First Task Force.—

(1) Establishment.—There is created the Florida Classrooms First Task Force to examine the emerging role of the School Advisory Councils as established in s. 229.58 and the changing roles of the district school board, district staff and school level staff in the utilization of fiscal resources to meet state education goals. The Florida Classrooms First Task Force shall also study the implications of s. 229.591(2)(c) for restructuring the provision of adequate resources for school and classroom needs.

(2) Membership.—The Governor shall appoint two parents, one principal, one teacher, and one business representative. The Commissioner of Education shall appoint one school board member, one superintendent, one business representative, and one representative of the Department of Education. The Speaker of the House and the President of the Senate shall each appoint two legislative members. The members shall be appointed to serve one year.

(3) Reporting.—The Florida Classrooms First Task Force shall report its findings and recommendations to the Commissioner of Education, the Governor and the Legislature by September 1, 1993. The task force shall report and make recommendations on the following, which shall include but not be limited to:

(a) The role of the SAC in determining purchases of materials and supplies consumed at the school level and other fiscal matters related to local schools;

(b) The role of teachers and other school level personnel in determining purchases consumed at the school level and other fiscal matters related to local schools;

(c) The need for additional state and local flexibility for schools to meet the goals of school improvement;

(d) The role of the district staff as relates to determining fiscal matters that affect the local school;

(e) The role of school board policies to facilitate appropriate relationships among collaborating parties;

(f) Redirecting state and local fiscal resources to ensure adequate school resources to meet state education goals with maximum emphasis on classroom support; and

(g) Further steps to identify systemic changes needed to sustain and enhance the school advisory council's role in Florida's system of school improvement and education accountability.

Section 2. This act shall take effect upon becoming law.

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

Amendment 3A (with Title Amendment)—On page 2, between lines 24 and 25, insert:

Section 2. Section 69 of the Conference Committee Report on Senate Bill 1802, the Implementing Bill for Fiscal Year 1993-1994, is hereby repealed, without regard to whether such bill or this act is the first to take effect.

Section 3. Effective July 1, 1993, section 12 of Senate Bill 1802, which was enacted during the 1993 Regular Session of the Legislature, is amended to read:

Section 12. *(1)* Notwithstanding the provisions of section 236.25(2), Florida Statutes, during the 1993-1994 fiscal year, district school boards may use revenue from unobligated discretionary capital improvement millage to fund one-time nonrecurring expenditures that provide instructional materials for each classroom. Such expenditures may include consumable and nonconsumable instructional supplies, materials, textbooks, and equipment.

(2) A school district that exercises the authority given it under subsection (1) with respect to expenditures that provide instructional materials may use the funds provided for such purpose in Specific Appropriation 375D of the General Appropriations Act for other operational purposes.

And the title is amended as follows:

In title, on page 1, line 8, after the semicolon (;) insert: repealing s. 69 of the Conference Committee Report on Senate Bill 1802, relating to the exclusion of foreign students from school districts' FEFP student count; amending s. 12 of Senate Bill 1802, which was enacted during the 1993 Regular Session of the Legislature; allowing revenue from unobligated discretionary capital improvement millage to be used by school districts to fund specified operations and allowing certain funds appropriated for instructional materials or educational technology to be used for other operational purposes;

Senator Jones moved the following amendments to **Amendment 3** which were adopted:

Amendment 3B—On page 2, strike all of lines 25 and 26 and insert:

Section 2. The sum of $50,000 is hereby appropriated from the General Revenue Fund to fund a grant for the University of Florida, in conjunction with the Black Archives of Florida Agricultural and Mechanical University and other appropriate elements of the State University System, to investigate, document, and compile a written report on the destruction of the town of Rosewood.

Section 3. The study provided in section 1 shall be prepared in a professional and scholastic manner using appropriately qualified academicians employed in the History Department of the University of Florida. The study shall include, but not be limited to, a review of the factual accounts of the Rosewood incident, interviews of witnesses to the incident, a review of other written accounts of the incident, a bibliography of articles and writings about the incident, and a report relating to the responsibility of the state for any acts in this regard. The study shall be concluded, and the report submitted to the Legislature, no later than January 1, 1994.

Section 4. This act, except for section 1, which shall take effect July 1, 1993, shall take effect upon becoming a law.

Amendment 3C—In title, on page 2, strike all of lines 2-9 and insert: An act relating to educational financing; amending s. 236.081, F.S.; providing for a classrooms-first entitlement to be added annually to the basic amount for current operation of school districts; providing guidelines for using the entitlement; providing restrictions; providing an appropriation for the funding of a grant to investigate the destruction of Rosewood, Florida; providing a report; providing effective dates.

Amendment 3 as amended was adopted.

On motion by Senator Dyer, by two-thirds vote **SB 2024** 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

SB 1946—A bill to be entitled An act relating to the Florida Gold Seal Vocational Endorsement Program; amending s. 239.217, F.S.; providing additional course requirements that must be met; providing an exemption from requirements if a student has deficiencies in meeting the requirements for the program because of misinformation that was given to him; providing for procedures to correct such deficiencies; providing an effective date.

—was read the second time by title. On motion by Senator Williams, by two-thirds vote **SB 1946** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SB 742—A bill to be entitled An act relating to the membership of statutorily created decisionmaking or regulatory boards, commissions, councils, and committees; providing state policy with respect to the gender balance of the membership of such bodies; providing exceptions; providing an effective date.

—was read the second time by title.

Seven amendments were adopted to **SB 742** to conform the bill to **CS for HB 1699**.

Pending further consideration of **SB 742** as amended, on motions by Senator Boczar, by two-thirds vote **CS for HB 1699** was withdrawn from the Committees on Governmental Operations; Professional Regulation; and Rules and Calendar.

On motion by Senator Boczar—

CS for HB 1699—A bill to be entitled An act relating to the membership of statutorily created decisionmaking or regulatory boards, commissions, councils, and committees; providing state policy with respect to the gender balance and minority representation of the membership of such bodies; providing exceptions; amending s. 14.24, F.S.; revising provisions relating to the election of officers of the Florida Commission on the Status of Women; providing for future repeal of provisions requiring gender balance of membership of boards, commissions, councils, and committees; providing an effective date.

—a companion measure, was substituted for **SB 742** and read the second time by title. On motion by Senator Boczar, by two-thirds vote **CS for HB 1699** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—32 Nays—1

LOCAL BILLS

Motions

On motions by Senator Jennings, by two-thirds vote the following bills were placed on the Local Bill Calendar: **House Bills 479, 1765, 865, 91, 93, 1065, 1789, 1913** and **2033**.

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

HB 479—A bill to be entitled An act relating to Volusia County; creating the "City of DeBary Charter"; providing for the corporate name and purpose of the Charter; establishing territorial boundaries of the municipality and authorizing annexations; providing powers of the municipality and of certain officers; providing for election of a City Council, including the Mayor and Vice Mayor, and providing for qualifications, powers, and duties of its membership, and a procedure for establishing their compensation and expense reimbursement; establishing circumstances which create vacancies in office and providing for filling vacancies and for forfeiture and recall; requiring independent financial audit; providing for Council meetings, rules, recordkeeping, and voting at meetings; providing for nominations, elections, and terms of office of the Mayor and Council; providing for a City Manager, City Clerk, and City Attorney and powers and duties of each; authorizing establishment of administrative departments; providing definitions; providing procedures for adoption of ordinances and resolutions, and for handling finances; establishing a fiscal year and annual budgets; providing procedures for initiative and referendum; providing for Charter amendments and review; providing for severability; providing for transition, including initial election and terms, date of creation and establishment of the municipality, payment of certain revenues, and transitional comprehensive plan and land development regulations; entitling the City to state shared and local option gas tax revenues; providing for contractual services and facilities; eliminating transition elements; requiring a 5-year wait for any reintroduction to the legislative delegation; providing effective dates.

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

Yeas—38 Nays—None

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

HB 1765—A bill to be entitled An act relating to Lee County; prohibiting the taking of saltwater fish, except by hook and line, handheld cast net, or use of five or fewer blue crab traps, from specified manmade canals and waterways within the county; providing a penalty; providing an effective date.

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

Yeas—38 Nays—None

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

HB 865—A bill to be entitled An act relating to Broward County; providing permanent status for certain employees of the Broward County Sheriff; specifying rights of employees, including collective bargaining rights; providing an effective date.

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

Yeas—38 Nays—None

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

HB 91—A bill to be entitled An act relating to the civil service system of the City of Jacksonville; amending s. 1 of ch. 92-341, Laws of Florida; eliminating restrictions on copension contributions of employees whose positions were funded by grants, permitting the city to make payment for such contributions from city funds; providing an effective date.

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

Yeas—38 Nays—None

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

HB 93—A bill to be entitled An act relating to the Charter of the City of Jacksonville; amending Article 16 of Chapter 92-341, Laws of Florida, being the Charter of the City of Jacksonville, to provide that police and correctional officers who suffer certain conditions or impairments of health shall be treated in a manner similar to firefighters with respect to special provisions relative to disability; increasing the retirement contribution rate for funding; declaring an important state interest; providing an effective date.

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

Yeas—38 Nays—None

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

HB 1065—A bill to be entitled An act relating to Palm Beach County; amending ch. 87-450, Laws of Florida, as amended, relating to the Palm Beach County Health Care Act; providing for restatement of the Legislature's intent regarding the district's responsibility to fund reorganizations undertaken by the district's predecessors-in-interest; providing the authority to impose liens and to collect funds expended by the district from liable third parties; providing for severability; providing an effective date.

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

Yeas—38 Nays—None

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

HB 1789—A bill to be entitled An act relating to Williston Memorial Hospital, Levy County; amending the charter of the City of Williston and creating section 11.09 of Article XI, chapter 78-624, Laws of Florida, providing authority to the City Council of the City of Williston to enter into a management contract or agreement to lease its Williston Memorial Hospital facility to a public or private organization or a not-for-profit or for-profit corporation upon such terms and conditions as may be determined by the city council to be in the best interest of its citizens; requiring the organization or corporation to provide for a certain amount of charity care, indigent care, and Medicaid; providing an effective date.

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

Yeas—38 Nays—None

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

HB 1913—A bill to be entitled An act relating to the North Lake County Hospital District; extending the terms of certain trustees presently serving; providing an effective date.

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

Yeas—38 Nays—None

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

HB 2033—A bill to be entitled An act relating to Manatee County; amending chapter 85-454, Laws of Florida, as amended, relating to the Braden River Fire Control and Rescue District; amending the residency requirement; amending the frequency of inspections; amending the schedule of special assessments and charges; amending the impact fees levied by the Braden River fire Control and Rescue District; providing an effective date.

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

Yeas—38 Nays—None

SPECIAL ORDER, continued

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

CS for HB 761—A bill to be entitled An act relating to adult care homes; amending s. 400.402, F.S.; amending the definition of the term "adult congregate living facility" to exclude a licensed adult family-care home from regulation under the Adult Congregate Living Facilities Act; amending s. 400.616, F.S.; redesignating the Adult Foster Home Care Act as the "Adult Family-Care Home Act" and adding additional sections; amending s. 400.617, F.S.; providing additional legislative intent; amending s. 400.618, F.S.; adding and revising definitions; amending s. 400.619, F.S.; revising and adding licensure requirements; providing license fees; providing access for the nursing home and long-term care facility ombudsman council; prohibiting the transfer of licenses; requiring space for residents receiving optional state supplementation; providing an exemption; providing for conditional licenses; providing additional circumstances under which the department may deny, suspend, or revoke a license; providing for the deposit and use of fees; creating s. 400.6196, F.S.; authorizing the Department of Health and Rehabilitative Services to impose penalties and require corrective action for certain violations; providing for the deposit and use of penalty moneys; amending s. 400.621, F.S.; providing for additional rules; providing for placement of clients; creating s. 400.6211, F.S.; requiring the department to provide training and education for persons who operate adult family-care homes; requiring that providers complete such a program within a time limit; providing a penalty for failure to complete the program within the time limit; amending s. 400.622, F.S.; revising the provisions providing for injunctive proceedings; amending s. 400.623, F.S.; revising the requirement that the department recruit and license adult family-care homes; deleting an obsolete provision; creating s. 400.625, F.S.; providing requirements for residency agreements for residents of adult family-care homes; creating s. 400.628, F.S.; establishing a residents' bill of rights; creating s. 400.629, F.S.; providing for civil actions to enforce rights under ss. 400.616-400.629, F.S.; converting existing licenses for adult foster homes to licenses for adult family-care homes; providing an effective date.

—a companion measure, was substituted for **CS for SB 1910** and by two-thirds vote read the second time by title. On motion by Senator Forman, by two-thirds vote **CS for HB 761** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

SENATOR SCOTT PRESIDING

CS for CS for SB 1932—A bill to be entitled An act relating to tax administration; amending s. 125.0108, F.S.; revising obsolete language; amending s. 201.17, F.S.; revising the date from which interest accrues for nonpayment of certain taxes; amending s. 212.08, F.S.; exempting from sales tax the charges by a utility for attaching wires to a transmission pole; amending s. 212.031, F.S.; exempting certain property from taxation pursuant to a previously issued technical assistance advisement; amending s. 212.054, F.S., relating to provisions that specify requirements for the administration and collection of discretionary sales surtaxes; providing for application of such surtaxes to the sale of services; providing that the exemption for sales amounts above $5,000 does not apply to the sale of services; revising the conditions under which a transaction is deemed to occur in a county imposing the surtax; deleting provisions requiring administrative costs of the discretionary sales surtaxes to be prorated among the counties that levy the taxes; requiring a study committee to recommend a method of allocation; specifying when a surtax applies to dealers outside the county; providing for distribution of the proceeds of such surtaxes collected by a dealer located in a county that does not impose a surtax; specifying consequences if a county does not provide timely information to the Department of Revenue; amending s. 212.055, F.S.; removing the limitations on the length of time the local government infrastructure surtax may be levied and the period during which a referendum levying the surtax may be held; authorizing additional uses for surtax revenues; amending s. 212.06, F.S.; revising the calculation of the indexed tax on asphalt manufactured for one's own use; amending s. 212.14, F.S.; providing procedures under which the department may issue subpoenas and subpoenas duces tecum; amending s. 212.15, F.S.; revising the penalties imposed for failing to remit taxes; amending s. 212.183, F.S.; authorizing self-accrual of sales tax for certain commercial rentals; amending s. 213.053, F.S.; providing that certain information with respect to railroads and private car and freight lines may be made available to certain federal agencies by the department; amending s. 213.10, F.S.; authorizing the department to account for the collection and distribution of tax moneys in separate clearing trust funds; amending s. 213.27, F.S.; authorizing the department to enter into contracts for the purpose of determining liability for intangible personal property tax; revising the requirements for notice before the department commences litigation to recover taxes due or before the department assigns a tax debt for collection; amending s. 213.28, F.S.; deleting certain limitations on contracts by the department with private auditors; prohibiting audit fees based on the amount of tax assessed or collected as a result of an audit; amending s. 218.21, F.S.; prescribing distributions from the Revenue Sharing Trust Fund for Municipalities to certain governments exercising municipal powers; amending s. 220.13, F.S.; correcting a cross-reference to a provision in the Internal Revenue Code; amending ss. 403.718, 403.7185, 403.7195, F.S.; revising the criteria under which administration costs may be deducted by the department from the proceeds of waste tire fees, lead-acid battery fees, and waste newsprint disposal fees; amending s. 624.5092, F.S.; revising requirements for calculating estimated tax payments; amending s. 731.111, F.S.; authorizing the department to file a claim, or amend a previously filed claim, against a taxpayer following receipt of the taxpayer's federal estate tax return or an amended or supplemented federal estate tax return; amending s. 212.05, F.S.; excluding franchise fees passed on to the television system program service provider's customer from the definition of the term "charges" for tax purposes of the sales, storage, or use tax; revising the sales tax on certain transactions involving coins; amending s. 212.0515, F.S.; revising the method for calculating the amount of sales tax to be paid on certain beverages sold in vending machines; amending s. 212.08, F.S.; exempting taxicabs from charging sales tax on taxicab leases and equipment; amending s. 212.02, F.S.; providing an additional exemption from the definition of the term "admission"; providing an effective date.

—was read the second time by title.

Senator Kiser moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 42, lines 15-31, and on page 43, lines 1-11, strike all of said lines and insert:

Section 25. Paragraph (a) of subsection (2) of section 212.04, Florida Statutes, 1992 Supplement, is amended to read:

212.04 Admissions tax; rate, procedure, enforcement.—

(2)(a)1. No tax shall be levied on admissions to athletic or other events sponsored by elementary schools, junior high schools, middle schools, high schools, community colleges, public or private colleges and universities, deaf and blind schools, facilities of the youth services programs of the Department of Health and Rehabilitative Services, and state correctional institutions when only student, faculty, or inmate talent is used. However, this exemption shall not apply to admission to athletic events sponsored by an institution within the State University System, and the proceeds of the tax collected on such admissions shall be retained and used by each institution to support women's athletics as provided in s. 240.533(4)(c).

2.a. No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations. To receive this exemption, the sponsoring organization must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended.

b. No tax imposed by this section and not actually collected before August 1, 1992, shall be due from any museum or historic building owned by any political subdivision of the state.

c. No tax shall be levied on dues, membership fees, and admission charges imposed by government-owned zoos. To receive this exemption, the zoo must be owned by the United States Government, the state, or a county, municipality, agency, authority, or other public body of the state.

3. No tax shall be levied on an admission paid by a student, or on his behalf, to any required place of sport or recreation if the student's participation in the sport or recreational activity is required as a part of a program or activity sponsored by, and under the jurisdiction of, the student's educational institution, provided his attendance is as a participant and not as a spectator.

4. No tax shall be levied on admissions to the National Football League championship game, or on admissions to any of the games of the 1994 World Cup Soccer Tournament.

5. No tax shall be levied on admissions to athletic or other events sponsored by governmental entities.

6. Also exempt from the tax imposed by this section to the extent provided in this subparagraph are admissions to live theater, live opera, or live ballet productions in this state which are sponsored by an organization that has received a determination from the Internal Revenue Service that the organization is exempt from federal income tax under s. 501(c)(3) of the United States Internal Revenue Code, 1954, as amended, if the organization actively participates in planning and conducting the event, is responsible for the safety and success of the event, is organized for the purpose of sponsoring live theater, live opera, or live ballet productions in this state, has more than 10,000 subscribing members and has among the stated purposes in its charter the promotion of arts education in the communities which it serves, and will receive at least 20 percent of the net profits, if any, of the events which the organization sponsors and will bear the risk of at least 20 percent of the losses, if any, from the events which it sponsors if the organization employs other persons as agents to provide services in connection with a sponsored event. Prior to March 1 of each year, such organization may apply to the department for a certificate of exemption for admissions to such events sponsored in this state by the organization during the immediately following state fiscal year. The application shall state the total dollar amount of admissions receipts collected by the organization or its agents from such events in this state sponsored by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Such organization shall receive the exemption only to the extent of $1,500,000 multiplied by the ratio that such receipts bear to the total of such receipts of all organizations applying for the exemption in such year; however, in no event shall such exemption granted to any organization exceed 6 percent of such admissions receipts collected by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Each organization receiving the exemption shall report each month to the department the total admissions receipts collected from such events sponsored by the organization during the preceding month and shall remit to the department an amount equal to 6 percent of such receipts reduced by any amount remaining under the exemption. Tickets for such events sold by such organizations shall not reflect the tax otherwise imposed under this section.

Section 26. Charges made by foreign registered vessels carrying passengers to international waters are exempt from the tax on admissions imposed under part I of chapter 212, Florida Statutes.

Section 27. Paragraph (a) of subsection (3) of section 212.18, Florida Statutes, 1992 Supplement, is amended to read:

212.18 Administration of law; registration of dealers; rules.—

(3)(a) Every person desiring to engage in or conduct business in this state as a dealer, as defined in this chapter, or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property, as defined in this chapter, and every person who sells or receives anything of value by way of admissions, shall file with the department an application for a certificate of registration for each place of business, showing the names of the persons who have interests in such business and their residences, the address of the business, and such other data as the department may reasonably require. The application shall be made to the department before the person, firm, copartnership, or corporation may engage in such business, and it shall be accompanied by a registration fee of $5. However, *the department shall permit an applicant licensed pursuant to chapter 475 desiring to lease, rent, or let or grant licenses in real property to collectively register all places of business in a single application. The registration fee for collectively registered places of business shall be $5 per place of business. In the event that more than 300 places of business are collectively registered by an applicant on a single application, the total fee charged for such registration by the department shall not exceed $1,500. The applicant is required to furnish to the Department in a manner prescribed by the Department, the owners name, business name, and address of each registered place of business.* No registration fee is required to accompany an application to engage in or conduct business to make mail order sales. The department, upon receipt of such application, will grant to the applicant a separate certificate of registration for each place of business, which certificate may be canceled by the department or its designated assistants for any failure by the certificateholder to comply with any of the provisions of this chapter. The certificate shall not be assignable and shall be valid only for the person, firm, copartnership, or corporation towhich issued, and such certificate shall be placed in a conspicuous place in the business or businesses for which it is issued and shall be so displayed atall times. *Except as provided in this paragraph,* no person shall engage in business as a dealer or in leasing, renting, or letting of or granting licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property as hereinbefore defined, nor shall any person sell or receive anything of value by way of admissions, without first having obtained such a certificate or after such certificate has been canceled; no person shall receive any license from any authority within the state to engage in any such business without first having obtained such a certificate or after such certificate has been canceled. The engaging in the business of selling or leasing tangible personal property or services or as a dealer, as defined in this chapter, or the engaging in leasing, renting, or letting of or granting licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property as hereinbefore defined, or the engaging in the business of selling or receiving anything of value by way of admissions, without such certificate first being obtained or after such certificate has been canceled by the department is prohibited. The failure or refusal of any person, firm, copartnership, or corporation to so qualify when required hereunder is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or subject to injunctive proceedings as provided by law. Such failure or refusal also subjects the offender to a $100 initial registration fee in lieu of the $5 registration fee authorized in this paragraph.

Section 28. Effective upon this act becoming a law and applicable retroactively to January 1, 1986, subsection (10) of section 199.052, Florida Statutes, is amended to read:

199.052 Annual tax returns; payment of annual tax.—

(10) An affiliated group of corporations may elect to make a consolidated return for any year. The election shall be made by timely filing a consolidated return. Once made, an election may not be revoked, and it is binding for the tax year. The mere making of a consolidated return shall not in itself provide a business situs in this state for intangible personal property held by a corporation. The fact that members of an affiliated group own stock in corporations which do not qualify under the stock ownership requirements as members of an affiliated group shall not preclude the filing of a consolidated return on behalf of the qualified members. Where a consolidated return is made, intercompany accounts, including the capital stock of an includable corporation, other than the parent, owned by another includable corporation, shall not be subject to annual taxation. However, capital stock and other intercompany accounts of a nonqualified member of the affiliated group shall be subject to annual tax. Each consolidated return shall be accompanied by documentation identifying all intercompany accounts and containing such other information as the department shall require. *Failure to timely file a consolidated return shall not prejudice the taxpayer's right to file a consolidated return, provided that the failure to file a consolidated return is limited to 1 year and the taxpayer's intent to file a consolidated return is evidenced by the taxpayer having filed a consolidated return for the 3 years prior to the year the return was not timely filed.*

Section 29. Paragraph (b) of subsection (7) and subsection (8) of section 336.025, Florida Statutes, 1992 Supplement, are amended to read:

336.025 County transportation system; levy of local option gas tax on motor fuel and special fuel.—

(7) For the purposes of this section, the term "transportation expenditures" means expenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

(b) Roadway and right-of-way maintenance and equipment *and structures used primarily for the storage and maintenance of such equipment.*

(8) In addition to the uses specified in subsection (7), the governing body of a county with a population of 50,000 or less on April 1, 1992, may use the proceeds of the tax imposed under this section in any fiscal year to fund infrastructure projects, if such projects are consistent with the local government's approved comprehensive plan or, if the approval or denial of the plan has not become final, consistent with the plan last submitted to the state land planning agency. *A county with a population of 15,000 or less that has not levied the 5th and 6th cents of motor fuel tax provided for in this section may do so for the purpose of constructing county detention facilities, without being subject to the provisions in subsections (3) and (4).* Except as provided in subsection (7), such funds shall not be used for the operational expenses of any infrastructure. Such funds may be used for infrastructure projects under this subsection only after the local government, prior to the fiscal year in which the funds are proposed to be used, or if pledged for bonded indebtedness, prior to the fiscal year in which the bonds will be issued, has held a duly noticed public hearing on the proposed use of the funds and has adopted a resolution certifying that the local government has met all of the transportation needs identified in its approved comprehensive plan or, if the approval or denial of the plan has not become final, consistent with the plan last submitted to the state land planning agency. The proceeds shall not be pledged for bonded indebtedness for a period exceeding 10 years. For the purposes of this subsection "infrastructure" has the same meaning as provided in s. 212.055.

Section 30. Subsection (6) of section 196.012, Florida Statutes, is amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(6) Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. *For purposes of the preceding sentence, an activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce shall be deemed an activity which serves a governmental, municipal or public purpose or function.* The term "governmental purpose" *also* includes a direct use of property on federal lands in connection with the Federal Government's Space Exploration Program. Real property and tangible personal property owned by the Federal Government and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt. *"Owned by the lessee" as used in this chapter does not include personal property, buildings, or other real property improvements used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed based operation which provides goods and services to the general aviation public in the promotion of air commerce provided that the real property is designated as an aviation area on an airport layout plan approved by the Federal Aviation Administration. For purposes of determination of "ownership", buildings and other real property improvements which will revert to the airport authority or other governmental unit upon expiration of the term of the lease shall be deemed "owned" by the governmental unit and not the lessee.*

Section 31. Effective upon this act becoming a law, section 15 of Committee Substitute for House Bill 1543, which was enacted during the 1993 Regular Session of the Legislature, is amended to read:

Section 15. Subsection (3) of Section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be no less than one-quarter page in size of a standard-size or a tabloid-size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county *or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority.* It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week, *or that the advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week.* It is further the legislative intent that the newspaper selected be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50.

(a) For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1), the advertisement shall be in the following form:

NOTICE OF TAX INCREASE

The . . . (name of the taxing authority) . . . has tentatively adopted a measure to increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent.

All concerned citizens are invited to attend a public hearing on the tax increase to be held on . . . (date and time) . . . at . . . (meeting place) . . ..

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(b) In all instances in which the provisions of paragraph (a) are inapplicable for taxing authorities other than school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The . . . (name of taxing authority) . . . has tentatively adopted a budget for . . . (fiscal year) . . .. A public hearing to make a FINAL DECISION on the budget AND TAXES will be held on . . . (date and time) . . . at . . . (meeting place) . . ..

(c) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy nonvoted millage in excess of the minimum amount required pursuant to s. 236.02(7), the advertisement shall be in the following form:

NOTICE OF TAX INCREASE

The . . . (name of school district) . . . will soon consider a measure to increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent.

A portion of the tax levy is required under state law in order for the school board to receive $. . . (amount A) . . . in state education grants. The required portion has . . . (increased or decreased) . . . by . . . (amount B) . . . percent and represents approximately . . . (amount C) . . . of the total proposed taxes.

The remainder of the taxes is proposed solely at the discretion of the school board.

All concerned citizens are invited to a public hearing on the tax increase to be held on . . . (date and time) . . . at . . . (meeting place) . . ..

A DECISION on the proposed tax increase and the budget will be made at this hearing.

1. AMOUNT A shall be an estimate, provided by the Department of Education, of the amount to be received in the current fiscal year by the district from state appropriations for the Florida Education Finance Program.

2. AMOUNT B shall be the percent increase over the rolled-back rate necessary to levy only the required local effort in the current fiscal year, computed as though in the preceding fiscal year only the required local effort was levied.

3. AMOUNT C shall be the quotient of required local-effort millage divided by the total proposed nonvoted millage, rounded to the nearest tenth and stated in words; however, the stated amount shall not exceed nine-tenths.

(d) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy as nonvoted millage only the minimum amount required pursuant to s. 236.02(7), the advertisement shall be the same as provided in paragraph (c), except that the second and third paragraphs shall be replaced with the following paragraph:

This increase is required under state law in order for the school board to receive $. . . (amount A) . . . in state education grants.

(e) In all instances in which the provisions of paragraphs (c) and (d) are inapplicable for school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The . . . (name of school district) . . . will soon consider a budget for . . . (fiscal year) . . .. A public hearing to make a DECISION on the budget AND TAXES will be held on . . . (date and time) . . . at . . . (meeting place) . . ..

(f) In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice to each elector residing within the jurisdiction of the taxing authority.

(g) In the event that the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a tentative budget and millage rate in a newspaper of paid general circulation within that county, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c) not less than 2 days or more than 5 days thereafter, and not later than September 18. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (e):

NOTICE OF TAX INCREASE

The . . . (name of the taxing authority) . . . proposes to increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent.

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on . . . (date and time) . . . at . . . (meeting place) . . ..

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

(i) The advertisements required pursuant to paragraphs (b) and (e) need not be one-quarter page in size or have a headline in type no smaller than 18 point.

(j) The amounts to be published as percentages of increase over the rolled-back rate pursuant to this subsection shall be based on aggregate millage rates and shall exclude voted millage levies unless expressly provided otherwise in this subsection.

(k) Any taxing authority which will levy an ad valorem tax for an upcoming budget year but does not levy an ad valorem tax currently shall, in the advertisement specified in paragraph (a), paragraph (c), paragraph (d), or paragraph (g), replace the phrase "increase its property tax levy by . . . (percentage of increase over rolled-back rate) . . . percent" with the phrase "impose a new property tax levy of $. . . (amount) . . . per $1,000 value."

(l) Any advertisement required pursuant to this section shall be accompanied by an adjacent notice meeting the budget summary requirements of s. 129.03(3)(b). Except for those taxing authorities proposing to levy ad valorem taxes for the first time, the following statement shall appear in the budget summary in boldfaced type immediately following the heading, if the applicable percentage is greater than zero:

THE PROPOSED OPERATING BUDGET EXPENDITURES OF . . . (name of taxing authority) . . . ARE . . . (percent rounded to one decimal place) . . . MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

For purposes of this paragraph, "proposed operating budget expenditures" or "operating expenditures" means all moneys of the local government, including dependent special districts, that:

1. Were or could be expended during the applicable fiscal year, or

2. Were or could be retained as a balance for future spending in the fiscal year.

Provided, however, those moneys held in or used in trust, agency, or internal service funds, and expenditures of bond proceeds for capital outlay or for advanced refunded debt principal, shall be excluded.

Section 32. Subsection (1) of section 193.075, Florida Statutes, as amended by section 6 of Committee Substitute for House Bill 1543, which was enacted during the 1993 Regular Session of the Legislature, is amended to read:

193.075 Mobile homes.—

(1) A mobile home shall be taxed as real property if the owner of the mobile home is also the owner of the land on which the mobile home is permanently affixed. A mobile home shall be considered permanently affixed if it is tied down and connected to the normal and usual utilities. However, a mobile home that is permanently affixed shall not be taxed as real property if it is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and is not rented, *or* occupied, ~~or located on property used for mobile home occupancy~~. A mobile home that is taxed as real property shall be issued an "RP" series sticker as provided in s. 320.0815.

Section 33. Except as otherwise provided herein, this act shall take effect July 1, 1993.

And the title is amended as follows:

In title, on page 1, strike everything before the enacting clause and insert: A bill to be entitled An act relating to taxation; amending s. 125.0108, F.S.; revising obsolete language; amending s. 201.17, F.S.; revising the date from which interest accrues for nonpayment of certain taxes; amending s. 212.08, F.S.; exempting from sales tax the charges by a utility for attaching wires to a transmission pole; amending s. 212.031, F.S.; exempting certain property from taxation pursuant to a previously issued technical assistance advisement; amending s. 212.054, F.S., relating to provisions that specify requirements for the administration and collection of discretionary sales surtaxes; providing for application of such surtaxes to the sale of services; providing that the exemption for sales amounts above $5,000 does not apply to the sale of services; revising the conditions under which a transaction is deemed to occur in a county imposing the surtax; deleting provisions requiring administrative costs of the discretionary sales surtaxes to be prorated among the counties that levy the taxes; requiring a study committee to recommend a method of allocation; specifying when a surtax applies to dealers outside the county; providing for distribution of the proceeds of such surtaxes collected by a dealer located in a county that does not impose a surtax; specifying consequences if a county does not provide timely information to the Department of Revenue; amending s. 212.055, F.S.; removing the limitations on the length of time the local government infrastructure surtax may be levied and the period during which a referendum levying the surtax may be held; authorizing additional uses for surtax revenues; amending s. 212.06, F.S.; revising the calculation of the indexed tax on asphalt manufactured for one's own use; amending s. 212.14, F.S.; providing procedures under which the department may issue subpoenas and subpoenas duces tecum; amending s. 212.15, F.S.; revising the penalties imposed for failing to remit taxes; amending s. 212.183, F.S.; authorizing self-accrual of sales tax for certain commercial rentals; amending s. 213.053, F.S.; providing that certain information with respect to railroads and private car and freight lines may be made available to certain federal agencies by the department; amending s. 213.10, F.S.; authorizing the department to

account for the collection and distribution of tax moneys in separate clearing trust funds; amending s. 213.27, F.S.; authorizing the department to enter into contracts for the purpose of determining liability for intangible personal property tax; revising the requirements for notice before the department commences litigation to recover taxes due or before the department assigns a tax debt for collection; amending s. 213.28, F.S.; deleting certain limitations on contracts by the department with private auditors; prohibiting audit fees based on the amount of tax assessed or collected as a result of an audit; amending s. 218.21, F.S.; prescribing distributions from the Revenue Sharing Trust Fund for Municipalities to certain governments exercising municipal powers; amending s. 220.13, F.S.; correcting a cross-reference to a provision in the Internal Revenue Code; amending ss. 403.718, 403.7185, 403.7195, F.S.; revising the criteria under which administration costs may be deducted by the department from the proceeds of waste tire fees, lead-acid battery fees, and waste newsprint disposal fees; amending s. 624.5092, F.S.; revising requirements for calculating estimated tax payments; amending s. 731.111, F.S.; authorizing the department to file a claim, or amend a previously filed claim, against a taxpayer following receipt of the taxpayer's federal estate tax return or an amended or supplemented federal estate tax return; amending s. 212.05, F.S.; excluding franchise fees passed on to the television system program service provider's customer from the definition of the term "charges" for tax purposes of the sales, storage, or use tax; revising the sales tax on certain transactions involving coins; amending s. 212.0515, F.S.; revising the method for calculating the amount of sales tax to be paid on certain beverages sold in vending machines; amending s. 212.08, F.S.; exempting taxicabs from charging sales tax on taxicab leases and equipment; amending s. 212.04, F.S.; exempting dues, membership fees, and admission charges imposed by government-owned zoos from the tax on admissions; exempting certain charges made by foreign registered in vessels from the tax on admissions; amending s. 212.18, F.S.; providing for the collective registration of certain places of business; providing fees; providing that sales of certain publications by a nonprofit association to its members are not subject to sales or use tax under certain conditions; providing for retroactive application to a specified period; amending s. 199.052, F.S.; providing that failure to timely file a consolidated intangible personal property tax return does not prejudice a taxpayer's right to file such return under certain conditions; providing for retroactive effect; amending section 336.025, F.S., revising provisions relating to local option fuel tax; providing an additional authorized use for the revenues from the local option gas tax for county transportation systems; amending s. 196.012, F.S., expanding the definition of governmental, municipal or public purpose to include certain aviation activities; providing an exemption from ad valorem taxation for certain buildings or other real property improvements constructed by a lessee on real property owned by an airport authority or other governmental unit; amending section 15 of Committee Substitute for House Bill 1543, which was enacted during the 1993 Regular Legislative Session; authorizing area-specific information in advertisements for fixing millage; amending s. 193.075, F.S.; prescribing scope of exemptions with respect to the taxation of mobile homes as real property; providing effective dates.

Senator Foley offered the following amendment which was moved by Senator Kiser and adopted:

Amendment 2—On page 43, between lines 10 and 11, insert:

Section 31. Subsection (27) is added to section 212.02, Florida Statutes, 1992 Supplement, to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(27) "Costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the type of trade or business in which the service provider engages.

Section 32. Section 212.056, Florida Statutes, is created to read:

212.056 Sales and use tax on services.—It is the legislative intent to levy an excise tax on the sale of services in this state as provided in this section. It is further the legislative intent to levy a complementary excise tax on the use of services in this state as provided in this section.

(1)(a) A tax is imposed on the sale at retail in this state of any service specified in s. 212.05(1)(k) at the rate of 6 percent of the sales price of the service. The tax shall be computed on each taxable sale of a service for the purpose of remitting the amount of tax due the state and includes each and every retail sale of a service.

(b) The sale of a service is in this state for purposes of this part if the service is performed wholly within this state, or if the service is performed partly within and partly outside this state but the greater proportion of the service is performed within this state, based on costs of performance as defined in s. 212.02.

(2) A tax is imposed on the use in this state of any service specified in s. 212.05(1)(k) when the sale of the service is at retail outside this state, at the rate of 6 percent of the cost price of the service. The use of a service is in this state for purposes of this part if the benefit of the service is enjoyed in this state. For purposes of determining where the benefit of the service is enjoyed, s. 212.0561(4) applies.

(3) If the sale of a service is outside this state, any applicable use tax shall be remitted by the purchaser of the service if the purchaser of the service has nexus for tax purposes with this state. However, if the seller has tax nexus in this state and the sale of the service is outside this state and the service sold either directly relates to real property in this state, directly relates to tangible personal property in this state, or is represented by tangible personal property forwarded to the purchaser in this state, then any applicable use tax shall be remitted by the seller of the service.

(4) Each multistate purchaser that self-accrues the taxes due on its purchases of services must file an annual supplementary tax return summarizing its purchases and sales of services for its prior fiscal year. The return must include a final calculation of taxes allocated under s. 212.0561(4), and other information the department prescribes by rule. The return must be filed on or before the deadline for filing Florida or federal income tax returns, recognizing any extensions of time granted thereto.

Section 33. Section 212.0561, Florida Statutes, is created to read:

212.0561 Rules of construction.—For purposes of the sales and use tax on services, the following rules of construction apply:

(1) If the sales price of the sale of a service or if the cost price of the use of a service cannot be included within the measure of the tax imposed by this part under the Constitution or laws of the United States, there shall be included in the measure of the tax imposed by this part on the sale of services that proportion of the sales price, or on the use of services that proportion of the cost price, that may lawfully be included under the laws and Constitution of the United States.

(2) If a transaction involves both the sale or use of a service taxable under this part and the sale or use of intangible or real property not taxable under this part, the charges shall be separately identified and stated with respect to the taxable and nontaxable portions of the transaction. Failure to separately state the charges creates a presumption that the entire transaction is taxable.

(3) If a transaction involves both the sale or use of a service taxable under this part and the sale or use of a service exempt under this part, the consideration paid must be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.

(4) For purposes of determining where the benefit of the service is enjoyed, the following provisions apply:

(a) If the purchaser is an individual not acting as a business, the service is presumed to be enjoyed in this state if:

1. The purchaser receives in this state tangible personal property representing the service; or

2. The service is ultimately rendered to a consumer located in this state; or

3. The service directly relates to real property located in this state.

4. Notwithstanding subparagraphs 1., 2., and 3., if the purchaser demonstrates to the satisfaction of the department that the benefit of the service was enjoyed outside of this state, the service is deemed used or consumed outside of this state.

(b) If the purchaser is a business, the benefit of the service is presumed to be enjoyed in this state if:

1. The purchaser is exclusively doing business in this state; or

2. The tangible result of the service was accepted by the purchaser in this state; or

3. The service directly relates to real property located in this state; or

4. The service directly relates to tangible personal property which has acquired a business situs in this state; or

5. The service directly relates to sales to a local market of the service purchaser which local market is in this state; or

6. The service does not directly relate to real property, to tangible personal property which has acquired a business situs, or to a local market of the service purchaser, and the purchaser is predominantly doing business in this state.

7. Notwithstanding subparagraphs 1., 2., 3., 4., 5., and 6., if the purchaser demonstrates to the satisfaction of the department that the benefit of the service was enjoyed outside of this state, the service is deemed used or consumed outside of this state.

(c) For the purpose of paragraph (b):

1. A purchaser is predominantly doing business in this state if, in the year the purchase was made, the proportion of the purchaser's business activity in this state is greater than that proportion in any other single state, based on the criteria provided in chapter 220 for the apportionment of business income for the prior fiscal year of the business.

2. If the service relates directly to real property located both within and without this state, the service is presumed to be enjoyed in this state in proportion to the value of such real property located within this state to the value of all such real property. Property values shall be determined as provided in chapter 220 for the apportionment of business income for the prior fiscal year of the business.

3. If the service relates directly to tangible personal property with business situs within this state and to tangible personal property with business situs without this state, the service is presumed to be enjoyed in this state in proportion to the value of such tangible personal property with business situs within this state to the value of all such tangible personal property. Property values shall be determined as provided in chapter 220 for the apportionment of business income for the prior fiscal year of the business.

4. If the service relates directly to a local market of the service purchaser located both within and without this state, the service is presumed to be enjoyed in this state in proportion to the value of the purchaser's Florida current year sales in that market to the value of all sales in that market. The geographic attribution of sales shall be determined as provided in chapter 220 for the apportionment of business income for the prior fiscal year of the business.

5. A service directly relates to an item of tangible personal property if it materially and permanently enhances the value of the tangible personal property, irrespective of ownership of the tangible personal property, and if the benefit cannot be transferred to other items of tangible personal property subsequent to the first use of the service.

Section 34. Section 212.0562, Florida Statutes, is created to read:

212.0562 Exemptions from sales or use tax on services.—There shall be exempt from the tax on the sale or use of services imposed by s. 212.056(1) or (2) the following:

(1)(a) Services sold in this state for use outside of this state.

(b) A service is deemed to be purchased for use outside this state if the benefit of the service is not enjoyed in this state. For purposes of determining where the benefit of the service is enjoyed, s. 212.0561(4) applies.

(c) In order to qualify for this exemption, the provisions of s. 212.0563 must be met.

(2) The occasional or isolated sale of services by a natural person who does not hold himself out as engaged in business.

(3) Services that partners who are natural persons render to their partnerships, unless the partner renders his services to the partnership in the capacity of an independent contractor.

Section 35. Section 212.0563, Florida Statutes, is created to read:

212.0563 Administration of s. 212.0562(1).—

(1) Each multistate business having tax nexus in this state under this part may obtain from the department an exempt purchase permit prior to claiming an exemption under s. 212.0562(1). Such permit may be used when purchasing any service sold in this state, in order for the transaction to be eligible for exemption under s. 212.0562(1). Upon purchasing a service from a dealer registered under this part, presentation by the multistate business of a valid exempt purchase permit absolves the selling dealer from the responsibility of collecting any sales tax that is due on the service.

(2) If a purchaser fails to obtain an exempt purchase permit or execute an exempt purchase affidavit, but otherwise qualifies for an exemption under s. 212.0562(1), the purchaser may apply to the department for a refund of taxes paid on the exempt amount of the purchase. The application for refund must be accompanied by an exempt purchase affidavit and must be submitted within 1 year after the purchaser's payment of the tax. Section 212.095 does not apply to refunds granted under this subsection.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, line 7, after the semicolon (;) insert: amending s. 212.02, F.S.; defining the term "costs of performance" for purposes of the tax on sales, use, and other transactions; creating ss. 212.056, 212.0561, 212.0562, and 212.0563, F.S.; providing for levy of said tax on the sale and use of certain services; providing for collecting and remitting thereof; requiring multistate purchasers that self-accrue the tax to file an annual supplementary tax return; providing rules of construction with respect to said tax; providing exemptions; providing for administration of the exemption for services sold in this state for use outside this state; providing for exempt purchase permits and affidavits; providing for refunds;

Senator Foley moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 43, between lines 10 and 11, insert:

Section 26. Paragraph (q) of subsection (1) of section 125.01, Florida Statutes, 1992 Supplement, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(q) Establish, and subsequently merge or abolish those created hereunder, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. *A municipal service taxing or benefit unit may include all or part of a municipality within the county pursuant to either of the following procedures:*

1. Subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years, the boundaries of a municipal service taxing or benefit unit may include all or part of the boundaries of a municipality in addition to all or part of the unincorporated areas. If ad valorem taxes are levied to provide essential facilities and municipal services within the unit, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units and the municipality may not exceed 10 mills.*; or*

2. Subject to consent by ordinance and further subject to approval by a majority of the electors of the municipality or the portion thereof affected, voting at a regular or special election, and with the concurrence of the county, a municipality may elect to transfer to the county the responsibility to provide specified municipal services or essential facilities within the unit. A municipality may withdraw from the municipal service taxing or benefit unit by ordinance, adopted not later than

September 1 of any year to take effect no earlier than October 1 of the following calendar year. If ad valorem taxes are levied to provide essential facilities and municipal services within the unit, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units and the municipality may not exceed 10 mills. Nothing herein prohibits a municipality from continuing in or entering into a service contract with a county for the purpose of providing municipal services.

This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, strike line 2 and insert: An act relating to taxation; amending s. 125.01, F.S.; providing procedure for including all or part of a municipality within a municipal service taxing unit; amending

Senator Forman moved the following amendment which was adopted:

Amendment 4 (with Title Amendment)—On page 24, line 27 through page 25, line 29, strike all of said lines and renumber subsequent sections.

And the title is amended as follows:

In title, on page 2, strike all of lines 17-21 and insert: rentals; amending s. 213.10, F.S.;

Senator Siegel offered the following amendment which was moved by Senator Kiser and adopted:

Amendment 5 (with Title Amendment)—On page 30, strike all of lines 3-10 and insert:

Section 24. Paragraph (e) of subsection (5) of section 212.08, Florida Statutes, 1992 Supplement, is amended, and paragraph (ee) is added to subsection (7) of that section, 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.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(e) Gas used for certain agricultural purposes.—Butane gas, propane gas, *natural gas,* and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper is also deemed an exempt use.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 3, line 15, following the semicolon (;) insert: exempting natural gas used for certain agricultural purposes from sales taxes;

Senator McKay moved the following amendment which was adopted:

Amendment 6 (with Title Amendment)—On page 43, between lines 10 and 11, insert:

Section 26. Paragraph (a) of subsection (2) of section 212.04, Florida Statutes, 1992 Supplement, is amended to read:

212.04 Admissions tax; rate, procedure, enforcement.—

(2)(a)1. No tax shall be levied on admissions to athletic or other events sponsored by elementary schools, junior high schools, middle schools, high schools, community colleges, public or private colleges and universities, deaf and blind schools, facilities of the youth services programs of the Department of Health and Rehabilitative Services, and state correctional institutions when only student, faculty, or inmate talent is used. However, this exemption shall not apply to admission to athletic events sponsored by an institution within the State University System, and the proceeds of the tax collected on such admissions shall be retained and used by each institution to support women's athletics as provided in s. 240.533(4)(c).

2.a. No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations. To receive this exemption, the sponsoring organization must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended.

b. No tax imposed by this section and not actually collected before August 1, 1992, shall be due from any museum or historic building owned by any political subdivision of the state.

3. No tax shall be levied on an admission paid by a student, or on his behalf, to any required place of sport or recreation if the student's participation in the sport or recreational activity is required as a part of a program or activity sponsored by, and under the jurisdiction of, the student's educational institution, provided his attendance is as a participant and not as a spectator.

4. No tax shall be levied on admissions to the National Football League championship game, or on admissions to any of the games of the 1994 World Cup Soccer Tournament.

5. *A participation fee or sponsorship fee imposed by a governmental entity as described in s. 212.08(6) for an athletic or recreational program is exempt when the governmental entity by itself, or in conjunction with an organization exempt under s. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, sponsors, administers, plans, supervises, directs, and controls the athletic or recreational program.* ~~No tax shall be levied on admissions to athletic or other events sponsored by governmental entities.~~

6. Also exempt from the tax imposed by this section to the extent provided in this subparagraph are admissions to live theater, live opera, or live ballet productions in this state which are sponsored by an organization that has received a determination from the Internal Revenue Service that the organization is exempt from federal income tax under s. 501(c)(3) of the United States Internal Revenue Code, 1954, as amended, if the organization actively participates in planning and conducting the event, is responsible for the safety and success of the event, is organized for the purpose of sponsoring live theater, live opera, or live ballet productions in this state, has more than 10,000 subscribing members and has among the stated purposes in its charter the promotion of arts education in the communities which it serves, and will receive at least 20 percent of the net profits, if any, of the events which the organization sponsors and will bear the risk of at least 20 percent of the losses, if any, from the events which it sponsors if the organization employs other persons as agents to provide services in connection with a sponsored event. Prior to March 1 of each year, such organization may apply to the department for a certificate of exemption for admissions to such events sponsored in this state by the organization during the immediately following state fiscal year. The application shall state the total dollar amount of admissions receipts collected by the organization or its agents from such events in this state sponsored by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Such organization shall receive the exemption only to the extent of $1,500,000 multiplied by the ratio that such receipts bear to the total of such receipts of all organizations applying for the exemption in such year; however, in no event shall such exemption granted to any organization exceed 6 percent of such admissions receipts collected by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Each organization receiving the exemption shall report each month to the department the total admissions receipts collected from such events sponsored by the organization during the preceding month and shall remit to the department an amount equal to 6 percent of such receipts reduced by any amount remaining under the exemption. Tickets for such events sold by such organizations shall not reflect the tax otherwise imposed under this section.

Section 27. *No tax imposed by s. 212.04, Florida Statutes, and not actually collected before the effective date of this act shall be due from any political subdivision of the state.*

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, line 7, after the semicolon (;) insert: revising and clarifying the exemption for admissions to certain events sponsored by governmental entities; providing that no tax on admissions not actually collected before the effective date of the act shall be due from any political subdivision of the state;

Senator Dudley moved the following amendment which was adopted:

Amendment 7 (with Title Amendment)—On page 43, between lines 25 and 26, insert:

Section 27. Effective for taxable years beginning on or after January 1, 1995, section 220.193, Florida Statutes, is created to read:

220.193 Credit for donation of instructional technology equipment.—

(1) There shall be allowed a credit against the tax imposed by this chapter to any business which donates instructional technology equipment to any public elementary or secondary school, community college, vocational-technical center, or university in this state. When claiming this credit, the taxpayer is required to enclose with its tax return a description of the instructional technology equipment donated, and a signed letter from the recipient stating that the donated equipment can and will be used for instructional purposes.

(2) The amount of the credit shall be computed as follows:

(a) If the equipment is new, the amount of the credit shall be equal to 35 percent of its purchase price or manufactured cost. For the purpose of this paragraph the term "new" means equipment that has neither been used nor depreciated for federal income tax purposes.

(b) If the equipment is 1 year old or less, the amount of the credit shall be equal to 25 percent of its purchased price or manufactured cost.

(c) If the equipment is more than 1 year old but less than 2 years old, the amount of the credit shall be equal to 20 percent of its purchased price or manufactured cost.

(d) If the equipment is 2 years old or older, the department shall determine the percent of its value to be allowed as credit, which shall be less than 10 percent of its purchased price or manufactured costs.

(3) If any credit granted pursuant to this section is not fully used in the first year for which it becomes available, the unused amount may be carried forward for a period not to exceed 5 years. The amount of credit taken under this section in any one year, however shall not exceed $100,000. The carryover may be used in a subsequent year when the tax imposed by this chapter for such year exceeds the credit for such year under this section after applying the other credits and unused credit carryovers in the order provided in s. 220.02(10). In addition, up to $100,000 a year of unused credit granted pursuant to this section may be transferred to another business and used by it as a credit against the tax imposed by this chapter. The total amount of all credit that may be taken pursuant to this section may not exceed $5,000,000 annually.

(4) The department shall adopt rules for the determination of value and the amount of credit under subsection (2) and for the transfer of credits under subsection (3).

Section 28. Effective for taxable years beginning on or after January 1, 1995, subsection (10) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(10) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 220.68, those enumerated in s. 631.719(1), those enumerated in s. 631.705, those enumerated in s. 220.18, those enumerated in s. 631.828, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, ~~and~~ those enumerated in s. 220.188, *and those enumerated in s. 220.193.*

Section 29. Effective for taxable years beginning on or after January 1, 1995, paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.—There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265(2) of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the deductible charitable contributions containing donations of instruction technology equipment which is equal to the amount of the credit allowable and used for the taxable year under s. 220.193.

~~5.~~4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 1994.

~~6.~~5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on December 31, 1994.

~~7.~~6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

~~8.~~7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

~~9.~~8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 4, line 7, after the semicolon (;) insert: creating s. 220.193, F.S.; providing a credit against the tax for a business that donates instructional technology equipment to a public school, vocational-technical center, community college, or university; providing for determination of the amount of the credit; providing for carryover or transfer of the credit; amending s. 220.02, F.S.; providing for order of credits against the tax; amending s. 220.13, F.S.; amending definition of adjusted federal income; providing for repeal of certain sections of act;

Senator Jones moved the following amendments which were adopted:

Amendment 8 (with Title Amendment)—On page 43, between lines 10 and 11, insert:

Section 26. Subsection (l) of section 30.231, Florida Statutes, is amended to read:

30.231 Sheriffs' fees for service of summons, subpoenas, and executions.—

(1) The sheriffs of all counties of the state in civil cases shall charge fixed, nonrefundable fees for docketing and service of process, according to the following schedule:

(a) All summons or writs except executions: *$20* ~~$12~~ for each summons or writ to be served, except when more than one summons or writ is issued at the same time out of the same cause of action to be served upon one person or defendant at the same time, in which case the sheriff shall be entitled to one fee.

(b) All writs except executions requiring a levy or seizure of property: *$50* ~~$20~~ in addition to the *$20* ~~$12~~ fee as stated in paragraph (a).

(c) Witness subpoenas: *$20* ~~$12~~ for each witness to be served.

(d) Executions:

1. *Twenty* ~~Ten~~ dollars for docketing and indexing each writ of execution, regardless of the number of persons involved.;

2. Fifty dollars for each levy.;

a. A levy is considered made when any property or any portion of the property listed in the instructions for levy is seized, or upon demand of the sheriff the writ is satisfied by the defendant in lieu of seizure.

b. When the instructions are for levy upon real property, a levy fee is required for each parcel described in the instructions.

c. When the instructions are for levy based upon personal property, one fee is allowed, although the property may be seized at different locations, conditional upon all of the items being advertised collectively and the sale being held at a single location. However, if the property seized cannot be sold at one location during the same sale as advertised, but requires separate sales at different locations, the sheriff is then authorized to impose a levy fee for the property and sale at each location.

3. *Twenty* ~~Six~~ dollars for advertisement of sale under process.;

4. *Twenty* ~~Ten~~ dollars for sale under process.;

5. *Twenty* ~~Ten~~ dollars for deed, bill of sale, or satisfaction of judgment.

Section 27. For the purpose of incorporating the amendment to section 30.231, Florida Statutes, in references thereto, paragraph (d) of subsection (3) of section 11.143, Florida Statutes, 1992 Supplement, is reenacted to read:

11.143 Standing or select committees; powers.—

(3)

(d) The sheriffs in the several counties or a duly constituted agent of a Florida legislative committee 18 years of age or older shall make such service and execute all process or orders when required by such committees. Sheriffs shall be paid as provided for in s. 30.231.

Section 28. For the purpose of incorporating the amendment to section 30.231, Florida Statutes, in references thereto, subsection (1) of section 106.26, Florida Statutes, is reenacted to read:

106.26 Powers of commission; rights and responsibilities of parties; findings by commission.—

(1) The commission shall, pursuant to rules adopted and published in accordance with chapter 120, consider all matters reported to it by the Division of Elections or otherwise coming to its attention, including appeals of division dismissals of cases based on no probable cause. In order to carry out its duties, the commission may, whenever required, issue subpoenas and other necessary process to compel the attendance of witnesses before it. The chairman thereof shall issue said process on behalf of the commission. The chairman or any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before the commission for the purpose of testifying in any matter about which the commission may desire evidence. The commission, whenever required, may also compel by subpoena the production of any books, letters, or other documentary evidence it may desire to examine in reference to any matter before it. The sheriffs in the several counties shall make such service and execute all process or orders when required by the commission. Sheriffs shall be paid for these services by the commission as provided for in s. 30.231. Any person who is served with a subpoena to attend a hearing of the commission also shall be served with a general statement informing him of the subject matter of the commission's investigation or inquiry and a notice that he may be accompanied at the hearing by counsel of his own choosing.

Section 29. Subsection (1) of section 48.183, Florida Statutes, is amended to read:

48.183 Service of process in action for possession of ~~residential~~ premises.—

(1) In an action for possession of ~~residential~~ premises ~~under s. 83.59~~, if ~~neither~~ the tenant *cannot be found in the county or there is no* ~~nor a~~ person ~~residing therein who is~~ 15 years of age or older *residing* ~~can be found~~ at the *tenant's* usual place of *abode in* ~~residence of~~ the *county* ~~tenant~~ after at least two attempts to obtain service as provided above in this subsection, summons may be served by attaching a copy to a conspicuous place on the property described in the complaint or summons. The minimum time delay between the two attempts to obtain service shall be 6 hours. ~~Nothing herein shall be construed as prohibiting service of process on a tenant as is otherwise provided on defendants in civil cases.~~

Section 30. Subsection (2) of section 83.62, Florida Statutes, is amended to read:

83.62 Restoration of possession to landlord.—

(2) At the time the sheriff executes the writ of possession, the landlord or his agent may remove any personal property found on the premises to or near the property line. *Subsequent to executing the writ of possession,* ~~If requested by~~ the landlord *may request* ~~to do so,~~ the sheriff *to* ~~shall~~ stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. *When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff.* Neither the sheriff nor the landlord or his agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

Section 31. Section 723.062, Florida Statutes, is amended to read:

723.062 Removal of mobile home owner; process.—

(1) In an action for possession, after entry of judgment in favor of the mobile home park owner, the clerk shall issue a writ of possession to the sheriff, describing the lot or premises and commanding him to put the mobile home park owner in possession. The writ of possession shall not issue earlier than 10 days from the date judgment is granted.

(2) At the time the sheriff executes the writ of possession, the landlord or his agent may remove any personal property, including the mobile home, found on the premises to or near the property line or, in the case of the mobile home, into storage. If requested by the landlord, the sheriff shall stand by to keep the peace while the landlord removes personal property. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord nor his agent shall be responsible to the tenant or any other party for loss, destruction, or damage to the property after it has been removed.

Section 32. Section 56.21, Florida Statutes, is amended to read:

56.21 Execution sales; notice.—Notice of all sales under execution shall be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place. ~~or, if there is no newspaper published in the county, by posting notices at the door of the courthouse of the county and at three other public places in the county for 30 days; but~~ The time of such notice may be shortened in the discretion of the court from which the execution issued, upon affidavit that the property to be sold is subject to decay and will not sell for its full value if held *until date of sale* ~~for a period of 30 days~~. On or before the date of the first publication or posting of the notice of sale, a copy of the notice of sale shall be furnished by certified mail to the attorney of record of the judgment debtor, or to the judgment debtor at the judgment debtor's last known address if the judgment debtor does not have an attorney of record. Such copy of the notice of sale shall be mailed even though a default judgment was entered. When levying upon real property, notice of such levy and execution sale shall be made to the property owner of record in the same manner as notice is made to any judgment debtor pursuant to this section. *When selling real or personal property, the sale date shall not be earlier than 30 days after the date of the last advertisement.*

Section 33. For the purpose of incorporating the amendment to section 56.21, Florida Statutes, in a reference thereto, section 56.22, Florida Statutes, is reenacted to read:

56.22 Execution sales; time, date, and place of sale.—All sales of property under legal process shall take place at the time, date, and place advertised in the notice of the sheriff's sale on any day of the week except Saturday and Sunday and shall continue from day to day until such property is disposed of. Property not effectively disposed of at the initial sheriff's sale may be readvertised, as provided in s. 56.21, upon receipt of an additional deposit to cover costs incurred in connection with the maintenance of the property under legal process. In the event no additional deposit is received by the sheriff, the property may be returned to the defendant; if the defendant refuses to accept such property, the property may be returned to a third party, such as a lienholder, upon presentation of a proper court order directing such return. If none of the above can be accomplished, such property shall be disposed of as unclaimed or abandoned.

Section 34. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Whenever the amount of money due on any mortgage, lien, or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien, or judgment and have the same acknowledged, or proven, and duly entered of record in the book provided by law for such purposes in the proper county. Within 60 days of the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of the provisions of this section, the prevailing party shall be entitled to attorney's fees and costs.

(2) Whenever a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it shall be the responsibility of the party receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Section 35. Paragraph (d) of subsection (1) of section 475.483, Florida Statutes, is amended to read:

475.483 Conditions for recovery; eligibility.—

(1) Any person is eligible to seek recovery from the Real Estate Recovery Fund if:

(d)1. Such person has caused to be issued a writ of execution upon such judgment, and the *person has executed an affidavit* ~~officer executing the writ has made a return~~ showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment; or

2. If such person is unable to comply with subparagraph 1. for a valid reason to be determined by the commission, such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment;

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 4, line 7, after the semicolon (;) insert: amending s. 30.231, F.S.; increasing sheriffs' fees for service and providing for levy fees, and reenacting ss. 11.143(3)(d) and 106.26(1), F.S., relating to standing or select committees and powers of the commission, to incorporate said amendment in references thereto; amending s. 48.183, F.S.; revising provisions relating to service of process in actions for possession of premises; amending s. 83.62, F.S.; revising provisions relating to restoration of possession to landlord; amending s. 723.062, F.S.; providing for execution of writ of possession of mobile home; amending s. 56.21, F.S.; revising provisions relating to execution sales, and reenacting s. 56.22, F.S., relating to execution sales, to incorporate said amendment in a reference thereto; amending s. 701.04, F.S.; providing for return of writ of execution on mortgage, lien, or judgment; amending s. 475.483, F.S., relating to recovery from the Real Estate Recovery Fund; requiring an affidavit;

Amendment 9 (with Title Amendment)—On page 43, line 11, strike the effective date and insert:

Section 26. Paragraph (n) of subsection (3) of section 125.0104, Florida Statutes, 1992 Supplement, is renumbered as section 212.0306, Florida Statutes, and amended to read:

212.0306 Local option food and beverage tax; procedure for levying; authorized uses; administration.—

(1)~~(n)1.~~ Any county, as defined in s. 125.011(1), ~~which, on January 1, 1989, imposes a tourist development tax on leases and rentals,~~ may impose *the following additional taxes* ~~an additional tax~~, by ordinance adopted by a majority vote of the governing body:~~,~~

(a) At the rate of 2 percent on the sale of food, beverages, or alcoholic beverages in hotels and motels only.

(b) At the rate of 1 percent on the sale of food, beverages, or alcoholic beverages in establishments that are licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels; however, the tax shall not apply to any item sold by the package for off-premises consumption. ~~, or in hotels, motels, and any establishment which is licensed under s. 565.02 except any establishment, other than a hotel or motel, licensed under s. 563.02 or s. 564.02. However, if on January 1, 1989, the county is not administering the tourist development tax pursuant to subsection (10), the governing body of the county shall not adopt the ordinance authorized in this paragraph until January 1, 1990.~~

(2)(a) Beginning July 1 of each year, and effective until the following June 30, the sales in any establishment licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels, that had gross annual revenues of $400,000 or less in the previous calendar year, are exempt from the tax authorized by paragraph (1)(b).

(b) Sales in any veterans', fraternal, or other chartered or incorporated club licensed under s. 565.02(4) are exempt from the tax authorized by paragraph (1)(b).

(c) All transactions that are exempt from the state sales tax are exempt from the taxes authorized by subsection (1).

(d) Sales in cities or towns presently imposing a municipal resort tax as authorized by chapter 67-930, Laws of Florida, are exempt from the taxes authorized by subsection (1).

(3)(a)~~2.a. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels and motels only,~~ The proceeds of *the* ~~such~~ tax *authorized by paragraph (1)(a)* shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3.~~ *If* ~~In the event~~ the county is not or is no longer a party to such an interlocal agreement and contract with a countywide convention and visitors bureau, the county shall allocate the proceeds of such tax for the purposes described in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3.~~

(b)~~b.~~ *For the first 12 months,* ~~If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels, motels, and any establishment which is licensed under s. 565.02,~~ the proceeds from the tax *authorized by paragraph (1)(b)* shall be *used by the county to assist persons who have become, or are about to become, homeless. These funds shall be made available for emergency homeless shelters, food, clothing, medical care, counseling, alcohol and drug abuse treatment, mental health treatment, employment and training, education, and housing. Thereafter, not less than 15 percent of these funds shall be made available for construction and operation of a*

spouse abuse emergency treatment and shelter facility, and the remainder shall be used for the other purposes set forth in this paragraph. Prior to enactment of the ordinance levying and imposing the tax provided for by paragraph (1)(b), the county shall appoint a representative task force including, but not limited to, service providers, homeless advocates, and impacted jurisdictions to prepare and submit to the governing board of the county for its approval a plan for addressing the needs of persons who have become, or are about to become, homeless. The governing board of the county shall adopt this countywide plan for addressing homeless needs as part of the ordinance levying the tax. ~~allocated as follows:~~

~~(I) For the first 2 years after the tax is imposed, 35 percent shall be used by the county to revitalize economically blighted areas, 20 percent shall be used by the county as provided by law, and 45 percent shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in subparagraph (5)(a)2. or 3. In the event the county is not or is no longer a party to such an interlocal agreement and contract with a convention and visitors bureau, the county shall allocate the 45 percent of the proceeds for the purposes described in subparagraph (5)(a)2. or 3.~~

~~(II) Thereafter, an amount equal to the average of the proceeds collected from such tax during each of the first 2 years after the tax is imposed shall be allocated as provided in sub-sub-subparagraph (I) and any excess above such amount shall be allocated to the county to be used as provided by law.~~

(c) The county and each municipality in that county shall continue to contribute each year at least 85 percent of aggregate expenditures from the respective county or municipal general fund budget for county or municipal operated homeless shelter services at or above the average level of such expenditures in the two fiscal years preceding the date of levying this tax.

(4) A certified copy of the ordinance that authorizes the imposition of a tax authorized by this section shall be furnished by the county to the Department of Revenue within 10 days after the adoption of the ordinance.

(5) A tax authorized by this section may take effect on the first day of any month, but may not take effect until at least 60 days after the adoption of the ordinance levying the tax.

(6) Any county levying a tax authorized by this section must locally administer the tax using the powers and duties enumerated for local administration of the tourist development tax by s. 125.0104, Florida Statutes, 1992 Supplement. The county's ordinance shall also provide for brackets applicable to taxable transactions.

(7) This section is repealed on October 1, 2008.

~~3. The penalties provided in subsection (8) apply to the tax on the sale of food, beverages, or alcoholic beverages authorized in this paragraph.~~

Section 27. This act shall take effect that this section and section , which amends section 125.0104, Florida Statutes, 1992 Supplement, shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 4, line 7, strike "providing an effective date" and insert: amending and renumbering s. 125.0104(3)(n), F.S., which authorizes certain counties to impose an additional tax on the sale of food, beverages, or alcoholic beverages in specified establishments; revising the establishments to which the tax applies; authorizing levy of an additional tax on sales in establishments licensed to sell alcoholic beverages for consumption on the premises, except hotels and motels; providing exemptions; providing that the proceeds of the additional tax shall be used to assist the homeless and for spouse abuse centers; providing for a task force to prepare a plan to address homeless needs; providing requirements for imposition of such taxes; requiring local administration of such taxes; providing for repeal; providing effective dates.

Amendment 10 (with Title Amendment)—On page 43, line 11, insert:

Section 28. Paragraph (n) of subsection (3) of section 125.0104, Florida Statutes, 1992 Supplement, is renumbered as section 212.0306, Florida Statutes, and amended to read:

212.0306 Local option food and beverage tax; procedure for levying; authorized uses; administration.—

(1)~~(n)~~*1.* Any county, as defined in s. 125.011(1), ~~which, on January 1, 1989, imposes a tourist development tax on leases and rentals,~~ may impose *the following additional taxes* ~~an additional tax~~, by ordinance adopted by a majority vote of the governing body.~~;~~

(a) At the rate of 2 percent on the sale of food, beverages, or alcoholic beverages in hotels and motels only.

(b) At the rate of 1 percent on the sale of food, beverages, or alcoholic beverages in establishments that are licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels; however, the tax shall not apply to any item sold by the package for off-premises consumption.~~, or in hotels, motels, and any establishment which is licensed under s. 565.02 except any establishment, other than a hotel or motel, licensed under s. 563.02 or s. 564.02. However, if on January 1, 1989, the county is not administering the tourist development tax pursuant to subsection (10), the governing body of the county shall not adopt the ordinance authorized in this paragraph until January 1, 1990.~~

(2)(a) Beginning July 1 of each year, and effective until the following June 30, the sales in any establishment licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels, that had gross annual revenues of $400,000 or less in the previous calendar year, are exempt from the tax authorized by paragraph (1)(b).

(b) Sales in any veterans', fraternal, or other chartered or incorporated club licensed under s. 565.02(4) are exempt from the tax authorized by paragraph (1)(b).

(c) All transactions that are exempt from the state sales tax are exempt from the taxes authorized by subsection (1).

(d) Sales in cities or towns presently imposing a municipal resort tax as authorized by chapter 67-930, Laws of Florida, are exempt from the taxes authorized by subsection (1).

(3)(a)~~2.a. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels and motels only,~~ The proceeds of *the* ~~such~~ tax *authorized by paragraph (1)(a)* shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3.~~ *If* ~~In the event~~ the county is not or is no longer a party to such an interlocal agreement and contract with a countywide convention and visitors bureau, the county shall allocate the proceeds of such tax for the purposes described in *s. 125.0104(5)(a)2. or 3., Florida Statutes, 1992 Supplement* ~~subparagraph (5)(a)2. or 3.~~

(b)~~b. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels, motels, and any establishment which is licensed under s. 565.02,~~ The proceeds from the tax *authorized by paragraph (1)(b)* shall be allocated as follows:

1.~~(I)~~ For the first *12 months* ~~2 years~~ after the tax is imposed, *90 percent of the revenues shall be used by the county solely for the purpose of assisting persons who have become, or are about to become, homeless, and 10 percent of the revenues shall be used exclusively for AIDS care, with the first priority given to programs for homeless persons that are tested HIV positive and participate in currently unfunded programs.*

2. Thereafter:

a. Twenty percent shall be used by the county to support economic development activities for developing new or expanded businesses or establishing other projects that stimulate new employment opportunities. However, one-third of this amount shall be used for international trade promotion by recognized not-for-profit organizations which are focused on the economic development of the county through international business promotion. In the distribution of these funds, special

consideration shall be given to the support of organizations with global networks of members, services, and facilities to most fully assist small and mid-sized businesses in Dade County to increase their sales in international markets.

b. Forty-five percent shall be used by the county to support culture and cultural activities, including visual arts, performing arts, science and historical museums and exhibitions, historic preservation, literary and media arts, festivals and special events, and marketing funds for county zoos and historic properties.

c. Thirty ~~35~~ percent ~~shall be used by the county to revitalize economically blighted areas, 20 percent shall be used by the county as provided by law, and 45 percent~~ shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in *s. 125.0104(5)(a)2. or 3* ~~subparagraph (5)(a)2. or 3~~. *If* ~~In the event~~ the county is not or is no longer a party to such an interlocal agreement and contract with a convention and visitors bureau, the county shall allocate the *30* ~~45~~ percent of the proceeds for the purposes described in *s. 125.0104(5)(a)2 or 3* ~~subparagraph (5)(a)2. or 3~~.

d. Five percent of the revenues shall be used exclusively for AIDS care, with the first priority given to programs for homeless persons that are tested HIV positive and participate in currently unfunded programs.

~~(II) Thereafter, an amount equal to the average of the proceeds collected from such tax during each of the first 2 years after the tax is imposed shall be allocated as provided in sub-sub-subparagraph (I) and any excess above such amount shall be allocated to the county to be used as provided by law.~~

(c) The county shall continue to contribute each year at least 60 percent of its aggregate expenditures from the county's general fund budget for the Department of Cultural Affairs programs and services at or above the average level of such expenditures in the two fiscal years preceding the date of levying this tax.

(4) A certified copy of the ordinance that authorizes the imposition of a tax authorized by this section shall be furnished by the county to the Department of Revenue within 10 days after the adoption of the ordinance.

(5) A tax authorized by this section may take effect on the first day of any month, but may not take effect until at least 60 days after the adoption of the ordinance levying the tax.

(6) Any county levying a tax authorized by this section must locally administer the tax using the powers and duties enumerated for local administration of the tourist development tax by s. 125.0104, Florida Statutes, 1992 Supplement. The county's ordinance shall also provide for brackets applicable to taxable transactions.

(7) This section is repealed on October 1, 2008.

~~3. The penalties provided in subsection (8) apply to the tax on the sale of food, beverages, or alcoholic beverages authorized in this paragraph.~~

Section 29. The use of the tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by this act, for the purposes provided in s. 212.0306(3)(b)1., Florida Statutes, as created by this act, shall be consistent with the countywide plan provided in House Bill 2257, 1993 Regular Session, or similar legislation.

Section 30. This act shall take effect July 1, 1993, except that this section and the preceding two sections that renumber section 125.0104(3)(n), Florida Statutes, as section 212.0306, Florida Statutes, amend that section, and provide for the uses of the tax authorized by that section shall take effect upon becoming a law, if House Bill 2257, or similar legislation, is adopted by the 1993 Legislature. However, a county may not levy the tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by this act, unless the tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by House Bill 2257, or similar legislation, is levied by the county. If House Bill 2257, or similar legislation, is adopted by the 1993 Legislature, it is the legislative intent that a county is authorized to levy both the 1 percent tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by this act, and the 1 percent tax authorized by s. 212.0306(1)(b), Florida Statutes, as created by House Bill 2257, or similar legislation. The Division of Statutory Revision of the Joint Legislative Management Committee is directed to conform the statutes to reflect this legislative intent.

And the title is amended as follows:

In title, on page 4, line 7, strike "providing an effective date." and insert: amending and renumbering s. 125.0104(3)(n), F.S., which authorizes certain counties to impose an additional tax on the sale of food, beverages, or alcoholic beverages in specified establishments; revising the establishments to which the tax applies; authorizing levy of an additional tax on sales in establishments licensed to sell alcoholic beverages for consumption on the premises, except hotels and motels; providing exemptions; providing that the proceeds of the additional tax shall be used to assist the homeless, for economic development and cultural activities, and to promote tourism; providing requirements for imposition of such taxes; requiring local administration of such taxes; providing for repeal; providing legislative intent; providing effective dates, including a contingent effective date.

Senator Kurth moved the following amendment which was adopted:

Amendment 11 (with Title Amendment)—On page 43, between lines 10 and 11, insert:

Section 26. Section 331.3075, Florida Statutes, is created to read:

331.3075 Space activities facilities; certification.—

(1) For the purposes of this section, unless otherwise provided, the term:

(a) "Department" means the Department of Commerce.

(b) "Space activities facility" means a space-related entity based in this state which is covered under the definition of the term "business client," "complementary activity," or "project" as those terms are defined in s. 331.303.

(2) The purpose of the certification program is to provide funding to the Spaceport Florida Authority to reimburse it for its efforts in helping space-related businesses initiate operations in this state, to help it to continue to carry out its statutory purpose of establishing facilities that enhance and provide commercial space-related development opportunities in this state, and to give it sufficient funds to continue to provide the services such businesses and facilities need from the authority. In order to ensure that such funding comes from state revenues generated by the activities of the Spaceport Florida Authority, such funding shall come from distributions of a portion of the sales taxes generated from purchases associated with the construction and operation of certified space activities facilities and from a portion of the sales taxes generated by the business or other economic activities of certified space activities facilities, pursuant to the provisions of s. 212.20. Funding may be used for purposes of providing the state portion of matching funds required by federal grant programs.

(3) Any space-related entity meeting the requirements of the definition in paragraph (1)(b) shall submit an application for certification as a space activities facility to the Department of Commerce pursuant to the provisions of this section.

(4) A space activities facility shall be certified when it has been determined by the Department of Commerce that it has received funding from a federally supported grant program or through agreement with the Spaceport Florida Authority, provided such facility is valued in excess of $10 million and meets one of the following criteria:

(a) The Spaceport Florida Authority holds title to the facility or the property on which it is constructed;

(b) The Spaceport Florida Authority issued bonds for the construction of the facility; or

(c) The facility is located within a spaceport territory as defined in s. 331.303.

(5) The department shall provide by rule for the qualifications for certification as a space activities facility and shall also provide for the form and manner of submission and review of certification applications. The Spaceport Florida Authority shall have no more than one certification for no more than five years not to commence before fiscal year 1994-

1995. Notwithstanding any other provision of law, if funds are distributed to the Spaceport Florida Authority pursuant to this section and if the Department of Transportation is specifically authorized by a separate provision of law to allocate funds to the Spaceport Florida Authority, the Department of Transportation is prohibited from allocating State Transportation Trust Fund moneys to the Spaceport Florida Authority. All costs incurred by the department pursuant to the certification process shall be reimbursed by the Spaceport Florida Authority.

(6) The department shall notify the Department of Revenue of such certification of a space activities facility for the purpose of providing notice for the sales tax distributions to the Spaceport Florida Authority authorized by s. 212.20. The Department of Commerce may audit the accounts, books, and records of the Spaceport Florida Authority pursuant to s. 213.34 to verify that the distributions to the authority authorized by s. 212.20 have been expended as required in this section. All costs incurred by the Department of Commerce pursuant to the certification process shall be reimbursed by the authority. Such information is subject to the confidentiality and information sharing requirements of chapter 213.

Section 27. Paragraph (g) of subsection (6) of section 212.20, Florida Statutes, 1992 Supplement, is redesignated as paragraph (h), and a new paragraph (g) is added to said subsection to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this part shall be as follows:

(g) Beginning 60 days after notice by the Department of Commerce to the Department of Revenue that a facility that has been certified as a space facility pursuant to chapter 331.3075 has commenced construction, $60,000 shall be distributed monthly to the Spaceport Florida Authority.

And the title is amended as follows:

In title, on page 4, line 7, after the semicolon (;) insert: creating s. 331.3075, F.S.; providing for the certification of space activities facilities; providing definitions; providing that the purpose of the program is to provide funding to the Spaceport Florida Authority to help it carry out its statutory duties and provide services required by space-related businesses in this state; providing for administration of the certification program by the Department of Commerce; providing certain requirements for certification; providing rulemaking authority to the department; restricting certain allocations; providing for notification of certification to the Department of Revenue; granting the Department of Commerce auditing authority, subject to certain confidentiality and information sharing requirements; amending s. 212.20, F.S.; providing for the distribution of funds to the Spaceport Florida Authority;

On motion by Senator Kiser, further consideration of **CS for CS for SB 1932** as amended was deferred.

On motions by Senator Forman, by two-thirds vote **CS for HB 257** was withdrawn from the Committees on Criminal Justice; Corrections, Probation and Parole; and Appropriations.

On motion by Senator Forman—

CS for HB 257—A bill to be entitled An act relating to a pretrial intervention program; amending s. 948.08, F.S.; expanding the program for limited purposes under certain circumstances; providing procedure; providing an effective date.

—a companion measure, was substituted for **SB 24** and read the second time by title. On motion by Senator Forman, by two-thirds vote **CS for HB 257** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

On motions by Senator Grant, by two-thirds vote **CS for HB 1665** was withdrawn from the Committees on Criminal Justice; Corrections, Probation and Parole; Finance, Taxation and Claims; and Appropriations.

On motions by Senator Grant, the rules were waived and by two-thirds vote—

CS for HB 1665—A bill to be entitled An act relating to sexual predators; creating the "Florida Sexual Predators Act"; providing legislative findings and intent; requiring registration of sexual predators and providing for the monitoring and tracking of registered sexual predators by law enforcement personnel through a computerized system maintained by the Department of Law Enforcement; providing criminal penalties for violations of the registration requirements and exceptions from such requirements; requiring the provision of certain written notifications of the registration requirements; providing legislative findings and purpose as to sexual predators and providing criteria defining sexual predators; providing for sexual predator findings by the courts; amending ss. 947.1405 and 947.141, F.S.; providing for conditional release supervision for sexual predators and for arrest upon violation of conditional release; providing an effective date.

—a companion measure, was substituted for **SB 386** and by two-thirds vote read the second time by title. On motion by Senator Grant, by two-thirds vote **CS for HB 1665** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

On motions by Senator Bankhead, by two-thirds vote **HB 1633** was withdrawn from the Committees on Criminal Justice; Governmental Operations; Finance, Taxation and Claims; and Appropriations.

On motion by Senator Bankhead—

HB 1633—A bill to be entitled An act relating to violent crime; creating s. 943.031, F.S.; creating the Florida Violent Crime Council and providing for membership, terms, meetings, duties, and annual reporting; providing for review and repeal; amending s. 943.04, F.S.; authorizing regional violent crime investigation teams; creating s. 943.042, F.S.; creating the Violent Crime Investigative Emergency Account within the Department of Law Enforcement Operating Trust Fund; authorizing local law enforcement agencies to donate forfeiture funds; amending s. 943.03, F.S.; authorizing an integrated violent crime information system; amending s. 943.051, F.S.; requiring that juveniles charged with certain offenses be fingerprinted; amending s. 39.039, F.S.; requiring the fingerprints of juveniles charged with certain offenses be submitted to the Department of Law Enforcement; amending s. 951.26, F.S.; authorizing county public safety coordinating councils to elect a chairman; amending s. 943.17, F.S.; requiring basic skills training on violent crime; amending s. 943.325, F.S.; authorizing DNA specimens for persons convicted of murder, and reenacting s. 760.40(2)(a), F.S., relating to genetic testing, to incorporate said amendment in a reference thereto; requiring a juvenile criminal history data base proposal; providing an effective date.

—a companion measure, was substituted for **CS for SB 1962** and read the second time by title. On motion by Senator Bankhead, by two-thirds vote **HB 1633** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

On motions by Senator Dyer, by two-thirds vote **CS for HB 933** was withdrawn from the Committees on Professional Regulation and Appropriations.

On motion by Senator Dyer—

CS for HB 933—A bill to be entitled An act relating to the sale or lease of business opportunities; amending s. 559.801, F.S., and creating s. 559.8015, F.S.; revising and adding definitions of terms related thereto; rearranging provisions; creating s. 559.802, F.S.; providing for a 1-year exemption from ss. 559.80-559.815, F.S., for the sale of a franchise if the franchisor files a notice with the Department of Agriculture and Consumer Services stating that it is in substantial compliance with the Federal Trade Commission rule requirements and pays a fee; providing for annual renewal of the exemption and for a renewal fee; limiting the information about the franchisor that may be required by the department; providing for rules; amending s. 559.803, F.S.; providing for a revised timeframe to provide disclosures to purchasers; requiring an index to disclosure documents; amending s. 559.805, F.S.; changing the annual and

updating fees; amending s. 559.809, F.S.; providing additional prohibitions; amending s. 559.813, F.S.; clarifying remedies and enforcement; providing an appropriation; providing an effective date.

—a companion measure, was substituted for **CS for CS for SB 1596** and read the second time by title. On motion by Senator Dyer, by two-thirds vote **CS for HB 933** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

On motions by Senator Jones, by two-thirds vote **CS for HB 1283** was withdrawn from the Committeees on Education, Governmental Operations and Appropriations.

On motion by Senator Jones—

CS for HB 1283—A bill to be entitled An act relating to the Florida Martin Luther King, Jr., Institute for Nonviolence; providing legislative findings; creating the institute and providing for an advisory board; providing membership, terms, powers, and duties; authorizing the establishment of fellowships; providing an effective date.

—a companion measure, was substituted for **SB 1470** and read the second time by title. On motion by Senator Jones, by two-thirds vote **CS for HB 1283** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

On motions by Senator Hargrett, by two-thirds vote **CS for HB 1273** was withdrawn from the Committees on Governmental Operations; International Trade, Economic Development and Tourism; Community Affairs; and Rules and Calendar.

On motion by Senator Hargrett—

CS for HB 1273—A bill to be entitled An act relating to small and minority business; providing legislative intent; creating the Florida Commission on Minority Economic and Business Development; providing for membership; assigning the commission to the Joint Legislative Management Committee; providing purposes; providing duties and powers; requiring a report; providing for a pilot project; providing for a performance audit; providing for expiration; providing an effective date.

—a companion measure, was substituted for **CS for SB's 1434, 348 and 1922** and read the second time by title.

Senator Hargrett moved the following amendment:

Amendment 1 (with Title Amendment)—On page 2, line 15, strike everything after the enacting clause and insert:

Section 1. Intent.—

(1) The Legislature finds that it is imperative that substantial reforms be accomplished in the state's efforts to develop minority entrepreneurs in order to achieve the objectives of the Legislature in enacting the Florida Small and Minority Business Assistance Act of 1985 and subsequent amendments.

(2) The Legislature finds that it is equally as imperative to improve the state's efforts to create jobs in those areas of the state principally populated by minorities and to ensure that these communities achieve a level of economic viability capable of supporting and sustaining those jobs.

(3) It is the intent of the Legislature to affirm that the provisions of sections 288.702-288.714, section 287.042, and sections 287.093-287.0947, Florida Statutes, and other related provisions, are for the development and growth of viable small businesses owned and controlled by minorities to compete in the mainstream of the Florida economy as well as the development and growth of such businesses to create jobs in depressed urban areas where minorities live and work and to:

(a) Affirm that the measure of success of these provisions is the extent to which the number of competitive minority firms in the state and paid employees increases and such businesses become stable participants in the mainstream of the Florida economy, and such businesses contribute to the economic growth of disadvantaged urban minority communities.

(b) Affirm that the core benefits of these provisions accrue to racial and gender groups that have historically been discriminated against.

(c) Increase the number and diversity of stable small businesses owned and controlled by minorities and provide mechanisms to encourage those minority businesses to start or locate in and provide jobs in depressed urban minority cores.

(d) Ensure integrity, competency, and efficiency in the administration of procurement practices and business development services and the state contracting opportunities made available to eligible minority businesses.

Section 2. Florida Commission on Minority Economic and Business Development.—

(1) There is created a Florida Commission on Minority Economic and Business Development.

(2) The commission shall be composed of 27 members, representing all regions of the state, and shall consist of the following:

(a) The Governor, the Secretary of Commerce, the Commissioner of Education, the Secretary of Labor and Employment Security, the Chancellor of the State University System, the Secretary of Management Services, and the Comptroller, or their respective designees.

(b) One member of the Senate appointed by the President of the Senate and one member of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) The chairmen of the Florida Conference of Black State Legislators and the Cuban-American Caucus.

(d) One member composed of a representative from the academic sector of the state university system from institution with an established urban economic development programs.

(e) Five members consisting of representatives of minority community support organizations and community advocacy agencies. Three of these members shall be appointed by the Governor, one shall be appointed by the President of the Senate, and one shall be appointed by the Speaker of the House of Representatives.

(f) Six members composed of representatives of the private business sector, including Small Business Development Centers, developers, private industry councils, minority supplier development councils and minority vendors. Two of these members shall be appointed by the Governor, two shall be appointed by the President of the Senate, and two shall be appointed by the Speaker of the House of Representatives. At least two private business sector members shall be non-minority licensed general contractors.

(g) Three representatives of local government, one of whom shall be a member of the Advisory Council on Intergovernmental Relations, one shall be a representative of a small local government, and one shall be a representative of a large local government, appointed by the Governor.

(h) One member, consisting of a tenant leader or neighborhood leader from a depressed inner city area.

(3) The commission shall elect from among its members, by majority vote, a chair and vice chair. The chair shall preside at meetings, appoint committees and committee chairs, and conduct other administrative matters as appropriate. In the absence of the chair, the vice chair shall preside and undertake the duties of the chair. The commission shall have a quorum of 15 members. Members of the commission shall receive no salary but may receive travel expenses and per diem as provided in section 112.061, Florida Statutes.

(4) The commission is assigned, to the Joint Legislative Management Committee and state agencies shall provide assistance when requested by the commission. The Advisory Council on Intergovernmental Relations shall provide assistance on issues relating to local governments.

(5) The purpose of the commission is to review and conduct an assessment of the operations of all state programs that assist, promote, and foster the development of small businesses owned and controlled as minority business enterprises. The commission shall ascertain whether the purpose and objectives of such programs are being realized and the impact the realization of those objectives is having on distressed urban communities. The review shall provide recommendations to the Governor and the Legislature on ways to improve the effectiveness of efforts to:

(a) Encourage state and local governments to utilize minority business enterprises to redress past discrimination in the purchase of architecture and engineering services, commodities, construction services, and contractual services.

(b) Assist in the development of minority business enterprises in industries where minority owned firms have been traditionally discriminated against, in industries or distressed urban communities where competitive minority owned firms do not currently exist, or as suppliers of commodities not otherwise available from minority business enterprises.

(c) Provide financial resources and technical assistance for the development of minority business enterprises and improved job opportunities for minorities with special emphasis on depressed urban areas principally populated by minorities.

(d) Address existing deficiencies in rule or law, or in their application.

Section 3. Florida Commission on Minority Economic and Business Development; duties.—

(1) The commission shall review and assess the overall effectiveness of the provisions in sections 288.702-288.714, section 287.042, and sections 287.093-287.0947, Florida Statutes, and other related provisions. The review and assessment shall include, but is not limited to:

(a) Policies, directives, procedures, resources, and techniques that may increase the number and diversity of businesses that are owned and controlled by minorities, overcome any economic disadvantages, and strengthen financial, managerial, and marketing skills.

(b) Policies, directives, procedures, and techniques that effectively further the spirit and intent of the Florida Small and Minority Business Assistance Act of 1985.

(c) The policies and procedures of the Bureau of Minority Business Enterprise Assistance in the Department of Management Services for certifying vendors, including the processing time of applications, criteria for admission, and consistency in the application of criteria.

(d) Policies, directives, procedures, and techniques regarding reciprocal certification including, but not limited to the efficacy of creating and implementing an accreditation system whereby the Bureau of Minority Business Enterprise Assistance will appoint accreditation teams that must include representatives of local governments with certification programs to review and approve local government certification programs for automatic eligibility for the state certification process.

(e) The resources necessary to conduct a competent investigation of ownership and control of applicants in the certification process.

(f) Compliance by local governments with section 287.0943(12), Florida Statutes, and the impact of this provision on the Bureau of Minority Business Enterprise Assistance.

(g) A review of a sample of certified minority business enterprises and a significant sampling of state transactions with the audited vendors, to ascertain if actual operations are consistent with certification and procurement criteria.

(h) The effectiveness of the efforts of the Bureau of Minority Business Enterprise Assistance compared to the efforts of the Department of Commerce prior to 1985, to monitor agency and contractor compliance, including the manner and degree to which the factors set out in section 287.0945(3), Florida Statutes, are documented and evaluated.

(i) Compliance by agencies with section 287.0947, Florida Statutes, and other data collection efforts by the Division of Purchasing in the Department of Management Services under section 287.042(15), Florida Statutes, and whether these provide adequate input to fulfill the duties assigned to the Bureau of Minority Business Enterprise Assistance.

(j) The appropriate agency assignment of the functions that identify, certify, counsel, train, and monitor minority businesses that provide goods and services to the state.

(k) The effectiveness of minority business development assistance under the Department of Commerce, the Department of Transportation, and the Department of Management Services, and whether such assistance has resulted in increased numbers of new minority businesses and the measurable growth, expansion, or diversification of existing client businesses or improved productivity and efficiency of such businesses.

(l) The policies and procedures of major procurement agencies in complying with section 287.042(15)(a), Florida Statutes, and in encouraging major contractors and subcontractors to open and expand opportunities for small businesses owned by minorities. This review shall include a survey of the performance of a sample of contractors in attaining these goals.

(m) The successful efforts by various agencies in meeting the spirit and intent of the Florida Small and Minority Business Assistance Act of 1985. This review shall include a comparative analysis of the varied local government certification programs.

(n) The obstacles to achieving an accurate measure of state businesses that are owned and controlled by minorities and available to perform state contracts.

(o) The effectiveness of sections 287.042 and 287.0947, Florida Statutes, in eliminating or reversing discriminatory purchasing practices and the economic disadvantage that results, including a review and assessment of whether current agency practices results in an unfair and uneven distribution of the prescribed spending goals among the commodity and contractual services budget classifications.

(p) Any other issue as determined appropriate by the commission.

(2) Based upon its review, the commission shall issue an interim and a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The interim report shall specifically state the commission's findings as to the efficiency of the certification process, the merits of state and local cooperative certification, state agency accountability in utilizing legitimate minority-owned businesses, and prosecution of abuses and fraud in the purchasing system. The commission's interim report should entail recommendations on those measures that may be undertaken under existing law through either revisions in policy or rule to change these areas. The interim report shall be completed by August 1, 1993. The final report shall indicate the full measure of changes in law required to reverse any discrimination in the purchasing process, to develop and promote minority entrepreneurs through opportunities in state purchasing and protect the legitimate economic and business interests of minorities. The report shall be completed by December 1, 1993, and shall be considered in the disparity study required under section 287.042(4)(f), Florida Statutes, and shall detail the methodology used to reach any results contained therein. The commission shall further provide recommendations to the Governor and the Legislature on ways to improve the effectiveness of state efforts in all areas related to this act.

Section 4. Florida Commission on Minority Economic and Business Development; powers.—

(1) The commission may, for the purposes of carrying out the provisions of this act, sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information as the commission deems appropriate. The commission may administer oaths or affirmations for the receipt of such testimony.

(2) Except as otherwise prohibited by law, the commission may secure directly from any agency information necessary to enable it to carry out its duties under this act. Upon request of the chair, the head of such agency shall promptly furnish such information to the commission.

(3) The commission may perform all acts necessary or convenient to carry out the powers expressly granted and duties expressly imposed in this act.

Section 5. Minority Business Enterprise Utilization Pilot Project. In accordance with the commission's purpose and intent, the State University System, through its member institutions, shall conduct a pilot project designed to measure and enhance minority business enterprise participation and compliance reporting. The length of the project shall be for one year. An interim report from the project, containing findings and recommendations, shall be included in the commission's final report due on December 1, 1993.

Section 6. Performance Audit.—

(1) The Auditor General shall review the activities of the Division of Purchasing within the Department of Management Services relating to the certification of minority business enterprises, pursuant to s. 11.45. In conducting this review, the Auditor General shall:

(a) Examine the policies, procedures, and criteria used by the Division of Purchasing for certifying minority business enterprise vendors and the timeliness of these processes;

(b) Identify how some local governments certify minority business enterprise vendors, as compared with the Division of Purchasing;

(c) Assess the procedures used by the Division of Purchasing to investigate alleged violations of minority business enterprise requirements by such vendors;

(d) Assess the Division of Purchasing's activities and reporting systems used to monitor agency use of minority business enterprise vendors; and

(e) Assess state agency compliance with the provisions of s. 287.0947, regarding agency minority business enterprise assistance.

(2) The Auditor General shall submit a report containing his findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Florida Commisison on Minority Economic and Business Development by November 1, 1993. This report shall be in lieu of the annual performance audit of the Division of Purchasing required under s. 287.114, for the 1993-94 fiscal year.

Section 7. Expiration.—The Florida Commission on Minority Economic and Business Development shall cease to exist on the date that the final report is transmitted as required in this act.

Section 8. This act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 1, strike all of lines 1-12 and insert: A bill to be entitled An act relating to small and minority business; providing legislative intent; creating the Florida Commission on Minority Economic and Business Development; providing for membership; assigning the commission to the Joint Legislative Management Committee; providing purposes; providing duties and powers; requiring a report; providing for a pilot project; providing for a performance audit; providing for expiration; providing an effective date.

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

Amendment 1A—On page 3, strike all of lines 5-10 and insert:

(c) The chairmen of the Florida Conference of Black State Legislators and the Cuban-American Caucus, or their designees.

(d) One member composed of a representative from the academic sector of the state university system from an institution with an established urban economic development program.

Amendment 1B—On page 4, strike line 2 and insert: a neighborhood leader from a depressed inner city area.

Amendment 1 as amended was adopted.

On motion by Senator Hargrett, by two-thirds vote **CS for HB 1273** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—None

On motions by Senator Dyer, by two-thirds vote **CS for HB 1117** was withdrawn from the Committees on Commerce and Appropriations.

On motion by Senator Dyer—

CS for HB 1117—A bill to be entitled An act relating to telephone companies; amending s. 364.3377, F.S.; requiring telecommunications companies that provide operator services to ensure users of those services access to a live operator at the beginning and at anytime during the call processing; providing an effective date.

—a companion measure, was substituted for **CS for SB 1972** and read the second time by title. On motion by Senator Dyer, by two-thirds vote **CS for HB 1117** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

SB 128—A bill to be entitled An act relating to educational finance; amending s. 236.25, F.S.; removing provisions which authorize the Legislature to prescribe a maximum amount of nonvoted current operating discretionary millage that school boards may levy and authorizing school boards to determine such millage, within specified limits; providing an effective date.

—was read the second time by title.

The Committee on Education recommended the following amendment which was moved by Senator Myers and adopted:

Amendment 1—On page 2, lines 6 and 7, strike "upon becoming a law" and insert: July 1, 1993

On motion by Senator Myers, by two-thirds vote **SB 128** 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—1

CS for SB 1002—A bill to be entitled An act relating to maternal and child health care; amending s. 383.011, F.S.; requiring the Department of Health and Rehabilitative Services to develop a substance abuse intervention component of the Healthy Start Care Coordination Program; specifying services to be provided as a part of substance abuse intervention; providing for services to be provided to pregnant and postpartum women; requiring the department to expunge the child abuse record of a substance-exposed child whose mother participates in substance abuse treatment and complies with specified requirements; amending s. 415.503, F.S.; revising the definition of the term "harm" for purposes of ss. 415.502-415.514, F.S., relating to child abuse, neglect, and exploitation; amending s. 415.5087, F.S., relating to grounds for appointment of a guardian advocate, to conform; amending s. 415.505, F.S.; exempting women who are complying with the requirements of the substance abuse intervention component of the Healthy Start Care Coordination Program from criminal prosecution by the state attorney and law enforcement agencies, and reenacting s. 415.506, F.S., relating to taking a child into protective custody, to incorporate said amendment in a reference thereto; providing an effective date.

—was read the second time by title.

Senator Boczar moved the following amendment which failed:

Amendment 1 (with Title Amendment)—On page 13, between lines 7 and 8, insert:

Section 6. Purpose.—It has never been the intent of the Legislature to protect parents who willfully abuse their children.

Section 7. Doctrine of parent-child tort immunity abrogated.—The common-law doctrine of parent-child tort immunity is hereby abrogated with regard to any action founded on alleged sexual battery as defined in section 794.011(1)h, Florida Statutes, or aggravated child abuse as defined in section 827.03(1), Florida Statutes, when such violation intentionally inflicts or permits the infliction of physical or mental injury to the child and causes great bodily harm, permanent disfigurement, or permanent disability. The common-law doctrine is further abrogated with regard to any action founded on any violation of section 827.04(1), Florida Statutes, except those actions founded on deprivation of necessary food, clothing, shelter or medical treatment. The ability of a person to sue another person based on any such action shall not be affected by any familial relationship between the persons.

Section 8. Sections 6 through 11 of this act do not apply to ordinary and reasonable parental discipline, including reasonable corporal punishment.

Section 9. Guardian ad litem.—At any stage of the proceeding, the court may appoint a guardian ad litem for the child.

Section 10. The provisions of section 744.301(2), Florida Statutes, do not apply to sections 6 through 11 of this act.

Section 11. Attorney's Fees.—In any action or proceeding under sections 6 through 11 of this act, the court, in its discretion, may allow the prevailing plaintiff a reasonable attorney's fee as part of the costs.

Section 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications, and to this end the provisions of this act are declared severable.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 29, after the semicolon (;) insert: abrogating the common-law doctrine with regard to certain actions founded on abuse or sexual battery; precluding applicability to reasonable parental discipline; authorizing appointment of a guardian ad litem for the child; providing for attorney's fees; providing for applicability and severability

On motion by Senator Bankhead, by two-thirds vote **CS for SB 1002** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

CS for SB 2130—A bill to be entitled An act An act relating to perinatal, neonatal, infant, and toddler health care; amending s. 383.15, F.S.; revising legislative intent relating to perinatal care services; amending s. 383.16, F.S.; revising definitions; amending s. 383.17, F.S.; providing for a regional perinatal intensive care centers program; deleting reference to grants to health care providers; amending s. 383.18, F.S.; providing for contracts; providing for medical and financial eligibility; amending s. 383.19, F.S.; providing for transportation services; providing for Medicaid reimbursement; revising priority consideration for establishment of centers; amending s. 383.21, F.S.; revising requirements for program review; dividing, transferring, renumbering, and amending s. 383.215, F.S.; revising the developmental evaluation and intervention programs; revising definitions; specifying program requirements; providing for interagency coordination; creating s. 391.305, F.S.; providing for standards and rulemaking; creating s. 391.306, F.S.; providing for program funding; authorizing the Department of Health and Rehabilitative Services to contract with providers; creating s. 391.307, F.S.; requiring annual program review; repealing s. 383.144, F.S., as amended, relating to the infant hearing impairment program; repealing s. 383.171, F.S., relating to grants to neonatal intensive care centers; repealing s. 383.212, F.S., relating to program review, evaluations, and projections for neonatal intensive care centers; providing an effective date.

—was read the second time by title. On motion by Senator Gutman, by two-thirds vote **CS for SB 2130** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—1

On motions by Senator Grant, by two-thirds vote **CS for HB 1293** was withdrawn from the Committees on Commerce and Appropriations.

On motion by Senator Grant—

CS for HB 1293—A bill to be entitled An act relating to exemptions from legal process; amending s. 77.0305, F.S.; providing for garnishment of government employee wages; providing for moneys to be deposited in the Department of Banking and Finance Administrative Trust Fund; providing a limited waiver of sovereign immunity; amending s. 222.11, F.S.; providing definitions; providing limitations on wages exempt from garnishment or attachment; providing for tracing of head of family wages; creating s. 222.25, F.S.; providing an exemption for other individual property which is exempt from legal process; creating s. 222.29, F.S.; prohibiting exemptions for fraudulent transfers; creating s. 222.30, F.S.; defining fraudulent asset conversions; providing remedies for creditors concerning fraudulent asset conversions; providing a time limitation for bringing legal actions; providing an effective date.

—a companion measure, was substituted for **CS for SB 2070** and read the second time by title. On motion by Senator Grant, by two-thirds vote **CS for HB 1293** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—30 Nays—5

Consideration of **CS for SB 2086** and **CS for SB 2096** was deferred.

On motions by Senator Brown-Waite, by two-thirds vote **CS for HB's 505 and 959** was withdrawn from the Committees on Commerce; and Executive Business, Ethics and Elections.

On motion by Senator Brown-Waite—

CS for HB's 505 and 959—A bill to be entitled An act relating to the Public Service Commission; amending s. 350.0605, F.S.; prohibiting certain employment by former members of the Florida Public Service Commission; providing for prospective application; providing an effective date.

—a companion measure, was substituted for **CS for SB 312** and read the second time by title. On motion by Senator Brown-Waite, by two-thirds vote **CS for HB's 505 and 959** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

Consideration of **Senate Bills 2108** and **2202** was deferred.

On motions by Senator Bankhead, by two-thirds vote **HB 1925** was withdrawn from the Committees on Governmental Operations and Appropriations.

On motion by Senator Bankhead—

HB 1925—A bill to be entitled An act relating to the Department of Military Affairs; amending s. 250.48, F.S.; increasing the permissible time period for a leave of absence without loss of pay; creating an Interstate Compact on Drug Interdiction; creating s. 250.533, F.S.; providing legislative purpose; creating s. 250.534, F.S.; providing for entry into force and withdrawal from the compact; creating s. 250.535, F.S.; providing definitions; providing for mutual assistance and support; creating s. 250.536, F.S.; providing responsibilities; creating s. 250.537, F.S.; providing for delegation; creating s. 250.538, F.S.; providing for limitations; creating s. 250.539, F.S.; providing for construction and severability; creating an Interstate Compact on Emergency Relief; creating s. 250.540, F.S.; providing legislative purpose; creating s. 250.541, F.S.; providing for entry into and withdrawal from the compact; creating s. 250.542, F.S.; providing for definitions and for mutual aid; creating s. 250.543, F.S.; providing for delegation; creating s. 250.544, F.S.; providing for limitations; creating s. 250.545, F.S.; providing for construction and severability; creating s. 250.546, F.S.; providing for payment of liability to responding states; creating s. 250.547, F.S.; providing for status, rights, and benefits of forces engaged pursuant to the compact; creating s. 250.548, F.S.; providing for benefits to be paid for injury or death occurring while going to or returning from duty; creating s. 250.549, F.S.; providing for the authority of responding states; providing an effective date.

—a companion measure, was substituted for **SB 1970** and read the second time by title. On motion by Senator Bankhead, by two-thirds vote **HB 1925** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37 Nays—None

On motions by Senator Wexler, by two-thirds vote **CS for HB 767** was withdrawn from the Committees on Education and Appropriations.

On motion by Senator Wexler—

CS for HB 767—A bill to be entitled An act relating to education; amending s. 232.246, F.S.; providing for high school credit for student service work; providing an effective date.

—a companion measure, was substituted for **CS for SB 1314** and read the second time by title. On motion by Senator Wexler, by two-thirds vote **CS for HB 767** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

CS for SB 1258—A bill to be entitled An act relating to criminal offenses; amending s. 796.03, F.S.; increasing the age of the victim applicable to the crime of procuring prostitution, and reenacting ss. 772.102(1)(a)14., 787.01(3)(a)4., 787.02(3)(a)4., and 895.02(1)(a)17., F.S., relating to criminal activities, kidnapping, false imprisonment, and racketeering, to incorporate said amendment in references thereto; amending ss. 796.06, 796.07, and 796.08, F.S.; increasing penalties for second and subsequent violations of renting space for use for prostitution, prostitution, and clarifying language; increasing penalty for unlawful transmission of human immunodeficiency virus and clarifying language; reenacting s. 893.138(1), F.S., relating to prostitution-related public nuisances, to incorporate the amendment to s. 796.07, F.S., in a reference thereto; creating s. 775.0877, F.S.; requiring HIV testing of offenders in certain circumstances and requiring certain disclosures; authorizing, as additional criminal penalty for criminal transmission upon a second or subsequent commission of specified offenses, a term of criminal quarantine community control; providing evidentiary and procedural matters and providing consent as an affirmative defense; amending s. 921.187, F.S.; establishing criminal quarantine community control as a sentencing disposition for offenders sentenced for criminal transmission of HIV; amending s. 381.004, F.S., relating to testing for HIV, to conform a cross-reference and to clarify provisions; amending s. 384.29, F.S., relating to confidentiality, to incorporate the amendment to s. 796.08, F.S., and to clarify provisions; reenacting ss. 384.26(2), 384.282(3), 384.30(2), F.S., relating to reporting, contact investigation, naming of parties, and minors' consent to treatment, to incorporate the amendments to s. 384.29, F.S., in references thereto; amending s. 948.001, F.S.; defining "criminal quarantine community control"; amending s. 948.01, F.S.; authorizing placement of certain offenders on criminal quarantine community control; requiring the Department of Corrections to develop and administer a criminal quarantine community control program; amending s. 948.03, F.S.; providing conditions of criminal quarantine community control; amending s. 951.27, F.S., to conform; amending s. 960.003, F.S.; authorizing testing of offenders for HIV in certain circumstances; amending s. 796.09, F.S., to incorporate the amendment to s. 796.07, F.S., and to clarify provisions; providing an effective date.

—was read the second time by title.

One amendment was adopted to **CS for SB 1258** to conform the bill to **CS for HB 153**.

Pending further consideration of **CS for SB 1258** as amended, on motions by Senator Foley, by two-thirds vote **CS for HB 153** was withdrawn from the Committees on Criminal Justice and Appropriations.

On motion by Senator Foley—

CS for HB 153—A bill to be entitled An act relating to criminal offenses; amending s. 796.03, F.S.; increasing the age of the victim applicable to the crime of procuring prostitution, and reenacting ss. 772.102(1)(a)14., 787.01(3)(a)4., 787.02(3)(a)4., and 895.02(1)(a)17., F.S., relating to criminal activities, kidnapping, false imprisonment, and racketeering, to incorporate said amendment in references thereto; amending s. 796.05, F.S.; providing that the offense of deriving support from the proceeds of prostitution includes belief that the support is derived from the proceeds of prostitution; amending ss. 796.06 and 796.07, F.S.; increasing penalties for second and subsequent violations of renting space for use for prostitution and prostitution, and clarifying language; reenacting s. 893.138(1). F.S., relating to prostitution-related public nuisances, to incorporate the amendment to s. 796.07, F.S., in a reference thereto; amending s. 796.08, F.S.; increasing penalty for unlawful transmission of human immunodeficiency virus and clarifying language; requiring certain offenders to pay for costs of screening for sexually transmissible diseases; creating s. 775.0877, F.S.; requiring HIV testing of offenders in certain circumstances and requiring certain disclosures; creating offense of criminal transmission of HIV; authorizing a term of criminal quarantine community control; providing evidentiary and procedural matters and providing consent as an affirmative defense; amending s. 921.187, F.S.; establishing criminal quarantine community control as a sentencing disposition for offenders sentenced for criminal transmission of HIV; amending s. 381.004, F.S., relating to testing for HIV, to correct a cross reference and to conform; amending s. 384.29, F.S., relating to confidentiality, to conform; reenacting ss. 384.26(2), 384.282(3), and 384.30(2), F.S., relating to reporting, contact investigation, naming of parties, and minors' consent to treatment, to incorporate the amendments to s. 384.29, F.S., in references thereto; amending s. 948.001, F.S.; defining "criminal quarantine community control"; amending s. 948.01, F.S.; authorizing placement of certain offenders on criminal quarantine community control; requiring the Department of Corrections to develop and administer a criminal quarantine community control program; amending s. 948.03, F.S.; providing conditions of criminal quarantine community control; amending s. 951.27, F.S., to conform; amending s. 960.003, F.S.; authorizing testing of offenders for HIV in certain circumstances; amending s. 787.02, F.S.; deleting a provision that precludes the offense from being a lesser included offense for purposes of s. 787.01, F.S.; which establishes the offense of kidnapping, to incorporate said amendment in a reference thereto; amending s. 796.09, F.S., to incorporate the amendment to s. 796.07, F.S., and to clarify language; providing an effective date.

—a companion measure, was substituted for **CS for SB 1258** and read the second time by title. On motion by Senator Foley, by two-thirds vote **CS for HB 153** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

SENATOR CHILDERS PRESIDING

CS for SB 1246—A bill to be entitled An act relating to human immunodeficiency virus; amending s. 240.2097, F.S.; requiring state universities to create an AIDS awareness program; amending s. 240.3192, F.S.; requiring community colleges to create an AIDS awareness program; amending s. 381.0035, F.S.; requiring certain AIDS education courses to include information on protocols and procedures; amending s. 381.0039, F.S.; including the Department of Corrections in an interagency AIDS education oversight agreement; requiring establishment of an interagency committee to develop a curriculum for AIDS education programs; amending s. 381.004, F.S.; permitting personnel working with developmentally disabled persons to have access to HIV test results; directing the Department of Health and Rehabilitative Services to develop a protocol for routinely offering HIV testing; amending s. 384.25, F.S.; requiring certain reporting by laboratories and physicians; requiring all physicians to inform HIV positive patients about assistance with partner notification; amending s. 627.411, F.S.; requiring insurance forms to state Florida's policy with regard to insurance coverage for AIDS; amending s. 627.429, F.S.; prohibiting insurance companies from disclosing whether a person has refused testing, been tested, or refused to release test results for HIV; amending s. 760.50, F.S.; clarifying provisions relating to discrimination on the basis of HIV infection; revising provisions with respect to right of action for violations; creating a statewide AIDS health insurance continuation program; creating a pediatric AIDS task force; authorizing the State Health Officer to establish a clean needle and syringe exchange demonstration project; requiring pharmacies to sell latex condoms; requiring the Department of Health and Rehabilitative Services to promote the availability of condoms in public restrooms; providing an effective date.

—was read the second time by title.

Senator Myers moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 9, line 20 through page 11, line 24, strike all of said lines and insert:

Section 6. Subsections (1), (3), (4), (5), (6), (7), and (8) of section 384.25, Florida Statutes, are amended to read:

384.25 Reporting required.—

(1) Each person who makes a diagnosis of or treats a person with a sexually transmissible disease and each laboratory that performs a test for a sexually transmissible disease which concludes with a positive result shall report such facts as may be required by the department by rule, within a time period as specified by rule of the department, but in no case to exceed 2 weeks. *The department may, by rule, require all laboratories that perform human immunodeficiency virus tests to report the total number of tests performed on a semiannual basis.*

(3) The department shall require reporting of physician diagnosed cases of acquired immune deficiency syndrome (AIDS) ~~and AIDS related complex~~ based upon diagnostic criteria from the Centers for Disease Control *and Prevention* of the United States Public Health Service. The department *shall also require the reporting* ~~may authorize county public health units to accept reports~~ of cases of human immunodeficiency virus

infection *for the purpose of epidemiologic tracking and research* ~~by October 1, 1989~~. *Information as to whether the patient is a United States citizen, a permanent resident of the United States, a foreign visitor to the United States, or an illegal alien, and the country of origin immediately preceding entry into the United States, may also be included if the patient voluntarily provides such information.* ~~However, in the case of human immunodeficiency virus reports, the department is prohibited from requiring the reporting of or collection of any information which would identify individual persons, including: name, address, identifying numbers or symbols, or any other identifying information except as authorized in subsection (4).~~

(4) The department *shall* ~~may~~ require physician *and laboratory* reporting of human immunodeficiency virus infection with information sufficient to identify the test subject ~~in those instances in which the test subject has authorized the physician to disclose such information~~ to the county public health unit for the purposes of partner notification and *epidemiologic tracking and research. The county public health unit shall report periodically to the State Health Office demographic information compiled from reports of human immunodeficiency virus infection, without names or name identifiers, for the purposes of epidemiologic tracking and research* ~~contact investigation pursuant to s. 384.26~~. However, only reports of human immunodeficiency virus infection identified on or after the effective date of the rule developed by the department pursuant to this subsection shall be accepted. ~~Such rule shall only be adopted by the department when federal funds are made available for the purposes of partner notification and contact investigation.~~ The reporting may not affect or relate to anonymous human immunodeficiency virus testing programs conducted pursuant to *s. 381.004(4)* ~~s. 381.609(4)~~ or university-based medical research protocols *that* ~~which~~ include partner notification and contact investigation as determined by the department. Human immunodeficiency virus reports shall include patient names and name identifiers, shall be maintained in the form of individual client records, and shall not be maintained in the form of a roster of names. ~~The department shall require county public health units to submit periodically to the State Health Officer or his designee demographic information compiled from reports of human immunodeficiency virus infection.~~

(5) After notification of the test subject pursuant to subsection (4), the department may, with the consent of the test subject, notify school superintendents of students and school personnel whose human immunodeficiency virus tests are positive. School superintendents shall maintain the confidentiality of the report information, and the information shall be released only in an emergency situation which results in a significant exposure by students or school personnel to the blood or body fluids of the person for whom a positive test result has been obtained. Such information shall be released only to persons who have experienced a significant exposure, and such persons shall comply with the confidentiality provisions of s. 384.29.

(6) The department shall by February 1 of each year submit to the Legislature an annual report relating to all information obtained pursuant to this section.

(7) The rules promulgated by the department pursuant to this section shall specify the *forms and* protocols for the reporting required by or permitted by subsections (3), ~~or~~ (4), *and (5)*. The protocol developed for implementation of *subsections* ~~subsection~~ (4) *and (5)* shall include but not be limited to: information to be given to a test subject during pretest *and posttest* counseling, setting forth the partner notification and contact investigation services available through county public health units, the benefits of such services, and the confidentiality protections available as part of such services.

(8) Each person who violates the provisions of this section or the rules adopted hereunder may be fined by the department up to $500 for each offense. The department shall report each violation of this section to the regulatory agency responsible for licensing each health care professional and each laboratory to which these provisions apply.

Section 7. Section 455.2224, Florida Statutes, is amended to read:

455.2224 Hepatitis B or human immunodeficiency *virus infected health care workers* ~~carriers~~.—The Department of Professional Regulation and each appropriate board within the Division of Medical Quality Assurance shall have the authority to establish procedures to handle, counsel, and provide other services to health care professionals within their respective boards who are infected with hepatitis B or the human immunodeficiency virus. *Such procedures shall incorporate the recommended guidelines for hepatitis B or human immunodeficiency virus infected health care workers issued by the State Health Officer.*

Section 8. Subsection (1) of section 455.2226, Florida Statutes, 1992 Supplement, is amended to read:

455.2226 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) As of July 1, 1991, the appropriate board shall require each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; part II, part III, or part V of chapter 468; chapter 470; or chapter 486 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome, ~~and~~ its impact on testing, confidentiality of test results, and treatment of patients, *and any protocols and procedures issued pursuant to s. 381.004, s. 384.25, or s. 455.2416 applicable to human immunodeficiency virus counseling, testing, reporting, and partner notification.*

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 24, following the semicolon (;) insert: amending s. 455.2224, F.S.; requiring professional boards to incorporate the recommendations of the State Health Officer with respect to HIV and hepatitis B infection; amending s. 455.2226, F.S.; requiring AIDS education courses to include information on protocols and procedures;

The vote was:

Yeas—17 Nays—13

Senator Foley moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. Subsection (4) of section 240.2097, Florida Statutes, is amended to read:

240.2097 Education programs, limited access status; transfer students; student handbook; rules.—The Board of Regents shall adopt rules to include the following provisions:

(4) The development of a comprehensive State University System policy that addresses the provision of instruction, information, and activities regarding human immunodeficiency virus infection and acquired immune deficiency syndrome. Such instruction, information, or activities shall emphasize the known modes of transmission of human immunodeficiency virus infection and acquired immune deficiency syndrome, signs and symptoms, associated risk factors, appropriate behavior and attitude change and means used to control the spread of human immunodeficiency virus infection and acquired immune deficiency syndrome, *and shall include a campuswide AIDS awareness program to inform students and employees about acquired immune deficiency syndrome and the prevention of human immunodeficiency virus infection.*

Section 2. Section 240.3192, Florida Statutes, is amended to read:

240.3192 Community colleges; HIV and AIDS policy.—Each community college shall develop a comprehensive policy that addresses the provision of instruction, information, and activities regarding human immunodeficiency virus infection and acquired immune deficiency syndrome. Such instruction, information, or activities shall emphasize the known modes of transmission of human immunodeficiency virus infection and acquired immune deficiency syndrome, signs and symptoms, associated risk factors, appropriate behavior and attitude change, and means used to control the spread of human immunodeficiency virus infection and acquired immune deficiency syndrome, *and shall include a campuswide AIDS awareness program to inform students and employees about acquired immune deficiency syndrome and the prevention of human immunodeficiency virus infection.*

Section 3. Subsection (1) of section 381.0035, Florida Statutes, is amended to read:

381.0035 Educational course on human immunodeficiency virus and acquired immune deficiency syndrome; employees and clients of certain health care facilities.—

(1) The Department of Health and Rehabilitative Services shall require all employees and clients of facilities licensed under chapters 393, 394, and 397 and employees of facilities licensed under chapter 395 and parts I, II, III, and V of chapter 400 to complete, biennially, a continuing educational course on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome with an emphasis on appropriate behavior and attitude change. Such instruction shall include information on current Florida law, ~~and~~ its impact on testing, confidentiality of test results, and treatment of patients, *and any protocols and procedures issued pursuant to s. 381.004, s. 384 25, or s. 455.2416 applicable to human immunodeficiency virus counseling, testing, reporting, and partner notification.*

Section 4. Section 381 0039, Florida Statutes, is amended to read:

381.0039 Oversight of acquired immune deficiency syndrome education programs.—The Department of Education, the Department of Health and Rehabilitative Services, *the Department of Corrections,* and the Department of Professional Regulation are directed to establish an interagency agreement to oversee the quality and cost efficiency of acquired immune deficiency syndrome education programs being administered in the state pursuant to chapters 381, 455, 943, and 945. The interagency agreement shall also include *the establishment of an interagency committee for developing a core curriculum and* ~~development~~, where appropriate, ~~of methods for~~ coordinating educational programs for *the* various professional groups. *The agency representatives shall consider the interests and needs of the various professional groups required to complete educational programs on acquired immune deficiency syndrome. The committee shall develop a methodology for systematically updating the educational courses to reflect the latest information on human immunodeficiency virus and acquired immune deficiency syndrome.* ~~A report on the status of acquired immune deficiency syndrome education programs shall be made to the Legislature on or before March 1, 1990.~~

Section 5. Paragraph (f) of subsection (3) and subsection (8) of section 381.004, Florida Statutes, 1992 Supplement, are amended to read:

381.004 Testing for human immunodeficiency virus.—

(3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(f) Except as provided in this section, the identity of any person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. No person who has obtained or has knowledge of a test result pursuant to this section may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative.

2. Any person, including third-party payors, designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative. The test subject may in writing authorize the disclosure of the test subject's HIV test results to third party payors, who need not be specifically identified, and to other persons to whom the test subject subsequently issues a general release of medical information. A general release without such prior written authorization is not sufficient to release HIV test results.

3. An authorized agent or employee of a health facility or health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee participates in the administration or provision of patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information. The department shall adopt a rule defining which persons have a need to know pursuant to this subparagraph.

4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment. For purposes of this subparagraph, health care providers shall include licensed health care professionals employed by or associated with state, county, or municipal detention facilities when such health care professionals are acting exclusively for the purpose of providing diagnoses or treatment of persons in the custody of such facilities.

5. The department, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law.

6. A health facility or health care provider which procures, processes, distributes, or uses:

a. A human body part from a deceased person, with respect to medical information regarding that person; or

b. Semen provided prior to July 6, 1988, for the purpose of artificial insemination.

7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews pursuant to chapters 395 and 766.

8. Authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information.

9. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records.

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party.

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

10. A person allowed access by order of a judge of compensation claims of the Division of Workers' Compensation of the Department of Labor and Employment Security. A judge of compensation claims shall not issue such order unless he finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means.

11. Those employees of the department or of child-placing or child-caring agencies or of family foster homes, licensed pursuant to s. 409.175, who are directly involved in the placement, care, control, or custody of such test subject and who have a need to know such information; adoptive parents of such test subject; or any adult custodian, any adult relative, or any person responsible for the child's welfare, if the test subject was not tested under subparagraph (b)2. and if a reasonable attempt has been made to locate and inform the legal guardian of a test result. The department shall adopt a rule to implement this subparagraph.

12. Those employees of residential facilities or community-based care programs which care for developmentally disabled persons pursuant to chapter 393 who are directly involved in the care, control, or custody of such test subject and who have a need to know such information. The department shall adopt rules to implement this subparagraph.

13.~~12.~~ Medical personnel who have been subject to a significant exposure during the course of medical practice or in the performance of professional duties, or individuals who are the subject of the significant exposure as provided in subparagraphs (i)10. and 11.

(8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.—The Department of Health and Rehabilitative Services shall develop a model protocol consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus. *The protocol shall include criteria for evaluating a patient's risk for human immunodeficiency virus infection and shall provide for offering human immunodeficiency virus testing, on a voluntary basis, as a routine part of primary health care or admission to a health care facility. The Department of Health and Rehabilitative Services shall ensure that protocols developed pursuant to this subsection are made available to all health care providers or facilities providing human immunodeficiency virus testing.*

Section 6. Section 384.25, Florida Statutes, is amended to read:

384.25 Reporting required.—

(1) Each person who makes a diagnosis of or treats a person with a sexually transmissible disease and each laboratory that performs a test for a sexually transmissible disease which concludes with a positive result shall report such facts as may be required by the department by rule, within a time period as specified by rule of the department, but in no case to exceed 2 weeks. *The department may, by rule, require all laboratories that perform human immunodeficiency virus tests to report the total number of tests performed on a semiannual basis.*

(2) The department shall adopt rules specifying the information required in and a minimum time period for reporting a sexually transmissible disease. In adopting such rules, the department shall consider the need for information, protections for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion.

(3) The department shall require reporting of physician diagnosed cases of acquired immune deficiency syndrome (AIDS) ~~and AIDS related complex~~ based upon diagnostic criteria from the Centers for Disease Control *and Prevention* of the United States Public Health Service. The department *shall also require the reporting* ~~may authorize county public health units to accept reports~~ of cases of human immunodeficiency virus infection *for the purpose of epidemiologic tracking and research* ~~by October 1, 1989~~. However, in the case of human immunodeficiency virus reports, the department *shall require the reporting of a person's age, sex, and race, but* is prohibited from requiring the reporting of or collection of any information which would identify individual persons, including: name, address, identifying numbers or symbols, or any other identifying information except as authorized in subsection (4). *Information as to whether the patient is a United States citizen, a permanent resident of the United States, a foreign visitor to the United States, or an illegal alien, and the country of origin immediately preceding entry into the United States, may also be included if the patient voluntarily provides such information.*

(4) The department *shall* ~~may~~ require physician reporting of human immunodeficiency virus infection with information sufficient to identify the test subject in those instances in which the test subject has authorized the physician to disclose such information to the county public health unit for the purposes of partner notification and contact investigation pursuant to s. 384.26. However, only reports of human immunodeficiency virus infection identified on or after the effective date of the rule developed by the department pursuant to this subsection shall be accepted. Such rule shall only be adopted by the department when federal funds are made available for the purposes of partner notification and contact investigation. The reporting may not affect or relate to anonymous human immunodeficiency virus testing programs conducted pursuant to *s. 381.004(4)* ~~s. 381.609(4)~~ or university-based medical research protocols which include partner notification and contact investigation as determined by the department. Human immunodeficiency virus reports shall include patient names and name identifiers, shall be maintained in the form of individual client records, and shall not be maintained in the form of a roster of names. The department shall require county public health units to submit periodically to the State Health Officer or his designee demographic information compiled from reports of human immunodeficiency virus infection, *without names or name identifiers, for the purpose of epidemiologic tracking and research.*

(5) Upon a determination that a patient has tested positive for human immunodeficiency virus, the physician shall advise the patient during posttest counseling that assistance is available for partner notification. The patient shall sign a release on a form developed by rule of the department that he has been informed about the availability of assistance for partner notification and shall indicate on the release whether he needs assistance with partner notification and whether the physician is authorized to identify the patient to the county public health unit for the purposes of partner notification. The release shall be made a part of the patient's records. If the patient refuses or is unable to sign the release, the physician shall document in the patient's records that he has informed the patient about the availability of assistance with partner notification. If the patient indicates that assistance is not needed, the physician shall report the fact of human immunodeficiency infection without identifying the patient pursuant to subsection (3). If the patient has indicated that he would like assistance in partner notification and has authorized the physician to disclose his identification for the purpose of receiving assistance, the physician shall notify the county public health unit pursuant to subsection (4).

(6)~~(5)~~ After notification of the test subject pursuant to subsection (4), the department may, with the consent of the test subject, notify school superintendents of students and school personnel whose human immunodeficiency virus tests are positive. School superintendents shall maintain the confidentiality of the report information, and the information shall be released only in an emergency situation which results in a significant exposure by students or school personnel to the blood or body fluids of the person for whom a positive test result has been obtained. Such information shall be released only to persons who have experienced a significant exposure, and such persons shall comply with the confidentiality provisions of s. 384.29.

(7)~~(6)~~ The department shall by February 1 of each year submit to the Legislature an annual report relating to all information obtained pursuant to this section.

(8)~~(7)~~ The rules promulgated by the department pursuant to this section shall specify the *forms and* protocols for the reporting required by or permitted by subsections (3), ~~or~~ (4), *and (5)*. The protocol developed for implementation of *subsections* ~~subsection~~ (4) *and (5)* shall include but not be limited to: information to be given to a test subject during pretest *and posttest* counseling, setting forth the partner notification and contact investigation services available through county public health units, the benefits of such services, and the confidentiality protections available as part of such services.

(9)~~(8)~~ Each person who violates the provisions of this section or the rules adopted hereunder may be fined by the department up to $500 for each offense. The department shall report each violation of this section to the regulatory agency responsible for licensing each health care professional and each laboratory to which these provisions apply.

Section 7. Section 455.2224, Florida Statutes, is amended to read:

455.2224 Hepatitis B or human immunodeficiency *virus infected health care workers* ~~carriers~~.—The Department of Professional Regulation and each appropriate board within the Division of Medical Quality Assurance shall have the authority to establish procedures to handle, counsel, and provide other services to health care professionals within their respective boards who are infected with hepatitis B or the human immunodeficiency virus. *Such procedures shall incorporate the recommended guidelines for hepatitis B or human immunodeficiency virus infected health care workers issued by the State Health Officer.*

Section 8. Subsection (1) of section 455.2226, Florida Statutes, 1992 Supplement, is amended to read:

455.2226 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) As of July 1, 1991, the appropriate board shall require each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; part II, part III, or part V of chapter 468; chapter 470; or chapter 486 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include

information on current Florida law on acquired immune deficiency syndrome, ~~and~~ its impact on testing, confidentiality of test results, and treatment of patients, *and any protocols and procedures issued pursuant to s. 381.004, s. 384.25, or s. 455.2416 applicable to human immunodeficiency virus counseling, testing, reporting, and partner notification.*

Section 9. Paragraph (f) of subsection (1) of section 627.411, Florida Statutes, is amended to read:

627.411 Grounds for disapproval.—

(1) The department shall disapprove any form filed under s. 627.410, or withdraw any previous approval thereof, only if the form:

(f) Excludes coverage for human immunodeficiency virus infection or acquired immune deficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of such contract, for human immunodeficiency virus infection or acquired immune deficiency syndrome which are different than those which apply to any other sickness or medical condition, *and does not clearly state that Florida law prohibits such coverage exclusions, benefits limitations, or insurance contracts containing terms or conditions different from other sicknesses or medical conditions.*

Section 10. Paragraph (g) of subsection (4) of section 627.429, Florida Statutes, 1992 Supplement, is redesignated as paragraph (h), and a new paragraph (g) is added to said subsection to read:

627.429 Medical tests for human immunodeficiency virus infection and acquired immune deficiency syndrome for insurance purposes.—

(4) USE OF MEDICAL TESTS FOR UNDERWRITING.—

(g) Except to the insurance company and its employees, insurance affiliates, agents, or reinsurers, an insurer may not disclose whether a person has refused to be tested for HIV, has been tested for HIV, or has refused to authorize the release of his HIV test results or test for a medical condition related to HIV.

Section 11. Paragraph (a) of subsection (4) and subsection (6) of section 760.50, Florida Statutes, are amended to read:

760.50 Discrimination on the basis of acquired immune deficiency syndrome~~, acquired immune deficiency syndrome related complex,~~ and human immunodeficiency virus prohibited.—

(4)(a) A person may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus. *For the purposes of this subsection, public accommodations shall include the professional office of a health care provider.*

(6)(a) Any person aggrieved by a violation of this section shall have a right of action in the circuit court and may recover for each violation:

1. Against any person who violates a provision of this section, liquidated damages of $1,000 or actual damages, whichever is greater.

2. Against any person who intentionally or recklessly violates a provision of this section, liquidated damages of $5,000 or actual damages, whichever is greater.

3. *Any other relief available under ss. 760.07 and 760.11(5)* ~~Reasonable attorney's fees~~.

4. Such other relief, including an injunction, as the court may deem appropriate.

(b) Nothing in this section limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law, *except as otherwise provided in this section.*

(c) For any grievance arising under this section other than one alleging housing discrimination, the aggrieved person may elect to pursue any administrative remedy that would be available under ss. 760.01-760.11. Once elected, the administrative remedy must be exhausted before a civil action is brought. Statutes of limitation shall apply as provided by ss. 760.01-760.11.

(d) For any grievance arising under this section alleging housing discrimination, the aggrieved person may elect to pursue any administrative remedy that would be available under, and in the manner provided by, ss. 760.20-760.37. Once elected, the administrative remedy must be exhausted before a civil action is brought. Statutes of limitation shall apply as provided by ss. 760.01-760.11.

Section 12. Clean needle and syringe exchange demonstration project.—The State Health Officer is authorized to establish a privately funded clean needle and syringe exchange demonstration project designed to combat the transmission of human immunodeficiency virus among injecting drug users. The demonstration project shall be a component of a drug abuse treatment program and shall include information on the modes of transmission and prevention of human immunodeficiency virus infection as part of outreach efforts to drug users. The distribution of clean needles and syringes pursuant to the demonstration project shall be exempt from criminal prosecution under s. 893.147. A report evaluating the effectiveness of the demonstration project shall be submitted by the State Health Officer to the Speaker of the House of Representatives, the President of the Senate, the minority leaders of both houses of the Legislature, and the chairmen of the appropriate substantive committees of the Legislature by December 31, 1994.

Section 13. Retail sale of condoms.—Any retail pharmacy shall be required to offer for sale latex condoms. The Department of Health and Rehabilitative Services is authorized to develop a rule permitting a waiver from this requirement.

Section 14. Condom sale in public restrooms.—The Department of Health and Rehabilitative Services shall initiate a public campaign to promote the availability of latex condoms in all public restrooms. The Department of Health and Rehabilitative Services shall report to the Legislature by December 31, 1993, on the progress of the campaign and include recommendations which will assist this effort.

Section 15. This act shall take effect July 1, 1993.

And the title is amended as follows:

Strike everything before the enacting clause and insert: A bill to be entitled An act relating to human immunodeficiency virus; amending s. 240.2097, F.S.; requiring state universities to create an AIDS awareness program; amending s. 240.3192, F.S.; requiring community colleges to create an AIDS awareness program; amending s. 381.0035, F.S.; requiring certain AIDS education courses to include information on protocols and procedures; amending s. 381.0039, F.S.; including the Department of Corrections in an interagency AIDS education oversight agreement; requiring establishment of an interagency committee to develop a curriculum for AIDS education programs; amending s. 381.004, F.S.; permitting personnel working with developmentally disabled persons to have access to HIV test results; directing the Department of Health and Rehabilitative Services to develop a protocol for routinely offering HIV testing; amending s. 384.25, F.S.; requiring certain reporting by laboratories and physicians; requiring all physicians to inform HIV positive patients about assistance with partner notification; amending s. 455.2224, F.S.; requiring professional boards to incorporate the recommendations of the State Health Officer with respect to HIV and hepatitis B infection; amending s. 455.2226, F.S.; requiring AIDS education courses to include information on protocols and procedures; amending s. 627.411, F.S.; requiring insurance forms to state Florida's policy with regard to insurance coverage for AIDS; amending s. 627.429, F.S.; prohibiting insurance companies from disclosing whether a person has refused testing, been tested, or refused to release test results for HIV; amending s. 760.50, F.S.; clarifying provisions relating to discrimination on the basis of HIV infection; revising provisions with respect to right of action for violations; authorizing the State Health Officer to establish a clean needle and syringe exchange demonstration project; requiring pharmacies to sell latex condoms; requiring the Department of Health and Rehabilitative Services to promote the availability of condoms in public restrooms; providing an effective date.

The vote was:

Yeas—17 Nays—14

Senator Harden moved the following amendment which failed:

Amendment 3—On page 17, lines 30 and 31 and on page 18, lines 1-16, strike all of said lines and renumber subsequent sections.

On motion by Senator Foley, by two-thirds vote **CS for SB 1246** 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—4

CS for SB's 722, 1284 and 1952—A bill to be entitled An act relating to juvenile contempt; amending s. 39.042, F.S.; authorizing the use of detention for juveniles who have been held in contempt; amending s. 39.043, F.S.; authorizing detention care for delinquent juveniles held in contempt and authorizing staff-secure institutional shelter care for dependent juveniles held in contempt; reenacting s. 39.044(1), relating to detention, to incorporate said amendments in references thereto; providing an effective date.

—was read the second time by title.

The Committee on Health and Rehabilitative Services recommended the following amendment which was moved by Senator Grant and adopted:

Amendment 1 (with Title Amendment)—On page 2, strike all of lines 19-21 and insert:

(2) A child alleged to be dependent ~~or in need of services~~ shall not, under any circumstances, be placed into secure detention care. *A child alleged to be in need of services shall not, under any circumstances, be placed into secure detention care unless all procedures provided in the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, as amended, are met* ~~solely for these reasons~~. *However, the*

And the title is amended as follows:

In title, on page 1, strike all of lines 7-9 and insert: contempt, prohibiting dependent children from secure detention care, authorizing staff-secure institutional shelter care for dependent children, and authorizing secure detention care for children in need of services if specific federal requirements are met; reenacting s.

Senator Grant moved the following amendment which was adopted:

Amendment 2 (with Title Amendment)—On page 2, strike all of lines 1-24 and insert:

Section 2. Section 39.043, Florida Statutes, is amended to read:

39.043 Prohibited uses of detention.—

(1) A child alleged to have committed a delinquent act or violation of law shall not be placed into secure, nonsecure, or home detention care for any of the following reasons:

(a) *Solely* to punish, treat, or rehabilitate the child;

(b) To allow a parent to avoid his or her legal responsibility;

(c) To permit more convenient administrative access to the child;

(d) To facilitate further interrogation or investigation; or

(e) Due to a lack of more appropriate facilities.

However, a child alleged to have committed a delinquent act or violation of law may be placed into secure detention care for not more than 5 days if the child has been held in direct or indirect contempt of court.

(2) A child alleged to be dependent ~~or in need of services~~ shall not, under any circumstances, be placed into secure detention care ~~solely for these reasons~~. *However, the child may be placed into an institutional shelter for not more than 5 days if the child has been held in direct or indirect contempt of court.*

(3)(a) A child alleged to be in need of services shall not, under any circumstances be placed into secure detention care unless the following conditions are met:

1. The child is within the jurisdiction of the circuit court under a valid order entered pursuant to the provisions of part IV of this chapter;

2. The valid court order regulates future conduct of the child;

3. The consequences of violating the valid court order was explained to the child and the child's attorney and each was provided with a written copy of the order;

4. The valid court order was entered following a hearing at which the child was afforded due process;

5. The child has been found to be in violation of a valid court order following a violation hearing at which the child was afforded due process;

6. There is no less restrictive alternative that is appropriate to the needs of the child and the community.

(b) For the purposes of this section, due process includes:

1. The right to a written copy of the charges served a reasonable time before the hearing;

2. The right to an explanation of the nature and consequences of the hearing;

3. The right to legal counsel, including court appointed legal counsel if the child or child's parent or guardian is indigent;

4. The right to confront witnesses;

5. The right to present witnesses and other evidence;

6. The right to a transcript or record of the proceedings; and

7. The right to appeal.

However, a child alleged to be in need of services may be placed in an institutional shelter for a period not to exceed 5 days if the child has been found in direct or indirect contempt of court.

Section 3. Subsection (70) is added to section 39.01, Florida Statutes, 1992 Supplement, to read:

39.01 Definitions.—When used in this chapter:

(70) "Institutional shelter" means a facility that provides 24-hour continual supervision for the temporary care of children who are older than 10 years of age and under 18 years of age, who are placed pursuant to s. 39.043.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 9, following the semicolon (;) insert: providing for secure detention care for children in need of services; amending s. 39.01, F.S.; defining the term "institutional shelter";

Senator Boczar moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 1, line 15, insert:

Section 1. Section 39.017, Florida Statutes, is created to read:

39.017 ATTORNEY'S FEES.—

(1) Whenever the court appoints an attorney to represent a parent or legal guardian under part III, part IV, part V, or part VI, the court shall only do so upon a finding that the parent or legal guardian is indigent pursuant to the indigency standards in s. 27.52.

(2) If, after the appointment of counsel for indigent parents or legal guardians, it is determined that the parents or legal guardians are not indigent, the court has continuing jurisdiction to assess attorney's fees and costs against the parents or legal guardians when payment of attorney's fees or costs has been ordered by the court, there is thereby created, in the name of the county in which the legal assistance was rendered, a lien, enforceable as provided in s. 27.56, upon all the property, both real and personal, of any parent or legal guardian who has received appointed counsel under part III, part IV, part V, or part VI. The lien constitutes a claim against the parent or legal guardian and the parent's or legal guardian's estate, enforceable according to law, in an amount to be determined by the court in which the legal assistance was rendered.

Section 2. Paragraph (a) of subsection (2) and subsection (3) of section 27.56, Florida Statutes, are amended to read:

27.56 Assistance; lien for payment of attorney's fees or costs.—

(2)(a) When payment of attorney's fees or costs has been ordered by the court, *either pursuant to this section or s. 39.017*, there is hereby created in the name of the county in which such assistance was rendered a lien, enforceable as hereinafter provided, upon all the property, both real and personal, of any person who:

1. Has received any assistance from any public defender of the state, from any special assistant public defender, or from any appointed private legal counsel; ~~or~~

2. Is a parent of a minor who is being, or has been, represented by any public defender of the state, by any special assistant public defender, or by any appointed private legal counsel; *or*.

3. Is a parent who is being, or has been, represented by legal counsel appointed by the court in proceedings under part III, part IV, part V, or part VI of chapter 39.

Such lien shall constitute a claim against the defendant-recipient or parent and his estate, enforceable according to law, in an amount to be determined by the court in which such assistance was rendered.

(3) In lieu of the procedure above described, the court is authorized to require that the defendant-recipient of the services of the public defender, special assistant public defender, or appointed private legal counsel, or that the parent of a minor who has received such services, *or the parent who has been represented by legal counsel appointed by the court in proceedings under part III, part IV, part V, or part VI of chapter 39,* execute a lien upon his real or personal property, presently owned or after-acquired, as security for the debt created hereby. Such lien shall be recorded in the public records of the county at no charge by the clerk of the circuit court and shall be enforceable in the same manner as a mortgage.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 1, line 2, insert: An act relating to juveniles; creating s. 39.017, F.S.; requiring that attorneys to represent parents or legal guardians in proceedings under parts II, III, IV, V, or VI of ch. 39, F.S., be appointed only upon a finding that the parent or legal guardian is indigent under s. 27.52, F.S.; providing for continuing jurisdiction to assess costs and attorney's fees against nonindigent parents and legal guardians creating a lien on the real and personal property of parents and legal guardians who have had court-appointed attorneys and providing for enforceability of the lien; amending s. 27.56, F.S., relating to liens for payment of attorney's fees or costs, to conform; amending

Senator McKay moved the following amendment which was adopted:

Amendment 4 (with Title Amendment)—On page 3, strike line 31 and insert:

Section 4. Effective upon this act becoming a law, section 39.017, Florida Statutes, is created to read:

39.017 Attorney's fees.—

(1) Whenever the court appoints an attorney to represent a parent or legal guardian under part III, part IV, part V, or part VI, the court shall only do so upon a finding that the parent or legal guardian is indigent pursuant to the indigency standards in s. 27.52.

(2) If, after the appointment of counsel for indigent parents or legal guardians, it is determined that the parents or legal guardians are not indigent, the court has continuing jurisdiction to assess attorney's fees and costs against the parents or legal guardians. When payment of attorney's fees or costs has been ordered by the court, there is hereby created, in the name of the county in which the legal assistance was rendered, a lien, enforceable as provided in s. 27.56, upon all the property, both real and personal, of any parent or legal guardian who has received appointed counsel under part III, part IV, part V, or part VI. The lien constitutes a claim against the parent or legal guardian and the parent's or legal guardian's estate, enforceable according to law, in an amount to be determined by the court in which the legal assistance was rendered.

Section 5. Effective upon this act becoming a law, paragraph (a) of subsection (2) and subsection (3) of section 27.56, Florida Statutes, are amended to read:

27.56 Assistance; lien for payment of attorney's fees or costs.—

(2)(a) When payment of attorney's fees or costs has been ordered by the court, *either pursuant to this section or s. 39.017,* there is hereby created in the name of the county in which such assistance was rendered a lien, enforceable as hereinafter provided, upon all the property, both real and personal, of any person who:

1. Has received any assistance from any public defender of the state, from any special assistant public defender, or from any appointed private legal counsel; ~~or~~

2. Is a parent of a minor who is being, or has been, represented by any public defender of the state, by any special assistant public defender, or by any appointed private legal counsel; *or*.

3. Is a parent who is being, or has been, represented by legal counsel appointed by the court in proceedings under part III, part IV, part V, or part VI of chapter 39.

Such lien shall constitute a claim against the defendant-recipient or parent and his estate, enforceable according to law, in an amount to be determined by the court in which such assistance was rendered.

(3) In lieu of the procedure above described, the court is authorized to require that the defendant-recipient of the services of the public defender, special assistant public defender, or appointed private legal counsel, or that the parent of a minor who has received such services, *or the parent who has been represented by legal counsel appointed by the court in proceedings under part III, part IV, part V, or part VI of chapter 39,* execute a lien upon his real or personal property, presently owned or after-acquired, as security for the debt created hereby. Such lien shall be recorded in the public records of the county at no charge by the clerk of the circuit court and shall be enforceable in the same manner as a mortgage.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect August 1, 1993.

And the title is amended as follows:

In title, on page 1, strike line 12 and insert: thereto; creating s. 39.017, F.S.; requiring that attorneys to represent parents or legal guardians in proceedings under parts II, III, IV, V, or VI of ch. 39, F.S., be appointed only upon a finding that the parent or legal guardian is indigent under s. 27.52, F.S.; providing for continuing jurisdiction to assess costs and attorney's fees against nonindigent parents and legal guardians; creating a lien on the real and personal property of parents and legal guardians who have had court-appointed attorneys and providing for enforceability of the lien; amending s. 27.56, F.S., relating to liens for payment of attorney's fees or costs, to conform; providing effective dates.

On motion by Senator Grant, by two-thirds vote **CS for SB's 722, 1284 and 1952** 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

SB 2108—A bill to be entitled An act relating to boating safety; creating s. 327.395, F.S.; requiring certain persons who operate certain vessels to obtain boating safety identification cards; requiring education courses or examinations; providing for the appointment of agents; requiring fees; providing exemptions; providing penalties; providing for the adoption of rules; amending s. 327.54, F.S.; prohibiting the rental of vessels to certain persons; requiring the display of certain information relating to personal watercraft safety; providing an effective date.

—was read the second time by title.

The Committee on Natural Resources and Conservation recommended the following amendment which was moved by Senator Dyer:

Amendment 1 (with Title Amendment)—On page 1, line 17, strike everything after the enacting clause and insert:

Section 1. Section 327.395, Florida Statutes, is created to read:

327.395 Boating safety identification cards.—

(1) Until October 1, 1999, a person born after September 30, 1978, and on or after October 1, 1999, a person under the age of 21 may not operate a vessel powered by an engine of 20 horsepower or more unless he has in his possession aboard the vessel photographic identification and a boater safety identification card issued by the department which shows that he has:

(a) Completed a department-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators; or

(b) Passed a course equivalency examination approved by the department; or

(c) Passed a temporary certificate examination developed by the department.

(2) Any person may obtain a boater safety identification card by complying with the requirements of this section.

(3) The department may appoint liveries, marinas, or other persons as its agents to administer the course, course equivalency examination, or temporary certificate examination and issue identification cards under guidelines established by the department. An agent must charge a $2 examination fee, which he must forward to the department with proof of passage of the examination and may charge and keep a $1 service fee.

(4) An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life. A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.

(5) A person is exempt from subsection (1) if he:

(a) Is licensed by the United States Coast Guard to serve as master of a vessel.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for any violation that occurs during the operation.

(d) Is a nonresident who has in his possession proof that he has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements of subsection (1).

(e) Is a nonresident who is visiting the state for 60 days or less in a vessel that is numbered in another state.

(f) Is exempted by rule of the department.

(6) A person who violates this section is guilty of a noncriminal infraction, punishable as provided in s. 327.73.

(7) The department shall design forms and adopt rules to administer this section. Such rules shall include provision for educational and other public and private entities to offer the course and administer examinations.

(8) The department shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating courses and examinations are available in each county of the state.

Section 2. Subsections (1), (2), and (3) of section 327.54, Florida Statutes, are amended to read:

327.54 Liveries; safety regulations; penalty.—

(1) *A* ~~No~~ livery *may not* ~~shall~~ knowingly lease, hire, or rent a vessel to any person:

(a) When the number of persons intending to use the vessel exceeds the number *considered* ~~deemed~~ to constitute a maximum safety load for the vessel *as specified on* ~~pursuant to~~ the authorized persons capacity plate of the vessel.

(b) When the horsepower of the motor exceeds the capacity of the vessel, making the vessel unsafe to operate.

(c) When the vessel does not contain the ~~required~~ safety equipment *required under* ~~pursuant to~~ s. 327.50.

(d) When the vessel is not seaworthy.

(2) A livery may not knowingly lease, hire, or rent a vessel powered by an engine of 20 horsepower or more to any person who is required to comply with section 327.395, unless he presents a valid boater safety identification card to the livery.

(3)~~(2)~~ If a vessel is unnecessarily overdue, the livery *must* ~~shall~~ notify the proper authorities.

(4)~~(3)~~ A livery may not lease, hire, or rent a personal watercraft to any person who is under 16 years of age, *nor may it lease, hire, or rent such watercraft to any other person, unless it displays information about the safe and proper operation of personal watercraft, in compliance with standards established by the department.*

Section 3. Subsection (1) of section 327.731, Florida Statutes, is amended to read:

327.731 Mandatory education for violators.—

(1) The court shall require any person convicted of a criminal violation of this chapter, any person convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, and any person convicted of a noncriminal infraction ~~under this chapter if he has been convicted of any other violation of this chapter and the offense for which he was convicted occurred within the 12 months preceding the noncriminal infraction,~~ *as defined in 327.73(e) through (o), excepting (j),* to:

(a) Enroll in and successfully complete, at his own expense, a boating safety course that meets minimum standards established by the department by rule;

(b) File with the court *and the department within 90 days* proof of successful completion of the course; and

(c) Refrain from operating a vessel until he has filed the proof of successful completion of the course with the court *and the department.*

Section 4. Subsection (1) of section 327.73 is amended to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of this chapter are noncriminal infractions:

(a) Section 327.11(5), relating to display of number and possession of registration certificate;

(b) Section 327.11(7), relating to display of decal;

(c) Section 327.13(2), relating to display of number;

(d) Section 327.14, relating to spacing of digits and letters of identification number;

(e) Section 327.25(10), relating to operation without a current registration;

(f) Section 327.33(2), relating to careless operation;

(g) Section 327.37, relating to water skiing, aquaplaning, and similar activities;

(h) Section 327.44, relating to interference with navigation;

(i) Section 327.46, relating to restricted areas;

(j) Section 327.48, relating to regattas and races;

(k) Section 327.50, relating to required safety equipment;

(l) Section 327.65, relating to muffling devices;

(m) Section 327.33(3)(b), relating to navigation rules; ~~and~~

(n) Section 327.39(1), (2), (3), and (5), relating to personal watercraft*; and*~~.~~

(o) Section 327.395, relating to boater safety education.

Any person cited for a violation of any such provision shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $35, except as otherwise provided in this section.

Section 5. The department shall compile statistics on boating accidents and boating violations of the age groups of persons affected by this act.

Section 6. This act shall take effect October 1, 1994.

And the title is amended as follows:

In title, on page 1, line 13, after the semicolon (;) insert: amending s. 327.731, F.S.; requiring documentation to be filed with the Department of Natural Resources; providing a noncriminal infraction; requiring the compilation of statistics;

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

Amendment 1A—On page 1, line 17, strike "under the age of" and after "21" insert: years of age or younger

Amendment 1B—On page 1, line 29, after "developed" insert: or approved

Amendment 1C—On page 3, between lines 11 and 12, insert:

(9) The department may establish and collect a $2 fee to cover administrative costs.

Amendment 1D—On page 4, between lines 28 and 29, insert:

A person who successfully completes an approved boating course is exempt from further application of this section upon showing proof to the court and the department as specified in paragraph (b).

Amendment 1 as amended was adopted.

On motion by Senator Dyer, by two-thirds vote **SB 2108** 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—4

CS for SB 772—A bill to be entitled An act relating to educational technology; creating s. 228.0865, F.S.; providing Legislative intent; creating certain councils and advisory boards; providing for membership and administration; requiring a plan; providing educational technology incentive awards; establishing criteria for eligibility; providing for use of award funds; providing for reporting; providing an effective date.

—was read the second time by title.

Senator Dudley moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 7, between lines 4 and 5, insert:

Section 3. *The Department of Education is authorized to recalculate FTE for the Lee County Vocational High Technical Center North as indicated:*

			Total 1993-1994
Program #	*Program*	*Proj FTE*	*WFTE*
332	*Office*	*239.00*	*302.82*
333	*Distributive*	*39.00*	*52.81*
335	*Health*	*87.00*	*124.33*
338	*Technical*	*94.50*	*128.62*
401	*Adult Basic Skills*	*5.00*	*3.61*
402	*GED Prep*	*10.50*	*7.96*
	TOTAL	*475.00*	*620.15*

And the title is amended as follows:

In title, on page 1, line 10, after the semicolon (;) insert: authorizing recalculation of FTE for the Lee County Vocational High Technical Center North;

On motion by Senator Kirkpatrick, by two-thirds vote **CS for SB 772** 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

LOCAL BILLS

Motions

On motions by Senator Jennings, by two-thirds vote **House Bills 107, 2293** and **1421** were placed on the Local Bill Calendar.

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

HB 107—A bill to be entitled An act relating to the City of Jacksonville Beach, Duval County; amending chapter 27643, Laws of Florida, 1951, as amended, relating to the employees' retirement system of the City of Jacksonville Beach; providing optional participation by executive and department head employees; excluding temporary employees and police officers from participation in the retirement system; providing a limitation upon the period during which retirement benefits may be delayed; modifying the conditions for the suspension of payment of retirement benefits; modifying conditions for and amounts of disability retirement; proscribing payment of benefits in excess of amount allowable under Internal Revenue Code; specifying that retirement system is an irrevocable trust; limiting the rights of the city members and beneficiaries to retirement system assets; authorizing engagement of investment managers and requiring same to serve as named fiduciary; authorizing engagement of custodian to hold funds and securities; acknowledging approval of placement of income from chapters 175 and 185, Florida Statutes, by a majority of firefighters and by a majority of police officers; requiring that contributions fully fund expected costs of benefits; providing for direct transfers of eligible rollover contributions; modifying provisions relating to the retirement system's rights of subrogation; providing procedures to be followed upon merger or termination of the retirement system; providing optional participation by executive and department head employees; providing an effective date.

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

Yeas—35 Nays—None

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

HB 2293—A bill to be entitled An act relating to Lee County; amending s. 5, ch. 76-410, Laws of Florida, relating to the Tice Fire Protection and Rescue Service District; increasing the amount of the ad valorem tax which may be levied by the board of commissioners of the district; providing for a referendum; revising provisions relating to appointments to the board; providing effective dates.

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

Yeas—35 Nays—None

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

HB 1421—A bill to be entitled An act relating to the Broward County Human Rights Act; amending ch. 83-380, Laws of Florida; prohibiting certain discriminatory practices with respect to employment, public accommodations, real estate transactions, financial practices, and other acts; prescribing duties of the Broward County Human Rights Board, the Broward County Human Rights Division, and other entities; providing remedies for aggrieved persons; prescribing procedures; providing exemptions; providing penalties; providing an effective date.

—was read the second time by title.

Senator Jenne moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—On page 82, strike line 26 and insert: to modification or repeal as other ordinances, insofar as such modification or repeal does not render the county out of compliance with Section 1.06 E. of the Charter of Broward County. Section 8.04 of the Charter of Broward County notwithstanding, the county ordinance shall prevail over municipal ordinances in conflict with this ordinance. Chapter 83-

And the title is amended as follows:

In title, on page 1, strike line 13 and insert: penalties; converting the act to an ordinance; providing for the ordinance to prevail over conflicting municipal ordinances; providing an effective date.

On motion by Senator Jenne, by two-thirds vote **HB 1421** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SPECIAL ORDER, continued

On motions by Senator Williams, by two-thirds vote **HB 201** was withdrawn from the Committees on Education and Appropriations.

On motion by Senator Williams, the rules were waived and—

HB 201—A bill to be entitled An act relating to postsecondary education; amending s. 240.551, F.S., relating to the Florida Prepaid Postsecondary Education Expense Program; transferring the program from the Department of Insurance to the State Board of Administration; revising provisions relating to the application of plans to independent colleges or universities; authorizing the application of benefits of an advance payment contract toward an eligible out-of-state college or university; providing conditions; preserving the validity of certain proceedings related to the program at the time of transfer; preserving certain powers and duties of the Prepaid Postsecondary Education Expense Board; transferring records, personnel, property, and certain funds of the program to the State Board of Administration; preserving revenue sources and administrative rules of the program; creating s. 240.6055, F.S.; creating the Access Grant Fund for Community College Graduates; providing for grants to eligible students; providing for grant amount; providing for priority in distribution; providing an effective date.

—a companion measure, was substituted for **SB 1026** and read the second time by title. On motion by Senator Williams, by two-thirds vote **HB 201** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34 Nays—1

Consideration of **SB 1856** was deferred.

CS for SB 1844—A bill to be entitled An act relating to health care; providing legislative findings; amending s. 154.04, F.S.; providing that medical peer review committees may be organized by county public health units; providing a public records exemption for identifying information in committee records and a public meetings exemption for committee proceedings; providing for review and repeal; amending s. 383.011, F.S.; providing an exemption from the public records law for identifying information contained in records of fetal infant mortality review boards and a public meetings exemption for proceedings of such boards; providing for review and repeal; amending s. 395.3025, F.S.; providing for disclosure of patient records to local or regional trauma agencies, panels, or committees; amending s. 395.4025, F.S.; providing for the extension of provisional status of applicants for state-approved trauma centers or state-approved pediatric trauma centers; deleting a provision making certain local or regional trauma agencies agents of the department for the purposes of s. 395.3025, F.S.; providing a public records exemption for certain letters and reports generated by the department; providing for review and repeal; creating s. 395.50, F.S.; providing for confidentiality relating to quality assurance activities conducted by the local or regional trauma agencies or their panels or committees; providing public meetings and records exemptions; providing for review and repeal; amending s. 401.30, F.S.; providing for disclosure of patient information without the patient's consent to an agent of the department, or a local or regional trauma agency, panel, or committee assembled pursuant to s. 395.50, F.S.; providing an effective date.

—was read the second time by title.

Senator Gutman moved the following amendment which was adopted:

Amendment 1—On page 10, line 20, strike "reports in" and insert: reports of the department in

On motion by Senator Gutman, by two-thirds vote **CS for SB 1844** 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

On motion by Senator Crenshaw, the rules were waived and the Senate reverted to—

INTRODUCTION OF BILL

On motion by Senator Crenshaw, by unanimous consent—

By Senator Crenshaw—

SCR 2438—A concurrent resolution extending the 1993 regular legislative session under the authority of Article III, Section 3(d) of the State Constitution.

WHEREAS, the sixty days of the 1993 regular session of the Florida Legislature will expire on April 2, 1993, and the necessary tasks of the session have not been completed, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That the 1993 regular session of the Florida Legislature is extended until 11:59 p.m., Sunday, April 4, 1993, under the authority of Article III, Section 3(d) of the State Constitution.

BE IT FURTHER RESOLVED that the regular session so extended shall consider only the following matters:

(1) Senate Bill 1800 and House Bill 1801, the general appropriations bills; the Senate and House Conference Committee Report thereon, and related implementing measures.

(2) CS for Senate Bill 1914, CS for House Bill 701, and House Bill 2271 relating to Health Care Access.

(3) Senate Bill 1804 and House Bill 1807, the appropriations bills relating to Hurricane Andrew and the Senate and House Conference Report thereon.

BE IT FURTHER RESOLVED that all other measures in both houses are hereby indefinitely postponed.

BE IT FURTHER RESOLVED that, upon adjournment Friday, April 2, 1993, either house may reconvene upon the call of its presiding officer.

—was introduced out of order and read by title. On motion by Senator Crenshaw, by two-thirds vote **SCR 2438** was read the second time in full, adopted by the required constitutional three-fifths vote of the membership and certified to the House. The vote on adoption was:

Yeas—38 Nays—None

SPECIAL ORDER, continued

On motions by Senator Jennings, by two-thirds vote **HB 1851** was withdrawn from the Committees on Natural Resources and Conservation; and Community Affairs.

On motion by Senator Jennings, by unanimous consent—

HB 1851—A bill to be entitled An act relating to exchange of public lands; providing that the Board of Trustees of the Internal Improvement Trust Fund convey to Collier County the Marco Island Airport; providing that the airport revert to the board if it ceases to be used as an airport; providing that the county convey to the board a parcel of its land holdings within Fakahatchee Strand State Preserve; providing for the closing of Janes Scenic Drive within the Fakahatchee Strand State Preserve; providing an effective date.

—was taken up out of order and read the second time by title. On motion by Senator Jennings, by two-thirds vote **HB 1851** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—32 Nays—1

On motion by Senator Jennings, by two-thirds vote **HB 1217** was withdrawn from the Committee on Community Affairs.

On motion by Senator Jennings, by unanimous consent—

HB 1217—A bill to be entitled An act relating to housing finance authorities; amending ss. 159.605, 159.608, F.S.; allowing housing finance authorities to acquire real and personal property to house and equip their facilities and staffs; allowing the authorities to create and make loans to not-for-profit corporations that acquire, construct, reconstruct, or rehabilitate qualifying housing developments as defined by statute; providing an effective date.

—was taken up out of order and read the second time by title. On motion by Senator Jennings, by two-thirds vote **HB 1217** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—32 Nays—2

CS for SB 1794—A bill to be entitled An act relating to fire safety; requiring certain devices on described plumbing fixtures; providing for inspections; amending s. 153.64, F.S.; prohibiting certain counties or private companies from charging a rate for fire sprinkler connections and any yard hydrants attached thereto; providing for certain counties and private water systems to charge a rate under certain circumstances; creating s. 180.192, F.S.; providing a limitation on rates for fire sprinkler connections; amending s. 553.79, F.S.; authorizing certain contractors to design described fire sprinkler systems; creating s. 627.0654, F.S.; providing insurance discounts for buildings with fire sprinklers; amending s. 633.021, F.S.; revising the definition of certain contractors to provide that such contractors may design described fire sprinkler systems; providing an effective date.

—was read the second time by title. On motion by Senator Weinstein, by two-thirds vote **CS for SB 1794** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—None

On motions by Senator Turner, by two-thirds vote **CS for HB 1391** was withdrawn from the Committees on Governmental Operations and Appropriations.

On motion by Senator Turner—

CS for HB 1391—A bill to be entitled An act relating to the arts; amending s. 265.286, F.S.; providing requirements for cultural organizations applying for state funding under specified grant programs to receive preference for minority participation; providing for submission of a minority participation plan for both artists and audiences and for plan assessment criteria; providing an effective date.

—a companion measure, was substituted for **SB 1432** and read the second time by title.

Senator Turner moved the following amendment which was adopted:

Amendment 1—On page 1, lines 26 and 27, strike *"the goals prescribed in s 287 042(4)(f)1."* and insert: *minority participation goals established by the department.*

On motion by Senator Turner, by two-thirds vote **CS for HB 1391** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—None

On motions by Senator Kurth, by two-thirds vote **CS for HB 1959** was withdrawn from the Committees on Personnel, Retirement and Collective Bargaining; and Appropriations.

On motion by Senator Kurth—

CS for HB 1959—A bill to be entitled An act relating to the Florida Retirement System; amending s. 121.021, F.S.; redefining "compensation," to delete obsolete language; redefining "normal retirement date" to provide for retirement after 25 years of service, regardless of age, for members of the Special Risk Class; defining the term "effective date of retirement"; defining the term "local agency employer"; amending s. 121.052, F.S.; clarifying participation requirements with respect to the membership class of elected state and county officers; amending s. 121.055, F.S.; authorizing local agency employers, including community college boards of trustees, to elect to cover additional positions in the Senior Management Service Class, subject to certain limits and eligibility criteria; authorizing local participants to withdraw from the class and alternatively participate in an employer-provided annuity program, under certain circumstances; providing for expansion of the class to include specified positions in the judicial branch; authorizing state attorneys and public defenders to elect to cover additional positions in the class, subject to certain limits and eligibility criteria; authorizing judicial participants to withdraw from the class and alternatively participate in the Senior Management Optional Annuity Program; providing for purchase of additional retirement credit for service in the class occurring on or after February 1, 1987; providing a restriction upon removal of a position from the class; providing individual certificates for group annuity contracts in the Senior Management Service Optional Annuity Program; amending s. 121.091, F.S.; clarifying provisions relating to payment of benefits to beneficiaries upon the death of a member; amending s. 121.35, F.S.; providing individual certificates for group annuity contracts in the State University System Optional Retirement Program; amending s. 121.122, F.S.; correcting a reference; providing for adjustments in contribution rates for the Senior Management Service Class and the Regular Class; providing effective dates.

—a companion measure, was substituted for **CS for CS for SB 1410** and read the second time by title. On motion by Senator Kurth, by two-thirds vote **CS for HB 1959** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

LOCAL BILLS

Motions

On motions by Senator Jennings, by two-thirds vote **House Bills 439** and **1193** were placed on the Local Bill Calendar.

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

HB 439—A bill to be entitled An act relating to the Children's Services Council of Palm Beach County; exempting the council from the provisions of part III of chapter 163, F.S.; providing that the council shall be exempt from paying fees, taxes, or increment revenues to community redevelopment agencies, except to the extent that such fees, taxes, or increment revenues have previously been pledged to bonds, notes, or other forms of indebtedness of a municipality or a community redevelopment agency authorized and issued before December 31, 1991, unless waived by the municipality or the community redevelopment agency; providing for severability; providing an effective date.

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

Yeas—37 Nays—None

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

HB 1193—A bill to be entitled An act relating to Collier County; establishing and organizing a municipality to be known and designated as the City of Marco Island; defining territorial boundaries; providing for government, jurisdiction, elections, administrative code, procedure, powers, franchises, immunities, privileges, and means for exercising the same; prescribing the general powers to be exercised by said city; providing prohibitions; providing procedures for filling vacancies in office; providing for a city council, city manager, and city attorney; providing for an initial election; providing for ordinances; providing for budget adoption; providing for amendments to the city charter; providing for referendum petitions; providing severability; providing for dissolution of the Marco

Island Fire Control District; providing for a referendum; providing a transition schedule; providing for county ordinances and services during transition period; providing effective dates.

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

Yeas—37 Nays—None

SPECIAL ORDER, continued

On motion by Senator Brown-Waite, by two-thirds vote **HB 1969** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Brown-Waite, by unanimous consent—

HB 1969—A bill to be entitled An act relating to local government; amending ss. 163.362 and 163.385, F.S.; providing that amendments to community redevelopment plans extend projects under the plan and allow issuance of additional bonds; providing for retirement of bonds; amending s. 163.370, F.S.; including public areas of certain hotels within authorized projects in a community redevelopment area; amending s. 212.0305, F.S.; authorizing local governments that levy a convention development tax to implement a convention center booking policy; amending ss. 1, 2, and 3, ch. 67-930, Laws of Florida; revising provisions which authorize certain cities to levy a municipal resort tax, to remove an exemption for beer and malt beverages; amending s. 163.3181, F.S., relating to public participation in the comprehensive planning process; providing public participation procedures for a local government considering undertaking a publicly financed capital project; providing for public notice; specifying when an affected person may file an administrative pleading; amending s. 163.340, F.S.; revising the definition of "public body" or "taxing authority"; amending s. 163.346, F.S.; requiring notice prior to issuance of redevelopment revenue bonds; amending s. 163.360, F.S.; requiring a community redevelopment agency to submit to certain taxing authorities any community redevelopment plan that the agency recommends for approval; amending s. 163.387, F.S.; specifying that certain entities created prior to July 1, 1993, are exempt from paying tax increments to a redevelopment trust fund; authorizing local governments to exempt special districts from such payment; providing procedures and requirements; providing an additional use for moneys in the trust fund; providing an effective date.

—was taken up out of order and by two-thirds vote read the second time by title. On motion by Senator Brown-Waite, by two-thirds vote **HB 1969** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36 Nays—None

On motions by Senator Wexler, by two-thirds vote **CS for HB 1573** was withdrawn from the Committees on Judiciary; and Health and Rehabilitative Services.

On motion by Senator Wexler, by unanimous consent—

CS for HB 1573—A bill to be entitled An act relating to the State of Florida Guardian Ad Litem Program; amending ss. 61.402 and 415.503, F.S.; authorizing a security background investigation of certified guardians ad litem; providing an effective date.

—was taken up out of order and read the second time by title. On motion by Senator Wexler, by two-thirds vote **CS for HB 1573** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—29 Nays—None

On motion by Senator Foley, by two-thirds vote **CS for HB 463** was withdrawn from the Committee on Judiciary.

On motion by Senator Foley—

CS for HB 463—A bill to be entitled An act relating to media personnel; exempting from disclosure in legal proceedings or in investigations by state agencies the sources of information obtained by certain media personnel; providing exceptions; providing an effective date.

—a companion measure, was substituted for **CS for SB 1256** and read the second time by title. On motion by Senator Foley, by two-thirds vote **CS for HB 463** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

On motions by Senator Williams, by two-thirds vote **CS for HB 491** was withdrawn from the Committees on Governmental Operations and Judiciary.

On motion by Senator Williams—

CS for HB 491—A bill to be entitled An act relating to public meetings and records; amending s. 286.011, F.S.; exempting certain meetings of governmental agencies from the requirement that they be open to the public; establishing criteria for such meetings; amending s. 119.07, F.S.; specifying that the exemption from public records requirements for records prepared by or at the direction of an agency attorney is not waived by certain release of such records; providing legislative findings; providing an effective date.

—a companion measure, was substituted for **CS for CS for SB 1210** and read the second time by title. On motion by Senator Williams, by two-thirds vote **CS for HB 491** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—32 Nays—2

On motions by Senator Grant, by two-thirds vote **CS for HB 1647** was withdrawn from the Committees on Commerce, Community Affairs and Appropriations.

On motion by Senator Grant—

CS for HB 1647—A bill to be entitled An act relating to fire safety; amending s. 553.895, F.S.; requiring certain buildings three stories or taller for which construction contracts are let after a specified date to be equipped with automatic sprinkler systems meeting described requirements; amending s. 633.022, F.S.; authorizing local governments to impose more stringent fire safety standards for certain sprinkler systems; amending s. 633.061, F.S.; increasing certain licensing and permit fees; requiring proof of insurance; prohibiting certain training activities; requiring registration with the State Fire Marshal for certain training activities; specifying criteria for certain trainees; imposing a registration fee; amending s. 633.081, F.S.; clarifying certain certification requirements related to criminal conduct; amending s. 633.085, F.S.; requiring agency budgeting of fees and charges imposed by the State Fire Marshal; amending s. 633.111, F.S.; increasing a copy fee; amending s. 633.162, F.S.; providing additional grounds for denying, nonrenewing, revoking, or suspending licenses or permits; amending s. 633.163, F.S.; specifying grounds for imposing an administrative fine under certain circumstances; creating s. 633.167, F.S.; providing for probation of licensees; amending s. 633.31, F.S.; specifying membership of the Firefighters Standards and Training Council; limiting terms; amending s. 633.32, F.S.; limiting terms of certain council members; providing for a seal; amending s. 633.33, F.S.; providing additional powers of the council; amending s. 633.34, F.S.; clarifying a requirement for a medical examination for qualification as a firefighter; amending s. 633.35, F.S.; increasing certain training program hour requirements; excluding public employers from paying certain training costs; providing an exception to certain qualifications for employment; amending s. 633.351, F.S.; requiring certain approval for continuing education requirements; amending s. 633.511, F.S.; specifying criteria for appointment of equipment dealers to the Florida Fire Safety Board; amending s. 633.514, F.S.; specifying additional duties of the board; amending s. 633.521, F.S.; authorizing the State Fire Marshal to require proof of insurance under certain circumstances; amending s. 633.527, F.S.; making license or permit application information public records; amending s. 633.547, F.S.; clarifying grounds for certain disciplinary action; deleting authority to impose an administrative fine; amending s. 791.013, F.S.; requiring product testing; requiring the State Fire Marshal to adopt certain rules; providing an effective date.

—a companion measure, was substituted for **CS for SB 1184** and read the second time by title. On motion by Senator Grant, by two-thirds vote **CS for HB 1647** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—None

On motions by Senator Dyer, by two-thirds vote **HB 1247** was withdrawn from the Committees on Commerce; and Finance, Taxation and Claims.

HB 1247—A bill to be entitled An act relating to title insurers; amending s. 624.501, F.S.; clarifying application of a certain administrative surcharge; clarifying adequacy of unearned premium reserve; providing an effective date.

—was read the second time by title. On motion by Senator Dyer, by two-thirds vote **HB 1247** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—2

CS for SB 1044—A bill to be entitled An act relating to insurance rates; amending s. 627.062, F.S.; providing that certain insurers that make a "use and file" rate filing are not subject to certain refund provisions; providing criteria for holding a rate excessive; authorizing the Department of Insurance to adopt rules for determining when price competition is sufficient; creating s. 627.0662, F.S.; exempting certain insurers from excess profit provisions; creating a special trust account for limited apportionment companies; amending s. 627.736, F.S.; requiring personal injury protection claims to be filed within a specified time after treatment arising out of a covered accident; allowing insurers to limit payment of medical benefits to services provided by exclusive health care providers; requiring an appropriate discount for such a policy; prohibiting insurers providing coverage under a personal protection policy subject to an exclusive provider provision from requiring a compulsory physical examination; prohibiting withholding or limiting payment by an insurer; providing for payment by insurers for treatment by nonexclusive providers; requiring insurers to inform purchasers of limitations of benefits and providing for required information and general format of forms given insureds; providing for repeal and review; amending s. 627.7283, F.S.; providing for the return of unearned premiums within a specified time after the effective date of cancellation; amending s. 628.531, F.S.; providing for the conversion of group-self-insurer's funds to mutual insurers; amending s. 627.848, F.S.; providing for cancellation of an insurance contract regardless of whether a premium finance company has complied with notice requirements; providing for a cause of action against the premium finance company for failing to provide notice; creating s. 628.531, F.S.; providing for conversion of a group self-insurer's fund to a domestic mutual insurer; amending s. 631.713, F.S.; exempting certain policies and contracts from provisions of part III of ch. 631, F.S., relating to life and health insurance guaranty of payments; amending s. 631.718, F.S.; providing for payment of certain costs from an annuities account; amending s. 631.718, F.S.; prescribing the manner of calculating assessments; providing an effective date.

—was read the second time by title.

Senator Williams moved the following amendment which was adopted:

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

Section 1. Subsections (1) and (2) of section 627.062, Florida Statutes, 1992 Supplement, are amended, and subsection (5) is added to that section, to read:

627.062 Rate standards.—

(1) The rates for all classes of insurance to which the provisions of this part *apply* are ~~applicable shall~~ not ~~be~~ excessive, inadequate, or unfairly discriminatory.

(2) As to all such classes of insurance:

(a) Insurers or rating organizations *must* ~~shall~~ establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on such classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, *must* ~~shall~~ be filed with the department under one of the following procedures:

1. If the filing is made at least 60 days before the proposed effective date and the filing is not implemented during the department's review of the filing and any proceeding and judicial review, *the* ~~then such~~ filing *is* ~~shall be~~ considered a "file and use" filing. In such case, the department shall initiate proceedings to disapprove the rate and so notify the insurer or ~~shall~~ finalize its review within 60 days *after* ~~of~~ receipt of the filing. Notification to the insurer by the department of its preliminary findings *tolls* ~~shall toll~~ the 60-day period during any such proceedings and subsequent judicial review. The rate *is considered* ~~shall be deemed~~ approved if the department does not issue notice to the insurer of its preliminary findings within 60 days *after* ~~of~~ the filing.

2. If the filing is not made in accordance with the provisions of subparagraph 1., *the* ~~such~~ filing *must* ~~shall~~ be made as soon as practicable, but no later than 30 days after the effective date, and *is* ~~shall be~~ considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the department to return to policyholders portions of rates found to be excessive, as provided in paragraph (h).

(b) Upon receiving a rate filing, the department shall review the rate filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the department shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The department may *adopt* ~~promulgate~~ rules *using* ~~utilizing~~ reasonable techniques of actuarial science and economics to specify the manner in which insurers *must* ~~shall~~ calculate investment income attributable to such classes of insurance written in this state and the manner in which such investment income *must* ~~shall~~ be used in the calculation of insurance rates. Such manner *must* ~~shall~~ contemplate allowances for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of return; however, investment income from invested surplus *may* ~~shall~~ not be considered. The profit and contingency factor as specified in the filing *must* ~~shall~~ be *used* ~~utilized~~ in computing excess profits in conjunction with s. 627.0625.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. A reasonable margin for underwriting profit and contingencies.

12. The cost of medical services, if applicable.

13. Other relevant factors *that affect* ~~which impact upon~~ the frequency or severity of claims or upon expenses.

(c) In the case of fire insurance rates, consideration *must* ~~shall~~ be given to the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

(d) If conflagration or catastrophe hazards are given consideration by an insurer in its rates or rating plan, including surcharges and discounts, the insurer *must* ~~shall~~ establish a reserve for that portion of the premium allocated to such hazard and *must* ~~shall~~ maintain the premium in a catastrophe reserve. Any removal of such premiums from the reserve for purposes other than paying claims associated with a catastrophe or purchasing reinsurance for catastrophes *is* ~~shall be~~ subject to approval of the department. Any ceding commission received by an insurer purchasing reinsurance for catastrophes *must* ~~shall~~ be placed in the catastrophe reserve.

(e) After consideration of the rate factors provided in paragraphs (b), (c), and (d), a rate may be found by the department to be excessive, inadequate, or unfairly discriminatory based upon the following standards:

1. Rates *are* ~~shall be deemed~~ excessive if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered.

2. Rates *are* ~~shall be deemed~~ excessive if, among other things, the rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replenishment is attributable to investment losses.

3. Rates *are* ~~shall be deemed~~ inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

4. A rating plan, including discounts, credits, or surcharges, *is* ~~shall be deemed~~ unfairly discriminatory if it fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program adopted *under* ~~pursuant to~~ s. 627.0625.

5. A rate *is* ~~shall be deemed~~ inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed which exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks.

6. A rate *is* ~~shall be deemed~~ unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(f) In reviewing a rate filing, the department may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria *specified* ~~enumerated~~ in this section.

(g) The department may at any time review a rate, rating schedule, rating manual, or rate change; the pertinent records of the insurer; and market conditions. If the department finds on a preliminary basis that a rate *could* ~~may~~ be excessive, inadequate, or unfairly discriminatory, the department shall initiate proceedings to disapprove the rate and shall so notify the insurer. However, the department may not disapprove as excessive any rate for which it has given final approval or which has been deemed approved for a period of 1 year after the effective date of the filing unless the department finds that a material misrepresentation or material error was made by the insurer or was contained in the filing. Upon being so notified, the insurer or rating organization *must* ~~shall~~, within 60 days, file with the department all information which, in the belief of the insurer or organization, proves the reasonableness, adequacy, and fairness of the rate or rate change. In such instances and in any administrative proceeding relating to the legality of the rate, the insurer or rating organization *bears* ~~shall carry~~ the burden of *proving* ~~proof~~ by a preponderance of the evidence ~~to show~~ that the rate is not excessive, inadequate, or unfairly discriminatory. After the department notifies an insurer that a rate *could* ~~may~~ be excessive, inadequate, or unfairly discriminatory, unless the department withdraws the notification, the insurer *may* ~~shall~~ not alter the rate except to conform with the department's notice until the earlier of 120 days after the date the notification was provided or 180 days after the date of the implementation of the rate. The department may, subject to chapter 120, disapprove without the 60-day notification any rate increase filed by an insurer within the prohibited time period or during the time that the legality of the increased rate is being contested.

(h) *If* ~~In the event~~ the department finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the department shall issue an order of disapproval specifying that *the insurer file* a new rate or rate schedule *that* ~~which~~ responds to the findings of the department be filed by the insurer. The department shall further order, for any "use and file" filing made in accordance with subparagraph (a)2., that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified be returned to such policyholder in the form of a credit or refund. If the department finds that an insurer's rate or rate change is inadequate, the new rate or rate schedule filed with the department in response to such a finding *applies* ~~shall be applicable~~ only to new or renewal business of the insurer written on or after the effective date of the responsive filing.

~~The provisions of~~ This subsection *does* ~~shall~~ not apply to workers' compensation *or* ~~and~~ employer's liability insurance *or* ~~and~~ to motor vehicle insurance.

(5) For purposes of determining whether a rate for property insurance as defined in s. 624.604 is excessive under s. 627.062, it shall be presumed that any rate increase of 15 percent or less over the rate in effect on March 1, 1993, is not excessive, provided the insurer seeking such rate increase is issuing new policies at the time the rate filing is made. Notwithstanding s. 627.062(2)(g), in any proceeding relating to the legality of such a rate increase, the department shall carry the burden of proof by a preponderance of the evidence to show that such increase produces a rate that is excessive. A rate filing for an increase greater than 15 percent shall not necessarily be presumed excessive and s. 627.062 is applicable to such a rate filing. This subsection is repealed on July 1, 1994.

Section 2. Section 626.7355, Florida Statutes, is created to read:

626.7355 Temporary customer representative license; pending examination.—

(1) Each applicant for a license may have issued to him a temporary license for a period not exceeding 6 months.

(2) If the applicant fails to pass the first examination, he may, after the expiration of 30 days, take another examination. An applicant permitted to take another examination must file another application along with the required filing fee.

(3) If an applicant has failed to pass the required examination before the expiration of his temporary license, he may apply for a regular state license just as any other first-time applicant may.

(4) The fee for the temporary license is the same as the fee for a regular license as specified in s. 624.501. A refund of such a fee may not be made after a temporary license is issued.

Section 3. Section 627.0662, Florida Statutes, is created to read:

627.0662 Special trust account provision.—Any insurer who qualifies as a limited apportionment company consistent with s. 627.351(3) is exempt from the excess profit provisions in s. 627.066. Such excess profits must be segregated in a trust account that is not subject to dividends, that may be released only upon order of the department, and that may be used by companies qualifying under this section to support net and gross writings located in this state. Any insurer contributing to such a fund must file a quarterly report with the department detailing the insurer's participation in the fund, in addition to filings already statutorily mandated.

Section 4. Section 627.7283, Florida Statutes, 1992 Supplement, is amended to read:

627.7283 Cancellation; return of premium.—

(1) If the insured or insurer cancels a policy of motor vehicle insurance, the insurer must return the unearned portion of any premium paid within 30 days after *the effective date of the cancellation* ~~issuance or receipt by the insurer of notice of cancellation~~. If the unearned premium is not returned within the 30-day period, the insurer must pay 8 percent interest on the amount due. If the unearned premium is not returned within 45 days after receipt of the notice, the insured may bring an action against the insurer pursuant to s. 624.155.

(2) If the insured cancels, the insurer may retain up to 10 percent of the unearned premium and must refund at least 90 percent of the unearned premium. If the insurer cancels, the insurer must refund 100 percent of the unearned premium. Cancellation is without prejudice to any claim originating prior to the effective date of the cancellation. For purposes of this section, unearned premiums must be computed on a pro rata basis.

Section 5. Section 627.848, Florida Statutes, is amended to read:

627.848 Cancellation of insurance contract upon default.—

(1) When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement, the insurance contract shall not be canceled unless cancellation is in accordance with the following provisions:

(a)1. ~~(1)~~ Not less than 10 days' written notice shall be mailed to each insured shown on the premium finance agreement of the intent of the premium finance company to cancel his insurance contract unless the defaulted installment payment is received within 10 days.

2.~~(2)~~ After expiration of such period, the premium finance company shall mail to the insurer a request for cancellation, specifying the effective date of cancellation and the unpaid premium balance due under the finance contract, and shall mail a copy thereof to the insured at his last known address as shown on the premium finance agreement.

(b)~~(3)~~ Every notice of cancellation shall include, in type or print of which its face shall not be smaller than 12 points, a statement that, if the insurance contract or contracts provide motor vehicle liability insurance required by the financial responsibility law, proof of financial responsibility is required to be maintained continuously for a period of 3 years, pursuant to chapter 324, and the operation of a vehicle without such financial responsibility is unlawful.

(c)~~(4)~~ Upon receipt of a copy of the cancellation notice by the insurer or insurers, the insurance contract shall be canceled with the same force and effect as if the notice of cancellation had been submitted by the insured himself, *whether or not the premium finance company has complied with the notice requirement of this subsection,* without requiring any further notice to the insured or the return of the insurance contract.

(d)~~(5)~~ All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he or the insurer first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, a mortgagee, an individual, or a person designated to receive such notice for such governmental agency, insurance carrier, or individual shall apply when cancellation is effected under the provisions of this section. The insurer, in accordance with such prescribed notice when it is required to give such notice in behalf of itself or the insured, shall give notice to such governmental agency, person, mortgagee, or individual; and it shall determine and calculate the effective date of cancellation from the day it receives the copy of the notice of cancellation from the premium finance company.

(e)~~(6)~~ Whenever an insurance contract is canceled in accordance with this section, the insurer shall promptly return the unpaid balance due under the finance contract, up to the gross amount available upon the cancellation of the policy, to the premium finance company and any remaining unearned premium to the agent or the insured, or both, for the benefit of the insured or insureds.

(f) If an insurance contract is canceled by an insurer upon the receipt of a copy of the cancellation notice from a premium finance company, and if such premium finance company has failed to provide the notice required by this subsection, the insured shall have a cause of action against the premium finance company for damages caused by such failure to provide notice.

(2) Any court of this state rendering or affirming a judgment or decree against a premium finance company and in favor of any named or omnibus insured or beneficiary arising out of a wrongful or improper cancellation of an insurance policy by such premium finance company shall award reasonable attorney's fees to the insured or beneficiary.

Section 6. Section 628.531, Florida Statutes, is created to read:

628.531 Conversion of group self-insurer's fund.—

(1) A group self-insurer's fund established pursuant to s. 440.57 may become a domestic mutual insurer under a plan and procedure that are approved by the department.

(2) The department may approve any plan or procedure that:

(a) Is equitable to the group self-insurer's fund members;

(b) Satisfies requirements imposed as to the formation of domestic mutual insurers; and

(c) Provides that the group self-insurer's fund will satisfy its existing contractual obligations to pay dividends.

Section 7. Subsection (3) of section 631.713, Florida Statutes, is amended to read:

631.713 Application of part.—

(3) This part shall not apply to:

(a) That portion or part of a variable life insurance contract or variable annuity contract not guaranteed by an insurer.

(b) That portion or part of any policy or contract under which the risk is borne by the policyholder.

(c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(d) Fraternal benefit societies as defined in s. 632.601.

(e) Health maintenance insurance.

(f) Dental service plan insurance.

(g) Pharmaceutical service plan insurance.

(h) Optometric service plan insurance.

(i) Ambulance service association insurance.

(j) Preneed funeral merchandise or service contract insurance.

(k) Prepaid health clinic insurance.

(l) Any annuity contract or group annuity contract *that* ~~which~~ is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such *a* contract or certificate.

(m) Any policy or contract to the effect that the assessments imposed by s. 631.718 with respect to such policy or contract are preempted by state or federal law.

Section 8. Subsection (6) of section 631.717, Florida Statutes, 1992 Supplement, is amended to read:

631.717 Powers and duties of the association.—

(6) The association may assist and advise the department, upon its request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer. The association may also assist and advise departments of insurance of other states; other guaranty associations; and conservators, rehabilitators, and receivers appointed or acting in regard to any member insured wherever located, for the purpose of developing plans to coordinate protection of policyholders. Costs of such activities may be charged against *the annuities account, the* health insurance account, or the life insurance account, created by s. 631.715, at the discretion of the board of directors, notwithstanding any other provision of this part.

Section 9. Section 631.718, Florida Statutes, 1992 Supplement, is amended to read:

631.718 Assessments.—

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers separately, for each of the accounts referred to in s. 631.715 at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after written notice to the member insurers.

(2) There shall be two classes of assessments, as follows:

(a) Class A assessments shall be made by the board of directors for the purpose of meeting administrative costs and other general expenses and for examinations conducted under the authority of s. 631.723(3) which are not related to a particular impaired or insolvent insurer.

(b) Class B assessments shall be made by the board of directors for the purpose of carrying out the powers and duties of the association under s. 631.717 relating to an impaired or insolvent domestic, foreign, or alien insurer.

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a non-pro rata basis. Such assessment shall not be credited against future insolvency assessments and shall not exceed $250 per member insurer in any one calendar year.

(b) The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer.

~~(c) Class B assessments against foreign or alien insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bear to such premiums received on business in this state for the calendar year preceding the assessment by all assessed member insurers.~~

(c)~~(d)~~ Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the 3 most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers. *If 3 years of data are not available, the directors may use such data as is reasonably available.*

(d)~~(e)~~ Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this part.

(e)~~(f)~~ Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(5) The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 1 percent of such insurer's premiums written in this state during the *3* calendar *years* ~~year~~ preceding the *year in which the association became obligated in accordance with s. 631.717* ~~assessment on the policies covered by the account~~. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this part. *If 3 years of data are not available, the directors may use such data as is reasonably available. In order to achieve coordination of the assessment process, it is the intent of the Legislature that the assessment provisions of this act shall apply to all existing and future insolvencies and impairments.*

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to an account, the amount by which the assets of such account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(8) The association shall issue to each insurer paying an assessment under this part, other than a Class A assessment, a certificate of contribution, in a form prescribed by the department, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the department may approve. However, any amount offset pursuant to s. 631.719 shall not be shown as an asset of the insurer on any of its financial statements.

(9) Notwithstanding any provision to the contrary, no member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35 to or for the benefit of employees of educational institutions situated in this state may be assessed in any one calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate income tax on the business to which this part applies or 0.1 percent of written premium on such business in this state, whichever is greater.

Section 10. Subsection (1) of section 284.33, Florida Statutes, is amended to read:

284.33 Purchase of insurance, reinsurance, and services.—

(1) The Department of Insurance is authorized to provide insurance, specific excess insurance, and aggregate excess insurance through the Division of Purchasing, pursuant to the provisions of part I of chapter 287, as necessary to provide insurance coverages authorized by this part, consistent with market availability. *The department may purchase services from a managed care organization for the purpose of providing medical care to injured state workers who are provided workers' compensation coverage under this part. In this case, the employing state agency shall refer its injured workers to the managed care organization and shall otherwise follow all procedures set out by that organization and the department for the medical treatment of the injured worker.* The Department of Insurance is further authorized to purchase such risk management services, including, but not limited to, risk and claims control; safety management; and legal, investigative, and adjustment services, as may be required and pay claims. The department may contract with a service organization for such services and advance money to such service organization for deposit in a special checking account for paying claims made against the state under the provisions of this part. The special checking account shall be maintained in this state in a bank or savings association organized under the laws of this state or of the United States. The department may replenish such account as often as necessary upon the presentation by the service organization of documentation for payments of claims equal to the amount of the requested reimbursement.

Section 11. Section 626.7455, Florida Statutes, is created to read:

626.7455 Managing general agents; minimum standards for claims handling during an emergency.—The department shall adopt rules that provide minimum standards of conduct for managing general agents with respect to the handling of claims arising as the result of an emergency declared by the Governor pursuant to law. In establishing the standards, the department shall consider necessary provisions to protect the public health, safety, and welfare or to protect insureds from fraud, abuse, misrepresentation, and excessive charges or claims adjustment periods, and other factors necessary to protect the interests of the insurance-buying public.

Section 12. Effective upon this act becoming a law, subsections (2) and (6) of section 627.351, Florida Statutes, 1992 Supplement, as amended by section 3 of chapter 92-345, Laws of Florida, paragraph (f) of subsection (4) of that section, as amended by section 18 of chapter 92-179, Laws of Florida, and subsection (5) of that section, are amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(a) Agreements may be made among property insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but are unable to procure, such insurance through ordinary methods; and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the applicable provisions of this chapter.

(b) The department shall require all insurers licensed to transact property insurance on a direct basis in this state to provide windstorm coverage to applicants *from areas determined to be eligible pursuant to paragraph (c)* who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage. The commissioner shall promulgate rules which provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties.

2. All insurers required to be members of such plan shall participate in its writings, expenses, profits, and losses. Such gross participation shall be in the proportion that the net direct premiums of each member written on property in this state during the preceding calendar year bears to the aggregate net direct premiums of all members of the plan written on property in this state during the preceding calendar year. The commissioner, after review of annual statements, other reports, and any other statistics which he deems necessary, shall certify to the plan the aggregate net direct premiums written on property in this state by all members. The plan of operation shall provide that one additional domestic member of the board of directors be elected by the domestic companies of this state on the basis of cumulative weighted voting based on the net written premiums of domestic companies in this state. Any such plan shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment. A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

3. The plan shall also provide that any member with a surplus as to policyholders of $20,000,000 or less writing 25 percent of its total countrywide property insurance premiums in this state may petition the department, within 90 days of the effective date of chapter 76-96, Laws of Florida, and thereafter within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses in the aggregate which exceeds $50,000,000 after payment of available plan funds in any calendar year. The plan shall provide that, if the department determines that any assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger or impair the solvency of the member insurer. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in subparagraph 2.

5. The plan may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

6. The plan may write excess reinsurance on a per risk basis subject to rates and coverage being approved by the board and the department.

~~7.~~6. The plan may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, or a nonprofit mutual company which may be empowered, among other things, to borrow money and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, Laws of Florida, and as subsequently modified consistent with chapter 76-96, Laws of Florida. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96, Laws of Florida, shall be construed to be the assets and obligations of the successor plan created herein.

~~8.~~7. On such coverage, an agent's remuneration shall be that amount of money payable to him by the terms of his contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

9. The plan is subject to the mandatory offer requirements of s. 627.7015.

(c) The provisions of paragraph (b) are applicable only with respect to:

1. Those areas of Broward County and Dade County located east of Interstate Highway 95, or, for areas south of the southernmost point of Interstate Highway 95, east of U.S. Highway 1; or

2. Any county or area which the department has heretofore designated or as to which the department, after public hearing, finds that the following criteria exist:

a. Due to the lack of windstorm insurance coverage in the county or area so affected, economic growth and development is being deterred or otherwise stifled in such county or area, mortgages are in default, and financial institutions are unable to make loans;

b. The county or area so affected has adopted and is enforcing the structural requirements of the Southern Standard Building Code, or its equivalent, for new construction and has included adequate minimum floor elevation requirements for structures in areas subject to inundation; and

c. Extending windstorm insurance coverage to such county or area is consistent with and will implement and further the policies and objectives set forth in applicable state laws, rules, and regulations governing coastal management, coastal construction, comprehensive planning, beach and shore preservation, barrier island preservation, coastal zone protection, and the Coastal Zone Protection Act of 1985.

Any time after the department has determined that the criteria referred to in this subparagraph do not exist with respect to any county or area of the state, it may, after a subsequent public hearing, declare that such county or area is no longer eligible for windstorm coverage through the plan.

(d) The windstorm board shall monitor and report its exposure to the board of the Florida Hurricane Catastrophe Fund. The windstorm board shall make a reasonable effort to cover its risk exposure by purchasing reinsurance.

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(f) The plan shall provide for one or more insurers *or non-insurers* able and willing to provide policy service through licensed resident agents and claims service on behalf of all other insurers participating in the plan. In the event no insurer is able and willing to provide such services, the Joint Underwriting Association is authorized to perform any and all such services.

(5) PROPERTY AND CASUALTY INSURANCE RISK APPORTIONMENT.—The department shall adopt by rule a joint underwriting plan to equitably apportion among insurers authorized in this state to write property insurance as defined in s. 624.604 or casualty insurance as defined in s. 624.605, the underwriting of one or more classes of property insurance or casualty insurance, except for the types of insurance that are included within property insurance or casualty insurance for which an equitable apportionment plan, assigned risk plan, or joint underwriting plan is authorized under s. 627.311 or subsections (1), (2), (3), or (4) of this section and except for risks eligible for flood insurance written through the federal flood insurance program to persons with risks eligible under subparagraph (a)1. and who are in good faith entitled to, but are unable to, obtain such property or casualty insurance coverage, including excess coverage, through the voluntary market. For purposes of this subsection, an adequate level of coverage means that coverage which is required by state law or by responsible or prudent business practices. The Joint Underwriting Association shall not be required to provide coverage for any type of risk for which there are no insurers providing similar coverage in this state. The department may designate one or more ~~participating~~ insurers *or non-insurers* who agree to provide policyholder and claims service, including the issuance of policies, on behalf of the participating insurers.

(a) The plan shall provide:

1. A means of establishing eligibility of a risk for obtaining insurance through the plan, which provides that:

a. A risk shall be eligible for such property insurance or casualty insurance as is required by Florida law if the insurance is unavailable in the voluntary market, including the market assistance program and the surplus lines market.

b. A commercial risk not eligible under sub-subparagraph a. shall be eligible for property or casualty insurance if:

(I) The insurance is unavailable in the voluntary market, including the market assistance plan and the surplus lines market;

(II) Failure to secure the insurance would substantially impair the ability of the entity to conduct its affairs; and

(III) The risk is not determined by the Risk Underwriting Committee to be uninsurable.

c. In the event the Federal Government terminates the Federal Crime Insurance Program established under Title 44, Code of Federal Regulations, ss. 80-83, Florida commercial and residential risks previously insured under the federal program shall be eligible under the plan.

d. In the event a risk is eligible under this paragraph and in the event the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less, for a given class of risk contained in the classification system defined in the plan of operation of the Joint Underwriting Association, and unless the market assistance plan provides a quotation for at least 80 percent of such applicants, such classification shall immediately be eligible for coverage in the Joint Underwriting Association. Provided, however, any market assistance plan application which is rejected because an individual risk is so hazardous as to be practically uninsurable, considering whether the likelihood of a loss for such a risk is substantially higher than for other risks of the same class due to individual risk characteristics, prior loss experience, unwillingness to cooperate with a prior insurer, physical characteristics and physical location shall not be included in the minimum percentage calculation provided above. In the event that there is any legal or administrative challenge to a determination by the department that the conditions of this subparagraph have been met for eligibility for coverage in the Joint Underwriting Association for a given classification, any eligible risk may obtain coverage during the pendency of any such challenge. In order to qualify as a quotation for the purpose of meeting the minimum percentage calculation in this subparagraph, the quoted premium must meet the following criteria:

(I) In the case of an admitted carrier, the quoted premium must not exceed the premium available for a given classification currently in use by the Joint Underwriting Association or the premium developed by using the rates and rating plans on file with the department by the quoting insurer, whichever is greater.

(II) In the case of an authorized surplus lines insurer, the quoted premium must not exceed the premium available for a given classification currently in use by the Joint Underwriting Association by more than 25 percent, after consideration of any individual risk surcharge or credit.

e. Any agent who falsely certifies the unavailability of coverage as provided by sub-subparagraphs a. and b., is subject to the penalties provided in s. 626.611.

2. A means for the equitable apportionment of profits or losses and expenses among participating insurers.

3. Rules for the classification of risks and rates which reflect the past and prospective loss experience.

4. A rating plan which reasonably reflects the prior claims experience of the insureds. Such rating plan shall include at least two levels of rates for risks that have favorable loss experience and risks that have unfavorable loss experience, as established by the plan.

5. Reasonable limits to available amounts of insurance. Such limits may not be less than the amounts of insurance required of eligible risks by Florida law.

6. Risk management requirements for insurance where such requirements are reasonable and are expected to reduce losses.

7. Deductibles as may be necessary to meet the needs of insureds.

8. Policy forms which are consistent with the forms in use by the majority of the insurers providing coverage in the voluntary market for the coverage requested by the applicant.

9. A means to remove risks from the plan once such risks no longer meet the eligibility requirements of this paragraph. For this purpose, the plan shall include the following requirements: At each 6-month interval after the activation of any class of insureds, the board of governors or its designated committee shall review the number of applications to the market assistance plan for that class. If, based on these latest numbers, at least 90 percent of such applications have been provided a quotation, the Joint Underwriting Association shall cease underwriting new applications for such class within 30 days, and notification of this decision shall be sent to the Insurance Commissioner, the major agents' associations, and the board of directors of the market assistance plan. A quotation for the purpose of this subparagraph shall meet the same criteria for a quotation as provided in sub-subparagraph d. All policies which were previously written for that class shall continue in force until their normal expiration date, at which time, subject to the required timely notification of nonrenewal by the Joint Underwriting Association, the insured may then elect to reapply to the Joint Underwriting Association according to the requirements of eligibility. If, upon reapplication, those previously insured Joint Underwriting Association risks meet the eligibility requirements, the Joint Underwriting Association shall provide the coverage requested.

10. A means for providing credits to insurers against any deficit assessment levied pursuant to paragraph (c), for risks voluntarily written through the market assistance plan by such insurers.

11. That the Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of 13 individuals appointed by the Insurance Commissioner, and shall have an executive or underwriting committee. At least four of the members shall be representatives of insurance trade associations as follows: one member from the American Insurance Association, one member from the Alliance of American Insurers, one member from the National Association of Independent Insurers, and one member from an unaffiliated insurer writing coverage on a national basis. Two representatives shall be from two of the statewide agents' associations. Each board member shall be appointed to serve for 2-year terms beginning on a date designated by the plan and shall serve at the pleasure of the commissioner. Members may be reappointed for subsequent terms.

(b) Rates used by the Joint Underwriting Association shall be actuarially sound. To the extent applicable, the rate standards set forth in s. 627.062 shall be considered by the department in establishing rates to be used by the joint underwriting plan. The initial rate level shall be determined using the rates, rules, rating plans, and classifications contained in the most current Insurance Services Office (ISO) filing with the department or the filing of other licensed rating organizations with an additional increment of 25 percent of premium. For any type of coverage or classification which lends itself to manual rating for which Insurance Services Office or another licensed rating organization does not file or publish a rate, the Joint Underwriting Association shall file and use an initial rate based on the average current market rate. The initial rate level for the rate plan shall also be subject to an experience and schedule rating plan which may produce a maximum of 25 percent debits or credits. For any risk which does not lend itself to manual rating and for which no rate has been promulgated under the rate plan, the board shall develop and file with the commissioner, subject to his approval, appropriate criteria and factors for rating the individual risk. Such criteria and factors shall include, but not be limited to, loss rating plans, composite rating plans, and unique and unusual risk rating plans. The initial rates required under this paragraph shall be adjusted in conformity with future filings by the Insurance Services Office with the department and shall remain in effect until such time as the Joint Underwriting Association has sufficient data as to independently justify an actuarially sound change in such rates.

(c)1. In the event an underwriting deficit exists for any policy year the plan is in effect, any surplus which has accrued from previous years and is not projected within reasonable actuarial certainty to be needed for payment for claims in the year the surplus arose shall be used to offset the deficit to the extent available.

2. As to any remaining deficit, the Board of Governors of the Joint Underwriting Association shall levy and collect an assessment in an amount sufficient to offset such deficit. Such assessment shall be levied against the insurers participating in the plan during the year giving rise to the assessment. Any assessments against insurers for the lines of property and casualty insurance issued to commercial risks shall be recovered from the participating insurers in the proportion that the net direct premium of each insurer for commercial risks written during the preceding calendar year bears to the aggregate net direct premium written for commercial risks by all members of the plan for the lines of insurance included in the plan. Any assessments against insurers for the lines of property and casualty insurance issued to personal risks eligible under sub-subparagraph (a)1.a. or sub-subparagraph (a)1.c. shall be recovered from the participating insurers in the proportion that the net direct premium of each insurer for personal risks written during the preceding calendar year bears to the aggregate net direct premium written for personal risks by all members of the plan for the lines of insurance included in the plan.

3. The board shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each participating insurer and policyholder, including, if prudent, filing suit to collect such assessment. If the board is unable to collect an assessment from any insurer, the uncollected assessments shall be levied as an additional assessment against the participating insurers and any participating insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying insurer.

4. Any funds or entitlements that the state may be eligible to receive by virtue of the Federal Government's termination of the Federal Crime Insurance Program referenced in sub-subparagraph (a)1.c. may be used under the plan to offset any subsequent underwriting deficits that may occur from risks previously insured with the Federal Crime Insurance Program.

(d) Upon adoption of the plan, all insurers authorized in this state to underwrite property or casualty insurance shall participate in the plan.

(e) A Risk Underwriting Committee of the Joint Underwriting Association composed of three members experienced in evaluating insurance risks is created to review risks rejected by the voluntary market for which application is made for insurance through the joint underwriting plan. The committee shall consist of a representative of the market assistance plan created under s. 627.3515, a member selected by the insurers participating in the Joint Underwriting Association, and a member named by the Insurance Commissioner. The Risk Underwriting Committee shall appoint such advisory committees as are provided for in the plan and are necessary to conduct its functions. The salaries and expenses of the members of the Risk Underwriting Committee and its advisory committees shall be paid by the joint underwriting plan. The plan approved by the department shall establish criteria and procedures for use by the Risk Underwriting Committee for determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

1. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

2. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the underwriting committee shall be construed as the private placement of insurance and the provisions of chapter 120 shall not apply.

(6) RESIDENTIAL PROPERTY AND CASUALTY JOINT UNDERWRITING ASSOCIATION.—

(a) There is created a joint underwriting association for equitable apportionment or sharing among insurers of property and casualty insurance covering residential property, for applicants who are in good faith entitled, but are unable, to procure insurance through the admitted voluntary market. The association shall operate pursuant to a plan of operation approved by order of the department. The association shall submit a proposed plan of operation to the department no later than January 15, 1993. The plan is subject to continuous review by the department. The department may withdraw approval of all or part of a plan if the department determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan.

(b) All insurers authorized to write such insurance in this state must participate in and be members of the Residential Property and Casualty Joint Underwriting Association. Each member's portion of losses and expenses incurred must be in the proportion that the direct premiums of the member written on residential property in this state during the preceding calendar year bears to the aggregate direct premiums of all members of the association written on residential property in this state during the preceding calendar year. After review of annual statements, other reports, and any other statistics that it deems necessary, the department must certify to the association the aggregate direct premiums written on residential property in this state by all members. *An insurer may petition the department for designation as a limited apportionment company pursuant to the criteria and procedures specified in subparagraph (2)(b)3.; an insurer so designated as a limited apportionment company shall not be required to participate in any apportionment of losses that, in the aggregate, exceeds $50 million after payment of available plan funds in any calendar year.*

(c) The plan of operation of the association:

1. May provide for one or more designated insurers, able and willing to provide policy and claims service, to act on behalf of the association to provide such service. If more than one insurer is designated, each licensed agent shall be entitled to select the insurer who will service the business placed by the agent. *However, the Board shall have the authority to provide for an equitable distribution of agents among servicing carriers.*

2. Must require that an agent be appointed by a property insurer in addition to being appointed by the association.

3. Must provide authority for the association to adopt reasonable rules governing its contracts with agents.

~~4.~~2. Must provide for adoption of residential property and casualty insurance policy forms, which forms must be approved by the department prior to use. For the purpose of this section, residential property and casualty insurance includes:

a. As to homeowners' insurance, a policy that provides coverage for accidental loss or damage to a structure with losses to be adjusted on the basis of costs of repair or replacement not to exceed a stated amount, with liability coverage up to ~~$100,000 per claim and~~ $300,000 per occurrence, and with coverages for personal property and contents as are customarily provided without additional premium charge in connection with such policy forms; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry *except that coverage for additional living expenses shall be limited to no more than 15 percent of the insured value of the dwelling.*

b. As to mobile homeowners' insurance, a policy that provides coverage for accidental loss or damage to a structure consistent with s. 627.702, with liability coverage in amounts up to ~~$100,000 per claim and~~ $300,000 per occurrence, and with coverages for personal property and contents as are customarily provided without additional premium charge in connection with such policy forms. Other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry *except that coverage for additional living expenses shall be limited to no more than 15 percent of the insured value of the dwelling.*

c. As to condominium unit owners' insurance, coverage for accidental loss or damage to portions of the structure and fixtures of the unit owner that are not the responsibility of the condominium association as provided by Florida law, with losses to be adjusted on the basis of costs of repair or replacement not to exceed stated amounts; coverage for personal property and contents as is normally included in such policy forms without additional premium charge; and liability coverages not to exceed limits of ~~$100,000 per claim and~~ $300,000 aggregate per occurrence; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry *except that coverage for additional living expenses shall be limited to no more than 15 percent of the insured value of the dwelling.*

d. As to rental dwelling insurance, coverage for accidental loss or damage to a structure with coverage to be based on costs of repair or replacement not to exceed a stated amount, and with liability coverage in amounts up to ~~$100,000 per claim and~~ $300,000 per occurrence; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry.

e. As to tenants' insurance, coverage for accidental loss or damage to betterments and improvements in the rented dwelling unit, with losses to be adjusted on the basis of costs of repair or replacement not to exceed stated amounts; coverage for personal property and contents in such limits as may be selected by the board; and liability coverages in amounts up to ~~$100,000 per claim and~~ $300,000 per occurrence; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry.

Any policy under this subparagraph must provide deductibles for residential property and casualty insurance in a minimum of $500 per occurrence, or such higher limits as may be selected by the insured. Policies issued under this subparagraph *are subject to the mandatory offer requirements of s. 627.7015* ~~shall not cover loss or damage caused by the enforcement of any ordinance or law regulating the construction, use, or repair of any property, or requiring the tearing down of any property,~~

~~including the cost of removing its debris~~. *Any policy under this subparagraph must exclude coverage for the peril of windstorm if the policy covers property that is eligible for coverage under the windstorm risk apportionment plan pursuant to subsection (2). The board may establish reasonable policy limits, subject to the approval of the department.*

~~5.~~3. May provide that the association may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan, and shall have the power to borrow funds and other powers reasonably necessary to effectuate the requirements of this subsection.

~~6.~~4. Must require that the association operate subject to the supervision and approval of a board of governors consisting of *13* ~~11~~ individuals, including one who is elected as chairman. The board shall consist of the insurance consumer advocate appointed under s. 627.0613, *six* ~~five~~ members designated by the insurance industry, one consumer representative appointed by the Insurance Commissioner, and *five* ~~four~~ representatives of the insurance industry appointed by the Insurance Commissioner. Of the *five* ~~four~~ insurance industry representatives appointed by the Insurance Commissioner, at least two must be individuals who are minority persons as defined in s. 288.703(3) *and at least one must be a representative of an insurance agents' association*. Any board member may be disapproved or removed and replaced by the commissioner at any time ~~for cause~~. All board members, including the chairman, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. *With respect to appointments made after July 1, 1993, the six members designated by the insurance industry shall be selected as follows:*

a. One member shall be the insurer with the largest volume of premium writings for residential property insurance in this state in the year preceding designation.

b. One member shall be the insurer with the second largest volume of premium writings for residential property insurance in this state in the year preceding designation.

c. One member shall be a domestic insurer writing residential property insurance in this state, selected by all such insurers in an election process specified in the plan under which each such insurer has one vote.

d. Two members shall be insurers writing residential property insurance in this state, selected by all such insurers in an election process specified in the plan under which each such insurer has one vote.

e. One member shall be a representative of insurance agents selected by all statewide associations of insurance agents in an election process specified in the plan under which each such association has one vote.

~~7.~~5. Must provide that a risk is eligible to be insured under the plan only after coverage is activated pursuant to paragraph (e) and an attempt has been made to place the risk with an admitted insurer through the market assistance plan under s. 627.3515, which attempt was not successful, and only if the risk is determined to be insurable by the risk underwriting committee. A risk shall cease to be eligible if it receives a premium quotation from an admitted carrier at that carrier's filed rate. *The requirement that an attempt be made to place the risk through the market assistance plan applies only after coverage through the association is deactivated under paragraph (f) and subsequently reactivated under paragraph (e).*

~~8.~~6. Must include rules for classifications of risks and rates therefor.

~~9.~~7. Must provide that if premium and investment income attributable to a particular plan year are in excess of projected losses and expenses of the plan attributable to that year, such excess shall be held in surplus. Such surplus shall be available to defray deficits as to future years and shall be used for that purpose prior to assessing member insurers as to any plan year.

10.~~8.~~ *Must specify reasonable underwriting criteria to be applied for all applicants in accepting or rejecting risks. A risk may be rejected only if it is, pursuant to such criteria, determined to be so hazardous as to be uninsurable.* ~~Must provide for a Risk Underwriting Committee of the association composed of three members experienced in evaluating insurance risks, to review and determine insurability of risks rejected by the voluntary market for which application is made for insurance through the association. The committee shall consist of a representative of the market assistance plan created under s. 627.3515 and two members named by the board. The Risk Underwriting Committee shall appoint such advisory committees as are provided for in the plan and are necessary to conduct its functions. The salaries and expenses of the members of the Risk Underwriting Committee and its advisory committees shall be paid by the association. The plan approved by the department shall establish objective criteria and procedures for use by the Risk Underwriting Committee to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable.~~ In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the *joint* underwriting *association* ~~committee~~ shall be construed as the private placement of insurance and the provisions of chapter 120 shall not apply.

11. The board may consider a noninsurance company as a servicing carrier.

(d)1. Rates of the plan *should be developed using average loss costs and geographical territories used by the largest rating advisory organization compiling such insurance data for the state, until such time as actuarially credible data is available from the plan. Rates shall also include* ~~shall be based on average loss costs of the five largest residential insurers, by premium volume in this state, plus~~ appropriate factors for catastrophe loading, projected expenses of the plan, and a 25-percent increment for presumed adverse selection. *The plan may also provide for discounts and surcharges as would be considered standard within the insurance industry, as determined by the board to be appropriate and as approved by the department.*

2. No later than 9 months after the end of each calendar year, the board must review and file with the department the loss and expense experience of the association. Such filing shall include a rate filing based on the loss and expense experience and other relevant factors if the board determines that such a filing is appropriate. Any such rate filing shall contain sufficient detail to enable the department to determine that the proposed rates are not inadequate, excessive, or unfairly discriminatory pursuant to the standards provided herein and in s. 627.062.

(e) Coverage through the association is hereby activated effective upon approval of the plan, and shall remain activated until coverage is deactivated pursuant to paragraph (f). Thereafter, coverage through the association shall be reactivated by order of the department only under one of the following circumstances:

1. If the Market Assistance Plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the Market Assistance Plan provides a quotation from admitted carriers at their filed rates for at least 90 percent of such applicants. Any Market Assistance Plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the department that the conditions of this subparagraph have been met for eligibility for coverage in the association, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the department may activate coverage by order for the period of the emergency upon a finding by the department that the emergency significantly affects the availability of residential property insurance.

(f) The activities of the association shall be reviewed at least annually by the board and, upon recommendation by the board or petition of any interested party, coverage shall be deactivated if the department finds that the conditions giving rise to its activation no longer exist.

(g) The board shall certify to the department its needs for annual assessments as to a particular calendar year, and any startup or interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. After the department approves such certification, the board shall levy such annual, startup, or interim assessments. Such assessments shall be prorated as

provided in paragraph (b). The board shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each participating insurer, including, if prudent, filing suit to collect such assessment. If the board is unable to collect an assessment from any insurer, the uncollected assessments shall be levied as an additional assessment against the participating insurers and any participating insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying insurer.

(h) Nothing in this subsection shall be construed to preclude the issuance of residential property insurance coverage pursuant to part VIII of chapter 626.

(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, the Residential Property and Casualty Joint Underwriting Association or its agents or employees, members of the board of governors, or the department or its representatives for any action taken by them in the performance of their duties under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any other willful tort.

(j) The Residential Property and Casualty Joint Underwriting Association is not a state agency, board, or commission. However, for the purposes of s. 199.183(1), the Residential Property and Casualty Joint Underwriting Association shall be considered a political subdivision of the state and shall be exempt from the corporate income tax and the insurance premium tax.

(k) The Residential Property and Casualty Joint Underwriting Association is subject to any assessment levied under s. 631.57 to retire bonds issued as a result of Hurricane Andrew under the authority of chapter 92-345, Laws of Florida.

(l) The Residential Property and Casualty Joint Underwriting Association board shall monitor and report its exposure to the board of the Florida Hurricane Catastrophe Insurance Fund.

(m) The Residential Property and Casualty Joint Underwriting Association board shall make reasonable effort to obtain reinsurance to cover its risk exposure.

Section 13. Section 627.7015, Florida Statutes, is created to read:

627.7015 Homeowner's policies; offer of replacement cost coverage and law and ordinance coverage.—

(1) Prior to issuing or the initial renewal of a homeowner's insurance policy, or issuance of coverage under the windstorm pool or the Florida Hurricane Catastrophe Fund, on or after the effective date of this act, the insurer must offer each of the following:

(a) A policy or endorsement providing that any loss will be adjusted on the basis of replacement cost not exceeding policy limits as to the dwelling, rather than actual cash value, but not including costs necessary to meet applicable laws regulating the construction, use, or repair of any property or requiring the tearing down of any property including the costs of removing its debris.

(b) A policy or endorsement providing that, subject to other policy provisions, any loss will be adjusted on the basis of replacement cost not exceeding policy limits as to the dwelling, rather than actual cash value, and also including costs necessary to meet applicable laws regulating the construction, use, or repair of any property or requiring the tearing down of any property including the costs of removing its debris; however, such additional costs necessary to meet applicable law shall be limited to 25 percent of the dwelling limit, and such coverage shall only apply to repairs of the damaged portion of property unless the total damage to the structure exceeds fifty percent of the replacement cost of the dwelling.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b). This subsection does not prohibit the offer of a guaranteed replacement cost policy.

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the coverage specified in paragraph (1)(b). The rejection or selection of alternative coverage shall be made on a form approved by the department. The form which shall be approved by the department prior to May 1, 1993, shall fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. After the initial renewal, unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, extends, changes, supersedes, or replaces an existing policy when the policyholder has rejected the coverage specified in this section or has selected alternative coverage.

(3) Nothing in this section shall be construed to apply to policies not considered to be "homeowners' policies" as that term is commonly understood in the insurance industry. This section specifically does not apply to mobile home policies or HO8 policy forms approved by the department. Nothing in this section shall be construed as limiting the ability of any insurer to reject or nonrenew any insured or applicant on the grounds that the structure does not meet underwriting criteria applicable to replacement cost policies or for other lawful reasons.

Section 14. Section 627.7017, Florida Statutes, is created to read:

627.7017 Payment of property insurance claims and settlements; verification of contractors' status required.—An insurer may not disburse funds solely to a contractor performing work, in payment of property insurance claims or settlements relating to repairs or reconstruction of damaged property, which disbursement exceeds $1,000, until it verifies that the contractor in charge of performing work to be paid for out of such funds is currently licensed to perform such work pursuant to part I or part II of chapter 489. The department shall adopt rules specifying the form for the verification.

Section 15. Section 627.7019, Florida Statutes, is created to read:

627.7019 Availability of coverage for exterior paint.—Each insurer must, in connection with the issuance or renewal of a policy of property insurance covering a commercial structure, make available at an appropriate premium an endorsement providing replacement cost coverage for accidental loss to the exterior paint of the structure. The endorsement may, at the option of the insurer, exclude coverage when other insured loss to the structure is less than 10 percent of the policy limits.

Section 16. Section 627.707, Florida Statutes, 1992 Supplement, is amended to read:

627.707 Minimum standards for investigation of sinkhole claims by insurers.—

(1) Upon receipt of a claim for a sinkhole loss, an insurer must meet the following minimum standards in investigating a claim:

(a)~~(1)~~ Upon receipt of a claim for a sinkhole loss, the insurer must make an inspection of the insured's premises to determine if there has been physical damage to the structure which might be the result of sinkhole activity.

(b)~~(2)~~ If, upon the investigation pursuant to *paragraph (a)* ~~subsection (1)~~, the insurer discovers damage to a structure which is consistent with sinkhole activity or if the structure is located in close proximity to a structure in which sinkhole damage has been verified, then prior to denying a claim, the insurer must obtain a written certification from an individual qualified to determine the existence of sinkhole activity, stating that the cause of the claim is not sinkhole activity, and that the analysis conducted was of sufficient scope to eliminate sinkhole activity as the cause of damage within a reasonable professional probability. The written certification must also specify the professional discipline and professional licensure or registration under which the analysis was conducted. Effective July 1, 1993, this section is repealed.

(2) No insurer shall nonrenew any policy of property insurance on the basis of filing of claims for partial loss caused by sinkhole damage or clay shrinkage as long as the total of such payments does not exceed the current policy limits of coverage for property damage, and provided the insured has repaired the structure in accordance with the engineering recommendations upon which any payment or policy proceeds was based.

Section 17. Effective upon this act becoming a law, paragraph (a) of subsection (1) of section 631.57, Florida Statutes, as amended by section 5 of chapter 92-345, Laws of Florida, is amended and a new paragraph (c) is added to that section to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only that amount of each covered claim which is in excess of $100 and is less than $300,000, except that:

a. The association shall pay the full amount of any covered claim arising out of a workers' compensation policy.

b. With respect to policies covering condominium associations, *or homeowner's associations, which associations have a responsibility to provide insurance coverage on residential units within the association,* the obligation shall include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units *or other residential units; however, this subsubparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.* ~~This subsubparagraph is repealed upon the adjournment sine die of the 1993 Regular Session of the Legislature.~~

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

The foregoing notwithstanding, the association shall have no obligation to pay covered claims to be paid from the proceeds of bonds issued under s. 166.111(2). However, the association shall cause assessments to be made under s. 631.57(3)(e) for such covered claims, and such assessments shall be assigned and pledged under s. 631.57(3)(e) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

Section 18. Section 627.3517, Florida Statutes, is created to read:

627.3517 Florida hurricane catastrophe fund.—

(1) SHORT TITLE.—This section may be cited as the Florida Hurricane Catastrophe Fund Act.

(2) PURPOSE AND INTENT.—The Legislature finds that the Florida Hurricane Catastrophe Fund is necessary for the economic welfare of the state and to provide a mechanism for compensating hurricane losses and catastrophic losses and to protect the economic growth and development of this state. The Legislature further finds that the establishment of the fund is necessary to address the actual and potential losses caused by hurricanes, which cause great personal suffering and hardship. The Legislature further finds that establishment of the fund is necessary to promote the general welfare of, maintain order within, and insure the domestic tranquility of the state, and that it is in the interest of the State of Florida to foster stability for persons adversely affected by hurricanes. It is further the intent of the Legislature that the fund work in furtherance of the goals of any federal natural disaster insurance and reinsurance program that may be established. The Legislature further finds that the fund may need revisions prior to its implementation to achieve the most public benefit and that such revisions deserve adequate study.

(3) Definitions.—As used in this section:

(a) "Commissioner" means the State Treasurer and Insurance Commissioner.

(b) "Fund" means the Florida Hurricane Catastrophe Fund.

(c) "Covered event" means a hurricane of class 4 or 5 that causes windstorm damage to eligible property in the state and the damage arising after the issuance of a hurricane watch by the National Hurricane Center and occurring within 72 hours of the downgrading of the hurricane to non-hurricane status by the National Hurricane Center.

(d) "Eligible property" means any property insured under a policy of homeowner's insurance, farm owner's insurance, mobile homeowner's insurance, fire insurance, or commercial property insurance.

(e) "Hurricane" means a windstorm that has been declared and defined by the National Hurricane Center to be a hurricane.

(f) "Plan of operation" means the plan for providing hurricane catastrophe compensation as adopted by the board of the fund.

(g) "Property insurance" means policies, riders, or endorsements of insurance that provide indemnity, in whole or in part, for the loss, destruction, or damage of eligible property. It does not include any reinsurance assumed by an insurance company.

(h) "Servicing facility" means any insurer engaged in writing direct property insurance in this state, and includes any other party contracted with by the fund to act as a servicing facility. Servicing facility also means the Florida Windstorm Underwriting Association and the Florida Residential Property Casualty Joint Underwriting Association unless otherwise noted.

(i) "Actuarially sound rates or rate" means rates that are determined as otherwise provided by law and will provide an amount of after tax income each year equal to the average annual expected loss to eligible property as a consequence of covered events.

(4) ESTABLISHMENT.—

(a) Provided that appropriate administrative rules are adopted by the Department of Insurance there may be established not prior to April 30, 1994, the "Florida Hurricane Catastrophe Fund" as a trust fund for the benefit of property insurance policyholders and claimants in this state. The fund is a trust established by the state for the exclusive purpose of providing compensation for qualifying losses to eligible property of a covered event as provided in this section. In no event shall any servicing facility be liable in any manner for any amounts for which the fund is obligated under this act. Provided further, however, no such fund shall be established unless a separate trust fund for these purposes is authorized by further legislative enactment.

(b)1. The amount of compensation provided by the fund and servicing facilities is as follows:

Proportion of Coverage		*Period of Coverage*
Servicing Facility	Fund	
70 percent	30 percent	May 1, 1994-December 31, 1995
60 percent	40 percent	January 1, 1996-December 31, 1998
40 percent	60 percent	January 1, 1999 and thereafter

2. Each servicing facility shall charge an actuarially sound rate which shall include the hurricane loss exposure on all eligible property and shall transmit to the fund the amount collected therefrom that is equal to (i) such servicing facility's market share of property insurance based on direct written premiums for the prior year expressed as a fraction multiplied by (ii) (x) the applicable percentage obligation of the fund as outlined in (b) above of (y) the dollar amount determined by the department pursuant to this act. Premium collected and sent to the fund shall not be considered premium for any other purpose or included in gross premium tax, agents' commission or in calculating any assessments.

3. Each servicing facility must demonstrate, as part of its rate filing pursuant to s. 627.062, that the amount of premium that will be generated by its rate will be at least equal to the greater of:

a. An amount sufficient to cover such servicing facility's total hurricane exposure; or

b. The amount determined under subparagraph 2.

4. If the fund is unable to pay the fund's share of losses for damage to eligible property, it may borrow funds necessary to pay such losses:

a. From any market source of funds; and

b. From insurers engaged in writing property insurance in this state, who shall be obligated to lend such funds in an amount in proportion to each insurer's share of the market for eligible property not to exceed two

times such insurer's net direct written premiums for coverage for eligible property or 20 percent of the insurer's admitted assets whichever is less and the fund shall pay interest on such amounts borrowed at a rate equal to the 90-day rate on treasury bills on the date of the initial borrowing. Thereafter, the rate shall be adjusted quarterly on the same basis.

5. The fund will only pay for the actual damage incurred by the insured notwithstanding any provision of county, municipal, or other local government ordinance to the contrary except as provided in the policy or endorsement thereto as may be provided in s. 627.7015.

6. Compensation under the fund shall include claims for additional living expenses when appropriate. However, any claims for additional living expenses is limited to not more than 15 percent of the individual's covered claim against the fund.

7. Compensation under the fund does not include reimbursement to a servicing facility for loss adjustment expenses. However, such anticipated expenses from a covered event shall be allowed in rate filings made by servicing facilities.

(c) The fund shall be directed by a board and shall be administered for the good and welfare of the people of the state for the sole purpose of providing a mechanism by which insureds' valid claims are paid.

(d) The fund is established within the State Board of Administration solely for the purposes of this section. Fund assets are property of the State and are to be held by the State Board of Administration and the right to the use of the funds shall be considered vested in the claimants as provided in this section and in policies issued under this section. Except as otherwise provided, the fund shall be managed by a board of directors.

(5) BOARD OF DIRECTORS.—

(a) The board consists of nine members, each serving a three-year term of which the terms are staggered. On the initial board 3 members shall serve a one year term; 3 members shall serve a 2 year term; 3 members shall serve a three year term as determined by the chairman.

(b) The board shall be composed of the following, each of whom shall have one vote:

1. The Insurance Commissioner or his designee from the department shall serve as chair of the board. Notwithstanding the provisions of paragraph (a), the chair's term as a member of the board shall coincide with the Insurance Commissioner's terms as State Treasurer.

2. The Comptroller or his designee.

3. The Insurance Consumer Advocate or his designee.

4. One individual chosen by the President of the Senate.

5. One individual chosen by the Speaker of the House of Representatives.

6. One individual who has experience in property and casualty insurance chosen by the Insurance Commissioner from a list of persons recommended by the servicing facilities.

7. One individual who has experience in building codes or structural engineering of buildings chosen by the Secretary of Professional Regulation.

8. One individual with experience in loss prevention or emergency management planning chosen by the Governor.

9. One individual member of the general insurance buying public chosen by the Governor.

(c) The fund shall reimburse members of the board for expenses allowed for public employees under s. 112.061.

(6) POWERS AND DUTIES.—

(a) The board is authorized to:

1. Adopt and administer a plan of operation.

2. Borrow funds necessary to effect the purposes of this section in accordance with the plan of operation.

3. Collect and maintain statistical and other data required by the department.

4. Employ, retain, or contract with persons to perform the duties of the fund.

5. Negotiate and become a party to contracts necessary to carry out the purposes of this section including contracts for consultants as necessary. Without limiting the generality of the foregoing, the association may enter into contracts with a municipality necessary for the municipality to issue bonds under s. 166.111(2). In connection with the issuance of the bonds and the entering into of the necessary contracts, the board may agree to terms and conditions as it determines necessary.

6. Create advisory committees to assist the board in the development of the plan of operation, and advise the board on claims and actuarial matters and the appropriate measures to reduce damage resulting from a hurricane.

7. Require every insurer transacting property insurance business in this state to act as a servicing facility.

(b)1. The department shall enforce reasonable standards for performance of duties by servicing facilities under this section. After notice and hearing, the department may impose appropriate sanctions permitted under the Insurance Code and applicable rules adopted thereunder.

2. The department shall adopt a notice to be given to every applicant for property insurance of eligible property once the fund begins offering coverage. The notice shall advise applicants of the availability of hurricane compensation from the fund.

3. The department shall determine annually an actuarially sound estimate of the dollar amount of annual expected losses from hurricanes in Florida by county, which determination shall reference the maximum possible loss from a single hurricane causing damage in Florida to eligible property. The department shall hold a public hearing prior to such determination.

(c) All moneys paid into the fund and the investment of proceeds therefrom, or any other source pursuant to the programs administered by the fund, shall be held by the State Board of Administration and used for the purpose of paying losses and all other operating expenses of the fund. All such money shall be held directly by the State Board of Administration and expended as directed by the board of directors of the fund, and shall not be subject to any control by any other governmental entity.

(7) PLAN OF OPERATION.—

(a) The board shall adopt a plan of operation, and any amendments to the plan of operation, necessary to assure the solvency of the fund and the reasonable and equitable administration of the fund. The plan of operation shall be reviewed on an on-going basis and may be revised when determined necessary by the board. The plan of operation and any amendments are effective upon a majority vote of all members of the board. The plan of operation and amendments thereto are subject to the approval of the department and must be by rule or order at the department's option.

(b) If the board fails to adopt a plan of operation, or the board fails to adopt amendments to the plan of operation, the department shall, by rule, adopt a plan of operation necessary to carry out the purposes of this section. Any plan of operation, or amendment, adopted by rule of the department shall continue in full force and effect until the plan or amendment is superseded by a plan of operation, or the amendment is approved and adopted by a majority vote of all members of the board.

(c) The plan of operation shall:

1. Establish procedures for performance of all the powers and duties of the fund;

2. Provide notice reasonably designed to reach all eligible persons in the state of the fund's creation, its purposes, the compensation provided by the fund and that the fund is the sole and exclusive provider of compensation for the eligible damages and losses covered by the fund.

3. Provide for and adopt all necessary forms.

4. Establish reasonable procedures for processing and maintaining all records of the fund, including all financial transactions of the fund, its agents, its employees, its board and all transactions with any servicing facility.

5. Establish reasonable procedures for the collection and remittance of money from servicing facilities.

6. Establish reasonable procedures for the payment of valid obligations for which the fund is liable.

7. Establish reasonable procedures for, and cause to be performed annually, an audit of financial transactions and affairs of the fund by an independent certified public accountant.

8. The plan shall provide that, if the department determines that any loan made pursuant to this act will result in an impairment of the surplus of a servicing facility, the board may direct that all or part of such assessment be deferred.

9. If, after the occurrence of a covered event, the board of directors of the fund determines the fund has insufficient assets available to pay its losses on eligible property in a timely manner, the board of directors shall notify the Governor, President of the Senate, and the Speaker of the House of Representatives of the details of the shortfall and request the Florida Legislature to enact legislation to fund the projected shortfall. If the Florida Legislature does not enact such legislation within 120 days of the request by the board of directors, the board of directors shall declare the fund insolvent and implement a plan for pro-rata distribution of the fund to creditors and claimants as of the date of the insolvency. Such plan shall allow for notification of all known creditors and potential claimants of the fund, a reasonable time for the filing of claims and evidences of indebtedness and for arbitration of such claims by the department; and that after such determination of all claims and liquidation of assets all creditors and debtors shall share in such assets in the proportion that their respective claims and debts bear to the total of such claims and debts.

(8) ANNUAL STATEMENTS.—

(a) The board shall submit to the department each year, not later than 120 days after the fund's fiscal year, a financial report in a form approved by the department.

(b) For purposes of the act, the fund's fiscal year shall be from January 1 to December 31.

(c) The department may require other reports concerning risks protected by the fund as the department determines appropriate.

(9) FEE AND TAX EXEMPTION.—The fund is exempt from payment of all fees and all taxes levied by this state, any county, city, or other political subdivision of this state.

(10) EXAMINATIONS.—For the purpose of ascertaining its condition or compliance with this section, the department, as often as the department determines advisable, may examine the accounts, records, documents, and transactions of the fund. The fund shall pay all reasonable and actually incurred expenses of the examination in accordance with s. 624.320. With respect to an examination or investigation of the fund, the department has the same powers it has to investigate or examine insurers under the Insurance Code.

(11) IMMUNITY FOR LIABILITY.—

(a) There shall be no liability on the part of and no cause of action shall arise against the fund or its agents or employees, any member of the fund's board, the State Board of Administration, the department or its staff, or the commissioner or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this section.

(b) Additionally, the fund shall indemnify each member of the board, each member of any committee or subcommittee of the board and the officers and the employees of the fund, if any, against all judgments including interest, fines, amounts paid or agreed upon in settlement, and reasonable costs and expenses, including attorney's fees and any other liability that may be incurred as a result of any claim, action, suit or proceeding, whether civil, administrative or otherwise, for or on account of any act performed or omitted or obligation entered into if done or omitted in good faith without intent to defraud and within what the indemnified party reasonably believed to be the scope of the indemnified party's employment and authority and for the purpose which the indemnified party reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the fund.

(12) FINANCIAL INSTITUTIONS TO ACCEPT POLICIES.—All financial institutions shall consider a policy issued by a servicing facility to be a policy issued by an insurer authorized to transact property insurance business in this state.

(13) EXEMPTION.—Notwithstanding any other provision of law, the obligation of the fund shall not be subject to the provisions of or eligible for the benefits provided in ss. 631.50 to 631.705, inclusive, entitled the "Florida Insurance Guaranty Association Act."

(14) FUND TERMINATION.—In the event the fund is terminated, and after payment of its obligations, its remaining assets must be dispersed as follows:

(a) If a federal or regional catastrophic loss pool replaces the fund, the assets may be placed in trust with that pool for the benefit of claims arising under residential and commercial property insurance business written in this state if so directed by the Legislature; or

(b) If paragraph (a) is not applicable, the assets to the extent practicable shall be refunded to the named insureds. To the extent this is not practicable, the assets shall be deposited with the department in trust on behalf of named insureds for the purpose of paying claims arising under a covered event. The deposit is subject to applicable provisions of part III of chapter 625.

(c) Assets remaining in the fund after the disposition of assets provided in paragraphs (a) and (b) shall escheat to the state and be used as directed by the Legislature.

(15) STUDY.—For purposes of determining all revisions necessary to the fund prior to its establishment in order for the fund to achieve its maximum public benefit, the board shall be established on or before June 1, 1993. For budget and administrative purposes only, the board shall be located within the department until the fund is established. No later than December 1, 1993, the board shall furnish a report of its findings and recommendations, including proposed legislation, to the Speaker of the House of Representatives, the President of the Senate, the chairs of the committees of the House of Representatives and the Senate having jurisdiction over insurance matters and the Majority and Minority leaders of each house.

Section 19. Section 624.6095, Florida Statutes, is created to read:

624.6095 Geographic concentration of property insurance exposures.—

(1) Each property insurer shall develop and implement a plan for the avoidance of such concentration of property insurance exposures as would render the insurer financially impaired or insolvent in the event of a reasonably anticipated loss event.

(2) Property insurers shall annually report to the department insured property exposures located in this state, and the effect of reinsurance on those exposures, by geographic region. Such information reported to the department shall be confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(3) If the department determines that an insurer's property insurance exposures in this state are so concentrated as to make financial impairment or insolvency likely in the event of a reasonably anticipated loss event, the department may require that the insurer submit to the department within 60 days a plan under which the insurer will alter the geographic distribution of the insurer's exposures to an appropriate level within a reasonable period of time.

Section 20. Section 625.50, Florida Statutes, is amended to read:

625.50 Authorized deposits of insurers and agents.—The following deposits of insurers and agents when made through the department shall be accepted and held and shall be subject to the provisions of this chapter:

(1) Deposits required under this code for authority to transact insurance in this state.

(2) Deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province, or country.

(3) Deposits in such additional amounts as are permitted to be made under s. 625.58.

(4) Deposits required under s. 627.3517.

Section 21. Subsection (1) of section 625.51, Florida Statutes, is amended to read:

625.51 Purpose of deposit.—Such deposits shall be held for the following purposes:

(1) Deposits made in this state under ss. 624.411, ~~and~~ 624.412, *and 627.357* shall be held for the purposes stated in the respective sections.

Section 22. Section 316.665, Florida Statutes, is created to read:

316.665 Seizure of license tags by recovery agents.—

(1) Licensed recovery agents and recovery agencies as described in s. 493.6101(20) and (21) are hereby authorized to seize license tags of motor vehicles whose registrations have been suspended pursuant to s. 627.733 or s. 316.646 upon compliance with the provisions of this section and rules of the Department of Highway Safety and Motor Vehicles.

(2) The Department of Highway Safety and Motor Vehicles shall:

(a) Provide for a contractual relationship with the Florida Association of Licensed Recovery Agents or a similar organization for the seizure of at least 5 percent of the license tags of each reinstatement group described in s. 627.733(7)(a) by recovery agents or recovery agencies.

(b) Provide for a procedure for the payment of fees to recovery agents or recovery agencies who have seized license tags pursuant to this section. This procedure shall include:

1. The development and distribution of forms and monthly renewal notices, including the name and most current address available to the department, of those persons not in compliance with s. 627.733 or s. 316.646, which shall be used by the seizing recovery agent or recovery agency to transmit the seized license plate to the local law enforcement agency pursuant to s. 324.201.

2. A provision requiring that a copy of the information concerning the seized license plate and the form sent to the local law enforcement agency be forwarded to the Tallahassee office of the Florida Association of Licensed Recovery Agents or similar organization under contract with the department which shall then submit the information to the department to make a claim for the fee described in s. 627.733.

(c) Provide a method for the payment of the fee described in s. 627.733(7) to the recovery agent or recovery agency seizing the license tag pursuant to this section. The requirements with respect to payment shall include the following:

1. When the owner or operator whose driver license has been suspended pursuant to s. 627.733 or s. 316.646 pays the reinstatement fee to the Department of Highway Safety and Motor Vehicles, the department shall thereupon pay the recovery fee to the Florida Association of Licensed Recovery Agents or similar agency under contract with the department.

2. When the recovery fee is paid by the department, the agency under contract with the department shall thereupon distribute the fee to the recovery agent or recovery agency which seized the license tag.

(3) The provisions of this section apply to any county as defined in s. 125.011(1).

Section 23. Subsection (4) of section 324.201, Florida Statutes, is amended, and subsection (5) is added to said section, to read:

324.201 Return of license or registration to department.—

(4) All information obtained by the department regarding compliance with the provisions of this chapter shall be made available to all law enforcement agencies *and recovery agents or recovery agencies authorized pursuant to s. 316.665 to seize license plates* for the purpose of enforcing this chapter. Law enforcement agencies *and recovery agents or recovery agencies* may utilize that information to seize the license plate of any motor vehicle which has a suspended registration as a result of noncompliance by the operator or owner of the motor vehicle under the provisions of this chapter.

(5) When a recovery agent or recovery agency obtains a seized license plate in accordance with this chapter, local law enforcement agencies shall be notified of the recovery within 6 hours of seizure. The recovery agent or recovery agency shall deliver the license plate to the local law enforcement authorities and obtain a receipt upon delivery of the license plate for claim record purposes with the department pursuant to the procedure set forth in subsection (4).

Section 24. Section 626.7355, Florida Statutes, is created to read:

626.7355 Temporary customer representative license; pending examination.—

(1) Each applicant for a license may have issued to him a temporary license for a period not exceeding 6 months.

(2) If the applicant fails to pass the first examination, he may, after the expiration of 30 days, take another examination. An applicant permitted to take another examination must file another application along with the required filing fee.

(3) If an applicant has failed to pass the required examination before the expiration of his temporary license, he may apply for a regular state license just as any other first-time applicant may.

(4) The fee for the temporary license is the same as the fee for a regular license as specified in s. 624.501. A refund of such a fee may not be made after a temporary license is issued.

Section 25. Section 627.0662, Florida Statutes, is created to read:

627.0662 Special trust account provision.—Notwithstanding the provisions of s. 627.066(7), when an insurer that qualifies as a limited apportionment company under s. 627.351(3) is ordered to return moneys under said subsections, it shall instead deposit such moneys in a separate trust account which must be maintained in good faith for a period of 5 years after the deposit. Moneys in the account may be used by companies qualifying under this section to support net and gross writings located in this state, but may not be used for payments of dividends to stockholders. Any insurer maintaining an account under this section must file a quarterly report with the department detailing the insurer's deposits to and disbursements from the account and such other information as the department may reasonably require.

Section 26. Subsection (15) is added to section 627.6472, Florida Statutes, 1992 Supplement, to read:

627.6472 Exclusive provider organizations.—

(15) Notwithstanding s. 627.601 or s. 627.602, the term "insurer" or "health insurer," as used in this section, includes a motor vehicle insurer issuing coverage for personal injury protection through an exclusive provider organization, as authorized by s. 627 736(11).

Section 27. Effective July 1, 1993, section 627.6585, Florida Statutes, is created to read:

627.6585 Time limit on certain defenses.—

(1) Each group health insurance contract shall include the following provision:

"Time Limit on Certain Defenses: After 2 years from the issue date, only fraudulent misstatements in an application may be used to void the policy or certificate or deny any claim for loss incurred or disability starting after the 2-year period."

(2) A policy may, in place of the provision set forth in subsection (1), include the following provision:

"Incontestable:

(a) Misstatements in the Application: After this policy has been in force for 2 years during the insured's lifetime (excluding any period during which the insured is disabled), the insurer cannot contest the statements in an application.

(b) Preexisting Conditions: No claim for loss incurred or disability starting after 2 years from the issue date will be reduced or denied because a sickness or physical condition, not excluded by name or specific description before the date of loss, had existed before the effective date of coverage."

Section 28. Effective July 1, 1993, subsection (2) of section 627.7263, Florida Statutes, is amended to read:

627.7263 Rental and leasing driver's insurance to be primary; exception.—

(2) For the renter's or lessee's coverage to become primary, the rental or lease agreement between the lessee and the lessor shall contain the following provision in the agreement or attached thereto in 12 point bold type or larger:

The valid and collectible liability insurance and Personal Injury Protection (PIP) insurance providing coverage for any authorized rental or leasing driver shall be primary for the limits of liability and PIP coverage as required by ss. 324.021(7) and 627.736

~~(2) Each rental or lease agreement between the lessee and the lessor shall contain a provision on the face of the agreement, stated in bold type, informing the lessee of the provisions of subsection (1) and shall provide a space for the name of the lessee's insurance company if the lessor's insurance is not to be primary.~~

Section 29. Section 627.7265, Florida Statutes, is created to read:

627.7265 Representations in applications for motor vehicle insurance.—

(1) The provisions of this section apply to representations in applications for motor vehicle insurance. To the extent that the provisions of this section may conflict with s. 627.409, the provisions of this section shall prevail.

(2) Any statement or description made by or on behalf of an insured in an application for a motor vehicle insurance policy, or in negotiations for a motor vehicle insurance policy, is a representation and is not a warranty. A misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the policy if:

(a) The misrepresentation, omission, concealment, or statement is fraudulent or negligent, and the misrepresentation, omission, concealment, or statement is material either to the acceptance of the risk or to the hazard assumed by the insurer; and

(b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

(3) If the insurer requires an agent to inquire of the insured and to complete the application, and the agent either intentionally or erroneously completes the application incorrectly, the insurer may not deny coverage or deny payment or recovery under the policy or contract due to such acts or omissions of the agent.

(4) If the insured, as part of the application, authorizes the insurer to investigate the insured's background and history, the insurer must complete such investigation within 180 days after the date on the application or prior to any claim which is made after such 180-day period. The insurer waives any right to prevent a recovery under the policy or contract if the insurer fails to complete such investigation within such time unless the insured prevented or impaired the investigation or intentionally misrepresented facts regarding such application. Nothing in this subsection will prohibit an insurer from investigating any claim.

Section 30. Subsection (4) of section 627.7295, Florida Statutes, 1992 Supplement, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(4) The insurer may cancel the policy in accordance with this code except that, notwithstanding s. 627.728, an insurer may not cancel a new policy or binder during the first 60 days ~~two months~~ immediately following the effective date of the policy or binder for nonpayment of premium unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason.

Section 31. Subsection (5) is added to section 627.732, Florida Statutes, to read:

627.732 Definitions.—As used in ss. 627.730-627.7405:

(5) "Recovery agent" means any person or agency who is currently licensed as a recovery agency or recovery agent and authorized pursuant to s. 316.665 to seize license tags.

Section 32. Subsection (7) of section 627.733, Florida Statutes, is amended to read:

627.733 Required security.—

(7)(a) Any operator or owner whose driver's license or registration has been suspended pursuant to this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee of $150 for the first reinstatement after July 6, 1988. Such reinstatement fee shall be $250 for the second reinstatement and $500 for each subsequent reinstatement during the 3 years following the first reinstatement. Any person reinstating his insurance under this subsection must also secure noncancellable coverage as described in s. 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form promulgated by the Department of Highway Safety and Motor Vehicles, such proof to be maintained for 2 years. If the person does not have a second reinstatement within 3 years after his initial reinstatement, the reinstatement fee shall be $150 for the first reinstatement after that 3-year period. In the event that a person's license and registration are suspended pursuant to this section or s. 316.646, only one reinstatement fee shall be paid to reinstate the license and the registration. All fees shall be collected by the Department of Highway Safety and Motor Vehicles at the time of reinstatement. The Department of Highway Safety and Motor Vehicles shall issue proper receipts for such fees and shall promptly deposit those fees in said department's Accident Reports Trust Fund. One-third of the fee collected under this subsection shall be distributed from the Accident Reports Trust Fund to the local government entity or state agency which employed the law enforcement officer *or the recovery agent* who seizes a license plate pursuant to s. 324.201 *or s 316 665*. Such funds may be used by the local government entity or state agency for any authorized purpose.

(b) With respect to a license plate seized by a recovery agent which results in the collection of the fee provided for in this section, one-third of the fee shall be paid to the recovery agent and the balance shall remain in the Accident Reports Trust Fund.

Section 33. Subsection (2) of section 627.8405, Florida Statutes, is amended and subsection (3) is added to that section, to read:

627.8405 Prohibited premium financing.—No premium finance company shall, in a premium finance agreement, provide financing for the cost of:

(2) An accidental death and dismemberment policy ~~sold in combination with a personal injury protection only policy~~.

(3) Any amount in excess of 70 percent of the premium on an insurance contract. This subsection also applies to premium financing by an insurance agent or insurance company under Part XVI.

The department shall promulgate rules to assure disclosure, at the time of sale, of coverages financed with personal injury protection.

Section 34. Paragraph (a) of subsection (4) of section 627.736, Florida Statutes, 1992 Supplement, is amended, and subsection (11) is added to said section, to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(4) BENEFITS; WHEN DUE.—Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Department of Health and Rehabilitative Services provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.7405. *If an insurer requires such written notice, a rebuttable presumption that an insurer has suffered prejudice as a result of late notice shall arise if the*

insurer has not received written notification within 30 days after the first treatment arising out of a covered accident that is not emergency or hospital treatment.

(11) An insurer may issue a policy that limits payment of medical benefits under this section to services provided by exclusive health care providers, subject to the same requirements that apply to a health insurer issuing a health insurance policy with an exclusive provider provision under s. 627.6472. The insurer shall provide an appropriate discount in the rates for personal injury protection coverage under such a policy, as approved by the department. Subsection (7) shall not apply to personal injury protection policies subject to an exclusive provider provision. An insurer providing coverage under a personal injury protection policy subject to an exclusive provider provision may not require a compulsory physical examination or independent medical examination of an injured person covered by such policy, and may not withhold or limit payment of a treating provider without the consent of the injured person covered by such policy except pursuant to paragraphs (a) and (b). An injured person receiving treatment pursuant to a personal injury protection policy subject to an exclusive provider provision may, subject to the limitations contained in paragraphs (a) and (b), and at the option of the covered injured person, receive covered diagnosis and treatment from other health care providers for any reason.

(a) An injured person covered by personal injury protection subject to an exclusive provider provision may, at the option of such injured person, receive health care services from any health care providers licensed and qualified to practice in this state, and the personal injury protection policy must provide for payment pursuant to paragraph (b) for covered services provided by such nonexclusive providers. Such nonexclusive providers shall comply with the applicable requirements contained in the plan of operation filed with and approved by the Agency for Health Care Administration. The Agency for Health Care Administration shall not approve the plan of operation for any personal injury protection exclusive provider plan unless the plan includes a schedule of reasonable fees for services of exclusive health care providers and unless the requirements applicable to nonexclusive providers are reasonable.

(b) The reimbursement or payment of medical benefits required by this section may be limited in the case of service or treatment delivered by a nonexclusive provider pursuant to paragraph (a). Such reimbursement or payment, however, may not be less than 90 percent of the amount of the reimbursement or payment which would have been due an exclusive provider under the schedule of reasonable fees for services contained in the plan of operation pursuant to paragraph (a). Unless otherwise required by state or federal law, any nonexclusive health care provider may refuse to treat an injured person covered by a policy subject to this subsection. Except as provided in s. 627.6472, a nonexclusive health care provider agreeing to treat an injured person covered by a policy subject to this subsection may not charge a fee in excess of the reasonable fee for services contained in the plan of operation pursuant to paragraph (a). Any reimbursement or payment to such nonexclusive providers may be conditioned upon the nonexclusive provider complying with the applicable requirements contained in the plan of operation pursuant to paragraph (a).

(c) A personal injury protection insurer has a nondelegable duty to fully inform a purchaser of the limitations of benefits provided by personal injury protection coverage. Acceptance of a policy of personal injury protection subject to an exclusive provider provision must be made on a form approved by the department. The form must provide, at a minimum, the information required to be disclosed by s. 627.6472(10), and at least the following additional information:

1. The requirements which must be met for a health care provider to become an exclusive provider under the policy; and

2. The options available to an injured person at the time of a covered injury.

The heading on the form shall be in 12-point bold type and shall state: "You are electing to purchase coverage subject to an exclusive provider provision. Your benefits may be limited should you choose to receive care from a health care provider who is not on your insurance company's list of exclusive providers." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing acceptance of personal injury protection coverage subject to an exclusive provider provision. The insurer shall notify the named insured at least annually of the insured's options as to the coverage required by this section.

(d) No health care provider may be, or be listed as, an exclusive provider for policies subject to this subsection if such health care provider performs any compulsory physical examination or independent medical examination on behalf of any insurance company. If an exclusive provider becomes a nonexclusive provider by performing any compulsory physical examination or independent medical examination on behalf of an insurance company, such health care provider may not again become, or be listed as, an exclusive provider for such policies subject to this subsection until such provider has refrained from performing any such compulsory physical examination or independent medical examinations for a period of 12 months.

(e) All health care providers listed as exclusive providers for policies subject to this section must contract directly with the exclusive provider organization established pursuant to s. 627.6472 and this section.

(f) This subsection is repealed on July 1, 1998, and must be reviewed by the Legislature prior to that date.

Section 35. Subsection (2) of section 627.739, Florida Statutes, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles.—

(2) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, $1,000, and $2,000, such amount to be deducted from the benefits otherwise due each person subject to the deduction. *After the deductible is met, an insured shall be eligible to receive up to the $10,000 in total benefits described in s. 627.736(1).* However, this subsection shall not be applied to reduce the amount of any benefits received in accordance with s. 627.736(1)(c).

Section 36. Section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles.—

(1) For the purposes of this section, the term:

(a) "Vehicle" means any mobile item, whether motorized or not, which is mounted on wheels.

(b) "Wrecker" means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

(2) Whenever a person regularly engaged in the business of transporting vehicles by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle or mobile home upon instructions from:

(a) The owner thereof; or

(b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle is wrongfully parked, and such removal is done in compliance with s. 715.07; or

(c) Any law enforcement agency; or

(d) A mobile home park owner as defined in s. 723.003 who has a current writ of possession for a mobile home lot pursuant to s. 723.061,

he shall have a lien on such vehicle for a reasonable towing fee and for a reasonable storage fee; except that no storage fee shall be charged if such vehicle is stored for less than 6 hours.

(3)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles who comes into possession of a vehicle pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice to the registered owner, *the insurer,* and to all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles *notwithstanding s. 627.736(9)(a)* or of a corresponding agency in any other state.

(b) Notice by certified mail, return receipt requested, shall be sent within 7 business days after the date of storage of the vehicle to the registered owner, *the insurer,* and to all persons of record claiming a lien against the vehicle. It shall state the fact of possession of the vehicle, that a lien as provided in subsection (2) is claimed, that charges have accrued and the amount thereof, that the lien is subject to enforcement pursuant to law, and that the owner, *insurer,* or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any vehicle which remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold in 35 days free of all prior liens.

(c) If attempts to locate the owner, *insurer,* or lienholder prove unsuccessful, the towing-storage operator shall, after 7 working days, excluding Saturday and Sunday, of the initial tow or storage, notify the public agency of jurisdiction in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the owner, *insurer,* or lienholder and a physical search of the vehicle has disclosed no ownership information *or insurance information* and a good faith effort has been made. For purposes of this paragraph, subsection (8), and s. 715.05, "good faith effort" means that the following checks have been performed by the company to establish prior state of registration and for title:

1. Check of vehicle for any type of tag, tag record, temporary tag, or regular tag.

2. Check of law enforcement report for tag number, if the vehicle was towed at the request of a law enforcement officer.

3. Check of trip sheet or tow ticket of tow truck operator to see if a tag was on vehicle at beginning of tow, if private tow.

4. If there is no address of the owner on the impound report, check of law enforcement report to see if an out-of-state address is indicated from driver license information.

5. Check of vehicle for inspection sticker or other stickers and decals that may indicate a state of possible registration.

6. Check of the interior of the vehicle for any papers that may be in the glove box, trunk, or other areas for a state of registration.

7. Check of vehicle for insurance information or insurance company name.

(d) If the insurer pays for towing fees, storage fees, or both, the vehicle must be released to the insurer under the same terms and conditions as it would be released to the owner.

(4)(a) The owner of a vehicle removed pursuant to the provisions of subsection (2), or any person claiming a lien, other than the towing-storage operator, within 10 days after the time he has knowledge of the location of the vehicle, may file a complaint in the county court of the county in which the vehicle is stored or in which the owner resides to determine if his property was wrongfully taken or withheld from him.

(b) Upon filing of a complaint, an owner or lienholder may have his vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle. At the time of such release, after reasonable inspection, he shall give a receipt to the towing-storage company reciting any claims he has for loss or damage to the vehicle or the contents thereof.

(c) Upon determining the respective rights of the parties, the court may award damages and costs in favor of the prevailing party. In any event, the final order shall provide for immediate payment in full of recovery, towing, and storage fees by the vehicle owner or lienholder; or the agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle was removed.

(5) Any vehicle which is stored pursuant to subsection (2) and which remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid or for which a lot rental amount is due and owing to the mobile home park owner, as evidenced by a judgment for unpaid rent, and any contents not released pursuant to subsection (9), may be sold by the owner, *insurer,* or operator of the storage space for such towing or storage charge or unpaid lot rental amount after 35 days from the time the vehicle is stored therein. The sale shall be at public auction for cash. If the date of the sale was not included in the notice required in subsection (3), notice of the sale shall be given to the person in whose name the vehicle or mobile home is registered, *the insurer,* to the mobile home park owner, and to all persons claiming a lien on the vehicle as shown on the records of the Department of Highway Safety and Motor Vehicles or of the corresponding agency in any other state. Notice shall be sent by certified mail, return receipt requested, to the owner of the vehicle and the person having the recorded lien on the vehicle at the address shown on the records of the registering agency and shall be mailed not less than 15 days before the date of the sale. After diligent search and inquiry, if the name and address of the registered owner, *the insurer,* or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days prior to the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The proceeds of the sale, after payment of reasonable towing and storage charges, costs of the sale, and the unpaid lot rental amount, in that order of priority, shall be deposited with the clerk of the circuit court for the county if the owner is absent, and the clerk shall hold such proceeds subject to the claim of the person legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens unless otherwise provided by court order.

(6) No person regularly engaged in the business of recovering, towing, or storing vehicles shall be liable for damages connected with such services, provided that they have been performed with reasonable care and provided, further, that, in the case of removal of a vehicle upon the request of a person purporting, and reasonably appearing, to be the owner or lessee, or a person authorized by the owner or lessee, of the property from which such vehicle is removed, such removal has been done in compliance with s. 715.07.

(7) No person regularly engaged in the business of recovering, towing, or storing vehicles shall operate a wrecker, tow truck, or car carrier unless the name, address, and telephone number of the company performing such service is clearly printed in contrasting colors on the driver and passenger sides of its vehicle. The name shall be in at least 3-inch permanently affixed letters, and the address and telephone number shall be in at least 1-inch permanently affixed letters.

(8) Failure to make good faith best efforts to comply with the notice requirements of this section shall preclude the imposition of any storage charges against such vehicle.

(9) Persons who provide services pursuant to this section shall permit vehicle owners *or insurers,* or their agents, which agency is evidenced by a writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths, to inspect the towed vehicle and shall release to the owner or agent all personal property not affixed to the vehicle which was in the vehicle at the time the vehicle came into the custody of the person providing such services.

(10)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles who comes into possession of a vehicle pursuant to subsection (2) and who has complied with the provisions of subsections (3) and (5), when such vehicle is to be sold for purposes of being dismantled, destroyed, or changed in such manner that it is not the motor vehicle or mobile home described in the certificate of title, shall apply to the county tax collector for a certificate of destruction. A certificate of destruction, which authorizes the dismantling or destruction of the vehicle described therein, shall be reassignable and shall accompany the vehicle for which it is issued, when such vehicle is sold for such purposes, in lieu of a certificate of title. The application for a certificate of destruction shall include an affidavit from the applicant that it has complied with all applicable requirements of this section and, if the vehicle is not registered in this state, by a statement from a law enforcement officer that the vehicle is not reported stolen, and shall be accompanied by such documentation as may be required by the department.

(b) The Department of Highway Safety and Motor Vehicles shall charge a fee of $3 for each certificate of destruction. A service charge of $4.25 shall be collected and retained by the tax collector who processes the application.

(c) The Department of Highway Safety and Motor Vehicles may adopt such rules as it deems necessary or proper for the administration of this subsection.

(11)(a) Any person who violates any provision of subsections (1) through (6) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who violates the provisions of subsections (7) through (10) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who uses a false or fictitious name, gives a false or fictitious address, or makes any false statement in any application or affidavit required under the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 37. Subsection (1) of section 715.05, Florida Statutes, is amended to read:

715.05 Reporting of unclaimed motor vehicles.—

(1) Whenever any law enforcement agency authorizes the removal of a vehicle or whenever any towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle pursuant to s. 715.07(2)(a)2., the applicable law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications giving the full description of the vehicle. Upon receipt of the full description of the vehicle, the department shall search its files to determine the owner's name, *the name of the insurance company that was insuring the vehicle at the time of pick up,* and whether any person has filed a lien upon the vehicle as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days from the date of storage and shall, by certified mail, return receipt requested, notify the owner, *the insurer,* and all lienholders of the location of the vehicle and of the fact that it is unclaimed. Such notice shall be given within 7 days, excluding Saturday and Sunday, from the date of storage and shall be complete upon mailing; however, if the state of registration is unknown, the person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall make a good faith best effort in so notifying the owner, *the insurer,* and any lienholders, and such notice shall be given within a reasonable period of time from the date of storage.

Section 38. Subsection (1) of section 635.041, Florida Statutes, is amended to read:

635.041 Contingency reserve.—

(1) Each *direct* mortgage guaranty insurer shall establish and maintain as a liability a contingency reserve out of earned premiums remaining after establishment of the unearned premium reserve. The insurer shall contribute an amount equal to 50 percent of the earned premiums into the contingency reserve.

Section 39. Section 634.240, Florida Statutes, is created to read:

634.240 Prohibition against tying agreements.—Any bank, savings and loan, consumer finance company, or other consumer lender operating in this state, which lends money that a borrower uses to finance the purchase of a new or used motor vehicle and a motor vehicle service agreement bought in connection therewith, is prohibited from:

(1) Requiring any person, who seeks a loan from that lender for the purpose of financing the purchase of a motor vehicle and a motor vehicle service agreement, to buy a motor vehicle service agreement from a motor vehicle service agreement company or insurer that is affiliated with the lender; or

(2) Preventing a salesman in any way from selling a motor vehicle service agreement, which is issued by a motor vehicle service agreement company or insurer that is not affiliated with the lender, to any person who seeks to purchase a motor vehicle and a motor vehicle service agreement.

This section does not apply to leasing agreements involving motor vehicles.

Section 40. Section 624.3101, Florida Statutes, is created to read:

624.3101 False or misleading financial statements or supporting documents; penalty.—Any person who knowingly and willfully files with the department, or who knowingly and willfully signs for filing with the department, a materially false or materially misleading financial statement or document in support thereof required by law or rule, with intent to deceive and with knowledge that the statement or document is materially false or materially misleading, commits a felony of the third degree, punishable as provided in ss. 775.082, s. 775.083, or s. 775.084.

Section 41. Subsection (2) of section 624.316, Florida Statutes, is amended to read:

624.316 Examination of insurers.—

(2)(a) *Except as provided in paragraph (f),* the department may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each ~~domestic~~ insurer not less frequently than once every 3 years. The examination shall cover the preceding 3 fiscal years of the insurer and shall be commenced within 12 months after the end of the most recent fiscal year being covered by the examination. The examination may cover any period of the insurer's operations since the last previous examination. The examination may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the insurer. In lieu of making its own examination *of a domestic insurer,* the department may accept an independent certified public accountant's audit report prepared on a statutory basis consistent with the Florida Insurance Code on that specific company. The department may not accept the report in lieu of the requirement imposed by paragraph (1)(b). When an examination is conducted by the department for the sole purpose of examining the 3 preceding fiscal years of the insurer within 12 months after the opinion date of an independent certified public accountant's audit report prepared on a statutory basis on that specific company consistent with the Florida Insurance Code, the cost of the examination as charged to the insurer pursuant to s. 624.320 shall be reduced by the cost to the insurer of the independent certified public accountant's audit reports. Requests for the reduction in cost of examination must be submitted to the department in writing no later than 90 days after the conclusion of the examination and shall include sufficient documentation to support the charges incurred for the statutory audit performed by the independent certified public accountant.

(b) The department shall examine each insurer applying for an initial certificate of authority to transact insurance in this state before granting the initial certificate.

(c) In lieu of making its own examination, the department may accept a full report of the last recent examination of a foreign insurer, certified to by the insurance supervisory official of another state, *if the examination covers a period ending on or before December 31, 1993 The department may accept such a report of an examination covering a period ending on or after January 1, 1994, only if one of the following conditions applies:*

1. The other state was, at the time of the examination, accredited under the financial regulation standards and accreditation program of the National Association of Insurance Commissioners.

2. The examination was performed under the supervision of an accredited state insurance department.

3. The examination was performed with the participation of one or more examiners who are employed by an accredited state insurance department and who, after review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the employing state insurance department.

(d) The examination by the department of an alien insurer shall be limited to the alien insurer's insurance transactions and affairs in the United States, except as otherwise required by the department.

(e) The department shall adopt rules providing that, upon agreement between the department and the insurer, an examination under this section may be conducted by independent certified public accountants, actuaries meeting criteria specified by rule, and reinsurance specialists meeting criteria specified by rule. The rules shall provide:

1. That the agreement of the insurer is not required if the department reasonably suspects criminal misconduct on the part of the insurer.

2. That the department shall provide the insurer with a list of three firms acceptable to the department, and that the insurer shall select the firm to conduct the examination from the list provided by the department.

3. That the insurer being examined must make payment for the examination directly to the firm performing the examination in accordance with the rates and terms agreed to by the department, the insurer, and the firm performing the examination.

4. That if the examination is conducted without the consent of the insurer, the insurer must pay all reasonable charges of the examining firm if the examination finds impairment, insolvency, or criminal misconduct on the part of the insurer.

(f)1.a. An examination under this section must be conducted at least once every year with respect to a domestic insurer that has continuously held a certificate of authority for less than 3 years. The examination must cover the preceding fiscal year or the period since the last examination of the insurer. The department may limit the scope of the examination if the insurer has demonstrated sufficient compliance with the insurance code as determined by the department.

b. The department may not accept an independent certified public accountant's audit report in lieu of an examination required by this subparagraph.

c. An insurer may not be required to pay more than $25,000 to cover the costs of any one examination under this subparagraph.

2. An examination under this section must be conducted not less frequently than once every 5 years with respect to an insurer that has continuously held a certificate of authority, without a change in ownership subject to s. 624.4245 or s. 628.461, for more than 15 years unless the department finds that the insurer has not demonstrated sufficient compliance as determined under subparagraph 3.; the finding must be accompanied by notice to the insurer specifying the department's reasons for finding that the insurer has not demonstrated sufficient compliance. The examination must cover the preceding 5 fiscal years of the insurer or the period since the last examination of the insurer.

(g) An examination report under this section shall include the department's recommendations as to improvements in the conduct of the insurer's business.

Section 42. Section 624.319, Florida Statutes, is amended to read:

624.319 Examination and investigation reports.—

(1) The department or its examiner shall make a full and true written report of each examination. The examination report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the insurer examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. ~~The department shall furnish a copy of the examination report to the insurer examined not less than 30 days prior to filing the examination report in its office. If such insurer so requests in writing within such 30-day period, the department shall grant a hearing with respect to the examination report and shall not so file the examination report until after the hearing and after such modifications have been made therein as the department deems proper.~~

(2) Prior to adopting any examination report as final, the department must provide the insurer a copy of the report and at least 30 days' notice of the opportunity to challenge the report pursuant to s. 120.57

(3)(a) Within 30 days after a financial examination report becomes final, the insurer must file with the department an affidavit signed by the individuals required to sign the insurer's annual statement attesting that the individuals have read the financial examination report and specifying the time within which the insurer intends to act on the recommendations in the report.

(b) Within 30 days after a market conduct examination report becomes final, the insurer must file a statement signed by an officer of the insurer attesting that the individual has read the report and specifying the time within which the insurer intends to act on the recommendations in the report.

(4)(a)~~(2)~~ *Any* ~~The~~ examination report *which has become final is* ~~when so filed shall be~~ admissible in evidence in any action or proceeding brought by the department against the person examined, or against its officers, employees, or agents. In all other proceedings, the admissibility of the examination report is governed by the evidence code.

(b) The department or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the department.

(5)~~(3)~~(a) The department may withhold from public inspection any examination report until *final* ~~filed~~ and may withhold any investigation report for so long as the department deems reasonably necessary to protect the person investigated from unwarranted injury or deems to be in the public interest.

(b) The department may withhold from public inspection any list of insurers or regulated companies if:

1. The financial solvency, condition, or soundness of such insurers or regulated companies is being monitored by the department;

2. The list is prepared to internally coordinate regulation by the department of the financial solvency, condition, or soundness of the insurers or regulated companies; and

3. The Insurance Commissioner and Treasurer determine that public inspection of such list could impair the financial solvency, condition, or soundness of such insurers or regulated companies.

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

(6)~~(4)~~ After the examination report has *become final* ~~been filed pursuant to subsection (1)~~, the department may publish the results of *the* ~~any such~~ examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

~~(5) After the examination report of an insurer has been filed pursuant to subsection (1), an affidavit shall be filed with the department, not more than 30 days after the report has been filed, on a form furnished by the department and signed by the officer of the company in charge of the insurer's business in this state, stating that he has read the report and that the recommendations made in the report will be considered within a reasonable time.~~

Section 43. Subsection (1) of section 624.407, Florida Statutes, is amended to read:

624.407 Capital funds required; new insurers.—

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer ~~hereafter~~ applying for its original certificate of authority in this state *after April 1, 1993,* shall possess surplus as to policyholders not less than the greater of:

(a) *$5,000,000* ~~$2,500,000~~;

(b) For life insurers, 4 percent of the insurer's total liabilities;

(c) For life and health insurers, 4 percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance; or

(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities;

however, no insurer shall be required under this subsection to have surplus as to policyholders greater than $100 million.

Section 44. Section 624.408, Florida Statutes, is amended to read:

624.408 Surplus as to policyholders required; new and existing insurers.—

(1)*(a)* To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state that applied for its certificate of authority on or ~~after the effective date of this act~~ *before April 1, 1993,* shall at all times maintain surplus as to policyholders not less than the greater of:

1.~~(a)~~ *Except as to domestic title insurers in existence prior to January 1, 1989, and except as provided in paragraph (b), $4,000,000* ~~$1,500,000~~;

2.~~(b)~~ For life insurers, 4 percent of the insurer's total liabilities;

3.~~(c)~~ For life and health insurers, 4 percent of the insurer's total liabilities plus 6 percent of the insurer's liabilities relative to health insurance; or

4.~~(d)~~ For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities.

5. For domestic title insurers in existence prior to January 1, 1989, $1,500,000.

(b) Except for domestic title insurers in existence prior to January 1, 1989, all insurers holding a certificate of authority on the effective date of this act, or any applicant that had its application for certificate of authority or permit to form an insurer pending on or before April 1, 1993, shall maintain surplus as to policyholders as follows:

1. On December 31, 1994, and until December 30, 1995, $1,650,000.

2. On December 31, 1995, and until December 30, 1996, $1,800,000.

3. On December 31, 1996, and until December 30, 1997, $1,950,000.

4. On December 31, 1997, and until December 30, 1998, $2,100,000.

5. On December 31, 1998, and until December 30, 1999, $2,250,000.

6. On December 31, 1999, and until December 30, 2000, $2,500,000.

7. On December 31, 2000, and until December 30, 2001, $2,750,000.

8. On December 31, 2001, and until December 30, 2002, $3,000,000.

9. On December 31, 2002, and until December 30, 2003, $3,250,000

10. On December 31, 2003, and until December 30, 2004, $3,600,000.

11. On December 31, 2004, and thereafter, $4,000,000.

~~(2) To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state that applied for its certificate of authority prior to the effective date of this act shall maintain on December 31, 1989, and until December 31, 1990, surplus as to policyholders not less than the greater of:~~

~~(a) $1,000,000;~~

~~(b) For life insurers, 3 percent of the insurer's total liabilities;~~

~~(c) For life and health insurers, 3 percent of the insurer's total liabilities plus 2 percent of the insurer's liabilities relative to health insurance; or~~

~~(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities.~~

~~(3) To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state that applied for its certificate of authority prior to the effective date of this act shall maintain on December 31, 1990, and until December 31, 1991, surplus as to policyholders not less than the greater of:~~

~~(a) $1,150,000;~~

~~(b) For life insurers, 3.3 percent of the insurer's total liabilities;~~

~~(c) For life and health insurers, 3.3 percent of the insurer's total liabilities plus 4 percent of the insurer's liabilities relative to health insurance; or~~

~~(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities.~~

~~(4) To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state that applied for its certificate of authority prior to the effective date of this act, shall maintain on December 31, 1991, and until December 31, 1992, surplus as to policyholders not less than the greater of:~~

~~(a) $1,300,000;~~

~~(b) For life insurers, 3.6 percent of the insurer's total liabilities;~~

~~(c) For life and health insurers, 3.6 percent of the insurer's total liabilities plus 5 percent of the insurer's liabilities relative to health insurance; or~~

~~(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities.~~

~~(5) To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state that applied for its certificate of authority prior to the effective date of this act, shall maintain on December 31, 1992, and thereafter, surplus as to policyholders not less than the greater of:~~

~~(a) $1,500,000;~~

~~(b) For life insurers, 4 percent of the insurer's total liabilities;~~

~~(c) For life and health insurers, 4 percent of the insurer's total liabilities plus 6 percent of the insurer's liabilities relative to health insurance; or~~

~~(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities.~~

(2)~~(6)~~ For purposes of this section, liabilities shall not include liabilities required under s. 625.041(4). For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities shall include liabilities required under s. 625.041(4).

(3)~~(7)~~ No insurer shall be required under this section to have surplus as to policyholders greater than $100 million.

Section 45. Subsection (3) is added to section 624.413, Florida Statutes, to read:

624.413 Application for certificate of authority.—

(3) Notwithstanding the provisions of s. 120.60(2), within 60 days after the department receives an application for a certificate of authority, the department must examine an application, notify the applicant of any apparent errors or omissions, and request any additional information the department is authorized by law to require. Failure to correct an error or omission or to supply additional information is not grounds for denial of the application unless the department timely notified the applicant within the 60-day period. The department must notify the applicant if the applicant is exempt from the certificate of authority requirement and return any tendered application fee within 60 days after receipt of the original application or within 10 days after receipt of the timely requested additional information or correction of errors or omissions.

Section 46. Subsection (1) and paragraphs (d) and (e) of subsection (8) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(1)(a) Each authorized insurer shall file with the department full and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding calendar year shall be filed on or before March 1, and quarterly statements covering the periods ending on March 31, June 30, and September 30 shall be filed within 45 days after each such date. The department may, for good cause, grant an extension of time for filing of an annual or quarterly statement. The statements shall contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the insurer or, if a reciprocal insurer, by the oath of the attorney in fact or its like officer if a corporation. To facilitate uniformity in financial statements and to facilitate department analysis, the department may by rule adopt the form for financial statements approved by the National Association of Insurance Commissioners in 1990, and may adopt subsequent amendments thereto if the methodology remains substantially consistent, and may by rule require each insurer to submit to the department or such organization as the department may designate all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system specified by the department.

(b) Each insurer's annual statement must contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or by a qualified loss reserve specialist, under criteria established by rule of the department. In adopting the rule, the department must consider any criteria established by the National Association of Insurance Commissioners. Workpapers in support of the statement of opinion must be provided to the department upon request. This paragraph does not apply to life insurance or title insurance.

(c)~~(b)~~ The department may by rule require reports or filings required under the insurance code to be submitted on a computer-diskette compatible with the electronic data processing equipment specified by the department.

(8)

(d) An insurer may not use the same accountant or partner of an accounting firm responsible for preparing the report required by this subsection for more than 7 ~~5~~ consecutive years. Following this period, the insurer may not use such accountant or partner for a period of 2 years, but may use another accountant or partner of the same firm. An insurer may request the department to waive this prohibition based upon an unusual hardship to the insurer and a determination that the accountant is exercising independent judgment that is not unduly influenced by the insurer considering such factors as the number of partners, expertise of the partners or the number of insurance clients of the accounting firm; the premium volume of the insurer; and the number of jurisdictions in which the insurer transacts business.

(e) The department shall adopt rules to implement this subsection, which rules must be in substantial conformity with the 1990 Model Rule Requiring Annual Audited Financial Reports adopted by the National Association of Insurance Commissioners, except where inconsistent with the requirements of this subsection. *Any material exception to, waiver of, or interpretation of accounting requirements of the department must be in writing from the department.*

Section 47. Paragraph (b) of subsection (1) of section 624.438, Florida Statutes, is amended to read:

624.438 General eligibility.—

(1) To meet the requirements for issuance of a certificate of authority and to maintain a multiple-employer welfare arrangement, an arrangement must be:

(b)*1.* Established by a trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws specifically stating its purpose and which has been organized and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance.

2.a. The association shall not be a combination of trades, industries, or professions, nor shall there be a combination within the trades, industries, or professions.

b. A trade association is defined as member employers who are in the same type or trade, such as plumbers or electricians, and any others which are trade designations as recognized by the required licensing agency.

c. An industry association is defined as member employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the federal Office of Management and Budget, unless restricted by sub-subparagraphs b. or d.

d. A professional association is defined as member employers who are of the same type of profession, such as physicians, dentists, accountants, lawyers or architects, but shall not be limited to those professions; however, the profession must be one which is recognized by the required licensing agency.

The requirements of this subparagraph shall not apply to a sponsoring association of an arrangement licensed prior to January 1, 1993, regardless of the nature of its business. However, a sponsoring association exempt from the requirements of this subparagraph may not expand the nature of its business beyond that set forth in its articles of incorporation as of July 1, 1993.

Section 48. Paragraph (e) of subsection (1) of section 624.523, Florida Statutes, is amended to read:

624.523 Insurance Commissioner's Regulatory Trust Fund.—

(1) There is created in the State Treasury a trust fund designated "Insurance Commissioner's Regulatory Trust Fund" to which shall be credited all payments received on account of the following items:

(e) All payments received on account of items provided for under respective provisions of s. 624.501, as follows:

1. Subsection (1) (certificate of authority of insurer).

2. Subsection (2) (charter documents of insurer).

3. Subsection (3) (annual license tax of insurer).

4~~3~~. Subsection (4) (annual statement of insurer).

5~~4~~. Subsection (5) (application fee for insurance representatives).

6~~5~~. The "appointment fee" portion of any appointment provided for under paragraphs (6)(a) and (b) (insurance representatives, property, marine, casualty and surety insurance, agents, and solicitors).

7~~6~~. Paragraph (6)(c) (nonresident agents).

8~~7~~. Paragraph (6)(d) (service representatives).

9~~8~~. The "appointment fee" portion of any appointment provided for under paragraph (7)(a) (life insurance agents, original appointment, and renewal or continuation of appointment).

10~~9~~. Paragraph (7)(b) (nonresident agent license).

11~~10~~. The "appointment fee" portion of any appointment provided for under paragraph (8)(a) (health insurance agents, agent's appointment, and renewal or continuation fee).

12~~11~~. Paragraph (8)(b) (nonresident agent appointment).

13~~12~~. The "appointment fee" portion of any appointment provided for under subsections (9) and (10) (limited licenses and fraternal benefit society agents).

14~~13~~. Subsection (11) (vending machines).

15~~14~~. Subsection (12) (surplus lines agent).

16~~15~~. Subsection (13) (adjusters' appointment).

17~~16~~. Subsection (14) (examination fee).

18~~17~~. Subsection (15) (temporary license and appointment as agent or adjuster).

19~~18~~. Subsection (16) (reissuance, reinstatement, etc.).

20~~19~~. Subsection (17) (additional license continuation fees).

21~~20~~. Subsection (18) (filing application for permit to form insurer).

22~~21~~. Subsection (19) (license fee of rating organization).

23~~22~~. Subsection (20) (miscellaneous services).

24~~23~~. Subsection (21) (insurance agencies).

Section 49. Section 624.490, Florida Statutes, is created to read:

624.490 Short Title.—Sections 624.490-624.495 may be cited as the "Viatical Settlement Contracts Act."

Section 50. Section 624.491, Florida Statutes, is created to read:

624.491 "Viatical settlement contract" defined.—As used in ss. 624.490-624.495:

(1) "Viatical settlement contract" means an agreement entered into between a person owning a life insurance policy upon the life of a terminally ill person and another person by which the policy owner receives compensation or anything of value less than the death benefits of the insurance policy in return for an assignment, transfer, sale, devise or bequest of the death benefits or ownership of the insurance policy, but does not include an assignment of a life insurance policy to a licensed lending institution or credit union as collateral for a loan.

(2) A "viatical settlement contract" shall not include a provision for payment of cash surrender values, loans or other benefits made by an insurer in accordance with the policy provisions.

Section 51. Section 624.492, Florida Statutes, is created to read:

624.492 Requirements.—

(1) Any person wishing to enter into a viatical settlement contract with any terminally ill person shall first obtain:

(a) a written statement from a licensed physician or psychologist attending the terminally ill person that the terminally ill person is of sound mind and under no constraint or undue influence; and

(b) a duly witnessed written document in which the terminally ill person consents to the viatical settlement contract, acknowledges the terminal illness, represents that he has full and complete understanding of the viatical settlement contract, that he has a full and complete understanding of the benefits of the life insurance policy and releases his medical records and acknowledges that he has entered into the contract freely and voluntarily.

(2) Any person who enters into a viatical settlement contract with a person registered with the department shall have the absolute right to rescind the contract within 15 days of execution of the contract, and any waiver or contract language contrary to this subsection shall be void.

(3) It shall be unlawful for any person domiciled, residing or conducting business in Florida to do any of the following unless he has complied with the provisions of ss. 624.490-624.495:

(a) Enter into a viatical settlement contract with any person, including a terminally ill person, domiciled or residing in Florida; or

(b) Execute a viatical settlement contract in whole or in part in this state.

Section 52. Section 624.493, Florida Statutes, is created to read:

624.493 Registration and fee.—

(1) A person may not transact the business of viatical settlement contracts pursuant to ss. 624.490-624.495 unless that person is registered with the department. The person shall file a registration form prescribed by the department and shall provide any information the department may require. The department shall be notified immediately of any change in the information previously filed.

(2) The registration form required in subsection (1) shall be under oath and accompanied by a fee of $60.00.

(3) A person which intends to discontinue transacting viatical settlement contracts in this state shall so notify the department.

Section 53. Section 624.494, Florida Statutes, is created to read:

624.494 Rules.—The department shall have the authority to promulgate rules reasonably necessary to govern viatical settlement contracts and transactions. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a death benefit under a life policy.

Section 54. Section 624.495, Florida Statutes, is created to read:

624.495. Applicability of related laws.—Sections 624.308, 624.310, 624.4211, 624.422, 624.423, 626.9541, and 626.9561-626.9641 shall apply to persons registered under this act as if they were an authorized insurer and as if the viatical settlement contract were a policy.

Section 55. Section 624.6095, Florida Statutes, is created to read:

624.6095 Concentration of property insurance exposures.—

(1) Each property insurer shall develop and implement a plan for the avoidance of such concentration of property insurance exposures as would render the insurer financially impaired or insolvent in the event of a reasonably anticipated loss event. Such plan shall include the effect of reinsurance.

(2) The department may adopt rules requiring certain property insurers to annually report the concentration of insured property exposures, and the effect of reinsurance on such exposures.

Section 56. Subsection (2) of section 624.610, Florida Statutes, 1992 Supplement, is amended and subsections (13) and (14) are added to said section, to read:

624.610 Reinsurance.—

(2)(a) If a ceding insurer reinsures all or any part of any particular risk or class of risks with an approved reinsurer, the ceding insurer may receive credit in accounting and financial statements on account of such reinsurance ceded. An approved reinsurer is:

1. An assuming insurer authorized by the department to transact such line of insurance or reinsurance in this state. Subject to the other requirements of this code, credit may be taken for reinsurance with an authorized insurer.

2. An assuming insurer approved by the department to transact such line of reinsurance in this state. The department shall approve only solvent insurers meeting the criteria established for authorized insurers in this state. From time to time, the department shall publish a list of insurers approved pursuant to this subsection. Subject to the other requirements of this code, credit may be taken for reinsurance with an approved reinsurer.

3. An assuming underwriting member of an insurance exchange domiciled in any other state or jurisdiction in the United States, *which insurance exchange was licensed and in operation on or before January 1, 1993,* provided the insurance exchange presents to the department for its approval, and maintains, satisfactory evidence that such assuming underwriting member maintains the standards and meets the financial requirements applicable to an authorized insurer. Subject to the other requirements of this section, credit may be taken for reinsurance with members approved under this subsection by the department.

4. A group of individual, unincorporated, or incorporated alien insurers which maintains funds in an amount not less than $50 million held in trust for United States policyholders and beneficiaries in a bank or trust company that is subject to supervision by any state of the United States or that is a member of the Federal Reserve System and which group satisfies the department by annually filing evidence that it can meet its obligations under its reinsurance agreements. Subject to the other requirements of this section, credit may be taken for reinsurance with a group approved under this subsection by the department.

(b) Credit in accounting and financial statements on account of reinsurance ceded to a nonapproved reinsurer may be allowed only:

1. When it is demonstrated by the ceding insurer to the satisfaction of the department that such reinsurer maintains the standards and meets the financial requirements applicable to an authorized insurer;

2. To the extent of deposits by, or funds withheld from, such reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or such deposits or funds are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer. The funds withheld may be cash or securities which are qualified as admitted assets under part II of chapter 625 and which have a market value equal to or greater than the credit taken; or

3. To the extent that the amount of a clean, *unconditional, evergreen,* and irrevocable letter of credit, issued for a term of not less than 1 year and in conformity with the requirements set forth in this subparagraph, equals or exceeds the liability of an unauthorized or unapproved reinsurer for unearned premiums, outstanding losses, and an adequate reserve for incurred but not reported losses under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit be issued under arrangements satisfactory to the department as constituting security to the ceding insurer substantially equal to that of a deposit under subparagraph 2. and that the letter be issued by a banking institution which is a member of the Federal Reserve System and which has financial standing satisfactory to the commissioner. *The department may adopt rules requiring that the letter adhere in its wording to a format for letters of credit as such format has been or may be adopted or approved by the National Association of Insurance Commissioners.*

(c) For the purposes of this subsection only, the term "ceding insurer" shall include any health maintenance organization operating under a certificate of authority issued under part I of chapter 641.

(13) A ceding insurer shall conduct a due diligence inquiry concerning the solvency and reputation of its assuming reinsurer prior to ceding any reinsurance to that reinsurer.

(14) If in the course of an examination under s. 624.316, the department and an insurer are unable to agree as to the nature, protection, or adequacy of any reinsurance contract for which credit is sought, the department may contract with a reinsurance consultant, under procedures specified in this subsection, for the purpose of reviewing and reporting to the department the consultant's evaluations and findings as to the nature, protection, and adequacy of the reinsurance contract. The department shall provide the ceding insurer being examined with a list of at least 10 reinsurance consultants, at least one of whom must be

employed by a national public accounting firm, and the ceding insurer shall select one of those consultants to perform the evaluation. If the ceding insurer fails to select one of the ten and to inform the department in writing of its selection within 14 days after receiving the list, the department shall select one of the consultants from the list to perform the evaluation. The insurer shall cooperate in the reinsurance evaluation by such reinsurance consultant. The ceding insurer being examined must make payment for the evaluation, directly to the firm performing the examination, in accordance with the reasonable rates and charges agreed to by the department and the firm.

Section 57. Subsection (1), the introductory paragraph of subsection (4), and subsections (7) and (8) of section 625.305, Florida Statutes, is amended to read:

625.305 Diversification.—

(1) Every insurer must maintain an amount equal to its entire reserve, as required under part I of this chapter, and the minimum surplus as to policyholders required to be maintained by the insurer under this code invested in coin or currency of the United States, in assets allowed by s. 625.012, except loans or advances to affiliates to the extent unsecured and in investments as authorized under this part, other than the investments authorized under either of the following sections:

(a) Section 625.331.

(b) Section 625.333, except paragraph (1)(a).

(4) ~~Without the prior written approval of the department,~~ The cost of investments in bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed, or guaranteed by any solvent institution, and which are classified as medium to lower quality obligations, other than obligations of subsidiaries or related corporations as that term is defined in s. 625.325, shall be limited to:

(7) The provisions of subsections (4), (5), and (6) apply to any investment made after September 30, 1991. If an insurer's investments in medium to lower quality obligations equal or exceed the maximum amounts permitted by subsection (4) as of October 1, 1991, the insurer shall not acquire any additional medium to lower quality obligations ~~without the prior written approval of the department~~. An insurer that is not in compliance with subsection (4) as of October 1, 1991, may hold until maturity or until January 1, 1996, whichever is sooner, only those medium to lower quality obligations it owns on that date if such obligations were obtained in compliance with the law in effect at the time the investments were made. If the insurer sells, transfers, or otherwise disposes of such securities prior to maturity, the insurer may not acquire any medium to lower quality obligations as substitutions or replacements, *except replacement investments,* ~~without the prior approval of the department. However, the consent of the department shall not be required if such replacement investment is~~ acquired for the purpose of supporting an unexpired life insurance or annuity product liability *if* ~~and~~ the insurer has filed with the department a schedule of such liabilities supported by the medium to lower quality investments. An insurer that is not in compliance with subsection (4) on December 31, 1991, shall file with its annual statement a separate schedule of the medium to lower quality obligations it owns on December 31, 1991. Until it is in compliance with subsection (4), the insurer shall file with each succeeding annual and quarterly statement a separate schedule of the medium to lower quality obligations it owns as of the reporting date of the filed statement.

(8) ~~Failure to obtain the prior written approval of the department shall result in~~ Any investments in excess of those permitted by subsection (4) *are* not ~~being~~ allowed as an asset of the insurer.

Section 58. Paragraph (b) of subsection (3) of section 625.325, Florida Statutes, is amended to read:

625.325 Investments in subsidiaries and related corporations.—

(3) DEFINITIONS.—For purposes of this section:

(b)1. "Related corporation" means a corporation in which the insurer's *parent or* parent corporation holds, directly or indirectly through an intermediary, sufficient stock to give the insurer's *parent or* parent corporation a controlling interest.

2. As to a limited reciprocal, "related corporation" means any corporation that is a member of the limited reciprocal.

Section 59. Subsection (4) is added to section 625.330, Florida Statutes, to read:

625.330 Special investments by title insurer.—

(4) Notwithstanding any other provision of this chapter, a title insurer may pledge or otherwise encumber assets required to be maintained under s. 625.305(1) to acquire other assets authorized by this chapter

Section 60. Subsection (11) of section 626.7451, Florida Statutes, is amended to read:

626.7451 Managing general agents; required contract provisions.—

(11) A licensed managing general agent, when placing business with an insurer under this code, may charge a per-policy fee not to exceed $25. In no instance shall the aggregate of per-policy fees for a placement of business authorized under this section, when combined with any other per-policy fee charged by the insurer, result in per-policy fees which exceed the aggregate amount of $25. The per-policy fee shall be a component of the insurer's rate filing, ~~and~~ shall be fully earned, *and shall be deemed to be premium solely for the purpose of calculating the premium tax as defined in s. 624.509.*

Section 61. Section 626.7452, Florida Statutes, is amended to read:

626.7452 Managing general agents; examination authority.—The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined *in order to assure compliance with this section* ~~as if it were the insurer except in the case where the managing general agent solely represents a single domestic insurer~~.

Section 62. Paragraph (f) is added and paragraph (d) of subsection (2) of section 626.918, Florida Statutes, 1992 Supplement, is amended to read:

626.918 Eligible surplus lines insurers.—

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the department in accordance with the following conditions:

(d) The insurer must have *and maintain* surplus as to policyholders of not less than *$15 million* ~~the amount required under this code for a like authorized insurer~~; or, if an alien insurer, must have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the department to be reasonably adequate, in an amount ~~equal to the capital and surplus~~ *not less than $2.5 million* ~~required of authorized insurers~~. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625;

(e) For those surplus lines insurers that had and had maintained their eligiblity, on or after the effective date of this section, the required surplus as to policyholders shall be not less than:

1. On December 31, 1994, and until December 30, 1995, $2,500,000.

2. On December 31, 1995, and until December 30, 1996, $3,500,000.

3. On December 31, 1996, and until December 30, 1997, $4,500,000.

4. On December 31, 1997, and until December 30, 1998, $5,500,000.

5. On December 31, 1998, and until December 30, 1999, $6,500,000.

6. On December 31, 1999, and until December 30, 2000, $8,000,000.

7. On December 31, 2000, and until December 30, 2001, $9,500,000.

8. On December 31, 2001, and until December 30, 2002, $11,000,000.

9. On December 31, 2002, and until December 30, 2003, $13,000,000.

10. On December 31, 2003, and until December 30, 2004, $15,000,000.

(f) The capital and surplus requirements set forth in subsection (e) shall not apply in the case of an insurance exchange created by the laws of individual states, where the exchange maintains capital and surplus pursuant to the requirements of that state, or maintains capital and surplus in an amount not less than $50,000,000 in the aggregate. For an insurance exchange which maintains funds for the protection of all

insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus in an amount not less than $3,000,000. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements set forth in subsection (e) above.

Section 63. Effective upon this act becoming a law, paragraph (f) of subsection (4) of section 627.351, Florida Statutes, 1992 Supplement, as amended by section 3 of chapter 92-345, Laws of Florida, and subsection (5) are amended to read:

627.351 Insurance risk apportionment plans.—

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(f) The plan shall provide for one or more insurers *or non-insurers* able and willing to provide policy service through licensed resident agents and claims service on behalf of all other insurers participating in the plan. In the event no insurer is able and willing to provide such services, the Joint Underwriting Association is authorized to perform any and all such services.

(5) PROPERTY AND CASUALTY INSURANCE RISK APPORTIONMENT.—The department shall adopt by rule a joint underwriting plan to equitably apportion among insurers authorized in this state to write property insurance as defined in s. 624.604 or casualty insurance as defined in s. 624.605, the underwriting of one or more classes of property insurance or casualty insurance, except for the types of insurance that are included within property insurance or casualty insurance for which an equitable apportionment plan, assigned risk plan, or joint underwriting plan is authorized under s. 627.311 or subsections (1), (2), (3), or (4) of this section and except for risks eligible for flood insurance written through the federal flood insurance program to persons with risks eligible under subparagraph (a)1. and who are in good faith entitled to, but are unable to, obtain such property or casualty insurance coverage, including excess coverage, through the voluntary market. For purposes of this subsection, an adequate level of coverage means that coverage which is required by state law or by responsible or prudent business practices. The Joint Underwriting Association shall not be required to provide coverage for any type of risk for which there are no insurers providing similar coverage in this state. The department may designate one or more ~~participating~~ insurers *or non-insurers* who agree to provide policyholder and claims service, including the issuance of policies, on behalf of the participating insurers.

(a) The plan shall provide:

1. A means of establishing eligibility of a risk for obtaining insurance through the plan, which provides that:

a. A risk shall be eligible for such property insurance or casualty insurance as is required by Florida law if the insurance is unavailable in the voluntary market, including the market assistance program and the surplus lines market.

b. A commercial risk not eligible under sub-subparagraph a. shall be eligible for property or casualty insurance if:

(I) The insurance is unavailable in the voluntary market, including the market assistance plan and the surplus lines market;

(II) Failure to secure the insurance would substantially impair the ability of the entity to conduct its affairs; and

(III) The risk is not determined by the Risk Underwriting Committee to be uninsurable.

c. In the event the Federal Government terminates the Federal Crime Insurance Program established under Title 44, Code of Federal Regulations, ss. 80-83, Florida commercial and residential risks previously insured under the federal program shall be eligible under the plan.

d. In the event a risk is eligible under this paragraph and in the event the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less, for a given class of risk contained in the classification system defined in the plan of operation of the Joint Underwriting Association, and unless the market assistance plan provides a quotation for at least 80 percent of such applicants, such classification shall immediately be eligible for coverage in the Joint Underwriting Association. Provided, however, any market assistance plan application which is rejected because an individual risk is so hazardous as to be practically uninsurable, considering whether the likelihood of a loss for such a risk is substantially higher than for other risks of the same class due to individual risk characteristics, prior loss experience, unwillingness to cooperate with a prior insurer, physical characteristics and physical location shall not be included in the minimum percentage calculation provided above. In the event that there is any legal or administrative challenge to a determination by the department that the conditions of this subparagraph have been met for eligibility for coverage in the Joint Underwriting Association for a given classification, any eligible risk may obtain coverage during the pendency of any such challenge. In order to qualify as a quotation for the purpose of meeting the minimum percentage calculation in this subparagraph, the quoted premium must meet the following criteria:

(I) In the case of an admitted carrier, the quoted premium must not exceed the premium available for a given classification currently in use by the Joint Underwriting Association or the premium developed by using the rates and rating plans on file with the department by the quoting insurer, whichever is greater.

(II) In the case of an authorized surplus lines insurer, the quoted premium must not exceed the premium available for a given classification currently in use by the Joint Underwriting Association by more than 25 percent, after consideration of any individual risk surcharge or credit.

e. Any agent who falsely certifies the unavailability of coverage as provided by sub-subparagraphs a. and b., is subject to the penalties provided in s. 626.611.

2. A means for the equitable apportionment of profits or losses and expenses among participating insurers.

3. Rules for the classification of risks and rates which reflect the past and prospective loss experience.

4. A rating plan which reasonably reflects the prior claims experience of the insureds. Such rating plan shall include at least two levels of rates for risks that have favorable loss experience and risks that have unfavorable loss experience, as established by the plan.

5. Reasonable limits to available amounts of insurance. Such limits may not be less than the amounts of insurance required of eligible risks by Florida law.

6. Risk management requirements for insurance where such requirements are reasonable and are expected to reduce losses.

7. Deductibles as may be necessary to meet the needs of insureds.

8. Policy forms which are consistent with the forms in use by the majority of the insurers providing coverage in the voluntary market for the coverage requested by the applicant.

9. A means to remove risks from the plan once such risks no longer meet the eligibility requirements of this paragraph. For this purpose, the plan shall include the following requirements: At each 6-month interval after the activation of any class of insureds, the board of governors or its designated committee shall review the number of applications to the market assistance plan for that class. If, based on these latest numbers, at least 90 percent of such applications have been provided a quotation, the Joint Underwriting Association shall cease underwriting new applications for such class within 30 days, and notification of this decision shall be sent to the Insurance Commissioner, the major agents' associations, and the board of directors of the market assistance plan. A quotation for the purpose of this subparagraph shall meet the same criteria for a quotation as provided in sub-subparagraph d. All policies which were previously written for that class shall continue in force until their normal expiration date, at which time, subject to the required timely notification of nonrenewal by the Joint Underwriting Association, the insured may then elect to reapply to the Joint Underwriting Association according to the requirements of eligibility. If, upon reapplication, those previously insured Joint Underwriting Association risks meet the eligibility requirements, the Joint Underwriting Association shall provide the coverage requested.

10. A means for providing credits to insurers against any deficit assessment levied pursuant to paragraph (c), for risks voluntarily written through the market assistance plan by such insurers.

11. That the Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of 13

individuals appointed by the Insurance Commissioner, and shall have an executive or underwriting committee. At least four of the members shall be representatives of insurance trade associations as follows: one member from the American Insurance Association, one member from the Alliance of American Insurers, one member from the National Association of Independent Insurers, and one member from an unaffiliated insurer writing coverage on a national basis. Two representatives shall be from two of the statewide agents' associations. Each board member shall be appointed to serve for 2-year terms beginning on a date designated by the plan and shall serve at the pleasure of the commissioner. Members may be reappointed for subsequent terms.

(b) Rates used by the Joint Underwriting Association shall be actuarially sound. To the extent applicable, the rate standards set forth in s. 627.062 shall be considered by the department in establishing rates to be used by the joint underwriting plan. The initial rate level shall be determined using the rates, rules, rating plans, and classifications contained in the most current Insurance Services Office (ISO) filing with the department or the filing of other licensed rating organizations with an additional increment of 25 percent of premium. For any type of coverage or classification which lends itself to manual rating for which Insurance Services Office or another licensed rating organization does not file or publish a rate, the Joint Underwriting Association shall file and use an initial rate based on the average current market rate. The initial rate level for the rate plan shall also be subject to an experience and schedule rating plan which may produce a maximum of 25 percent debits or credits. For any risk which does not lend itself to manual rating and for which no rate has been promulgated under the rate plan, the board shall develop and file with the commissioner, subject to his approval, appropriate criteria and factors for rating the individual risk. Such criteria and factors shall include, but not be limited to, loss rating plans, composite rating plans, and unique and unusual risk rating plans. The initial rates required under this paragraph shall be adjusted in conformity with future filings by the Insurance Services Office with the department and shall remain in effect until such time as the Joint Underwriting Association has sufficient data as to independently justify an actuarially sound change in such rates.

(c)1. In the event an underwriting deficit exists for any policy year the plan is in effect, any surplus which has accrued from previous years and is not projected within reasonable actuarial certainty to be needed for payment for claims in the year the surplus arose shall be used to offset the deficit to the extent available.

2. As to any remaining deficit, the Board of Governors of the Joint Underwriting Association shall levy and collect an assessment in an amount sufficient to offset such deficit. Such assessment shall be levied against the insurers participating in the plan during the year giving rise to the assessment. Any assessments against insurers for the lines of property and casualty insurance issued to commercial risks shall be recovered from the participating insurers in the proportion that the net direct premium of each insurer for commercial risks written during the preceding calendar year bears to the aggregate net direct premium written for commercial risks by all members of the plan for the lines of insurance included in the plan. Any assessments against insurers for the lines of property and casualty insurance issued to personal risks eligible under sub-subparagraph (a)1.a. or sub-subparagraph (a)1.c. shall be recovered from the participating insurers in the proportion that the net direct premium of each insurer for personal risks written during the preceding calendar year bears to the aggregate net direct premium written for personal risks by all members of the plan for the lines of insurance included in the plan.

3. The board shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each participating insurer and policyholder, including, if prudent, filing suit to collect such assessment. If the board is unable to collect an assessment from any insurer, the uncollected assessments shall be levied as an additional assessment against the participating insurers and any participating insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying insurer.

4. Any funds or entitlements that the state may be eligible to receive by virtue of the Federal Government's termination of the Federal Crime Insurance Program referenced in sub-subparagraph (a)1.c. may be used under the plan to offset any subsequent underwriting deficits that may occur from risks previously insured with the Federal Crime Insurance Program.

(d) Upon adoption of the plan, all insurers authorized in this state to underwrite property or casualty insurance shall participate in the plan.

(e) A Risk Underwriting Committee of the Joint Underwriting Association composed of three members experienced in evaluating insurance risks is created to review risks rejected by the voluntary market for which application is made for insurance through the joint underwriting plan. The committee shall consist of a representative of the market assistance plan created under s. 627.3515, a member selected by the insurers participating in the Joint Underwriting Association, and a member named by the Insurance Commissioner. The Risk Underwriting Committee shall appoint such advisory committees as are provided for in the plan and are necessary to conduct its functions. The salaries and expenses of the members of the Risk Underwriting Committee and its advisory committees shall be paid by the joint underwriting plan. The plan approved by the department shall establish criteria and procedures for use by the Risk Underwriting Committee for determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

1. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

2. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the underwriting committee shall be construed as the private placement of insurance and the provisions of chapter 120 shall not apply.

Section 64. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, 1992, Supplement, is amended to read:

627.728 Cancellations; nonrenewals.—

(1) As used in this section, the term:

(a) "Policy" means the bodily injury and property damage liability, personal injury protection, medical payments, comprehensive, collision, and uninsured motorist coverage portions of a policy of motor vehicle insurance delivered or issued for delivery in this state:

1. Insuring a natural person as named insured or one or more related individuals resident of the same household; and

2. Insuring only a motor vehicle of the private passenger type or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or insuring any other four-wheel motor vehicle having a load capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured other than farming; other than any policy issued under *the Florida Joint Underwriting Association* ~~an automobile insurance assigned risk plan~~; insuring more than four automobiles; or covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

Section 65. Subsections (3) and (4) are added to section 627.8405, Florida Statutes, to read:

627.8405 Prohibited premium financing.—No premium finance company shall, in a premium finance agreement, provide financing for the cost of:

(1) A membership in an automobile club. The term "automobile club" means a legal entity which, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, this definition of "automobile club" does not include persons, associations, or corporations which are organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon racecourses established and marked as such for the duration of such particular events. The words "motor vehicle" used herein have the same meaning as defined in chapter 320.

(2) An accidental death and dismemberment policy sold in combination with a personal injury protection *and property damage* only policy.

(3) Any amount in excess of 70 percent of the premium on an insurance contract. This subsection also applies to premium financing by insurance agents or insurance companies under Part XVI.

(4) Any product not regulated under the provisions of the insurance code. This subsection also applies to premium financing by insurance agents or insurance companies under Part XVI.

Section 66. Section 628.371, Florida Statutes, is amended to read:

628.371 Dividends to stockholders.—

(1) A domestic stock insurer shall not pay any dividends or distribute cash or other property to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains. ~~Dividend payments or distributions to stockholders shall not exceed 10 percent of such surplus in any one year unless otherwise approved by the department. In addition to such limited payments, an insurer may make dividend payments or distributions out of the insurer's entire net operating profits and realized net capital gains derived during the immediately preceding calendar year.~~

(2) Dividend payments or distributions to stockholders, without prior written approval of the department, shall not exceed the larger of:

(a) The lessor of ten percent of surplus or net gain from operations for life and health companies or net income for property and casualty companies, not including realized capital gains, plus a two year carry forward for property and casualty companies;

(b) Ten percent of surplus, with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains;

(c) The lessor of ten percent of surplus or net investment income (net gain before capital gains for life companies) plus a three year carry forward (two year carry forward for life companies) with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains.

(3) In lieu of the provisions in subsection (2), an insurer may pay a dividend or make a distribution without the prior written approval of the department when:

(a) The dividend is equal to or less than the greater of:

1. Ten percent of the insurers surplus as to policyholders derived from realized net operating profits on its business and net realized capital gains; or

2. The insurers entire net operating profits and realized net capital gains derived during the immediately preceding calendar year; and

(b) The insurer will have surplus as to policyholders equal to or exceeding 115 percent of the minimum required statutory surplus as to policyholders after the dividend or distribution is made; and,

(c) The insurer has filed notice with the department at least ten business days prior to the dividend payment or distribution, or such shorter period of time as approved by the department on a case-by-case basis. Such notice shall not create a right in the department to approve or disapprove a dividend otherwise properly payable hereunder; and

(d) The notice includes a certification by an officer of the insurer attesting that after payment of the dividend or distribution the insurer will have at least 115 percent of required statutory surplus as to policyholders.

~~(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus advanced to the insurer under s. 628.401.~~

~~(3) A dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.~~

(4) The department shall not approve a dividend or distribution in excess of the maximum amount allowed in subsection (1) unless, considering the following factors, it determines that the distribution or dividend would not jeopardize the financial condition of the insurer:

(a) The liquidity, quality, and diversification of the insurer's assets and the effect on its ability to meet its obligations.

(b) Reduction of investment portfolio and investment income.

(c) Effects on the written premium to surplus ratios as required by the Florida Insurance Code.

(d) Industrywide financial conditions.

(e) Prior dividend distributions of the insurer.

(f) Whether the dividend is only a "pass-through" dividend from a subsidiary of the insurer.

Section 67. Paragraph (a) of subsection (7) of section 628.461, Florida Statutes, is amended to read:

628.461 Acquisition of controlling stock.—

(7) The person or persons filing the statement required by subsection (1) shall have the burden of proof. The department shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(a) Upon completion of the acquisition, the domestic stock insurer will be able to satisfy the requirements for the *continuance* ~~issuance~~ of a license to write the line or lines of insurance for which it is presently licensed;

Section 68. Subsections (1) and (2) of section 628.6011, Florida Statutes, 1992 Supplement, are amended to read:

628.6011 Assessable mutual insurers.—

(1) An "assessable mutual insurer" is an insurer incorporated in Florida without permanent capital stock which has only policyholders, insureds or risks located in Florida ~~and which transacts insurance only within Florida~~. An assessable mutual insurer may be formed only in accordance with part I *and must include the words "assessable mutual" in its name.* Members of the assessable mutual have a contingent liability for discharge of its liabilities as provided in this part. An assessable mutual may be authorized to offer only property~~, health,~~ and casualty insurance.

(2) The assessable mutual shall *be a member of* ~~not participate in~~ the Florida Insurance Guaranty Association ~~or the Florida Life and Health Insurance Guaranty Association~~.

Section 69. Subsections (2) and (4) of section 628.6016, Florida Statutes, is amended to read:

628.6016 Applicability of related laws.—In addition to other provisions of the code cited in ss. 628.6011-628.6018:

(2) Part II of chapter 625 *and part I of chapter 631*;

(4) Sections *627.091, 627.101, 627.111, 627.141, 627.151, 627.171, 627.191, 627.211, 627.072,* 627.291, 627.413, 627.4132, 627.416, 627.418, 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, 627.428, 627.702, and 627.706; part XI of chapter 627; ss. 627.912, 627.913, and 627.918; and

apply to assessable mutual insurers; however, ss. 628.255, 628.411, and 628.421 do not apply. No section of the code not expressly and substituted for the term "commercial self-insurer" as appropriate.

Section 70. Subsection (5) of section 628.231, Florida Statutes, is added to read:

628.231 Directors; number, election.—

(1) The affairs of every domestic insurer shall be managed by not less than five directors.

(2) Directors must be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than 3 years each and until their successors are elected and have qualified; and, if to be elected for terms of more than 1 year, the insurer's bylaws shall provide for a staggered-terms system under which the terms of a proportionate part of the members of the board of directors will expire on the date of each annual meeting of stockholders or members.

(3) A majority of the directors must be citizens of the United States.

(4) If so provided in a stock insurer's bylaws, a director of such stock insurer shall be a stockholder thereof; and, if so provided in a mutual insurer's bylaws, a director of such mutual insurer shall be a policyholder thereof.

(5) In the case of domestic mutual insurers, any proxy solicitation to members for the election of directors shall contain disclosures concerning such directors as required by rule of the department. Such rule shall be based on the proxy disclosure requirements of the Federal Securities and Exchange Commission's Regulation S-K as it existed on March 31, 1993.

Section 71. Subsections (1) and (4) of section 628.6017, Florida Statutes, are amended to read:

628.6017 Converting assessable mutual insurer.—

(1) An assessable mutual insurer may become a stock insurer *by filing an application which complies with s. 628.051 and by submitting a plan of conversion which is equitable to the insurer's members and acceptable to the department. Section 628.441 shall not apply to the conversion of an assessable mutual insurer to a stock insurer.* ~~as provided in s. 628.441 or a~~ *An assessable mutual insurer may become a* nonassessable mutual pursuant to s. 628.341 if the assessable mutual insurer's ratio of actual annual written premiums, as adjusted in accordance with subsection (2), to current surplus as to policyholders does not exceed 10 to 1 for gross written premiums and does not exceed 4 to 1 for net written premiums.

~~(4) Neither the Florida Insurance Guaranty Association nor the Florida Life and Health Insurance Guaranty Association shall be liable for any liability of an assessable mutual insurer except for claims incurred on policies issued on or after the date on which the assessable mutual insurer became a stock insurer or a nonassessable mutual insurer.~~

Section 72. Section 628.6018, Florida Statutes, is amended to read:

628.6018 Assessments.—

(1) For assessable mutual insurers, the following provisions shall apply concerning the requirement of s. 628.081(3)(e) that the articles of incorporation of a mutual insurer specify the maximum contingent liability of its members to assessment.

(a) In considering the application for a certificate of authority as an assessable mutual insurer, the department shall determine if the proposed maximum contingent liability specified or proposed to be specified in the articles of incorporation is sufficient, upon consideration of the assessable mutual insurer's proposed reinsurance program, and other factors as the department determines affect the likelihood that an assessment may be needed, and if needed, whether the proposed maximum assessment would be sufficient.

(b) The department may deny an application for a certificate of authority as an assessable mutual insurer if the applicant proposes an insufficient maximum assessment liability as determined by the department hereunder. Any entity already holding a certificate of authority as an assessable mutual insurer as of July 1, 1993, shall not be subject to this paragraph.

(c) The department may revoke the certificate of authority of, or place in delinquency proceedings under part I of chapter 631, any assessable mutual insurer having a maximum contingent assessment liability of less than ten times the premium as set out under s. 628.081(3)(e), which subsequent to issuance of its certificate of authority, substantially modifies its reinsurance program without the consent of the department.

If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the insurer may institute suit to collect the same.

(2)~~(1)~~ Any assessment made by an insurer under this part is prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer is likewise prima facie correct.

(3)~~(2)~~ The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. The failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(4)~~(3)~~ If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the insurer may institute suit to collect the same.

Section 73. Subsection (9) is added to section 631.718, Florida Statutes, to read:

631.718 Assessments.—

(9) Notwithstanding any provisions to the contrary, no member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to section 121.35, to or for the benefit of employees of educational institutions situated in this state may be assessed in any one calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate tax on the business to which this part applied or 0.1 percent of written premium on such business in this state, whichever is greater.

Section 74. This act shall take effect July 1, 1993.

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 insurance; amending s. 627.062, F.S.; providing that certain rate filings are presumed not excessive; providing for repeal of that presumption; creating s. 626.7355, F.S.; providing for a temporary customer service representative license; creating s. 627.0662, F.S.; exempting certain insurers from excess profit provisions; creating a special trust account for limited apportionment companies; amending s. 627.7283, F.S.; providing for the return of unearned premiums within a specified time after the effective date of cancellation; amending s. 627.848, F.S.; providing for cancellation of an insurance contract regardless of whether a premium finance company has complied with notice requirements; providing for a cause of action against the premium finance company for failing to provide notice; specifying certain proof of notice of intent to cancel or request for cancellation of certain contracts; providing circumstances for award of attorney's fees; creating s. 628.531, F.S.; providing for conversion of a group self-insurer's fund to a domestic mutual insurer; amending s. 631.713, F.S.; exempting certain policies and contracts from provisions of part III of ch. 631, F.S., relating to life and health insurance guaranty of payments; amending s. 631.717, F.S.; providing for payment of certain costs from an annuities account; amending s. 631.718, F.S.; prescribing the manner of calculating assessments; limiting Florida Life and Health Insurance Guaranty Association assessments of certain insurers; amending s. 284.33, F.S.; authorizing the Department of Insurance to purchase managed care services with the purpose of providing medical care to injured state workers receiving workers' compensation benefits from the department's Division of Risk Management; providing procedures; creating s. 626.7455, F.S.; requiring adoption of rules specifying standards of conduct for managing general agents in specified circumstances; amending s. 627.351, F.S.; revising provisions relating to eligibility for coverage under the windstorm insurance risk apportionment plan and the Residential Property and Casualty Joint Underwriting Association; creating s. 627.7015, F.S.; requiring offers of replacement cost coverage and law and ordinance coverage in connection with issuance or renewal of homeowners' insurance policies; creating s. 627.7017, F.S.; requiring an insurer to verify contractors' licensure status in specified circumstances; creating s. 627.7019, F.S.; requiring insurers to make available specified coverage for loss to exterior paint; amending s. 627.707, F.S.; saving provisions relating to investigation of sinkhole losses from scheduled repeal; prohibiting nonrenewals of property insurance policies in specified circumstances; amending s. 631.57, F.S.; specifying obligations of the Florida Insurance Guaranty Association with respect to homeowner's association policies; creating s. 627.3517, F.S.; creating the Florida Hurricane Catastrophe Fund Act; creating the fund; providing for a board of directors, providing duties; providing for a plan of operation; creating s. 624.6095, F.S.; providing for insurer reporting; authorizing requirement of certain corrective plans; amending ss. 625.50, 625.51, F.S.; providing cross-references; creating s. 316.665, F.S.; authorizing recovery agents to seize license plates in certain counties; providing for rules and for a contractual relationship with the Department of Highway Safety and Motor Vehicles; amending s. 324.201, F.S.; providing for the release of certain information to recovery agents or agencies; providing a procedure when a recovery agent or agency obtains a seized license plate; creating s. 626.7355, F.S.; providing for temporary customer representative licenses; creating s. 627.0662, F.S.; requiring certain insurers to deposit excess profits in a special account; amending s. 627.6472, F.S.; including motor vehicle insurers within the definitions of "insurer" and "health insurer" for certain purposes; creating s. 627.6585, F.S.; requiring group health insurance contracts to contain a specified incontestability clause; providing alternative language; amending s. 627.7263, F.S.; specifying conditions under which a renter's or lessee's coverage becomes primary;

requiring certain notice; creating s. 627.7265, F.S.; specifying circumstances under which misrepresentations, omissions, concealments, or incorrect statements may prevent recovery under a motor vehicle insurance policy; providing circumstances under which rights to prevent recovery are waived; amending s. 627.7295, F.S.; specifying the period within which a new policy or binder may not be canceled; amending s. 627.732, F.S.; defining "recovery agent"; amending s. 627.733, F.S.; providing for disposition of fees with respect to certain license plates seized by recovery agents; amending s. 627.8405, F.S.; prohibiting certain premium financing; amending s. 627.736, F.S.; creating a presumption relating to failure to provide notice of an accident; authorizing an insurer to issue certain policies limiting payment of medical benefits under certain circumstances; authorizing certain injured persons to receive health care services from any licensed health care provider; providing for limitation of reimbursement or payment of medical benefits; requiring personal injury protection insurers to provide certain notice; providing for future repeal and review; amending s. 627.739, F.S.; providing for application of a deductible amount; providing for receipt of certain benefits after a deductible is met; amending s. 713.78, F.S.; requiring notice to insurers with respect to certain recovered, removed, or stored vehicles; specifying rights of insurers; providing circumstances for release of the vehicle to the insurer; amending s. 715.05, F.S.; providing for notice to the insurer of unclaimed motor vehicles; amending s. 635.041, F.S.; specifying contingency reserves of mortgage guaranty insurers; creating s. 634.240, F.S.; prohibiting sales of motor vehicle service agreements in connection with the financing of a motor vehicle; creating s. 624.3101, F.S.; prohibiting false or misleading financial statements; providing a penalty; amending s. 624.316, F.S.; authorizing the department to accept certain reports of insurers in lieu of making its own examination under certain circumstances; providing for certain examination of insurers to be by an independent professional examiner; specifying requirements; amending s. 624.319, F.S.; clarifying and revising duties and responsibilities of the department with respect to examination and investigation reports; amending s. 624.407, F.S.; increasing a required surplus amount for new insurers; amending s. 624.408, F.S.; revising required surplus amounts for new and existing insurers; amending s. 624.413, F.S.; providing additional duties of the department with respect to an application for certificate of authority; amending s. 624.424, F.S.; requiring insurer annual statements to contain financial information; increasing the period within which an insurer may not use certain accountants; requiring written notice of noncompliance with departmental accounting regulations under certain circumstances; amending s. 624.438, F.S.; specifying eligibility requirements for a certificate of authority as a multiple-employer welfare arrangement; amending s. 626.461, F.S.; providing for the continuance of an insurer's license to write business; amending 624.523, F.S.; providing for deposit of annual license taxes of insurers in the Insurance Commissioner's Regulatory Trust Fund; creating s. 624.6095, F.S.; requiring insurers to develop and implement a plan to avoid concentration of property insurance exposures; authorizing the department to adopt rules; amending s. 624.610, F.S.; requiring ceding insurers to conduct certain inquiry of assuming reinsurers; limiting an insurer's ability to take credit for certain reinsurance; authorizing the department to use the services of reinsurance consultants in specified circumstances; creating 624.490, F.S.; providing a short title; creating s. 624.491, F.S.; providing a definition; creating s. 624.492, F.S.; providing requirements for viatical settlement contracts; creating s. 624.493, F.S.; requiring registration to enter into or solicit such contracts; imposing a registration fee; creating s. 624.494, F.S.; authorizing the department to adopt rules; creating s. 624.495, F.S.; providing applicability; amending s. 625.305, F.S.; specifying requirements for maintenance of certain assets; amending s. 625.325, F.S.; clarifying a definition; amending s. 625.330, F.S.; providing an exemption; amending 626.7451, F.S.; related to managing general agents; providing that policy fees shall be deemed premium for purposes of calculating premium tax; amending s. 626.7452, F.S.; authorizing the department to examine a managing general agent; amending s. 626.918, F.S.; requiring minimum surplus as to policyholders for surplus lines insurers; amending s. 627.351, F.S.; allowing non-insurers to provide services to the medical malpractice and property and casualty joint underwriting associations; amending s. 627.728, F.S.; providing for renewals of policies issued by the Florida Joint Underwriting Association; amending s. 627.8405, F.S.; prohibiting certain premium financing; amending s. 628.231, F.S.; providing for disclosures pertaining to boards of directors; amending s. 628.371, F.S.; limiting payment of extraordinary dividends or distributions; amending s. 628.6011, F.S.; specifying the content of the name of an assessable mutual insurer; requiring assessable mutual insurers to belong to a guaranty association; amending s. 628.6016, F.S.; making certain provisions of the insurance code applicable to assessable mutual insurers; amending s. 628.6017, F.S.; providing for the conversion of an assessable mutual insurer to a stock insurer; deleting an insurance guaranty association exemption from liability for any liability of assessable mutual insurers; amending s. 628.6018, F.S.; specifying maximum contingent liability imposed by assessable mutual insurers; amending s. 631.718, F.S., relating to assessments from the Florida Life and Health Insurance Guaranty Association; providing a limitation on the amount of assessments; providing an effective date.

On motion by Senator Williams, by two-thirds vote **CS for SB 1044** 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—1

Motion to Reconsider

Senator Johnson moved that the Senate reconsider the vote by which **CS for SB 1044** passed. The motion failed.

MOTIONS

Senator Dudley moved that the Senate recall **CS for HB 2345** from the House. The motion failed.

Senator Boczar moved that the Senate recess until noon, Saturday, April 3. The motion failed.

REPORTS OF COMMITTEES

The Committee on Rules and Calendar submits the following bills to be placed on the Special Order Calendar for Friday, April 2, 1993: CS for SB's 1914, 2006, 1784 and 406, CS for CS for HB 497, CS for CS for CS for SB 398, CS for HJR 1579, CS for SB 152, CS for CS for SB 164, CS for SB 994, SJR 1370, CS for SB 772, CS for SB 1500, CS for SB 2224, CS for CS for SB 516, CS for HB 77, HB 173, SB 1976, SB 1276, SB 1702, SB 1992, CS for CS for SB 1550, SB 1762, CS for HB 565, CS for CS for SB 2038, SB 174, SB 188, SB 356, CS for SB 1230, CS for SB 780, SB 484, CS for SB 1034, CS for SB 1590, CS for HB 1085, CS for CS for SB 396, CS for SB 1594, CS for SB 1742, CS for CS for SB 1716, SB 1628, SB 2024, SB 1946, SB 742, CS for SB 1910, CS for CS for SB 1932, SB 24, SB 386, CS for SB 1962, CS for CS for SB 1596, SB 1470, CS for SB's 1434, 348 and 1922, CS for SB 1972, SB 128, CS for SB 1002, CS for SB 2130, CS for SB 2070, CS for SB 2086, CS for SB 2096, CS for SB 312, SB 2108, SB 2202, SB 1970, CS for SB 1314, CS for SB 1258, CS for SB 1246, CS for SB's 722, 1284 and 1952, SB 1856, CS for SB 1844, CS for SB 1794, SB 1432, CS for CS for SB 1410, CS for SB 1256, CS for CS for SB 1210, CS for SB 1184, SB 1120, SB 1026, SB 832, SB 784, SB 596, SB 422, SCR 366, CS for SB 1218, CS for SB 1044, SB 978

Respectfully submitted,
Toni Jennings, Chairman

The Committee on Rules and Calendar submits the following bills to be placed on the Local Bill Calendar for Friday, April 2, 1993: HB 109, HB 487, HB 893, HB 897, HB 1063, HB 1697, HB 1911, HB 2355

Respectfully submitted,
Toni Jennings, Chairman

INTRODUCTION AND REFERENCE OF BILLS

FIRST READING

SR 2422 was introduced out of order and adopted March 31.

SR 2424 was introduced out of order and adopted March 31.

SR 2426 was introduced out of order and adopted April 1.

SR 2428 was introduced out of order and adopted this day.

SR 2430 was introduced out of order and adopted this day.

SR 2432 was introduced out of order and adopted this day.

SR 2434 was introduced out of order and adopted this day.

By Senator Grogan—

SB 2436—A bill to be entitled An act relating to Brevard County; providing for the relief of Julian S. Mangum, Sr., to compensate him for the loss of his business inventory taken by the Brevard County Sheriff's Department; providing for payment by the Brevard County Sheriff's Department; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Special Master; and the Committee on Finance, Taxation and Claims.

MESSAGES FROM THE GOVERNOR AND OTHER EXECUTIVE COMMUNICATIONS

The Governor advised that he had filed with the Secretary of State SB 456, which became law without his signature on April 2, 1993.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

FIRST READING

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed HB 91, HB 93, HB 479, HB 753, HB 765, HB 995, HB 1057, CS for HB 1665, HB 1765, HB 2033, HB 2425; has passed as amended HB 107, CS for HB 387, HB 439, CS for HB 461, HB 581, CS for HB 761, CS for HB 795, HB 865, CS for HB 899, HB 1065, HB 1193, HB 1421, HB 1487, CS for HB 1663, CS for HB 1747, HB 1789, HB 1913, HB 1969, HB 2293; has adopted HM 2343 and requests the concurrence of the Senate.

John B. Phelps, Clerk

By Representative King and others—

HB 91—A bill to be entitled An act relating to the civil service system of the City of Jacksonville; amending s. 1 of ch. 92-341, Laws of Florida; eliminating restrictions on copension contributions of employees whose positions were funded by grants, permitting the city to make payment for such contributions from city funds; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By Representative King and others—

HB 93—A bill to be entitled An act relating to the Charter of the City of Jacksonville; amending Article 16 of Chapter 92-341, Laws of Florida, being the Charter of the City of Jacksonville, to provide that police and correctional officers who suffer certain conditions or impairments of health shall be treated in a manner similar to firefighters with respect to special provisions relative to disability; increasing the retirement contribution rate for funding; declaring an important state interest; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By Representative Bainter—

HB 479—A bill to be entitled An act relating to Volusia County; creating the "City of DeBary Charter"; providing for the corporate name and purpose of the Charter; establishing territorial boundaries of the municipality and authorizing annexations; providing powers of the municipality and of certain officers; providing for election of a City Council, including the Mayor and Vice Mayor, and providing for qualifications, powers, and duties of its membership, and a procedure for establishing their compensation and expense reimbursement; establishing circumstances which create vacancies in office and providing for filling vacancies and for forfeiture and recall; requiring independent financial audit; providing for Council meetings, rules, recordkeeping, and voting at meetings; providing for nominations, elections, and terms of office of the Mayor and Council; providing for a City Manager, City Clerk, and City Attorney and powers and duties of each; authorizing establishment of administrative departments; providing definitions; providing procedures for adoption of ordinances and resolutions, and for handling finances; establishing a fiscal year and annual budgets; providing procedures for initiative and referendum; providing for Charter amendments and review; providing for severability; providing for transition, including initial election and terms, date of creation and establishment of the municipality, payment of certain revenues, and transitional comprehensive plan and land development regulations; entitling the City to state shared and local option gas tax revenues; providing for contractual services and facilities; eliminating transition elements; requiring a 5-year wait for any reintroduction to the legislative delegation; providing effective dates.

—was referred to the Committee on Rules and Calendar.

By Representative Hanson—

HB 753—A bill to be entitled An act relating to Palm Beach County; defining career service employees; providing permanent status for certain employees of the Palm Beach County Sheriff; providing applicability; specifying rights of such employees; providing cause for suspension or dismissal; providing for rules; providing procedures for appeal of disciplinary actions and complaints against employees of the Sheriff; providing for the appointment of boards to hear appeals and procedures with respect thereto; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Jamerson—

HB 765—A bill to be entitled An act relating to the Pinellas Police Standards Council, Pinellas County; amending s. 4(k)(1) and (2) of ch. 72-666, Laws of Florida, as amended; increasing the duties and powers of the Council; increasing the council's funding assessment from $2 to $3 with the $1 addition dedicated to the women and minority recruitment program as described; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Warner—

HB 995—A bill to be entitled An act relating to Martin County; amending ss. 10 and 17 of ch. 78-560, Laws of Florida, relating to the powers and duties of the Environmental Control Hearing Board; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By Representative Smith—

HB 1057—A bill to be entitled An act relating to Clay County; repealing ch. 89-522, Laws of Florida, which provides permanent status and certain rights of certain employees of the Clay County Sheriff and specifies certain actions that can be taken against them; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By the Committee on Criminal Justice and Representative Roberts and others—

CS for HB 1665—A bill to be entitled An act relating to sexual predators; creating the "Florida Sexual Predators Act"; providing legislative findings and intent; requiring registration of sexual predators and providing for the monitoring and tracking of registered sexual predators by law enforcement personnel through a computerized system maintained by the Department of Law Enforcement; providing criminal penalties for violations of the registration requirements and exceptions from such requirements; requiring the provision of certain written notifications of the registration requirements; providing legislative findings and purpose as to sexual predators and providing criteria defining sexual predators; providing for sexual predator findings by the courts; amending ss. 947.1405 and 947.141, F.S.; providing for conditional release supervision for sexual predators and for arrest upon violation of conditional release; providing an effective date.

—was referred to the Committees on Criminal Justice; Corrections, Probation and Parole; Finance, Taxation and Claims; and Appropriations.

By Representative Gay—

HB 1765—A bill to be entitled An act relating to Lee County; prohibiting the taking of saltwater fish, except by hook and line, handheld cast net, or use of five or fewer blue crab traps, from specified manmade canals and waterways within the county; providing a penalty; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Representative Ogles—

HB 2033—A bill to be entitled An act relating to Manatee County; amending chapter 85-454, Laws of Florida, as amended, relating to the Braden River Fire Control and Rescue District; amending the residency requirement; amending the frequency of inspections; amending the schedule of special assessments and charges; amending the impact fees levied by the Braden River fire Control and Rescue District; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By Representative De Grandy and others—

HB 2425—A bill to be entitled An act relating to appropriations; providing an appropriation for the funding of a grant to investigate the destruction of Rosewood, Florida; providing a report; providing an effective date.

—was referred to the Committee on Appropriations.

By Representative Arnall and others—

HB 107—A bill to be entitled An act relating to the City of Jacksonville Beach, Duval County; amending chapter 27643, Laws of Florida, 1951, as amended, relating to the employees' retirement system of the City of Jacksonville Beach; providing optional participation by executive and department head employees; excluding temporary employees and police officers from participation in the retirement system; providing a limitation upon the period during which retirement benefits may be delayed; modifying the conditions for the suspension of payment of retirement benefits; modifying conditions for and amounts of disability retirement; proscribing payment of benefits in excess of amount allowable under Internal Revenue Code; specifying that retirement system is an irrevocable trust; limiting the rights of the city members and beneficiaries to retirement system assets; authorizing engagement of investment managers and requiring same to serve as named fiduciary; authorizing engagement of custodian to hold funds and securities; acknowledging approval of placement of income from chapters 175 and 185, Florida Statutes, by a majority of firefighters and by a majority of police officers; requiring that contributions fully fund expected costs of benefits; providing for direct transfers of eligible rollover contributions; modifying provisions relating to the retirement system's rights of subrogation; providing procedures to be followed upon merger or termination of the retirement system; providing optional participation by executive and department head employees; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By the Committee on Criminal Justice and Representative Martinez and others—

CS for HB 387—A bill to be entitled An act relating to juvenile offenders; amending s. 960.001, F.S.; authorizing release to victim of information as to whether the offense was committed by a juvenile; amending s. 960.003, F.S.; requiring disclosure of HIV test results on alleged juvenile offenders to the parent or guardian, and reenacting ss. 381.004(3)(g) and (i)6. and 951.27(2), F.S., relating to HIV testing and blood tests of inmates, to incorporate said amendment in references thereto; amending s. 39.0585, F.S.; requiring certain information from delinquency and dependency treatment agencies; deleting a restriction on release of information and requiring certain information sharing upon consent of the parent or guardian; amending and renumbering s. 39.016, F.S., as s. 743.015, F.S., relating to removal of disability of nonage; providing additional requirements for a petition; amending the effect of an order removing the disability of nonage; amending s. 39.01, F.S.; revising certain definitions; amending s. 39.047, F.S.; revising the duties of an intake counselor in screening a child; amending s. 39.052, F.S.; authorizing the court to extend the time for filing of a motion for transfer of a child for prosecution as an adult; expanding judicial control of commitment decisions at delinquency disposition hearings; amending s. 39.054, F.S., relating to powers of disposition; deleting a restriction relating to commitment orders; amending s. 743.0645, F.S.; authorizing certain additional persons to consent to medical treatment of a minor; amending s. 790.115, F.S.; prohibiting display of a dangerous weapon on a school bus or bus stop; prohibiting possession of a firearm on a school bus or bus stop; providing penalties; amending s. 784.07, F.S., relating to assault or battery on law enforcement and certain other officers; deleting intake officers; creating s. 784.075, F.S., relating to battery on a detention or commitment facility staff; providing definitions; providing penalties; amending s. 39.048, F.S.; deleting the 45-day limit on filing a petition; amending s. 216.136, F.S.; creating the Juvenile Justice Estimating Conference and providing its duties; amending s. 216.133, F.S., defining the consensus estimating conference; amending s. 39.057, F.S.; modifying criteria for admission to boot camp program; creating a task force; providing the membership of the task force; requiring the submission of a plan; amending s. 39.002, F.S.; providing intent to require interagency cooperation in the siting of facilities; amending s. 39.074, F.S.; requiring interagency cooperation in the siting of facilities; amending s. 39.042, F.S., providing aggravating circumstances that justify extended detention; creating a task force on use of detention resources; providing for membership of the task force; requiring a report and recommendations; amending s. 39.045, F.S.; authorizing law enforcement agencies to release the names of certain offenders; providing an effective date.

(Substituted for **CS for SB 1230** on the Special Order Calendar this day.)

By Representative Healey—

HB 439—A bill to be entitled An act relating to the Children's Services Council of Palm Beach County; exempting the council from the provisions of part III of chapter 163, F.S.; providing that the council shall be exempt from paying fees, taxes, or increment revenues to community redevelopment agencies, except to the extent that such fees, taxes, or increment revenues have previously been pledged to bonds, notes, or other forms of indebtedness of a municipality or a community redevelopment agency authorized and issued before December 31, 1991, unless waived by the municipality or the community redevelopment agency; providing for severability; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By the Committee on Governmental Operations and Representative Crady and others—

CS for HB 461—A bill to be entitled An act relating to waste management and regulation; amending ss. 125.01, 166.021, 381.0098, 403.702, 403.704, 403.7084, 403.727, and 483.615, F.S.; redesignating "biohazardous waste" as "biomedical waste"; amending s. 403.727, F.S.; providing for a right to contribution between certain parties under certain circumstances; amending s. 212.055, F.S.; providing additional uses for the local government infrastructure surtax; amending s. 287.045, F.S.; providing for purchase of materials with recycled content by agencies that use state contracts; allowing an additional price preference to bidders using certain materials relative to purchase of products or materials by the state; providing limitations on renewing certain contracts; providing an exception; requiring agencies to use certain contracts; requiring agencies to consider the life-cycle of products in making purchases; authorizing the Division of Purchasing of the Department of Management Services to adopt rules; creating s. 288.1185, F.S.; creating the Recycling Markets Advisory Committee; providing purposes; providing for membership; providing duties and responsibilities; requiring the committee to develop a plan to develop markets for recycled materials; providing considerations for the plan; requiring the committee to submit a report; authorizing the committee to hire staff; amending s. 403.703, F.S.; revising and adding definitions; creating s. 403.7031, F.S.; limiting the content of certain local ordinances; amending s. 403.7045, F.S.; deleting provisions providing for regulation of recovered materials; creating s. 403.7046, F.S.; providing for regulation of recovered materials; requiring the Department of Environmental Regulation to adopt rules; requiring the department to appoint a technical advisory committee; providing for membership; providing for the duties and responsibilities of the committee; authorizing a fee; providing for deposit of the fee; providing for an exception; providing confidentiality for certain trade secrets; providing for review and repeal; prohibiting local governments from imposing certain registration or reporting requirements; exempting certain recovered materials processing facilities from regulation under certain circumstances; providing for the distribution of grants to local mosquito control agencies; providing an exception; providing definitions; amending s. 403.7049, F.S.; encouraging counties and municipalities to charge certain fees; providing for grants to such local governments under certain circumstances; amending s. 403.705, F.S.; changing the date for preparation of a report on solid waste management; amending s. 403.706, F.S.; revising certain local government solid waste responsibilities; including composting plans under such responsibilities; authorizing certain counties to provide alternate recycling programs; requiring counties to include in certain reports progress on composting programs; providing credits toward the county waste reduction goal; authorizing local governments to enact ordinances to require separation of recyclable materials; amending s. 403.7065, F.S.; providing additional criteria for procurement of products or materials with recycled content; amending s. 403.707, F.S.; changing a reference from "clean debris" to "construction and demolition debris"; exempting certain composting operations from certain permit requirements; prohibiting the Department of Environmental Regulation from permitting expansions of certain landfills; amending s. 403.708, F.S.; modifying the required coding design for certain plastic bottles and containers; exempting the disposal of incidental yard trash; amending s. 403.709, F.S.; prescribing research projects for which Solid Waste Management Trust Fund moneys may be used; authorizing the secretary of the department to reserve certain portions of appropriations to fund certain solid waste projects; amending s. 403.7095, F.S.; providing requirements to be considered in continuing grants to local governments; revising the criteria for certain grants; amending s. 403.7125, F.S.; requiring audit of landfill escrow accounts by independent certified public accountants; amending s. 403.713, F.S.; excluding recovered materials from local government authority to regulate the flow of solid waste across certain boundaries; specifying restrictions on local government regulation of recovered materials; revising authority of local governments; providing confidentiality; providing for review and repeal; amending s. 403.714, F.S.; requiring state institutions to participate in certain recycling programs; requiring the Department of Agriculture and Consumer Services to coordinate the development of specifications for use of compost by the state; requiring certain entities and persons to report to the department on expenditures and use of compost; requiring the department to report compost use summaries to the Governor and the Legislature; amending s. 403.716, F.S.; providing for training of operators of waste-to-energy facilities, biohazardous waste incinerators, and mobile soil thermal treatment units or facilities; amending s. 403.717, F.S.; revising provisions providing waste tire and lead-acid battery requirements; revising certain fees; revising department rulemaking authority; providing for an exemption; amending s. 403.719, F.S.; requiring certain counties to file an annual report of waste tire grant moneys; creating s. 403.7191, F.S.; regulating the use of certain materials in packaging; prohibiting the use of certain elements in packaging; providing exemptions; requiring certificates of compliance; prohibiting certain activities; providing a penalty; providing for review and a report; providing rulemaking authority; creating s. 403.7192, F.S.; regulating the manufacture and disposition of certain batteries; prohibiting the sale or distribution of certain batteries; providing criteria for selling or distributing products containing rechargeable batteries; providing a penalty; providing rulemaking authority; creating s. 403.7193, F.S.; prohibiting certain environmental representations on consumer products; providing a penalty; creating the Florida Packaging Waste Reduction Council; providing duties; providing an appropriation; providing for confidentiality; providing an exemption from open government Sunset requirements; amending s. 403.7195, F.S.; providing for minimum recycled content for newsprint; specifying certain content by certain dates; providing criteria for such newsprint; amending s. 403.7197, F.S.; revising provisions of the advance disposal fee program; providing definitions; requiring the department to consider certain proposals for designation of additional containers; requiring the department to determine the recycling rates of container types; providing an exemption from the advance disposal fee for recycled content; providing for collection of the fee; authorizing a collection allowance; excluding the advance disposal fee from estimated tax payments; authorizing the department to adopt emergency rules; requiring the Department of Environmental Regulation to adopt certain rules; providing for confidentiality of certain taxpayer information; providing that the proceeds of the fee be deposited into the Solid Waste Management Trust Fund; requiring the department to develop a grant program for recycling and litter prevention; providing requirements of the program; providing legislative intent with respect to uses of the advance disposal fee; specifying uses; requiring the department to evaluate establishing certain advance disposal fees; requiring a report; establishing a litter-reduction goal; requiring the Department of Environmental Regulation to contract with the Center for Solid and Hazardous Waste Management for an annual litter survey; providing for designation of additional containers or product packaging to be subject to the advance disposal fee; abolishing the Clean Florida Commission; repealing s. 403.7198, F.S.; relating to container deposits; amending ss. 403.7225, 403.7226, 403.7234, and 403.7236, F.S.; clarifying provisions requiring local hazardous waste management assessments; applying such requirements to small quantity generators of hazardous waste; revising provisions relating to regional planning council's regional hazardous waste management facility needs assessments; deleting a requirement that the department report to the Legislature; clarifying provisions of the small quantity generator notification and verification program; clarifying provisions relating to information sent to the department by local governments; creating s. 403.7238, F.S.; providing for expanded local hazardous waste management programs; providing for grants for start-up costs; amending s. 403.7265, F.S.; clarifying provisions relating to local hazardous waste collection programs; deleting a requirement that the department prepare a plan for collecting small quantities of hazardous waste from certain persons; requiring the department to establish a cooperative collection center arrangement grant program; providing for grants; providing limitations; amending s. 403.75, F.S.; revising certain definitions related to processing and rerefining oil; creating s. 403.7531, F.S.; requiring certain retail dealers to post a notice related to disposal of used oil; amending s. 403.754, F.S.; revising provisions requiring certain persons to register to transport, collect, or recycle used oil; amending s. 403.7545, F.S.; authorizing the department to regulate used oil consistently with certain federal requirements; amending s. 403.758, F.S.; providing for additional enforcement authority for the department; amending s. 403.769, F.S.; providing for a permit for used oil processing facilities; prohibiting state agencies from requiring certain labels relating to biomedical wastes; prohibiting incinerating or disposing of certain mercury-containing devices; prohibiting incineration of spent lamps; specifying uses of the Solid Waste Management Trust Fund; specifying moneys to be deposited into the trust fund; requiring the department to adopt rules; requiring certain public information and warning signs related to mercury contamination; providing a penalty; requiring the department to organize and coordinate a public-private demonstration project for collecting and recycling mercury-containing devices and spent lamps; providing an appropriation; provid-

ing requirements for review of new waste-to-energy facilities capacity by the Department of Environmental Regulation; providing a review process for certain waste-to-energy facilities; providing applicant requirements; requiring the department to study the use of incineration for waste disposal; prohibiting the department from issuing a permit for a construction of hazardous waste incinerators for a certain time; providing legislative findings; creating s.403.7895, F.S.; providing requirements for permitting and certification of commercial hazardous waste incinerators; providing legislative intent; providing applicability; requiring a certificate of need; requiring the Governor and Cabinet, sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board, to make certain determinations regarding such certificate of need; specifying additional permitting conditions; requiring the department to conduct a hazardous waste needs and capacity study; specifying criteria for the study; requiring a report to the Legislature; providing an appropriation; creating s. 403.4133, F.S.; creating the Adopt-a-Shore Program; providing purposes; amending s. 316.2045, F.S.; providing an exception to the prohibition on obstruction of public streets, highways, and roads for solid waste or recyclable or recovered materials collection vehicles; creating the phosphogypsum management program; providing definitions; providing for rules relating to construction and permitting criteria; providing for fees; providing for review and repeal; providing exceptions to mandatory closing of certain phosphogypsum stack systems; providing an appropriation; amending s. 72.011, F.S.; authorizing taxpayers to contest the assessment of a certain fee, penalties, and interest; amending s. 213.05, F.S.; authorizing the Department of Revenue to collect the advance disposal fee; amending s. 213.053, F.S.; providing for confidentiality of information obtained by the Department of Revenue pursuant to collecting the advance disposal fee; providing a finding of important state interest; amending s. 376.3071, F.S.; specifying additional conditions for entitlement to reimbursements for certain cleanup expenses; authorizing Enterprise Florida to contract with a plastic products manufacturer in a plastic recycling business venture; providing for the Departments of Corrections and Health and Rehabilitative Services to participate in the business venture; providing requirements and criteria for the business venture; authorizing other governmental entities to participate under certain circumstances; providing intent; requiring the departments to identify certain costs associated with plastic products; specifying the term of the business venture; requiring a report; providing appropriations; amending s. 403.7145, F.S.; requiring state agencies, the judicial branch, and the State University System to collect and sell recyclable materials; authorizing the use of sale proceeds for certain purposes; providing an effective date.

(Taken up out of order and passed this day.)

By Representative Ritchie and others—

HB 581—A bill to be entitled An act relating to Escambia County; amending chapter 92-248, Laws of Florida; providing for certain water service utilities to provide consumption information to the Escambia County Utilities Authority and to terminate water service on account of nonpayment of charges for utility services furnished by the Escambia County Utilities Authority; providing for reimbursement of the cost; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By the Committee on Aging and Human Services; and Representative Brown and others—

CS for HB 761—A bill to be entitled An act relating to adult care homes; amending s. 400.402, F.S.; amending the definition of the term "adult congregate living facility" to exclude a licensed adult family-care home from regulation under the Adult Congregate Living Facilities Act; amending s. 400.616, F.S.; redesignating the Adult Foster Home Care Act as the "Adult Family-Care Home Act" and adding additional sections; amending s. 400.617, F.S.; providing additional legislative intent; amending s. 400.618, F.S.; adding and revising definitions; amending s. 400.619, F.S.; revising and adding licensure requirements; providing license fees; providing access for the nursing home and long-term care facility ombudsman council; prohibiting the transfer of licenses; requiring space for residents receiving optional state supplementation; providing an exemption; providing for conditional licenses; providing additional circumstances under which the department may deny, suspend, or revoke a license; providing for the deposit and use of fees; creating s. 400.6196, F.S.; authorizing the Department of Health and Rehabilitative Services to impose penalties and require corrective action for certain violations; providing for the deposit and use of penalty moneys; amending s. 400.621, F.S.; providing for additional rules; providing for placement of clients; creating s. 400.6211, F.S.; requiring the department to provide training and education for persons who operate adult family-care homes; requiring that providers complete such a program within a time limit; providing a penalty for failure to complete the program within the time limit; amending s. 400.622, F.S.; revising the provisions providing for injunctive proceedings; amending s. 400.623, F.S.; revising the requirement that the department recruit and license adult family-care homes; deleting an obsolete provision; creating s. 400.625, F.S.; providing requirements for residency agreements for residents of adult family-care homes; creating s. 400.628, F.S.; establishing a residents' bill of rights; creating s. 400.629, F.S.; providing for civil actions to enforce rights under ss. 400.616-400.629, F.S.; converting existing licenses for adult foster homes to licenses for adult family-care homes; providing an effective date.

(Substituted for **CS for SB 1910** on the Special Order Calendar this day.)

By the Committee on Business and Professional Regulation; and Representative Bloom and others—

CS for HB 795—A bill to be entitled An act relating to underground facilities; creating the Underground Facility Damage Prevention and Safety Act; providing legislative intent; providing definitions; providing for the creation of the "Sunshine State One-Call of Florida, Inc."; providing for a board of directors; requiring annual reports to the Governor; providing for the establishment of a one-call toll-free telephone notification system; providing for participation by underground facility operators; providing procedures; requiring notice of excavations and demolitions; providing immunity for board members of the corporation; providing for liability of certain entities and the system; providing civil and criminal penalties; providing an exemption for single family residential owners; providing an exception for emergency excavations under certain circumstances; providing for the assessment of costs among member operators; providing for applicability and construction; providing severability; providing an effective date.

(Substituted for **SB 1276** on the Special Order Calendar this day.)

By Representative Geller—

HB 865—A bill to be entitled An act relating to Broward County; providing permanent status for certain employees of the Broward County Sheriff; specifying rights of employees, including collective bargaining rights; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By the Committee on Higher Education and Representative Hawkins and others—

CS for HB 899—A bill to be entitled An act relating to education; amending s. 232.426, F.S.; revising provisions relating to conformance of athletic activities to postsecondary scholarship opportunities; amending s. 228.2001, F.S., relating to the Florida Educational Equity Act; providing additional functions of the Office of Equal Educational Opportunity; providing for a task force on gender equity; providing duties; requiring rules; providing for the withholding of funds; amending s. 240.533, F.S.; requiring each state university to develop a gender equity plan; providing for the withholding of funds; amending ss. 240.5335 and 212.04, F.S.; correcting cross references; amending s. 240.35, F.S.; revising provisions relating to community college fees collected for financial aid purposes; providing an effective date.

(Substituted for **CS for CS for SB 1716** on the Special Order Calendar this day.)

By Representative McAndrews—

HB 1065—A bill to be entitled An act relating to Palm Beach County; amending ch. 87-450, Laws of Florida, as amended, relating to the Palm Beach County Health Care Act; providing for restatement of the Legislature's intent regarding the district's responsibility to fund reorganizations undertaken by the district's predecessors-in-interest; providing the authority to impose liens and to collect funds expended by the district from liable third parties; providing for severability; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By Representative Hawkins—

HB 1193—A bill to be entitled An act relating to Collier County; establishing and organizing a municipality to be known and designated as the City of Marco Island; defining territorial boundaries; providing for government, jurisdiction, elections, administrative code, procedure, powers, franchises, immunities, privileges, and means for exercising the same; prescribing the general powers to be exercised by said city; providing prohibitions; providing procedures for filling vacancies in office; providing for a city council, city manager, and city attorney; providing for an initial election; providing for ordinances; providing for budget adoption; providing for amendments to the city charter; providing for referendum petitions; providing severability; providing for dissolution of the Marco Island Fire Control District; providing for a referendum; providing a transition schedule; providing for county ordinances and services during transition period; providing effective dates.

(Passed on the Local Bill Calendar this day.)

By Representative Geller—

HB 1421—A bill to be entitled An act relating to the Broward County Human Rights Act; amending ch. 83-380, Laws of Florida; prohibiting certain discriminatory practices with respect to employment, public accommodations, real estate transactions, financial practices, and other acts; prescribing duties of the Broward County Human Rights Board, the Broward County Human Rights Division, and other entities; providing remedies for aggrieved persons; prescribing procedures; providing exemptions; providing penalties; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By Representative Kelly—

HB 1487—A bill to be entitled An act relating to governmental reorganization; providing regulatory purpose; abolishing the Department of Business Regulation and the Department of Professional Regulation and transferring their duties to the Department of Business and Professional Regulation; creating s. 20.165, F.S.; creating the Department of Business and Professional Regulation; amending ss. 455.01, 455.02, and 561.01, F.S.; providing definitions and correcting cross references and terminology, to conform; creating s. 455.116, F.S.; providing for placement of certain trust funds into the department; creating s. 455.117, F.S.; authorizing the department to provide services and information to other levels of government and private entities; amending s. 20.42, F.S., relating to the Agency for Health Care Administration; delaying transfer to the agency of certain responsibilities relating to health care professionals; delaying amendment and repeal of specified sections of ch. 455, F.S., to conform; requiring submission of a reorganization plan to the Department of Management Services for recommendations and for subsequent submission to the Executive Office of the Governor for approval and inclusion in the 1994-1995 fiscal year budget request; requiring a reviser's bill to conform the Florida Statutes to the provisions of this act; creating the Consumer Affairs Task Force; providing membership; providing powers and duties, including a report; providing for staff; providing for certain compensation and reimbursement of expenses and for certain per diem and travel expenses; repealing ss. 20.16 and 20.30, F.S., relating to the Departments of Business Regulation and Professional Regulation, to conform; providing severability; providing effective dates.

(Taken up out of order and passed this day.)

By the Committee on Business and Professional Regulation; and Representative Roberts—

CS for HB 1663—A bill to be entitled An act relating to the Spaceport Florida Authority; creating s. 331.3075, F.S.; providing for the certification of space activities facilities; providing definitions; providing that the purpose of the program is to provide funding to the Spaceport Florida Authority to help it carry out its statutory duties and provide services required by space-related businesses in this state; providing for administration of the certification program by the Department of Commerce; providing certain requirements for certification; providing rulemaking authority to the department; restricting certain allocations; providing for notification of certification to the Department of Revenue; granting the Department of Commerce auditing authority, subject to certain confidentiality and information sharing requirements; amending s. 212.20, F.S.; providing for the distribution of funds to the Spaceport Florida Authority; providing an effective date.

—was referred to the Committees on International Trade, Economic Development and Tourism; Finance, Taxation and Claims; and Appropriations.

By the Committee on Finance and Taxation; and Representative Schultz and others—

CS for HB 1747—A bill to be entitled An act relating to insurance plans; amending ss. 627.311 and 627.351, F.S.; specifying certain appointed members of certain boards of governors must be minority persons; exempting such associations from the corporate income tax and the intangible personal property tax; providing for payment of premium taxes on policies written by such associations; repealing s. 627.351(6)(j), F.S., relating to the nature, and exemptions from certain taxes, of the Residential Property and Casualty Joint Underwriting Association; amending s. 631.718, relating to assessments from the Florida Life and Health Insurance Guaranty Association; providing a limitation on the amount of assessments; providing an effective date.

—was referred to the Committees on Commerce; Community Affairs; and Finance, Taxation and Claims.

By Representative Boyd—

HB 1789—A bill to be entitled An act relating to Williston Memorial Hospital, Levy County; amending the charter of the City of Williston and creating section 11.09 of Article XI, chapter 78-624, Laws of Florida, providing authority to the City Council of the City of Williston to enter into a management contract or agreement to lease its Williston Memorial Hospital facility to a public or private organization or a not-for-profit or for-profit corporation upon such terms and conditions as may be determined by the city council to be in the best interest of its citizens; requiring the organization or corporation to provide for a certain amount of charity care, indigent care, and Medicaid; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By Representative Kelly and others—

HB 1913—A bill to be entitled An act relating to the North Lake County Hospital District; extending the terms of certain trustees presently serving; providing an effective date.

Proof of publication of the required notice was attached.

(Passed on the Local Bill Calendar this day.)

By the Committee on Tourism and Economic Development; and Representative Reddick—

HB 1969—A bill to be entitled An act relating to local government; amending ss. 163.362 and 163.385, F.S.; providing that amendments to community redevelopment plans extend projects under the plan and allow issuance of additional bonds; providing for retirement of bonds;

amending s. 163.370, F.S.; including public areas of certain hotels within authorized projects in a community redevelopment area; amending s. 212.0305, F.S.; authorizing local governments that levy a convention development tax to implement a convention center booking policy; amending ss. 1, 2, and 3, ch. 67-930, Laws of Florida; revising provisions which authorize certain cities to levy a municipal resort tax, to remove an exemption for beer and malt beverages; amending s. 163.3181, F.S., relating to public participation in the comprehensive planning process; providing public participation procedures for a local government considering undertaking a publicly financed capital project; providing for public notice; specifying when an affected person may file an administrative pleading; amending s. 163.340, F.S.; revising the definition of "public body" or "taxing authority"; amending s. 163.346, F.S.; requiring notice prior to issuance of redevelopment revenue bonds; amending s. 163.360, F.S.; requiring a community redevelopment agency to submit to certain taxing authorities any community redevelopment plan that the agency recommends for approval; amending s. 163.387, F.S.; specifying that certain entities created prior to July 1, 1993, are exempt from paying tax increments to a redevelopment trust fund; authorizing local governments to exempt special districts from such payment; providing procedures and requirements; providing an additional use for moneys in the trust fund; providing an effective date.

—was referred to the Committee on Rules and Calendar.

By Representative Arnold—

HB 2293—A bill to be entitled An act relating to Lee County; amending s. 5, ch. 76-410, Laws of Florida, relating to the Tice Fire Protection and Rescue Service District; increasing the amount of the ad valorem tax which may be levied by the board of commissioners of the district; providing for a referendum; revising provisions relating to appointments to the board; providing effective dates.

(Passed on the Local Bill Calendar this day.)

By Representative Mackey—

HM 2343—A memorial to the Congress of the United States, urging Congress to propose the issuance by the federal postal service of a stamp honoring the four freedoms.

—was referred to the Committee on Rules and Calendar.

RETURNING MESSAGES ON SENATE BILLS

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 124 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 124—A bill to be entitled An act relating to public employees' benefits; amending s. 110.123, F.S., pertaining to the state group insurance program, to require that a state agency that employs a correctional probation officer who is killed in the line of duty, under certain conditions, to pay the entire premium under the State Employees Group Health Self-Insurance Plan for the officer's spouse and children for certain time periods, in the same manner as present law provides for law enforcement officers and correctional officers; amending s. 112.19, F.S., pertaining to death benefits for such officers; expanding the scope of the section by making part-time and auxiliary law enforcement, correctional, and correctional probation officers eligible for such benefits; amending s. 112.193, F.S.; revising the authorization pertaining to the award of commemorative service awards upon the death or retirement of a law enforcement officer or a correctional officer; expanding the scope of the authority to allow such awards to be given with respect to correctional probation officers and to part-time and auxiliary law enforcement, correctional, and correctional probation officers upon retirement or death; amending s. 121.091, F.S.; revising death benefit provisions under the Florida Retirement System to provide for reinstatement of benefits to a surviving spouse whose benefit terminated due to remarriage; amending s. 631.718, F.S., relating to assessments from the Florida Life and Health Insurance Guaranty Association; providing a limitation on the amount of assessments; providing an effective date.

House Amendment 2 (with Title Amendment)—On page 2, line 9, insert:

Section 1. Paragraph (b) of subsection (1) of section 112.191, Florida Statutes, 1992 Supplement, is amended to read:

112.191 Firefighters; death benefits.—

(1) Whenever used in this act:

(b) The term "firefighter" means any full-time duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified pursuant to s. 633.35, and who is a member of a duly constituted fire department of such employer, *or who is a volunteer firefighter*~~, and not a volunteer fireman~~.

(Renumber subsequent section.)

And the title is amended as follows:

On page 1, line 2, after the semicolon (;) insert: amending s. 112.191, F.S.; redefining the term "firefighter" to include volunteer firefighters;

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

CS for SB 124 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 428 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 428—A bill to be entitled An act relating to domestic relations; amending s. 61.052, F.S.; providing that evidence at a hearing on a petition for dissolution of marriage need not be corroborated; amending s. 61.075, F.S.; providing for unequal distribution of marital assets and liabilities; providing additional factors to be considered by court in making a distribution; amending s. 61.13, F.S.; requiring court to consider evidence of spouse abuse or child abuse in determining parental responsibility for a minor child; providing for venue in child custody modifications; providing additional criteria to be considered in deciding shared responsibility and primary residence; amending s. 61.14, F.S.; providing for modification of support, maintenance, or alimony agreements or orders under certain conditions; providing that degree of proof for modifying the obligations is the same for obligations established by court order and those established by voluntary agreement; amending s. 61.16, F.S.; providing that certain applications need not be corroborated by expert testimony; amending s. 61.30, F.S.; providing additional criteria for courts to consider in adjusting minimum child support awards; amending s. 742.045, F.S.; providing that certain applications in paternity proceedings need not be corroborated by expert testimony; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 2, line 3, strike everything after the enacting clause and insert:

Section 1. Subsections (8) and (9) of section 61.046, Florida Statutes, 1992 Supplement, are amended to read:

61.046 Definitions.—As used in this chapter:

(8) "Obligee" means the person to whom ~~support~~ payments are made pursuant to an ~~alimony or child support~~ order *establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.*

(9) "Obligor" means a person responsible for making ~~support~~ payments pursuant to an ~~alimony or a child support~~ order *establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.*

Section 2. Subsection (2) of section 61.052, Florida Statutes, is amended to read:

61.052 Dissolution of marriage.—

(2) Based on the evidence at the hearing, which evidence need not be corroborated except to establish that the residence requirements of s. 61.021 are met which may be corroborated by *a valid Florida drivers license, a Florida voters registration card or the testimony or* affidavit of a third party, the court shall dispose of the petition for dissolution of marriage when the petition is based on the allegation that the marriage is irretrievably broken as follows:

(a) If there is no minor child of the marriage and if the responding party does not, by answer to the petition for dissolution, deny that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage if the court finds that the marriage is irretrievably broken.

(b) When there is a minor child of the marriage, or when the responding party denies by answer to the petition for dissolution that the marriage is irretrievably broken, the court may:

1. Order either or both parties to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi, or any other person deemed qualified by the court and acceptable to the party or parties ordered to seek consultation; or

2. Continue the proceedings for a reasonable length of time not to exceed 3 months, to enable the parties themselves to effect a reconciliation; or

3. Take such other action as may be in the best interest of the parties and the minor child of the marriage.

If, at any time, the court finds that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage. If the court finds that the marriage is not irretrievably broken, it shall deny the petition for dissolution of marriage.

Section 3. Subsection (1) of section 61.075, Florida Statutes, is amended to read:

61.075 Equitable distribution of marital assets and liabilities.—

(1) In a proceeding for dissolution of marriage, in addition to all other remedies available to a court to do equity between the parties, or in a proceeding for disposition of assets following a dissolution of marriage by a court which lacked jurisdiction over the absent spouse or lacked jurisdiction to dispose of the assets, the court shall set apart to each spouse that spouse's nonmarital assets and liabilities, and *in distributing* ~~shall distribute between the parties~~ the marital assets and liabilities *between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on* ~~in such proportions as are equitable, after considering~~ all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or educational opportunities of either party.

(e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.

(f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.

(g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.

(h) The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.

(i) The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition.

(j) ~~(i)~~ Any other factors necessary to do equity and justice between the parties.

Section 4. Paragraph (b) of subsection (2) of section 61.13, Florida Statutes, is amended, paragraph (c) is added to said subsection, and paragraph (j) of subsection (3) is redesignated as paragraph (k), and a new paragraph (j) is added to said subsection, to read:

61.13 Custody and support of children; visitation rights; power of court in making orders.—

(2)

(b)1. The court shall determine all matters relating to custody of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction Act. It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities of childrearing. After considering all relevant facts, the father of the child shall be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The court shall consider evidence of *spousal or child* ~~spouse~~ abuse as evidence of detriment to the child. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility. ~~If the court finds that spouse abuse has occurred between the parties, it may award sole parental responsibility to the abused spouse~~ and make such arrangements for visitation as will best protect the child *or* ~~and~~ abused spouse from further harm.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include primary residence, education, medical and dental care, and any other responsibilities which the court finds unique to a particular family.

b. The court shall order "sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests of" the minor child.

c. The court may award the grandparents visitation rights of a minor child if it is in the child's best interest. Grandparents shall have legal standing to seek judicial enforcement of such an award. Nothing in this section shall require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor shall grandparents have legal standing as "contestants" as defined in s. 61.1306. No court shall order that a child be kept within the state or jurisdiction of the court solely for the purpose of permitting visitation by the grandparents.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because such parent is not the child's primary residential parent.

(c) The circuit court in the county in which either parent or the child resides and the circuit court in which the original award of custody was entered have jurisdiction to modify an award of child custody. The court may change the venue in accordance with s. 47.122.

(3) For purposes of shared parental responsibility and primary residence, the best interests of the child shall include an evaluation of all factors affecting the welfare and interests of the child, including, but not limited to:

(j) The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent

Section 5. Section 61.1301, Florida Statutes, 1992 Supplement, is amended to read:

61.1301 Income deduction orders.—

(1) ISSUANCE IN CONJUNCTION WITH AN ~~ALIMONY OR CHILD SUPPORT~~ ORDER *ESTABLISHING, ENFORCING, OR MODIFYING AN OBLIGATION FOR ALIMONY OR CHILD SUPPORT* ~~OR MODIFICATION~~.—

(a) Upon the entry of an order establishing, enforcing, or modifying an ~~alimony or a child support~~ obligation *for alimony, for child support, or for alimony and child support*, the court shall enter a separate order for income deduction if one has not been entered. Copies of the orders shall be served on the obligee and obligor. If the ~~support~~ order *establishing, enforcing, or modifying the obligation* directs that ~~support~~ payments be made through the depository, the court shall provide *to the depository* a copy of the ~~support~~ order *establishing, enforcing, or modifying the obligation* ~~to the depository~~. If the obligee is a IV-D applicant, the court shall furnish *to the IV-D agency* copies of the ~~support~~ *income deduction* order *and the order establishing, enforcing, or modifying the obligation* ~~and the income deduction order to the IV-D agency~~.

(b) The income deduction order shall:

1. Direct a payor to deduct from all income due and payable to an obligor the amount required by the court to meet the obligor's support obligation;

2. State the amount of arrearage owed, if any, and direct a payor to withhold an additional 20 percent or more of the periodic amount specified in the ~~support~~ order *establishing, enforcing, or modifying the obligation*, until full payment is made of any arrearage;

3. Direct a payor not to deduct in excess of the amounts allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended;

4. Direct whether a payor shall deduct all, a specified portion, or no income which is paid in the form of a bonus or other similar one-time payment, up to the amount of arrearage reported in the income deduction notice or the remaining balance thereof, and forward the payment to the governmental depository. For purposes of this subparagraph, "bonus" means a payment in addition to an obligor's usual compensation and which is in addition to any amounts contracted for or otherwise legally due and shall not include any commission payments due an obligor; and

5. In title IV-D cases, direct a payor to provide to the court depository the date on which each deduction is made.

(c) The income deduction order is effective immediately unless the court upon good cause shown finds that the income deduction order shall be effective upon a delinquency in an amount equal to 1 month's *payment pursuant to the order establishing, enforcing, or modifying the obligation* ~~support~~. In order to find good cause, the court must at a minimum make written findings that:

1. Explain why implementing immediate income deduction would not be in the child's best interest;

2. There is proof of timely payment of *the* previously ordered *obligation* ~~support~~ without an income deduction order in cases of modification; and

3. There is an agreement by the obligor to advise the IV-D agency and court depository of any change in payor and health insurance.

(d) The income deduction order shall be effective so long as the order ~~of support~~ upon which it is based is effective or until further order of the court.

(e) When the court orders the income deduction to be effective immediately, the court shall furnish to the obligor a statement of his rights, remedies, and duties in regard to the income deduction order. The statement shall state:

1. All fees or interest which shall be imposed.

2. The total amount of income to be deducted for each pay period until the arrearage, if any, is paid in full and shall state the total amount of income to be deducted for each pay period thereafter. The amounts deducted may not be in excess of that allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended.

3. That the income deduction order applies to current and subsequent payors and periods of employment.

4. That a copy of the income deduction order will be served on the obligor's payor or payors.

5. That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount ~~of support~~ owed pursuant to *the* ~~a support~~ order *establishing, enforcing, or modifying the obligation*, the arrearages, or the identity of the obligor.

6. That the obligor is required to notify the obligee and, when the obligee is receiving IV-D services, the IV-D agency within 7 days of changes in the obligor's address, payors, and the addresses of his payors.

(f) When the court orders the income deduction to be effective upon a delinquency in an amount equal to 1 month's *payment pursuant to the order establishing, enforcing, or modifying the obligation* ~~support~~, the obligee may enforce the income deduction by serving a notice of delinquency on the obligor.

1. The notice of delinquency shall state:

a. The terms of the ~~support~~ order *establishing, enforcing, or modifying the obligation.*

b. The period of delinquency and the total amount of the delinquency as of the date the notice is mailed.

c. All fees or interest which may be imposed.

d. The total amount of income to be deducted for each pay period until the arrearage, and all applicable fees and interest, is paid in full and shall state the total amount of income to be deducted for each pay period thereafter. The amounts deducted may not be in excess of that allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended.

e. That the income deduction order applies to current and subsequent payors and periods of employment.

f. That a copy of the notice of delinquency will be served on the obligor's payor or payors, together with a copy of the income deduction order, unless the obligor applies to the court to contest enforcement of the order. The application shall be filed within 15 days after the date the notice of delinquency was served.

g. That the enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount ~~of support~~ owed pursuant to *the* ~~a support~~ order *establishing, enforcing, or modifying the obligation*, the amount of arrearages, or the identity of the obligor.

h. That the obligor is required to notify the obligee of the obligor's current address and current payors and of the address of current payors. All changes shall be reported by the obligor within 7 days. If the IV-D agency is enforcing the order, the obligor shall make these notifications to the agency instead of to the obligee.

2. The failure of the obligor to receive the notice of delinquency does not preclude subsequent service of the income deduction order on the obligor's payor. A notice of delinquency which fails to state an arrearage does not mean that an arrearage is not owed.

(g) At any time, any party, including the IV-D agency, may apply to the court to:

1. Modify, suspend, or terminate the order for income deduction because of a modification, suspension, or termination of the underlying order ~~for support~~; or

2. Modify the amount of income deducted when the arrearage has been paid.

(2) ENFORCEMENT OF INCOME DEDUCTION ORDERS.—

(a) The obligee or his agent shall serve an income deduction order and the notice to payor, and in the case of a delinquency a notice of delin-

quency, on the obligor's payor unless the obligor has applied for a hearing to contest the enforcement of the income deduction order pursuant to paragraph (c).

(b)1. Service by or upon any person who is a party to a proceeding under this section shall be made in the manner prescribed in the Florida Rules of Civil Procedure for service upon parties.

2. Service upon an obligor's payor or successor payor under this section shall be made by prepaid certified mail, return receipt requested, or in the manner prescribed in chapter 48.

(c)1. The obligor, within 15 days after having an income deduction order entered against him or within 15 days after service of a notice of delinquency, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount ~~of support~~ owed pursuant to *an* ~~a support~~ order *establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support*, the amount of *the* arrearage ~~of support~~, or the identity of the obligor. The obligor shall send a copy of the pleading to the obligee and, if the obligee is receiving IV-D services, to the IV-D agency. The timely filing of the pleading shall stay the service of an income deduction order on all payors of the obligor until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper. The payment of *a* delinquent *obligation* ~~support~~ by an obligor upon entry of an income deduction order shall not preclude service of the income deduction order on the obligor's payor.

2. When an obligor timely requests a hearing to contest enforcement of an income deduction order, the court, after due notice to all parties and the IV-D agency if the obligee is receiving IV-D services, shall hear the matter within 20 days after the application is filed. The court shall enter an order resolving the matter within 10 days after the hearing. A copy of this order shall be served on the parties and the IV-D agency if the obligee is receiving IV-D services. If the court determines that service of an income deduction order is proper, it shall specify the date the income deduction order must be served on the obligor's payor.

(d) When a court determines that an income deduction order is proper pursuant to paragraph (c), the obligee or his agent shall cause a copy of the income deduction order and a notice to payor, and in the case of a delinquency a notice of delinquency, to be served on the obligor's payors. A copy of the notice to the payor, and in the case of a delinquency a notice of delinquency, shall also be furnished to the obligor.

(e) The notice to payor shall contain only information necessary for the payor to comply with the income deduction order. The notice shall:

1. Require the payor to deduct from the obligor's income the amount specified in the income deduction order, and in the case of a delinquency the amount specified in the notice of delinquency, and to pay that amount to the obligee or to the depository, as appropriate. The amount actually deducted plus all administrative charges shall not be in excess of the amount allowed under s 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b);

2. Instruct the payor to implement the income deduction order no later than the first payment date which occurs more than 14 days after the date the income deduction order was served on the payor;

3. Instruct the payor to forward, within 2 days after each date the obligor is entitled to payment from the payor, to the obligee or to the depository the amount deducted from the obligor's income, a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order, and the specific date each deduction is made. If the IV-D agency is enforcing the order, the payor shall make these notifications to the agency instead of the obligee;

4. Specify that if a payor fails to deduct the proper amount from the obligor's income, the payor is liable for the amount the payor should have deducted, plus costs, interest, and reasonable attorney's fees;

5. Provide that the payor may collect up to $5 against the obligor's income to reimburse the payor for administrative costs for the first income deduction and up to $1 for each deduction thereafter;

6. State that the income deduction order and the notice to payor, and in the case of a delinquency the notice of delinquency, are binding on the payor until further notice by the obligee, IV-D agency, or the court or until the payor no longer provides income to the obligor;

7. Instruct the payor that, when he no longer provides income to the obligor, he shall notify the obligee and shall also provide the obligor's last known address and the name and address of the obligor's new payor, if known; and that, if the payor violates this provision, the payor is subject to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. If the IV-D agency is enforcing the order, the payor shall make these notifications to the agency instead of to the obligee. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order;

8. State that the payor shall not discharge, refuse to employ, or take disciplinary action against an obligor because of an income deduction order and shall state that a violation of this provision subjects the payor to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order, if any *alimony or child* support *obligation* is owing. If no *alimony or child* support *obligation* is owing, the penalty shall be paid to the obligor;

9. State that an obligor may bring a civil action in the courts of this state against a payor who refuses to employ, discharges, or otherwise disciplines an obligor because of an income deduction order. The obligor is entitled to reinstatement and all wages and benefits lost, plus reasonable attorney's fees and costs incurred;

10. Inform the payor that the income deduction order has priority over all other legal processes under state law pertaining to the same income and that payment, as required by the income deduction order, is a complete defense by the payor against any claims of the obligor or his creditors as to the sum paid;

11. Inform the payor that, when he receives income deduction orders requiring that the income of two or more obligors be deducted and sent to the same depository, the payor may combine the amounts that are to be paid to the depository in a single payment as long as the payments attributable to each obligor are clearly identified; and

12. Inform the payor that if the payor receives more than one income deduction order against the same obligor, the payor shall contact the court for further instructions. Upon being so contacted, the court shall allocate amounts available for income deduction giving priority to current child support obligations up to the limits imposed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b).

(f) At any time an income deduction order is being enforced, the obligor may apply to the court for a hearing to contest the continued enforcement of the income deduction order on the same grounds set out in paragraph (c), with a copy to the obligee and, in IV-D cases, to the IV-D agency. The application does not affect the continued enforcement of the income deduction order until the court enters an order granting relief to the obligor. The obligee or the IV-D agency is released from liability for improper receipt of moneys pursuant to an income deduction order upon return to the appropriate party of any moneys received.

(g) An obligee or his agent shall enforce income deduction orders against an obligor's successor payor who is located in this state in the same manner prescribed in this section for the enforcement of an income deduction order against a payor.

(h)1. When an income deduction order is to be enforced against a payor located outside the state, the obligee who is receiving IV-D services or his agent shall promptly request the agency responsible for income deduction in the other state to enforce the income deduction order. The request shall contain all information necessary to enforce the income deduction order, including the amount to be periodically deducted, a copy of the ~~support~~ order *establishing, enforcing, or modifying the obligation*, and a statement of arrearages, if applicable.

2. When the IV-D agency is requested by the agency responsible for income deduction in another state to enforce an income deduction order against a payor located in this state for the benefit of an obligee who is being provided IV-D services by the agency in the other state, the IV-D agency shall act promptly pursuant to the applicable provisions of this section.

3. When an obligor who is subject to an income deduction order enforced against a payor located in this state for the benefit of an obligee who is being provided IV-D services by the agency responsible for income deduction in another state terminates his relationship with his payor, the IV-D agency shall notify the agency in the other state and provide it with the name and address of the obligor and the address of any new payor of the obligor, if known.

4.a. The procedural rules and laws of this state govern the procedural aspects of income deduction orders whenever the agency responsible for income deduction in another state requests the enforcement of an income deduction order in this state.

b. Except with respect to when withholding must be implemented, which is controlled by the state where the ~~support~~ order *establishing, enforcing, or modifying the obligation* was entered, the substantive law of this state shall apply whenever the agency responsible for income deduction in another state requests the enforcement of an income deduction order in this state.

c. When the IV-D agency is requested by an agency responsible for income deduction in another state to implement income deduction against a payor located in this state for the benefit of an obligee who is being provided IV-D services by the agency in the other state or when the IV-D agency in this state initiates an income deduction request on behalf of an obligee receiving IV-D services in this state against a payor in another state, the IV-D agency shall file the interstate income deduction documents, or an affidavit of such request when the income deduction documents are not available, with the depository and if the IV-D agency in this state is responding to a request from another state, provide copies to the payor and obligor in accordance with subsection (1). The depository created pursuant to s. 61.181 shall accept the interstate income deduction documents or affidavit and shall establish an account for the receipt and disbursement of *alimony payments or child* support payments in accordance with s. 61.181 and advise the IV-D agency of the account number in writing within 2 days after receipt of the documents or affidavit.

(i) Certified copies of payment records maintained by a depository shall, without further proof, be admitted into evidence in any legal proceeding in this state.

(j)1. A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this subsection is subject to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order, if any *alimony or child* support is owing. If no *alimony or child* support is owing, the penalty shall be paid to the obligor.

2. An employee may bring a civil action in the courts of this state against an employer who refuses to employ, discharges, or otherwise disciplines an employee because of an income deduction order. The employee is entitled to reinstatement and all wages and benefits lost plus reasonable attorney's fees and costs incurred.

(k) When a payor no longer provides income to an obligor, he shall notify the obligee and, if the obligee is a IV-D applicant, the IV-D agency and shall also provide the obligor's last known address and the name and address of the obligor's new payor, if known. A payor who violates this subsection is subject to a civil penalty not to exceed $250 for the first violation or $500 for a subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order.

(3) It is the intent of the Legislature that this section may be used to collect arrearages in child support payments *or in alimony payments* which have been accrued against an obligor.

Section 6. Subsection (1) of section 61.16, Florida Statutes, 1992 Supplement, is amended to read:

61.16 Attorney's fees, suit money, and costs.—

(1) The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings. *An application for attorney's fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter.* The court may order that the amount be paid directly to the attorney, who may enforce the order in *that attorney's* ~~his~~ name. In Title IV-D cases, attorney's fees, suit money, and costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees.

Section 7. Section 742.045, Florida Statutes, is amended to read:

742.045 Attorney's fees, suit money, and costs.—The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings. *An application for attorney's fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter.* The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 8. *This act does not apply to proceedings pending on October 1, 1993, but those proceedings remain governed by the law in effect on September 30, 1993.*

Section 9. This act shall take effect October 1, 1993.

And the title is amended as follows:

On page 1, lines 3-5, strike all of said lines and insert: s. 61.052, F.S.; providing for corroboration of residency as a prerequisite to dissolution of marriage; amending s.

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

CS for SB 428 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 448 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 448—A bill to be entitled An act relating to construction contracting; amending s. 489.103, F.S.; exempting the sale or installation of awnings from regulation under pt. I, ch. 489, F.S., relating to construction contracting; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 1, between lines 22 and 23, insert:

Section 2. Subsection (2) of 489.113, Florida Statutes, 1992 Supplement is amended to read:

489.113 Qualifications for practice; restrictions.—

(2) No person who is not certified or registered shall engage in the business of contracting in this state. *However, for purposes of complying with the provisions of this chapter, a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered, provided that the work is within the scope of the supervisor's license and provided that the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in s. 489.105(3)(d)-(o).* To enforce this subsection:

Section 3. Paragraph (e) of Subsection (4) of section 489.117, Florida Statutes, 1992 Supplement, is created to read:

489.117 Registration.—

(e) Any person who is not required to obtain registration or certification pursuant to s. 489.105(3)(d)-(o) may perform specialty contracting services for the construction, remodeling, repair or improvement of single-family residences without obtaining a local professional license if such person is under the supervison of a certified general, building or residential contractor.

(Renumber subsequent sections.)

And the title is amended as follows:

On page 1, line 6, after the semicolon (;) insert: amending s. 489.113, F.S.; authorizing certain persons to perform construction work under the

supervision of a licensed contractor; amending s. 489.117, F.S.; authorizing certain persons to perform specialty contracting services for a contractor;

House Amendment 2 (with Title Amendment)—On page 1, lines 22 and 23, insert:

Section 2. Paragraph (n) of subsection (3) of section 489.105, Florida Statutes, 1992 Supplement, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and shall only be responsible for, the project that person contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or by others construct, repair, alter, remodel, add to, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(o):

(n) "Underground utility *and excavation* contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, of main sanitary sewer collection systems, main water distribution systems, and storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. An underground utility *and excavation* contractor shall not install any piping that is an integral part of a fire protection system as defined in s. 633.021(7) beginning at the point where the piping is used exclusively for such system.

Section 3. Paragraph (i) of subsection (2) and paragraph (b) of subsection (4) of section 489.107, Florida Statutes, 1992 Supplement, are amended to read:

489.107 Construction Industry Licensing Board.—

(2) The board shall consist of eighteen members, of whom:

(i) One is primarily engaged in business as an underground utility *and excavation* contractor;

(4) The board shall be divided into two divisions, Division I and Division II.

(b) Division II is comprised of the roofing contractor, sheet metal contractor, air conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility *and excavation* contractor members of the board; one of the members appointed pursuant to paragraph (2)(j); and one of the members appointed pursuant to paragraph (2)(k). Division II has jurisdiction over the examination and regulation of roofing contractors, sheet metal contractors, air conditioning contractors, mechanical contractors, pool contractors, plumbing contractors, and underground utility *and excavation* contractors.

Section 4. Subsection (3) of section 489.113, Florida Statutes, 1992 Supplement, is amended to read:

489.113 Qualifications for practice; restrictions.—

(3) A contractor shall subcontract the electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air conditioning work for which a local examination for a certificate of competency or a license is required, unless such contractor holds a state certificate of competency or license of the respective trade category, as required by the appropriate local authority. However, a general, building, or residential contractor shall not be required to subcontract the installation of wood shingles, wood shakes, or asphalt or fiberglass shingle roofing materials on a new building of his own construction, and a general contractor shall not be required to subcontract structural swimming pool work. Further, a general contractor, on new site development work, site redevelopment work, mobile home parks, and commercial properties, shall not be required to subcontract the construction of the main sanitary sewer collection system, the storm collection system, and the water distribution system, not including the continuation of utility lines from the mains to the buildings. *Further, any certified general contractor, certified residential contractor, certified building contractor, or certified underground utility and excavation contractor may perform clearing and grubbing, grading, excavation, and other site work for any construction project in this state.* Further, as to mobile home parks, the general contractor shall not be required to subcontract the continuation of utility lines from the mains, and the continuations are to be considered a part of the main sewer collection and main water distribution systems. Further, a solar contractor shall not be required to subcontract minor, as defined by board rule, electrical, mechanical, plumbing, or roofing work so long as that work is within the scope of the license held by the solar contractor and where such work exclusively pertains to the installation of residential solar energy equipment as defined by rules the board adopted in conjunction with the Electrical Contracting Licensing Board. This subsection does not apply if the local authority does not require a certificate of competency or license for such trade. However, no general, building, or residential contractor certified after 1973 shall act as, hold himself out to be, or advertise himself to be a roofing contractor unless he is certified or registered as a roofing contractor. Any general contractor currently qualifying as a swimming pool company shall have a period of 2 years from the effective date of this act in which to obtain either a registered or certified commercial or residential pool license.

Section 5. Section 489.1135, Florida Statutes, is created to read:

489.1135 Underground utility and excavation contractors; designation; certificate.—

(1) Each business entity that at the time of application is not qualified by a construction contractor licensed pursuant to s. 489.105(3)(n) and that is qualified by the Department of Transportation as of January 1, 1993, in both the "grading" and "drainage" classes established in rule pursuant to s. 337.14, may designate one person for certification as an underground utility and excavation contractor, providing that person:

(a) Has at least 5 years' experience in grading and drainage work, at least 2 years of which must have been in a supervisory capacity with the qualified business entity.

(b) Is at least 18 years of age.

(c) Is an employee of, or has an ownership interest in, that business entity.

(2) The board shall issue, without examination, a certificate in the category of underground utility and excavation to an applicant properly designated pursuant to subsection (1), provided the board has received a completed application, including an application fee of $150 and a certification fee of $125, from such applicant prior to April 1, 1994, and provided the applicant:

(a) Has not had a registration or certificate which was issued by the board suspended, revoked, or relinquished or deposited in lieu of further disciplinary action.

(b) Does not have a disciplinary case pending before the board, or the Department of Transportation.

(c) Has not been convicted of a crime in any jurisdiction which directly related to the practice of contracting or the ability to practice contracting.

Section 6. Subsection (3) of section 633.521, Florida Statutes, is amended to read:

633.521 Certificate application and issuance; examination and investigation of applicant.—

(3) As a prerequisite to taking the examination for certification as a Contractor I, Contractor II, or Contractor III, the applicant must be at least 18 years of age, be of good moral character, and shall possess 4 years' proven experience in the employment of a fire protection system Contractor I, Contractor II, or Contractor III or a combination of equivalent education and experience. As a prerequisite to taking the examination for certification as a Contractor IV, the applicant shall be at least 18 years old, be of good moral character, and have at least 2 years' proven experience in the employment of a fire protection system Contractor I, Contractor II, Contractor III, or Contractor IV or combination of equivalent education and experience which combination need not include experience in

the employment of a fire protection system contractor. As a prerequisite to taking the examination for certification as a Contractor V, the applicant shall be at least 18 years old, be of good moral character, and have been licensed as a certified underground utility *and excavation* contractor pursuant to chapter 489, have verification by an individual who is licensed as a certified utility contractor pursuant to chapter 489 that the applicant has 4 years' proven experience in the employ of a certified underground utility *and excavation* contractor, or have a combination of education and experience equivalent to 4 years' proven experience in the employ of a certified underground utility *and excavation* contractor. Within 30 days from the date of the examination, the State Fire Marshal shall inform the applicant in writing whether he has qualified or not and, if the applicant has qualified, that he is ready to issue a certificate of competency, subject to compliance with the requirements of subsection (4).

Section 7. Any person licensed as an underground utility contractor on the effective date of this act is automatically licensed as an underground utility and excavation contractor pursuant to this act.

(Renumber subsequent section.)

And the title is amended as follows:

On page 1, line 6, after the semicolon (;) insert: amending s. 489.105, F.S.; changing the term "underground utility contractor" to "underground utility and excavation contractor"; amending ss. 489.107 and 633.521, F.S.; conforming language; amending s. 489.113, F.S.; authorizing certain contractors to perform additional duties within their licenses; creating s. 489.1135, F.S.; providing for the designation of underground utility and excavation contractors; providing for certification; providing that persons licensed as underground utility contractors on the effective date of the act are automatically licensed as underground utility and excavation contractors;

Senator Dantzler moved the following amendment which was adopted:

Senate Amendment 1 to House Amendment 1—On page 1, strike all of lines 26-30 and insert:

(a) The department shall issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of such order.

(b) A county, municipality, or local licensing board created by special act may issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part.

Section 3. Subsection (6) is added to section 489.117, Florida Statutes, 1992 Supplement, to read:

489.117 Registration.—

(6) Any person who is not required to obtain

On motions by Senator Dudley, the Senate concurred in **House Amendment 1** as amended and in **House Amendment 2**; and the House was requested to concur in the Senate amendment to the House amendment.

SB 448 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—35 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 458 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 458—A bill to be entitled An act relating to the Board of Juvenile Welfare, Pinellas County; repealing section 3 of chapter 92-228, Laws of Florida; continuing the board's exemption from paying fees, taxes, or increment revenue to community redevelopment agencies created pursuant to part III of chapter 163, Florida Statutes; providing an effective date.

House Amendment 2 (with Title Amendment)—On page 1, strike all of lines 13 and 14 and insert:

Section 1. Subsection (g) of section 2 of chapter 23483, Laws of Florida, 1945, as amended by chapter 25500, Laws of Florida, 1949, section 1 of chapter 31171, Laws of Florida, 1955, and section 2 of chapter 92-228, Laws of Florida, is amended to read:

Section 2. The board hereby created shall have the following powers and duties:

(g) The Board of Juvenile Welfare for Pinellas County shall be exempt from the payment of any fees, taxes, or increment revenue to community redevelopment agencies established pursuant to part III of chapter 163, Florida Statutes, *except to the extent that such fees, taxes, or increment revenues have previously been pledged to bonds, notes, or other forms of indebtedness authorized and issued by the governing body of a municipality or a community redevelopment agency before the effective date of this act. With respect to the fees, taxes, or increment revenues that, before the effective date of this act, have previously been pledged to bonds, notes, or other forms of indebtedness, the Board of Juvenile Welfare for Pinellas County shall be exempt from the payment of any further fees, taxes, or increment revenues to community redevelopment agencies, upon the payment or other defeasance of such bonds, notes, or other forms of indebtedness.*

Section 2. Section 3 of chapter 92-228, Laws of Florida, is hereby repealed.

(Renumber subsequent section.)

And the title is amended as follows:

On page 1, line 3, after the semicolon (;) insert: amending section 2 of chapter 23483, Laws of Florida; providing that the board shall be exempt from paying fees, taxes, or increment revenues, except to the extent that such fees, taxes, or increment revenues have previously been pledged to bonds, notes, or other forms of indebtedness of a municipality or a community redevelopment agency authorized and issued before the effective date of this act;

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

SB 458 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—29 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 592 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 592—A bill to be entitled An act relating to education; amending s. 231.095, F.S.; deleting an obsolete reference; amending s. 231.17, F.S.; revising provisions relating to certification, application procedures, required minimum competencies, examination, the professional orientation program, and application of statutes and rules; providing a means for demonstrating mastery of general knowledge; amending s. 231.1725, F.S.; providing for district qualification of substitute teachers, adult education teachers, nondegreed teachers of vocational education, and noncertificated teachers in critical teacher shortage areas; amending s. 231.173, F.S.; providing for certification of out-of-state administrators; amending s. 231.24, F.S.; revising provisions relating to certification renewal; amending s. 231.30, F.S.; revising authority for establishment of certification fees; providing a maximum fee for certification or for certification renewal; repealing s. 231.15(3), F.S., relating to certification fees; repealing s. 231.1711, F.S., relating to processing applications for certification; amending s. 231.261, F.S.; correcting a cross-reference; revising provisions relating to financing the Education Practices Commission; amending s. 231.262, F.S.; revising penalties imposed by the commission;

providing for the disposition of funds derived from penalties; creating s. 231.263, F.S.; creating a recovery network program for educators who are impaired as a result of alcohol abuse, drug abuse, or a mental condition; providing an implementation date; providing eligibility for participation; providing for staff; providing for treatment contracts; providing procedures; providing an exemption from public records requirements for certain disclosed information and providing for review and repeal of the exemption; providing for determination of ineligibility for further assistance; providing for funds to implement this act; providing for rules; amending s. 231.28, F.S.; providing grounds for revocation, suspension, or discipline of certified educators; revising reporting requirements for certain violations by certified and district qualified school personnel; amending s. 231.603, F.S.; requiring annual teacher education center inservice plan updates; amending s. 231.606, F.S.; revising duties of teacher education center councils; amending s. 231.613, F.S., relating to inservice training institutes; revising requirements; transferring approval authority from the Commissioner of Education to school boards; amending s. 236.0811, F.S.; providing for local school board approval of master inservice plans; requiring inservice funds to be withheld under certain circumstances; amending s. 230.2305, F.S.; requiring demonstration of certain knowledge by principals and other school district administrative and supervisory personnel having direct responsibility for the program; providing an effective date.

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

Section 1. Section 231.095, Florida Statutes, is amended to read:

231.095 Teachers assigned teaching duties outside field in which certified.—When a teacher in a district school system is assigned teaching duties in a class dealing with subject matter that is outside the field in which the teacher is certified, the parents or guardians of all students in the class shall be notified in writing of such assignment. Such notification shall be provided in the annual report of school progress pursuant to *ss. 229.592(3) and 230.23(18)* ~~s. 229.575~~.

Section 2. Subsections (1), (2), (3), and (7) of section 231.17, Florida Statutes, are amended to read:

231.17 Certificates granted on application to those meeting prescribed requirements.—

(1) REQUIREMENTS.—

(a) Each person seeking certification pursuant to this chapter shall submit a completed application to the Department of Education and remit the fee required pursuant to s. 231.30.

(b) Pursuant to the provisions in s. 120.60, the Department of Education shall issue within 90 calendar days of the stamped receipted date of the completed application *an official statement of eligibility for certification or* a certificate covering the ~~appropriate~~ classification, level, and area *for which the applicant is deemed qualified.*

1. The statement of eligibility shall be issued to advise the applicant of qualifications that he must complete to qualify for the temporary or professional certificate sought. Each statement of eligibility shall be valid for 2 years from the date of issuance and may be renewed for one additional 2-year period upon written application to the department, provided the initial statement of eligibility has not expired for more than 1 year.

2. The department shall issue a temporary certificate to any *applicant* ~~person~~ who submits satisfactory evidence of possessing the qualifications for such a certificate as prescribed *by this chapter* ~~herein~~ and by rules of the state board *when the department:*

a. Receives notification from a district superintendent or the governing authority of a developmental research school, state-supported school, or nonpublic school that the applicant has been issued a valid statement of eligibility by the Department of Education and is employed by the school district, developmental research school, or state-supported school or nonpublic school which has an approved professional orientation program;

b. Receives the applicant's fingerprint reports from the Department of Law Enforcement and the Federal Bureau of Investigation pursuant to s. 231.1712; and

c. Determines that the applicant is qualified for the certificate. ~~and who pays the required fee, makes application in writing on the form prescribed by the department, and meets the requirements in ss. 231.1711 and 231.1712 and other requirements of law. An applicant shall be permitted to submit official transcripts from institutions of higher education as part of the application.~~

(c) To be deemed qualified for a professional certificate, the ~~Each~~ applicant for certification shall:

1.~~(a)~~ File a written statement under oath that the applicant subscribes to and will uphold the principles incorporated in the Constitutions of the United States and of the State of Florida;

2.~~(b)~~ Be at least 18 years of age*;* ~~and have received~~

3. Document receipt of a bachelor's *or higher* degree from an accredited institution of higher learning. The bachelor's or higher degree shall not be required in areas approved in rule by the State Board of Education as nondegreed areas. *Each applicant seeking initial certification shall have attained at least a 2.5 overall grade point average on a 4.0 scale in the applicant's major field of study.* At least 30 of the total number of semester hours required for the initial secondary certificate area on a professional certificate shall be earned in courses in the field of specialization no more than nine of which shall be earned in a college of education unless the applicant's courses in the specialization field were offered only in the college of education. *The applicant may document the required education by submitting official transcripts from institutions of higher education or by authorizing the direct submission of such official transcripts through established electronic network systems;*

4.~~(c)~~ Meet such academic and professional requirements based on credentials certified by standard institutions of higher learning, including any institutions of higher learning in this state which are accredited by an accrediting association which is a member of the Council on Postsecondary Accreditation, as may be prescribed by the state board;

5.~~(d)~~ Be competent and capable of performing the duties, functions, and responsibilities of a teacher; ~~and~~

6.~~(e)~~ Be of good moral character*;*

7. Demonstrate mastery of the minimum competencies required by subsection (2); and

8. Complete the professional orientation program required by subsection (3).

(2) MINIMUM COMPETENCIES.—

(a) Each professional certificate issued shall be valid for a period not to exceed 5 years. Each applicant for initial professional certification shall demonstrate, on a comprehensive written examination or through such other procedures as may be specified by the state board, mastery of those minimum essential generic and specialization competencies and other criteria as shall be adopted into rules by the state board, including, but not limited to, the *ability to* ~~following~~:

1. ~~The ability to~~ Write in a logical and understandable style with appropriate grammar and sentence structure;

2. ~~The ability to~~ Read, comprehend, and interpret professional and other written material;

3. ~~The ability to~~ Comprehend and work with fundamental mathematical concepts;

4. ~~The ability to~~ Recognize signs of severe emotional distress in students and to apply techniques of crisis intervention with emphasis on suicide prevention and positive emotional development;

5. ~~The ability to~~ Recognize signs of alcohol and drug abuse in students and to apply counseling techniques with emphasis on intervention and prevention of future abuse;

6. ~~The ability to~~ Recognize the physical and behavioral indicators of child abuse and neglect, to know rights and responsibilities regarding reporting, to know how to care for a child's needs after a report is made, and to know recognition, intervention, and prevention strategies pertaining to child abuse and neglect that can be related to children in a classroom setting in a nonthreatening, positive manner;

7. ~~The ability to~~ Comprehend patterns of physical, social, and academic development in students, including exceptional students in the regular classroom, and to counsel the same students concerning their needs in these areas;

8. ~~The ability to~~ Recognize and be aware of the instructional needs of exceptional students.

(b) The state board shall adopt rules which specify the minimum essential generic and subject matter competencies to be demonstrated by means of the written examination and those to be demonstrated by other means. ~~The written examination may be taken by~~ Any individual enrolled in a postsecondary institution who pays the appropriate fee and completes the required application procedures *may take the written examination* prior to graduation. The examination shall require a candidate to demonstrate the following:

1. Mastery of general knowledge, including the ability to read, write, and compute;

2. Mastery of professional skills; and

3. Mastery of the subject matter in each area for which certification is being sought.

The state board shall designate the certification areas for which subject area tests shall be developed. However, an applicant may satisfy the subject area and professional knowledge testing requirements by attaining scores on corresponding tests from the National Teachers Examination series, *and successors to that series,* that meet standards established by the state board. The College Level Academic Skills Test or a similar test approved by the state board shall be used by degreed personnel to demonstrate mastery of general knowledge as required in subparagraph 1. *The College Level Academic Skills Test shall be waived for any applicant who passed the reading, writing, and mathematics subtest of the old Florida Teacher Certification Examination and subsequently obtained a certificate pursuant to this chapter.*

~~(c) Each person seeking initial certification shall have attained at least a 2.5 overall grade point average on a 4.0 scale in the applicant's major field of study.~~

(c)~~(d)~~ A person who meets all ~~certification~~ requirements ~~which have been~~ established by law or rule *for issuance of a professional certificate,* other than ~~the~~ passing ~~of~~ the examination, *successfully completing* ~~and the successful completion of~~ the first year of the professional orientation program, or *completing* the ~~completion of~~ professional education courses in which the applicant is deficient, *shall* ~~may~~ be issued a nonrenewable, 2-year temporary certificate. However, the State Board of Education shall adopt rules to allow for the issuance of:

1. One nonrenewable 2-year temporary certificate and one nonrenewable 5-year professional certificate to an individual who holds a bachelor's degree in the area of speech-language impaired to allow for completion of a master's degree program in speech-language impaired.~~, to allow for the issuance of~~

2. One additional 2-year temporary certificate when the requirements for the professional certificate were not completed because of the serious illness, injury, or other extraordinary, extenuating circumstance of the applicant.~~, or to allow a person~~

3. A 1-year extension of the temporary certificate for an applicant who was employed less than 99 days during the first year of teaching ~~to extend the certificate for 1 additional year~~.

4. Additional 2-year temporary certificates to an applicant who is completing the professional certification requirements for an English or language arts teacher of limited English proficient students.

The department shall *reissue* ~~issue~~, pursuant to this *paragraph* ~~section~~, a certificate upon the written request of the district school superintendent, the governing authority of a developmental research school, or the governing authority of a *state-supported school or* nonpublic school with an approved professional orientation program.

(d)~~(e)~~ The commissioner, with the approval of the state board, may assign to a university in the state system the responsibility for printing, administering, scoring, and providing appropriate analysis of the written tests required.

(e)~~(f)~~ The state board shall, *by rule, specify the examination scores* ~~adopt as a rule a score~~ the achievement of which shall be required for the issuance of a professional certificate and certain temporary certificates. *Such rules shall provide an alternative method by which an applicant may demonstrate mastery of general knowledge, including the ability to read, write, or compute. The alternative shall:*

1. Apply only to an applicant who has successfully completed all prerequisites for issuance of the professional certificate, except passing one specific subtest of the College Level Academic Skills Test (CLAST) and who has taken and failed to achieve a passing score on that subtest at least four times.

2. Require notification from the superintendent of the employing school district, the governing authority of the employing developmental research school, or the governing authority of a state-supported school or nonpublic school with an approved professional orientation program that the applicant has satisfactorily demonstrated mastery of the subject area covered by that specific subtest by demonstrating successful teaching experience and proficient academic performance in that subject area. The decision of the superintendent or governing authority shall be based on a review of the applicant's official academic transcript and notification from the applicant's principal, a peer teacher, and a district-level supervisor that the applicant has demonstrated successful teaching experience in that subject area.

(f)~~(g)~~ Provision shall be made for a person who does not achieve the score necessary for certification to review his completed examination and bring to the attention of the department any errors which would result in a passing score.

(g)~~(h)~~ The department and the board shall maintain confidentiality of the examination, developmental materials, and workpapers, and the examination, developmental materials, and workpapers shall be exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The board shall adopt such rules as may be necessary to accomplish this purpose.

~~(i) The state board shall designate the certification areas for which subject area tests shall be developed.~~

(3) PROFESSIONAL ORIENTATION PROGRAM.—Each school district and developmental research school shall develop and *maintain* ~~submit to the commissioner for approval~~ a plan for a professional orientation program for beginning teachers, teachers employed in the state for the first time, and teachers whose professional certificates are inactive. A *state-supported school or* nonpublic school may develop a plan for a professional orientation program and submit it to the commissioner for *initial* approval.

(a) The professional orientation program *is a 3-year program for developing professional skills and competencies. The first year of the program shall be mandatory* for beginning teachers *and* shall *offer* ~~be a program of~~ individualized mentoring and assistance. The goal of the first year shall be to provide an orientation to professional responsibilities and the training and support activities required to enable the beginning teacher to successfully demonstrate the competencies required by this section. *Other professional competencies identified by the State Board of Education or local school board may be required.* The program for the first year may include a reduced teaching load. ~~School districts are strongly encouraged to develop a program for second and third years for those beginning teachers who successfully complete the first year.~~ The optional second and third years may *offer continued development for successful beginning teachers or for any teacher with identified skill development needs, may* involve decreasing levels of assistance, and *may* ~~need not~~ include peer mentoring and professional orientation teams. The professional orientation program for experienced teachers shall be a 90-day program of orientation to state and district policies and practices.

(b) No teacher who has less than 1 full year of successful teaching experience as defined in s. 228.041(16) shall be issued the professional educator's certificate until the individual has successfully completed the first year of the professional orientation program. The teacher employed in the state for the first time or whose professional certificate is inactive and who has at least 1 full year of successful teaching experience may, during the first 90 days of employment, demonstrate successful instructional performance on an instructional performance evaluation system that has been approved for use in the professional orientation program in the employing district of the teacher. This performance evaluation system shall measure demonstration of the competencies described in

subsection (2). The experienced teacher who fails to document successful demonstration of the essential competencies during the first 90 days of employment shall complete 1 year of the professional orientation program.

(c) A teacher participating in the professional orientation program shall be a member of the bargaining unit with the same rights as any other first-year teacher and shall receive full pay according to the adopted salary schedule of the district. The requirement for participation in a professional orientation program may be met by teaching *full-time or on an equivalent part-time basis* in a *school district or in a* nonpublic school, state-supported school, or developmental research school with an approved professional orientation program.

(d) The professional orientation program shall include, but is not limited to, the following conditions:

1. Each school district and developmental research school, *and each state-supported school or nonpublic school with an approved professional orientation program plan, shall annually submit evaluation data on its* ~~shall submit a request for approval of a~~ professional orientation program to the Commissioner of Education. The commissioner shall develop criteria for *continued* approval after consultation with the Education Standards Commission. ~~Nonpublic schools also may submit a plan for approval of a professional orientation program.~~

2. Professional orientation activities *during the first year* shall be based on classroom application of the competencies described in subsection (2), in appropriate instructional settings. Emphasis shall be given to application of those competencies which are directly related to effective performance of the instructional services for which the participant is seeking certification coverage. *The orientation activities shall also develop school improvement skills.*

3. Successful completion of that portion of the professional orientation program required for a professional certificate means that the superintendent or chief administrator has verified to the Department of Education that the teacher has successfully completed the first year of the program.

4. A teacher who has successfully completed the professional orientation program shall have the same reemployment rights as any other teacher on probationary service.

(e) The state board shall adopt the rules necessary to provide for the professional orientation program. Such rules shall include opportunities for school districts to work with teacher preparation institutions to devise, and submit for approval, performance appraisal systems and other professional development mechanisms tailored to meet local situations. The rules shall provide for a procedure by which the applicant for a professional certificate may appeal the judgment of the superintendent or chief administrator regarding successful completion of the program. The appeals procedures shall involve the Education Practices Commission and shall not apply to continued employment or reemployment. The involvement of the Education Practices Commission in such appeals procedures shall be pursuant to rules of the State Board of Education.

(f) District school boards may expend educational training funds as provided for in ss. 236.081 and 236.0811 for professional orientation program activities.

(7) PRIOR APPLICATION.—Those persons who *apply* ~~applied~~ for initial *professional* ~~regular~~ or temporary certification ~~under the law preceding July 1, 1990,~~ shall be governed by the law and rules in effect at the time of application for issuance of the initial certificate.

Section 3. Section 231.1725, Florida Statutes, 1992 Supplement, is amended to read:

231.1725 Employment of substitute teachers, teachers of adult education, ~~and~~ nondegreed teachers of vocational education, *and noncertificated teachers in critical teacher shortage areas.*—

(1) Notwithstanding the provisions of ss. 231.02, 231.15, 231.17, and 231.172 or any other provision of law or rule to the contrary, *each school board* ~~the State Board of Education~~ shall establish the minimal qualifications for:

(a) Substitute teachers to be employed pursuant to s. 231.47. The qualifications shall require the filing of a complete set of fingerprints in the same manner as required by s. 231.02.

(b) Part-time and full-time teachers in adult education programs. The qualifications shall require the filing of a complete set of fingerprints in the same manner as required by s. 231.02. Faculty employed solely to conduct postsecondary instruction may be exempted from this requirement.

(c) Part-time and full-time nondegreed teachers of vocational programs. Qualifications shall be established for agriculture, business, health occupations, home economics, industrial, marketing, and public service education teachers, based primarily on successful occupational experience rather than academic training. The qualifications for such teachers shall require:

1. The filing of a complete set of fingerprints in the same manner as required by s. 231.02. Faculty employed solely to conduct postsecondary instruction may be exempted from this requirement.

2. Documentation of education and successful occupational experience including documentation of:

a. A high school diploma or the equivalent.

b. Completion of 6 years of full-time successful occupational experience or the equivalent of part-time experience in the teaching specialization area. Alternate means of determining successful occupational experience may be established by the school board.

c. Completion of vocational education training conducted through the local school district inservice master plan.

d. For full-time teachers, completion of professional education training in teaching methods, course construction, lesson planning and evaluation, and teaching special needs students. This training may be completed through coursework from a standard institution or an approved district teacher education program.

e. Demonstration of successful teaching performance.

(d) Part-time and full-time noncertificated teachers in critical teacher shortage areas. The qualifications shall require the filing of fingerprints in the same manner as required by s. 231.02 and shall be based on academic training in the essential generic and specialization competencies of the instructional assignment. The school board shall be responsible for determining critical teacher shortage areas within the school district. Each school board shall annually report the number, qualifications, and areas of assignment of all non-certificated teachers employed pursuant to this paragraph during each school year. The report shall be publicly disclosed pursuant to s. 230.23(18).

(2) Substitute, adult education, and nondegreed vocational education teachers *and noncertificated teachers in critical teacher shortage areas who are* employed pursuant to this section shall have the same rights and protection of laws as certified teachers.

Section 4. Section 231.173, Florida Statutes, is amended to read:

231.173 Successful experienced out-of-state teachers *and administrators.*—Notwithstanding the provisions of ss. 231.02, 231.15, 231.17, and 231.172 or any other provision of law or rule to the contrary, a successful, experienced, and certified out-of-state teacher *or administrator* employed in a public school or nonpublic school in this state may qualify for a professional certificate if *the applicant* ~~he~~:

(1) Completes the application process, including the filing of a complete set of fingerprints as required by s. 231.02.

(2) Holds a valid standard certificate issued by the state where *the applicant* ~~he~~ most recently taught, which standard certificate is equivalent to the professional certificate issued by this state and for which specialization coverage is based on a level of training comparable to that required in this state for *the applicant's* ~~his~~ area of ~~teaching~~ assignment.

(3) Documents 5 years of *appropriate* successful full-time teaching *or administrative* experience, including 2 continuous years during the 5-year period immediately preceding the date of ~~his~~ application for certification.

(4) Submits a request for issuance of the professional certificate from the superintendent of the employing school district or ~~the head of the~~ governing *authority* ~~board~~ of the *employing developmental research school, state-supported school, or* nonpublic school within the first *120* ~~90~~ days of *assignment* ~~teaching~~. ~~The certificate shall be limited to the applicant's academic specialization and the subjects which he is assigned to teach.~~

(5) The certificate issued in accordance with these provisions shall reflect specialization coverages as follows:

(a) Teachers.—A teacher appointed to an academic assignment shall be eligible for the academic coverage in an area in which the teacher is assigned.

(b) Principals.—An individual appointed as an intern or interim principal of a K-12 school shall be eligible for the educational leadership coverage.

(c) Administrators of adult education.—An individual appointed as an administrator of an adult education program shall be eligible for the administration of adult education coverage.

(d) Directors of vocational education.—An individual appointed as a director of vocational education shall be eligible for the director of vocational education coverage.

Section 5. Subsection (1) and paragraph (a) of subsection (2) of section 231.24, Florida Statutes, 1992 Supplement, are amended to read:

231.24 Renewal of *professional* certificates.—

(1) All certificates, except ~~a~~ nonrenewable professional *and temporary certificates* ~~certificate~~, issued to school personnel shall be renewable for successive periods not to exceed 5 years from the date of submission of documentation of completion of the requirements for renewal provided in subsection (2). Only one renewal may be granted during each 5-year validity period of a *professional* certificate. However, the state board shall *adopt* ~~promulgate~~ rules to *establish requirements for the late renewal of a professional certificate and to* allow a 1-year extension of the validity period of a professional certificate in the event of serious illness, injury, or other extraordinary extenuating circumstances of the applicant. The department shall grant such *1-year* extension upon written request of the superintendent of the local school district, ~~or~~ the governing authority of a *developmental research school, or the governing authority of a state-supported school or* nonpublic school that has an approved professional orientation program.

(2) For the renewal of a professional certificate, the following requirements shall be met:

(a)1. The applicant shall earn a minimum of 6 college credits or 120 inservice points or a combination thereof. For each area of specialization to be retained on a certificate, the applicant shall earn at least 3 of the required credit hours or equivalent inservice points in the specialization area. Credits or points that provide training ~~to teachers~~ in the *areas* ~~area~~ of exceptional student education, *drug abuse, child abuse and neglect, strategies in teaching limited English proficient students, or dropout prevention strategies, or in areas identified in the educational goals and performance standards adopted pursuant to ss. 229.591(3) and 229.592,* may be applied toward any specialization area. Credits or points earned through approved summer institutes may be applied toward the fulfillment of these requirements. Inservice points may also be earned by participation in professional growth components approved by the State Board of Education and specified pursuant to s. 236.0811 in the district's approved 5-year master plan for inservice educational training, including, but not limited to, serving as a trainer in an approved teacher training activity or serving on an instructional materials committee or a state board or commission which deals with educational issues.

2. In lieu of college course credit or inservice points, the applicant may renew a specialization area by passage of a state board approved subject area test or by completion of a department approved summer work program in a business or industry directly related to an area of specialization listed on the certificate. The state board shall adopt rules providing for the approval procedure.

3. In the event an applicant wishes to retain more than two specialization areas on the certificate, the applicant shall be permitted two successive validity periods for renewal of all specialization areas. However, at no time shall less than 6 college course credit hours or the equivalent be earned in any one validity period.

Section 6. Section 231.30, Florida Statutes, is amended to read:

231.30 Certification fees.—

(1) The State Board of Education, *by rule,* shall *establish fees to be paid for applications, examinations, certification, certification renewal, late renewal, recordmaking, and recordkeeping. Fees shall be based on department estimates of the revenue required to implement the provisions of law with respect to certification of school personnel, but shall not exceed $60.* ~~have the authority to adopt rules providing for the payment of fees:~~

~~(a) For a professional certificate;~~

~~(b) For a temporary certificate or a part-time certificate;~~

~~(c) For renewal of a professional certificate; and~~

~~(d) For a duplicate certificate or a name change.~~

(2) The proceeds from the collection of certification fees, *fines, penalties, and costs levied pursuant to this chapter* shall be remitted by the Department of Education to the Treasurer *for deposit into* ~~and shall be kept by him in~~ a separate fund to be known as the "Educational Certification and Service Trust Fund" and disbursed for the payment of expenses incurred by the Educational Standards Commission, by the Educational Practices Commission, and in the printing of forms and bulletins and the issuing of certificates, upon vouchers approved by the department.

Section 7. Paragraph (b) of subsection (7) and subsection (10) of section 231.261, Florida Statutes, are amended to read:

231.261 Education Practices Commission; organization.—

(7) The duties and responsibilities of the commission are to:

(b) Revoke or suspend a certificate or take other appropriate action as provided in *ss.* ~~s.~~ 231.262 and ~~in s.~~ 231.17~~(6)(b)~~.

(10) The commission shall be financed from *the following:* certification fees*; fines, penalties, and costs collected pursuant to s. 231.262(7);* and general revenue.

Section 8. Paragraphs (c), (d), and (g) of subsection (6) of section 231.262, Florida Statutes, 1992 Supplement, are amended, and subsection (7) is added to said section, to read:

231.262 Complaints against teachers and administrators; procedure*; penalties.*—

(6) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(c) Imposition of an administrative fine not to exceed $2,000 for each count or separate offense. ~~Such fine shall be deposited in the State Treasury.~~

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified *educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation* ~~teacher~~.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate *or an expired certificate subject to late renewal,* which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(7) All moneys collected by, or awarded to, the commission as fees, fines, penalties, or costs shall be deposited into the Educational Certification and Service Trust Fund pursuant to s. 231.30.

Section 9. Subsections (1) and (5) of section 231.28, Florida Statutes, are amended to read:

231.28 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission shall have authority to suspend the teaching certificate of any person as defined in s. 228.041(9) or (10) for a period of time not to exceed 3 years, thereby denying that person the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (4); to revoke the teaching certificate of any person, thereby denying that person the right to teach for a period of time not to exceed 10 years, with reinstatement subject to the provisions of subsection (4); to revoke permanently the teaching certificate of any person; or to impose any other penalty provided by law, provided it can be shown that such person:

(a) Obtained the teaching certificate by fraudulent means;

(b) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school;

(c) Has been guilty of gross immorality or an act involving moral turpitude;

(d) Has had a teaching certificate revoked in another state;

(e) Has been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation;

(f) Upon investigation, has been found guilty of personal conduct which seriously reduces that person's effectiveness as an employee of the school board;

(g) Has breached a contract, as provided in s. 231.36(2); ~~or~~

(h) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules; or

(i)~~(h)~~ Has otherwise violated the provisions of law ~~or rules of the State Board of Education~~, the penalty for which is the revocation of the teaching certificate.

(5)~~(a)~~ *Each district* ~~The~~ superintendent *and the governing authority of each state-supported school or nonpublic school with an approved professional orientation program* shall report to the department the name of any person *certified pursuant to this chapter or employed and qualified pursuant to s. 231.1725:*

(a) Who has been convicted of, or who has pled nolo contendere to, a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;~~.~~

(b) ~~The superintendent shall report to the department the name of any person~~ Who that official has reason to believe has committed or is found to have committed any act which would be a ground for revocation or suspension under subsection (1)*; or*~~.~~

(c) ~~The superintendent shall report to the department the name of any person~~ Who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

Section 10. Section 231.263, Florida Statutes, is created to read:

231.263 Recovery network program for educators.—

(1) There is created within the Department of Education, to begin on July 1, 1994, a recovery network program to assist educators who are impaired as a result of alcohol abuse, drug abuse, or a mental condition in obtaining treatment to permit their continued contribution to the education profession. Any person who holds certification issued by the department pursuant to this chapter is eligible for the assistance.

(2)(a) The department shall employ an administrator and staff as are necessary, to be assigned exclusively to the recovery network program.

(b) The Commissioner of Education shall establish the criteria for, and appoint, the staff of the program.

(c) The department may contract with other professionals to implement this section.

(3) The recovery network program shall assist educators in obtaining treatment and services from approved treatment providers, but each impaired educator must pay for treatment under terms and conditions agreed upon by the impaired educator and the treatment provider. A person who is admitted to the program must contract with the treatment provider and the program. The treatment contract must prescribe the type of treatment and the responsibilities of the impaired educator and the provider and must provide that the impaired educator's progress will be monitored by the program.

(4) The recovery network program shall locate, evaluate, and approve qualified treatment providers.

(5) The recovery network program shall operate independently of, but may cooperate with, the Office of Professional Practices Services of the Department of Education and the Education Practices Commission. A person's participation in the program entitles the commissioner to enter into a deferred prosecution agreement pursuant to s. 231.262, or such participation may be considered a factor in mitigation of, or a condition of disciplinary action against, the person's certificate by the Education Practices Commission pursuant to s. 231.28.

(6) The recovery network program shall operate independently of employee assistance programs operated by local school districts, and the powers and duties of school districts to make employment decisions, including disciplinary decisions, is not affected except as provided in this section.

(a) A person who is not subject to investigation or proceedings under ss. 231.262 and 231.28 may voluntarily seek assistance through a local school district employee assistance program for which he is eligible and through the recovery network, regardless of action taken against him by a school district. Voluntarily seeking assistance alone does not subject a person to proceedings under ss. 231.262 and 231.28.

(b) A person who is subject to investigation or proceedings under ss. 231.262 and 231.28 may be required to participate in the program. The program may approve a local employee assistance program as a treatment provider or as a means of securing a treatment provider. The program and the local school district shall cooperate so that the person may obtain treatment without limiting the school district's statutory powers and duties as an employer or the disciplinary procedures under ss. 231.262 and 231.28.

(7) If a complaint is made to the department against a teacher or an administrator pursuant to s. 231.262 and a finding of no probable cause indicates that no concern other than impairment exists, the department shall inform the person of the availability of assistance provided by the recovery network program.

(8) A person who is referred or who requests admission to the recovery network program shall be temporarily admitted pending a finding that he has:

(a) Acknowledged his impairment problem.

(b) Agreed to evaluation as approved by the recovery network program.

(c) Voluntarily enrolled in an appropriate treatment program approved by the recovery network program.

(d) Voluntarily sought agreement from the school district for temporary leave or limitations on the scope of employment if the temporary leave or limitations are included in the treatment provider's recommendations, or voluntarily agreed to pursue the alternative treatment recommended by the treatment provider if the school district does not approve such temporary leave or limitations on the scope of employment.

(e) Executed releases to the recovery network program for all medical and treatment records regarding his impairment and participation in a treatment program pursuant to 42 U.S.C. s. 290dd-3 and the federal regulations adopted thereunder.

(9) An approved treatment provider must disclose to the recovery network program all information in its possession which relates to a person's impairment and participation in the treatment program. Effective June 30, 1993, information obtained under this subsection is confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Failure to provide such information to the program is grounds for withdrawal of approval of a treatment provider. Medical records provided to the program may not be disclosed to any other person, except as authorized by law.

(10)(a) A person may be declared ineligible for further assistance from the recovery network program if he does not progress satisfactorily in a treatment program or leaves a prescribed program or course of treatment without the approval of the treatment provider.

(b) The determination of ineligibility must be made by the commissioner in cases referred to him by the program administrator. Before referring a case to the commissioner, the administrator must discuss the circumstances with the treatment provider. The commissioner may direct the Office of Professional Practices Services to investigate the case and provide a report.

(c) If a treatment contract with the program is a condition of a deferred prosecution agreement, and the commissioner determines that the person is ineligible for further assistance, the commissioner may agree to modify the terms and conditions of the deferred prosecution agreement or may issue an administrative complaint, pursuant to s.

231.262, alleging the charges regarding which prosecution was deferred. The person may dispute the determination as an affirmative defense to the administrative complaint by including with his request for hearing on the administrative complaint a written statement setting forth the facts and circumstances that show that the determination of ineligibility was erroneous. If administrative proceedings regarding the administrative complaint, pursuant to s. 120.57, result in a finding that the determination of ineligibility was erroneous, the person is eligible to participate in the program. If the determination of ineligibility was the only reason for setting aside the deferred prosecution agreement and issuing the administrative complaint and the administrative proceedings result in a finding that the determination was erroneous, the complaint shall be dismissed and the deferred prosecution agreement reinstated without prejudice to the commissioner's right to reissue the administrative complaint for other breaches of the agreement.

(d) If a treatment contract with the program is a condition of a final order of the Education Practices Commission, the commissioner's determination of ineligibility constitutes a finding of probable cause that the person failed to comply with the final order. The commissioner shall issue an administrative complaint and the case shall proceed under ss. 231.262 and 231.28 in the same manner as cases based on a failure to comply with an order of the Education Practices Commission.

(e) If the person voluntarily entered into a treatment contract with the program, the commissioner shall issue a written notice stating the reasons for the determination of ineligibility. Within 20 days after the date of such notice, the person may contest the determination of ineligibility pursuant to s. 120.57.

(11) Medical records released pursuant to paragraph (8)(e) may be disclosed to the commissioner, the Office of Professional Practices Services, and the Education Practices Commission only as required for purposes of this section, or as otherwise authorized by law. Further disclosure or release of the medical records may not be made except as authorized by law and in accordance with 42 U.S.C. s. 290dd-3 and the federal regulations adopted thereunder. The medical records are not public records but are confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(12) The State Board of Education shall include in the fees established pursuant to s. 231.30 an amount sufficient to implement the provisions of this section. The state board shall, by rule, establish procedures and additional standards for:

(a) Approving treatment providers, including appropriate qualifications and experience, amount of reasonable fees and charges, and quality and effectiveness of treatment programs provided.

(b) Admitting eligible persons to the program.

(c) Evaluating impaired persons by the recovery network program.

Section 11. Subsection (4) of section 231.603, Florida Statutes, is amended to read:

231.603 Establishment and operation of teacher education centers.—

(4) Pursuant to rules of the State Board of Education, each teacher education center shall develop an inservice training plan. The teacher education center inservice plan shall be updated *annually* ~~periodically~~ and shall be incorporated into the district master plan for inservice educational training.

Section 12. Paragraph (b) of subsection (1) of section 231.606, Florida Statutes, is amended to read:

231.606 Administration of local teacher education centers.—

(1) CENTER COUNCIL.—A council shall be established for each teacher education center. The local school board shall appoint the members of the council at the teacher education center.

(b) Duties and responsibilities.—The center council shall perform the following duties and responsibilities:

1. Recommend to the superintendent policy and procedures for the teacher education center.

2. Develop goals and objectives for the center within the policies as determined by the local school board.

3. Develop and *annually* ~~periodically~~ update the teacher education center inservice plan. *Council members may serve on the committee established pursuant to s. 236.0811(2) to annually review proposed changes to the district master inservice plan.*

4. Recommend to the superintendent the employment of a director and an appropriate teacher education center staff.

5. Make recommendations to the superintendent on an appropriate budget.

Section 13. Subsections (1), (2), and (3) of section 231.613, Florida Statutes, 1992 Supplement, are amended to read:

231.613 Inservice training institutes.—

(1) It is the intent of the Legislature to establish inservice training institutes for the purpose of providing rigorous, intensive inservice training for the state's public school instructional personnel as defined in s. 228.041(9). The Legislature shall determine annually in the General Appropriations Act the subject area or areas of instruction for the institutes and the grade levels and specialties of participating instructional personnel. *Instructional technology* ~~Computer literacy~~ and multicultural education shall be included as subject areas or areas of instruction at inservice training institutes. Effective July 1, 1992, and each year thereafter, inservice instruction in vocational education shall be provided which meets needs identified in the inservice master plan for vocational educators pursuant to s. 231.614. A district may provide summer inservice training institutes in instructional areas which are areas of critical *need* ~~teacher shortage~~ for the district and approved by the Department of Education, provided the district has approved add-on certification programs for each instructional area so designated.

(2) Each public school district shall separately, or in cooperation with an adjoining district or districts, establish an inservice training institute which meets the following criteria:

(a) Operate for *at least 30 hours of instruction* ~~the number of hours or days specified in the General Appropriations Act~~. The training *shall* ~~will~~ be on consecutive days, except weekends and district holidays.

(b) Operate at a time other than the regular school year for students.

(c) Annually provide rigorous, intensive inservice training for district instructional personnel as designated in subsection (1).

(d) Utilize school district, community college, university, or other *district* approved facilities as the site for inservice institutes.

(e) Utilize teacher education centers to provide for inservice institute training.

Districts are encouraged to utilize university and community college personnel to conduct the training.

(3) By *May 1* ~~February 1~~ of each year, each district ~~or group of districts establishing an inservice institute~~ shall submit to the *school board* ~~department~~ for approval a plan describing how inservice institute training shall be provided for that year. Such plans shall be *developed according to criteria and procedures established by the Commissioner of Education* ~~submitted in a manner and form as prescribed by state board rule~~ and shall contain:

(a) An estimate of costs for providing inservice activities.

(b) Procedures to evaluate institute activities consistent with s. 231.608(1).

(c) Such other items as may be required by the state board.

Section 14. Paragraph (a) of subsection (2) of section 236.0811, Florida Statutes, 1992 Supplement, is amended to read:

236.0811 Educational training.—

(2)(a)1. Pursuant to rules of the State Board of Education, each district shall develop and submit to the *local school board* ~~commissioner~~ for approval a 5-year master plan for inservice educational training. The plan shall be based on an assessment of the inservice educational training needs of the district conducted by a committee which includes parents, classroom teachers, and other educational personnel. The plan shall include a component consisting of competencies in the identification, assessment, and prescription of instruction for exceptional students. The

plan shall also include a component consisting of competencies in the identification, assessment, and prescription of instruction for child abuse and neglect prevention and for substance and alcohol abuse prevention. The plan must also include a component consisting of competencies in instruction for multicultural sensitivity in the classroom. The plan shall be updated annually by July 1 *using criteria and procedures for continued approval developed by the Commissioner of Education. Such plan shall be approved by the school board* and shall include inservice activities for all district employees from all fund sources. Classroom teachers and guidance counselors shall be required to participate in the inservice training for child abuse and neglect prevention, for alcohol and substance abuse prevention education, and for multicultural sensitivity education, which may include negotiation and conflict resolution training. The department shall withhold *funding* ~~approval~~ of any district's master inservice plan, as required by this section, which fails to provide and require training in substance abuse prevention education pursuant to s. 233.067(4)(c)1. for all classroom teachers and guidance counselors.

2. The plan of each school district for inservice educational training submitted pursuant to this paragraph must include inservice components which may be used for extension of a certificate or a new endorsement in each of the following areas: a study of the middle grades, understanding the student in the middle grades, organizing interdisciplinary instruction in the middle grades, curriculum development in the middle grades, developing critical thinking and creative thinking in students in the middle grades, counseling functions of the teacher in the middle grades, developing creative learning materials for the middle grades, and planning and evaluating programs in the middle grades. The department is authorized to waive one or more of these inservice areas if the district can document its unsuccessful attempt to secure a competent trainer or sufficient enrollment or when the department determines that specific validated competencies may be substituted in lieu of such inservice areas. The State Board of Education shall adopt rules necessary to implement the provisions of this subparagraph.

Section 15. *Notwithstanding the provisions of s. 231.17(7), Florida Statutes, individuals who applied for initial certification prior to June 30, 1993, shall be governed by the provisions of section 231.17(2), Florida Statutes, as amended by this act. If necessary, a 1 year extension to a valid temporary certificate may be issued to allow for the implementation of related rules. A 1 year extension shall be issued based upon application and request from the employing school district, state-supported, or nonpublic school.*

Section 16. *Section 231.263, Florida Statutes, is repealed on October 1, 1996, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes. In the event that s. 11.61, Florida Statutes, is repealed prior to October 1, 1996, this section shall stand repealed on the effective date of the repeal of said section.*

Section 17. *Subsection (3) of section 231.15, Florida Statutes, 1992 Supplement, and section 231.1711, Florida Statutes, as created by chapter 90-288, Laws of Florida, and as amended by chapter 91-105, Laws of Florida, are hereby repealed.*

Section 18. Section 288.046, Florida Statutes, is created to read:

288.046 Legislative intent.—The Legislature recognizes the importance of providing a skilled work force for attracting new business and industry, and for maintaining, expanding, or restructuring current business and industry. It is the intent of the Legislature that a program exist to meet the short-term, immediate, workforce skill needs of such business and industry. It is further the intent of the Legislature that funds provided for the purposes of this act be expended on business and industry that support the state's economic development goals and that instruction funded pursuant to this act lead to employment that will sustain the economic self-sufficiency of participants.

Section 19. Section 288.047, Florida Statutes, is created to read:

288.047 Quick response training for economic development.—

(1) The Quick Response Training Program is created to meet the workforce skill needs of existing, new, and expanding industries. The program shall be administered by the Department of Commerce, in conjunction with the Department of Education. The Department of Commerce shall promulgate rules pursuant to chapter 120 for the administration of this program. The Department of Commerce shall provide technical services and shall identify businesses that seek services through the program. The Department of Education shall provide services related to the development and implementation of instructional programs.

(2)(a) A Quick Response Advisory Committee, composed of the Director of the Division of Vocational, Adult, and Community Education of the Department of Education; Director of the Division of Community Colleges of the Department of Education; and Director of the Division of Labor, Employment, and Training of the Department of Labor and Employment Security, or their respective designees, and four private sector members, shall review training funded through this program and shall provide policy guidance to the Department of Commerce in the implementation of this program. The committee shall elect its own chairman. Members of the committee may receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(b) The four private sector members appointed to the Quick Response Advisory Committee shall be selected from a slate of nominees submitted by the board of directors of Enterprise Florida, Inc. The Secretary of Commerce shall appoint private sector members from this slate for terms of 4 years, except that in making the initial appointments, the secretary shall appoint members for staggered terms, one for 1 year, 2 years, 3 years and 4 years, respectively. To the maximum extent possible, the secretary shall select private sector members that represent diverse industries and regions of the state. The importance of minority representation shall be considered when making appointments for each private sector position. Private sector members may be removed for cause. Absence from three consecutive meetings shall result in the automatic removal of a private sector member.

(c) The Quick Response Advisory Committee shall meet at the call of its chairman, at the request of a majority of the membership, at the request of the Department of Commerce, or at times as may be prescribed by its rules. The committee shall serve to advise the Department of Commerce regarding the administration of the Quick Response Training Program.

(3) The Department of Commerce shall ensure that instruction funded pursuant to this section is not available through the local community college, school district, or private industry council and that the instruction promotes economic development by providing specialized entry-level skills to new workers or supplemental skills to current employees whose job descriptions are changing or expanding, or by updating or upgrading the skills of current employees. No such funds shall be expended to subsidize the ongoing staff development program of any business or industry, or to provide training for instruction related to retail businesses.

(4) Requests for funding through the Quick Response Training Program may be generated through inquiries from a specific business or industry, inquiries from a school district director of vocational education or community college occupational dean on behalf of a business or industry, or through official state economic development efforts. In allocating funds for the purposes of the program, the Department of Commerce shall establish criteria for approval of requests for funding and shall select the entity that provides the most efficient, cost-effective instruction meeting such criteria. Program funds may be allocated to any area vocational-technical center, community college, or state university. Program funds may only be allocated to nonpublic postsecondary institutions only upon a review that includes, but is not limited to, accreditation and licensure documentation and prior approval by a majority of the advisory committee. Instruction funded through the program shall terminate when participants demonstrate competence at the level specified in the request; however, no such instruction shall exceed 18 months. Program participants shall not be included in calculations of full-time equivalent enrollments for state funding purposes.

(5) Prior to the allocation of funds for any request pursuant to the provisions of this section, the Department of Commerce shall prepare a grant agreement between the business or industry requesting funds, the educational institution receiving funding through the program, and the Department of Commerce. Such agreement shall include, but not be limited to:

(a) An identification of the facility in which the instruction will be conducted and the respective responsibilities of the parties for paying costs associated with facility use.

(b) An identification of the equipment necessary to conduct the program, the respective responsibilities of the parties for paying costs associated with equipment purchase, maintenance, and repair, as well as an identification of which party owns the equipment upon completion of the instruction.

(c) An identification of the personnel necessary to conduct the instructional program, the qualifications of such personnel, and the respective responsibilities of the parties for paying costs associated with the employment of such personnel.

(d) An identification of the estimated length of the instructional program. No such program shall exceed 12 months of full-time instruction or 18 months of total instruction.

(e) An identification of special program requirements that are not addressed otherwise in the agreement.

(f) Permission to access information specific to the wages and performance of participants upon the completion of instruction for evaluation purposes. Information which, if released, would disclose the identity of the person to whom the information pertains or disclose the identity of the person's employer is confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The agreement shall specify that any evaluations published subsequent to the instruction shall not identify the employer or any individual participant.

(6) For the purposes of this section, the Department of Commerce may accept grants of money, materials, services, or property of any kind from any agency, corporation, or individual.

(7) The Department of Commerce may procure equipment as necessary to meet the purposes of this section. Title to and control of such equipment shall be vested in the Department of Education. Upon the conclusion of instruction, the Department of Education may transfer title to the district school board, community college board of trustees, or Board of Regents on behalf of a specific state university where the equipment is physically located. The department may also lease such equipment to the district school board, community college board of trustees, or Board of Regents for a maximum of 1 year. Such lease may provide for automatic renewal. Either party to a lease has the right to cancel the lease upon a 60-day notice in writing. Any equipment for which no title transfer or lease exists shall be returned to a warehouse reserve and become available for use in any area of the state in which an instructional program requires the use of such equipment.

(8) In providing instruction pursuant to this section, materials that relate to methods of manufacture or production, potential trade secrets, business transactions, or proprietary information received, produced, ascertained, or discovered by employees of the respective departments, district school boards, community college boards of trustees, or other personnel employed for the purposes of this section shall be confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The state may seek copyright protection for all instructional materials and ancillary written documents developed wholly or partially with state funds as a result of instruction provided pursuant to this section.

Section 20. The Department of Commerce and Education shall not be required to implement s. 288.047 until such time as a specific appropriation for such implementation is provided.

Section 21. *Sections 239.509 and 239.517, Florida Statutes, as created by chapter 92-136, Laws of Florida, are hereby repealed.*

Section 22. Paragraph (d) of subsection (3) of section 229.591, Florida Statutes, is amended to read:

229.591 Comprehensive revision of Florida's system of school improvement and education accountability.—

(3) EDUCATION GOALS.—The state as a whole shall work toward the following goals:

(d) Learning environment.—School boards provide a learning environment conducive to teaching and learning ~~that includes sequential instruction in mathematics, science, reading, writing, and the social sciences and appropriate educational materials, equipment, and pupil-teacher ratio~~.

Section 23. Paragraph (e) of subsection (3), subsection (5), and paragraphs (c) and (e) of subsection (6) of section 229.592, Florida Statutes, 1992 Supplement, are amended to read:

229.592 Implementation of state system of school improvement and education accountability.—

(3) COMMISSIONER.—The commissioner shall be responsible for implementing and maintaining a system of intensive school improvement and stringent education accountability.

(e) As cochairman of the Florida Commission on Education Reform and Accountability, the commissioner shall appear before the appropriate committees of the Legislature annually in October to report and recommend changes in state policy necessary to foster school improvement and education accountability. The report shall reflect the recommendations of the Florida Commission on Education Reform and Accountability. Included in the report shall be a list of the schools for which school boards have developed assistance and intervention plans and an analysis of the various strategies used by the school boards. In the fall of 1992 and 1993, the commissioner shall report in writing to the public on the current status of the state's education system. School boards shall distribute this report to the parents of all pupils in the district. *Beginning with the 1993-1994 school year and each school year thereafter, school reports shall be distributed pursuant to this paragraph and s. 230.23(18)(e) according to guidelines adopted by the State Board of Education.*

(5) STATE BOARD.—The State Board of Education shall adopt rules necessary to implement a state system of school improvement and education accountability. By September 1, 1992, the state board shall adopt standards for indicating progress toward the state education goals pursuant to s. 229.591(3). *By September 1, 1993, the state board shall adopt rules providing guidelines for annual school reports. Such rules shall be based on recommendations of the Commission on Education Reform and Accountability and shall include, but not be limited to, a requirement that each school report identify the annual Education Enhancement Trust Fund allocations to the district and the school and how those allocations were used for educational enhancement and supporting school improvement.*

(6) EXCEPTIONS TO LAW.—To facilitate innovative practices and to allow local selection of educational methods during the time period required for careful deliberation by the Legislature and the Florida Commission on Education Reform and Accountability, the following time-limited exceptions shall be permitted:

(c) Until July 1, 1994, the Legislature authorizes that the methods and requirements of the statutes listed in paragraph (a) for which a specific line-item appropriation or a specific listing within a line-item appropriation is contained and funded in the General Appropriations Act and the following statutes may be waived for any school board so requesting, provided the general statutory purpose of each section is met and the school board has submitted a written request to the commissioner for approval pursuant to this subsection: ss. *228.041(13) and (16);* 229.602(6); 230.23(3), (4)(f) and (o), (6), (7)(a), (b), and (c), (11)(c), and (17); 231.095; 232.01; 232.04; 232.245; 232.2462; 232.426; 233.011; 236.013(3) relating to the 36-hour limit; and 236.135. *Graduation requirements in s. 232.246 may be met by demonstrating performance of intended outcomes for any course in the Course Code Directory if a waiver from the requirements of s. 232.2462 has been approved based upon a need identified in a school improvement plan. In developing procedures for awarding credits based on performance outcomes, districts may request waivers from State Board of Education rules relating to curriculum frameworks and credits for courses and programs in the Course Code Directory. Credit awarded for a course or program beyond that allowed by the Course Code Directory shall count as credit for electives. Upon request by any school district, the commissioner shall evaluate and establish procedures for variations in academic credits awarded toward graduation by a high school offering six periods per day compared to those awarded by high schools operating on other schedules.*

1. A school board may originate a request for waiver and submit the request to the commissioner if such waiver is required to implement districtwide improvements.

2. A school board may submit a request to the commissioner for a waiver if such request is presented to the school board by a school advisory council established pursuant to s. 229.58 and if such waiver is required to implement a school improvement plan required by s. 230.23(18). The school board shall report annually to the Florida Commission on Education Reform and Accountability, in conjunction with the feedback report required pursuant to subsection (3), the number of waivers requested by school advisory councils, the number of such waiver requests approved and submitted to the commissioner, and the number of such waiver requests not approved and not submitted to the commissioner. For each waiver request not approved, the school board shall

report the statute or rule for which the waiver was requested, the rationale for the school advisory council request, and the reason the request was not approved.

(e) The written request for waiver of statute or rule shall indicate at least how the general statutory purpose will be met, how granting the waiver will assist schools to improve student outcomes related to the student performance standards adopted pursuant to subsection (5), and how student improvement will be evaluated *and reported*. In considering any waiver, the commissioner shall ensure protection of the health, safety, welfare, and civil rights of the students and protection of the public interest.

Section 24. Subsection (9) is added to section 216.136, Florida Statutes, to read:

216.136 Consensus estimating conferences; duties and principals.—

(9) OCCUPATIONAL FORECASTING CONFERENCE.—

(a) Duties.—The Occupational Forecasting Conference shall:

1. Develop official information regarding the personnel needs of current, new, and emerging industries within the state for inclusion in the state planning and budgeting system.

2. Identify the occupations necessary to support such industries.

3. Utilize data bases of the Department of Labor and Employment Security, universities, economic development commissions, and any other sources deemed relevant to the duties of the conference.

4. Report its findings and projections to the Commissioner of Education for inclusion in the legislative budget request submitted by the commissioner.

(b) Principals.—The Commissioner of Education, the Executive Office of the Governor, the Lieutenant Governor, the Secretary of Commerce, Secretary of Labor and Employment Security, and the director of the Division of Economic and Demographic Research of the Joint Legislative Management Committee, or their designees, are the principals of the Occupational Forecasting Conference. The principal representing the Commissioner of Education shall preside over sessions of the conference. The principals may identify other individuals with demonstrated expertise in occupational forecasting to assist in the execution of the duties of the conference.

Section 25. Paragraph (b) of subsection (4) of section 230.2316, Florida Statutes, is amended to read:

230.2316 Dropout prevention.—

(4) STUDENT ELIGIBILITY AND PROGRAM CRITERIA.—All programs funded pursuant to the provisions of this section shall be positive and shall reflect strong parental and community involvement. In addition, specific programs shall meet the following criteria:

(b) Teenage parent programs.—

1. The program shall provide pregnant students or students who are parents and the children of these students with a comprehensive teenage parent program consisting of educational and ancillary service components. The program shall provide pregnant students or students who are parents with the option of participating in regular classroom activities, *enrolling in adult basic or adult secondary instruction,* or enrolling in a special program designed to meet their needs pursuant to s. 232.01. Students participating in teenage parent programs shall be exempt from minimum attendance requirements for absences related to pregnancy, but shall be required to make up work missed due to absence.

2. The curriculum shall include instruction in such topics as prenatal and postnatal health care, parenting skills, benefits of sexual abstinence, and consequences of subsequent pregnancies. Parenting skills should include instruction in the stages of child growth and development, methods for aiding in the intellectual, language, physical, and social development of children, and guidance on constructive play activities.

3. Provision for necessary child care, health care, social services, and transportation shall be required ancillary service components of teenage parent programs. Ancillary services may be provided through the coordination of existing programs and services and through joint agreements between school districts and between school districts and other appropriate public and private providers.

Section 26. Section 231.3505, Florida Statutes, 1992 Supplement, is amended to read:

231.3505 Employment of directors of vocational education in school districts.—In order to receive state funding, each school board that employs at least 15 full-time equivalent vocational teachers *shall* ~~must~~ employ a director of vocational education who meets the certification requirements established by the State Board of Education. *Effective July 1, 1994, within the 30 semester credit hours required for certification of vocational directors, the State Board of Education shall require the successful completion of graduate-level coursework in Florida school finance.* Such directors shall be directly accountable to the superintendent of schools~~, or his designee,~~ for the planning and implementation of vocational programs. Two or more district school boards may employ a single director.

Section 27. Subsection (5) of section 236.013, Florida Statutes, is amended to read:

236.013 Definitions.—Notwithstanding the provisions of s. 228.041, the following terms are defined as follows for the purposes of this act:

(5) The maximum value for funding a student in kindergarten through grade 12 or in a prekindergarten program for exceptional children as provided in s. 232.01(1)(e), except for a student as set forth in sub-sub-subparagraph (2)(c)1.b.(I), is one full-time equivalent student membership for a school year or equivalent. *Any school district that operates an area vocational-technical center and provides vocational dual enrollment or early admission instruction for secondary students through such area vocational-technical center pursuant to s. 239.241 shall be exempt from the provisions of this subsection for such dual enrollment or early admission students. Such dual enrollment and early admission students shall be reported separately and shall be exempt from limitations on funded enrollments.*

Section 28. Paragraph (c) of subsection (1) of section 236.081, Florida Statutes, 1992 Supplement, is amended to read:

236.081 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(c) Determination of programs.—Cost factors based on desired relative cost differences between the following programs shall be established in the annual General Appropriations Act. However, the application of cost factors in part-time programs for exceptional students is limited to a maximum of twelve twenty-fifths of a student membership in a given program during a week. Beginning with the 1990-1991 fiscal year, the application of cost factors in part-time programs for exceptional students is limited to a maximum of 432 hours of a student full-time equivalent membership in a given program during a school year as defined in s. 228.041(16). The criteria for qualification for the special programs, including maximum case loads for part-time programs, shall be determined by rules of the state board. However, the district may apply to the department for an exemption to the maximums set above, and the department may grant such exemptions when district size or program dispersal would place an undue burden on the district. Cost factors for special programs for exceptional students shall be used to fund programs, approved by the department, as provided by law for exceptional students under the minimum age for enrollment in kindergarten. Beginning with the 1993-1994 fiscal year, the Department of Education shall conduct a program cost analysis, pursuant to State Board of Education rule, as part of the program review process. Adult basic and secondary programs must also be addressed in the program cost analysis. The program cost analysis must include, but is not limited to, the cost of direct and indirect operations, instruction, faculty-to-student ratio, consumable supplies, equipment, and optimum program length. *Beginning with the 1994-1995 General Appropriations Act, the Legislature shall assign each secondary vocational program and postsecondary adult vocational program to a program funding level based on programmatic costs derived from the program cost analysis. A minimum of three funding levels shall be established in the General Appropriations Act for the purposes of this paragraph.*

1. Basic programs.—

a. Kindergarten and grades 1, 2, and 3.

b. Grades 4, 5, 6, 7, and 8.

c. Grades 9, 10, 11, and 12.

2. Special programs for exceptional students.—

a. Educable mentally handicapped.

b. Trainable mentally handicapped.

c. Physically handicapped.

d. Physical and occupational therapy part-time.

e. Speech, language, and hearing part-time.

f. Speech, language, and hearing.

g. Visually handicapped part-time.

h. Visually handicapped.

i. Emotionally handicapped part-time.

j. Emotionally handicapped.

k. Specific learning disability part-time.

l. Specific learning disability.

m. Gifted part-time.

n. Hospital and homebound part-time.

o. Profoundly handicapped.

3. ~~Special~~ Adult general education programs.—

a. Adult basic education.

b. Adult secondary education.

c. Lifelong learning.

4. *Secondary vocational* ~~Special vocational technical~~ programs ~~job preparatory.~~—

a. Agriculture.

b. Office.

c. Distributive.

d. Diversified.

e. Health.

f. Public service.

g. Home economics.

h. Industrial.

i. Exploratory.

5. *Postsecondary adult vocational and supplemental vocational programs* ~~Special vocational technical adult supplemental.~~—

a. Agriculture.

b. Office.

c. Distributive.

d. Health.

e. Public service.

f. Home economics.

g. Industrial.

6. Students-at-risk programs.—

a. Dropout prevention.

b. Kindergarten through grade 3 ESOL.

c. Grades 4 through 8 ESOL.

d. Grades 9 through 12 ESOL.

Section 29. Subsection (1) of section 239.105, Florida Statutes, 1992 Supplement, is amended to read:

239.105 Definitions. As used in this chapter, the term:

(1) "Adult basic education" means courses at or below *an eighth a* ~~fifth~~ grade educational level in the language arts, including English for speakers of other languages, mathematics, natural and social sciences, consumer education, and other courses that enable an adult to attain basic or functional literacy.

Section 30. Paragraphs (c), (f), and (g) of subsection (2), paragraph (a) of subsection (4), paragraph (a) of subsection (5), and subsections (7) and (16) of section 239.117, Florida Statutes, 1992 Supplement, are amended, and subsection (17) is added to said section, to read:

239.117 Postsecondary student fees.—

(2) The following students are exempt from any requirement for the payment of registration, matriculation, and laboratory fees for instruction:

(c) A student enrolled in a dual enrollment or early admission program pursuant to s. 239.241. Fee-exempt instruction provided at community colleges pursuant to this *paragraph* ~~subsection~~ generates an additional one-fourth of a full-time equivalent enrollment.

(f) A student enrolled in an employment and training program pursuant to s. 409.029. Such a student may receive a fee exemption only if the student applies for and does not receive student financial aid, including Job Training Partnership Act or Family Support Act funds. Schools and community colleges shall help such students apply for financial aid, but shall not deny such students program participation during the financial aid application process. Such a student may not be required to incur debt within the financial aid package. Fee-exempt instruction provided at community colleges pursuant to this *paragraph* ~~subsection~~ generates an additional one-fourth of a full-time equivalent enrollment.

(g) A student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence for individuals intended to be institutionalized, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. *Exemptions granted pursuant to this paragraph shall be limited to students enrolled in vocational preparatory, postsecondary adult vocational, or supplemental vocational instruction.*

(4)(a) The Commissioner of Education shall recommend to the State Board of Education no later than December 31 of each year a schedule of fees for postsecondary adult vocational, lifelong learning, and supplemental vocational courses and programs conducted by district school boards. The fee schedule shall be based on the amount of student fees necessary to produce 10 percent of the prior year's cost of postsecondary adult vocational and vocational preparatory programs and 25 percent of the prior year's cost of supplemental vocational programs. ~~The fee schedule for lifelong learning programs shall be based on student fees and nonstate funds necessary to produce 50 percent of the prior year's cost of lifelong learning programs.~~ State funds may not exceed 50 percent of the prior *year expenditure of state and local revenues for* ~~year's cost of~~ lifelong learning programs. The recommended annual increase in fees may not exceed 10 percent for students who are residents for tuition purposes. Fees for students who are not residents for tuition purposes must offset the full cost of instruction.

(5)(a) Each year the State Board of Community Colleges shall review and evaluate the percentage of the cost of adult programs and postsecondary adult vocational programs supported through student fees. If this review indicates that student fees generate less than the percentage targeted for the program, the State Board of Community Colleges shall adopt a schedule of fee increases by December 31 for the following fall semester. For students who are residents for tuition purposes, the schedule so adopted must produce revenues equal to 25 percent of the prior year's program cost for college preparatory and supplemental vocational programs and 10 percent of the prior year's program cost for postsecondary adult vocational and vocational preparatory programs. ~~The fee schedule for lifelong learning programs shall be based on student fees and nonstate funds necessary to produce 50 percent of the prior year's cost of lifelong learning programs.~~ State funds may not exceed 50 percent of the prior *year expenditure of state and local revenues for* ~~year's cost of~~ lifelong learning programs. The state board may not increase fees more than

10 percent for students who are residents for tuition purposes. Unless otherwise specified in the General Appropriations Act, the fee schedule shall take effect and the college shall expend student fees on instruction. If the Legislature enacts a calculation different than that adopted by the state board, the state board shall adopt a fee schedule that generates the same revenues as the calculation contained in the General Appropriations Act. Each community college board of trustees shall establish matriculation, tuition, and noncredit fees that may vary no more than 10 percent from the schedule approved by the State Board of Education. Fees for students who are not residents for tuition purposes must offset the full cost of instruction.

(7) Each school board ~~and community college board of trustees~~ may collect, for financial aid purposes, up to an additional 5 percent of the student fees collected for postsecondary adult vocational and supplemental vocational courses and programs. All fees collected shall be deposited into the student financial aid fee trust fund of the district ~~or community college~~. Of the fees collected annually, a minimum of 25 percent shall be invested pursuant to the provisions of s. 18.125. Any undisbursed balance remaining in the trust fund and interest income accruing to investments from the trust fund shall increase the total funds available for distribution to postsecondary adult vocational and supplemental vocational students. Awards shall be based on student financial need and distributed in accordance with a nationally recognized system of need analysis approved by the State Board for Vocational Education. Fees collected pursuant to this subsection shall be allocated in an expeditious manner.

(16) Each school board ~~and community college board of trustees~~ may establish a separate fee for capital improvements, technology enhancements, or equipping buildings which may not exceed 5 percent of the matriculation fee for resident students or 5 percent of the matriculation and tuition fee for nonresident students. Funds collected through these fees may not be bonded. The fee shall be collected as a component part of the registration and tuition fees, paid into a separate account, and expended only to maintain, improve, equip, or enhance the postsecondary adult vocational or adult education facilities of the school district ~~or community college~~. Projects funded through the use of the capital improvement fee must meet the survey and construction requirements of chapter 235. Pursuant to s. 216.0158, each school board ~~and community college board of trustees~~ shall identify each project, including maintenance projects, proposed to be funded in whole or in part by such fee. A maximum of 15 cents per credit hour may be allocated from the capital improvement fee for child care centers conducted by the school board ~~or community college board of trustees~~.

(17) Each community college board of trustees may establish a separate activity and service fee, capital improvement fee, and financial aid fee pursuant to s. 240.35. Any community college board of trustees that assesses the student financial aid fee for students enrolled in postsecondary adult vocational courses or programs shall distribute at least the amount of financial aid collected from such students to other students enrolled in postsecondary adult vocational courses or programs.

Section 31. Subsection (3) of section 239.201, Florida Statutes, 1992 Supplement, is amended to read:

239.201 Job-related vocational instruction.—

(3) The minimum support from the school district or community college for vocational education shall be at least in the amount of *local*, state, *and* ~~or~~ federal funds that the vocational programs earn. *Local funds shall include, but not be limited to, millage collected for the purpose of satisfying required local effort and fee revenues generated by students enrolled in postsecondary adult vocational and supplemental vocational courses and programs. From the funds provided pursuant to this subsection, school boards shall expend a minimum of 80 percent on aggregate school costs. Any school board that expends less than 80 percent of the required funds shall have funding withheld from the subsequent appropriation in the same amount as the total underexpenditure; however, in the subsequent year allocation, the school board shall restore the required funds to the previously underfunded programs.* The school district or community college shall indicate the expenditure of such funds in an identifiable manner pursuant to rules of the State Board for Vocational Education.

Section 32. Subsection (2) of section 239.217, Florida Statutes, 1992 Supplement, is amended, and subsection (6) is added to said section, to read:

239.217 Florida Gold Seal Vocational Endorsement Program.—

(2) Each school district may award the Florida gold seal vocational endorsement to a high school student who meets the requirements of this section. To be eligible for award of the Florida gold seal vocational endorsement, a student must:

(a) Meet all requirements for graduation as specified in s. 232.246, including number of credits, courses, grade point average, and mastery of minimum performance standards and basic skills.

(b) Complete a vocational job-preparatory program pursuant to ss. 228.041 and 236.081, consisting of a minimum of three credits, *or complete three credits in a sequential program of studies defined in an articulation agreement with a postsecondary institution that leads to the completion of a postsecondary adult vocational program or a postsecondary vocational program as defined in s. 239.105.*

(c) Demonstrate competency in a manner approved by the State Board of Education for vocational competencies related to the specific job-preparatory program completed; basic skills of reading, writing, and computation related to the occupation; and general skills and knowledge related to employability.

(d) Earn a minimum cumulative unweighted grade point average of 3.0 on a 4.0 scale on all subjects required for a standard high school diploma.

(e) Earn a minimum unweighted grade point average of 3.5 on a 4.0 scale for *the* secondary vocational courses *that compose the vocational program of study.*

(f) Beginning with the 1997-1998 school year, meet the following additional requirements:

1. One credit in English composition or applied communications.

2. One credit in science or applied science, including biology, chemistry, physics, or principles of technology.

3. One credit in mathematics, in algebra I or the equivalent.

(6) A student who does not meet the requirements of subsection (2) as a result of inaccurate or incomplete information provided by a high school guidance counselor, a teacher, or school district personnel may be eligible for the Florida gold seal vocational endorsement if such inaccuracies and misinformation are verified by the principal of the student's school or by the district superintendent. A method for correcting deficiencies created by such misinformation must be developed by the school district. The student must correct the deficiencies no later than the end of the first semester of enrollment at a postsecondary institution. The deficiencies may be corrected by completion of comparable coursework at the postsecondary institution or by completion of a directed individualized study program administered by the school district. A student who does not complete the requirements to correct such deficiencies shall forfeit eligibility to participate in the Florida gold seal vocational endorsement program at the end of the first semester.

Section 33. Section 239.233, Florida Statutes, 1992 Supplement, is amended to read:

(Substantial rewording of section. See s. 239.233, F.S., 1992 Supplement, for present text.)

239.233 Vocational education reporting requirements.—

(1)(a) The Department of Education shall calculate student completion and placement rates for each postsecondary adult vocational and postsecondary vocational program conducted within each school district and community college. The department shall initiate a program review for any postsecondary adult vocational or postsecondary vocational program for which the annual completion rate is lower than 20 percent or the placement rate is lower than 70 percent. Staff of the department and school district or community college shall jointly develop a program review report that includes strategies for improving the program and its corresponding completion or placement rates. For the purposes of this section, "enrollment" is defined as any student who has completed 25 percent of the vocational program or demonstrated 25 percent of the competencies required for completion of the program, exclusive of necessary vocational preparatory instruction. "Program completer" is defined as any student who has demonstrated sufficient academic skills and technical proficiency to be awarded a vocational certificate. "Placement" is defined as student employment after completion of the vocational program. Students who enter full-time military

service or who continue their education at the postsecondary level shall also be considered placements. Vocational completers may have a maximum of 1 year to obtain employment before such calculation is conducted. School districts and community colleges that conduct postsecondary adult vocational programs or postsecondary vocational programs shall report all enrollments and completers for each such program to the Department of Education. The State Board for Vocational Education shall adopt, by rule, a formula for calculating completion rates and placement rates for postsecondary adult and postsecondary vocational programs that applies to both school districts and community colleges School districts and community colleges shall use placement information reported by the Florida Education and Training Placement Information Program pursuant to s. 229.8075 as the basis for placement calculations. Any school district or community college may add placement information collected by personnel of the school district or community college to the placement information reported by the Florida Education and Training Placement Information program only if the additional placement information is independently verifiable by the department. Additional placement information collected by school districts and community colleges shall not be commingled in the data base maintained by the Florida Education and Training Placement Information Program. The State Board for Vocational Education shall specify statistically valid, uniform procedures, by rule, that school districts and community colleges may employ for the purpose of providing such supplemental information. At least every 5 years, the Auditor General shall examine a sample of placement information collected by school districts and community colleges.

(b) The department shall conduct annual analyses to compare a sample of the student information reported for funding for postsecondary adult vocational and postsecondary vocational programs with the vocational student enrollment reports. The department shall withhold state funding of a program if the reports differ significantly from the vocational student enrollment reports. Such funding shall be withheld until the department determines that the enrollment reports have been completed and are consistent with the funding reports.

(c) The State Board for Vocational Education shall adopt standards that school boards and community college boards of trustees may use for program planning and evaluation. Such standards shall include, but not be limited, to completion rates, placement rates, and earnings from employment. School boards and community college boards of trustees may also seek information related to the employment and earnings of persons who do not complete programs for the purposes of program revision. Such standards shall enable the institutions and department to compare institutional program effectiveness to the effectiveness of comparable programs statewide. The State Board for Vocational Education shall also develop statistically valid methods for adjusting such comparisons to account for factors that include, but are not limited to, regional differences in wages and occupational supply and demand.

(d) Any programmatic information reported on student completion and placement and any other reports prepared for the purposes of this section shall comply with any confidentiality requirements of state and federal law. No such information may publicly disclose the identities of such completers or noncompleters and their employers.

(e) The State Board for Vocational Education shall adopt a methodology for the determination of instruction-related employment, as well as the establishment of program standards, for the purposes of this subsection. The State Board for Vocational Education shall develop such methodology with the advice of occupational deans, district directors of vocational education, area vocational-technical center directors, staff of the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools, staff of the Florida Commission on Education Reform and Accountability, staff of the Postsecondary Education Planning Commission, staff of the Florida Education and Training Placement Information Program, staff of the Senate Education Committee, and staff of the House Education Committee.

(2) Each school district and community college that conducts vocational instruction shall prepare an annual report that addresses the extent to which it is meeting the standards specified in subsection (1). Such report shall include consumer information published pursuant to s. 239.245. The State Board for Vocational Education may specify, by rule, additional information that shall be included in the report. The State Board for Vocational Education shall also prescribe a common format for the annual report. Such report shall be submitted to the department on or before November 15 of each year. The State Board for Vocational Education shall review each such report on or before December 31. The board may initiate a program review based on information that indicates a need for program improvement.

(3) The department shall compile reports submitted pursuant to this section and produce a statewide annual report that addresses the extent to which school districts and community colleges are meeting the standards specified in subsection (1). The State Board for Vocational Education may specify, by rule, additional information that shall be included in the report. The State Board for Vocational Education shall also prescribe a format for the annual report. Such report shall be submitted to the State Board for Vocational Education, the Speaker of the House of Representatives, and the President of the Senate on or before December 31 of each year.

(4) The Florida Education and Training Placement Information Program is responsible for performing longitudinal analyses related to vocational education performance. Such analyses shall include, but not be limited to, employment stability, annual earnings, relatedness of employment, and other analyses deemed necessary, informational, or illustrative for the purposes of this section. Staff of the program shall also periodically analyze the status of former students who are not found in the process employed to generate placement information.

(5) The State Board for Vocational Education may adopt other rules necessary to implement the provisions of this section.

Section 34. Subsection (1) and paragraph (a) of subsection (2) of section 239.245, Florida Statutes, 1992 Supplement, are amended to read:

239.245 Public information on vocational education programs.—

(1) Beginning in the 1994-1995 school year, as a public service, the Department of Education shall disseminate information derived from the vocational student ~~output and outcome~~ reports required by s. 239.233. The department shall ensure that the information disseminated does not name or otherwise identify a student, a former student, or the student's employer.

(2) The dissemination shall be conducted in accordance with the following procedures:

(a) Annually, the Department of Education shall publish the instruction-related placement rates and average quarterly earnings for students who complete enough of each type of postsecondary vocational education program and postsecondary adult vocational education program to have gained skills adequate to obtain instruction-related employment, *pursuant to* ~~as defined in~~ s. 239.233. This information must be aggregated to the state level and must be included in any accountability reports. A program that was created or modified so that instruction-related placement rates cannot be calculated must be so identified in such reports.

Section 35. Subsection (2) of section 239.517, Florida Statutes, 1992 Supplement, is amended to read:

239.517 Industry services training program.—

(2) The programs of vocational education funded pursuant to this section *are* ~~is~~ supplementary to those offered by vocational-technical schools, community colleges, and other public school programs and shall be operated statewide to assist any area to become more competitive in industrial and economic development; however, a program may not be made available to any area except as prescribed under rules of the State Board of Education. Programs funded pursuant to this section must be concerned only with instruction for skilled and semiskilled operations requiring learning time of 1 year or less, and each such program must be terminated when training needs have been met. Such programs must also provide specialized entry-level skills to new workers or supplemental skills to current employees whose job descriptions are changing or expanding. In selecting programs for funding, diligence shall be exercised to determine the company's ability to provide the needed instruction and the extent to which the company is dependent on this program as a means of subsidizing its ongoing staff development activities.

Section 36. Section 237.36, Florida Statutes, is created to read:

237.36 Indirect costs.—School boards shall assess district indirect costs only for services received by the program or institution against which such cost is assessed. When assigning each specific indirect cost to multiple programs or institutions, school boards shall identify one basis for the assessment of such cost and shall maintain the same basis for assigning such cost to each program or institution.

Section 37. Paragraph (c) of subsection (1) of section 450.021, Florida Statutes, 1992 Supplement, is amended to read:

450.021 Minimum age; general.—

(1) Minors of any age may be employed:

(c) In domestic or farm work in connection with their own homes or the farm or ranch on which they live, *or in the herding, tending, and management of livestock, and* ~~or~~ directly for their own parents or guardian, ~~or in the herding, tending, and management of livestock,~~ during the hours they are not required by law to be in school.

Section 38. Subsection (2) of section 450.061, Florida Statutes, 1992 Supplement, is amended to read:

450.061 Hazardous occupations prohibited.—

(2) *With the exception of students enrolled in cooperative education, preapprenticeship, or apprenticeship programs conducted within public schools, area vocational-technical centers, or community colleges,* no minor under 18 years of age, whether such person's disabilities of nonage have been removed, shall be employed or permitted or suffered to work in any of the following places of employment or in any of the following occupations:

(a) In or around explosive or radioactive materials.

(b) On any scaffolding, roof, superstructure, residential or nonresidential building construction, or ladder above 6 feet.

(c) In or around toxic substances or corrosives, including pesticides or herbicides, unless proper field entry time allowances have been followed.

(d) Any mining occupation.

(e) In the operation of power-driven woodworking machines.

(f) In the operation of power-driven hoisting apparatus.

(g) In the operation of power-driven metal forming, punching, or shearing machines.

(h) Slaughtering, meat packing, processing, or rendering, except as provided in 29 C.F.R. Part 570.61(c).

(i) In the operation of power-driven bakery machinery.

(j) In the operation of power-driven paper products and printing machines.

(k) Manufacturing brick, tile, and like products.

(l) Wrecking or demolition.

(m) Excavation operations.

(n) Logging or sawmilling.

(o) Working on electric apparatus or wiring.

(p) Firefighting.

(q) Operating or assisting to operate, including starting, stopping, connecting or disconnecting, feeding, or any other activity involving physical contact associated with operating, a tractor over 20 PTO horsepower, any trencher or earthmoving equipment, fork lift, or any harvesting, planting, or plowing machinery, or any moving machinery.

Section 39. Section 242.68, Florida Statutes, 1992 Supplement, is amended to read:

(Substantial rewording of section. See s. 242.68, F.S., 1992 Supp., for present text.)

242.68 Education for state prisoners; Correctional Education School Authority; Board of Correctional Education.—

(1) There is hereby created a Correctional Education School Authority attached to the Department of Corrections which shall be composed of the educational facilities of all institutions operated by the Department of Corrections and shall be supervised by a Board of Correctional Education. Library services and facilities, and maintenance of facilities, that house the education programs shall continue to be assigned to the Department of Corrections, which shall also be responsible, in consultation with the Correctional Education School Authority, for renovation and new construction of correctional education facilities. All education-related positions, including central office administrative positions, shall be assigned to the school authority.

(2)(a) There is hereby established a Board of Correctional Education attached to the Department of Corrections, which shall be composed of eight voting members. Membership shall be as follows:

1. Two voting ex officio members, who shall be the Commissioner of Education or designee and the Secretary of Corrections or designee.

2. Six voting members appointed by the Governor and confirmed by the Senate in regular session as follows: one member who is trained in vocational education and training; one member who is trained in adult basic education; one member who is trained in special education; one member who has business experience in the private sector; one member who is a teacher certified by the Department of Education, who is currently teaching adult education or special education in the Florida public school system; and one member who is a former inmate of the Florida prison system and who has completed requirements for a general educational development certificate or vocational certificate. The Commissioner of Education and the Secretary of Corrections may submit recommendations for appointment to the Governor for his consideration. The Governor may remove any member for cause and shall fill vacancies as appropriate.

(b) Members of the board shall serve without compensation but shall be reimbursed for per diem and travel expenses incurred in the performance of their duties as provided in s. 112.061.

(c) Members shall be appointed for terms of 4 years each, except for initial appointments and whenever a vacancy occurs other than by expiration of a term. Initial terms shall be as follows: two members shall be appointed for 2-year terms and three members shall be appointed for 4-year terms. Whenever a vacancy occurs other than by expiration, the Governor shall appoint a member for the remainder of that term.

(d) No appointed member shall serve more than two terms, regardless of length.

(e) Members of the board shall elect a chair annually. No board member may serve more than two consecutive terms as chair. The Secretary of Corrections or his designee and the Commissioner of Education or his designee shall not serve as chairman of the board.

(f) The board is vested with the authority and responsibility to manage and operate the correctional education program as provided by law. The Department of Corrections and the Department of Education shall cooperate and render assistance as may be necessary to enable the board to discharge its responsibilities. Resources of the departments may be used to support the operation of the education programs as agreed by the departments and the board. The Correctional Education School Authority shall operate its education programs in accordance with applicable provisions of the Florida school laws and rules of the State Board of Education except as expressly exempted by the State Board of Education.

(g) The responsibilities of the board shall be to:

1. Adopt and enforce all necessary rules for the management and operation of education programs within the Department of Corrections. In adopting rules the board shall consider the Department of Corrections operating procedures and goals of correctional education. Rules adopted by the board shall not conflict with Department of Corrections rules relating to security or any applicable rules adopted by the Department of Education.

2. Develop, update, and maintain for public inspection written cooperative agreements with the Department of Corrections and the Department of Education outlining the duties and responsibilities of the school authority and its staff, the Department of Corrections, and the Department of Education.

3. Develop and maintain written procedures for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the Department of Corrections. The information collected shall include, but shall not be limited to, assessment of the inmate's areas of educational or vocational interest, vocational skills, and level of education.

4. Develop rules to implement appropriate testing and assessment procedures, in cooperation with the Department of Corrections, for identifying and recommending which inmates will benefit from correctional education. These procedures shall use Department of Education-approved assessment tests based on assessment of the inmate's academic and vocational needs, the inmate's level of interest, and the length of time the inmate is expected to remain in prison.

5. Develop rules, in cooperation with the Department of Corrections, to ensure that inmates who are identified as likely to benefit from correctional education are assigned to correctional facilities offering correctional education courses.

6. In cooperation with the Department of Corrections, develop rules for the school authority staff concerning the behavioral control of inmates while in education programs and the reporting of behavioral problems.

7. Ensure that the Department of Education, pursuant to s. 229.565, annually monitors and assesses one-third of inmate education program services and reports the results of such evaluation to the board for inclusion in the board's annual report of its activities.

8. Establish and adopt criteria to annually evaluate the Director of Correctional Education and set the compensation and salary of the director. The annual evaluation and any merit increases as a result thereof shall be approved by the Office of the Governor.

9. Adopt rules governing the compensation and salary of teachers and other education personnel.

10. Visit and inspect institutional education programs at reasonable intervals and report the results of such inspections in the board's annual report of its activities.

11. Approve education programs of the appropriate levels and types in the correctional institutions and adopt rules for the admission of inmate students thereto.

12. Pursuant to the provisions of chapter 287, enter into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out its duties and responsibilities regarding the education of inmates and ensure that agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education standards. Agreements and contracts for instructional services shall expressly prescribe the qualifications of and the board's expectations for instructors and the educational objectives to be met. All tangible personal property purchased with state funds shall become the property of the state and shall be subject to chapter 273. No contract for the provision of educational services shall be made or entered into by the board, the director, or any other agency representative unless the contract clearly demonstrates a cost savings to the state.

13. Review and approve the budget request for the correctional education program. The approved budget shall be forwarded directly to the Office of the Governor for inclusion in the Governor's budget recommendations.

14. Promulgate rules which establish cost centers for each program offered. Such expenditures shall be reported by individual program in the annual report required by subparagraph 17., and shall clearly indicate expenditures of funds by category.

15. Review and approve the 5-year comprehensive plan for correctional education and update the plan annually.

16. Annually establish goals and measurable objectives relating to all phases of the correctional education program and report attainment thereof, if any, in the board's annual report of its activities.

17. Report the board's annual activities to the Secretary of Corrections, the Commissioner of Education, the Governor, and the Legislature.

18. Develop and maintain complete and reliable statistics on the number of general educational development (GED) certificates, literacy certificates, and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses. Such reports shall clearly indicate the type of certificate earned and the number of individual inmates earning such certificates and shall also indicate an unduplicated count of inmates earning certificates. The compiled statistics shall be summarized and analyzed in the annual report of correctional education activities required by subparagraph 17.

19. Develop and implement rules for selecting programs to add to or delete from the vocational curriculum. The procedure shall include a labor market analysis which demonstrates the projected demand for certain occupations and the projected supply of potential employees, and an analysis of a survey of female inmates incarcerated within the Department of Corrections to assess female vocational preferences. Said survey shall be conducted by the authority no later that July 1, 1993 and the board shall evaluate the results to determine the feasibility of adding vocational education programs or replacing existing programs in female institutions which have been identified as giving those female inmates an equal opportunity to participate in vocational programs traditionally offered only to male inmates. In conducting labor market analyses, the board shall evaluate the feasibility of adding vocational education programs which have been identified by the Department of Labor and Employment Security or a regional coordinating council as being in undersupply in this state. All program changes made during any one fiscal year shall be included in the annual report of correctional education activities required by subparagraph 17.

20. Develop rules for the selection and deletion of academic and vocational programs. The rules shall be in accordance with accepted Department of Education standards. Academic programs shall meet minimum Department of Education standards to the extent possible. A list of specified facilities offering academic and vocational training programs through the authority shall be listed in the annual report required by subparagraph 17.

21. Develop and implement rules for the establishment and maintenance of academic and vocational curriculum committees which shall meet annually and recommend to the board such modifications in curricula as may be necessary and recommend the selection of textbooks and equipment essential for the operation of its educational programs. The curriculum committees shall have, as part of their membership, at least one academic teacher, one vocational teacher, one teacher certified in special education, and one instructional administrator. Any recommendations having a fiscal impact upon the agency shall be included in the board's annual legislative budget request.

22. Ensure that correctional education programs comply with the policies set by the board and with public policies and goals and objectives of the state, which include, in the following order of priority:

a. Providing every inmate who has an expectation of release from custody within 10 years and whose length of time in prison is sufficient for educational programming with the opportunity to achieve functional literacy, specifically the ability to read and write the English language and the ability to perform routine mathematical functions prior to release or expiration of sentence.

b. Providing every inmate who has an expectation of release from custody within 10 years and whose length of time in prison is sufficient for educational programming, and who has demonstrated the intellectual capacity to benefit therefrom, with the opportunity to obtain the equivalent of a public high school education. The highest priority in achieving this goal shall be focused on those institutions housing first time offenders and youthful offenders as defined in chapter 958.

c. Ensuring that every inmate who has an expectation of release from custody within 10 years and whose length of time in prison is sufficient for educational programming be released possessing at least entry-level marketable vocational skills in one or more occupational fields for which there is a demonstrable demand in the economy of this state. No inmate shall be allowed to earn more than one certificate in any vocational discipline as long as there are inmates on waiting lists for those vocational programs. Waiting lists for each vocational program shall be maintained by the authority.

d. Providing that inmates who demonstrate college-level aptitudes be provided the opportunity to participate in college-level academic programs approved by the board, which may be offered within correctional facilities. Associated costs shall be borne by the inmate.

23. Ensure, in cooperation with the Department of Corrections, that every inmate who has 2 years or more remaining to serve on the sentence when received at an institution and who lacks basic and func-

tional literacy skills attends not fewer than 800 hours of instruction in a correctional adult basic education program. The basic and functional literacy level of an inmate shall be determined by the average composite test score obtained on a test approved for this purpose by the State Board of Education. Such testing shall be provided in accordance with procedures developed by the publisher of the approved tests.

a. Upon completion of the 800 hours of instruction, the inmate shall be retested and, if a composite test score of functional literacy is not attained, the authority is authorized to require the inmate to remain in the instructional program.

b. Highest priority of inmate participation shall be focused on youthful offenders, first time offenders, and those inmates nearing release from the correctional system.

c. An inmate shall be required to attend the 800 hours of adult basic education instruction unless the inmate:

(I) Is serving a life sentence or is under sentence of death.

(II) Is specifically exempted for security or health reasons.

(III) Is housed at a community correctional center, road prison, work camp, or vocational center.

(IV) Attains a functional literacy level after attendance in fewer than 800 hours of adult basic education instruction.

(V) Is unable to enter such instruction because of insufficient facilities, staff, or classroom capacity.

(VI) Has previously participated in and completed the program.

(VII) Has a verified high school diploma or its equivalent.

(VIII) Has been evaluated by education staff as not able to benefit from additional instruction.

d. The Correctional Education School Authority shall provide classes to accommodate those inmates assigned to correctional or public work programs after normal working hours. The authority shall not be required to provide the classes if specified funding is not appropriated for this purpose by the Legislature.

e. If an inmate attends and actively participates in the 800 hours of instruction, the supervising teacher shall recommend, and the Department of Corrections may grant, a one-time award of up to 30 additional days of incentive gain-time, which must be credited and applied as provided by law. Active participation means, at a minimum, that the inmate is attentive, responsive, cooperative, and completes assigned work at an academic level of average or above.

f. Notwithstanding s. 944.275(4)(b), the education program manager or supervising teacher shall recommend, and the department may grant, a one time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a general educational development certificate or vocational certificate. Under no circumstances may an inmate receive more than 60 days for educational attainment pursuant to this section. The criteria for earning a recommendation for incentive gain-time for a general educational development certificate or a vocational certificate shall be established by rule.

24. Recommend to the Department of Corrections the award of additional incentive gain-time for inmates who receive a general educational development certificate or vocational certificate in accordance with s. 944.275(4)(d).

25. In consultation with the Department of Corrections, develop rules which determine conditions under which an inmate may be removed from an education program or the classroom. Department of Corrections managers are prohibited from taking inmates out of education programs or classrooms unless such conditions exist.

(3) The Board of Correctional Education is created as a body corporate with all powers of a body corporate for all the purposes created by or that may exist under this chapter and shall:

(a) Have a corporate seal.

(b) Employ personnel or contract with education providers or other authorized entities or agents as may be necessary in its judgment and may fix their compensation.

(c) Have power to contract and be contracted with, to sue and be sued, and to plead and be impleaded in all courts of law and equity.

(d) Receive donations.

(e) Have final rulemaking authority.

(4) There is hereby established the position of Director of Correctional Education who shall be appointed by the Governor and shall serve at the discretion of the Governor. The Governor may remove the director for cause. A vacancy in the position of director shall be filled from a list of three qualified applicants submitted by the board. The director shall:

(a) Supervise the administration of the school authority.

(b) Develop standardized correctional education curricula which shall be approved by the Department of Education. Any modified curricula shall clearly indicate the areas modified and shall be expressly approved in writing by the Department of Education. All available educational programs shall be reported in the annual report required by subparagraph (2)(g)17.

(c) Ensure that correctional education programs provide minimum performance standards, basic functional literacy skills, and marketable vocational skills which are in accordance with established Department of Education standards.

(d) After consultation with the regional education program administrator and the institution superintendent, recommend the education program manager or institution supervising teacher, who shall be the chief education administrator responsible for the daily operation and administration of the institution educational program, to the board for appointment. After consultation with the institution supervising teacher, the regional education program administrator, and the institution superintendent, approve all staff responsible for providing education programs.

(e) Ensure that all education, counseling and administrative staff managing educational programs, are certified in accordance with the Department of Education standards.

(f) Develop and revise annually a compensation and classification plan for correctional educators which is competitive with school district salaries and includes a step pay plan. The director shall administer the compensation and classification plan for instructional personnel within the rules and policies established by the board, subject only to the approval of the State Board of Education. The director shall administer the compensation and classification plan for administrative and noninstructional personnel within the rules and policies established by the board, subject only to the approval of the Department of Management Services.

(g) Implement procedures regarding the testing of all offenders committed to the custody of the Department of Corrections, except offenders who are specifically excluded from the testing requirement. The test shall be administered in accordance with acceptable Department of Education testing standards.

(h) Annually update the 5-year comprehensive plan for correctional education. The plan shall require the director to:

1. Develop measurable objectives.

2. Develop quality control mechanisms.

(i) Annually develop goals and measurable objectives relating to all phases of the correctional education program.

(j) Develop a staffing and funding formula for correctional education which shall be submitted to the Legislature for approval. The formula shall include differential funding levels for various types of programs, shall be based on the number of full-time equivalent students, shall be based on information obtained as a result of unscheduled attendance counts taken by an independent source once per quarter, and shall provide the basis for the legislative budget request. For purposes of this section, a full-time equivalent student shall be calculated in accordance with the provisions set forth in s. 236.013, and rules established by the Department of Education. The funding formula shall include the procedure to document daily attendance and shall require that attendance records be retained a minimum of 3 years for audit purposes. Funds generated by the formula per full-time equivalent student

On motions by Senator Johnson the Senate concurred in **House Amendment 3**; and refused to concur in **House Amendment 1** and the House was requested to recede.

CS for SB 592 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—37 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 820 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 820—A bill to be entitled An act relating to criminal law; amending s. 787.02, F.S.; deleting a provision that precludes the offense from being a lesser included offense for purposes of s. 787.01, F.S., which establishes the offense of kidnapping, and reenacting s. 910.14, F.S., relating to kidnapping, to incorporate said amendment in a reference thereto; amending s. 794.011, F.S.; providing a definition and providing technical changes; deleting an evidentiary provision and incorporating into the sexual battery section the substance of s. 794.041, F.S., relating to the offense of sexual activity with a person who is under a specified age by or at solicitation of a person in familial or custodial authority and deleting an age minimum for the solicitation offense; repealing s. 794.041, F.S., relating to unlawful sexual activity with a child by or at the solicitation of a person in familial or custodial authority to the child; amending ss. 39.001, 39.076, 39.4105, 110.1127, 242.335, 393.0655, 394.457, 396.0425, 397.0715, 402.305, 409.175, F.S., relating to juvenile program personnel screening, grandparental visitation, employee security checks, and personnel screening for the Florida School for the Deaf and the Blind, developmental disabilities caretakers, mental health and substance abuse treatment personnel, and child care and family foster home personnel, conforming provisions to the amendments to ss. 794.011, 794.041, F.S.; reenacting ss. 775.15(7), 794.023(2), 903.133, 914.16, 944.033(3), 945.091(3), 946.40(4), 951.24(2)(c), 958.09(2), F.S., relating to time limitations, sexual battery by multiple perpetrators, bail on appeal, sexual abuse victims under age 16, community correctional centers, use of prisoners in public works, and extensions of limits of confinement for inmates, to incorporate the amendment to s. 794.011, F.S., in references thereto; amending s. 794.022, F.S., to conform to the amendments to ss. 794.011, 794.041, F.S.; adding an evidentiary provision; reenacting s. 90.404(1)(b), F.S., relating to character evidence, to incorporate the amendment to s. 794.022, F.S., in a reference thereto; amending s. 27.3455, F.S.; providing that certain costs may be removed for just cause, but if not removed must be paid to satisfy probation, and reenacting s. 27.56(1)(a), F.S., relating to attorney's fees and costs, to incorporate said amendment in a reference thereto; amending s. 787.02, F.S.; deleting a provision that requires the purpose for committing false imprisonment to be other than the purposes required for committing a violation of s. 787.01, F.S., which establishes the offense of kidnapping, and reenacting s. 910.14, F.S., relating to kidnapping, to incorporate said amendment in a reference thereto; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 3, line 6, through page 4, line 27, strike all of said lines and renumber subsequent sections.

And the title is amended as follows:

In title, on page 2, lines 18 through 24, strike all of said lines and insert: 794.022, F.S., in a reference thereto; amending s.

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

SB 820 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—34 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 1090 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1090—A bill to be entitled An act relating to trust funds; abolishing trust funds within the State University System, the state courts system, the Justice Administrative Commission, and various state departments; providing for transfer of current balances to general revenue; renaming a trust fund within the Department of Community Affairs; providing for the paying of outstanding debts and obligations of the abolished trust funds and for the removal of the abolished trust funds from the various state accounting systems; repealing ss. 395.803 and 395.804, F.S., relating to the Medical Education and Tertiary Care Trust Fund; repealing s. 240.258, F.S., relating to the Florida Vietnam Veterans' Memorial Trust Fund; repealing s. 240.4985, F.S., relating to the Good-Gulfstream Trust Fund for Higher Education; amending s. 240.518, F.S.; changing the Historically Black College and University Trust Fund to the Historically Black College and University Program and providing for annual general revenue funding; repealing s. 240.415, F.S., relating to the Student Financial Aid Trust Fund; amending ss. 240.417 and 240.429, F.S., to conform; amending s. 163.517, F.S.; changing the Safe Neighborhoods Trust Fund to the Safe Neighborhoods Program; amending ss. 163.504, 163.508, and 163.519, F.S., to conform; repealing s. 945.32, F.S., relating to the Court-Ordered Payment Trust Fund; amending s. 945.31, F.S., to conform; amending s. 410.401, F.S.; eliminating the Alzheimer's Disease Research Trust Fund and providing for other funding and awarding of research grants related to Alzheimer's disease by the Department of Elderly Affairs; amending s. 513.045, F.S.; eliminating the Mobile Home and Recreational Vehicle Park Trust Fund and providing for deposit of permit fees in the County Health Unit Trust Fund; amending s. 513.055, F.S., to conform; amending s. 39.442, F.S.; eliminating the Child in Need of Services Trust Fund; amending s. 404.056, F.S.; eliminating the Radon Trust Fund and providing for deposit of the radon surcharge into the Radiation Protection Trust Fund; amending s. 553.98, F.S., to conform; amending s. 404.131, F.S.; eliminating the Low-Level Radioactive Waste Trust Fund and providing for deposit into the Radiation Protection Trust Fund of moneys collected in relation to the transport of low-level radioactive waste; amending ss. 210.20, 287.088, 394.4786, 394.4787, 394.4788, 394.4789, 395.003, 395.1041, 395.701, 395.7015, 400.34, 408.040, 408.07, 408.08, 409.2673, 409.701, and 768.73, F.S., to conform; amending s. 408.033, F.S.; eliminating the Local and State Health Trust Fund and transferring its depository duties to the Health Care Trust Fund; repealing s. 376.22, F.S., relating to the Port Trust Fund; amending s. 215.20, F.S., to conform; repealing s. 403.0615(4), F.S., relating to the Water Resources Restoration and Preservation Trust Fund; repealing s. 458.3125, F.S., relating to the Physician Training Trust Fund; amending s. 256.031, F.S.; eliminating the Flag Trust Fund; authorizing the Department of State to buy and sell flags and providing for deposit of the proceeds from such sale; amending ss. 267.061 and 267.0617, F.S., to conform; amending s. 550.2415, F.S.; eliminating the Research Trust Fund and transferring its functions to the Pari-mutuel Wagering Trust Fund; amending s. 290.034, F.S.; renaming the Community Development Support and Assistance Trust Fund as the Operating Trust Fund to function as the depository of funds appropriated to the Community Development Corporation Support and Assistance Program; amending ss. 290.033, 290.036, 290.037, 290.038, and 290.039, F.S., to conform; amending s. 252.84, F.S.; eliminating the Hazardous Materials Administration Trust Fund and transferring its duties to the Operating Trust Fund; amending ss. 252.82, 252.83, 252.86, and 252.91, F.S., to conform; amending s. 553.795, F.S.; eliminating the Building Inspector Certification Trust Fund and transferring its duties to the Operating Trust Fund; amending s. 189.427, F.S.; eliminating the Special District Administrative Trust Fund and transferring its duties to the Operating Trust Fund; amending s. 943.25, F.S.; eliminating the Trust Fund for Grant Matching and transferring its duties to the Operating Trust Fund; repealing s. 420.35, F.S., relating to the Florida Elderly Housing Trust Fund; amending s. 420.34, F.S.; providing that funding for the Elderly Homeowner Rehabilitation Program shall appropriated from the State Housing Trust Fund; amending ss. 409.504 and 409.506, F.S.; eliminating the Community Service Trust Fund and providing general revenue funding of the program for community services; amending s. 426.009, F.S.; eliminating the Handicapped and Elderly Security Assist-

ance Trust Fund and providing for funding of the Handicapped and Elderly Security Assistance Program through the General Revenue Fund; amending ss. 426.003, 775.0836, and 939.015, F.S., to conform; repealing ss. 420.424(3) and 420.4255, F.S., relating to the Neighborhood Housing Services Grant Fund; amending ss. 239.505 and 420.429, F.S., to conform; repealing s. 186.911, F.S., relating to the Growth Management Trust Fund; amending s. 311.07, F.S.; changing the Florida Seaport Transportation and Economic Development Trust Fund to the Florida Seaport Transportation and Economic Development Program and providing for funding through a designated program account in the State Transportation Trust Fund; amending s. 311.09, F.S., to conform; renaming the Accident Reports Trust Fund as the Highway Safety Operating Trust Fund, to be used to fund the general operations of the department; abolishing the Drivers' Education Trust Fund, the Florida Real Time Vehicle Information System Trust Fund, the Motor Vehicle Inspection Trust Fund, the Motor Vehicle License Plate Replacement Trust Fund, and the Odometer Fraud Prevention and Detection Trust Fund and providing for depositing revenues that are currently deposited into those funds into the Highway Safety Operating Trust Fund; repealing s. 215.20(4)(jj), F.S., relating to the Motor Vehicle Inspection Trust Fund; amending ss. 316.2124, 318.1451, 319.324, 320.06, 320.0607, 320.08, 320.0848, 320.089, 320.131, 320.27, 320.77, 321.23, 322.025, 322.095, 322.12, 322.17, 322.20, 325.214, 627.733, F.S.; providing for deposit or revenues into the Highway Safety Operating Trust Fund; providing effective dates.

House Amendment 1—On page 49, line 3, before "~~or~~" insert: *which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary or the acquisition of spoil disposal sites and improvements to existing and future spoil sites; or*

House Amendment 2 (with Title Amendment)—On page 67, between lines 4 and 5, insert a new section 80:

Section 80. Subsection (5) is added to section 374.976, Florida Statutes, to read:

374.976 Authority to address impacts of waterway development projects.—

(5) The Florida Inland Navigation District may furnish assistance and support to seaports for the purpose of planning and carrying out dredge material management projects and other environmental mitigation projects. Port projects shall benefit publicly-maintained channels and harbors. Any port eligible for funding shall be located in a member county of the district and each port shall contribute matching funds for funded projects.

(Renumber subsequent sections.)

And the title is amended as follows:

On page 5, line 21, after the semicolon (;) insert: amending s. 374.976, F.S., relating to the Florida Inland Navigation District;

House Amendment 3—On page 10, line 6, strike the period (.) and insert: *, effective July 1, 1993.*

House Amendment 4—On page 25, line 13, strike "Subsection" and insert: Effective July 1, 1993, subsection

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

CS for SB 1090 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—37 Nays—1

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 1106 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1106—A bill to be entitled An act relating to housing; creating the Predevelopment Loan Program Act; transferring, renumbering, and amending s. 420.303, F.S.; providing a short title; transferring and renumbering s. 420.305, F.S.; providing a purpose; transferring, renumbering, and amending s. 420.306, F.S.; providing definitions; transferring, renumbering, and amending ss. 420.307, 420.308, 420.31, F.S., relating to the Housing Predevelopment Trust Fund, loan program, and rules, respectively; amending s. 420.504, F.S.; providing for suspension of members of the Florida Housing Finance Agency for cause; amending s. 420.507, F.S.; providing for the agency to make mortgage loans in specified amounts; prescribing the duties of the agency with respect to the Predevelopment Loan Program; amending s. 420.5087, F.S.; providing for State Apartment Incentive Loan Program loans in excess of 25 percent of project cost; providing for extended terms of such loans; amending s. 420.5092, F.S.; correcting a cross-reference; amending s. 420.609, F.S.; providing additional members of the Affordable Housing Study Commission; providing for removal of commission for cause; amending s. 420.9071, F.S.; providing definitions for use in the State Housing Initiatives Partnership Act; amending s. 420.9072, F.S.; redefining legislative intent and goals with respect to the State Housing Initiatives Partnership Program; revising duties of local governments with respect to the program; amending s. 420.9075, F.S.; prescribing uses for which local housing assistance programs may allocate funds; prescribing objectives for involving partners in the program; providing for eligibility and for annual monitoring of tenant eligibility; prescribing additional information to be included in counties' and eligible municipalities' annual reports; requiring suspension of program funds to counties in which the Auditor General has found violations of program criteria; amending s. 420.9076, F.S.; prescribing additional guidelines and contents for affordable housing incentive plans; amending s. 420.9078, F.S.; providing for administration of an affordable housing production program; transferring and renumbering ss. 420.304, 420.309, 420.32, F.S.; repealing ss. 420.34, 420.35, F.S., relating to the Elderly Homeowners Rehabilitation Act and the Florida Elderly Housing Trust Fund, respectively; providing for transfer of moneys in the Florida Elderly Housing Trust Fund; amending s. 409.508, F.S.; transferring authority over the Low-income Home Energy Assistance Act from the Department of Health and Rehabilitative Services to the Department of Community Affairs; providing for transfer of functions, records, property, personnel, assets, liabilities, and rules of the Department of Health and Rehabilitative Services which relate to the act; amending s. 420.503, F.S.; redefining the term "mortgage," with respect to the Florida Housing Finance Agency; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 3 through 46, strike everything after the enacting clause and insert:

Section 1. Section 420.303, Florida Statutes, is transferred, renumbered as section 420.521, Florida Statutes, and amended to read:

420.521 ~~420.303~~ Short title.—*Sections 420.521-420.529* ~~This part~~ may be cited as the *"Predevelopment Loan Program* ~~"Housing Predevelopment and Elderly Homeowner Rehabilitation Assistance~~ Act."

Section 2. Section 420.305, Florida Statutes, is transferred, renumbered as section 420.523, Florida Statutes, and amended to read:

420.523 ~~420.305~~ Purpose.—The purpose of *the Predevelopment Loan Program* ~~this part~~ is to:

(1) Provide for financial and technical assistance to local governments, housing authorities, and not-for-profit organizations who will provide for the sponsorship of housing for the target population in the state, such housing to be financed by federal, state, local, or private resources.

(2) Ensure maximum leverage of federal, state, and local public funds and private resources in the construction and financing of housing for the target population.

(3) Create a Housing Predevelopment Trust Fund to be used by eligible sponsors of housing.

Section 3. Section 420.306, Florida Statutes, 1992 Supplement, is transferred, renumbered as section 420.524, Florida Statutes, and amended to read:

420.524 ~~420.306~~ Definitions.—For the purpose of *ss. 420.521-420.529* ~~this part~~, the term:

~~(1) "Agency" means the Florida Housing Finance Agency.~~

~~(3) "Application" means a written request for a predevelopment loan or grant to sponsor housing for the target population.~~

~~(3) "Aquaculture" means the cultivation and attendant handling, planting, harvesting, packing, processing, storing, or delivering of food products cultivated in fresh or salt water.~~

(1)~~(4)~~ "Community-based organization" or "not-for-profit organization" means any group incorporated under chapter 617 to provide housing and other services on a not-for-profit basis, and which is acceptable to federal and state agencies and financial institutions as a sponsor of affordable housing.

~~(5) "Department" means the Department of Community Affairs.~~

(2)~~(6)~~ "Eligible housing project" means a housing project proposed by an eligible sponsor which will ensure that a minimum of 20 percent of the completed housing units are rented or sold to *very-low-income* ~~very low-income~~ persons or that a minimum of 50 percent of the completed housing units are rented or sold to low-income households or *low-income* farmworker households.

~~(7) "Farmworker" means any laborer who is employed on a seasonal, temporary, or permanent basis in the planting, cultivating, harvesting, or processing of agricultural or aquacultural products and who derives at least 50 percent of his income in the immediately preceding 12 months from such employment. "Farmworker" also includes a person who has retired as a laborer due to age, disability, or illness. In order to be considered retired as a farmworker due to age under this part, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker prior to retirement. In order to be considered retired as a farmworker due to disability or illness, it must be:~~

~~(a) Established medically that a person is unable to be employed as a farmworker due to that disability or illness; and~~

~~(b) Established that he had previously met the definition of a farmworker.~~

~~(8) "Fund" means the Housing Predevelopment Trust Fund.~~

~~(9) "Local government" means any county, municipality, or other political subdivision.~~

(3)~~(10)~~ "Low-income persons" means one or more natural persons or a family, not including students, whose total annual household income does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

~~(11) "Real property" means land, buildings, fixtures, and all other improvements to the land.~~

~~(12) "Secretary" means the secretary of the Department of Community Affairs.~~

(4)~~(13)~~ "Sponsor" means a unit of local government, a housing authority as established pursuant to chapter 421, a *community-based or* not-for-profit organization, or a limited partnership if its general partner is a *community-based or* not-for-profit organization *that applies for* ~~which makes application~~ and is awarded predevelopment expenses from the fund.

(5)~~(14)~~ "Student" means any person not living with that person's parent or guardian who is eligible to be claimed by that person's parent or guardian as a dependent under the federal Income Tax Code and who is enrolled on at least a half-time basis in a secondary school, vocational-technical center, community college, college, or university. The term does not include a person participating in an educational or training program approved by the agency.

(6)~~(15)~~ "Target population" means farmworkers, very low-income persons and families, and low-income persons and families.

(7)~~(16)~~ *"Very-low-income* ~~"Very low-income~~ persons" means one or more natural persons or a family, not including students, whose total annual household income does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. *"Very-low-income* ~~"Very low-income~~ persons" also means, in projects for which the sponsor intends to use the federal low-income housing tax credit, persons or households having incomes that meet the eligibility requirements of s. 42 of the Internal Revenue Code of 1986, as amended.

Section 4. Subsection (1) of section 420.307, Florida Statutes, 1992 Supplement, is transferred, renumbered as section 420.525, Florida Statutes, and amended to read:

420.525 ~~420.307~~ Housing Predevelopment Trust Fund.—

(1) There is established in the State Treasury a separate trust fund to be named the "Housing Predevelopment Trust Fund" which shall be administered by the agency according to the provisions of *ss. 420.521-420.529* ~~*this part*~~. There shall be deposited into the fund all moneys appropriated by the Legislature, or moneys received from any other source, for the purpose of *ss. 420.521-420.529* ~~this part~~ and all proceeds derived from the use of such moneys. Administrative and personnel costs incurred in implementing the provisions of *ss. 420.521-420.529* ~~this part~~ may be paid from the fund. If a loan commitment for program funds is entered into during the state fiscal year for which the program funds were appropriated, the funds shall continue to be made available for use during the entire predevelopment period, even if it extends beyond the fiscal year in which the loan commitment was entered. The budget amendment process created in s. 216.181 shall be used to make funds available throughout the predevelopment period.

(2) All unencumbered funds, loan repayments, proceeds from the sale of any property, existing funds remaining in the following programs, and any other proceeds that would otherwise accrue pursuant to the activities conducted under this program and the provisions of the following programs shall be deposited in the fund and shall not revert to the General Revenue Fund:

(a) The Rural Housing Land Acquisition and Site Development Act;

(b) The Farmworker Housing Assistance Act; and

(c) The Community-Based Organization Loan Program created by the Florida Affordable Housing Act of 1986.

Section 5. 420.308, Florida Statutes, 1992 Supplement, is transferred, renumbered as section 420.526, Florida Statutes, and amended to read:

420.526 ~~420.308~~ *Predevelopment Loan Program;* loans and grants authorized; activities eligible for support.—

(1) The agency is authorized to underwrite and make loans and grants from the *Housing Predevelopment Trust* Fund to eligible sponsors when it determines that:

(a) A need for housing for the target population exists in the area described in the application; and

(b) Federal, state, or local public funds or private funds are available or likely to be available to aid in the site acquisition, site development, construction, rehabilitation, maintenance, or support of the housing proposed in the application.

(2) The agency shall not award a grant or loan to a sponsor that is unable to demonstrate the ability to proceed as verified by a qualified development team.

(3) The agency shall establish rules for the equitable distribution of the funds in a manner that meets the need and demand for housing for the target population. However, during the first 6 months of fund availability, at least 40 percent of the total funds made available under this program shall be reserved for sponsors of farmworker housing.

(4) The activities of sponsors which are eligible for housing predevelopment loans shall include, but not be limited to:

(a) Site acquisition.

(b) Site development.

(c) Fees for requisite services from architects, engineers, surveyors, attorneys, and other professionals.

(d) Marketing expenses relating to advertisement.

(5) The activities of sponsors which are eligible for housing predevelopment grants shall include, but not be limited to:

(a) Administrative expenses.

(b) Market and feasibility studies.

(c) Consulting fees.

(6) Any funds paid out of the Housing Predevelopment Trust Fund for activities under *ss 420.521-420.529* ~~this part~~ which are reimbursed to the sponsor from another source shall be repaid to the fund.

(7) Sponsors receiving loans for professional fees may receive forgiveness of such loans if it is determined that the proposed project would not be feasible for housing for the target population.

(8) Terms and conditions of housing predevelopment loan agreements shall be established by rule and shall include:

(a) Provision for interest, which shall be set at 3 percent per year.

(b) Provision of a schedule for the repayment of principal and interest for a term not to exceed 3 years or initiation of permanent financing, whichever event occurs first. However, the agency may extend the term of a loan for an additional period not to exceed 1 year if extraordinary circumstances exist and if such extension would not jeopardize the agency's security interest.

(c) Provision of reasonable security for the housing predevelopment loan to ensure the repayment of the principal and any interest accrued within the term specified. Reasonable security shall be a promissory note secured by a mortgage from the sponsor on the property to be purchased, improved, or purchased and improved with the proceeds of the housing predevelopment loan or other collateral acceptable to the agency.

(d) Provisions to ensure that the land acquired will be used for the development of housing and related services for the target population.

(e) Provisions to ensure, to the extent possible, that any accrued savings in cost due to the availability of these funds will be passed on to the target population in the form of lower land prices. The agency shall ensure that such savings in land prices shall be passed on in the form of lower prices or rents for dwellings constructed on such land.

(f) Provisions to ensure that any land acquired through assistance under *ss. 420.521-420.529* ~~this part~~ for housing for the target population shall not be disposed of or alienated in a manner that violates title VII of the 1968 Civil Rights Act, which specifically prohibits discrimination based on race, sex, color, religion, or national origin or that violates other applicable federal or state laws.

(9) No predevelopment loan made under this section shall exceed the lesser of:

(a) The development and acquisition costs for the project, as determined by rule of the agency; or

(b) Five hundred thousand dollars.

(10) Any real property or any portion thereof purchased or developed under *ss. 420.521-420.529* ~~this part~~ may be disposed of by the eligible sponsor upon the terms and conditions established by rule of the agency and consistent with *ss. 420.521-420.529* ~~this part~~, at a price not to exceed the actual prorated land costs, development costs, accrued taxes, and interest.

Section 6. Section 420.31, Florida Statutes, 1992 Supplement, is transferred, renumbered as section 420.528, Florida Statutes, and amended to read:

420.528 ~~420.31~~ Rules; annual reports.—

(1) The agency may adopt rules necessary to implement *ss. 420.521-420.529* ~~this part~~ and to further specify the purposes for which loan and grant funds may be expended, the required content of applications, the procedure for evaluating and competitively ranking all applications, and reporting requirements for sponsors awarded funds under *ss. 420.521-420.529* ~~this part~~.

(2) The agency shall submit, within the annual report required by s. 420.511, a summary of loans and grants made, loan and grant recipients, loan commitments received by sponsors, persons or families housed, projects initiated and completed, and the balance on all loans outstanding at the end of each fiscal year.

Section 7. Subsection (2) of section 420.504, Florida Statutes, is amended to read:

420.504 Agency; creation, membership, terms, expenses.—

(2)*(a)* ~~Of the members first appointed, four shall be designated to serve for a term of 2 years, and four for a term of 4 years, from the dates of their appointment; thereafter,~~ Members of the agency shall be appointed for terms of 4 years, except that any vacancy shall be filled for the unexpired term.

(b) Subject to removal or reinstatement of the member by the Senate, the Governor may suspend a member for cause, including, but not limited to, failure to attend at least three meetings of the board during any 12-month period.

Section 8. Subsection (22) of section 420.507, Florida Statutes, 1992 Supplement, is amended, and subsection (26) is added to that section, to read:

420.507 Powers of the agency.—The agency shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the agency may:

(a) Make first, second, and other subordinated mortgage loans including variable or fixed rate loans subject to contingent interest. The agency shall make ~~first mortgage~~ loans *exceeding 25 percent of project cost* available only to nonprofit organizations and public bodies which are able to secure grants, donations of land, or contributions from other sources *and to projects meeting the criteria of subparagraph 1.* Mortgage loans shall be made available at the following rates of interest:

1. Zero to 3 percent interest for sponsors of projects that maintain an 80 percent occupancy of residents qualifying as farmworkers as defined in s. 420.306(7) over the life of the loan.

2. Three to 9 percent interest for sponsors of projects targeted at populations other than farmworkers.

(b) Geographically and demographically target the utilization of loans.

(c) Underwrite credit, and reject projects which do not meet the established standards of the agency.

(d) Negotiate with governing bodies within the state after a loan has been awarded to obtain local government contributions.

(e) Inspect any records of a sponsor at any time during the life of the loan or the agreed period for maintaining the provisions of s. 420.5087.

(f) Establish, by rule, the procedure for evaluating, scoring, and competitively ranking all applications based on the criteria set forth in s. 420.5087(6)(c); determining actual loan amounts; making and servicing loans; and exercising the powers authorized in this subsection.

(g) Establish a loan loss insurance reserve to be used to protect the outstanding program investment in case of a default, deed in lieu of foreclosure, or foreclosure of a program loan.

(26) To develop and administer the Predevelopment Loan Program. In developing and administering the program, the agency may make loans and grants as provided in ss. 420.521-420.529.

Section 9. Subsection (4) and paragraphs (c) and (g) of subsection (6) of section 420.5087, Florida Statutes, 1992 Supplement, are amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very low-income persons.

(4) Loans shall be in an amount not to exceed the lesser of 25 percent of the total project cost or the minimum amount required to make the project economically feasible; however, *loans exceeding 25 percent of project cost may be made as provided in s. 420.507* ~~sponsors eligible for first mortgage loans or sponsors of projects eligible for zero to 3 percent interest loans shall be eligible for loans in excess of 25 percent of project cost.~~

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for life-safety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) In consultation with the department, the agency shall provide by rule for the establishment of a review committee composed of department and agency staff and shall establish by rule a scoring system for evaluation and competitive ranking of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of the agency.

2. Targeting objectives of the agency which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period to exceed the minimum required by federal law or the provisions of this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent; however, when certificates or vouchers are accepted as payment for rent on units set aside pursuant to subsection (2), the benefit must be divided between the agency and the sponsor, as provided by agency rule.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience.

13. Sponsor's ability to proceed with construction.

(g) The loan term shall be for a period of not more than 15 years; however, if both a program loan and federal low-income housing tax credits are to be used to assist a project, the agency may set the loan term for a period commensurate with the investment requirements associated with the tax credit syndication. *The term of the loan may also exceed 15 years if necessary to conform to requirements of the Federal National Mortgage Association.* The agency may renegotiate and extend the loan in order to extend the availability of housing for the targeted population. The term of a loan may not extend beyond the period for which the sponsor agrees to provide the housing set-aside required by subsection (2).

Section 10. Subsection (2) of section 420.5092, Florida Statutes, 1992 Supplement, is amended to read:

420.5092 Florida Affordable Housing Guarantee Program.—

(2) As used in this *section* ~~part~~, the term:

(a) "Affordable housing guarantee" means an obligation of the guarantee fund to partially guarantee the payment of principal and interest on a loan made to finance or refinance the purchase, construction, or rehabilitation of eligible housing.

(b) "Agency" means the Florida Housing Finance Agency.

(c) "Annual debt service reserve" means the reserve maintained in the guarantee fund in an amount equal to the maximum reserve amount for each series of revenue bonds issued to establish the guarantee fund.

(d) "Eligible housing" means any real and personal property designed and intended for the primary purpose of providing decent, safe, and sanitary residential units for homeownership or rental for eligible persons as determined by the agency pursuant to rule.

(e) "Guarantee fund" means the Affordable Housing Guarantee Fund created and established with proceeds of revenue bonds issued by the agency pursuant to this section to implement the Florida Affordable Housing Guarantee Program.

(f) "Maximum reserve amount" means, for each series of outstanding revenue bonds issued to establish the guarantee fund, the largest aggregate amount of annual principal installments and interest payments becoming due in any state fiscal year in which the revenue bonds are outstanding.

Section 11. Subsections (1) and (2) of section 420.609, Florida Statutes, 1992 Supplement, are amended to read:

420.609 Affordable Housing Study Commission.—Because the Legislature firmly supports affordable housing in Florida for all economic classes:

(1) There is hereby created the Affordable Housing Study Commission which shall be composed of *21* ~~18~~ members to be appointed by the Governor:

(a) One citizen actively engaged in the residential home building industry.

(b) One citizen actively engaged in the home mortgage lending profession.

(c) One citizen actively engaged in the real estate sales profession.

(d) One citizen actively engaged in apartment development.

(e) One citizen actively engaged in the management and operation of a rental housing development.

(f) Two citizens who represent very low-income and low-income persons.

(g) One citizen representing a community-based organization with experience in housing development.

(h) One citizen representing a community-based organization with experience in housing development in a community with a population of less than 50,000 persons.

(i) Two citizens who represent elderly persons' housing interests.

(j) One representative of regional planning councils.

(k) One representative of the Florida League of Cities.

(l) One representative of the Florida Association of Counties.

(m) Two citizens representing statewide growth management organizations.

(n) One citizen of the state to serve as chairman of the commission.

(o) One citizen representing a residential community developer.

(p) Three members who are residents of the state.

(2)*(a)* Members shall be appointed for 4-year staggered terms, except that the citizen serving as chairman shall be appointed to serve a 2-year term and except that a vacancy shall be filled for the unexpired portion of the term. The members of the commission shall serve without compensation, but shall be reimbursed for all necessary expenses in the performance of their duties, including travel expenses, in accordance with s. 112.061.

(b) The Governor may remove or suspend a member for cause, including, but not limited to, failure to attend at least three meetings of the commission during any 12-month period.

Section 12. Section 420.9071, Florida Statutes, 1992 Supplement, is amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(1) "Adjusted for family size" means adjusted in a manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility determined as provided in ~~subsection (17),~~ subsection *(19)* ~~(18)~~, *subsection (20),* or subsection *(25)*~~(22)~~, based upon a formula established by the United States Department of Housing and Urban Development.

(2) "Adjusted gross income" means wages, income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, minus the deductions allowable under s. 61 of the Internal Revenue Code of 1986, as amended.

(3) "Affordable" means that monthly rents or monthly mortgage payments including taxes and insurance do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in ~~subsection (17),~~ subsection *(19)* ~~(18)~~, *subsection (20),* or subsection *(25)* ~~(22)~~. However, it is not the intent to limit an individual's ability to devote more than 30 percent of his income for housing.

(4) "Affordable housing advisory committee" means the committee appointed by the governing body of a county or eligible municipality for the purpose of recommending specific initiatives and incentives to encourage or facilitate affordable housing as provided in s. 420.9076.

(5)~~(4)~~ "Agency" means the Florida Housing Finance Agency created under part V of this chapter.

(6)~~(5)~~ "Award" means a loan, grant, or subsidy funded wholly or partially by the local housing distribution.

(7) "Community-based organization" means a nonprofit organization that has among its purposes the provision of affordable housing to persons who have special needs or have very low income, low income, or moderate income within a designated area, which may include a municipality, a county, or more than one municipality or county, and maintains, through a minimum of one-third representation on the organization's governing board, accountability to housing program beneficiaries and residents of the designated area. A community housing development organization established pursuant to 24 C.F.R. part 92.2 and a community development corporation created pursuant to chapter 290 are examples of community-based organizations.

(8)~~(6)~~ "Department" means the Department of Community Affairs.

(9)~~(7)~~ "Eligible housing" means any real and personal property located within the county or the eligible municipality which is designed and intended for the primary purpose of providing decent, safe, and sanitary residential units that are designed to meet the standards of chapter 553 for homeownership or rental for eligible persons as designated by each county or eligible municipality participating in the local housing assistance program.

(10)~~(8)~~ "Eligible municipality" means a municipality that is eligible for federal community development block *grant entitlement moneys* ~~grants~~ as an entitlement community identified in 24 C.F.R. s. 570, subpart D, Entitlement Grants *or a nonentitlement municipality that is receiving local housing distribution funds under an interlocal agreement that provides for possession and administrative control of funds to be transferred to the nonentitlement municipality. An eligible municipality that defers its participation in community development block grants does not affect its eligibility for participation in the State Housing Initiatives Partnership Program.*

(11)~~(9)~~ "Eligible person" means one or more natural persons or a family determined by the county or eligible municipality to be of very low income, low income, or moderate income according to the adjusted gross income of the resident with adjustment made for family size.

(12)~~(10)~~ "Eligible sponsor" means a person or a private or public for-profit or not-for-profit entity that applies for *an award* ~~a loan~~ under the local housing assistance program for the purpose of providing eligible housing for eligible persons.

(13)~~(11)~~ "Grant" means a distribution of a portion of a local housing distribution to an eligible sponsor or eligible person to partially assist in the construction, ~~or~~ rehabilitation, *or financing* of eligible housing or to provide the cost of tenant or ownership qualifications.

(14)~~(12)~~ "Loan" means a pledge of the local housing distribution moneys to an eligible sponsor or eligible person to partially finance the *acquisition,* construction, or rehabilitation of eligible housing.

(15)~~(13)~~ "Local housing assistance plan" means a concise description of the local housing assistance program adopted by local government ordinance with an explanation of the way in which the program meets the requirements of ss. 420.907-420.9079.

(16)~~(14)~~ "Local housing assistance program" means the housing construction, rehabilitation, repair, and finance program implemented by a participating county or eligible municipality with the local housing distribution or other funds deposited into the local housing assistance trust fund.

(17)~~(15)~~ "Local housing distributions" means the proceeds of the taxes collected under chapter 201 deposited into the Local Government Housing Trust Fund and distributed to counties and eligible municipalities participating in the State Housing Initiatives Partnership Program pursuant to s. 420.9073.

(18)~~(16)~~ "Local housing partnership" means the implementation of the local housing assistance program in a manner that involves the applicable local government, lending institutions, housing developers, community-based housing and service organizations, and providers of professional services relating to affordable housing. The term includes initiatives to provide support services for housing program beneficiaries such as training to prepare persons for the responsibility of homeownership, counseling of tenants, and the establishing of support services such as day care, health care, and transportation.

(19)~~(17)~~ "Low-income person" means one or more natural persons or a family, not including students, that has a total annual adjusted gross household income that does not exceed 80 percent of the median annual adjusted gross income for households within the state or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county, whichever amount is greater. With respect to rental units, the low-income person's annual income at the time of initial occupancy may not exceed 80 percent of the state's median income adjusted for family size. While occupying the rental unit, a low-income person's annual income may increase to an amount not to exceed 140 percent of 80 percent of the state's median income adjusted for family size.

(20)~~(18)~~ "Moderate-income person" means one or more natural persons or a family, not including students, that has a total annual adjusted gross household income that is less than 120 percent of the median annual adjusted gross income for households within the state or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county, whichever is greater. With respect to rental units, the moderate-income person's annual income at the time of initial occupancy may not exceed 120 percent of the state's median income adjusted for family size. While occupying the rental unit, a moderate-income person's annual income may increase to an amount not to exceed 140 percent of 120 percent of the state's median income adjusted for family size.

(21)~~(19)~~ "Personal property" means major appliances, including a freestanding refrigerator or stove, to be identified on the encumbering documents.

(22)~~(20)~~ "Population" means the latest official state estimate of population certified pursuant to s. 186.901 prior to the beginning of the fiscal year.

(23) "Rent subsidies" means ongoing monthly rental assistance. The term does not include initial assistance to tenants, such as grants or loans for security and utility deposits.

(24)~~(21)~~ "Student" means a person not living with the person's parent or guardian who is eligible to be claimed by the person's parent or guardian as a dependent under the federal Income Tax Code and who is enrolled at least half time in a secondary school, vocational-technical center, community college, or university. The term does not include a person participating in a job training program approved by the county or the eligible municipality.

(25)~~(22)~~ *"Very-low-income* ~~"Very low income~~ person" means one or more natural persons or a family, not including students, that has a total annual adjusted gross household income that does not exceed 50 percent of the median annual adjusted gross income for households within the state or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county, whichever is greater. With respect to rental units, the *very-low-income* ~~very low income~~ person's annual income at the time of initial occupancy may not exceed 50 percent of the state's median income adjusted for family size. While occupying the rental unit, a *very-low-income* ~~very low income~~ person's annual income may increase to an amount not to exceed 140 percent of 50 percent of the state's median income adjusted for family size.

Section 13. Section 420.9072, Florida Statutes, 1992 Supplement, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to local governments as an incentive for the creation of *local housing* partnerships, to *expand production of* ~~produce~~ and preserve affordable housing, *and to increase housing-related employment.*

(1)*(a)* In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and provide new housing for *very-low-income* ~~very low income~~ persons, low-income persons, and moderate-income persons. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-saving measures. *The Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, developers, and community groups to produce affordable housing and provide related services. Extending the partnership concept to encompass cooperative efforts between local governments is specifically encouraged. Local governments are also intended to establish a housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.*

(b) The Legislature further intends that the State Housing Initiatives Partnership Program provide the maximum flexibility to local governments to determine the use of funds for housing programs while ensuring accountability for the efficient use of public resources and guaranteeing that benefits are provided to those in need. ~~Extending the partnership concept to encompass cooperative efforts between local governments is specifically encouraged.~~

(2)(a) To be eligible to receive funds under the program, a county or eligible municipality must:

1. Submit to the agency and the department its local housing assistance plan describing the local housing assistance program established pursuant to s. 420.9075; and

2. Within 12 months after establishing, by ordinance, the local housing assistance program, submit to the agency and the department its affordable housing incentive plan pursuant to s. 420.9076.

(b) A county or an eligible municipality seeking approval to receive its share of the local housing distribution must adopt an ordinance containing the following provisions:

1. Creation of an affordable housing assistance trust fund.

2. Establishment of a local housing assistance program to be implemented *through* ~~by~~ a local housing partnership *as defined in s. 420.9071.*

3. Designation of the responsibility for the ~~implementation and~~ administration of the local housing assistance program. Such ordinance may also provide for the contracting of all or part of the administrative or other functions of the program to a third person or entity.

4. Creation of the affordable housing advisory committee as provided in s. 420.9076.

The ordinance must not take effect until at least 30 days after the date of formal adoption.

(3) The governing board of the county or of an eligible municipality must submit to the agency and the department ~~by certified mail~~ two copies of its local housing assistance plan. The plan must include a copy of the ordinance and such other information as the agency requires by rule; however, information to be included in the plan is intended to demonstrate consistency with the requirements of this program without posing an undue burden on the local government. Plans shall be reviewed by a committee composed of agency and department staff as established by agency rule, in consultation with the department. Within 30 days after receiving a plan, the review committee shall review the plan and either approve it or identify inconsistencies with the requirements of the program. The agency and the department shall assist a local government in revising its plan if it initially proves to be inconsistent with program requirements. A plan that is revised by the local government to achieve consistency with the program shall be reviewed within 30 days after submission. A local government may twice revise and resubmit its plan during any state fiscal year. The deadlines for submitting original and revised plans shall be established by agency rule*; however, during the first year the program is in existence, counties and eligible municipalities may submit their initial plans not later than June 30, 1993.* The Legislature intends that approval of plans be expedited to ensure that the production of needed housing and the related creation of jobs occur as quickly as possible. After being approved for funding, a local government may revise its local housing assistance program ~~without seeking further approval~~ if the program as revised complies with the requirements for such programs*; however, a local government must submit its revised plan for review according to the process established in this subsection in order to ensure continued consistency with the requirements of the State Housing Initiatives Partnership Program.*

(4) Moneys in the Local Government Housing Trust Fund shall be distributed by the agency to each approved county and eligible municipality within the county as provided in s. 420.9073. Distributions shall be allocated to the participating county and to each eligible municipality within the county according to an interlocal agreement between the county governing authority and the governing body of the eligible municipality or, if there is no interlocal agreement, according to population. The portion for each eligible municipality is computed by multiplying the total moneys earmarked for a county by a fraction, the numerator of which is the population of the eligible municipality and the denominator of which is the total population of the county. The remaining revenues shall be distributed to the governing body of the county.

(5)*(a)* Local governments are encouraged to make the most efficient use of their resources by cooperating to provide affordable housing assistance. Local governments may enter into an interlocal agreement for the purpose of establishing a joint local housing assistance program subject to the requirements of ss. 420.907-420.9079. The local housing distributions for such *counties and eligible municipalities* ~~local governments~~ shall be directly disbursed on a monthly basis to each *county or eligible municipality* ~~local government~~ to be administered in conformity with the interlocal agreement providing for a joint local housing assistance program.

(b) If a county or eligible municipality enters into an interlocal agreement with a municipality that becomes eligible as a result of entering into that interlocal agreement, the county or eligible municipality that has agreed to transfer the control of funds to a municipality that was not originally eligible must ensure through its local housing assistance plan and through the interlocal agreement that all program funds are used in a manner consistent with ss. 420.907-420.9079. This must be accomplished by:

1. Providing that the use of the portion of funds transferred to the municipality meets all requirements of ss. 420.907-420.9079, or

2. Providing that the use of the portion of funds transferred to the municipality, when taken in combination with the use of the local housing distribution from which funds were transferred, meets all requirements of ss. 420.907-420.9079.

(6) The moneys that otherwise would be distributed pursuant to s. 420.9073 to a local government that does not meet the program's requirements for receipts of such distributions shall remain in the Local Housing Trust Fund to be used by the agency to administer the *affordable* ~~local government~~ housing *production* program pursuant to s. 420.9078.

(7) A county or an eligible municipality must expend its portion of the local housing distribution only to:

~~(a)~~ implement a local housing assistance program.

~~(b) Supplement funds available to the agency to provide enhanced funding of state housing programs within the county or the eligible municipality.~~

~~(c) Provide the local matching share of federal affordable housing grants or programs.~~

~~(d) Fund emergency repairs by existing service providers under weatherization assistance programs pursuant to ss. 409.509-409.5093.~~

A county or an eligible municipality may not expend its portion of the local housing distribution to provide rent subsidies; *however, this does not prohibit the use of funds for security and utility deposit assistance.*

(8) Funds distributed under this program may not be pledged to pay the debt service on any bonds.

(9) The agency may adopt rules necessary to implement ss. 420.907-420.9079.

Section 14. Section 420.9075, Florida Statutes, 1992 Supplement, is amended to read:

420.9075 Local housing assistance programs; *partnerships.*—

(1)*(a)* Each county or eligible municipality participating in the State Housing Initiatives Partnership Program shall establish a local housing assistance program created to make affordable residential units available to persons of very low income, low income, or moderate income and to persons who have special housing needs, including, but not limited to, homeless people and migrant farmworkers. The programs are intended to increase the availability of affordable residential units by combining local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce the cost of housing.

(b) Local housing assistance programs may allocate funds to:

1. Implement local strategies for the provision of affordable housing.

2. Supplement funds available to the agency to provide enhanced funding of state housing programs within the county or the eligible municipality.

3. Provide the local matching share of federal affordable housing grants or programs.

4. Fund emergency repairs, including, but not limited to, repairs performed by existing service providers under weatherization assistance programs under ss. 409.509-409.5093.

(2)(a) Each county and each eligible municipality participating in the State Housing Initiatives Partnership Program should encourage the involvement of appropriate public-sector and private-sector entities as partners in order to combine resources to reduce housing costs for the targeted population. This partnership process may involve:

1. Lending institutions.

2. Housing developers.

3. Nonprofit and other community-based housing and service organizations.

4. Providers of professional services relating to affordable housing.

5. Other persons or entities who can assist in providing housing or related support services.

(b) The specific participants in partnership activities may vary according to the community's resources and the nature of the local housing assistance program.

(3)~~(2)~~ Each local housing assistance program is governed by the following criteria and administrative procedures:

(a) Each county, eligible municipality, or entity formed through interlocal agreement to participate in the State Housing Initiatives Partnership Program must develop a qualification system for applications for awards and adopt criteria for the selection of eligible persons and eligible sponsors and a maximum award schedule or system of amounts consistent with the intent of its local housing assistance program and ss. 420.907-420.9079.

(b)~~(a)~~ The county or eligible municipality or its administrative representative shall advertise the availability of a housing assistance program in a newspaper of general circulation and periodicals serving ethnic and diverse neighborhoods, at least 30 days before the beginning of the application period.

~~(b) The county or the eligible municipality shall adopt a maximum award schedule or system of amounts that is commensurate with the intent of its local housing assistance program and ss. 420.907-420.9079.~~

(c) In accordance with the provisions of ss. 760.20-760.37, it is unlawful to discriminate on the basis of race, creed, religion, color, age, sex, marital status, familial status, national origin, or handicap in the *award* ~~loan~~ application process for eligible housing.

(d) As a condition of receipt of an award, the eligible sponsor or eligible person must contractually commit to comply with the affordable housing criteria provided under ss. 420.907-420.9079 applicable to the affordable housing objective of the award. The program criteria adopted by the county or eligible municipality must prescribe the contractual obligations required to ensure compliance with award conditions.

(e) The staff or entity that has administrative authority for a local housing assistance program assisting rental developments shall annually monitor and determine tenant eligibility.

(4)~~(3)~~ The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:

(a) At least 65 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for homeownership for eligible persons.

(b) At least 75 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for construction, rehabilitation, or emergency repair of affordable housing.

(c) The sales price of new or existing eligible housing may not exceed 90 percent of the median area purchase price in the area where the eligible housing is located, as established by the United States Department of Treasury in accordance with s. 3(b)(2) of the United States Housing Act of 1937.

(d) All units constructed, rehabilitated, or otherwise assisted with the funds provided from the local housing assistance program must be occupied by *very-low-income* ~~very low income~~ persons, low-income persons, and moderate-income persons. At least 30 percent must be occupied by *very-low-income* ~~very low income~~ persons and at least an additional 30 percent by low-income persons.

(e) Loans shall be provided for periods not exceeding 30 years, except for deferred payment loans or loans that extend beyond 30 years which continue to serve eligible persons.

(f) Eligible rental housing constructed, rehabilitated, or otherwise assisted from the housing assistance program moneys must be reserved for eligible persons for 15 years or the term of the assistance, whichever period is longer. Eligible sponsors that offer rental housing for sale before 15 years or that have remaining mortgages funded under this program must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible recipients.

(g) Eligible owner-occupied housing constructed, rehabilitated, or otherwise assisted from proceeds provided from the housing assistance program shall be subject to the *long-term affordability and recapture requirements as provided by the county or eligible municipality* ~~recapture provisions of the mortgage revenue bond program contained in s. 143(m) of the Internal Revenue Code of 1986~~.

(h) The total amount of monthly mortgage payments or the amount of monthly rent charged by the eligible sponsor or his designee must be made affordable.

(i) The cost per unit and the maximum cost per unit for eligible housing benefiting from awards made pursuant to this section must be established by resolution.

(j) The benefit of assistance provided through the State Housing Initiatives Partnership Program must accrue to eligible persons occupying eligible housing.

(k) Funds not used to meet the criteria established in paragraph (a) or paragraph (b) or not used for the administration of a local housing assistance program must be used for housing production and finance activities, including, but not limited to, financing the purchase of existing units, providing rental housing, and providing homeownership training to prospective homebuyers and owners of homes assisted through the local housing assistance program.

~~(j) Each county, eligible municipality, or entity formed through interlocal agreement to implement a local housing assistance program must develop a qualification system for applications for awards consistent with the intent of its local housing assistance program and ss. 420.907-420.9079.~~

~~(k) The staff or entity that has administrative authority for a local housing assistance program assisting rental developments shall annually monitor and determine tenant eligibility and the amount of subsidy.~~

If both an award under the local housing assistance program and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (d) of this subsection.

(5)~~(4)~~ Each county or eligible municipality receiving local housing distribution moneys shall establish and maintain a local housing assistance trust fund. All moneys of a county or an eligible municipality received from its share of the local housing distribution and other funds received or budgeted to provide the local housing assistance program shall be deposited into the trust fund; *however, local housing distribution moneys used to match federal HOME program moneys may be repaid to the HOME program trust fund if required by federal law or regulations.* Expenditures other than for the administration and implementation of the local housing assistance program may not be made from the trust fund.

(6)~~(5)~~ The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance program. The cost of administering the program may not exceed 5 percent of the local housing distribution moneys deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by resolution, that 5 percent of the local housing distribution is insufficient to adequately pay the necessary costs of administering the local housing assistance program. The cost of administering the program may not exceed 10 percent of the local housing distribution deposited into the trust fund.

(7)~~(6)~~ Pursuant to s. 420.606, the department shall provide technical assistance to local governments regarding the creation of partnerships, the design of housing assistance programs, the implementation of incentive plans, and the provision of support services. The department shall monitor the activities of local governments to determine compliance with program requirements and shall collect data on the operation and achievements of housing partnerships.

(8)~~(7)~~ Each county or eligible municipality shall submit to the department and to the agency by November 15 of each year a report of its affordable housing programs and accomplishments. The report must include, but is not limited to:

(a) The number of *households* ~~people~~ served by income *category*, age, family size, and race, and data regarding any special needs populations such as farmworkers, rural residents, *homeless persons*, and the elderly.

(b) The number of units and the average cost of producing units under each program.

(c) The average sales price of a single-family unit and the amount of rent charged for a rental unit based on unit size.

(d) *By income category,* the number of mortgages made, *the average mortgage amount,* and the rate of default.

(e) A description of the implementation of the affordable housing incentive plan and the resulting reduction in housing costs.

(f) A concise description of the support services that are available to the residents of affordable housing provided by local programs.

(g) The appraised value of housing produced and an accounting of what percentage was financed by the local housing distribution, other public moneys, and private resources.

(h)~~(g)~~ Such other data or affordable housing accomplishments considered significant by the reporting county or eligible municipality.

(9)~~(8)~~ The report shall be made available by the local government for public inspection. Members of the public may submit written comments on the report to the department.

(10)~~(9)~~ The agency shall review the report of each county or eligible municipality and any written comments from the public and transmit any comments concerning the effectiveness of local programs to the department. The department shall include a summary of local housing activities, *agency comment,* and public comment in the annual housing report required by s. 420.6075.

(11)~~(10)~~ If, as a result of the review of such report or at any other time, the agency or the department determines that a county or eligible municipality may have established a pattern of violation of the criteria for a local housing assistance program established under ss. 420.907-420.9079 or that an eligible sponsor or eligible person has violated the applicable award conditions, the agency or department shall report such pattern of violation of criteria or violation of award conditions to the Executive Office of the Governor and the *department's Chief Internal Auditor appointed pursuant to s. 20.55* ~~Auditor General~~. *The department's Chief Internal Auditor must determine within 60 days whether the county or eligible municipality has violated program criteria and shall issue a written report thereon. If a violation has occurred, the distribution of program funds to the county or eligible municipality must be suspended until the violation is corrected.*

Section 15. Section 420.9076, Florida Statutes, 1992 Supplement, is amended to read:

420.9076 Adoption of affordable housing incentive plans; committees.—

(1) Each county or eligible municipality participating in the State Housing Initiatives Partnership Program, *including a municipality receiving program funds through the county, or an eligible municipality* must adopt an affordable housing incentive plan within 12 months after the date of adoption of the ordinance by the county or eligible municipality establishing a local housing assistance program.

(2) The governing board of a county or ~~an eligible~~ municipality shall appoint the members of the affordable housing advisory committee by resolution. Pursuant to the terms of any interlocal agreement, a county and ~~an eligible~~ municipality may create and jointly appoint an advisory committee to prepare a joint plan. The ordinance adopted pursuant to s. 420.9075 which creates the advisory committee or the resolution appointing the advisory committee members must provide for nine committee members and their terms. The committee must include:

(a) One citizen who is actively engaged in the residential home building industry.

(b) One citizen who is actively engaged in the banking or mortgage banking industry.

(c) One citizen who is a representative of those areas of labor engaged in home building.

(d) One citizen who is designated as an advocate for low-income persons.

(e) One citizen who is a provider of affordable housing.

(f) One citizen who is a real estate professional.

(3) All meetings of the advisory committee are public meetings, and all committee records are public records. Staff, administrative, and facility support to the advisory committee shall be provided by the appointing county or eligible municipality.

(4) The resolution creating and appointing the advisory committee must define affordable housing as applicable to the county and ~~eligible~~ municipality in a way that is consistent with the adopted local comprehensive plan. The advisory committee shall review the established poli-

cies and procedures, ordinances, land development regulations, and adopted local comprehensive plan of the appointing local government and shall recommend specific initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. Such recommendations may include the modification or repeal of existing policies, procedures, ordinances, regulations, or plan provisions; the creation of exceptions applicable to affordable housing; or the adoption of new policies, procedures, regulations, ordinances, or plan provisions. At a minimum, each advisory committee shall make recommendations on affordable housing incentives in the following areas:

(a) The affordable housing definition in the appointing resolution.

(b) The expedited processing of permits for affordable housing projects.

(c) The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment.

(d) The allowance of increased density levels.

(e) The reservation of infrastructure capacity for housing for *very-low-income* ~~very-low-income~~ persons and low-income persons.

(f) The transfer of development rights as a financing mechanism for housing for *very-low-income* ~~very-low-income~~ persons and low-income persons.

(g) The reduction of parking and setback requirements.

(h) The allowance of zero-lot-line configurations.

(i) The modification of ~~sidewalk and~~ street requirements.

(j) The establishment of a process by which a local government considers, before adoption, policies, procedures, ordinances, regulations, or plan provisions that have a significant impact on the cost of housing.

(k) The preparation of a printed inventory of locally owned public lands suitable for affordable housing.

The advisory committee recommendations must also include other affordable housing incentives identified by the advisory committee. To the maximum extent feasible, the approved affordable housing incentive recommendations submitted to the governing board of the appointing county or eligible municipality must quantify the affordable housing cost reduction anticipated from implementing the specific recommendation.

(5) The approval by the advisory committee of its affordable housing incentive recommendations must be made by affirmative vote of a majority of the membership of the advisory committee taken at a public hearing. Notice of the time, date, and place of the public hearing of the advisory committee to adopt final affordable housing incentive recommendations must be published in a newspaper of general paid circulation in the county. Such notice must contain a short and concise summary of the affordable housing initiative recommendations to be considered by the advisory committee. The notice must state the public place where a copy of the tentative advisory committee recommendations can be obtained by interested persons.

(6) Within 90 days after the date of receipt of the affordable housing incentive recommendations from the advisory committee, the governing body of the appointing local government shall adopt an affordable housing incentive plan. Such plan must consist of the adoption of specific initiatives to encourage or facilitate affordable housing and a schedule for implementation and must include, at a minimum, a schedule for implementation of expedited permit processing for affordable housing projects and a process for review of local policies, ordinances, regulations, and plan provisions that significantly impact the cost of housing *prior to their adoption.*

(7) The governing board of the county or the eligible municipality shall notify the agency by certified mail of its adoption of an affordable housing incentive plan. The notice must include a copy of the approved plan.

(a) If the agency fails to receive timely the approved affordable housing incentive plan, a notice of termination of its share of the local housing distribution shall be sent by certified mail by the agency to the affected county or eligible municipality. The notice of termination must specify a date of termination of the funding if the affected county or eligible municipality has not adopted an affordable housing incentive plan. If the county or the eligible municipality has not adopted an affordable housing incentive plan by the termination date specified in the notice of termination, the local distribution share terminates; and any uncommitted local distribution funds held by the affected county or eligible municipality in its local housing assistance trust fund shall be transferred to the State Housing Trust Fund to the credit of the agency to administer the local government housing program pursuant to s. 420.9078.

(b) If a county fails to timely adopt an affordable housing incentive plan but an eligible municipality within the county does timely adopt a plan, the agency, after receipt of a notice of termination, shall thereafter distribute directly to the participating eligible municipality its share calculated in the manner provided in s. 420.9071.

(c) Any county or eligible municipality whose local distribution share has been terminated may subsequently elect to receive directly its local distribution share by adopting an affordable housing incentive plan in the manner and according to the procedure provided in this section and by adopting an ordinance in the manner required in s. 420.9072.

Section 16. Subsection (1) of section 420.9078, Florida Statutes, 1992 Supplement, is amended to read:

420.9078 State administration of remaining local housing distribution funds.—

(1) With that portion of the documentary stamp tax moneys remaining in the Local Government Housing Trust Fund pursuant to s. 420.9072(6), the agency shall administer *an affordable* ~~a local government~~ housing *production* program for counties, ~~eligible~~ municipalities, and eligible sponsors in conformity with the criteria prescribed in s. 420.9075.

Section 17. *Section 420.304, Florida Statutes, and sections 420.309 and 420.32, Florida Statutes, 1992 Supplement, are transferred and renumbered as sections 420.522, 420.527, and 420.529, Florida Statutes, respectively.*

Section 18. *Sections 420.34 and 420.35, Florida Statutes, are repealed.*

Section 19. *Moneys in the Florida Elderly Housing Trust Fund on the effective date of this act shall be transferred to the Economic Opportunity Trust Fund and expended as provided by law.*

Section 20. Subsections (2), (3), and (4) of section 409.508, Florida Statutes, are amended to read:

409.508 Low-income home energy assistance program.—

(2) The Department of *Community Affairs* ~~Health and Rehabilitative Services~~ is designated as the state agency to administer the Low-income Home Energy Assistance Act of 1981, 42 U.S.C. ss. 8621 et seq. The Department of *Community Affairs* ~~Health and Rehabilitative Services~~ is authorized to provide home energy assistance benefits to eligible households which may be in the form of cash, vouchers, certificates, or direct payments to electric or natural gas utilities or other energy suppliers and operators of low-rent, subsidized housing in behalf of eligible households. Priority shall be given to eligible households having at least one elderly or handicapped individual and to eligible households with the lowest incomes.

(3) Agreements may be established between electric or natural gas utility companies, other energy suppliers, the Department of Revenue, and the Department of *Community Affairs* ~~Health and Rehabilitative Services~~ for the purpose of providing payments to energy suppliers in the form of a credit against sales and use taxes due or direct payments to energy suppliers for services rendered to low-income, eligible households.

(4) The Department of *Community Affairs* ~~Health and Rehabilitative Services~~ shall adopt rules to carry out the provisions of this act.

Section 21. *All identifiable program functions of the Low Income Home Energy Assistance Program existing within the Department of Health and Rehabilitative Services are transferred to the Department of Community Affairs by a type four transfer pursuant to section 20.06(4), Florida Statutes, including all records, property, personnel, assets, and liabilities. Included in this transfer are four positions currently associated with this program and appropriations for fiscal year 1993-1994 at a spending level equal to that available to the Department of Health and Rehabilitative Services during fiscal year 1992-1993; any additional authority required pursuant to increases in the federal funding level may be addressed by budget amendment. In addition, any rules adopted*

for this program function are included in such transfer. The Department of Community Affairs shall notify, in writing, the Bureau of Administrative Code in the Division of Elections of the Department of State of the rule transfer.

Section 22. Subsection (22) of section 420.503, Florida Statutes, 1992 Supplement, is amended to read:

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

(22) "Mortgage" means:

(a) A mortgage, mortgage deed, deed of trust, or other instrument:

1. Creating a ~~first~~ lien, subject only to such title exceptions as may be acceptable to the agency, on a fee interest in real property located within the state or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds the maturity date of the mortgage loan by a number of years determined by the agency to be sufficient to protect its interests; and

2. Secured, insured, or guaranteed in such manner as the agency determines will protect its interests and those of the bondholders, provided the bonds issued to fund or finance such instrument are rated by a nationally recognized rating service in any one of the three highest classifications, which rating services and classifications are determined pursuant to rules adopted by the State Board of Administration under s. 215.84(3), unless the bonds are privately placed through a negotiated sale as authorized in s. 420.509(7)(a); or

(b) A pledge of stock in a cooperative association and a security interest in the related lease.

Section 23. This act shall take effect upon becoming a law.

And the title is amended as follows:

On pages 1-3, strike the entire title and insert: A bill to be entitled An act relating to housing; creating the Predevelopment Loan Program Act; transferring, renumbering, and amending s. 420.303, F.S.; providing a short title; transferring and renumbering s. 420.305, F.S.; providing a purpose; transferring, renumbering, and amending s. 420.306, F.S.; providing definitions; transferring, renumbering, and amending ss. 420.307, 420.308, 420.31, F.S., relating to the Housing Predevelopment Trust Fund, loan program, and rules, respectively; amending s. 420.504, F.S.; providing for suspension of members of the Florida Housing Finance Agency for cause; amending s. 420.507, F.S.; providing for the agency to make mortgage loans in specified amounts; prescribing the duties of the agency with respect to the Predevelopment Loan Program; amending s. 420.5087, F.S.; providing for State Apartment Incentive Loan Program loans in excess of 25 percent of project cost; providing for extended terms of such loans; amending s. 420.5092, F.S.; correcting a cross-reference; amending s. 420.609, F.S.; providing additional members of the Affordable Housing Study Commission; providing for removal of commission for cause; amending s. 420.9071, F.S.; providing definitions for use in the State Housing Initiatives Partnership Act; amending s. 420.9072, F.S.; redefining legislative intent and goals with respect to the State Housing Initiatives Partnership Program; revising duties of local governments with respect to the program; amending s. 420.9075, F.S.; prescribing uses for which local housing assistance programs may allocate funds; prescribing objectives for involving partners in the program; providing for eligibility and for annual monitoring of tenant eligibility; prescribing additional information to be included in counties' and eligible municipalities' annual reports; requiring suspension of program funds to counties in which the Auditor General has found violations of program criteria; amending s. 420.9076, F.S.; prescribing additional guidelines and contents for affordable housing incentive plans; amending s. 420.9078, F.S.; providing for administration of an affordable housing production program; transferring and renumbering ss. 420.304, 420.309, 420.32, F.S.; repealing ss. 420.34, 420.35, F.S., relating to the Elderly Homeowners Rehabilitation Act and the Florida Elderly Housing Trust Fund, respectively; providing for transfer of moneys in the Florida Elderly Housing Trust Fund; amending s. 409.508, F.S.; transferring authority over the Low-income Home Energy Assistance Act from the Department of Health and Rehabilitative Services to the Department of Community Affairs; providing for transfer of functions, records, property, personnel, assets, liabilities, and rules of the Department of Health and Rehabilitative Services which relate to the act; amending s. 420.503, F.S.; redefining the term "mortgage," with respect to the Florida Housing Finance Agency; providing an effective date.

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

CS for SB 1106 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 1128 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1128—A bill to be entitled An act relating to bingo; repealing s. 6 of ch. 92-280, Laws of Florida, which provides for review and repeal of ch. 92-280, Laws of Florida, relating to bingo; providing an effective date.

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

Section 1. Section 849.0931, Florida Statutes, 1992 Supplement, is amended to read:

(Substantial rewording of section. See s. 849.0931, F.S., 1992 Supp., for present text.)

849.0931 Conduct of bingo authorized; licensing and registration; conditions for conduct; prohibitions and penalties.—

(1) INTENT.—It is the intent of the Legislature to provide a statutory basis for regulating bingo activities in the state adequate to shield such activity from corrupting influences; to ensure that only charitable, nonprofit, veterans', and community organizations are the beneficiaries of such bingo activity; and to ensure that bingo is conducted and played honestly and fairly. It is further the express intent of the Legislature that no authorized organization serve as the sponsor of any bingo game conducted by another organization.

(2) DEFINITIONS.—As used in this section:

(a) "Authorized expenses" means the actual business expenses essential to the conduct and playing of bingo, consisting of the following: the rental amount for the use of premises if rented exclusively for the purpose of conducting bingo; custodial services; equipment and supplies; accounting services for records and reports; bingo license and registration fees; advertising; security personnel; pro rata amounts for the cost of insurance and utilities, comprised of electricity, water, gas, and sewerage, incurred in conducting bingo; and the cost of refreshments sold or otherwise provided to patrons and volunteers.

(b) "Authorized organization" means:

1. Any nonprofit charitable, religious, educational, veterans', fraternal, service, civic, medical, volunteer rescue service, or volunteer firefighters' organization which has qualified for exemption from federal income tax and which is engaged in charitable, civic, community, benevolent, religious, or scholastic works or endeavors; a subsidiary of an organization which was established by state legislative action, which organization is exempt from federal income tax and which is engaged in charitable, civic, community, benevolent, or scholastic works or endeavors; or a veteran's organization chartered under chapter 617. An organization is tax exempt if it has a determination letter currently in effect from the Internal Revenue Service stating that the organization is exempt from federal income taxation under s. 501(c) of the Internal Revenue Code. To be eligible, an organization described in this subparagraph must also have been in continuous existence and active in the state for at least 3 years, unless the organization's function is to support the charitable, civic, community, benevolent, or scholastic works or similar activities of an organization that was established by state legislative action and that has been in continuous existence and active in the state for at least 3 years.

2. A facility licensed or certified under chapter 400, chapter 651, or s. 410.026 or which is elderly housing financed or insured by the Federal Government.

3. A community association.

(c) "Bingo card" means the flat piece of paper or cardboard employed by players in the game of bingo. The card shall have not fewer than 24 numbers printed on it. The numbers shall range from 1 through 75, inclusive. More than one set of numbers may be printed on a piece of paper, thereby creating multiple cards. The bingo card shall be part of a deck, group, or series, with recorded control numbers.

(d) "Bingo game" means a single game of the activity commonly known as "bingo" in which participants pay a sum of money for the use of one or more bingo cards. When the game commences, numbers are drawn by chance, one by one, and announced. The players cover or mark those numbers on the bingo card until a player receives a given order of numbers in an arrangement that has been preannounced for that particular game. The player calls out "bingo" and, after verification is made of the required arrangement of numbers, is declared the winner of a predetermined prize. More than one game may be played upon a bingo card, and numbers called for one game may be used for a succeeding game or games. Only bingo games in which the winner, in competition among all players in the game, is determined by the matching of letters and numbers on a bingo card with letters and numbers appearing on the numbered objects drawn and announced by the caller shall be considered bingo for purposes of this section.

(e) "Charitable purpose" means the use of proceeds by an authorized organization or governmental agency exclusively for, or the giving, donating, or otherwise transferring to an authorized organization or governmental agency for use exclusively for, the relief of poverty, indigence, or personal distress; help for disadvantaged persons; treatment and prevention of physical or mental distress; relief of suffering caused by pestilence, famine, fire, floods, and other state, national, or international calamities and undertakings to prevent such; advancement of education and learning; youth programs; advancement of religion; activities which reduce the burdens of government to provide such types of services to the public; and, in the case of volunteer rescue service or firefighters' organizations, for financial support of such organizations.

(f) "Community association" means a residential homeowners' association comprised of persons who own or lease: a unit in a planned unit development which is a part of a residential development scheme; a lot for a home or a mobile home which is a part of a residential development scheme; or a townhouse, villa, condominium, cooperative, or other residential unit which is a part of a residential development scheme, which association is authorized to impose a fee which may become a lien on the parcel. In the case of a mobile home park as defined in chapter 723, "community association" means, in addition to the homeowners' association, a group of residents in such mobile home park.

(g) "Conducting bingo" or "the conduct of bingo" means to direct or assist in the operating of a bingo game.

(h) "Distributor" means any person who sells, leases, or otherwise provides or distributes bingo supplies or equipment to authorized organizations conducting bingo. The term does not include printers who print bingo cards or bingo game programs or merchants who sell directly to players items used by players to play bingo.

(i) "Division" means the Division of Pari-mutuel Wagering of the Department of Business Regulation.

(j) "Gross receipts" means all money collected at a session, excluding refreshment, concessionaire, and canteen sales related only to food and beverages, unless the authorized organization conducting the session derives a monetary benefit from such sales, in which case the amount received from the sales shall be a part of the gross receipts.

(k) "Leased bingo facility" means premises which are owned or leased by any person, including an authorized organization, and which are offered for leasing to authorized organizations for the purpose of conducting such organizations' bingo sessions, except that premises owned or leased by an authorized organization shall not be considered a leased bingo facility if the facility is used by no more than three authorized organizations per week for the purpose of conducting bingo.

(l) "Member" or "bona fide member" means a person who holds full and regular membership status in the authorized organization and active members of a bona fide auxiliary of the authorized organization.

(m) "Net proceeds" means all money collected or received from all bingo activities remaining after payment of all prizes and authorized expenses.

(n) "Objects" means a set of 75 balls or other precision shapes identical in size, shape, weight, and balance on which are printed numbers and letters, with numbers 1 through 15 being marked with the letter "B," numbers 16 through 30 being marked with the letter "I," numbers 31 through 45 being marked with the letter "N," numbers 46 through 60 being marked with the letter "G," and numbers 61 through 75 being marked with the letter "O."

(o) "Premises" means an entire building or group of buildings at one location. Division by floors or rooms to create multiple premises within a building for the purpose of qualifying as different premises is not permitted.

(p) "Principal" means, with respect to any enterprise: each of its officers and directors; each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager; each of its owners or partners if an unincorporated business; each of its shareholders who owns 10 percent or more of the shares of the corporation, if a corporation; and each person other than a banking institution who has provided financing for the enterprise constituting 10 percent or more of the total financing of the enterprise.

(q) "Rack" means the container in which the objects are placed after being drawn and announced.

(r) "Receptacle" means the container from which the objects are drawn or ejected.

(s) "Security personnel" means a certified law enforcement officer, as defined in s. 943.10, or employee of a private security firm licensed under chapter 493, hired to provide security for a bingo session.

(t) "Volunteer" means any person, other than security personnel, who participates in any manner in the conduct of bingo by an authorized organization.

(3) AUTHORITY OF DIVISION.—The Division of Pari-mutuel Wagering of the Department of Business Regulation shall:

(a) Adopt rules governing: the issuance or denial of licenses, registrations, or preliminary approvals and the revocation or suspension of licenses or registrations for the conduct of bingo, the operation of a leased bingo facility, or acting as a distributor of bingo equipment and supplies; the conduct of bingo, activities involved in operating a leased bingo facility or distributing bingo equipment and supplies; recordkeeping and reporting requirements; the disposition of funds derived from the conduct of bingo; and any other areas necessary to ensure the integrity of bingo activities within the state and the proper disposition of all funds derived therefrom.

(b) Conduct investigations and monitor the conduct of bingo, the operation of leased bingo facilities, and the distribution of bingo equipment and supplies.

(c) Inspect and review the books, accounts, records, and documents related to the bingo operation of any current or former licensee or registrant.

(d) Have access to and inspect all premises used for the conduct of bingo or the storage of bingo equipment and supplies without notice during normal business hours in order to verify compliance with this section. Inspections made pursuant to this section shall not be conducted in a manner which disrupts normal business operations.

(e) Suspend or revoke any license or registration, after hearing, for any violation of this section or the rules adopted pursuant thereto.

(f) Take testimony, issue summons and subpoenas for any witness, and issue subpoenas duces tecum in connection with any matter within its jurisdiction.

(g) Prohibit any person from attending any bingo session who has engaged in conduct which threatens the integrity of or is disruptive of the bingo game.

(h) Monitor and ensure the proper disposition of funds generated from the conduct of bingo.

(i) Report to the President of the Senate and the Speaker of the House of Representatives, by January 1, 1995, the status of bingo regulation in the state, including any recommendations for changes.

(4) BINGO AUTHORIZED.—

(a) Nothing in this chapter shall be construed to prohibit an authorized organization holding a valid license or registration certificate to conduct bingo issued by the division from conducting bingo if conducted pursuant to this section.

1. The gross receipts derived from bingo may only be used for authorized expenses, charitable purposes, or as prizes awarded to players, as provided in this section.

2. The gross receipts derived from bingo shall be expended as follows:

a. For prizes awarded to players, subject to the limitations provided in this section.

b. Organizations licensed to conduct bingo may deduct a maximum of 24 percent of their annual gross receipts from bingo for the payment of authorized expenses attributable to that annual period. This percentage cap on expenses does not include prizes awarded. Organizations which are registered to conduct bingo may deduct the actual cost of authorized expenses attributable to each session conducted.

c. After the expenditures authorized by sub-subparagraphs a. and b., the remaining proceeds may only be used for charitable purposes, or may be carried over to the next scheduled day of play to conduct bingo games without charge to players until the proceeds carried over from the previous day's play have been exhausted.

3. No part of the gross receipts may be used by any organization for the construction, acquisition, improvement, maintenance, or repair of real or personal property or for debt reduction payments for such property, except property used for charitable purposes.

4. An authorized community association may deduct the actual expenses it incurs in conducting the bingo session but must return all remaining proceeds from such games to the players in the form of prizes, except that any proceeds remaining after payment of prizes to players may be carried over to the next day of play as provided in subparagraph 2. or donated to a charitable, nonprofit, or veterans' organization which is exempt from federal income tax under the provisions of s. 501(c) of the Internal Revenue Code to be used by such recipient organization for a charitable purpose. No part of the gross receipts may be used for any other purpose.

(b) Bingo games for patients only in federally or state designated veterans' hospitals, domiciliaries, and nursing homes may be conducted and such bingo sessions shall be exempt from the registration, licensing, recordkeeping, and reporting requirements of this section. Any funds generated over and above the actual cost of conducting the games and prizes awarded shall be used in conducting future games for the patients.

(c) Bingo games attended exclusively by the residents or clients of facilities licensed or certified under chapter 400, chapter 651, or s. 410.026, or their guests, or by residents or their guests of housing for the elderly financed or insured by the Federal Government, may be conducted by such facilities and shall be exempt from the registration, licensing, recordkeeping, and reporting requirements of this section if neither the facility nor any third party derives financial benefit from such games.

(5) LICENSE OR REGISTRATION REQUIRED; APPLICATION.—

(a) Only those persons holding an appropriate valid license, registration, or preliminary approval issued by the division are authorized to conduct bingo, to operate a leased bingo facility, or to act as a distributor. The division shall establish, by rule, a schedule for the annual renewal of licenses and registrations. A license or certificate of registration issued under this section is not transferable.

(b) Any authorized organization which generates annual gross bingo receipts of $104,000 or less shall not be required to hold a license to be authorized to conduct bingo, but shall be required to register with the division. Such organization shall submit an application form to the division and, if the organization is eligible for registration, the division shall notify the applicant that it has been properly registered and is authorized to conduct bingo. The division shall issue to duly registered organizations a certificate of registration.

(c) The division shall have the authority to issue to any authorized organization a special event bingo license which shall authorize the organization to conduct bingo at festivals or short-term special events. The special event bingo license shall have a maximum term of 5 days and no more than 2 special event bingo licenses shall be issued to any organization per year. The license fee for a special event bingo license, not to exceed $25, shall be determined by the division. The two days per week limitation on the conduct of bingo by an authorized organization shall not apply to any special events licensed separately under this paragraph.

(d) An authorized organization seeking a license or registration or renewal thereof to conduct bingo shall make application on forms prescribed by the division. Such application shall contain the following information: the name and address of the applicant; if applicable, a determination letter from the Internal Revenue Service certifying that the applicant is exempt under federal tax law; evidence that the organization is eligible under this section to conduct bingo and, where applicable, has been in continuous existence in this state for at least 3 years; the address or location of the premises to be used for conducting bingo and, if the premises are to be leased, the name and address of the owner, together with a copy of the lease; projected annual gross bingo receipts; and other information determined necessary by rule by the division.

(e) A person seeking a distributor's license or renewal thereof shall make application on forms prescribed by the division. Such application shall contain the following information: the full name, address, and social security number or federal employment identification number of the applicant; the address of each location to be operated by the distributor; the name and address of all owners if the business is not a corporation; if a corporation, the name and address of each officer and director and each shareholder having a 10 percent or more interest; the name and address of the person designated as registered agent within the state; and other information determined necessary by rule by the division.

(f) A person seeking a license to operate a leased bingo facility or a renewal thereof shall make application on forms prescribed by the division. Such application shall contain the following information: the full name and address of the person who owns or holds a leasehold interest in the facility; the full name, address, and social security number or federal employment identification number of the applicant; the address of each location to be operated by the applicant; the name and address of all owners if the business is not a corporation; if a corporation, the name and address of each officer and director and each shareholder having a 10 percent or more interest; the name and address of the person designated as registered agent within the state; and other information determined necessary by rule by the division.

(g) Each principal of an applicant for a distributor's license or a license to operate a leased bingo facility; the management personnel of a leased bingo facility; the person who owns or holds a leasehold interest in a leased bingo facility, if affiliated with the applicant for a license to operate such facility; and the members-in-charge of sessions conducted by licensed organizations whose gross annual bingo receipts exceed $104,000 shall have their backgrounds investigated by the division, including fingerprinting of such individuals, to ensure eligibility. Each such individual shall file with the division a complete set of his fingerprints that has been taken by an authorized law enforcement officer, which shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing; the costs of processing shall be borne by the applicant.

(6) LICENSE FEES.—

(a) The annual fee for issuance or renewal of a license to operate a leased bingo facility shall be $1,000. In addition, leased bingo facility licensees shall pay a daily operation fee of $75 per day for each day the facility is used for conducting two or less bingo sessions and $100 for each day the facility is used for conducting more than two bingo sessions. The daily operation fee shall be remitted to the division with the required monthly report for the preceding month's operation of the facility.

(b) The fee for issuance or renewal of a license for a distributor shall be $2,000.

(c) The fee for issuance or renewal of a license or registration to conduct bingo shall be based upon the applicant's annual gross receipts from bingo according to the following schedule:

Gross Receipts	Fees
$ 0-104,000	$ 0
$104,001-300,000	$100
in excess of $300,000	$250

(d) Authorized organizations may also be licensed to operate a leased bingo facility. The total annual fee for the license issued to an authorized organization shall be $250 per facility, in lieu of the fee provided in paragraph (a), if the organization was leasing its facility to other authorized organizations for the purpose of conducting bingo prior to January 1, 1993.

(e) The division shall have the authority to prorate fees and to stagger license and registration renewal dates and report submission dates.

(7) CONDITIONS FOR CONDUCTING BINGO.—

(a) Bingo may be conducted only between the hours of 10 a.m. and 1 a.m. Each bingo session may be sponsored and conducted by only one authorized organization. An authorized organization may conduct bingo a maximum of 2 days per week; any bingo session which continues after midnight, but not later than 1 a.m., shall be considered conducted on 1 day. Bingo may only be conducted 6 days per week at any premises, including leased bingo facilities.

(b) Each authorized organization conducting bingo shall designate up to three members of that organization to be in charge of each session, one of whom shall be designated the member-in-charge of the session. The member-in-charge may change from session to session. The member-in-charge shall be present during the entire session and be familiar with provisions of this section and all applicable rules for conducting bingo.

(c) Security for bingo sessions may be, but is not required to be, provided by an authorized organization. If the organization elects to provide security, it may be provided only by security personnel hired by the organization or members of the organization. Persons providing security services must be present during the entire session and actively engaged in performing only security duties. The maximum compensation for security services shall not exceed $150 per security person per day. A member of the authorized organization who is providing security services may not be compensated and is not required to meet the requirements for security personnel.

(d) An organization conducting sessions open to the public may refuse entry to any person who is objectionable or undesirable, but such refusal of entry shall not be on the basis of race, creed, color, religion, sex, national origin, marital status, physical handicap, or age, except as provided in this section. An organization may establish rules for limiting or prohibiting attendance by minors at bingo sessions conducted by the organization.

(e) The gross receipts from all bingo activities shall be receipted by each organization by use of a receipting system approved by the division as sufficient to ensure that all gross receipts are properly documented. The division shall by rule prescribe various acceptable receipting systems or methods.

(f) Each organization authorized to conduct bingo shall employ adequate internal controls to safeguard receipts and maintain a separate bank account for its bingo activities, except that organizations which are registered to conduct bingo shall not be required to maintain a separate bank account. Gross receipts from each session less the amounts awarded as cash prizes or cash payments for expenses paid at the conclusion of the session shall be deposited into such account no later than the next business day following the date of the bingo session. All disbursements must be paid from this account on preprinted, serially numbered checks. Such checks must be payable to a specific payee and may not be made payable to "cash."

(g) An authorized organization conducting bingo may lease or purchase equipment or supplies only from a licensed distributor or an organization licensed or registered to conduct bingo. When an authorized organization rents or leases bingo equipment or supplies, the price paid must be a lump sum or hourly rate established in the competitive market and shall not be based upon a percentage of the receipts or attendance at a bingo session.

(h) No person other than a member of the authorized organization conducting the bingo session may assist in the conduct of any bingo game conducted as part of that session.

(i) No person assisting in the conduct of a bingo game may receive any form of compensation for assisting in the conduct of a bingo game. This provision shall not be construed to prohibit tipping by patrons or compensation authorized by this section.

(j) Each volunteer and member-in-charge assisting in the conduct of a bingo session shall at all times during the session wear an identification tag or badge which displays the person's name, whether he is a volunteer or member-in-charge, and the name of the organization.

(8) PRIZES.—Prize limitations apply to all games, whether a fee is charged or the game is free. Game prizes shall not exceed $50 in cash or items of equivalent value. Jackpot prizes shall not exceed $250 in cash or items of equivalent value, and no more than three jackpots shall be awarded per day by any organization. The value of merchandise awarded as a prize is the suggested retail price or fair market value as of the date it is awarded, regardless of whether the item was purchased by or donated to the organization. All prizes shall be awarded by the end of the session, and merchandise offered as prizes must have been paid for in full prior to being offered as a prize.

(9) CONDUCT OF BINGO GAMES.—All games, regardless of the type or name, shall be conducted as follows:

(a) The objects, whether drawn or ejected, shall be equal as to size, shape, weight, and balance and as to all other characteristics that may control their selection from the receptacle. The caller shall cancel any game if, during the course of a game, the mechanism used in the drawing or ejection of objects becomes jammed in such a manner as to interfere with the accurate determination of the next number to be announced or if the caller determines that more than one object is labeled with the same number or that there is a number to be drawn without a corresponding object in the receptacle. Players in a game canceled pursuant to this paragraph shall be permitted to play the next game free of charge.

(b) Prior to commencement of any bingo session, the member-in-charge shall cause a verification to be made of all objects to be placed in the receptacle and shall inspect the objects in the presence of a disinterested player to ensure that all objects are present and that there are no duplications or omissions. Any player may call for a verification of numbers before, during, or after a session.

(c) The card on which the game is played shall be part of a deck, group, or series, with recorded control numbers, no two of which may be alike in any given game.

(d) After drawing each object, the caller shall manually display the object to the players before placing it in the rack. All numbers shall be announced in the same order that they are ejected from the receptacle.

(e) A winner or bona fide bingo is determined when a predetermined specified arrangement of called numbers appears on a bingo card that corresponds with the numbers on the objects drawn and announced. Numbers announced in error, objects misplaced in the rack, or errors in the numbers lit on the verification board shall not be recognized as a bingo.

(f) The particular arrangement of numbers required to be covered in order to win must be clearly described and announced to the players immediately before each game.

(g) Organizations are not required to have verification boards in order to conduct bingo, but if an organization uses a verification board in conducting its bingo session, it must be used during the entire session and cannot be turned off during any game unless it is inoperative.

(h) If an object has been drawn but the caller has not yet begun to vocally announce the number and a player declares a bingo on a previously called number, the object must be removed from the receptacle and shall be the next number to be called if the declared bingo is not valid. If the caller has started to vocally announce the number and a player declares a bingo on a previously called number, the caller shall complete the call of the new number and if the player's bingo on a previously called number is valid, such player shall share the prize for that game with any player who gained a bingo on the last number called.

(i) Numbers on the winning card shall be announced and verified as provided in this paragraph. A disinterested player shall review the card as the numbers on the card are announced. The caller shall check the numbers being announced against the numbers appearing on the objects

in the rack. Any player shall be entitled, at the time the winner is determined, to call for a verification of the numbers drawn, and such verification shall be made against the objects in the rack in the presence of the player and the member-in-charge for that bingo session.

(j) After determining a winner, the caller shall ask, "Are there any other bingos?" The caller shall allow a reasonable time for other players to respond. If no one replies, the caller shall declare the game closed. No player is entitled to share the prize unless the player has declared a bingo prior to the announcement that the game is closed.

(k) The prize shall be awarded after a bingo is validated.

(10) Assistance for Handicapped and other Players.—It is the intent of the Legislature to insure that handicapped players and players who are temporarily absent from his or her seat is not prevented from playing bingo due to a lack of assistance from other persons in attendance at the bingo session.

(a) Nothing in this chapter shall be construed to prohibit handicapped players from receiving assistance in the playing of bingo games which is provided by persons who accompany the player to the bingo session, another player, or persons who are assisting in the conducting of the bingo session. Organizations conducting bingo sessions shall not deny entry to or charge an entry fee of a person who seeks entry to a bingo session for the sole purpose of assisting a handicapped player.

(b) Nothing in this chapter shall prohibit the playing of player's bingo cards by another player or persons assisting in the conduct of the bingo session while the player whose cards are being played is temporarily away from his or her seat.

(11) NOTICES REQUIRED.—A person who is licensed to operate a leased bingo facility shall conspicuously post on the premises of the facility a copy of his license. An authorized organization conducting bingo shall conspicuously post on the premises where bingo is conducted a notice which contains a copy of its bingo license or registration notice; a description of all prizes to be awarded and how the prizes may be won; the rules under which bingo is to be played; all costs to play; the organization's name; how the net proceeds are to be distributed and, if the proceeds are to be donated to another organization, the name of such other organization; and the name of the member-in-charge for that session.

(12) LOCATION OF GAMES.—

(a) An organization licensed or registered to conduct bingo may conduct bingo games only at the premises designated on its application for a license or registration to conduct bingo and only within the county or within a 15-mile radius of the licensee's or registrant's headquarters or primary place of operation for purposes other than conducting bingo.

(b) Bingo may be conducted either outdoors or indoors.

(c) Bingo may only be conducted at any of the following premises:

1. Property owned by the authorized organization which is conducting the bingo session.

2. Property owned by the organization that is eligible and designated to receive the proceeds.

3. Property leased full time, for a minimum of 1 year, exclusively by the authorized organization which is conducting the bingo session.

4. Property leased from or donated by another authorized organization which may or may not be licensed or registered to conduct bingo at such location.

5. Property owned or leased by a county, municipality, or other governmental entity.

6. Property leased from a leased bingo facility operator licensed by the division.

7. Community associations may conduct bingo only at premises owned or leased by the association and located within the residential development. With respect to a mobile home park as defined in chapter 723, bingo may be conducted at premises owned or leased by the association or residents, or at premises which are common facilities of the park. Such bingo games shall not be open to the public and shall be restricted to members and residents of the association community or mobile home park and their guests.

Property described in subparagraphs 1. through 4. may be used by a maximum of three authorized organizations per week for the purpose of conducting bingo. Any such facility used by more than three authorized organizations per week for the purpose of conducting bingo shall be considered and must be licensed as a leased bingo facility.

(d) Bingo may only be conducted pursuant to the following lease arrangements:

1. Property used for conducting bingo must be leased for a minimum of 1 year, except in situations involving a special events license.

2. A lease agreement for the lease of premises for the conduct of bingo may provide at a reasonable market rate for concessions or concession operators, security personnel, bingo equipment (tables and chairs, receptacle, rack, verification boards, and television monitors), advertising, and custodial services related to the conduct of bingo. No organization, however, shall be required by any lessor, including an operator of a leased bingo facility, as a condition of leasing the facility, to lease anything in addition to the facility and the equipment specified in this paragraph. The lease agreement between a leased bingo facility operator and an authorized organization may not provide for the facility operator or his employees, agents, or family members to participate in the conduct of bingo by the authorized organization.

3. The lease may not be based upon a percentage of the gross receipts or net proceeds from, or the number of patrons attending, a bingo session. The lease must be based on a flat rate rental amount which does not exceed the fair market rental rates charged for premises of similar size in the same locale for similar rental time periods. The division shall prescribe by rule the acceptable method of determining fair market rental rates.

4. An organization licensed or registered to conduct bingo may lease or sublease premises it owns or leases full time to other authorized organizations for use by such other organizations for the purpose of conducting bingo.

5. A governmental entity may lease or sublease premises it owns or leases full time to any authorized organization for use by the organization for the purpose of conducting bingo.

6. A person licensed to operate a leased bingo facility must enter into a written lease with each authorized organization electing to use the facility for conducting bingo sessions. All of the remuneration to be received by an operator of a leased bingo facility from the authorized organization leasing such facility must be stated in the lease, and the lease must provide a breakdown of rental charges. A copy of each such lease shall be submitted by the operator to the division along with the report required by subsection (12) which is due for the month in which the lease is executed.

(e) The division or any law enforcement agency with jurisdiction may conduct inspections of premises where bingo is conducted or bingo equipment and supplies are stored to ensure compliance with the requirements of this section during regular business hours.

(13) RECORDS AND REPORTS.—

(a) Each authorized organization licensed to conduct bingo shall keep and maintain permanent records of its bingo activities and shall maintain such records for a period of not less than 3 years. These records shall contain sufficient detail to allow the division to determine compliance with this section and shall be available for audit and inspection by the division or other law enforcement agencies with jurisdiction during the organization's regular business hours. The records shall contain the following information for each reporting period: the number of sessions conducted; the total gross receipts from all sessions; the total cost of prizes, both cash and merchandise, awarded for all sessions; the total authorized expenses for all sessions and to whom such expenses were paid; and the amount of any net proceeds remaining after payment of prizes and the purpose for which any proceeds were or are to be used.

(b) Each organization licensed to conduct bingo shall file semiannually with the division a report containing the required bingo records. The required reports shall be submitted on forms prescribed by the division, shall contain the information set forth in paragraph (a) and any additional information required by the division, and shall be deemed public records.

(c) Each authorized organization registered to conduct bingo shall be exempt from the recordkeeping and reporting requirements of this section, except that such organization shall be required to submit annually to the division a sworn affidavit disclosing, for all bingo sessions conducted, the total gross receipts, the total amount spent on authorized expenses and the total amount awarded as prizes.

(d) Each person licensed as a distributor shall keep and maintain permanent records of his bingo activities and shall maintain such records for a period of not less than 3 years. These records shall contain sufficient detail to allow the division to determine compliance with this section and shall be available for audit and inspection by the division or other law enforcement agencies with jurisdiction during the distributor's normal business hours. Each bingo distributor shall file quarterly with the division a report which discloses all receipts and expenditures relating to its bingo-related activities in the state and which identifies the authorized organizations to which such equipment and supplies were supplied. The required reports shall be on forms prescribed by the division and shall be deemed public records once filed.

(e) Each person licensed to operate a leased bingo facility shall keep and maintain permanent records of his bingo activities and shall maintain such records for a period of not less than 3 years. These records shall contain sufficient detail to allow the division to determine compliance with this section and shall be available for audit and inspection by the division or other law enforcement agencies with jurisdiction during the operator's regular business hours. Each leased bingo facility operator shall file monthly with the division a report which discloses all receipts and expenditures relating to its bingo activities in the state and the number of bingo sessions which were conducted at the facility per day, and which identifies the authorized organizations which conducted each bingo session conducted at the facility. The required reports shall be submitted on forms prescribed by the division, shall contain whatever additional information is deemed necessary by the division, and shall be deemed public records once filed. The division shall review the financial reports submitted by such operators to ensure their compliance with this section.

(f) A uniform reporting system shall be developed by the division to provide acceptable uniform financial data and statistics concerning organizations conducting bingo, outside concessionaire operations, concessions operated by any licensee, distributors, and leased bingo facility operators, which the division may use to review the operation of these organizations in order to exercise a reasonable degree of control over the activity of the bingo industry. Each licensed distributor and leased bingo facility operator shall submit to the division, in addition to any other required reports, a complete annual report of its accounts, certified by a public accountant licensed to practice in the state. The division shall adopt rules for the form and content of such reports, including, but not limited to, a requirement for a statement of assets and liabilities, operating revenues and expenses, and net worth, which statement shall be certified by a public accountant licensed to practice in this state, and any other information deemed necessary by the division.

(14) PROHIBITED ACTIVITIES.—

(a) The use of computer and electronic devices for conducting bingo is prohibited.

(b) Door prizes, give-aways, and any gaming activity other than bingo are prohibited on the premises on any day bingo is conducted, except games authorized by chapter 24 and promotions conducted by the authorized organization conducting the bingo session. Promotions offered pursuant to this paragraph are subject to the prize limitations provided in this section.

(c) Leased bingo facility operators and their employees, agents, or family members may not participate in the conduct of an authorized organization's bingo session conducted at a leased bingo facility. An authorized organization may not allow the operator of a leased bingo facility or his employees, agents, or family members to participate in the conduct of the authorized organization's bingo sessions.

(d) Authorized organizations conducting bingo may not lease premises to conduct bingo from any person other than an authorized organization, a person licensed to operate a leased bingo facility, or a municipality, county, or other governmental entity as provided herein, and may lease, purchase, or otherwise acquire bingo equipment or supplies only from a person duly licensed as a distributor or an organization licensed or registered to conduct bingo.

(e)1. No person who:

a. Has been convicted within the last 5 years of a felony which was designed and intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering;

b. Has been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with such;

c. Directly or indirectly leases premises or sells, leases, or otherwise distributes bingo equipment or supplies to an organization for the purposes of conducting bingo; or

d. Has violated any provision of this section or any rules adopted pursuant thereto;

may participate in the operation or conduct of the bingo activities of an authorized organization.

2. No person who:

a. Has been convicted within the last 5 years of a felony which was designed and intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering;

b. Has been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with such; or

c. Has violated any provision of this section or any rule adopted pursuant thereto;

may be licensed as a bingo distributor or be employed by a licensed distributor.

3. No person who:

a. Has been convicted within the last 5 years of a felony which was designed and intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering;

b. Has been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with such; or

c. Has violated any provision of this section or any rule adopted pursuant thereto;

may be licensed to operate a leased bingo facility or be employed by a person licensed to operate a leased bingo facility.

(f) No authorized organization or other person shall lend or sell the name of an authorized organization or allow such organization's identity to be used by anyone for the purpose of operating, conducting, or advertising any bingo game Authorized organizations are not, however, prohibited from advertising sessions they conduct or how the proceeds are to be used. Operators of leased bingo facilities licensed by the division are not prohibited from advertising sessions that are conducted by an authorized organization at the leased facility if the authorized organization has given written approval for the advertising. No authorized organization or other person may enter into any agreement to have anyone conduct a bingo session on behalf of the authorized organization or other person, except as provided in this section.

(g) Any person assisting in the conduct of any game played during a bingo session shall not be allowed to participate as a player during that session.

(h) No person under the age of 18 years may participate in conducting or playing bingo.

(i) Seats or bingo cards shall not be held, set aside, or reserved for any player by anyone assisting in the conduct of any session, except braille cards for use by legally blind players.

(j) No service or thing of value shall be given or offered by any authorized organization or other person to encourage or entice participation in any bingo game, except that the furnishing of nonalcoholic beverages and edibles to patrons without cost and promotions as provided in this section are allowed.

(k) An authorized organization conducting bingo on premises at which it is also licensed to serve alcoholic beverages may not engage in both activities at the same time unless done in two separate rooms which are closed off from one another. No authorized organization may conduct bingo or allow bingo to be played in the room designated for selling alcoholic beverages, nor may it allow anyone to possess or consume any alcoholic beverage in the room designated for conducting bingo.

(l) No operator of a leased bingo facility, employee, agent, or family member of such operator, or person holding a financial or managerial interest in a leased bingo facility may:

1. Provide any person to conduct or assist in the conduct of bingo at the facility.

2. Provide accounting services to an organization conducting bingo on the premises of the facility.

3. Solicit, suggest, encourage, or make any expenditure of gross receipts of an authorized organization conducting bingo on the premises.

4. Charge any fee to any person wishing to play bingo conducted by an authorized organization at the facility.

5. Provide assistance for or participate in the conduct of bingo at the facility.

(15) SUSPENSION, REVOCATION, OR DENIAL OF LICENSE OR REGISTRATION; FINE.—

(a) The division may deny a license or registration or renewal thereof or may suspend or revoke any license or registration when the applicant, organization licensed or registered to conduct bingo, licensed distributor, or licensed leased bingo facility operator has violated or failed to comply with the provisions of this section or any rules adopted pursuant thereto; knowingly caused, aided, abetted, or conspired with another to cause any person to violate this section or any rules adopted pursuant thereto; obtained a license or registration by fraud, misrepresentation, or concealment; or if any principal of the licensed distributor, licensed leased bingo facility operator, or authorized organization is found to be no longer eligible under this section.

(b) Notwithstanding any other provision of this section, the division may impose an administrative fine not to exceed $5,000 for each violation against any person who has violated or failed to comply with the provisions of this section or any rules adopted pursuant thereto.

(16) CRIMINAL PENALTY; INJUNCTIONS.—

(a) Any person who conducts a bingo game, operates a leased bingo facility, or distributes bingo equipment and supplies without a valid license or registration certificate issued as provided in this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The division, any state attorney, the statewide prosecutor, or the Attorney General may, within their respective jurisdictions, conduct inspections of premises where bingo is conducted or bingo equipment and supplies are stored and inspect the records of any registrant or licensee to ensure compliance with this section. Such authorities may apply for a temporary or permanent injunction restraining further violation of this section and such injunction shall issue without bond.

(17) DEPOSITS.—All moneys collected under this section shall be deposited in the Pari-mutuel Wagering Trust Fund and shall be used exclusively for the bingo-related activities of the division.

(18) LOCAL ORDINANCES.—The bingo regulations provided in this section constitute the minimum regulations for bingo conducted in this state. This section does not prohibit additional stricter bingo regulations being imposed by counties or municipalities through local ordinances. Local governments may also adopt zoning ordinances designed to protect the public's health, safety, and welfare which affect bingo activities in that jurisdiction.

Section 2. (1) *There is hereby appropriated from the Pari-mutuel Wagering Trust Fund to the Department of Business Regulation for fiscal year 1993-1994 sufficient funds and positions as required for the purpose of administering the provisions of this act.*

(2) This section shall take effect upon this act becoming a law.

Section 3. *Any unrefunded license fees paid pursuant to chapter 91-206, Laws of Florida, by applicants for licensure or registration as provided in this act shall be applied toward the first year's license or registration fee, if any, required hereunder, and any unused portion shall be refunded to such applicants at the time they are approved by the division for licensure or registration.*

Section 4. (1) *Section 6 of chapter 92-280, Laws of Florida, is hereby repealed.*

(2) This section shall take effect upon this act becoming a law.

Section 5. Except as otherwise provided herein, this act shall take effect October 1, 1993, except that paragraphs (a) and (b) of subsection (3) of section 849.0931, Florida Statutes, as amended by this act, shall take effect upon this act becoming a law.

And the title is amended as follows:

Strike entire title and insert: A bill to be entitled An act relating to bingo; amending s. 849.0931, F.S.; revising provisions which regulate the conduct of bingo; providing intent; providing definitions; providing that the Division of Pari-mutuel Wagering shall supervise bingo activities and specifying powers and duties of the division; authorizing the conduct of bingo by authorized organizations; providing for use of bingo proceeds; providing requirements and conditions for the conduct of bingo; requiring licensing or registration of such organizations, operators of leased bingo facilities, and distributors of bingo equipment; providing exemptions; providing for special event licenses; providing for fees; providing assistance for certain players; providing limitations on prizes; providing requirements regarding the location of games and the lease of premises; providing requirements for records and reports; prohibiting certain activities in connection with bingo; providing for revocation or denial of licenses and registrations and administrative fines; providing a criminal penalty; providing for injunctions; providing for deposit of moneys collected in the Pari-mutuel Wagering Trust Fund; authorizing certain local ordinances relating to bingo; providing an appropriation and authorizing positions; providing a credit against first-year license or registration fees and refunds for license fees previously paid and not refunded; repealing s. 6 of ch. 92-280, Laws of Florida, which provides for review and repeal of s. 849.0931, F.S.; providing effective dates.

Senator Grant moved that the Senate concur in the House amendment. The motion failed. The vote was:

Yeas—10 Nays—27

The Senate refused to concur in the House amendment and the House was requested to recede. The action of the Senate was certified to the House.

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 1204 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 1204—A bill to be entitled An act relating to the courts; amending s. 35.22, F.S., relating to fees collected by the district courts of appeal; authorizing teleconferencing fees; amending s. 44.102, F.S.; revising the confidentiality privilege in court-ordered mediation cases; amending s. 44.103, F.S.; providing specific authorization for the practice of having parties pay for court-ordered, nonbinding arbitration services; providing for compensation of arbitrators by the county or the parties; providing for volunteer arbitrators; amending s. 683.19, F.S.; authorizing each chief circuit judge to designate Good Friday as a legal holiday for the courts within the judicial circuit; repealing s. 44.105, F.S., for the purpose of deleting the limitation on referral to both mediation and arbitration; creating s. 16.58, F.S.; creating the Florida Legal Resource Center within the Department of Legal Affairs; providing for the duties of the center; providing for reports; amending s. 287.057, F.S.; revising language with respect to the procurement of specified legal services; reenacting s. 287.058(5), F.S., relating to contract documents, to incorporate the amendment to s. 287.057, F.S., in a reference thereto; amending s. 287.059, F.S.; revising language with respect to private attorney services; providing a definition; providing criteria for contracting for private attorney services; providing requirements to be used by the Attorney General

with respect to the use of private attorney services; providing for rules; authorizing the Attorney General to competitively bid contract court reporting services; providing an effective date.

House Amendment 1—On page 14, line 8, after "agency" insert: *or his or her designee,*

House Amendment 2—On page 11, line 17, after the period (.) insert: *Those agencies exempt from written approval from the Attorney General, as described in paragraphs (2)(a)-(f), may contract with the Department of Legal Affairs for attorney services. The Attorney General shall determine on a case-by-case basis whether to provide such attorney services as staffing, expertise, or other legal considerations warrant.*

House Amendment 3—On page 10, lines 20 through 23, strike all of said lines and insert:

(e) Procured by the Board of Regents and the universities of the state university system.

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

SB 1204 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—33 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 1212 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1212—A bill to be entitled An act relating to the Uniform Commercial Code; amending s. 679.402, F.S.; requiring certain financial statements to be printed in certain type; providing for certain notice requirements; amending s. 679.501, F.S.; providing for discharge of certain security interests under certain circumstances; providing an effective date.

House Amendment 1—On page 2, line 9, after *"Severs"* insert: *without damage*

On motion by Senator Weinstein, the Senate refused to concur in the House amendment and the House was requested to recede. The action of the Senate was certified to the House.

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 1438 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1438—A bill to be entitled An act relating to handicapped persons; creating s. 553.501, F.S.; providing a short title; creating s. 553.502, F.S.; providing intent; creating s. 553.503, F.S.; adopting certain guidelines; creating s. 553.504, F.S.; providing exceptions to such guidelines; creating s. 553.505, F.S.; providing exceptions to applicability of the act; creating s. 553.506, F.S.; providing powers of the Board of Building Codes and Standards; creating s. 553.507, F.S.; providing exemptions; creating s. 553.508, F.S.; providing for architectural barrier removal; providing criteria; creating s. 553.509, F.S.; providing for clarification of existing law; transferring and renumbering ss. 553.481, 553.482, 553.49, and 553.495, F.S., as ss. 553.510, 553.511, 553.512, 553.513, 553.511, F.S., respectively; amending s. 316.1964, F.S.; providing an exemption for certain public airport parking facilities under certain circumstances; repealing ss. 553.45, 553.46, 553.47, 553.48, 553.485, F.S., relating to accessibility by handicapped persons; amending s. 316.1955, F.S.; providing additional criteria for parking spaces provided by governmental agencies for certain disabled persons; providing an effective date.

House Amendment 1—On page 2, line 27, through page 3, line 6, strike all of said lines and insert:

(2) All new single-family houses, duplexes, triplexes, condominiums, and townhouses shall provide at least one bathroom, located with maximum possible privacy, where bathrooms are provided on habitable grade levels, with a door that has a 29-inch clear opening. However, if only a toilet room is provided at grade level, such toilet room shall have a clear opening of not less than 29 inches.

House Amendment 2—On page 9, line 30, through page 10, line 24, strike all of said lines and renumber subsequent sections.

House Amendment 3—On page 3, lines 7-10, strike all of said lines and insert: clear opening of not less than 29 inches.

(3) All required doors and walk through openings in buildings excluding single family homes, duplexes, and triplexes not covered by the Americans with Disabilities Act of 1990 or the Fair Housing Act shall have at least 29 inches of clear width except under ss. 553.501-553.513.

(Renumber subsequent subsections.)

Senator Jones moved that the Senate refuse to concur in **House Amendment 1**. The motion failed.

On motion by Senator Jones, the Senate reconsidered the vote by which the Senate refused to concur in **House Amendment 1**.

On motions by Senator Jones, the Senate concurred in **House Amendments 1, 2** and **3**.

CS for SB 1438 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—33 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 1552 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1552—A bill to be entitled An act relating to construction contracting; amending s. 489.105, F.S.; changing the term "underground utility contractor" to "underground utility and excavation contractor"; amending ss. 489.107 and 633.521, F.S.; conforming language; amending s. 489.113, F.S.; authorizing certain contractors to perform additional duties within their licenses; creating s. 489.1135, F.S.; providing for the designation of underground utility and excavation contractors; providing for certification; providing that persons licensed as underground utility contractors on the effective date of the act are automatically licensed as underground utility and excavation contractors; providing an effective date.

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

Section 1. Subsections (1), (5), (6), and (7) of section 489.103, Florida Statutes, 1992 Supplement, are amended to read:

489.103 Exemptions.—This part does not apply to:

(1) Contractors in work on bridges, roads, streets, highways, or railroads, and services incidental thereto. *The board, in agreement with the Department of Transportation, shall, by rule, define "services incidental thereto" for the purposes of this subsection only.*

(5) Public utilities, including telecommunications companies as defined in s. 364.02(7), on construction, maintenance, and development work performed by their employees, which work, including, but not limited to, work on bridges, roads, streets, highways, or railroads, is incidental to their business. *The board shall define, by rule, the term "incidental to their business" for purposes of this subsection.*

(6) The sale or installation of any finished products, materials, or articles of merchandise *that* ~~which~~ are not fabricated into and do not become a permanent fixed part of the structure, *such as awnings. However, this subsection does not exempt* ~~except for~~ inground spas and swimming pools that involve excavation, plumbing, chemicals, or wiring of any appliance without a factory-installed electrical cord and plug. This subsection *does* ~~shall~~ not ~~be construed to~~ limit the exemptions provided in subsection (7).

(7) Owners of property when acting as their own contractor and providing all material supervision themselves, when building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings at a cost of under $25,000 on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of *any* ~~more than one~~ such structure by the owner-builder within 1 year after completion of same *creates a presumption* ~~is prima facie evidence~~ that the construction was undertaken for purposes of sale or lease. This subsection does not exempt any person who is employed by such owner and who acts in the capacity of a contractor. For the purposes of this subsection, the term "owners of property" includes the owner of a mobile home situated on a leased lot. To qualify for exemption under this subsection, an owner must personally appear and sign the building permit application. The local permitting agency shall provide the person with a disclosure statement in substantially the following form:

Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own contractor even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family or two-family residence or a farm outbuilding. You may also build or improve a commercial building at a cost of $25,000 or less. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease *a* ~~more than one~~ building you have built yourself within 1 year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of this exemption. You may not hire an unlicensed person as your contractor. ~~Your construction must be done according to building codes and zoning regulations.~~ It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. *Any person working on your building who is not licensed must work under your supervision and must be employed by you, which means that you must deduct F.I.C.A. and withholding tax and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.*

Section 2. Subsection (13) of section 489.105, Florida Statutes, 1992 Supplement, as created by chapter 90-228, Laws of Florida, is hereby repealed, subsection (3) is amended, and new subsections (13), (14), (15), (16), (17), and (18) are added to said section, to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and shall only be responsible for, the project ~~that person~~ contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or by others construct, repair, alter, remodel, add to, *demolish* subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs *(d)-(q)* ~~(d)-(o)~~:

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he may do, except as provided in this part.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which commercial or residential buildings do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, when not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same and including the balancing of air-handling systems.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, when not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof.

(f) "Class A air conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith; to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring.

(g) "Class B air conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system being installed under this classification; to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring.

(h) "Class C air conditioning contractor" means a contractor whose business is limited to the servicing of air conditioning, heating, or refrigeration systems, including duct alterations in connection with those systems he is servicing, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. No person not previously registered or certified as a Class C air conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air conditioning contractors who held Class C licenses prior to October 1, 1988.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air conditioning, refrigera-

tion, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith; to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air conditioning control wiring; and to install a condensate drain from an air conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum gas fuel lines within buildings, potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring.

(j) "Commercial pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of such work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, construction of floors, guniting, fiberglassing, installation of tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, construction of decks, construction of equipment rooms or housing for pool equipment, and installation of package pool heaters. However, the scope of such work does not include direct connections to a sanitary sewer system or to potable water lines.

(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, and servicing of any residential swimming pool or hot tub or spa, regardless of use. The scope of such work includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, construction of floors, guniting, fiberglassing, installation of tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, construction of decks, installation of housing for pool equipment, and installation of package pool heaters. However, the scope of such work does not include direct connections to a sanitary sewer system or to potable water lines.

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves the servicing, repair, water treatment, including, but not limited to, the direct infusion of chlorine gas accomplished through the use of machinery attached to the pool, and maintenance of any swimming pool or hot tub or spa, whether public or private. The scope of such work may include any necessary piping and repairs, replacement and repair of existing equipment, or installation of new additional equipment as necessary. The scope of such work includes the reinstallation of tile and coping, repair and replacement of all piping, filter equipment, and chemical feeders of any type, replastering, reconstruction of decks, and reinstallation or addition of pool heaters.

(m) "Plumbing contractor" means a contractor whose contracting business consists of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, when not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, when not prohibited by law, design the following without obtaining any additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities; venting systems; public or private water supply systems; septic tanks; drainage and supply wells; swimming pool piping; irrigation systems; or solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas (excluding liquid petroleum gases), and storm and sanitary sewer lines; and water and sewer plants and substations. The scope of work of the plumbing contractor also includes the design, when not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers to the extent authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in such a manner as to comply with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor shall apply to private property and public property, shall include any excavation work incidental thereto, and shall include the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified herein as being the work of a trade other than that of a plumbing contractor. Nothing in this definition shall be construed to limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6). Nothing in this definition shall be construed to require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.

(n) "Underground utility *and excavation* contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, of main sanitary sewer collection systems, main water distribution systems, ~~and~~ storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. An underground utility contractor shall not install any piping that is an integral part of a fire protection system as defined in s. 633.021(7) beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to the provisions of chapter 489, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide any services enumerated in this paragraph that are within the scope of the services such contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, when not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) ~~(p)~~ "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction and whose scope is limited to a subset of the activities described in the categories established in one of the paragraphs of this subsection.

(13) "Business organization" means any partnership, corporation, business trust, joint venture, or other legal entity which engages or offers to engage in the business of contracting or acts as a contractor as defined in this section.

(14) "Financially responsible officer" means a person other than the primary qualifying agent who with the approval of the board assumes personal responsibility for all financial aspects of the business organization.

(15) "Structural component" means any vertical or horizontal load-bearing member of a structure which supports dead or live loads in addition to its own weight and includes, but is not limited to, a foundation, an exterior or interior load-bearing wall, a column, a column beam, a floor, and a roof structure.

(16) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which is binding on the parties.

(17) "Pollutant storage tank" means a tank, together with associated piping or dispensing facilities, which is or could be used for the storage or supply of pollutants as defined in s. 376.301 and which is required to be registered under chapter 17-761 of the Florida Administrative Code.

(18) "Tank" means any container other than one which is aboveground and either elevated or situated upon an impermeable surface, or which is located in an accessible underground area and either elevated or situated upon an impermeable surface therein, in such manner that any leak in such container may be readily detected.

~~(13) "Mediation" means a process whereby a neutral third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement.~~

Section 3. Paragraph (i) of subsection (2) and paragraph (b) of subsection (4) of section 489.107, Florida Statutes, 1992 Supplement, are amended to read:

489.107 Construction Industry Licensing Board.—

(2) The board shall consist of eighteen members, of whom:

(i) One is primarily engaged in business as an underground utility *and excavation* contractor;

(4) The board shall be divided into two divisions, Division I and Division II.

(b) Division II is comprised of the roofing contractor, sheet metal contractor, air conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility *and excavation* contractor members of the board; one of the members appointed pursuant to paragraph (2)(j); and one of the members appointed pursuant to paragraph (2)(k). Division II has jurisdiction over the examination and regulation of *contractors defined in s. 489.105(3)(e)-(r)* ~~roofing contractors, sheet metal contractors, air conditioning contractors, mechanical contractors, pool contractors, plumbing contractors, and underground utility contractors~~.

Section 4. Section 489.1135, Florida Statutes, is created to read:

489.1135 Underground utility and excavation contractors; designation; certificate.—

(1) Each business entity which at the time of application is not qualified by a construction contractor licensed pursuant to s. 489.105(3)(n), and is qualified by the Department of Transportation as of January 1, 1993, in both the "grading" and "drainage" classes established in rule pursuant to s. 337.14, may designate one person for certification as an underground utility and excavation contractor, providing that person:

(a) Has at least 5 years' experience in grading and drainage work, at least 2 years of which must have been in a supervisory capacity with the qualified business entity.

(b) Is at least 18 years of age.

(c) Is an employee of, or has an ownership interest in, that business entity.

(2) The board shall issue, without examination, a certificate in the category of underground utility and excavation to an applicant properly designated pursuant to subsection (1), provided the board has received a completed application, including an application fee of $150 and a certification fee of $125, from such applicant prior to April 1, 1994, and provided the applicant:

(a) Has not had a registration or certificate which was issued by the board suspended, revoked, or relinquished or deposited in lieu of further disciplinary action.

(b) Does not have a disciplinary case pending before the board, or the Department of Transportation.

(c) Has not been convicted of a crime in any jurisdiction which directly related to the practice of contracting or the ability to practice contracting.

Section 5. Subsection (3) of section 633.521, Florida Statutes, is amended to read:

633.521 Certificate application and issuance; examination and investigation of applicant.—

(3) As a prerequisite to taking the examination for certification as a Contractor I, Contractor II, or Contractor III, the applicant must be at least 18 years of age, be of good moral character, and shall possess 4 years' proven experience in the employment of a fire protection system Contractor I, Contractor II, or Contractor III or a combination of equivalent education and experience. As a prerequisite to taking the examination for certification as a Contractor IV, the applicant shall be at least 18 years old, be of good moral character, and have at least 2 years' proven experience in the employment of a fire protection system Contractor I, Contractor II, Contractor III, or Contractor IV or combination of equivalent education and experience which combination need not include experience in the employment of a fire protection system contractor. As a prerequisite to taking the examination for certification as a Contractor V, the applicant shall be at least 18 years old, be of good moral character, and have been licensed as a certified underground utility *and excavation* contractor pursuant to chapter 489, have verification by an individual who is licensed as a certified utility contractor pursuant to chapter 489 that the applicant has 4 years' proven experience in the employ of a certified underground utility *and excavation* contractor, or have a combination of education and experience equivalent to 4 years' proven experience in the employ of a certified underground utility *and excavation* contractor. Within 30 days from the date of the examination, the State Fire Marshal shall inform the applicant in writing whether he has qualified or not and, if the applicant has qualified, that he is ready to issue a certificate of competency, subject to compliance with the requirements of subsection (4).

Section 6. Any person licensed as an underground utility contractor on the effective date of this act is automatically licensed as an underground utility and excavation contractor pursuant to this act.

Section 7. Section 489.109, Florida Statutes, 1992 Supplement, is amended to read:

489.109 Fees.—

(1) The board, by rule, shall establish reasonable fees to be paid for applications, examination, certification and renewal, registration and renewal, and recordmaking and recordkeeping. The fees shall be established as follows:

(a) With respect to an applicant for a certificate, the initial application and examination fee shall not exceed $350, and the initial certification fee and the renewal fee shall not exceed $200; *however, any applicant who seeks certification under this part by taking a practical examination shall pay as an examination fee the actual cost incurred by the department in conducting the examination.* ~~and~~

(b) With respect to an applicant for registration, the initial application fee shall not exceed *$100* ~~$50~~, and the initial registration fee and the renewal fee shall not exceed $200.

(c) The board, by rule, may ~~also~~ establish penalty fees, not to exceed *the applicable renewal fee* ~~$50 for certification and $50 for registration~~ for renewal applications made *after the expiration date of the certificate or registration* ~~within 90 days after the end of the period~~.

(d) The board, by rule, may establish a fee for transfer of a certificate or registration from one business organization to another, not to exceed *the applicable renewal fee* ~~$50~~.

(e) The board, by rule, shall impose a renewal fee for an inactive status certificate or registration, not to exceed the renewal fee for an active status certificate or registration. The board, by rule, may provide for a different fee for voluntary inactive status where such status is sought by a building code administrator or inspector certified pursuant to part XII of chapter 468 who is employed by a local government and is not allowed by the terms of such employment to maintain a certificate on active status issued pursuant to this part.

(f) The board, by rule, shall impose an additional late fee on a delinquent status certificateholder or registrant when such certificatehólder or registrant applies for active or inactive status.

(g) The board, by rule, shall impose an additional fee, not to exceed the applicable renewal fee, which reasonably reflects the costs of processing a certificateholder's or registrant's request to change licensure status at any time other than at the beginning of a licensure cycle.

(2) The board shall establish fees which are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of the construction industry.

~~(2) Failure to renew an active or voluntary inactive certificate or registration within 90 days after the date of renewal will result in the certificate or registration becoming involuntarily inactive. Failure to reactivate an involuntarily inactive certificate or registration after two consecutive renewal periods have lapsed will result in the certificate or registration becoming null and void without further action of the board. The department shall notify certificateholders and registrants who have failed to reactivate their certificates or registrations for a renewal period that such certificates or registrations shall become null and void if not renewed by the end of the second period.~~

~~(3) A certificate or registration which is involuntarily inactive may be reactivated by application to the department, including payment of an application fee for reactivation not to exceed $100 as established by board rule, complying with any background investigation that may be required by the board, and upon payment of the current renewal fee for each renewal period in which the certificate or registration was involuntarily inactive and payment of the penalty fee.~~

~~(4) The department shall notify those certificateholders and registrants currently in an inactive status of the provisions of this section at the time of the next renewal period.~~

~~(5) A certificateholder or registrant whose license has become null and void may reapply to the board for certification or registration. The board may waive education and experience requirements as promulgated by board rule upon reapplication; however, the board may require any additional current requirements for certification or registration, including reexamination.~~

~~(6) A person who is registered or holds a valid certificate from the board may go on voluntary inactive status during which time he shall not engage in contracting, but may retain his certificate or registration on an inactive basis, on payment of a renewal fee during the inactive period, not to exceed $50 per renewal period. To go off voluntary inactive status, such person shall be required only to pay the regular renewal fee for certification or registration.~~

(3)~~(7)~~ In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all certificateholders and registrants shall pay a fee of $4 to the department at the time of application or renewal. The funds shall be transferred at the end of each licensing period to the Department of Education to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida. The board shall, at the time the funds are transferred, advise the Department of Education on the most needed areas of research or continuing education based on significant changes in the industry's practices or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the Department of Education. The Department of Education shall allocate 50 percent of the funds to a graduate program in building construction in a Florida university and 50 percent of the funds to all accredited private and state universities and community colleges within the state offering approved courses in building construction, with each university or college receiving a pro rata share of such funds based upon the number of full-time building construction students enrolled at the institution. The Department of Education shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The Department of Education shall cause a report to be made to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.

Section 8. Subsections (2), (3), (4), and (9) of section 489.113, Florida Statutes, 1992 Supplement, are amended to read:

489.113 Qualifications for practice; restrictions.—

(2) No person who is not certified or registered shall engage in the business of contracting in this state. *However, for purposes of complying with the provisions of this chapter, a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered, provided that the work is within the scope of the supervisor's license and provided that the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in s. 489.105(3)(d)-(o). This subsection does not affect the application of any local construction licensing ordinances.* To enforce this subsection:

(a) The department shall issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of such order.

(b) A county, municipality, or local licensing board created by special act may issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part.

(3) A contractor shall subcontract *all* ~~the~~ electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air conditioning work ~~for which a local examination for a certificate of competency or a license is required~~, unless such contractor holds a state certificate *or registration in* ~~of competency or license of~~ the respective trade category, *however:* ~~as required by the appropriate local authority.~~

(a) A general, building, or residential contractor, except as otherwise provided in this part, shall be responsible for any construction or alteration of a structural component of a building or structure, and any general contractor or underground utility and excavation contractor may perform clearing and grubbing, grading, excavation, and other site work for any project in the state. Any building or residential contractor may perform clearing and grubbing, grading, excavation, and other site work, limited to the lot on which any specific building is located.

(b) ~~However,~~ A general, building, or residential contractor shall not be required to subcontract the installation, *or repair made under warranty,* of wood shingles, wood shakes, or asphalt or fiberglass shingle roofing materials on a new building of his own construction. ~~, and~~

(c) A general contractor shall not be required to subcontract structural swimming pool work.

(d) ~~Further,~~ A general contractor, on new site development work, site redevelopment work, mobile home parks, and commercial properties, shall not be required to subcontract the construction of the main sanitary sewer collection system, the storm collection system, and the water distribution system, not including the continuation of utility lines from the mains to the buildings.

(e) A ~~Further, as to mobile home parks, the~~ general contractor shall not be required to subcontract the continuation of utility lines from the mains *in mobile home parks*, and *such* ~~the~~ continuations are to be considered a part of the main sewer collection and main water distribution systems.

(f) ~~Further,~~ A solar contractor shall not be required to subcontract minor, as defined by board rule, electrical, mechanical, plumbing, or roofing work so long as that work is within the scope of the license held by the solar contractor and where such work exclusively pertains to the installation of residential solar energy equipment as defined by rules *of* the board adopted in conjunction with the Electrical Contracting Licensing Board. ~~This subsection does not apply if the local authority does not require a certificate of competency or license for such trade.~~

(g) ~~However,~~ No general, building, or residential contractor certified after 1973 shall act as, hold himself out to be, or advertise himself to be a roofing contractor unless he is certified or registered as a roofing contractor. ~~Any general contractor currently qualifying as a swimming pool company shall have a period of 2 years from the effective date of this act in which to obtain either a registered or certified commercial or residential pool license.~~

(4)*(a)* When a certificateholder desires to engage in contracting in any area of the state, as a prerequisite therefor, he shall be required only to exhibit to the local building official, tax collector, or other person in

charge of the issuance of licenses and building permits in the area evidence of holding a current certificate and to pay the fee for the occupational license and building permit required of other persons.

(b) Notwithstanding the provisions of paragraph (a) ~~However~~, a local construction regulation board may deny the issuance of a building permit to a certified contractor, or issue a permit with specific conditions, if the local construction regulation board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the county or municipality that the local construction regulation board represents or if the local construction regulation board has proof that such contractor, through the public hearing process, has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and finds, after providing notice *of an opportunity to be heard* to the contractor, that such fraud or violation would have been fraud or a violation if committed in the county or municipality that the local construction board represents. Notification of and information concerning such permit denial shall be submitted to the Department of Professional Regulation within 15 days after the local construction regulation board decides to deny the permit.

(c) The local government may also deny issuance of, or may suspend, any outstanding building permit where a contractor fails or refuses to provide proof of public liability and property damage insurance coverage as required by s. 489.115(5) and workers' compensation insurance coverage as required by s. 489.114.

(9) Nothing in this part shall be construed to prevent any contractor from acting as a prime contractor where the *majority* ~~bulk~~ of the work to be performed under the contract is within the scope of his license and from subcontracting to other licensed contractors that remaining work which is *part* ~~incidental to the completion~~ of the project contracted.

Section 9. Section 489.114, Florida Statutes, is reenacted to read:

489.114 Evidence of workers' compensation coverage.—Any person, business organization, or qualifying agent engaged in the business of contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate or registration of the contractor, provide to the Construction Industry Licensing Board, as provided by board rule, evidence of workers' compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the Department of Labor and Employment Security receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that such cancellation has occurred or that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation shall result solely from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section. The department shall notify the persons or entities governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine as provided by rule. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate or registration of the contractor under the provisions of s. 489.129.

Section 10. Section 489.115, Florida Statutes, 1992 Supplement, is amended to read:

489.115 Certification and registration; endorsement; renewals; *continuing education.*—

(1) No person may engage in the business of contracting in this state without first being certified or registered in the proper classification.

(2)~~(1)~~(a) The department shall issue a certificate or registration to each person qualified by the board and upon receipt of the original license fee.

(b) Certification allows the certificateholder to engage in contracting only for the type of work covered by the certificate *and only while the certificate is on active status.*

(3)~~(2)~~ The board shall certify as qualified for certification by endorsement any applicant who:

(a) Meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this part; and has satisfied the requirements set forth in s. 489.111; or

(b) Holds a valid license to practice contracting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to Florida's current certification criteria.

(4)~~(3)~~(a) Each certificateholder or registrant who desires to continue as a certificateholder or registrant shall renew his certificate or registration every 2 years~~, except that the department may issue a 3-year license to certificateholders renewing for the 3-year period beginning July 1, 1989, notwithstanding any other law to the contrary~~. The department shall mail each certificateholder and registrant an application for renewal.

(b) Each certificateholder or registrant shall provide proof, in a form established by rule of the board, that the certificateholder or registrant has completed at least 14 classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate or registration. The board shall by rule establish criteria for the approval of continuing education courses and providers and may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

(c)~~(b)~~ The certificateholder or registrant shall complete, sign, and forward the renewal application to the department, together with the appropriate fee. Upon receipt of the application and fee, the department shall renew the certificate or registration.

(5)(a)~~(4)~~ As a prerequisite to the initial issuance or the renewal of a certificate or registration, the applicant shall submit an affidavit on a form provided by the board attesting to the fact that the applicant has obtained *workers' compensation insurance as required by chapter 440,* public liability *insurance,* and property damage insurance for the safety and welfare of the public, in amounts determined by rule of the board. The board shall by rule establish a procedure to verify the accuracy of such affidavits based upon a random sample method.

(b) In addition to the affidavit of insurance, as a prerequisite to the initial issuance of a certificate, the applicant shall furnish evidence of financial responsibility, credit, and business reputation of either himself or the business organization he desires to qualify. The board shall adopt rules defining financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy or assignment of receivers. Such rules shall specify the financial responsibility grounds on which the board may refuse to qualify an applicant for certification.

(c) If, within 60 days from the date the applicant is notified that he has qualified, he does not provide the evidence required, he shall apply to the department for an extension of time which shall be granted upon a showing of just cause.

(6)~~(5)~~ An initial applicant shall, along with his application, and a certificateholder or registrant shall, upon requesting a change of status, submit to the board a credit report from a nationally recognized credit agency that reflects the financial responsibility of the applicant or certificateholder or registrant. The credit report required for the initial applicant shall be considered the minimum evidence necessary to satisfy the board that he is financially responsible to be certified, that he has the necessary credit and business reputation to engage in contracting in the state, and that he has the minimum financial stability necessary to avoid the problem of financial mismanagement or misconduct. The board shall, by rule, adopt guidelines for determination of financial stability.

Section 11. Section 489.116, Florida Statutes, is created to read:

489.116 Inactive and delinquent status; renewal and cancellation notices.—

(1) A certificateholder or registrant may not engage in contracting unless the certificateholder or registrant has an active status certificate or registration. A certificateholder or registrant who engages in contracting without an active status certificate or registration is subject to disciplinary action as provided in ss. 455.227 and 489.129.

(2) The board shall permit a certificateholder or registrant to elect, at the time of licensure renewal, an active or inactive status.

(3) An inactive status certificateholder or registrant may change to active status at any time, provided the certificateholder or registrant meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, and pays any applicable late fees.

(4) A certificateholder or registrant shall apply with a completed application, as determined by board rule, to renew an active or inactive status certificate or registration before the certificate or registration expires. Failure of a certificateholder or registrant to so apply shall cause the certificate or registration to become an involuntary inactive certificate or registration. Further, any certificateholder or registrant who fails to apply to renew licensure on either active or inactive status within 60 days after the expiration of the previous licensure cycle shall become a delinquent status certificateholder or registrant.

(5) A delinquent status certificateholder or registrant must apply with a completed application, as determined by board rule, for active or inactive status during the current licensure cycle. Failure by a delinquent status certificateholder or registrant to become active or inactive before the expiration of the current licensure cycle renders the certificate or registration void, and any subsequent licensure shall be subject to all procedures and requirements imposed on an applicant for initial licensure.

(6) An inactive certificateholder or registrant shall comply with the same continuing education requirements, if any, that are imposed on an active status certificateholder or registrant.

(7) The status or any change in status of a certificateholder or registrant shall not alter in any way the board's right to impose discipline or to enforce discipline previously imposed on a certificateholder or registrant for acts or omissions committed by the certificateholder or registrant while holding a certificate or registration.

(8) At least 60 days prior to the end of a licensure cycle, the department shall forward:

(a) A licensure renewal notification to an active or inactive certificateholder or registrant at the certificateholder's or registrant's address of record.

(b) A notice of pending cancellation of licensure to a delinquent status certificateholder or registrant at the certificateholder's or registrant's address of record.

Section 12. Section 489.117, Florida Statutes, 1992 Supplement, is amended to read:

489.117 Registration; *specialty contractors.*—

(1)*(a)* Any person engaged in the business of *a contractor* ~~contracting~~ in the state shall be registered in the proper classification, unless he is certified. Any person entering the business of *a contractor* ~~contracting~~ shall be registered prior to engaging in *business as a contractor* ~~contracting~~, unless he is certified. To be initially registered, the applicant shall submit the required fee and file evidence, in a form provided by the department, of holding a current local occupational license issued by any municipality, county, or development district for the type of work for which registration is desired and evidence of successful compliance with the local examination and licensing requirements, if any, in the area for which registration is desired. No examination shall be required for registration.

(b)~~(2)~~ Registration allows the registrant to engage in contracting only in the counties, municipalities, or development districts where he has complied with all local licensing requirements and only for the type of work covered by the registration.

(c) Each registrant shall report to the board each local jurisdiction and each category of registration in which the registrant holds a certificate of competency or license, or where the registrant has been granted a certificate of competency or license by reciprocal agreement, for which registration is required by this part, within 30 days after obtaining such certificate or license.

(2) No new registration may be issued by the board after July 1, 1993, based on any certificate of competency or license for a category of contractor defined in s. 489.105(3)(a)-(o) which is issued by a municipal or county government that does not exercise disciplinary control and oversight over such locally licensed contractors, including forwarding a recommended order in each action to the board as provided in s. 489.131(7). For purposes of this subsection and s. 489.131(10), the board shall determine the adequacy of such disciplinary control by reviewing the local government's ability to process and investigate complaints and to take disciplinary action against locally licensed contractors.

(3)*(a)* Upon findings of fact supporting the need therefor, the board may grant a limited nonrenewable registration to a contractor not domiciled in the state, for one project. During the period of such registration the board may require compliance with this and any other statute of the state.

(b)~~(4)~~ The application for a temporary registration shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of contracting for which the temporary license was issued.

(4)~~(5)~~(a) A person holding a local license whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)*(a)-(o)*~~(a)-(o)~~, or the job scope of one of the certified contractor categories previously established by board rule as of the effective date of this provision, shall not be required to register with the board *to perform contracting activities within the scope of such specialty license.*

(b) A local jurisdiction may require an individual holding a local *specialty* contractor license in a category which pursuant to paragraph (a) does not permit registration to obtain a tracking registration from the board, provided that the board has established by rule that the activities which comprise the job scope of the local *specialty* contractor license involve life safety considerations and a significant potential danger to the consumer.

(c) The local jurisdictions shall be responsible for providing licensure and disciplinary information on such locally licensed individuals to the board, and the board shall maintain such licensure and disciplinary information as is provided to them, and shall *make* ~~provide~~ such information *available through the automated information system provided pursuant to s. 489.120* ~~upon request to local building departments and to other interested parties as determined by board rule~~. The *biennial* tracking registration fee shall not exceed $40.

(d) Neither the board nor the department assumes any responsibility for providing discipline pursuant to having provided the tracking registration. Providing discipline to such locally licensed individuals shall be the responsibility of the local jurisdiction. Failure to obtain a tracking registration shall not be considered a violation of this chapter; however, a local jurisdiction requiring such tracking registration may levy such penalties for failure to obtain the tracking registration as it chooses to provide through local ordinance.

(e) Any person who is not required to obtain registration or certification pursuant to s. 489.105(3)(d)-(o) may perform specialty contracting services for the construction, remodeling, repair or improvement of single-family residences without obtaining a local professional license if such person is under the supervision of a certified or registered general, building, or residential contractor.

Section 13. Section 489.119, Florida Statutes, 1992 Supplement, is amended to read:

489.119 Business organizations; qualifying agents.—

(1) If an individual proposes to engage in contracting in his own name, registration or certification may be issued only to that individual.

(2)~~(a)~~ If the applicant proposes to engage in contracting as a *business organization, including any* partnership, corporation, business trust, or other legal entity, or in any name other than his legal name, the *business organization* ~~applicant~~ must apply *for certification or registration* through a qualifying agent, *or the individual applicant must apply for certification or registration under the fictitious name.*

(a) The application must state the name of the partnership and of its partners; the name of the corporation and of its officers and directors and the name of each of its stockholders who is also an officer or director; the name of the business trust and its trustees; or the name of such other legal entity and its members; *and must state the fictitious name, if any, under which the business organization is doing business.*

1. The application for primary qualifying agent must include an affidavit on a form provided by the board attesting that the applicant has final approval authority on all checks, drafts, or payments, regardless of the form of payment, made by the entity, and that the applicant has final approval authority for all construction work performed by the entity.

2. The application for financially responsible officer must include an affidavit on a form provided by the board attesting that the applicant's approval is required for all checks, drafts, or payments, regardless of the form of payment, made by the entity, and that the applicant has authority to act for the business organization in all financial matters.

3. The application for secondary qualifying agent must include an affidavit on a form provided by the board attesting that the applicant has authority to supervise all construction work performed by the entity as provided in s. 489.1195(2).

(b) ~~In addition,~~ The applicant must furnish evidence of statutory compliance if a fictitious name is used, the provisions of s. 865.09(7) notwithstanding. ~~Such application must also show that the qualifying agent is legally qualified to act for the business organization in all matters connected with its contracting business and that he has authority to supervise construction undertaken by such business organization.~~

(c) A joint venture, including a joint venture composed of qualified business organizations, is itself a separate and distinct organization that must be qualified in accordance with board rules.

(d) The registration or certification, when issued upon application of a business organization, must be in the name of the *business organization* ~~qualifying agent~~, and the name of the *qualifying agent* ~~business organization~~ must be noted thereon. If there is a change in any information that is required to be stated on the application, the business organization shall, within 45 days after such change occurs, mail the correct information to the department.

~~(b) Any person certified or registered pursuant to part I of this chapter who has had his license revoked shall not be eligible to be a partner, officer, director, or trustee of a business organization defined by this section or be employed in a managerial or supervisory capacity for a 5-year period. Such person shall also be ineligible to reapply for certification or registration under part I of this chapter for a period of 5 years.~~

(3)(a) The qualifying agent shall be certified or registered under this part in order for the business organization to be certified or registered in the category of the business conducted for which the qualifying agent is certified or registered. If any qualifying agent ceases to be affiliated with such business organization, he shall so inform the department. In addition, if such qualifying agent is the only certified or registered *contractor* ~~individual~~ affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and shall have 60 days from the termination of the qualifying agent's affiliation with the business organization in which to employ another qualifying agent. The business organization may not engage in contracting until a qualifying agent is employed, *unless the executive director or chair of the board has granted a temporary nonrenewable certificate or registration to the financially responsible officer, the president, the sole proprietor, a partner, or, in the case of a limited partnership, the general partner, who assumes all responsibilities of a primary qualifying agent for the entity. This temporary certificate or registration shall only allow the entity to proceed with incomplete contracts as defined in s. 489.121.*

(b) The qualifying agent shall inform the department in writing when he proposes to engage in contracting in his own name or in affiliation with another business organization, and he or such new business organization shall supply the same information to the department as required of applicants under this part.

(c) Upon a favorable determination by the board, after investigation of the financial responsibility, credit, and business reputation of the qualifying agent and the new business organization, the department shall issue, without an examination, a new certificate or registration in the *business organization's* ~~qualifying agent's~~ name, and the name of the *qualifying agent* ~~new business organization~~ shall be noted thereon.

(4) When a certified qualifying agent, on behalf of a business organization, makes application for an occupational license in any municipality or county of this state, the application shall be made with the tax collector in the name of the ~~qualifying agent and the name of the~~ business organization *and the qualifying agent*; and the license, when issued, shall be issued to the ~~qualifying agent and the~~ business organization, upon payment of the appropriate licensing fee and exhibition to the tax collector of a valid certificate issued by the department, and the state license number shall be noted thereon.

(5)(a) Each registered or certified contractor shall affix the number of his registration or certification to each application for a building permit and on each building permit issued and recorded. Each city or county building department shall require, as a precondition for the issuance of the building permit, that the contractor taking out the permit must provide verification giving his Construction Industry Licensing Board registration or certification number.

(b) The registration or certification number of each contractor shall appear in any *proposal, bid, contract,* newspaper, airwave transmission, phone directory, or other advertising medium, *as defined by board rule,* used by that contractor *in the practice of contracting.*

(6) Each qualifying agent shall pay the department an amount equal to the original fee for certification or registration of a new business organization. If the qualifying agent for a business organization desires to qualify additional business organizations, the board shall require him to present evidence of ability and financial responsibility of each such organization. The issuance of such certification or registration is discretionary with the board.

~~(7) If a business organization or any of its partners, officers, directors, trustees, or members is fined for violating s. 489.129(2), the board may, on that basis alone, deny issuance of a certificate or registration to a qualifying agent on behalf of that business organization.~~

Section 14. Section 489.1195, Florida Statutes, is amended to read:

489.1195 Responsibilities.—

(1) A qualifying agent is a primary qualifying agent unless he is a secondary qualifying agent under this section.

(a) All primary qualifying agents for a business organization are jointly and equally responsible for supervision of all operations of the business organization; for all field work at all sites; and for financial matters, both for the organization in general and for each specific job.

(b) Upon approval by the board, a business entity may designate a financially responsible officer for purposes of certification or registration. A financially responsible officer shall assume personal responsibility for all financial aspects of the business organization and may not be designated as the primary qualifying agent.

(c) Where a business organization has a certified or registered financially responsible officer, the primary qualifying agent shall be responsible for all construction activities of the business organization, both in general and for each specific job.

(2)*(a)* One of the qualifying agents for a business organization that has more than one qualifying agent may be designated as the sole primary qualifying agent for the business organization by a joint agreement that is executed, on a form provided by the board, by all qualifying agents for the business organization.

(b) The joint agreement must be submitted to the board for approval. If the board determines that the joint agreement is in good order, it shall approve the designation and immediately notify the qualifying agents of such approval. The designation made by the joint agreement is effective upon receipt of the notice by the qualifying agents.

(c) The qualifying agent designated for a business organization by a joint agreement is the sole primary qualifying agent for the business organization, and all other qualifying agents for the business organization are secondary qualifying agents.

(d)~~(a)~~ A designated sole primary qualifying agent has all the responsibilities and duties of a primary qualifying agent, notwithstanding that there are secondary qualifying agents for specified jobs. The designated sole primary qualifying agent is jointly and equally responsible with secondary qualifying agents for field work supervision.

(e)~~(b)~~ A secondary qualifying agent is responsible only for:

1. The supervision of field work at sites where his license was used to obtain the building permit; and

2. Any other work for which he accepts responsibility.

A secondary qualifying agent is not responsible for supervision of financial matters.

(3)(a) A qualifying agent who has been designated by a joint agreement as the sole primary qualifying agent for a business organization may terminate his status as such by giving actual notice to the business organization, to the board, and to all secondary qualifying agents of his intention to terminate his status. His notice to the board must include proof satisfactory to the board that he has given the notice required in this paragraph.

(b) The status of the qualifying agent shall cease upon the designation of a new primary qualifying agent or 60 days after satisfactory notice of termination has been provided to the board, whichever first occurs.

(c) If no new primary qualifying agent has been designated within 60 days, all secondary qualifying agents for the business organization shall become primary qualifying agents unless the joint agreement specifies that one or more of them shall become sole qualifying agents under such circumstances, in which case only they shall become sole qualifying agents.

(d)~~(b)~~ Any change in the status of a qualifying agent is prospective only. A qualifying agent is not responsible for his predecessor's actions but is responsible, even after a change in status, for matters for which he was responsible while in a particular status.

Section 15. Section 489.124, Florida Statutes, 1992 Supplement, is amended to read:

489.124 Business records requirements; *address of record; service.*—

(1) All contractors who are registered or certified pursuant to this chapter shall maintain complete financial and business records for the immediately preceding 3 years. The business and financial records to be maintained shall include minutes of corporate meetings, business contacts, telephone records, insurance policies, letters of complaint, notices received from government entities, bank statements, canceled checks, records of accounts receivable and payable, financial statements, loan documents, tax returns, and all other business and financial records the contractor maintains in the regular course of business.

(2) Each certificateholder or registrant of the department shall be solely responsible for notifying the department in writing of the certificateholder's or registrant's current mailing address and phone number. If the mailing address is not the certificateholder's or registrant's physical address, the certificateholder or registrant shall also supply the physical address.

(a) A certificateholder's or registrant's failure to notify the department of a change of address or phone number shall constitute a violation of this section.

(b) The certificateholder or registrant shall be responsible for retaining proof that the certificateholder or registrant has notified the department of the certificateholder's or registrant's current address of record.

(3) Notwithstanding any other provision of law, service by regular mail to a certificateholder's or registrant's address of record shall constitute adequate and sufficient notice to the certificateholder or registrant for any official communication to the certificateholder or registrant by the board or the department, except when other service is required pursuant to the provisions of s. 455.224 or s. 455.225.

Section 16. Section 489.127, Florida Statutes, 1992 Supplement, is amended to read:

489.127 Prohibitions; penalties.—

(1) No person shall:

(a) Falsely hold himself or a business organization out as a licensee, certificateholder, or registrant;

(b) Falsely impersonate a certificateholder or registrant;

(c) Present as his own the certificate or registration of another;

(d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a certificate or registration;

(e) Use or attempt to use a certificate or registration which has been suspended or revoked;

(f) Engage in the business or act in the capacity of a contractor or advertise himself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified;

(g) Operate a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent;

(h) Commence or perform work for which a building permit is required pursuant to an adopted state minimum building code without such building permit being in effect; or

(i) Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

(2)*(a)* Any *unlicensed* person who violates any of the provisions of subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any unlicensed person who commits a violation of subsection (1) after having been previously found guilty of such violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any unlicensed person who commits a violation of subsection (1) during the existence of a state of emergency declared by executive order of the Governor commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(d) Any person who operates as a pollutant storage systems contractor, precision tank tester, or internal pollutant storage tank lining applicator in violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The department may issue a stop-work order for all unlicensed work on a project upon finding probable cause to believe that construction work which requires certification or registration is being performed without a current valid certificate or registration. Stop-work orders may be enforced using the procedures and remedies set forth in s. 455.228.

(4)~~(3)~~ Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which *a* county or municipal *certificate of competency or license or state* certification *or registration* is required.

(a) A code enforcement officer designated pursuant to this subsection may issue a citation for any violation of subsection (1) or s. 489.132(1) whenever, based upon personal investigation, the code enforcement officer has reasonable and probable grounds to believe that such a violation has occurred.

(b) A citation issued by a code enforcement officer shall be in a form prescribed by the local governing body of the county or municipality and shall state:

1. The time and date of issuance.

2. The name and address of the person to whom the citation is issued.

3. The time and date of the violation.

4. A brief description of the violation and the facts constituting reasonable cause.

5. The name of the code enforcement officer.

6. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.

7. The applicable civil penalty if the person elects not to contest the citation.

(c) The local governing body of the county or municipality is authorized to enforce codes and ordinances against unlicensed contractors under the provisions of this section and may enact an ordinance estab-

lishing procedures for implementing this section, including a schedule of penalties to be assessed by the code enforcement officer. The maximum civil penalty which may be levied shall not exceed $500. Moneys collected pursuant to this section shall be retained locally as provided for by local ordinance, and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.

(d) The act for which the citation is issued shall be ceased upon receipt of the citation; and the person charged with the violation shall elect either to correct the violation and pay the civil penalty in the manner indicated on the citation or, within 10 days of receipt of the citation, exclusive of weekends and legal holidays, request an administrative hearing before the enforcement or licensing board or designated special master to appeal the issuance of the citation by the code enforcement officer.

1. Hearings shall be held before an enforcement or licensing board or designated special master as established by s. 162.03(2) and such hearings shall be conducted pursuant to the requirements of ss. 162.07 and 162.08.

2. Failure of a violator to appeal the decision of the code enforcement officer within the time period set forth in this paragraph shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be deemed an admission of the violation and penalties may be imposed accordingly.

3. If the person issued the citation, or his designated representative, shows that the citation is invalid or that the violation has been corrected prior to appearing before the enforcement or licensing board or designated special master, the enforcement or licensing board or designated special master *may* ~~shall~~ dismiss the citation unless the violation is irreparable or irreversible.

4. Each day a willful, knowing violation continues shall constitute a separate offense under the provisions of this subsection.

(e) A person cited for a violation pursuant to this subsection is deemed to be charged with a noncriminal infraction.

(f) If the enforcement or licensing board or designated special master finds that a violation exists, the enforcement or licensing board or designated special master may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than *$1,000* ~~$500~~ per day for each violation. In determining the amount of the penalty, the enforcement or licensing board or designated special master shall consider the following factors:

1. The gravity of the violation.

2. Any actions taken by the violator to correct the violation.

3. Any previous violations committed by the violator.

(g) Upon written notification by the code enforcement officer that a violator had not contested the citation or paid the civil penalty within the timeframe allowed on the citation, or if a violation has not been corrected within the timeframe set forth on the notice of violation, the enforcement or licensing board or the designated special master shall enter an order ordering the violator to pay the civil penalty set forth on the citation or notice of violation, and a hearing shall not be necessary for the issuance of such order.

(h) A certified copy of an order imposing a civil penalty against an uncertified contractor may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including a levy against personal property; however, such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After 3 months from the filing of any such lien which remains unpaid, the enforcement board or licensing board or designated special master may authorize the local governing body's attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution.

(i) This subsection does not authorize or permit a code enforcement officer to perform any function or duty of a law enforcement officer other than a function or duty that is authorized in this subsection.

(j) An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board or licensing board or designated special master to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board or licensing board or designated special master. An appeal shall be filed within 30 days of the execution of the order to be appealed.

(k) All notices required by this subsection shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer or code enforcement officer; by leaving the notice at the violator's usual place of residence with some person of his family above 15 years of age and informing such person of the contents of the notice; or by including a hearing date within the citation.

(l) For those counties which enact ordinances to implement this subsection and which have local construction licensing boards or local government code enforcement boards, the local construction licensing board or local government code enforcement board shall be responsible for the administration of such citation program and training of code enforcement officers. The local governing body of the county shall enter into interlocal agreements with any municipalities in the county so that such municipalities may by ordinance, resolution, policy, or administrative order, authorize individuals to enforce the provisions of this section. Such individuals shall be subject to the requirements of training as specified by the local construction licensing board.

(m) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(n) Nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.

(o) Nothing in this subsection shall be construed to authorize local jurisdictions to exercise disciplinary authority or procedures established in this subsection against an individual holding a proper valid certificate issued pursuant to this part.

(5)~~(4)~~ Local building departments may collect outstanding fines against registered or certified contractors issued by the Construction Industry Licensing Board, and may retain 25 percent of the fines they are able to collect, provided that they transmit 75 percent of the fines they are able to collect to the department according to a procedure to be determined by the department.

Section 17. Section 489.128, Florida Statutes, is amended to read:

489.128 Contracts performed by unlicensed contractors unenforceable.—As a matter of public policy, contracts entered into on or after October 1, 1990, and performed in full or in part by any contractor who fails to obtain or maintain his license in accordance with this part shall be unenforceable in law *or in equity*~~, and the court in its discretion may extend this provision to equitable remedies~~. However, in the event the contractor obtains or reinstates his license, the provisions of this section shall no longer apply.

Section 18. Section 489.129, Florida Statutes, 1992 Supplement, is amended to read:

489.129 Disciplinary proceedings.—

(1) The board may *take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee,* revoke, suspend, or deny the issuance or renewal of the certificate or registration ~~of a contractor~~, require financial restitution to a consumer, impose an administrative fine not to exceed $5,000 *per violation*, ~~place a contractor on probation,~~ require continuing education, *or* assess costs associated with investigation and prosecution, ~~or reprimand or censure a contractor~~ if the contractor, *financially responsible officer,* or ~~if the~~ business organization for which the contractor is a primary qualifying agent or is a secondary qualifying agent responsible under s. 489.1195~~,~~ is found guilty of any of the following acts:

(a) Obtaining a certificate or registration by fraud or misrepresentation.

(b) Being convicted or found guilty *of, or entering a plea of nolo contendere to,* regardless of adjudication, ~~of~~ a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.

(c) Violating *any provision of* chapter 455.

(d) *Knowingly* ~~Willfully or deliberately disregarding and~~ violating the applicable building codes or laws of the state or of any municipalities or counties thereof.

(e) Performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the certificateholder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered.

(f) Knowingly combining or conspiring with an uncertified or unregistered person by allowing his certificate or registration to be used by the uncertified or unregistered person with intent to evade the provisions of this part. When a certificateholder or registrant allows his certificate or registration to be used by one or more business organizations without having any active participation in the operations, management, or control of such business organizations, such act constitutes prima facie evidence of an intent to evade the provisions of this part.

(g) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificateholder or registrant as set forth on the issued certificate or registration, or in accordance with the personnel of the certificateholder or registrant as set forth in the application for the certificate or registration, or as later changed as provided in this part.

(h) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

(i) Being disciplined by any municipality or county for an act or violation of this part.

(j) Failing in any material respect to comply with the provisions of this part *or violating a rule or lawful order of the board.*

(k) Abandoning a construction project in which the contractor is engaged or under contract as a contractor. A project *may* ~~is to~~ be *presumed* ~~considered~~ abandoned after 90 days if the contractor terminates the project without just cause or without proper notification to the ~~prospective~~ owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

(l) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.

(m) Committing fraud or deceit in the practice of contracting.

(n) *Committing* ~~Being found guilty of~~ incompetency or misconduct in the practice of contracting.

(o) *Committing* ~~Being found guilty of~~ gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.

(p) Proceeding on any job without obtaining applicable local building department permits and inspections.

(q) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.

(r) Failing to satisfy within a reasonable time, the terms of a civil judgment obtained against the licensee, *or the business organization qualified by the licensee,* relating to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.

(2) If a contractor disciplined under subsection (1) is a qualifying agent for a business organization and the violation was performed in connection with a construction project undertaken by that business organization, the board may impose an additional administrative fine not to exceed $5,000 *per violation* against the business organization or against any partner, officer, director, trustee, or member if such person participated in the violation or knew or should have known of the violation and failed to take reasonable corrective action.

(3) The board may specify by rule the acts or omissions which constitute violations of this section.

(4) In recommending penalties in any proposed recommended final order, the department shall follow the penalty guidelines established by the board by rule. The department shall advise the hearing officer of the appropriate penalty, including mitigating and aggravating circumstances, and the specific rule citation.

(5) The board may not reinstate the certification or registration of, or cause a certificate or registration to be issued to, a person who *or business organization which* the board has determined *is* unqualified *or whose certificate or registration the board has suspended* until it is satisfied that such person *or business organization* has complied with all the terms and conditions set forth in the final order and is capable of competently engaging in the business of contracting.

(6)*(a)* The board may assess interest payments on all fines imposed under this chapter against any person or business organization which has not paid the imposed fine by the due date established by rule or final order. The provisions of chapter 120 do not apply to such assessment. Interest rates to be imposed shall be established by rule and shall not be usurious.

(b) Venue for all actions to enforce any fine levied by the board shall be in Duval County. The board is authorized to enter into contracts with attorneys to prosecute such actions on a contingent fee basis. All such contracts shall be publicly advertised and competitively awarded based upon responses submitted to a request for proposals developed by the board.

(7) The board shall not issue or renew a certificate or registration to any person who has been assessed a fine, interest payments, or costs associated with investigation and prosecution, until such fine, interest payments, or costs associated with investigation and prosecution are paid in full.

(8) If the board finds any certified or registered contractor guilty of a violation, the board may, as part of its disciplinary action, require such contractor to obtain continuing education in the areas of contracting affected by such violation.

(9) Any person certified pursuant to this part who has had his license revoked shall not be eligible to be a partner, officer, director, or trustee of a business organization defined by this section or be employed in a managerial or supervisory capacity for a 5-year period. Such person shall also be ineligible to reapply for certification under this part for a period of 5 years after the effective date of the revocation.

(10) If a business organization or any of its partners, officers, directors, trustees, or members is or has previously been fined for violating subsection (2) or s. 489.132, the board may, on that basis alone, revoke, suspend, place on probation, or deny issuance of a certificate or registration to a qualifying agent or financially responsible officer of that business organization.

(11)(a) Notwithstanding the provisions of chapters 120 and 455, upon receipt of a legally sufficient consumer complaint alleging a violation of this part, the department may provide by rule for binding arbitration between the complainant and the certificateholder or registrant, provided the following conditions exist:

1. There is evidence that the complainant has suffered or is likely to suffer monetary damages resulting from the violation of this part;

2. The certificateholder or registrant does not have a history of repeated or similar violations;

3. Reasonable grounds exist to believe that the public interest will be better served by arbitration than by disciplinary action; and

4. The complainant and certificateholder or registrant have not previously entered into private arbitration, and no civil court action based on the same transaction has been filed.

(b) The certificateholder or registrant and the complainant may consent in writing to binding arbitration within 15 days following notification of this process by the department. The department may suspend all action in the matter for 45 days when notice of consent to binding arbitration is received by the department. If the arbitration process is successfully concluded within the 60-day period, the department may close the case file with a notation of the disposition and the licensee's record shall reflect only that a complaint was filed and resolved through arbitration.

(c) Where a complaint meets the criteria for arbitration set forth in paragraph (a) and the damages at issue are less than $2,500, the department shall refer the complaint for mandatory arbitration. A pilot program, which shall expire 2 years after the effective date of this act, is hereby established to determine if mandatory arbitration is an appropriate method of resolving consumer complaints where the damages at issue are less than $2,500.

(d) The arbitrator's order shall become a final order of the board if not challenged by the complainant or the certificateholder or registrant within 30 days after filing. The board's review of the arbitrator's order shall operate in the manner of the review of recommended orders pursuant to s. 120.57(1) and shall not be a de novo review.

~~(9)(a) The department may, by rule, provide for a mediation process for the complainant and the licensee. Notwithstanding the provisions of chapters 120 and 455, upon receipt of a legally sufficient consumer complaint alleging a violation of this part, both the licensee and the complainant may consent in writing to mediation within 15 days following notification of this process by the department. The department may suspend all action in the matter for 45 days when notice of consent to mediation is received by the department. If the mediation process is successfully concluded within the 60-day period, the department may close the case file with a notation of the disposition and the licensee's record shall reflect only that a complaint was filed and resolved through mediation. If mediation is rejected by either the complainant or licensee, or should said parties fail to reach a mediated solution within the 60-day period, the department shall process the complaint in the manner required by chapters 120 and 455. The mediator shall provide a written report to the department of the mediation results within 10 days of the conclusion of the mediation process as provided by rule.~~

~~(b) No licensee may avail himself of the mediation process more than three times without the approval of the board. The board may consider the subject and the dates of the earlier complaints in rendering its decision. The board's decision shall not be considered a final agency action and is not appealable.~~

~~(c) The licensee shall bear all costs of mediation.~~

~~(d) Mediation shall be conducted according to rules of practice and procedure for circuit court as adopted by the Supreme Court. The mediator shall be a certified circuit court mediator.~~

~~(e) The department, in conjunction with the board, shall determine by rule the types of cases which may be included in the mediation process. The department may initiate or continue disciplinary action pursuant to chapter 455 and this chapter against the licensee as determined by rule.~~

Section 19. Section 489.131, Florida Statutes, 1992 Supplement, is amended to read:

489.131 Applicability.—

(1) This part applies to all contractors, including, but not limited to, those performing work for the state or any county or municipality. Officers of the state or any county or municipality shall determine compliance with this part before awarding any contract for construction, improvement, remodeling, or repair.

(2) The state or any county or municipality shall require that bids submitted for construction, improvement, remodeling, or repair of public buildings be accompanied by evidence that the bidder holds an appropriate certificate or registration, unless the work to be performed is exempt under s. 489.103~~, or the contractor is not domiciled in this state and can satisfactorily show that he will comply with s. 489.117(3). Any contractor not domiciled in this state shall submit to the state, county, or city proof of workers' compensation coverage and evidence that the contractor's carrier or self-insurer has current knowledge of the contractor's intent to do business within this state~~.

(3) Nothing in this part limits the power of a municipality or county:

(a) To regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections which is designed to secure compliance with and aid in the implementation of state and local building laws.

(b) To enforce other laws for the protection of the public health and safety.

(c) To collect occupational license taxes, *subject to s. 205.065,* and inspection fees for engaging in contracting or examination fees from persons who are registered with the board pursuant to local examination requirements. However, nothing in this part shall be construed to require general contractors, building contractors, or residential contractors to obtain additional occupational licenses for specialty work when such specialty work is performed by employees of such contractors on projects for which they have substantially full responsibility and such contractors do not hold themselves out to the public as being specialty contractors.

(d) To adopt any system of permits requiring submission to and approval by the municipality or county of plans and specifications for work to be performed by contractors before commencement of the work.

(e) To require one bond for each contractor in an amount not to exceed $5,000, which bond shall be conditioned only upon compliance with the applicable state minimum building code and applicable local building code requirements adopted pursuant to s. 553.73. Any such bond must be equally available to all contractors without regard to the period of time a contractor has been certified or registered and without regard to any financial responsibility requirements. Any such bonds shall be payable to the Governor and filed in each county or municipality in which a building permit is requested. Bond reciprocity shall be granted statewide. All such bonds shall be included in meeting any financial responsibility requirements imposed by any statute or rule. Any contractor who provides a third party insured warranty policy in connection with a new building or structure for the benefit of the purchaser or owner shall be exempt from the bond requirements under this subsection with respect to such building or structure.

(f) To refuse to issue permits or issue permits with specific conditions to a contractor who has committed multiple violations, when he has been disciplined for each of them by the board and when each disciplinary action has involved revocation or suspension of a license, imposition of an administrative fine of at least $1,000, or probation; or to issue permits with specific conditions to a contractor who, within the previous 12 months, has had *disciplinary* ~~final~~ action *other than a citation or letter of guidance* taken against him by the department or by a local board or agency which licenses contractors and has reported the action pursuant to paragraph (6)(c), for engaging in the business or acting in the capacity of a contractor without a license. However, this subsection does not supersede the provisions of s. 489.113(4), and no county or municipality may require any certificateholder to obtain a local professional license or pay a local professional license fee as a condition of performing any services within the scope of the certificateholder's statewide license as established under this part.

(4) Nothing in this part shall be construed to waive any requirement of any ordinance or resolution existing on October 1, 1979, of a board of county commissioners regulating the type of work required to be performed by a specialty contractor.

(5) Any official authorized to issue building or other related permits shall, before issuing a permit, ascertain that the applicant contractor is certified or is registered in the area where the construction is to take place.

(6)(a) *No municipality or county* ~~Municipalities or counties~~ may *require* ~~continue to provide examinations for their territorial area, pro-~~

~~vided that no examination is given to~~ the holder of a certificate *issued pursuant to this part to sit for examination to operate within the scope of such certificate.*

(b) To engage in contracting in the territorial area, an applicant shall also be registered with the board, *as required by s. 489.117.*

(c) Each local board or agency which licenses contractors transmits monthly to the board a report of any disciplinary action taken against contractors and of any administrative or disciplinary action taken against unlicensed persons for engaging in the business or acting in the capacity of a contractor including any cease and desist orders issued pursuant to s. 489.113(2)(b) and any fine issued pursuant to s. 489.127*(4)*~~(3)~~.

(7)(a) The local governing body of a county or municipality, or its local enforcement body, is authorized to enforce the provisions of this part as well as its local ordinances against locally licensed or registered contractors, as appropriate. The local jurisdiction enforcement body may conduct disciplinary proceedings against a locally licensed or registered contractor and may require restitution, impose a suspension or revocation of his local license, or a fine not to exceed $5,000, or a combination thereof, against the locally licensed or registered contractor, according to ordinances which a local jurisdiction may enact. In addition, the local jurisdiction may assess reasonable investigative and legal costs for the prosecution of the violation against the violator, according to such ordinances as the local jurisdiction may enact.

(b) In addition to any action the local jurisdiction enforcement body may take against the individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body shall issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action, or a recommendation for suspension, revocation, or restriction of the registration, or a fine to be levied by the board, or a combination thereof. The local jurisdiction enforcement body shall inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, his rights to appeal, and the consequences should he decide not to appeal. The local jurisdiction enforcement body shall, upon having reached adjudication or having accepted a plea of nolo contendere, immediately inform the board of its action and the recommended board penalty.

(c) *The department,* the disciplined contractor, or the complainant may challenge the local jurisdiction enforcement body's recommended penalty for board action to the Construction Industry Licensing Board. A challenge shall be filed within 30 days of the issuance of the recommended penalty to the board. If challenged, there is a presumptive finding of probable cause and the case may proceed without the need for a probable cause hearing.

(d) Failure of *the department,* the disciplined contractor, or the complainant to challenge the local jurisdiction's recommended penalty within the time period set forth in this subsection shall constitute a waiver of the right to a hearing before the board. A waiver of the right to a hearing before the board shall be deemed an admission of the violation, and the penalty recommended shall become a final order according to procedures developed by board rule without further board action. The disciplined contractor may appeal this board action to the district court.

(e) The department may investigate any complaint which is made with the department. However, if the department determines that the complaint against a registered contractor is for an action which a local jurisdiction enforcement body has investigated and reached adjudication or accepted a plea of nolo contendere, including a recommended penalty to the board, the department shall not initiate prosecution for that action, unless the secretary has initiated summary procedures pursuant to s. 455.225(8).

(f) Nothing in this subsection shall be construed to allow local jurisdictions to exercise disciplinary authority over certified contractors.

(8) A local enforcement board may petition the secretary of the department for issuance of a summary order against a certificateholder or registrant for any violation of this part.

(9)~~(8)~~ The right to create local boards in the future by any municipality or county is preserved.

(10) No municipal or county government may issue any certificate of competency or license for any contractor defined in s. 489.105(3)(a)-(o) after July 1, 1993, unless such local government exercises disciplinary control and oversight over such locally licensed contractors, including forwarding a recommended order in each action to the board as provided in subsection (7).

(11) Any municipal or county government which enters or has in place a reciprocal agreement which accepts a certificate of competency or license issued by another municipal or county in lieu of its own certificate of competency or license allowing contractors defined in s. 489.105(3)(a)-(o), shall file a certified copy of such agreement with the board not later than 60 days after the effective date of this act, or 30 days after the effective date of such agreement.

~~(9) A Division I contractor, except as otherwise provided in this part, shall be responsible for any construction or alteration of a structural component of a building or structure. The term "structural component" is defined, for purposes of this subsection, to mean any vertical or horizontal load-bearing member of a structure which supports dead or live loads in addition to its own weight and includes, but is not limited to, a foundation, an exterior or interior load-bearing wall, a column, a column beam, a floor, and a roof structure.~~

Section 20. Section 489.132, Florida Statutes, is amended to read:

489.132 Prohibited acts by unlicensed principals; investigation; hearing; penalties.—

(1) No uncertified or unregistered person associated with a contracting firm qualified by the licensee under this chapter shall:

(a) Conceal or cause to be concealed, or assist in concealing, from the primary qualifying agent, any material activities or information about the contracting firm;

(b) Exclude or facilitate the exclusion of any aspect of the contracting firm's financial or other business activities from the primary qualifying agent;

(c) Knowingly cause any part of the contracting firm's activities, financial or otherwise, to be conducted without the primary qualifying agent's supervision; or

(d) Assist or participate with any *certificateholder or registrant* ~~qualifying agent~~ in the violation of any provision of this chapter.

(2) The department shall cause an investigation of any incident where it appears that any uncertified or unregistered person associated with a contracting firm is in violation of this section. When, after investigation, the department finds there is probable cause to believe this section has been violated, the department shall prepare and file an administrative complaint which shall be served on the uncertified or unregistered person. The department shall prosecute the complaint pursuant to chapter 120.

(3) Upon a finding of a violation of this section, the department is authorized to impose a fine of not more than $5,000 and assess reasonable investigative and legal costs for the prosecution of the violation against the violator. Any such fine and assessments shall be paid within 30 days of the filing of the final order with the department. In the event of an appeal, the time for payment of any fine and assessments shall be stayed until a final order is rendered upholding the department decision.

(4) In the event any fine and assessments imposed by the department are not paid within the time provided for payment, the department may bring action *as provided in s. 489.129(6)(b)* in the appropriate circuit court of the state for enforcement of the final order, and the circuit court shall not rehear the merit of those matters included in the final order of the department.

(5) The department may suspend, revoke, or deny *issuance or renewal of a certificate or registration* ~~qualifying agent's license~~ for any *individual or business organization* ~~contracting firm~~ that associates a person *as an officer, director, or partner, or in a managerial or supervisory capacity* ~~in any matter, directly or indirectly~~, after such person has been found under a final order to have violated this section *or was an officer, director, partner, trustee, or manager of a business organization disciplined by the board by revocation, suspension, or fine in excess of $2,500, upon finding reasonable cause that such person knew or reasonably should have known of the conduct leading to the discipline.*

Section 21. Sections 489.140, 489.141, 489.142, 489.143, and 489.144, Florida Statutes, are created to read:

489.140 Construction Industries Recovery Fund.—There is created the Florida Construction Industries Recovery Fund as a separate account in the Professional Regulation Trust Fund.

(1) The Florida Construction Industries Recovery Fund shall be disbursed as provided in s. 489.143, on order of the board, as reimbursement to any natural person adjudged by a court of competent jurisdiction to have suffered monetary damages, or to whom the licensee has been ordered to pay restitution by the board, where the judgment or restitution order is based on a violation of s. 489.129(1)(d), (h), (k), or (l), committed by any contractor, financially responsible officer, or business organization licensed under the provisions of this part at the time the violation was committed, and providing that the violation occurs after July 1, 1993.

(2) The Construction Industries Recovery Fund shall be funded out of the receipts deposited in the Professional Regulation Trust Fund from the one-half cent per square foot surcharge on building permits collected and disbursed pursuant to s. 468.631.

(3) In addition, any surplus of moneys collected from the fines imposed by the board and collected by the department shall be transferred into the Construction Industries Recovery Fund.

489.141 Conditions for recovery; eligibility.—

(1) Any person is eligible to seek recovery from the Construction Industries Recovery Fund after having made a claim and exhausting the limits of any available bond, cash bond, surety, guarantee, warranty, letter of credit, or policy of insurance, if:

(a) Such person has received final judgment in a court of competent jurisdiction in this state in any action wherein the cause of action was based on a construction contract or the Construction Industry Licensing Board has issued a Final Order directing the licensee to pay restitution to the claimant based upon a violation of s. 489.129(1)(d), (h), (k), or (l), where the contract was executed and the violation occurred on or after July 1, 1993, and provided that:

1. At the time the action was commenced, such person gave notice thereof to the board by certified mail; except that, if no notice has been given to the board, the claim may still be honored if the board finds good cause to waive the notice requirement;

2. Such person has caused to be issued a writ of execution upon such judgment, and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment; or

3. If such person is unable to comply with subparagraph 2. for a valid reason to be determined by the board, such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment; or

(b) The claimant has made a diligent attempt, as defined by board rule, to collect the restitution awarded by the board; and

(c) A claim for recovery is made within 2 years from the time of the act giving rise to the claim or within 2 years from the time the act is discovered or should have been discovered with the exercise of due diligence; however, in no event may a claim for recovery be made more than 4 years after the date of the act giving rise to the claim; and

(d) Any amounts recovered by such person from the judgment debtor, or from any other source, have been applied to the damages awarded by the court or the amount of restitution ordered by the board; and

(e) Such person is not a person who is precluded by this act from making a claim for recovery.

(2) A person is not qualified to make a claim for recovery from the Construction Industries Recovery Fund, if:

(a) The claimant is the spouse of the judgment debtor or a personal representative of such spouse;

(b) The claimant is a certificateholder who acted as the contractor in the transaction which is the subject of the claim;

(c) Such person's claim is based upon a construction contract in which the certificateholder was acting with respect to the property owned or controlled by the certificateholder;

(d) Such person's claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract; or

(e) Such person was associated in a business relationship with the certificateholder other than the contract at issue.

(f) Such person has suffered damages as the result of making improper payments to a contractor as defined in chapter 713, part I.

489.142 Board powers upon notification of commencement of action.—When the board receives certified notice of any action, as required by s. 489.141(1)(a), the board may intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review on behalf of the State of Florida.

489.143 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 489.141(1) may apply to the board to cause payment to be made to such person from the Construction Industries Recovery Fund in an amount equal to the judgment, exclusive of postjudgment interest, against the certificateholder or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, exclusive of postjudgment interest, or $25,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages. The fund is not obligated to pay any portion of any judgment, or any judgment, which is not expressly based on one of the grounds for recovery set forth in s. 489.140(1).

(2) Upon receipt by a claimant under subsection (1) of payment from the Construction Industries Recovery Fund, the claimant shall assign his additional right, title, and interest in the judgment, to the extent of such payment, to the board, and thereupon the board shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment by the board, to the extent of the right, title, and interest of the board therein, shall be for the purpose of reimbursing the Construction Industries Recovery Fund.

(3) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to $25,000, regardless of the number of claimants involved in the transaction.

(4) Payments for claims based upon judgments against any one certificateholder shall not exceed, in the aggregate, $50,000.

(5) If at any time the claims pending against the fund exceed 80% of the fund balance plus anticipated revenue for the next two quarters, the board shall accept no further claims until such time as the board is given express authorization and funding from the legislature.

(6) All payments and disbursements from the Construction Industries Recovery Fund shall be made by the Treasurer upon a voucher signed by the secretary of the department. Amounts transferred to the Construction Industries Recovery Fund shall not be subject to any limitation imposed by an appropriation act of the Legislature.

(7) Upon the payment of any amount from the Construction Industries Recovery Fund in settlement of a claim in satisfaction of a judgment or restitution order against a certificateholder as described in s. 489.141(1), the license of such certificateholder shall be automatically suspended, without further administrative action, upon the date of payment from the fund. The license of such certificateholder shall not be reinstated until he has repaid in full, plus interest, the amount paid from the fund. A discharge of bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

489.144 Investment of the fund.—The funds in the Construction Industries Recovery Fund may be invested by the Treasurer under the same limitations as apply to the investment of other state funds, and the interest earned thereon shall be deposited to the credit of the Construction Industries Recovery Fund and shall be available for the same purposes as other moneys deposited in the Construction Industries Recovery Fund.

Section 22. Paragraph (c) of subsection (2) of section 489.511, Florida Statutes, 1992 Supplement, is amended to read, and paragraph (c) of subsection (5) of said section is added to read:

489.511 Certification; application; examinations; endorsement.—

(2) A person shall be entitled to take the certification examination for the purpose of determining whether he is qualified to engage in contracting throughout the state as a contractor if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has at least 3 years' proven management *or supervisory* experience in the trade or education equivalent thereto, or a combination thereof, but not more than one-half of such experience may be educational equivalent;

2. Has at least 6 years of comprehensive, specialized training, education, or experience associated with an electrical or alarm system contracting business; or

3. Has been licensed for 3 years as an engineer.

(5)(a) The board shall, by rule, designate those types of specialty electrical contractors who may be certified under this part.

(b) The limit of the scope of work and responsibility of a specialty contractor shall be established by the board by rule.

(c) For those specialty electrical contractors applying for certification under this part who work in jurisdictions that do not require local licensure for those activities for which the applicant desires to be certified, the experience requirement may be met by demonstrating at least 6 years of comprehensive, specialized training, education, or experience in the type of specialty electrical work for which certification is desired. An affidavit signed by the applicant's employer stating that the applicant performed the work required under this paragraph shall be sufficient to demonstrate to the board that the applicant has met the experience requirement.

Section 23. Paragraph (c) of subsection (3) of section 489.531, Florida Statutes, is amended, and subsections (4), (5), and (6) are added to said section, to read:

489.531 Prohibitions; penalties.—

(3) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) against persons who engage in activity for which county or municipal certification is required.

(c) The local governing body of the county or municipality is authorized to enforce codes and ordinances against unlicensed contractors under the provisions of this section and may enact an ordinance establishing procedures for implementing this section, including a schedule of penalties to be assessed by the code enforcement officers. The maximum civil penalty which may be levied shall not exceed $500. *Moneys collected pursuant to this section shall be retained locally as provided for by local ordinance and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.*

(4) Local building departments may collect outstanding fines against registered or certified contractors issued by the Electrical Contractors' Licensing Board and may retain 25 percent of the fines they are able to collect, provided that they transmit 75 percent of the fines they are able to collect to the department according to a procedure to be determined by the department.

(5)(a) The local governing body of a county or municipality, or its local enforcement body, is authorized to enforce the provisions of this part as well as its local ordinances against locally licensed or registered contractors, as appropriate. The local jurisdiction enforcement body may conduct disciplinary proceedings against a locally licensed or registered contractor and may require restitution or impose a suspension or revocation of the local license or a fine not to exceed $5,000, or a combination thereof, against the locally licensed or registered contractor, according to ordinances which a local jurisdiction may enact. In addition, the local jurisdiction may assess reasonable investigative and legal costs for the prosecution of the violation against the violator, according to such ordinances as the local jurisdiction may enact.

(b) In addition to any action the local jurisdiction enforcement body may take against the individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body shall issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action or a recommendation for suspension, revocation, or restriction of the registration or imposition of a fine to be levied by the board, or a combination thereof. The local jurisdiction enforcement body shall inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, the rights to appeal, and the consequences should the contractor decide not to appeal. The local jurisdiction enforcement body shall, upon having reached adjudication or having accepted a plea of nolo contendere, immediately inform the board of its action and the recommended board penalty.

(c) The department, the disciplined contractor, or the complainant may challenge the local jurisdiction enforcement body's recommended penalty for board action to the Electrical Contractors' Licensing Board. A challenge shall be filed within 30 days after the issuance of the recommended penalty to the board. If challenged, there is a presumptive finding of probable cause and the case may proceed without the need for a probable cause hearing.

(d) Failure of the department, the disciplined contractor, or the complainant to challenge the local jurisdiction's recommended penalty within the time period set forth in this subsection shall constitute a waiver of the right to a hearing before the board. A waiver of the right to a hearing before the board shall be deemed an admission of the violation, and the penalty recommended shall become a final order according to procedures developed by board rule without further board action. The disciplined contractor may appeal this board action to the district court.

(e) The department may investigate any complaint which is made with the department. However, if the department determines that the complaint against a registered contractor is for an action which a local jurisdiction enforcement body has investigated and reached adjudication or accepted a plea of nolo contendere, including a recommended penalty to the board, the department shall not initiate prosecution for that action, unless the secretary has initiated summary procedures pursuant to s. 455.225(8).

(f) Nothing in this subsection shall be construed to allow local jurisdictions to exercise disciplinary authority over certified contractors.

(6) The right to create local boards in the future by any municipality or county is preserved.

Section 24. Part XII of chapter 468, Florida Statutes, consisting of sections 468.601, 468.602, 468.603, 468.605, 468.606, 468.607, 468.609, 468.613, 468.617, 468.621, 468.627, 468.629, 468.631, 468.632, and 468.633, is created to read:

CHAPTER 468, PART XII
BUILDING CODE ADMINISTRATORS AND INSPECTORS

468.601 Purpose.—The Legislature finds that, where building code administration and inspection personnel fail to adequately, competently, and professionally administer state or local building codes, physical and economic injury to the citizens of the state may result and, therefore, deems it necessary in the interest of public health and safety to regulate the practice of building code administration and inspection in this state.

468.602 Exemptions.—This part does apply to:

(1) Persons who possess a valid certificate, issued pursuant to s. 633.081, for conducting firesafety inspections, when conducting firesafety inspections.

(2) Persons currently licensed or certified to practice as an architect pursuant to chapter 481, an engineer pursuant to chapter 471, or a contractor pursuant to chapter 489, when performing any services authorized by such license or certificate.

(3) Persons acting as inspectors and plans examiners pursuant to s. 235.26 while conducting activities authorized by certification under that section.

468.603 Definitions.—As used in this part:

(1) "Building code administrator" or "administrator" means any of those employees of municipal or county governments with building construction regulation responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance. This term is synonymous with "building official" as used in the Southern Standard Building Code and the South Florida Building Code.

(2) "Building code inspector" or "inspector" means any of those employees of local governments or state agencies with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance.

(3) "Board" means the Florida Building Code Administrators and Inspectors Board.

(4) "Department" means the Department of Professional Regulation.

(5) "Certificate" means a certificate of qualification issued by the department as provided in this part.

(6) "Categories of building inspectors" include the following:

(a) "Building inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws.

(b) "Coastal construction inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed to resist near-hurricane and hurricane velocity winds in accordance with the provisions of the governing building code.

(c) "Commercial electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial buildings and structures by inspecting for compliance with the provisions of the National Electrical Code.

(d) "Residential electrical inspector" means a person who is qualified to inspect and determine the electrical safety of one and two family dwellings and accessory structures by inspecting for compliance with the applicable provisions of the governing electrical code.

(e) "Mechanical inspector" means a person who is qualified to inspect and determine that the mechanical installations and systems for buildings and structures are in compliance with the provisions of the governing mechanical code.

(f) "Plumbing inspector" means a person who is qualified to inspect and determine that the plumbing installations and systems for buildings and structures are in compliance with the provisions of the governing plumbing code.

(g) "One and two family dwelling inspector" means a person who is qualified to inspect and determine that one and two family dwellings and accessory structures are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes.

(7) "Plans examiner" means a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes. Categories of plans examiners include:

(a) Building plans examiner.

(b) Plumbing plans examiner.

(c) Mechanical plans examiner.

(d) Electrical plans examiner.

468.605 Florida Building Code Administrators and Inspectors Board.—

(1) There is created within the Department of Professional Regulation the Florida Building Code Administrators and Inspectors Board. Members shall be appointed by the Governor, subject to confirmation by the Senate. Members shall be appointed for 4-year terms. No member shall serve more than two consecutive 4-year terms, nor serve for more than 11 years on the board. To ensure continuity of board policies, the Governor shall initially appoint one member for a 1-year term, two members for 2-year terms, two members for 3-year terms, and two members for 4-year terms.

(2) The board shall consist of seven members, as follows:

(a) One member who is an architect licensed pursuant to chapter 481, an engineer licensed pursuant to chapter 471, or a contractor licensed pursuant to chapter 489.

(b) One member serving as a building code administrator.

(c) One member serving as a building inspector who is without managerial authority in the employing agency.

(d) One member serving as a mayor of a city or chairperson of the commission of a charter county.

(e) One member serving as a city manager.

(f) Two consumer members who are not, and have never been, members of a profession regulated under this part, chapter 481, chapter 471, or chapter 489. One of the consumer members must be a person with a disability or a representative of an organization which represents persons with disabilities.

None of the board members described in paragraph (a) or paragraph (f) may be an employee of a municipal, county, or state governmental agency.

468.606 Authority of the board.—The board is authorized to:

(1) Adopt rules as necessary to carry out the provisions of this part.

(2) Certify individuals as being qualified under the provisions of this part to be building code administrators, plans examiners, and building code inspectors.

468.607 Certification of building code administration and inspection personnel.—The board shall issue a certificate to any individual whom the board determines to be qualified, within such class and level as provided in this part and with such limitations as the board may place upon it. No person may be employed by a state agency or local governmental authority to perform the duties of a building code administrator, plans examiner, or inspector after October 1, 1993, without possessing the proper valid certificate issued in accordance with the provisions of this part.

468.609 Administration of this part; standards for certification.—

(1) Except as provided in this part, any person who desires to be certified shall apply to the board, in writing upon forms approved and furnished by the board, to take the certification examination.

(2) A person shall be entitled to take the examination for certification pursuant to this part if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 3 years' experience as a building inspector;

2. Demonstrates 4 years' experience in the field of construction corresponding to the certification category sought; or

3. Demonstrates a combination of postsecondary education and experience which totals 4 years, with at least 1 year of such experience in construction or building inspection.

(3) No person may engage in the duties of a building code administrator, plans examiner, or inspector pursuant to this part after October 1, 1993, unless such person possesses one of the following types of certificates, currently valid, issued by the board attesting to the person's qualifications to hold such position:

(a) A standard certificate.

(b) A limited certificate.

(c) A provisional certificate.

(4)(a) To obtain a standard certificate, an individual must pass an examination approved by the board which demonstrates that the applicant has fundamental knowledge of the state laws and codes relating to the construction of buildings for which the applicant has code administration or inspection responsibilities. It is the intent of the Legislature that the examination approved for certification pursuant to this part be substantially equivalent to the examinations administered by the Southern Building Code Congress International, the Building Officials Association of Florida, the South Florida Building Code (Dade and Broward), and the Council of American Building Officials.

(b) A standard certificate shall be issued to each applicant who successfully completes the examination, which certificate authorizes the individual named thereon to practice throughout the state as a building code administrator, plans examiner, or inspector within such class and level as is specified by the board.

(c) The board may accept proof that the applicant has passed an examination which is substantially equivalent to the board-approved examination set forth in this section.

(5)(a) A building code administrator, plans examiner, or inspector holding office upon the effective date of this act shall not be required to possess a standard certificate as a condition of tenure or continued employment, but shall be required to obtain a limited certificate as described in this subsection.

(b) By October 1, 1993, individuals who were employed on July 1, 1993, as building code administrators, plans examiners, or inspectors, who are not eligible for a standard certificate, but who wish to continue in such employment, shall submit to the board the appropriate application and certification fees and shall receive a limited certificate qualifying them to engage in building code administration, plans examination, or inspection in the class, at the performance level, and within the governmental jurisdiction in which such person is employed.

(c) The limited certificate shall be valid only as an authorization for the building code administrator, plans examiner, or inspector to continue in the position held on July 1, 1993, and shall expire on October 1, 1995. However, limited certificates issued to employees of counties with a population of less than 50,000, or to employees of municipalities with a population of less than 3,500, shall expire on October 1, 1998.

(d) A building code administrator, plans examiner, or inspector holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance of a standard certificate or provisional certificate appropriate for such new position.

(6)(a) The board may provide for the issuance of provisional or temporary certificates valid for such period, not less than 1 year nor more than 3 years, as specified by board rule, to any building code administrator, plans examiner, or inspector newly employed or newly promoted who lacks the qualifications prescribed by the board or by statute as prerequisite to issuance of a standard certificate.

(b) No building code administrator, plans examiner, or inspector may have a provisional or temporary certificate extended beyond the specified period by renewal or otherwise.

(c) The board may provide for appropriate levels of provisional or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters as the board may deem necessary to protect the public safety and health.

(7)(a) Any individual who holds a valid certificate under the provisions of s. 553.795, or who has successfully completed all requirements for certification pursuant to such section, shall be deemed to have satisfied the requirements for receiving a standard certificate prescribed by this part.

(b) Any individual who holds a valid certificate issued by the Southern Building Code Congress International, the Building Officials Association of Florida, the South Florida Building Code (Dade and Broward), or the Council of American Building Officials certification programs, or who has been approved for certification under one of those programs not later than October 1, 1995, shall be deemed to have satisfied the requirements for receiving a standard certificate in the corresponding category prescribed by this part. Employees of counties with a population of less than 50,000, or employees of municipalities with a population of less than 3,500, shall be deemed to have satisfied the requirements for standard certification where such employee is approved for certification under one of the programs set forth in this paragraph not later than October 1, 1998.

(8) Any individual applying to the board may be issued a certificate valid for multiple inspection classes, as deemed appropriate by the board.

(9) Certification and training classes may be developed in coordination with postsecondary vocational centers, community colleges, the State University System, or other entities offering certification and training classes.

468.613 Certification by endorsement.—The board shall examine other certification or training programs, as applicable, upon submission to the board for its consideration of an application for certification by endorsement. The board shall waive its examination, qualification, education, or training requirements, to the extent that such examination, qualification, education, or training requirements of the applicant are determined by the board to be comparable with those established by the board.

468.617 Joint inspection department; other arrangements.—

(1) Nothing in this part shall prohibit any local jurisdiction from entering into and carrying out contracts with any other local jurisdiction under which the parties agree to create and support a joint inspection department for conforming to the provisions of this part. In lieu of a joint inspection department, any local jurisdiction may designate an inspector from another local jurisdiction to serve as an inspector for the purposes of this part.

(2) Nothing in this part shall prohibit local governments from employing persons certified pursuant to this part to perform inspections on a contract basis.

468.621 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violating or failing to comply with any provision of this part, or a valid rule or lawful order of the board or department pursuant thereto.

(b) Obtaining certification through fraud, deceit, or perjury.

(c) Knowingly assisting any person practicing contrary to the provisions of:

1. This part; or

2. The building code adopted by the enforcement authority of that person.

(d) Having been convicted of a felony against this state or the United States, or of a felony in another state that would have been a felony had it been committed in this state.

(e) Having been convicted of a crime in any jurisdiction which directly relates to the practice of building code administration or inspection.

(f) Making or filing a report or record which the certificateholder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

(g) Committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property by failure to properly enforce applicable building codes.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for certification.

(b) Permanent revocation.

(c) Suspension of a certificate.

(d) Imposition of an administrative fine not to exceed $5,000 for each separate offense. Such fine must be rationally related to the gravity of the violation.

(e) Issuance of a reprimand.

(f) Placement of the certificateholder on probation for a period of time and subject to such conditions as the board may impose, including alteration of performance level.

(g) Satisfactory completion of continuing education.

(h) Issuance of a citation.

(4) Where a certificate is suspended, placed on probation, or has conditions imposed, the board shall reinstate the certificate of a disciplined building code administrator, plans examiner, or inspector upon proof the disciplined individual has complied with all terms and conditions set forth in the final order.

(5) No person may be allowed to apply for certification under this part for a minimum of 5 years after the date of revocation of any certificate issued pursuant to this part. The board may by rule establish additional criteria for certification following revocation.

468.627 Application; examination; renewal; fees.—

(1) The board shall establish by rule fees to be paid for application, examination, reexamination, certification and certification renewal, inactive status application, and reactivation of inactive certificates. The board may establish by rule a late renewal penalty. The board shall establish fees which are adequate, when combined with revenue generated by the provisions of s. 468.631, to ensure the continued operation of this part. Fees shall be based on department estimates of the revenue required to implement this part.

(2) The initial application fee may not exceed $25 for building code administrators, plans examiners, or inspectors.

(3) The initial examination fee may not exceed $50 for building code administrators, plans examiners, or inspectors.

(4) The initial certification fee may not exceed $25 for building code administrators, plans examiners, or inspectors.

(5) The biennial certification renewal fee may not exceed $25 for building code administrators, plans examiners, or inspectors.

(6) Employees of local government agencies having responsibility for inspection, regulation, and enforcement of building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes shall pay no application or examination fees, and shall pay not more than five dollars each for inital certification and biennial certification renewal fees.

(7) The certificateholder shall provide proof, in a form established by board rule, that the certificateholder has completed at least 14 classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate. The board shall by rule establish criteria for approval of continuing education courses and providers, and may by rule establish criteria for accepting alternative non-classroom continuing education on an hour-for-hour basis.

468.629 Prohibitions; penalties.—

(1) No person may:

(a) Falsely hold himself or herself out as a certificateholder.

(b) Falsely impersonate a certificateholder.

(c) Present as his or her own the certificate of another.

(d) Give false or forged evidence to the board or the department, or a member, an employee, or an officer thereof, for the purpose of obtaining a certificate.

(e) Use or attempt to use a certificate which has been suspended or revoked.

(f) Threaten, coerce, trick, persuade, or otherwise influence, or attempt to threaten, coerce, trick, persuade, or otherwise influence, any certificateholder to violate any provision of this part.

(g) Offer any compensation to a certificateholder in order to induce a violation of this part, a local building code or ordinance, or another law of this state.

(2) Any person who violates any provision of this part commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates any provision of this part after a previous conviction for such violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

468.631 Building Code Administrators and Inspectors Fund.—The provisions of this part shall be funded through a surcharge, to be assessed pursuant to s. 125.56(4) or s. 166.201 at the rate of one-half cent per square foot of under-roof floor space permitted, including new construction, renovations, alterations, and additions. The unit of government responsible for collecting permit fees pursuant to s. 125.56(4) or s. 166.201 shall collect such surcharge and shall remit the funds to the department on a quarterly calendar basis beginning not later than December 31, 1993, for the preceding quarter, and continuing each third month thereafter; and such unit of government may retain an amount up to 10 percent of the surcharge collected to fund projects and activities intended to improve the quality of building code enforcement. There is created within the Professional Regulation Trust Fund a separate account to be known as the Building Code Administrators and Inspectors Fund, which shall deposit and disburse funds as necessary for the implementation of this part. The department shall annually establish the amount needed to fund the certification and regulation of building code administrators, plans examiners, and inspectors. Any funds collected in excess of the amount needed to adequately fund the certification and regulation of building code administrators, plans examiners, and inspectors shall be deposited into the Construction Industries Recovery Fund established by s. 489.140. If the Construction Industries Recovery Fund is fully funded as provided by s. 489.140, any remaining funds shall be distributed to the Construction Industry Licensing Board for use in the regulation of certified and registered contractors.

468.632 Prosecution of criminal violations.—The department shall report any criminal violation of this part to the proper prosecuting authority for prompt prosecution.

468.633 Authority of local government.—

(1) Nothing in this part may be construed to restrict the authority of local governments to require as a condition of employment that building code administrators, plans examiners, and inspectors possess qualifications beyond the requirements for certification contained in this part.

(2) The discipline of any person pursuant to s. 468.621 shall, as a matter of law, constitute just or substantial cause for discharge from employment.

(3) The certification or discipline of a local government's employees pursuant to this part shall not be construed as a waiver of sovereign immunity by the local government.

Section 25. The Legislature hereby directs that a study be undertaken, pursuant to the provisions of section 11.62, Florida Statutes, to determine whether private building inspection services should be regulated under part XII of chapter 468, Florida Statutes, as created by this act. This study shall be completed and a report provided to the Speaker of the House of Representatives and the President of the Senate not later than February 1, 1994.

Section 26. Paragraph (q) is added to subsection (4) of section 20.30, Florida Statutes, 1992 Supplement, as amended by chapters 92-33 and 92-292, Laws of Florida, to read:

20.30 Department of Professional Regulation.—There is created a Department of Professional Regulation.

(4) The following boards are established within the Department of Professional Regulation, Division of Professions:

(q) Florida Building Code Administrators and Inspectors Board.

Section 27. Paragraphs (a) and (c) of subsection (3) of section 376.303, Florida Statutes, 1992 Supplement, are amended to read:

376.303 Powers and duties of the Department of Environmental Regulation.—

(3)(a) The department may inspect the installation of any pollutant storage tank. Any person installing a pollutant storage tank, as defined in s. *489.105(17)* ~~489.133~~, shall certify that such installation is in accordance with the standards adopted pursuant to this section. The department shall promulgate a form for such certification which shall at a minimum include:

1. A signed statement by the certified pollutant storage systems ~~specialty~~ contractor, as defined in s. *489.105(3)(p)* ~~489.133~~, that such installation is in accordance with standards adopted pursuant to this section; and

2. Signed statements by the onsite persons performing or supervising the installation of a pollutant storage tank, which statements shall be required of tasks that are necessary for the proper installation of such tank.

(c) The department may enjoin the installation or use of any pollutant storage tank that has been or is being installed in violation of this section or *chapter 489* ~~of s. 489.133~~.

Section 28. Section 553.77, Florida Statutes, 1992 Supplement, is amended to read:

553.77 Specific powers of the board.—

(1) The board shall:

(a) Adopt rules and regulations or amendments thereto in accordance with the procedures prescribed in chapter 120.

(b) Make a continual study of the operation of the State Minimum Building Codes and other laws relating to the construction of buildings, including manufactured buildings, to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions.

(c) Upon written application by a private party or a local enforcement agency, issue advisory opinions relating to new technologies, techniques, and materials which have been tested where necessary and found to meet the objectives of the State Minimum Building Codes and the Florida Manufactured Building Act of 1979.

(d) Upon written application by a private party or a local enforcement agency, issue advisory opinions relating to the interpretation, enforcement, administration, or modification by local governments of the State Minimum Building Codes and the Florida Manufactured Building Act of 1979.

(e) Make recommendations to, and provide assistance upon the request of, the Florida Commission on Human Relations regarding rules relating to handicapped accessibility.

(f) Coordinate and cooperate with the Florida Fire Code Advisory Council created under s. 633.72, for assistance and recommendations relating to firesafety code interpretations.

(2) Upon written application by a private party or a local enforcement agency, the board may also:

(a) Provide for the testing of materials, devices, and method of construction.

(b) Appoint experts, consultants, technical advisers, and advisory committees for assistance and recommendations relating to the State Minimum Building Codes.

(c) Appoint an advisory committee consisting of at least five plumbing contractors licensed to do business in this state for assistance and recommendations relating to plumbing code interpretations, if the board identifies the need for additional assistance in making decisions regarding the State Plumbing Code.

~~(3) The board shall conduct a program to certify building code administration personnel and building inspection personnel in this state.~~

(3) ~~(4)~~ With respect to the qualification program for special inspectors of threshold buildings as required by s. 553.79(5)(c), the board may prescribe initial and annual renewal fees for certification, by rule, in accordance with chapter 120.

(4)~~(5)~~(a) Upon written application by a private party, the board shall issue a binding opinion relating to a state agency's interpretation and enforcement of the specific model code adopted by the agency to regulate building construction or relating to the conformity of new technologies, techniques, and materials to the objectives of that model code. The provisions of this paragraph shall not be construed to provide any powers to the board with respect to any decision of the State Board of Education made pursuant to the provisions of s. 235.26, to the State Fire Marshal made pursuant to the provisions of chapter 633, to the Department of Management Services made pursuant to the provisions of s. 255.25, or to any local government decision with respect to construction not subject to a state agency model code.

(b) Upon written applications by private parties or the enforcement agency, the board may issue binding opinions relating to the interpretation of ss. 553.71(7) and 553.79(5)(a) and (c), (6)(a), (b), (d), and (e), and (7)(a) and (c).

(c) Each opinion issued pursuant to this section shall be rendered in the same manner provided in s. 120.565, relating to declaratory statements.

(5)~~(6)~~ By September 1 of each year, the Board of Building Codes and Standards shall provide the department a report on:

(a) Obstacles encountered by the board in implementing the board's statutorily mandated responsibilities;

(b) Issues within or related to the board's jurisdiction which the board feels its present authority or resources are insufficient to appropriately address;

(c) Proposed legislation addressing such obstacles or issues, if appropriate;

(d) Proposed items for possible inclusion in the department's legislative budget request addressing such issues and board proposals for actions to be taken by the department or any other agency addressing such issues, if appropriate.

The board's report and the department's response to each of their proposals shall be included by the department in the annual report required by s. 420.6075(2). The board's report in its entirety shall be made available to interested parties.

(6)~~(7)~~ The board may designate a board member with demonstrated expertise in interpreting building plans to attend each meeting of the advisory council created in s. 553.49. The board member may vary from meeting to meeting, shall serve on the council in a nonvoting capacity, and shall receive per diem and expenses as provided in s. 553.74(3).

Section 29. Section 489.123, Florida Statutes, as amended by chapters 91-137 and 91-305, Laws of Florida, and section 553.795, Florida Statutes, are hereby repealed.

Section 30. Section 489.133, Florida Statutes, is amended to read:

489.133 Pollutant storage systems specialty contractors; definitions; certification; restrictions.—

(1) As used in this part:

~~(a) "Pollutant storage systems specialty contractor" means a contractor who installs or removes a pollutant storage tank.~~

~~(b) "Pollutant storage tank" means a tank, together with associated piping or dispensing facilities, which is or could be used for the storage or supply of pollutants as defined in s. 376.301 and which is required to be registered under chapter 17-61 of the Florida Administrative Code or for which notification must be submitted under Subtitle I of the Resource Conservation and Recovery Act.~~

~~(c) "Tank" means any container other than one which is aboveground and either elevated or situated upon an impermeable surface, or which is located in an accessible underground area and either elevated or situated upon an impermeable surface therein, in such manner that any leak in such container may be readily detected.~~

(a)~~(d)~~ "Registered internal pollutant storage tank lining applicator" means any person who has registered with the department pursuant to subsection (3). This registration is exempt from the provisions of prior municipality, county, or development district registration, as required under s. 489.117, and is on a statewide basis.

(b)~~(e)~~ "Registered precision tank tester" means any person who has registered with the department pursuant to subsection (2).

(2) The board shall adopt rules providing standards for registration of precision tank testers who precision test a pollutant storage tank. The Department of Environmental Regulation shall approve the methodology, procedures, and equipment used and shall approve the applicant as being eligible for registration as a registered precision tank tester. A registered precision tank tester is subject to the provisions of ss. 489.129 and 489.132 and is considered a contractor operating as a primary qualifying agent for the business entity employing him, which is considered a contracting firm for the purposes of ss. 489.129 and 489.132. A person who registers under this subsection is exempt from municipal, county, or development district registration under s. 489.117 and may operate as a precision tank tester statewide.

(3) The board shall adopt rules providing standards for registration of internal pollutant storage tank lining applicators who internally line pollutant storage tanks as a method of upgrading or repairing pollutant storage tanks to prevent discharge of pollutants. The Department of Environmental Regulation shall approve the methodology, procedures, and equipment used and shall approve the applicant as being eligible for registration as a registered internal pollutant storage tank lining applicator. A registered internal pollutant storage tank lining applicator is subject to the provisions of ss. 489.129 and 489.132, and shall be considered a contractor operating as a primary qualifying agent for the business entity employing him, which entity shall be considered a contracting firm for the purposes of ss. 489.129 and 489.132.

(4) The board shall adopt rules providing standards for certification of pollutant storage systems specialty contractors, including persons who remove such systems. The board shall provide the proposed rules to the Department of Environmental Regulation for review and comment prior to adoption. The rules shall include, but not be limited to:

(a) Standards for operating as a pollutant storage systems specialty contractor.

(b) Requirements for certification as a pollutant storage systems specialty contractor.

(c) Requirements for certification without examination of pollutant storage systems specialty contractors for any person who has passed a local licensure examination, a licensure examination in another state, or a licensure examination of a national organization, which is at least as stringent as the examination adopted by the board.

~~(d) Requirements for certification without examination of pollutant storage systems specialty contractors for any certified mechanical contractor, any certified plumbing contractor, and any registered mechanical or plumbing contractor who has passed a local examination judged by the board to be at least as stringent as the equivalent state mechanical or plumbing contractor's examination, provided that such contractor has been certified prior to July 1, 1986, or has been registered and passed such local examination prior to July 1, 1986.~~

~~(e) Requirements for certification by practical examination, demonstrating the ability to competently install or remove pollutant storage tanks, of pollutant storage systems specialty contractors for any person who has received a temporary certificate under paragraph (5)(a) and has operated as a pollutant storage systems specialty contractor since September 1, 1981, provided that such person pays for the actual cost of the practical examination.~~

~~(f) Requirements for certification without examination of pollutant storage systems specialty contractors for any person who satisfactorily shows to the board evidence of having operated as a pollutant storage systems specialty contractor continuously for 10 years prior to July 1, 1990: statements from local officials in the areas where the person performs most of his work that such work has been competently and safely performed; and a statement from the Department of Environmental Regulation that it has taken no legal or administrative action against such person related to public health and safety issues resulting from pollutant storage systems. Application for certification without examination of pollutant storage systems specialty contractor shall be made to the board prior to July 1, 1990.~~

~~The board may use standards and examinations of national organizations if such standards and examinations are adequate to ensure competent installation and removal of pollutant storage tanks. All such standards and examinations shall be designed to ensure that leaks and other discharges are eliminated to the greatest extent possible.~~

~~(5)(a) Any person who has operated as a pollutant storage systems specialty contractor during the 5 years preceding September 1, 1986, shall receive within 30 days after written request a temporary certificate permitting such person to continue operating without certification until July 1, 1990, if such person:~~

~~1. Notifies the department in writing that he intends to continue such operation and submits an application fee set by the board not to exceed $50.~~

~~2. Provides a history of successful operation as a pollutant storage systems specialty contractor within such time period.~~

~~(b) A contractor seeking to be certified pursuant to paragraph (4)(d) shall receive within 30 days after written request a temporary certificate permitting such contractor to continue operating without certification until the board determines whether he qualifies for a certificate under paragraph (4)(d), provided that such contractor:~~

~~1. Notifies the department in writing that he intends to apply for certification under paragraph (4)(d).~~

~~2. Provides the board sufficient information to determine that such contractor qualifies on the basis of certification or registration and the passage of an examination.~~

~~The board may revoke or refuse to issue such temporary certificate for violation of s. 489.127 or s. 489.129.~~

(5)~~(6)~~(a) Notwithstanding any provision of this part to the contrary, no person shall engage in contracting as a pollutant storage systems specialty contractor unless such person is certified as a pollutant storage systems specialty contractor pursuant to this part, nor shall any official authorized to issue building or other related permits issue a permit or permits for the installation or removal of a pollutant storage tank unless such official ascertains that the applicant for such permit or permits is certified as a pollutant storage systems specialty contractor.

(b) Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(7) Any person who operates as a pollutant storage systems specialty contractor, precision tank tester, or internal pollutant storage tank lining applicator in violation of this section or any person who violates subsection (6) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 31. Section 8 of chapter 88-331, Laws of Florida, is hereby repealed.

Section 32. Paragraph (a) of subsection (6) of section 715.12, Florida Statutes, 1992 Supplement, is amended to read:

715.12 Construction Contract Prompt Payment Law.—

(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. *During the period that interest accrues under this section, the interest rate shall be the rate specified in s. 55.03 or the rate specified in the contract, whichever is greater. A person shall not be entitled to receive both the contract interest and the statutory interest specified in this section.*

Section 33. Subsection (3) of section 404.056, Florida Statutes, 1992 Supplement, is amended to read:

404.056 Environmental radiation standards and programs; radon protection.—

(3) RADON TRUST FUND.—There is created in the State Treasury the Radon Trust Fund, which shall be administered by the department to administer and carry out the purposes of this section. The trust fund shall be funded through a surcharge, to be assessed at the rate of *one-half* ~~1~~ cent per square foot under-roof floor space permitted pursuant to s. 125.56(4) or s. 166.201. However, for additions, alterations, or renovations to existing buildings, the surcharge shall be computed on the basis of the square footage being added, altered, or renovated. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s.

166.201 shall collect such surcharge and remit the funds collected to the department on a quarterly calendar basis beginning not later than October 31, 1988, for the preceding quarter, July 1, 1988, through September 30, 1988, and continuing each third month thereafter; and such unit of government may retain an amount up to 5 percent of the surcharge collected to cover costs associated with the collection and remittance of such surcharge. All funds remitted to the department pursuant to this subsection shall be deposited in the Radon Trust Fund. Funds collected from such surcharge shall not be used to fund research on techniques for mitigation of radon in existing buildings. At such time as the building codes for radon-resistant buildings, as prescribed by s. 553.98, are adopted and 1 year of training has been provided following the adoption of building codes pursuant to s. 553.98, the surcharge authorized in this subsection shall be repealed and shall be reviewed by the Legislature prior to repeal.

Section 34. There is hereby appropriated four FTE positions and the sum of $236,189 from the Professional Regulation Trust Fund in the Department of Professional Regulation during Fiscal Year 1993-1994 to implement the provisions of this act.

Section 35. The Legislature directs that a study be undertaken to determine whether the regulation and licensure for the installation of underground ducts and conduit should be changed, and if so, what changes would be appropriate. The secretary of the department shall appoint a committee consisting of three members nominated by the Construction Industry Licensing Board, three members nominated by the Electrical Contractors Licensing Board, and the Secretary or his designee. This study shall be completed, and a report provided to the Speaker of the House of Representatives and the President of the Senate not later than November 1, 1993.

Section 36. This act shall take effect July 1, 1993.

And the title is amended as follows:

Strike the entire title and insert: A bill to be entitled An act relating to the construction industry; amending s. 489.103, F.S.; revising exemptions to provisions regulating construction contracting; amending s. 489.105, F.S., and repealing subsection (13), relating to the definition of "mediation"; expanding the definition of "contractor" and defining "business organization," "financially responsible officer," "structural component," "arbitration," "pollutant storage tank," and "tank"; changing the term "underground utility contractor" to "underground utility and excavation contractor"; amending ss. 489.107 and 633.521, F.S.; conforming language; creating s. 489.1135, F.S.; providing for the designation of underground utility and excavation contractors; providing for certification; providing that persons licensed as underground utility contractors on the effective date of the act are automatically licensed as underground utility and excavation contractors; amending s. 489.109, F.S.; revising and providing fees; amending s. 489.113, F.S.; authorizing persons who are not certified or registered to perform construction work under certain supervision; revising provisions relating to subcontracting; authorizing local governments to deny or suspend building permits of contractors failing or refusing to provide proof of public liability and property damage insurance and workers' compensation insurance; revising a provision relating to a contractor acting as a prime contractor; reenacting s. 489.114, F.S., relating to evidence of workers' compensation coverage; amending s. 489.115, F.S.; revising certification and registration requirements; requiring certain continuing education; creating s. 489.116, F.S.; providing procedures for inactive and delinquent status; providing fees; providing for renewal and cancellation notices; amending s. 489.117, F.S.; revising registration requirements; requiring certain reporting; prohibiting certain initial registration; revising provisions relating to the contracting activities of specialty contractors and the reporting of licensure and disciplinary information on such contractors; authorizing certain persons to perform specialty contracting services without obtaining a local professional license under certain circumstances; amending s. 489.119, F.S., relating to certification or registration of business organizations and qualifying agents; revising application and licensure requirements; providing for temporary nonrenewable certificate or registration under certain circumstances; requiring the registration or certification number under certain circumstances; requiring the registration or certification number under certain circumstances; amending s. 489.1195, F.S.; providing responsibilities of business organizations with respect to financially responsible officers of such organizations; amending s. 489.124, F.S.; providing for currency of address of record and other information; providing for service of official communication to certificateholders and registrants; amending s. 489.127, F.S.; providing penalties for repeat violations, violations committed during a state of emergency, and violations relating to pollutant storage contracting; providing for stop-work orders; revising fines and penalties; expanding enforcement duties of local code enforcement officers; amending s. 489.128, F.S.; providing for the unenforceability in equity of certain prior contracts performed by unlicensed contractors; amending s. 489.129, F.S., relating to disciplinary proceedings; providing applicability of certain provisions to business organizations; providing venue in actions to enforce fines; providing for contracts to prosecute on a contingency fee basis; providing restrictions on persons who have had licenses revoked; providing disciplinary actions on business organizations and their officers in violation of the part; replacing mediation with binding arbitration; amending s. 489.131, F.S., relating to applicability; revising requirements for bids on public buildings projects; authorizing local governments to issue permits with specific conditions to certain contractors; prohibiting local examination of certificateholders; authorizing the Department of Professional Regulation to challenge local jurisdiction penalty recommendations; authorizing local enforcement boards to petition for summary orders against violators; prohibiting local governments from issuing certain initial licenses; requiring certain reporting; revising disciplinary provisions; amending s. 489.132, F.S., relating to prohibited acts by unlicensed principals; creating ss. 489.140, 489.141, 489.142, 489.143, and 489.144, F.S.; creating the Construction Industries Recovery Fund as a separate account within the Professional Regulation Trust Fund; providing conditions for recovery from the fund; providing eligibility; providing powers of the Construction Industry Licensing Board upon notification of commencement of action; providing for payment from the fund; providing for investment of the fund; amending s. 489.511, F.S.; revising qualifications required to take the examination for certification as an electrical or alarm system contractor; amending s. 489.531, F.S.; providing local government rights and responsibilities regarding enforcement, disciplinary action, investigation, and fines relating to electrical and alarm system contractors; authorizing the department to challenge local jurisdiction penalty recommendations; creating part XII of chapter 468, F.S.; providing for regulation of building code administrators and inspectors; providing purpose, exemptions, and definitions; establishing the Florida Building Code Administrators and Inspectors Board; providing authority of the board; providing for certification of building code administrators and inspection personnel; providing for administration of the part; providing standards for certification; providing for certification by endorsement; providing for joint inspection departments and other local government arrangements; providing disciplinary proceedings; providing for application, examination, and renewal; providing fees; providing prohibitions and penalties; creating the Building Code Administrators and Inspectors Fund as a separate fund in the Professional Regulation Trust Fund; assessing a surcharge to fund the certification program and providing for collection, deposit, and distribution thereof; providing for prosecution of criminal violations; providing authority of local governments to enact more stringent requirements; providing for a study to determine whether private building inspection services should be regulated under the part; requiring a report; amending s. 20.30, F.S.; placing the Florida Building Code Administrators and Inspectors Board within the Division of Professions of the Department of Professional Regulation; amending ss. 376.303 and 553.77, F.S., to conform to the provisions of the act; amending s. 489.133, F.S., relating to pollutant storage systems specialty contractors, to conform to the provisions of the act; repealing s. 489.123, F.S., relating to reports of certified and registered contractors to local licensing boards; repealing s. 553.795, F.S., relating to voluntary certification of building code administrators and inspectors; repealing s. 8, ch. 88-331, Laws of Florida, relating to the adoption of rules providing standards for the certification of response action contractors; amending s. 715.12, F.S.; providing for interest rates and restrictions on interest under the Construction Contract Prompt Payment Law; amending s. 404.056, F.S.; reducing the surcharge that funds the Radon Trust Fund; providing an appropriation; directing that a study regarding underground ducts be undertaken; providing an effective date.

On motion by Senator Diaz-Balart, the Senate concurred in the House amendment.

CS for SB 1552 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—32 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 1668 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1668—A bill to be entitled An act relating to ethics; amending s. 11.045, F.S.; expanding and modifying registration and disclosure requirements for legislative lobbyists; providing definitions; providing penalties; amending s. 11.062, F.S.; prohibiting departments of the executive branch, state universities, community colleges, and water management districts from using public funds to retain lobbyists to represent them before the legislative or executive branch; exempting full-time employees of these entities; prohibiting lobbyists from accepting compensation derived from public funds; providing penalties; authorizing complaints to be filed with and investigated by the Commission on Ethics; authorizing the commission to adopt rules; creating s. 11.063, F.S.; prohibiting legislative lobbyists from contracting for or accepting any contingency fee; providing penalties; creating s. 11.064, F.S.; requiring legislative lobbyists and principals to retain records for a specified period; providing penalties; amending s. 112.3215, F.S., and creating ss. 112.3216 and 112.3217, F.S., to apply the registration and reporting requirements, contingency fee restrictions, record retention requirements, and penalties applicable to legislative lobbyists and principals pursuant to this act to executive branch lobbyists and principals; amending s. 112.324, F.S; requiring that persons filing complaints with the Commission on Ethics have personal knowledge of the matters set forth in the complaint; providing severability; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 2, line 8, strike everything after the enacting clause and insert:

Section 1. Section 11.043, Florida Statutes, is created to read:

11.043 Legislative intent and purpose.—The Legislature finds that the operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on legislative action. Further, the Legislature finds that preservation of the integrity of the governmental decisionmaking process is essential to the continued functioning of an open government. Therefore, in order to preserve and maintain the integrity of the process and to better inform the citizens of the efforts to influence legislative branch action, the Legislature finds it necessary to require the public disclosure of the identity, expenditures, and activities of certain persons who attempt to influence actions of the legislative branch.

Section 2. Subsections (1), (2), (3), (4) and (7) of section 11.045, Florida Statutes, are amended to read:

11.045 Lobbyists; registration and reporting; exemptions; penalties.—

(1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the committee of each house charged by the presiding officer with responsibility for ethical conduct of lobbyists.

(b) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying.

(c) "Legislative action" means introduction, sponsorship, testimony, debate, voting, or any other official action on any measure, resolution, amendment, nomination, appointment, or report of, or any matter which may be the subject of action by, either house of the Legislature or any committee thereof.

(d) "Lobbying" means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

(e) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

(f)~~(b)~~ "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) Each house of the Legislature shall provide by rule, or may provide by a joint rule adopted by both houses, for the registration of lobbyists who lobby the Legislature. The rule may provide for the payment of a registration fee. The rule may provide for exemptions from registration or registration fees. The rule shall provide that:

(a) Registration is required for each principal represented.

(b) Every registrant shall be required to state the extent of any direct business association or partnership with any current member of the Legislature.

(c) Each lobbyist and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate lobbying expenditures. Any documents and records retained pursuant to this section may be inspected under reasonable circumstances by any authorized representative of the Legislature. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.

(d)~~(c)~~ All registrations shall be open to the public.

(e)~~(d)~~ Any person who is exempt from registration under the rule shall not be considered a lobbyist for any purpose.

(3) Each house of the Legislature shall provide by rule *the following reporting requirements*:

(a) ~~A procedure by which~~ Statements shall be filed *quarterly* ~~semiannually~~ by all registered lobbyists, which statements shall disclose all lobbying expenditures *by the lobbyist and the principal* and the source of funds for such expenditures. *All expenditures made by the lobbyist and the principal for the purpose of lobbying must be reported. The report of such expenditures must identify whether the expenditure was made directly by the lobbyist, directly by the principal, initiated or expended by the lobbyist and paid for by the principal, or initiated or expended by the principal and paid for by the lobbyist. Expenditures made must be reported by the category of the expenditure, including, but not limited to, the categories of food and beverages, entertainment, research, communication, media advertising, publications, travel, and lodging. Lobbying expenditures do not include a lobbyist's or principal's salary, office expenses, and personal expenses for lodging, meals, and travel.*

(b) A principal who is represented by two or more lobbyists shall designate one lobbyist whose expenditure report shall include all lobbying expenditures of the principal and of all of the lobbyists on behalf of that principal as required by paragraph (a). Specific requirements for filing the consolidated expenditure report are as follows:

1. A list of all lobbyists representing the principal shall be included with the report. An expenditure report for each lobbyist on the list must be made pursuant to the reporting requirements of paragraph (a). The report for each lobbyist on the list must contain a cumulative total for the reporting period for all reportable categories. The consolidated report filed on January 15 shall contain a cumulative total for the calendar year for all reportable categories for each lobbyist and shall contain a cumulative total for the calendar year of all lobbying expenditures of all lobbyists represented on the consolidated report.

2. The report of lobbying expenditures by the principal shall be made pursuant to the requirements of paragraph (a). The report shall contain a cumulative total of expenditures made by the principal for the reporting period. The report filed on January 15 shall contain a cumulative total of all expenditures of the principal for the calendar year.

3. The principal is responsible for the accuracy of figures reported as lobbying expenditures made by the principal. Each lobbyist whose expenditures are included in the report is responsible for the accuracy of the lobbying expenditure figures submitted to the principal by that lobbyist for inclusion in the consolidated report filed by the designated lobbyist.

(c) The *reporting statements* ~~statement of session expenditures~~ shall be filed by *April 15,* July 15, *October 15, and January 15* of each year and shall include *the* expenditures for the period from January 1 through *March 31, April 1 through* June 30, *July 1 through September 30, and*

October 1. ~~The statement of interim expenditures shall be filed by January 15 and shall include expenditures for the period from July 1~~ through December 31, *respectively* ~~including expenditures for any special sessions~~. *The report due January 15 shall include a cumulative total for the calendar year for all reportable categories.* The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. A *reporting* statement *need not* ~~shall~~ be filed ~~even~~ if there have been no expenditures during a reporting period. *However, the registrant shall certify on the report due January 15 that there were no expenditures during any reporting period for which a report was not filed. Reporting statements may be filed by electronic means, when feasible.*

~~(b) That lobbying expenditures shall not include personal expenses for lodging, meals, and travel.~~

(4) Each house of the Legislature shall provide by rule a procedure by which a *person* ~~lobbyist~~, when in doubt about the applicability and interpretation of this section in a particular context, may submit in writing the facts for an advisory opinion to the committee of the respective house and may appear in person before the committee. The rule shall provide a procedure by which:

(a) The committee shall render advisory opinions to any *person* ~~lobbyist~~ who seeks advice as to whether the facts in a particular case would constitute a violation of this section.

(b) The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions.

(c) All advisory opinions of the committee shall be numbered, dated, and open to public inspection.

(7) Any person required to be registered *or to provide information* pursuant to this section or pursuant to rules established in conformity with this section who knowingly fails to disclose any material fact required by this section or by rules established in conformity with this section, *or who knowingly provides false information on any report required by this section or by rules established in conformity with this section,* commits a noncriminal infraction, punishable by a fine not to exceed $5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (6).

Section 3. Effective upon this act becoming a law, section 11.047, Florida Statutes, is created to read:

11.047 Contingency fees; prohibitions; penalties.—

(1) "Contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent or in any way contingent on the enactment, defeat, modification, or other outcome of any specific legislative action.

(2) No person may, in whole or in part, pay, give, or receive, or agree to pay, give, or receive, a contingency fee. However, this subsection does not apply to claims bills.

(3) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If such person is a lobbyist, the lobbyist shall forfeit any fee, bonus, commission, or profit received in violation of this section and is subject to the penalties set forth in s. 11.045. When the fee, bonus, commission, or profit is nonmonetary, the fair market value of the benefit shall be used in determining the amount to be forfeited. All forfeited benefits collected shall be deposited into the Legislative Lobbyist Registration Trust Fund.

(4) This section does not apply to any contract providing for compensation by contingency fee which is in existence on the date this act becomes a law and which does not provide for compensation by contingency fee for lobbying after December 31, 1993.

(5) Nothing in this section may be construed to prohibit any salesperson engaging in legitimate state business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company.

Section 4. Effective July 1, 1994, Section 11.062, Florida Statutes, is amended to read:

11.062 Use of state funds for lobbying prohibited; penalty.—

(1) No funds, exclusive of salaries, travel expenses, and per diem, appropriated to, or otherwise available for use by, any executive, judicial, or quasi-judicial department shall be used by any state employee or other person for lobbying purposes, which shall include the cost for publication and distribution of each publication used in lobbying; other printing; media; advertising, including production costs; postage; entertainment; and telephone and telegraph. Any state employee of any executive, judicial, or quasi-judicial department who violates the provisions of this section shall have deducted from his salary the amount of state moneys spent in violation of this section.

(2)(a) A department of the executive branch, a state university, a community college, or a water management district may not use public funds to retain a lobbyist to represent it before the legislative or executive branch. However, full-time employees of a department of the executive branch, a state university, a community college, or a water management district may register as lobbyists and represent that employer before the legislative or executive branch. Except as a full-time employee, a person may not accept any public funds from a department of the executive branch, a state university, a community college, or a water management district for lobbying.

(b) A department of the executive branch, a state university, a community college, or a water management district that violates this subsection may be prohibited from lobbying the legislative or executive branch for a period not exceeding 2 years.

(c) This subsection shall not be construed to prohibit a department of the executive branch, a state university, a community college or a water management district from retaining a lobbyist for purposes of representing the entity before the executive or legislative branch of the federal government. Further, any person so retained is not subject to the prohibitions of this subsection.

(d) A person who accepts public funds as compensation for lobbying in violation of this subsection may be prohibited from registering to lobby before the legislative or executive branch for a period not exceeding 2 years.

(e) A person may file a written complaint with the Commission on Ethics alleging a violation of this subsection. The commission shall investigate and report its finding to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet. Based upon the report of the Commission on Ethics or upon its own finding that a violation of this subsection has occurred, a house of the Legislature may discipline the violator according to its rules, and the Governor or the Governor and Cabinet, as applicable, may prohibit the violator from lobbying before the executive branch for a period not exceeding 2 years after the date of the formal determination of a violation. The Commission on Ethics shall adopt rules necessary to conduct investigations under this paragraph.

Section 5. Section 112.3213, Florida Statutes, is created to read:

112.3213 Legislative intent and purpose.—The Legislature finds that the operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on executive branch action. Further, the Legislature finds that preservation of the integrity of the governmental decisionmaking process is essential to the continued functioning of an open government. Therefore, in order to preserve and maintain the integrity of the process and to better inform citizens of the efforts to influence executive branch action, the Legislature finds it necessary to require the public disclosure of the identity, expenditures, and activities of certain persons who attempt to influence actions of the executive branch in the areas of policy and procurement.

Section 6. Subsections (1) and (5) of section 112.3215, Florida Statutes, 1992 Supplement, are amended to read:

112.3215 Executive branch lobbyists; registration and reporting; investigation by commission.—

(1) For the purposes of this section:

(a) ~~(c)~~ "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch.

(b) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying.

(c)~~(d)~~ "Fund" means the Executive Branch Lobby Registration Trust Fund.

(d)~~(b)~~ "Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement *or an attempt to obtain the goodwill of an agency official or employee.*

(e)~~(a)~~ "Lobbyist" means a person who *is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying,* ~~for compensation, remuneration, or commission, on behalf of another person, lobbies an agency~~ or *a person* who is principally employed for governmental affairs by another person *or governmental entity* to lobby on behalf of that other person *or governmental entity*. "Lobbyist" does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.

2. An employee of an agency acting in the normal course of his duties.

3. ~~A person who is~~ A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

4. *A* ~~Any~~ person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017(1)(a).

(f) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(5)*(a)* A lobbyist must also submit to the commission, *quarterly* ~~semiannually~~, a signed expenditure report summarizing *all* ~~his~~ lobbying expenditures *by the lobbyist and the principal,* ~~including meals, entertainment, and gifts for public officers and employees, and the sources from which they came, for the preceding 6 months~~. *All expenditures made by the lobbyist and the principal for the purpose of lobbying must be reported. The report of such expenditures must identify whether the expenditure was made directly by the lobbyist, directly by the principal, initiated or expended by the lobbyist and paid for by the principal, or initiated or expended by the principal and paid for by the lobbyist. Expenditures made must be reported by the category of the expenditure, including, but not limited to, the categories of food and beverages, entertainment, research, communication, media advertising, publications, travel, and lodging. Lobby expenditures do not include a lobbyist's or principal's salary, office expenses, and personal expenses for lodging, meals, and travel.*

(b) A principal who is represented by two or more lobbyists shall designate one lobbyist whose expenditure report shall include all lobbying expenditures of the principal and of all of the lobbyists on behalf of that principal as required by paragraph (a). Specific requirements for filing the consolidated expenditure report are as follows:

1. A list of all lobbyists representing the principal shall be included with the report. An expenditure report for each lobbyist on the list must be made pursuant to the reporting requirements of paragraph (a). The report for each lobbyist on the list must contain a cumulative total for the reporting period for all reportable categories. The consolidated report filed on January 15 shall contain a cumulative total for the calendar year for all reportable categories for each lobbyist and shall contain a cumulative total for the calendar year of all lobbying expenditures of all lobbyists represented on the consolidated report.

2. The report of lobbying expenditures by the principal shall be made pursuant to the requirements of paragraph (a). The report shall contain a cumulative total of expenditures made by the principal for the reporting period. The report filed on January 15 shall contain a cumulative total of all expenditures of the principal for the calendar year.

3. The principal is responsible for the accuracy of figures reported as lobbying expenditures made by the principal. Each lobbyist whose expenditures are included in the report is responsible for the accuracy of the lobbying expenditure figures submitted to the principal by that lobbyist for inclusion in the consolidated report filed by the designated lobbyist.

(c) The *reporting statements* ~~statement of expenditures~~ shall be due on *April 15, July 15, October 15, and* January 15 ~~and July 15~~ of each year *and shall include the expenditures for the period from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The report due January 15 shall include a cumulative total for the calendar year for all reported categories.* ~~Lobby expenditures shall not include personal expenses for lodging, meals, travel, salary, and office expenses~~. A statement *need not* ~~shall~~ be filed ~~even~~ if there have been no expenditures during a reporting period. *However, the registrant shall certify on the report due January 15 that there were no expenditures during any reporting period for which a reporting statement was not filed.*

(d) The commission shall adopt a rule which allows reporting statements to be filed by electronic means, when feasible.

(e) Each lobbyist and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate lobbying expenditures. Any documents and records retained pursuant to this section may be inspected under reasonable circumstances by any authorized representative of the commission. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.

Section 7. Effective upon this act becoming a law, section 112.3217, Florida Statutes, is created to read:

112.3217 Contingency fees; prohibitions; penalties.—

(1) "Contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent or in any way contingent on the enactment, defeat, modification, or other outcome of any specific executive branch action.

(2) No person may, in whole or in part, pay, give, or receive, or agree to pay, give, or receive, a contingency fee. However, this subsection does not apply to claims bills.

(3) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If such person is a lobbyist, the lobbyist shall forfeit any fee, bonus, commission, or profit received in violation of this section and is subject to the penalties set forth in s. 112.3215. When the fee, bonus, commission, or profit is nonmonetary, the fair market value of the benefit shall be used in determining the amount to be forfeited. All forfeited benefits shall be deposited into the Executive Branch Lobby Registration Trust Fund.

(4) This section does not apply to any contract providing for compensation by contingency fee which is in existence on the date this act becomes a law and which does not provide for compensation by contingency fee for lobbying after December 31, 1993.

(5) Nothing in this section may be construed to prohibit any salesperson engaging in legitimate state business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company.

Section 8. Except as otherwise provided herein, this act shall take effect October 1, 1993.

And the title is amended as follows:

On page 1, lines 2 through 31 and page 2, lines 1 through 5, strike all of said lines and insert: An act relating to ethics; creating s. 11.043, F.S.; providing legislative intent and purpose; amending s. 11.045, F.S., relating to legislative lobbyist registration and reporting; providing definitions; requiring the Legislature to provide for the quarterly reporting by category of all lobbying expenditures incurred by the lobbyist and the principal; providing specified categories; requiring the Legislature to provide for the retention of lobbyist and principal records for a specified period; providing for inspection of such records; providing a penalty for filing false information; requiring the Legislature to provide for the issuance of advisory opinions under certain circumstances; creating s. 11.047, F.S.; prohibiting contingency fees; providing an exception; providing a penalty; requiring forfeiture of moneys received in violation of the prohibition; providing for valuation of nonmonetary benefits for forfeiture; providing for deposit of forfeited benefits into the Legislative Lobbyist Registration Trust Fund; amending s. 11.062, F.S.; prohibiting departments of the executive branch, state universities, community colleges, and water management districts from using public funds to retain lobby-

ists to represent them before the legislative or executive branch of state government; exempting full time employees of these entities; prohibiting lobbyists from accepting compensation derived from public funds; providing penalties; authorizing complaints to be filed with and investigated by the Commission on Ethics; authorizing commission to adopt rules; creating s. 112.3213, F.S.; providing legislative intent and purpose; amending s. 112.3215, F.S., relating to executive branch lobbyist registration and reporting; providing definitions; requiring the quarterly reporting by category of all lobbying expenditures incurred by the lobbyist and the principal; providing specified categories; requiring the retention of lobbyist and principal records for a specified period; providing for inspection of such records; creating s. 112.3217, F.S.; prohibiting contingency fees; providing an exception; providing a penalty; requiring forfeiture of moneys received in violation of the prohibition; providing for valuation of nonmonetary benefits for forfeiture; providing for deposit of forfeited benefits into the Executive Branch Lobby Registration Trust Fund; providing effective dates.

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

CS for SB 1668 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—34 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB's 1708 and 1884 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB's 1708 and 1884—A bill to be entitled An act relating to public assistance; creating the "Family Transition Act"; providing a short title; providing legislative intent; providing definitions; providing for demonstration projects; providing requirements for the projects; providing for evaluation of the projects and for recommendations for expanding the program to other areas of this state; providing responsibilities of the Department of Health and Rehabilitative Services; providing for limitations on benefits and for enhanced services, to promote self-sufficiency; providing exceptions to certain limitations on benefits; providing for exemptions from limitations; providing for the department to extend benefits in specified circumstances; providing for selection and responsibilities of review panels; providing for support staff; providing for reimbursement for per diem and travel expenses of panel members; providing limitations on the assets that a participant may have; providing for additional transitional child care benefits; providing for suspension of benefits for unexcused absences from school; providing for waivers of certain limitations; providing for penalties for failure to participate in a required program activity; providing for court ordered work experience, job training, or education programs; providing incentives to employers; providing for an AFDC dependency diversion program; providing rule making authority to the department; providing for reporting; requiring AFDC participants to maintain required childhood immunizations and providing a penalty for failure to do so; providing for a waiver of the immunization requirement; requiring certain work to have been performed in the United States; providing for participation by housing authorities in the AFDC two-party payment program; providing for an appropriation; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 2, line 15, strike everything after the enacting clause and insert:

Section 1. Short title.—This act may be cited as the "Family Transition Act."

Section 2. Legislative intent.—

(1) The purpose of the family transition program is to provide short-term comprehensive services that are concentrated on moving participants along the continuum from dependence on society through independence to the opportunity to contribute to society.

(a) The family transition program exists to meet the transitional needs of program participants who need assistance toward achieving independent, productive lives and gaining the responsibility that comes with self-sufficiency.

(b) The family transition program must be delivered in a manner consistent with the preservation and encouragement of self-worth, both for those who receive the services and for those who deliver the services.

(2) It is the intent of the Legislature to implement this act statewide as soon as practicable.

(3) It is the intent of the Legislature that the family transition program be implemented in its entirety and that the provisions authorizing enhanced benefits not be implemented without specific benefit limitations.

Section 3. Definitions.—As used in this act, the term:

(1) "AFDC" means aid to families with dependent children.

(2) "Bootstrap training" means a process in which an employed person who has been a participant in the family transition program continues education through self-study instruction, technical-skills training, or other educational endeavors.

(3) "Case management" means a method by which the employment counselor or case manager ensures that services are provided based on assessing the needs of the participant and the participant's family, and then arranging, coordinating, monitoring, evaluating, and advocating on behalf of the participant. For the purpose of this act, "case management" pertains to the development and implementation of the participant's employability plan.

(4) "Department" means the Department of Health and Rehabilitative Services.

(5) "Employability plan" means an agreement developed for each participant that clearly delineates the obligations of the participant and the program activities that the participant must complete, as well as the department's responsibilities in assisting the participant to comply with the employability plan. The plan is signed by the participant and the employment counselor, reviewed at least every 6 months by the participant and the employment counselor to evaluate effectiveness, and updated on an ongoing basis as needs and circumstances warrant. The employability plan review may not interfere with the participant's work or education program. Except for participants determined appropriate for up-front job search, the employability plan is developed prior to assigning any participant to an activity other than assessment.

(6) "Family transition program" or "program" means the AFDC client's transition program and involves a pact between service deliverers and participants under which enhanced benefits and services are provided in exchange for increased participant responsibility.

(7) "Participant" means any person participating in the family transition program.

(8) "Review panel" means the local panel selected by the department's health and human services board to assist in reviewing the sufficiency of the department's delivery of enhanced family transition program services and the progress of family transition program participants.

(9) "Workfare" means an employability-skills training program, consisting primarily of unpaid work performed for a public agency or a nonprofit agency, which provides to the participant, in exchange for benefits under the family transition program, the opportunity to develop basic work skills, to practice and improve existing skills, to acquire on-the-job experience, and to meet the goal of long-term self-sufficiency. A participant in workfare is not an employee of the state and is not subject to chapter 440, Florida Statutes.

Section 4. Family transition program; general provisions.—

(1)(a) Any provision of law to the contrary notwithstanding, the department shall begin to implement the family transition program as soon as possible, but no later than 3 months after it receives federal waiver approval and sufficient funds. In order to satisfy the requirements for obtaining federal waivers, the department shall initially implement two variations of the family transition program as demonstration projects, with the goal of having the program implemented statewide as early as practicable, subject only to the availability of funding and federal waivers. The demonstration projects must be implemented in distinct, urban locations that are as closely matched demographically as is feasible, selected by the department as appropriate test locations for the purpose of collecting the data necessary for evaluation in accordance with this act.

(b) The department shall select the locations of the demonstration projects within the following guidelines:

1. Locations must be manageable sites consistent with the evaluation design, and selection factors must include labor markets, transportation system, ethnic composition, concentrations of low-income families, local employment capacities, and the capacities of local service delivery systems.

2. The department must consult with the district health and human service boards in the process of site selection and must encourage community input into the selection process through the boards.

(c) The department shall immediately request all federal waivers necessary to implement the program demonstration projects. The department may redirect current support funds offered to family transition program participants to optimize the effectiveness of the funds in this program, shall report to the chairmen of the appropriate substantive committees of the Senate and the House of Representatives on the waivers that are being used, shall compile data evaluating the use of waivers as part of evaluating the program, and shall recommend annually any program changes that need to be incorporated as progress toward statewide implementation is made.

(2) The demonstration projects must provide an identical array of time-limited, concentrated transitional services as delineated in the employability plan developed for each participant, except that:

(a) In one of the demonstration projects, participation in the family transition program for participants who meet statewide AFDC eligibility standards, as well as in a workfare program, must be mandatory. Each participant who is assessed as job-ready must, after an initial 3 weeks of job search, participate in the employability-skills training program for at least 30 hours per week. However, a participant may be exempted from participation in the employability-skills training program if daycare and transportation are not available or if the participant is participating in an allowable federal job-opportunities and basic-skills activity that provides education or training, for at least 30 hours per week or full time, as designated by the education or training institution. The employability-skills training program must meet all federal requirements.

(b) In the other demonstration project public assistance applicants who meet statewide AFDC eligibility standards and recipients must be provided with the option to participate in the family transition program by entering into a written contract. The written contract must include an agreement to accept the time-limited benefits described in this act in exchange for the concentrated transitional services. As part of this demonstration project, workfare may be used where appropriate or as a component in a participant's employability plan.

(3)(a) The department shall encourage maintaining the currency of immunizations pursuant to section 17 of this act and also preventive health for the participant family's children, and shall provide information on the full range of voluntary public health services as part of the program's integrated services delivery system. The information must be made available at the yearly or periodic redetermination review, and information about the services must be provided during the program's application and orientation process.

(b) The department shall advise program applicants for AFDC benefits of the availability of standard childhood immunizations through the county public health unit. At the 6-month review, if the participant fails to submit proof of immunizations, the employment counselor shall notify the review panel. The review panel shall take into consideration the failure of the participant to provide proof of immunization at its scheduled review. The department shall address barriers that prohibit the participant's ability to comply with the immunization requirement.

(c) The department shall conduct the program's application and orientation process on a daily basis, and shall strongly encourage noncustodial parents as well as custodial parents to attend.

(4) If a participant family ceases to receive AFDC benefits in a transitional demonstration project because the family moves out of the project area or becomes ineligible for AFDC benefits and the family later begins again to receive AFDC benefits in the project area, the duration limitation on the monthly payment applies as though the family never ceased to receive AFDC benefits in the transitional demonstration project. However, if the family has been ineligible for AFDC benefits for at least 36 consecutive months before reapplying for AFDC benefits, this subsection does not apply.

Section 5. Federal waivers and evaluation.—

(1) The department shall conduct, through contract, a comprehensive evaluation of the demonstration projects operated under this act. An initial phase of such evaluation must be designed to monitor the extent to which the family transition program is being implemented and to make recommendations on how best to expand the family transition program to other sites, including validation of estimated program costs and savings related to factors such as child care, other support services, AFDC benefits, staffing ratios and service integration.

(2) The initial phase of the evaluation must provide information on the preliminary outcomes of the program, including rates of job placement and job retention and participant salary levels. The department shall report results of the initial evaluation within 18 months after the demonstration projects begin.

(3) Following the initial implementation of the demonstration projects, a subsequent phase of evaluation must be conducted to determine the impact of the family transition program on participants. The evaluation must include, but is not limited to:

(a) The effect of the program on post-program levels of earnings and public assistance receipt.

(b) The effect of the program on longer term job retention and welfare recidivism.

(c) Estimates of the impact of the family transition program on aggregate expenditures for AFDC, Food Stamps, Medicaid, child care, other support services, funds expended under the Job Opportunities and Basic Skills Training (JOBS) program, the Job Training Partnership Act (JTPA), and similar publicly funded programs and services.

(4) In order to provide evaluation findings with the highest feasible level of scientific validity, the department is specifically authorized to contract for an evaluation design that includes random assignment of program participants to program groups and control groups. Under such design, members of control groups must be given the level of benefits and services generally available to recipients who are not included in the family transition program demonstration areas. The provisions of s. 402.105, Florida Statutes, or similar provisions of federal or state law do not apply under this section.

(5) If the secretary determines that procurement procedures for the evaluation will delay the application or approval of any required federal waivers or would otherwise delay initial implementation of family transition program demonstration sites beyond January 1, 1994, the secretary may proceed with such procurement, notwithstanding any provisions of chapter 287, Florida Statutes. However, the professional standards of any contractor selected must be consistent with the provisions of this section, and the amount of the contract must not exceed the funds provided for this purpose.

Section 6. Responsibilities of the department.—

(1) To improve efficiency, the department shall promote innovative approaches to the delivery of program services that foster the development of entrepreneurial program efforts among participants. To this end, the department shall establish a task force comprised of the Department of Labor and Employment Security, the Department of Commerce, consumers, business leaders, Private Industry Councils, and other appropriate community agencies or organizations that can develop opportunities that emphasize enterprise development for participants in the demonstration sites.

(2) To the greatest possible extent, there must be a single location at which participants can receive program services.

(3) The department shall develop a procedure for determining the employability of program participants when they enter the program. Those participants who are found to be job-ready must be referred to job-search programs. Screening criteria may include, but are not limited to, work experience, academic or vocational aptitudes, and length of time on public assistance.

(4) Each participant who is not initially referred to a job-search program must be provided with family-centered case-management beginning with screening or with an assessment to determine appropriate services, followed by development and implementation of a mutally understood employability plan that includes, but need not be limited to, the provision of necessary education, training, motivation, and other related support services, and culminating in the participant family's self-sufficiency through employment.

(5) For staff who deal directly with participants, the department shall provide training to encourage a positive staff attitude, an understanding of the goals of the family transition program, and the necessary capabilities to accomplish these goals.

(6) The department shall provide to participants full notification of all benefit limitations and mutual expectations. Full notification must be made a part of the employability plan.

(7) The department shall expand project independence and establish bootstrap training programs that include education, training, apprenticeship, and work internships, with priority placed on assisting participants to achieve self-sufficiency by obtaining employment or higher-paying jobs. The department may establish a bootstrap training initiative, including formal motivational training, to cultivate positive attitudes, self-esteem, and personal responsibility and to increase the participants' likelihood of achieving self-sufficiency.

(8) At least once every 6 months, the case manager shall conduct a review to assure that the participant is making progress on the employability plan. After the evaluation, the case manager must advise the participant as to the progress made.

(9) The department shall work with other units of state and local government, including housing authorities, through innovative, cooperative rent-subsidy programs, toward reducing disincentives to employment, and shall conduct public-awareness programs that provide effective community understanding of the new opportunities to achieve self-sufficiency.

(10) The department may offer, where appropriate, vouchers for the purchase of various types of program services from a menu of appropriate services, which may include child care and transportation.

Section 7. Benefits limitations and enhanced services applicable to all participants.—

(1)(a) Except as otherwise provided in this act, AFDC benefits may not be received for more than 24 months in any 60-month period by applicants and current recipients, except that those recipients who have received AFDC for 36 of the past 60 months, or who are under 24 years old, have no high school diploma or are not currently in high school or a high school equivalency program, and have little or no work history in the past year, may not receive AFDC benefits for more than 36 months out of any 72-month period.

(b) The family transition program review panel may approve or disapprove a maximum of two extensions of the time limit on AFDC benefits of up to 4 months each. Such extensions may be granted only if the participant has substantially met the requirements of the participant's employability plan and has encountered extraordinary difficulties in obtaining employment. Participants who are granted an extension to the benefit time limits remain responsible for meeting all program requirements.

(c) The following persons are exempt from the time limits on AFDC benefits contained in this act:

1. A disabled or incapacitated adult;

2. A full-time caretaker of a disabled dependent person;

3. A caretaker relative whose needs are not included in the AFDC benefits;

4. A person who is under 18 years of age who remains in an educational program or is working at least 30 hours per week to support his family;

5. A parent who has a child who is 6 months of age or younger; and

6. A recipient who is 62 years of age or older.

Exempted persons generally are not eligible for enhanced program services, but may choose to participate if they would have been included in the program except for the exemption. The department may provide selected appropriate enhanced services to exempted persons if funds are available. Exempted persons and persons who do not opt for time-limited benefits shall continue to be eligible for all services and benefits provided in accordance with state and federal law.

Section 8. Review panels; selection and responsibilities.—

(1)(a) Upon selection of the demonstration project locations, there shall be established at least one review panel for each demonstration project to assist in reviewing the sufficiency of the department's delivery of enhanced family transition program services as required in this act and the progress of participants. Each review panel must consist of seven members and must include a member of the local health and human services board, a member of the Private Industry Council, a participant or former participant in the family transition program, two members of the local business community, one member of the education community, and one member at large. The district administrator shall submit nominees for each review panel to the health and human services board for confirmation. The member of the review panel designated from the health and human services board shall serve as interim chair until a permanent chair is elected by the members of the panel.

(b) The department shall provide support staff and services for the review panels, and shall provide all review panel members with intensive training in public assistance issues and the goals of the family transition program.

(c) Review panels shall operate under the auspices of the health and human services boards, but all determinations must be made independently of the department. Review panel members, while serving on review panels, are agents of the state for purposes of sovereign immunity under section 768.28, Florida Statutes.

(2) The review panels shall:

(a) Review every 9 months the cases of those participants who are failing to meet the requirements of their employability plans or to meet program requirements. This review should include an evaluation of the sufficiency of the department's efforts to meet its responsibilities under the program.

(b) Approve or disapprove applications for the extension of the time limit in AFDC benefits pursuant to this act. Failure by the department to substantially provide sufficient services as specified in the family transition program employability plan shall be considered by the review panel in evaluating an application for the extension of the time limit on benefits and may void or modify the time limit on benefits. The participant and the participant's advocate may review and obtain copies of all documents concerning the participant, including documents submitted to the review panel, at least 10 days before the review hearing is held. The participant and the participant's advocate may question the case manager at the review hearing and submit information for consideration by the review committee. The review panel's decision must be in writing.

(3) The participant's case manager shall submit the participant's entire case file and prepare the information presented to the review panel for the participant's review hearing, and the participant may bring an advocate to the review hearing.

(4) Review panel members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

(5) Nothing precludes any participant from seeking a standard fair hearings process review procedure in addition to the review panel proceedings. The participant must be informed of this option by the department.

Section 9. In addition to the review conducted by the review panel, the district administrator shall conduct a full durational review of each participant reaching the end of the benefit eligibility period with the option of removing the parent's needs from the AFDC grant and assigning a protective payee in any situation in which AFDC grant cancellation would result in the need to move a child into substitute care. After assessing the situation, the district administrator shall determine whether to remove the parent's needs from the AFDC grant and assign a protective payee or to remove the parent's needs from the AFDC grant but continue the grant for the child in the name of the parent. Termination of full AFDC benefits shall not occur unless the district administrator makes a determination that such termination is not likely to result in the child being placed into emergency shelter or foster care.

Section 10. Enhanced services; participant responsibilities.—

(1) The asset-accumulation limit for each participant family is $5,000 per family, plus a vehicle of reasonable worth needed primarily for self-sufficiency purposes, in order not to discourage the accumulation of assets for purposes such as education, employment, training, improved housing, or the development of a business.

(2) In order to be eligible to participate in the program, the participant must meet statewide AFDC eligibility requirements. Thereafter, in computing a participant family's eligibility for continued program benefits, the following amounts must be disregarded:

(a) The first $200 of a participant's monthly gross earnings and 50 percent of all additional earned income.

(b) Amounts earned during the summer by a teenager who has remained in school throughout the previous academic year and who has not yet been graduated from high school.

(c) The income of a stepparent whose needs are not included in the AFDC assistance group. The duration of the income exclusion allowed under this paragraph may not exceed 6 months.

(3) The department shall inform participants of the advantages of the earned-income tax-credit option that is available as a wage supplement for low-wage working families with children and encourage them to take advantage of that credit.

(4) A child who is a full-time student in secondary school or vocational training, or the equivalent, and who is expected to complete the program by age 19, is eligible for basic AFDC benefits until the 19th birthday.

(5) A participant family that meets the requirements of section 402.3015(4), Florida Statutes, may receive 12 additional months of transitional child care benefits, in addition to the 12 months of transitional child care benefits provided under section 402.3015, Florida Statutes. During the second year of subsidized child care benefits, participants shall pay a child care fee, based on a sliding scale and as specified in section 409.029, Florida Statutes.

(6) With respect to Medicaid, the department shall eliminate the periodic reporting requirement and extend benefits for 12 full months for employed participant families who lose their AFDC eligibility due to earnings.

(7) Each participant with a school-age child is required to have a conference with an appropriate school official of the child's school during each grading period to assure that the participant is involved in the child's educational progress and is aware of any existing attendance or academic problems.

(8) Participants who are eligible for the AFDC unemployed parent program as provided for under s. 409.255, Florida Statutes, must be granted a waiver of the AFDC unemployed parent program 100-hour rule.

(9) The department may grant case-by-case exceptions to the AFDC unemployed parent program 6-month time limit on the availability of cash benefits, which limit is provided under s. 409.255, Florida Statutes, for the purpose of enabling the family's principal wage earner to complete an employability plan, based on whether the employability plan could reasonably be completed in 6 months.

(10) If a participant fails without good cause, as defined by department rule, to participate in any required family transition program activity, the department must impose sanctions against the participant to the fullest extent allowable under federal law. The department shall request a waiver from the United States Department of Agriculture, Food and Nutrition Service so that, when a participant's AFDC benefits are reduced due to sanctions, that participant's food stamp benefits do not increase because of the reduced benefits.

Section 11. Court-ordered participation.—Upon notification that a dependent child's parent who is absent from the home is unemployed or underemployed, the court may order that parent to participate in work experience, job training activities, or education for up to 40 hours per week. A parent who fails without good cause to participate as ordered by the court may be held in contempt.

Section 12. Incentives for employers.—In order to promote job availability for participants who are hard to place at a level equal to or exceeding the average wage at placement, certain incentives to private employers are provided. The minimum wage level must be defined based upon the situation at the time the participant enters the job. The employer incentives apply only to full-time jobs, 40 hours a week.

(1) The department, if a federal waiver is obtained, may pay employers who employ those participants who are hard to place 70 percent of the individual participant's AFDC benefits for up to 1 year to compensate them for intensive training in the skills necessary for the particular position and general skills for retaining employment. The employer must demonstrate to the department's satisfaction that no other employees are displaced due to the employment of the participant.

(2) The department may establish a work supplementation program to further promote the placement of the hard-to-place participants, as provided in section 482 of Title IV-F of the Social Security Act and as established pursuant to section 201 of the Family Support Act of 1988, Pub. L. No. 100-485.

(3) For the purposes of this section, a participant is hard to place if, during the preceding 12 months, the participant has been unable to retain any job for at least 3 months, has held more than two jobs during the preceding 12 months, and meets at least one of the following federal criteria for enhanced funding:

(a) Has been on AFDC for 36 of the past 60 months; or

(b) Is under 24 years of age, has no high school diploma or is not currently enrolled in a high school equivalency program, and has little or no work history during the past 12 months.

(4) Nothing in this section shall be construed to create an obligation for the state to pay any incentive to employers either prospectively or retroactively.

Section 13. Family transition program learnfare requirement.—Pursuant to federal law and regulations, the department shall reduce the benefit payments for a participant's eligible dependent child or for an eligible teenage participant who has not been exempted from education-participation requirements during a grading period in which the child or teenage participant has accumulated a number of unexcused absences from school that is sufficient to jeopardize the student's academic progress, in accordance with rules adopted by the department with input from the Department of Education. The benefit payments must be reinstituted after a subsequent grading period in which the child has substantially improved his attendance. Good cause exemptions from the rule of unexcused absences include the following:

(1) The student is expelled from school and alternative schooling is not available.

(2) The teen has a child under 6 months of age.

(3) No licensed day care is available for a child of teen parents subject to Learnfare.

(4) Prohibitive transportation problems exist (e.g., to and from day care).

(5) The teen is over 16 years of age and not expected to graduate from high school by age 20.

Fifteen days after sanction notification, the participant parent of a dependent child or the teenage participant may file an internal fair hearings process review procedure appeal, and no sanction shall be imposed until the appeal is resolved.

Section 14. Family transition program AFDC dependency diversion.—

(1) The department shall fund a program targeted for children "at risk" of AFDC dependency or parenting within the demonstration projects to divert them from future welfare participation.

(a) The diversion efforts shall include case management, educational counseling, mentoring programs, educational enrichment programs, and extracurricular activities.

(b) The children targeted for this program must be receiving AFDC benefits or residing in public housing projects, and not be teen parents or school dropouts or children who have been involved in delinquent activities.

(2) The department shall establish a public education campaign in collaboration with the local school system to provide students ages 13 to 19 with information regarding the changing welfare system, including the transitional approach of time-limited benefits and the parental responsibility of both boys and girls in being able to support their children themselves as self-sufficient, contributing members of their community.

Section 15. The department shall adopt rules governing the family transition program and shall provide programmatic features by rule when appropriate.

Section 16. Reporting.—

(1) The department, in consultation with the Department of Labor and Employment Security, the Department of Commerce, and the Department of Education, shall provide to the Governor, the President and the Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives, a status report on the operation of the demonstration projects by November 1 of each year during which the demonstration projects are operational, and at the conclusion of the demonstration projects, and shall report annually thereafter on the effectiveness of the family transition program in meeting its objectives, accompanying the final report and each annual report with an analysis of welfare reform initiatives in other states and any recommendations for additional demonstration projects or changes in the law or rules governing the program.

(2) Within 1 year after the date of demonstration project implementation, the department shall provide a report describing the feasibility of including a child support assurance program as part of the family transition program.

Section 17. Family transition program; awards of recognition.—The department may provide family transition program meritorious success and service awards, incentives, and recognition to program participants and service deliverers.

Section 18. Immunizations.—Statewide, the department shall advise applicants for aid to families with dependent children of the availability of standard childhood immunizations through the county public health unit. Within 12 months after a determination of eligibility for aid to families with dependent children or at the next scheduled full redetermination, the recipients must submit to the department proof that the children for whom they receive benefits have received their standard childhood immunizations. If a recipient fails to provide such proof of immunization, the department shall review the case to determine whether sanctions should be imposed. The department shall waive this requirement if the failure to immunize the children is because of religious reasons or other good cause, or upon proof that the immunization sequence has been started.

Section 19. Required quarters of work for AFDC unemployed parent program.—The department shall waive the required quarters of work for the AFDC unemployed parent program within the family transition program except for recent refugee entrants who qualify for the Refugee Assistance Program.

Section 20. Vendor payment for housing authority.—Statewide, the Department of Health and Rehabilitative Services shall expand the vendor payment program for housing authorities that wish to participate in the Aid to Families with Dependent Children Two-Party Payment Program. The program shall be implemented statewide as defined in section 409.185(6)(d), Florida Statutes.

Section 21. Periods of substantially high unemployment rates.—The department shall use an unemployment rate threshold established by the Social Services Estimating Conference established pursuant to section 216.136(6), Florida Statutes, in consultation with the Economic Estimating Conference described in section 216.136(1), Florida Statutes, to provide for suspension of the family transition program's duration of benefits time limit during 6-month periods of unemployment rates that are substantially higher than average. No such suspensions shall occur unless the state's unemployment rate is at least 3 base percentage points above the average for the past 3 years.

Section 22. This act shall take effect upon becoming a law.

And the title is amended as follows:

On page 1, line 1, strike the entire title and insert: A bill to be entitled an act relating to public assistance; creating the "Family Transition Act"; providing a short title; providing legislative intent; providing definitions; providing for demonstration projects; providing requirements for the demonstration projects; providing for evaluation of the demonstration projects and for recommendations for expanding the program to other areas of this state; providing responsibilities of the Department of Health and Rehabilitative Services; providing for limitations on benefits and for enhanced services, to promote self-sufficiency; providing exceptions to certain limitations on benefits; providing for exemptions from limitations; providing for the department to extend benefits in specified circumstances; providing for selection and responsibilities of review panels; providing for support staff; providing for reimbursement for per diem and travel expenses of panel members; providing for increased asset accumulation and providing limitations on the increased assets that a participant may have; providing for additional transitional child care benefits; requiring participant parents of school-age children to participate in parent-school conferences; providing for waivers of certain limitations; providing for penalties for failure to participate in a required program activity; providing for court-ordered work experience, job training, or education programs; providing incentives to employers; providing a family transition program learnfare requirement for participant children and eligible teenage participants; providing for a program AFDC dependency diversion feature; providing rule-making authority to the department; providing for reporting; requiring statewide AFDC recipients to maintain required childhood immunizations and providing for sanctions for failure to do so; providing for a waiver of the immunization requirement; providing for participation by housing authorities in the AFDC two-party payment program; providing for suspension of time limits during periods of substantially high unemployment rates; providing an effective date.

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

CS for SB's 1708 and 1884 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—33 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 1760 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 1760—A bill to be entitled An act relating to motor vehicle licenses; prescribing the amount of the annual use and processing fees for purchasers of 10,000 or more Florida panther license plates; amending s. 320.08065, F.S.; redistributing the proceeds of the Florida panther license plate annual use fee; providing an effective date.

House Amendment 1—On page 1, lines 23 through 31 and on page 2, lines 1 through 3, strike all of said lines and insert:

(a) *Forty-five* ~~Fifty~~ percent to the Florida Panther Research and Management Trust Fund in the Game and Fresh Water Fish Commission to be used for programs to protect the endangered Florida panther;

(b) *Forty* ~~Twenty-five~~ percent to the Save Our State Environmental Education Trust Fund in the Department of Natural Resources to be used for *environmental education, including* programs to inform the public about the habitat needs of the Florida panther; and

(c) *Fifteen* ~~Twenty-five~~ percent, *but no less than $300,000,* to the Florida Communities Trust Fund for use pursuant to the Florida Communities Trust Act.

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

SB 1760 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB's 1914, 2006, 1784 and 406 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB's 1914, 2006, 1784, and 406—An act relating to health care; amending s. 20.42, F.S.; modifying organization and responsibilities of the Agency for Health Care Administration; revising division responsibilities; delaying transfer to the agency of certain responsibilities relating to health care professionals; transferring to the agency certain responsibilities relating to state employee health insurance; amending ss. 32 and 33 of ch. 92-33, Laws of Florida; delaying transfer of the Division of Medical Quality Assurance, and the boards thereunder, from the Department of Professional Regulation to the agency; amending s. 110.123, F.S., relating to the state group insurance program; providing legislative intent; providing agency responsibilities; amending s. 112.0455, F.S.; providing agency responsibilities under the Drug-Free Workplace Act; amending s. 408.001, F.S.; revising membership of the board of directors of the Florida Health Care Purchasing Cooperative; deleting obsolete language; transferring, renumbering, and amending s. 409.701, F.S.; revising membership of the board of directors of the Florida Health Access Corporation; amending ss. 408.062, 409.7105, and 455.201, F.S.; conforming references and terminology to the provisions of the act; creating s. 408.301, F.S.; providing legislative findings and intent; providing for an inter-agency agreement between the Agency for Health Care Administration and the Department of Health and Rehabilitative Services; amending s. 408.07, F.S.; revising definition of "banked points"; amending ss. 408.072 and 408.08, F.S., relating to review of hospital budgets, inspections, audits, and enforcement; clarifying allowable rate of increase in net revenue per adjusted admission; authorizing the Health Care Board to adjust excess revenues for certain hospitals; amending s. 408.061, F.S., requiring the submission of certain data by nursing homes; requiring a study and a report to the Legislature; amending s. 624.91, F.S.; revising membership of the board of directors of the Florida Healthy Kids Corporation; transferring to the agency administration of the Florida Healthy Kids Trust Fund; amending s. 766.1115, F.S.; expanding the definition of "health care provider" under the Access to Health Care Act; delaying amendment and repeal of specified sections in ch. 455, F.S., to conform to the act; amending s. 240.4067, F.S., relating to the medical education reimbursement and loan repayment program; providing for penalties for noncompliance; deleting a 3-year limit on payment period; amending s. 240.4075, F.S.; adding birth centers to the list of eligible employing institutions for the nursing student loan forgiveness program; amending s. 381.0302, F.S.; providing additional membership in the Florida Health Services Corps; authorizing the Department of Health and Rehabilitative Services to provide certain financial assistance to primary care medical residents, physician assistants, and nurse practitioners; authorizing use of certain appropriated funds as federal matching funds; creating s. 381.0406, F.S., relating to rural health networks; providing legislative findings and intent; providing definitions; providing for organization, administration, and nonprofit corporate status; specifying services to be provided; requiring participation of certain trauma agencies; providing for public and private financing; providing for phased-in implementation; specifying responsibilities of the agency and the State Health Office relating to establishment and certification of rural health networks; providing for rules; amending s. 395.1055, F.S.; providing for separate standards for statutory rural hospitals; creating s. 395.606, F.S., relating to rural health network cooperative agreements; providing legislative intent with respect to antitrust laws; specifying conditions under which health care providers who are members of rural health networks may consolidate services or enter into cooperative agreements; requiring approval and oversight by the agency; providing for administrative and judicial review; amending s. 409.905, F.S.; providing for Medicaid nursing facility services for recipients in rural hospitals; creating s. 409.9116, F.S.; creating a disproportionate share program for rural hospitals; establishing a funding formula; providing for creation of a rural hospital financial assistance program under certain circumstances; specifying requirements for participation; providing for a workgroup to examine personnel licensing and training issues; amending s. 768.28, F.S.; correcting a cross-reference; directing the agency to establish a workgroup to examine personnel licensing and training issues relating to rural hospitals; providing membership; requiring a report; amending s. 408.02, F.S.; providing for the development of state practice parameters; providing a liability defense; creating s. 408.700, F.S.; providing legislative intent regarding the need to reform Florida's health care delivery system; proposing the creation of managed competition throughout the state; proposing the creation of community health purchasing alliances; creating s. 408.701, F.S.; providing definitions; creating s. 408.702, F.S., establishing community health purchasing alliance regions; providing for alliance standards; providing for voluntary membership; providing duties, powers, and responsibilities; providing for membership fees; providing for a choice of health plans for nonstate employees and for state employees; creating s. 408.7025, F.S.; providing agency responsibilities with respect to community health purchasing alliances; authorizing the agency to contract with alliances and provide start-up funds; requiring an annual audit; establishing a data committee and specifying membership; requiring a report to the Legislature; providing for confidentiality of medical information; requiring the submission of data by health care providers; authorizing the agency to adopt rules to implement the recommendations of the data committee; providing for a provider and consumer advisory panel; creating s. 408.703, F.S.; providing for community health purchasing alliance boards of directors; providing for membership, appointment, and terms; providing for staff; creating s. 408.704, F.S., establishing standards for accountable health partnerships; providing for designation of accountable health partnerships by the agency; specifying standards and requirements; providing for panels of providers to make recommendations to accountable health partnerships on health plans and issues; providing for notice and hearing; limiting coverage for professional liability; prohibiting the exclusion of physicians from participating solely on the basis of economic criteria; creating s. 408.705, F.S.; requiring a study relating to community health purchasing alliances; requiring a report; creating s. 408.707, F.S.; providing legislative intent with respect to certain antitrust issues; requiring a study and specifying contents; requiring a report; providing for the establishment of criteria and conditions for formation and certification of provider networks; creating s. 408.90, F.S.; providing legislative findings and intent; creating s. 408.901, F.S.; providing definitions; creating s. 408.902, F.S.; creating the MedAccess program within the Agency for Health Care Administration; providing for a report; creating s. 408.903, F.S.; providing eligibility requirements; creating s. 408.904, F.S.; providing health care benefits; creating s. 408.905, F.S.; providing limitations and exclusions; creating s. 408.906, F.S.; providing for the payment of claims; creating s. 408.907, F.S.; providing for the collection of premiums; creating s. 408.9075, F.S.; providing agency responsibilities for the administration of the MedAccess program; amending s. 409.908, F.S.; providing for a new methodology for reimbursing for Medicaid physician services; creating s. 409.9081, F.S.; providing for copayments for Medicaid services; providing for a study of the costs and benefits of collecting Medicaid copayments; amending s. 409.911, F.S.; creating new requirements for the regular disproportionate share program; creating s. 409.9121, F.S.; providing legislative findings and intent; creating s. 409.9122, F.S.; providing for an independent study of the MediPass program; providing for the expansion of the MediPass program; directing the agency to encourage the enrollment of Medicaid recipients in managed care plans; providing for a study of the feasibility of managed care programs for Medicaid recipients with special needs; providing for funds for technical assistance in developing Medicaid prepaid health plans; amending s. 409.914, F.S.; directing the agency to seek federal authority to establish a Medicaid buy-in program; providing for the consolidation of the state health insurance and Medicaid buy-in programs once federal waivers are obtained; repealing s. 409.9114, F.S., relating to the extraordinary disproportionate share program; repealing s. 407.60, F.S., relating to charges for radiation therapy procedures; amending s. 15 of ch. 92-178, Laws of Florida; revising the divestiture date for designated health services; clarifying the application of that provision; repealing s. 455.238, F.S., relating to mark-ups by health care providers; providing legislative intent relating to health care fraud and abuse; establishing a workgroup on care fraud and abuse; requiring a report; amending s. 408.031, F.S.; correcting a cross-reference; amending s. 408.032, F.S.; revising definitions; amending s. 408.033, F.S., relating to local and state health planning; revising a fine; providing for denial of relicensure for failure to pay facility fees; amending s. 408.034, F.S., relating to duties and responsibilities of the Agency for Health Care Administration; amending s. 408.035, F.S.; revising review criteria; amending s. 408.036, F.S.; providing projects subject to review; revising projects subject to expedited review; providing additional exemptions; amending s. 408.037, F.S.; modifying application content; amending s. 408.038, F.S., relating to fees; amending s. 408.039, F.S., relating to review process; providing for confidentiality of applications until deemed complete; providing for review and repeal; reducing timeframe for a public hearing request; providing basis for final orders; providing for the right to initiate or intervene in administrative hearings; amending s. 408.040,

F.S., relating to conditions and monitoring; providing for agency actions, fines, and injunctive relief; extending the validity period for certificates of need; prohibiting transfers, consolidations, and divisions of certificates of need; amending s. 408.041, F.S., relating to penalties; providing for fines; amending s. 408.043, F.S.; eliminating special provisions for specified nursing homes; providing for preferences for rural health networks and cooperative agreements for tertiary service providers; amending s. 408.044, F.S., relating to injunctions; amending s. 408.045, F.S., relating to competitive sealed proposals; creating a requirement for recommendations by the agency regarding continued need for certificate-of-need regulation; amending ss. 189.415 and 651.118, F.S., to conform to the act; repealing s. 408.042, F.S., relating to limitation on transfers; transferring the Medicaid program from the Department of Health and Rehabilitative Services to the agency; transferring of certain positions from the Department of Management Services to the agency; providing appropriations; amending s. 627.4106, F.S.; revising a definition; repealing s. 627.4106, F.S., relating to small group health insurance; amending s. 627.6699, F.S.; providing definitions; requiring guarantee issue of all health plans to small employers; requiring modified community rating of health plans issued to small employers; revising definition of small employer; revising preexisting conditions requirements for certain groups; requiring that geographic regions for rating purposes be by county line; providing for guaranteed renewability of small group health plans; requiring carriers to maintain records; providing confidentiality; providing for review and repeal; providing for revisions in the standard and basic health benefit plans; requiring the reinsurance board to report complaints of abuse and misrepresentation to the Department of Insurance; providing for alliance membership on the health benefit plan committee; amending s. 627.4236, F.S.; prohibiting health maintenance organizations from excluding coverage for bone marrow transplant procedures under certain circumstances; repealing s. 33, ch. 92-33, Laws of Florida; abrogating the transfer of powers, duties, and funds of the Division of Medical Quality Assurance of the Department of Professional Regulation to the Agency for Health Care Administration; amending s. 20.30, F.S.; reinstating the Division of Medical Quality Assurance within the Department of Professional Regulation; reestablishing the Board of Nursing Home Administrators and the Board of Opticianry within the Division of Professions of the Department of Professional Regulation; reestablishing the Board of Medicine, the Board of Osteopathic Medicine, the Board of Acupuncture, the Board of Chiropractic, the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, the Board of Dentistry, the Board of Nursing, the Board of Optometry, the Board of Pharmacy, the Board of Physical Therapy Practice, the Board of Podiatric Medicine, the Board of Psychological Examiners, the Board of Veterinary Medicine, the Board of Speech-Language Pathology and Audiology, and the Board of Clinical Laboratory Personnel within the Division of Medical Quality Assurance; amending s. 20.42, F.S., relating to organization of the Agency for Health Care Administration; creating the Health Care Advisory Commission within the agency; providing for membership of the commission; providing duties of the commission; renaming the Division of Health Policy and Planning as the Division of Health Policy and Cost Control; providing additional responsibilities relating to state and local health planning, certificate-of-need review, hospital budget review, and the administration of specified contracts; providing duties of the Division Director for State Health Purchasing; amending ss. 440.101, 440.102, F.S.; revising requirements pertaining to the drug-free workplace program, including notice and other procedural requirements; providing for collective bargaining of certain drug-testing procedures; providing that no cause of action arises based on the failure of an employer to establish a drug-testing program or policy; revising confidentiality provisions; revising standards for drug-testing laboratories; providing for reassignment or placement on leave of state employees while participating in employee assistance programs or drug rehabilitation programs; prohibiting an employer from refusing to deny medical and indemnity benefits in accordance with the act; amending s. 440.13, F.S.; prohibiting a health care provider from discontinuing, without good cause, authorized remedial treatment, care, and attendance to an injured employee before the receipt of certain notice from the carrier or self-insurer of the denial of medical and indemnity benefits to that employee; providing penalties; replacing references to the Department of Health and Rehabilitative Services with references to the Agency on Health Care Administration to conform to governmental reorganization of the functions of the department; amending s. 287.088, F.S.; defining the term "full-time employee" with respect to a state contractor for purposes of access to hospitalization and medical insurance benefits; deleting provisions relating to subcontractors; changing effective dates of certain provisions; eliminating provisions relating to fulfillment of hospitalization and medical insurance obligations; deleting requirements for payment of liquidated damages, posting certain statements, and filing complaints; deleting prohibition on contractors for failure to comply; amending s. 154.235, F.S., relating to bond refunds; revising authorized investments for health facilities authorities; creating s. 220.187, F.S.; providing an exemption from the state corporate income tax for certain preventative cancer-screening procedures; providing eligibility and application requirements; providing for administration by the Department of Health and Rehabilitative Services; amending s. 220.02, F.S.; providing order for applying credits against the corporate income tax; amending s. 394.875, F.S.; providing for the licensure of certain residential treatment facilities exclusively for the treatment of law enforcement personnel and their families who are suffering from nonacute, stress-related mental health problems, including drug and alcohol abuse; specifying criteria for licensure; amending s. 395.0191, F.S.; providing an equivalency to board certification for purposes of staff membership and clinical privileges; amending s. 395.7015, F.S.; providing a credit for uncompensated charity care against the annual assessment on freestanding radiation therapy centers; amending s. 408.01, F.S.; revising the membership of the advisory council advising the agency; amending ss. 455.201, 455.203, 455.205, 455.207, 455.208, 455.209, 455.211, F.S.; conforming provisions to changes made by the act; repealing s. 43, ch. 92-33, Laws of Florida, relating to license renewal for certain medical professions; abrogating the repeal of s. 455.213(6) and (7), F.S.; repealing ss. 455.2141, 455.2173, F.S., relating to duties of the Agency for Health Care Administration with respect to licensing; amending ss. 455.2175, 455.218, F.S.; conforming provisions to changes made by the act; revising licensure requirements for certain foreign-trained professionals; repealing ss. 455.220, 455.2205, F.S., relating to the Health Care Trust Fund; amending ss. 455.221, 455.223, 455.224, 455.225, 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.241, 455.243, 455.245, 455.26, F.S.; conforming provisions to changes made by the act; amending s. 109, ch. 91-282, Laws of Florida; extending an exemption from the requirements of s. 455.218(1)(f), F.S., for certain applicants for licensure as foreign-trained professionals; clarifying that participation in a faculty practice plan does not constitute an investment interest; amending s. 455.236, F.S.; redefining the term "investment interest" for purposes of financial arrangements between referring health care providers and providers of health care services amending s. 458.311, F.S.; deleting a limitation on the number of times the licensure examination may be taken; revising requirements for issuance for a restricted license; amending s. 400.051, F.S.; prescribing exemptions from provisions regulating nursing homes; amending s. 409.905, F.S.; providing for Medicaid reimbursement for services provided in certain skilled nursing facilities operated by such hospitals; amending s. 409.908, F.S.; providing for the rate of payment of such reimbursement; providing a limitation; providing for application for federal waivers necessary to implement competitive bidding and selective contracting for purchasing Medicaid hospital inpatient service; providing for pilot projects; providing for application for federal waivers to implement competitive bidding and selective contracting for purchasing Medicaid hospital inservices; providing for pilot projects; deleting obsolete provisions; creating s. 408.70, F.S.; providing legislative intent regarding the need to reform the state's health care delivery system; proposing the creation of managed competition throughout the state; proposing the creation of community health purchasing alliances; creating s. 408.701, F.S.; providing definitions; creating s. 408.702, F.S.; establishing community health purchasing alliance regions; providing for the merger of certain alliances; providing for alliance standards; providing for voluntary membership; providing duties, powers, and responsibilities; providing for membership fees; creating s. 408.703, F.S.; providing community health purchasing alliance membership requirements for small employers; creating s. 408.704, F.S.; providing agency responsibilities with respect to community health purchasing alliances; authorizing the agency to contract with alliances and provide startup funds; requiring an annual review; requiring alliances to submit certain data to the agency; establishing an advisory data committee and specifying membership; requiring a report to the Legislature; requiring the submission of data by health care providers; requiring the agency to adopt and implement recommendations of the advisory data committee; establishing an appeals process for grievances; exempting certain records from public disclosure requirements; providing for future legislative review of this exemption under the Open Government Sunset Review Act; creating s. 408.7042, F.S.; providing requirements for the Division of State Health Purchasing of the agency in purchasing health care for state employees and their dependents; providing requirements for the agency in purchasing health care for Medicaid recipients and persons who participate in the MedAccess and Medicaid buy-in programs; creating s. 408.7045, F.S.; establishing community health purchasing alliance marketing requirements; creating s. 408.705, F.S.; providing for boards of directors for com-

munity health purchasing alliances; providing for membership, appointment, and terms; providing for staff; creating s. 408.706, F.S.; establishing standards for accountable health partnerships; providing for designation of accountable health partnerships by the agency; specifying standards and requirements; requiring the agency to conduct an assessment and a participation study of community health purchasing alliances; requiring the agency, in consultation with the Department of Legal Affairs, to assess the effects of antitrust laws on community health purchasing alliances and accountable health partnerships; creating s. 408.908, F.S.; providing agency responsibilities for the administration of the MedAccess program; amending s. 409.908, F.S.; providing for a new methodology for reimbursing for Medicaid physician services; amending s. 409.911, F.S.; creating new requirements for the regular disproportionate share program; creating s. 409.9121, F.S.; providing legislative findings and intent; creating s. 409.9122, F.S.; providing for an independent study of the MediPass program; providing for the expansion of the MediPass program; directing the agency to encourage the enrollment of Medicaid recipients in managed care plans; providing for a study of the feasibility of managed care programs for Medicaid recipients with special needs; providing for funds for technical assistance in developing Medicaid prepaid health plans; repealing s. 409.9114, F.S., amending s. 409.701, F.S.; authorizing the Florida Health Access Corporation to provide subsidized or nonsubsidized coverage to small employers; expanding the program statewide; authorizing the corporation to serve businesses with fewer than a specified number of employees; changing the composition of the board of directors of the Florida Health Access Corporation; requiring the agency to establish a Medicaid home care program; correcting a cross-reference; amending ss. 408.032, 408.033, 408.034, 408.035, 408.036, 408.037, 408.038, 408.039, 408.040, 408.041, 408.043, 408.044, 408.045, F.S., relating to certificate of need and authority to license health care facilities and health service providers; conforming provisions and references to the transfer of responsibilities from the Department of Health and Rehabilitative Services and the Health Care Board to the agency; providing an additional exemption from certificate-of-need review; providing for preference in certificate-of-need awards to rural health networks under certain conditions; creating s. 627.4239, F.S.; prohibiting coverage for certain drugs used to treat cancer; establishing expansion goals and deadlines; amending s. 409.701, F.S.; authorizing the Florida Health Access Corporation to provide subsidized or nonsubsidized coverage to small employers; expanding the program statewide; authorizing the corporation to serve businesses with fewer than a specified number of employees; changing the composition of the board of directors of the Florida Health Access Corporation; providing reimbursement under Medicaid for physician assistant services; repealing s. 20.42, F.S., relating to the Agency for Health Care Administration; creating s. 20.43, F.S.; creating the Department of Health; providing duties of the department; providing for the department to be directed by the State Health Officer; providing duties of the State Health Officer; providing for organization of the department; providing for the appointment of assistant health officers; designating regions within the state to be supervised by the State Health Officers; providing for regional health officers; creating the Department of Health Advisory Council; providing duties of the council and membership; providing legislative intent; providing that certain health services are not subject to competitive bids; requiring the department to consult with county governments with respect to policies and service delivery plans; amending s. 20.19, F.S.; redesignating the Department of Health and Rehabilitative Services as the Department of Human and Social Services; revising purpose of the department; deleting responsibilities of the department with respect to public health; providing for a Secretary of Human and Social Services; providing duties of the secretary; deleting the position and duties of Deputy Secretary for Health; revising the duties of the Deputy Secretary for Human Services; redesignating the health and human services boards within the department as the human and social services boards; deleting the boards' responsibilities with respect to health services; conforming provisions to changes made by the act; amending s. 20.04, F.S., relating to the structure of the executive branch of government; conforming provisions to changes made by the act; repealing s. 33, ch. 92-33, Laws of Florida, abrogating the transfer of powers, duties, and funds of the Division of Medical Quality Assurance of the Department of Professional Regulation to the Agency for Health Care Administration; amending s. 20.30, F.S.; reinstating the Division of Medical Quality Assurance within the Department of Professional Regulation; reestablishing the Board of Nursing Home Administrators and the Board of Opticianry within the Division of Professions of the Department of Professional Regulation; reestablishing the Board of Medicine, the Board of Osteopathic Medicine, the Board of Acupuncture, the Board of Chiropractic, the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, the Board of Dentistry, the Board of Nursing, the Board of Optometry, the Board of Pharmacy, the Board of Physical Therapy Practice, the Board of Podiatric Medicine, the Board of Psychological Examiners, the Board of Veterinary Medicine, the Board of Speech-Language Pathology and Audiology, and the Board of Clinical Laboratory Personnel within the Division of Medical Quality Assurance; amending ss. 455.201, 455.203, 455.205, 455.207, 455.208, 455.209, 455.211, F.S.; conforming provisions to changes made by the act; repealing s. 43, ch. 92-33, Laws of Florida, relating to license renewal for certain medical professions; abrogating the repeal of s. 455.213 (6) and (7), F.S.; repealing ss. 455.2141, 455.2173, F.S., relating to duties of the Agency for Health Care Administration with respect to licensing; amending ss. 455.2175, 455.218, F.S.; conforming provisions to changes made by the act; repealing s. 455.220, F.S., relating to the Health Care Trust Fund; transferring, renumbering, and amending s. 455.2205, F.S., relating to the Health Care Trust Fund; providing for trust fund moneys to be used for operation of the Department of Health; amending ss. 455.221, 455.223, 455.224, 455.225, 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.241, 455.243, 455.245, 455.26, F.S.; conforming provisions to changes made by the act; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Agency for Health Care Administration to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Health and Rehabilitative Services with respect to alcohol, drug abuse, and mental health programs, children's medical services, Medicaid, public health, and environmental health to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Agriculture and Consumer Services relating to dog fly, mosquito, and pest control, and the regulation of food establishments, bottled water, water vending machines, and packaged ice to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Education relating to the John A. Mulrennan, Sr., Arthropod Research Laboratory to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Business Regulation relating to the regulation of public food service establishments to the Department of Health; transferring all powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Environmental Regulation with respect to administering the Florida Safe Drinking Water Act to the Department of Health; providing for continued effect of rules; providing for transfer of pending judicial and administrative proceedings to the Department of Health; providing severability; directing the Division of Statutory Revision to prepare a reviser's bill to make certain changes consistent with the act; repealing s. 409.9114, F.S.; providing loan forgiveness for certain medical students and physicians; providing for application for federal waivers to implement competitive bidding and selective contracting for purchasing Medicaid hospital inservices; providing for pilot projects; providing an effective date.

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

Section 1. This act may be cited as the "Health Care and Insurance Reform Act of 1993".

Section 2. Section 20.42, Florida Statutes, 1992 Supplement, is amended to read:

20.42 Agency for Health Care Administration.—There is created the Agency for Health Care Administration within the Department of Professional Regulation. The agency shall be a separate budget entity, and the director of the agency shall be the agency head for all purposes. The agency shall not be subject to control, supervision, or direction by the Department of Professional Regulation in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(1) DIRECTOR OF HEALTH CARE ADMINISTRATION.—The head of the agency is the Director of Health Care Administration, who shall be appointed by the Governor. The director shall serve at the pleasure of and report to the Governor.

(2) ORGANIZATION OF THE AGENCY.—The agency shall be organized as follows:

(a) Effective July 1, 1993, the Division of Health Quality Assurance, which shall be responsible for:

1. Health facility licensure and inspection~~; certificate of need~~; *and*

2. Effective July 1, 1994, the Board of Medicine, created under chapter 458; the Board of Osteopathic Medicine, created under chapter 459; the Board of Acupuncture, created under chapter 457; the Board of Chiropractic, created under chapter 460; the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491; the Board of Dentistry, created under chapter 466; the Board of Optometry, created under chapter 463; the Board of Pharmacy, created under chapter 465; the Board of Podiatric Medicine, created under chapter 461; the Board of Nursing, created under chapter 464; the Board of Psychological Examiners, created under chapter 490; the Board of Speech-Language Pathology and Audiology, created under chapter 468; the Board of Nursing Home Administrators, created under part II of chapter 468; occupational therapy, as regulated under part III of chapter 468; respiratory therapy, as regulated under part V of chapter 468; physical therapy, as regulated under chapter 486; *the Board of Clinical Laboratory Personnel, created under part IV of chapter 483; midwifery, as regulated under chapter 467; dietetics and nutrition practice, as regulated under part X of chapter 468; electrolysis, as regulated under chapter 478; nursing assistants, as regulated under s. 400.211;* and the Board of Opticianry, created under part I of chapter 484.

(b) The Division of Health Policy and *Cost Control* ~~Planning~~, which shall be responsible for *health policy,* the State Center for Health Statistics, the development of The Florida Health Plan, *certificate of need, hospital budget review, state and local health planning under s. 408.033,* and research and analysis.

(c) Effective July 1, 1993, the Division of State Health Purchasing, which shall be responsible for *the Medicaid program and the* ~~supervising the purchase of health care by: Medicaid; the Florida Health Access Program; the Pooled Purchasing Cooperative; and~~ state employee health insurance *program functions related to: the procurement of the administrator of the state employee health insurance plan; the development of the plan's benefit design; the establishment of the plan's cost sharing and cost containment requirements; the creation and maintenance of administrative cost controls; the collection and analysis of data; and the monitoring and evaluation of the administrator and provider network performance. The division shall also administer the contracts with the Florida Health Access Corporation program and the Florida Health Care Purchasing Cooperative and the Florida Healthy Kids Corporation.*

(d) The Health Care Board, which shall be responsible for hospital budget review, nursing home financial analysis, and special studies as assigned by the secretary or the Legislature.

(e) The Division of Administrative Services, which shall be responsible for revenue management, budget, personnel, and general services.

(3) DEPUTY DIRECTOR FOR HEALTH QUALITY ASSURANCE.—The director shall appoint a Deputy Director for Health Quality Assurance who shall serve at the pleasure of, and be directly responsible to, the director. The Deputy Director for Health Quality Assurance shall be responsible for the Division of Health Quality Assurance.

(4) DEPUTY DIRECTOR FOR HEALTH POLICY AND *COST CONTROL* ~~PLANNING~~.—The director shall appoint a Deputy Director for Health Policy and *Cost Control* ~~Planning~~ who shall serve at the pleasure of, and be directly responsible to, the director. The Deputy Director for Health Policy and *Cost Control* ~~Planning~~ shall be responsible for the Division of Health Policy and *Cost Control* ~~Planning and the Division of State Health Purchasing~~.

(5) DEPUTY DIRECTOR FOR STATE HEALTH PURCHASING.—The director shall appoint a Deputy Director for State Health Purchasing who shall serve at the pleasure of, and be directly responsible to, the director. The Deputy Director for State Health Purchasing shall be responsible for the Division of State Health Purchasing.

(6)~~(5)~~ HEALTH CARE BOARD.—The Health Care Board shall be composed of 11 members appointed by the Governor, subject to confirmation by the Senate. The members of the board shall biennially elect a chairperson and a vice chairperson from its membership. The board shall be responsible for hospital budget review, nursing home financial review and analysis, and special studies requested by the Governor, the Legislature, or the director.

(7)~~(6)~~ DEPUTY DIRECTOR OF ADMINISTRATIVE SERVICES.—The director shall appoint a Deputy Director of Administrative Services who shall serve at the pleasure of, and be directly responsible to, the director. The deputy director shall be responsible for the Division of Administrative Services.

Section 3. *Section 32 of chapter 92-33, Laws of Florida, and section 2 of chapter 92-292, Laws of Florida, are hereby repealed.*

Section 4. Effective July 1, 1994, subsections (2), (4), and (5) of section 20.30, Florida Statutes, 1992 Supplement, are amended to read:

20.30 Department of Professional Regulation.—There is created a Department of Professional Regulation.

(2) The following divisions of the Department of Professional Regulation are established:

(a) Division of Technology, Testing and Training.

(b) Division of Professions.

~~(c) Division of Medical Quality Assurance.~~

~~1. The director of the division shall be appointed by the Secretary of Professional Regulation.~~

~~2. The division shall concentrate sufficient resources and efforts on the investigation and discipline of health care practitioners regulated by the department who are in violation of the unprofessional conduct provisions of the applicable practice acts and other provisions of law, as are necessary to meet the challenge of identifying those health care practitioners who are not providing adequate medical care in order to take forceful corrective measures to assure quality medical care throughout the state.~~

~~3. The division shall coordinate closely with the Office of Health Planning and Regulation in the Department of Health and Rehabilitative Services to ensure that the state's regulation of health care facilities and the health care practitioners who practice therein is consistent and offers adequate protection to the public.~~

~~4. The division shall establish and maintain a disciplinary training program for division staff and board members designed to ensure the proper and appropriate administration of medical quality assurance. The program shall provide for initial and periodic training in the grounds for disciplinary action, the actions which may be taken, changes in any relevant law, sanctions which are most appropriate for specified types of unprofessional conduct, guidelines for the conduct of hearings, and any other matters which the division shall determine may be necessary or useful.~~

(c)~~(d)~~ Division of Real Estate.

1. The director of the division shall be appointed by the Secretary of Professional Regulation, subject to approval by a majority of the Florida Real Estate Commission.

2. The offices of the Division of Real Estate shall be located in Orlando.

(d)~~(e)~~ Division of Regulation.

(e)~~(f)~~ Division of Administration.

(f)~~(g)~~ Division of Certified Public Accounting.

1. The director of the division shall be appointed by the Secretary of Professional Regulation, subject to approval by a majority of the Board of Accountancy.

2. The offices of the division shall be located in Gainesville.

(4) The following boards are established within the Department of Professional Regulation, Division of Professions:

(a) Board of Architecture and Interior Design, created under part I of chapter 481.

(b) Board of Auctioneers, created under part VI of chapter 468.

(c) Barbers' Board, created under chapter 476.

(d) Construction Industry Licensing Board, created under part I of chapter 489.

(e) Board of Cosmetology, created under chapter 477.

(f) Electrical Contractors' Licensing Board, created under part II of chapter 489.

(g) Board of Professional Engineers, created under chapter 471.

(h) Board of Funeral Directors and Embalmers, created under chapter 470.

(i) Board of Professional Geologists, created under chapter 492.

(j) Board of Hearing Aid Specialists, created under part II of chapter 484.

(k) Board of Professional Land Surveyors, created under chapter 472.

(l) Board of Landscape Architecture, created under part II of chapter 481.

(m) Board of Massage, created under chapter 480.

~~(n) Board of Nursing Home Administrators, created under part II of chapter 468.~~

~~(o) Board of Opticianry, created under part I of chapter 484.~~

(n)~~(p)~~ Board of Pilot Commissioners, created under chapter 310.

(o)~~(q)~~ Board of Employee Leasing Companies, created under part XI of chapter 468.

(p) Board of Veterinary Medicine, created under chapter 494.

~~(5) The following boards are established within the Department of Professional Regulation, Division of Medical Quality Assurance:~~

~~(a) Board of Medicine, created under chapter 458.~~

~~(b) Board of Osteopathic Medicine, created under chapter 459.~~

~~(c) Board of Acupuncture, created under chapter 457.~~

~~(d) Board of Chiropractic, created under chapter 460.~~

~~(e) Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.~~

~~(f) Board of Dentistry, created under chapter 466.~~

~~(g) Board of Nursing, created under chapter 464.~~

~~(h) Board of Optometry, created under chapter 463.~~

~~(i) Board of Pharmacy, created under chapter 465.~~

~~(j) Board of Physical Therapy Practice, created under chapter 486.~~

~~(k) Board of Podiatric Medicine, created under chapter 461.~~

~~(l) Board of Psychological Examiners, created under chapter 490.~~

~~(m) Board of Veterinary Medicine, created under chapter 474.~~

~~(n) Board of Speech Language Pathology and Audiology, created under part I of chapter 468.~~

~~(o) Board of Clinical Laboratory Personnel, created by s. 483.805.~~

Section 5. Section 33 of chapter 92-33, Laws of Florida, is amended to read:

Section 33. Except as otherwise provided in this act, all powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Division of Medical Quality Assurance of the Department of Professional Regulation, and, except as otherwise provided in this act, the boards established thereunder, are transferred by a type one transfer, as defined in s. 20.06(1), Florida Statutes, to the Agency for Health Care Administration and assigned to the Division of Health Quality Assurance of the agency, as created by this act. Such transfer shall take effect July 1, *1994* ~~1993~~. Any rules promulgated by or for the division or boards are included in such transfer.

Section 6. Subsections (3) and (5) of section 110.123, Florida Statutes, 1992 Supplement, are amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(a) It is the intent of the Legislature to offer a comprehensive package of health insurance benefits for state employees which are provided in a cost-efficient and prudent manner, and to allow state employees the option to choose benefit plans which best suit their individual needs. Therefore, the state group insurance program is established which may include the state group health insurance plan, health maintenance organization plans, group life insurance plans, group accidental death and dismemberment plans, and group disability insurance plans. Furthermore, the department is additionally authorized to establish and provide as part of the state group insurance program any other group insurance plans which are consistent with the provisions of this section.

(b) Notwithstanding any provision in this section to the contrary, it is the intent of the Legislature that the Agency for Health Care Administration shall be responsible for all aspects of the purchase of health care for state employees under the state group health insurance plan and the health maintenance organizations plans. Responsibilities shall include, but not be limited to, the development of requests for proposals for state employee health services, the determination of health care benefits to be provided, and the negotiation of contracts for health care and health care administrative services. Prior to the negotiation of contracts for health care services, the Legislature intends that the Agency for Health Care Administration shall develop, in consultation with the Department of Management Services with respect to state collective bargaining issues, the health benefits and terms to be included in the state group health insurance program. The Agency for Health Care Administration shall adopt rules necessary to perform its responsibilities pursuant to this section. It is the intent of the Legislature that the Department of Management Services shall be responsible for the contract management and day-to-day management of the state employee health insurance program, including, but not limited to, employee enrollment, premium collection, payment to health care providers and other administrative functions related to the program.

(c)~~(b)~~ Except as provided for in subparagraph (d)2., the percentage of state contribution toward the cost of any plan in the state group insurance program shall be uniform with respect to all state employees in state collective bargaining units participating in the same plan or any similar plan. Nothing contained within this section prohibits the development of separate benefit plans for officers and employees exempt from collective bargaining or the development of separate benefit plans for each collective bargaining unit.

(d)~~(c)~~1. Participation by individuals in the program shall be available to all state officers, full-time state employees, and part-time state employees; and such participation in the program or any plan thereof shall be voluntary. Participation in the program shall also be available to retired state officers and employees who elect at the time of retirement to continue coverage under the program, but they may elect to continue all or only part of the coverage they had at the time of retirement. A surviving spouse may elect to continue coverage only under the state group health insurance plan or a health maintenance organization plan.

2. Notwithstanding any previous rejection or cancellation of participation in any group insurance plan or self-insurance plan provided under this section, participation in the insurance plan shall be offered beginning September 1, 1991, to all former employees who retired before September 1, 1991, and to the eligible dependents of these former employees. An employer who provides insurance under this section shall, before September 1, 1991, notify his previously retired former employees and their eligible dependents, in writing, of their eligibility to participate in the group insurance plan or self-insurance plan as provided in this section. The employees and their eligible dependents shall have until October 31, 1991, to accept or reject, in writing, participation in their former employer's group insurance plan or self-insurance plan.

(e)~~(d)~~1. A person eligible to participate in the state group health insurance plan may be authorized by rules *approved by the Agency for Health Care Administration and* adopted by the department, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization plan which is under contract with the state in accordance with criteria established by this section and by said rules. The offer of optional membership in a health maintenance organization plan permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of state and federal laws.

2. *Subject to the approval of and supervision by the Agency for Health Care Administration,* the department shall contract with health maintenance organizations to participate in the state group insurance program through a request for proposal based upon a premium and a minimum benefit package as follows:

a. ~~The department shall establish~~ A minimum benefit package to be provided by a participating HMO ~~which~~ shall include: physician services; inpatient and outpatient hospital services; emergency medical services, including out-of-area emergency coverage; diagnostic laboratory and diagnostic and therapeutic radiologic services; mental health, alcohol, and chemical dependency treatment services meeting the minimum requirements of state and federal law; skilled nursing facilities and services; prescription drugs; and other benefits as may be required by the department. Additional services may be provided subject to the contract between the department and the HMO.

b. ~~The department may establish~~ A uniform schedule for deductibles and copayments *may be established* for all participating HMOs.

c. Based upon the minimum benefit package and copayments and deductibles contained in sub-subparagraphs a. and b., the *Agency for Health Care Administration* ~~department~~ shall issue a request for proposal for all HMOs which are interested in participating in the state group insurance program. Upon receipt of all proposals, the *Agency for Health Care Administration* ~~department~~ may, as it deems appropriate, enter into contract negotiations with HMOs submitting bids. As part of the request for proposal process, the *Agency for Health Care Administration* ~~department~~ may require detailed financial data from each HMO which participates in the bidding process for the purpose of determining the financial stability of the HMO.

d. In determining which HMOs to contract with, the *Agency for Health Care Administration* ~~department~~ shall, at a minimum, consider: each proposed contractor's previous experience and expertise in providing prepaid health benefits; each proposed contractor's historical experience in enrolling and providing health care services to participants in the state group insurance program; the cost of the premiums; the plan's ability to adequately provide service coverage and administrative support services as determined by the *Agency for Health Care Administration* ~~department~~; plan benefits in addition to the minimum benefit package; accessibility to providers; and the financial solvency of the plan. Nothing shall preclude the *Agency for Health Care Administration* ~~department~~ from negotiating regional or statewide contracts with health maintenance organization plans when this is cost-effective and when the *Agency for Health Care Administration* ~~department~~ determines the plan has the best overall benefit package for the service areas involved. However, no HMO shall be eligible for a contract if the HMO's retiree Medicare premium exceeds the retiree rate as set by the department for the state group health insurance plan.

e. The department, *subject to the review and approval of the Agency for Health Care Administration,* may limit the number of HMOs that it contracts with in each service area based on the nature of the bids *the Agency for Health Care Administration* ~~it~~ receives, the number of state employees in the service area, and any unique geographical characteristics of the service area. The department, *subject to the review and approval of the Agency for Health Care Administration,* shall establish by rule service areas throughout the state.

f. All persons participating in the state group insurance program who are required to contribute towards a total state group health premium shall be subject to the same dollar contribution regardless of whether the enrollee enrolls in the state group health insurance plan or in an HMO plan.

3. The *Agency for Health Care Administration* ~~department~~ is authorized to negotiate and *the department is authorized to* contract with specialty psychiatric hospitals for mental health benefits, on a regional basis, for alcohol, drug abuse, and mental and nervous disorders. The department may establish, subject to *the* ~~legislative~~ approval *of the Agency for Health Care Administration and the Legislature* pursuant to subsection (5), any such regional plan upon completion of an actuarial study to determine any impact on plan benefits and premiums.

4. In addition to contracting pursuant to subparagraph 2., the department shall enter into contract with any HMO to participate in the state group insurance program which:

a. Serves greater than 5,000 recipients on a prepaid basis under the Medicaid program;

b. Does not currently meet the 25 percent non-Medicare/non-Medicaid enrollment composition requirement established by the Department of Health and Human Services excluding participants enrolled in the state group insurance program;

c. Meets the minimum benefit package and copayments and deductibles contained in sub-subparagraphs 2.a. and b.;

d. Is willing to participate in the state group insurance program at a cost of premiums that is not greater than 95 percent of the cost of HMO premiums accepted by the department in each service area; and

e. Meets the minimum surplus requirements of s. 641.225.

The department is authorized to contract with HMOs that meet the requirements of sub-subparagraphs a. through d. prior to the open enrollment period for state employees. The department is not required to renew the contract with the HMOs as set forth in this paragraph more than twice. Thereafter, the HMOs shall be eligible to participate in the state group insurance program only through the request for proposal process described in subparagraph 2.

5. All enrollees in the state group health insurance plan or any health maintenance organization plan shall have the option of changing to any other health plan which is offered by the state within any open enrollment period designated by the department. Open enrollment shall be held at least once each calendar year.

6. Any HMO participating in the state group insurance program shall, upon the request of the *Agency for Health Care Administration* ~~department~~, submit to the *Agency for Health Care Administration* ~~department~~ standardized data for the purpose of comparison of the appropriateness, quality, and efficiency of care provided by the HMO. Such standardized data shall include: membership profiles; inpatient and outpatient utilization by age and sex, type of service, provider type, and facility; and emergency care experience. Requirements and timetables for submission of such standardized data and such other data as the *Agency for Health Care Administration* ~~department~~ deems necessary to evaluate the performance of participating HMOs shall be promulgated by rule.

7. The department shall, after consultation with *the Agency for Health Care Administration and* representatives from each of the unions representing state and university employees, establish a comprehensive package of insurance benefits including, but not limited to, supplemental health and life coverage, dental care, and vision care to allow state employees the option to choose the benefit plans which best suit their individual needs.

a. Based upon a desired benefit package, the *Agency for Health Care Administration* ~~department~~ shall issue a request for proposal for *health* insurance providers interested in participating in the state group insurance program, *and the department shall issue a request for proposal for insurance providers interested in participating in the non-health-related components of the state group insurance program.* Upon receipt of all proposals, the department *or the Agency for Health Care Administration* may, as *either* ~~it~~ deems appropriate, enter into contract negotiations with insurance providers submitting bids or negotiate a specially designed benefit package. Insurance providers offering or providing supplemental coverage as of May 30, 1991, which qualify for pretax benefit treatment pursuant to s. 125 of the Internal Revenue Code of 1986, with 5,500 or more state employees currently enrolled may be included by the department in the supplemental insurance benefit plan established by the department *or the Agency for Health Care Administration* without participating in a request for proposal, submitting bids, negotiating contracts, or negotiating a specially designed benefit package. These contracts shall provide state employees with the most cost-effective and comprehensive coverage available; however, no state or agency funds shall be contributed toward the cost of any part of the premium of such supplemental benefit plans.

b. Pursuant to the applicable provisions of s. 110.161, and s. 125 of the Internal Revenue Code of 1986, the department shall enroll in the pretax benefit program those state employees who voluntarily elect coverage in any of the supplemental insurance benefit plans as provided by sub-subparagraph a.

c. Nothing herein contained shall be construed to prohibit insurance providers from continuing to provide or offer supplemental benefit coverage to state employees as provided under existing agency plans.

(f)~~(e)~~ The benefits of the insurance authorized by this section shall not be in lieu of any benefits payable under chapter 440, the Workers' Compensation Law. The insurance authorized by this law shall not be deemed to constitute insurance to secure workers' compensation benefits as required by chapter 440.

(5) DEPARTMENT OF MANAGEMENT SERVICES; POWERS AND DUTIES.—The Department of Management Services is responsible for the administration of the state group insurance program. The department shall initiate and supervise the program as established by this section and shall adopt such rules as are necessary to perform its responsibilities. To implement this program, the department shall, with prior ~~legislative~~ approval *by the Legislature and, for state employee health insurance, by the Agency for Health Care Administration*:

(a) Determine the benefits to be provided and the contributions to be required for the state group insurance program. Such determinations, whether for a contracted plan or a self-insurance plan pursuant to paragraph (c), do not constitute rules within the meaning of s. 120.52(16) or orders within the meaning of s. 120.52(11). Any physician's fee schedule used in the health and accident plan shall not be available for inspection or copying by medical providers or other persons not involved in the administration of the program. However, in the determination of the design of the program, the department *or the Agency for Health Care Administration* shall consider existing and complementary benefits provided by the Florida Retirement System and the Social Security System.

(b) Prepare, in cooperation with the Department of Insurance *and the Agency for Health Care Administration*, the specifications necessary to implement the program.

(c) Contract on a competitive proposal basis with an insurance carrier or carriers, or professional administrator, determined by the Department of Insurance to be fully qualified, financially sound, and capable of meeting all servicing requirements. Alternatively, the Department of Management Services may self-insure any plan or plans contained in the state group insurance program subject to approval based on actuarial soundness by the Department of Insurance. The department may contract with an insurance company or professional administrator qualified and approved by the Department of Insurance to administer such plan. Before entering into any contract, the Department of Management Services *or, for state employee health insurance, the Agency for Health Care Administration* shall advertise for competitive proposals, and such contract shall be let upon the consideration of the benefits provided in relationship to the cost of such benefits. The department, *subject to the review and approval of the Agency for Health Care Administration,* may contract for medical services which will improve the health or reduce medical costs for employees who participate in the state group insurance plan.

(d) With respect to the state group health insurance plan, be authorized, *subject to the review and approval of the Agency for Health Care Administration,* to require copayments with respect to all providers under the plan.

(e) Have authority to establish, *subject to the review and approval of the Agency for Health Care Administration,* a voluntary program for comprehensive health maintenance, which may include health educational components and health appraisals.

Final decisions concerning the existence of coverage or benefits under the state group health insurance plan shall not be delegated or deemed to have been delegated by the department, *except that such decisions shall be subject to the review and approval of the Agency for Health Care Administration.*

Section 7. Paragraph (c) of subsection (5), paragraph (b) of subsection (6), paragraphs (f), (h), and (q) of subsection (8), paragraph (c) of subsection (9), paragraphs (a) and (c) of subsection (12), paragraph (a) of subsection (13), and subsection (17) of section 112.0455, Florida Statutes, 1992 Supplement, are amended to read:

112.0455 Drug-Free Workplace Act.—

(5) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(c) "Initial drug test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent, or shall use a more accurate scientifically accepted method approved by the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ as such more accurate technology becomes available in a cost-effective form.

(6) NOTICE TO EMPLOYEES.—

(b) Prior to testing, all employees and job applicants for employment shall be given a written policy statement from the employer which contains:

1. A general statement of the employer's policy on employee drug use, which shall identify:

a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis; and

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report the use of prescription or nonprescription medications both before and after being tested. Additionally, employees and job applicants shall receive notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications shall be developed by the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~.

5. The consequences of refusing to submit to a drug test.

6. Names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs.

7. A statement that an employee or job applicant who receives a positive confirmed drug test result may contest or explain the result to the employer within 5 working days after written notification of the positive test result. If an employee or job applicant's explanation or challenge is unsatisfactory to the employer, the person may contest the drug test result as provided by subsections (14) and (15).

8. A statement informing the employee or job applicant of his responsibility to notify the laboratory of any administrative or civil actions brought pursuant to this section.

9. A list of all drugs for which the employer will test, described by brand names or common names, as applicable, as well as by chemical names.

10. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission.

11. A statement notifying employees and job applicants of their right to consult the testing laboratory for technical information regarding prescription and nonprescription medication.

(8) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(f) A person who collects or takes a specimen for a drug test conducted pursuant to this section shall collect an amount sufficient for two drug tests as determined by the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~.

(h) Every specimen that produces a positive confirmed result shall be preserved by the licensed laboratory that conducts the confirmation test for a period of at least 210 days from the time the results of the positive confirmation test are mailed or otherwise delivered to the employer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee or job applicant's expense, at another laboratory, licensed and approved by the *Agency for Health Care Administration* ~~Department of Health and~~

~~Rehabilitative Services~~, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory which performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(q) An employer who performs drug testing or specimen collection shall use chain-of-custody procedures as established by the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ to ensure proper recordkeeping, handling, labeling, and identification of all specimens to be tested.

(9) CONFIRMATION TESTING.—

(c) All positive initial tests shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ as such technology becomes available in a cost effective form.

(12) DRUG TESTING STANDARDS; LABORATORIES.—

(a) No laboratory may analyze initial or confirmation drug specimens unless:

1. The laboratory is licensed and approved by the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ using criteria established by the National Institute on Drug Abuse as guidelines for modeling the state drug testing program.

2. The laboratory has written procedures to ensure chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(c) The laboratory shall submit to the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ a monthly report with statistical information regarding the testing of employees and job applicants. The reports shall include information on the methods of analyses conducted, the drugs tested for, the number of positive and negative results for both initial and confirmation tests, and any other information deemed appropriate by the *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~. No monthly report shall identify specific employees or job applicants.

(13) RULES.—

(a) The *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ is hereby authorized to promulgate rules, using criteria established by the National Institute on Drug Abuse as guidelines for modeling the state drug testing program, concerning, but not limited to:

1. Standards for drug testing laboratory licensing, suspension, and revocation of a license.

2. Body specimens and minimum specimen amounts which are appropriate for drug testing.

3. Methods of analysis and procedures to ensure reliable drug testing results, including standards for initial tests and confirmation tests.

4. Minimum cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result.

5. Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens being tested.

6. Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

7. A list of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test.

(17) LICENSE FEE.—Fees from licensure of drug testing laboratories shall be sufficient to carry out the responsibilities of the *Agency for Health Care Administration* ~~department~~ for the regulation of drug testing laboratories. The *Agency for Health Care Administration* ~~department~~ shall collect fees for all licenses issued under this part. ~~The fee schedule for fiscal year 1991-1992 shall not exceed the maximum fees provided herein and such schedule adopted by rule by the department pursuant to this part.~~ Each nonrefundable fee shall be due at the time of application and shall be payable to the *Agency for Health Care Administration* ~~department~~ to be deposited in a trust fund administered by the *Agency for Health Care Administration* ~~department~~ and used only for the purposes of this section. The fee schedule is as follows: For licensure as a drug testing laboratory, an annual fee of not less than $8,000 or more than $10,000 per fiscal year; for late filing of an application for renewal, an additional fee of $500 per day shall be charged.

Section 8. The Division of Statutory Revision is requested to retitle chapter 408, Florida Statutes, as "Health Care Administration."

Section 9. Effective July 1, 1993, paragraph (b) of subsection (3) and subsection (4) of section 408.001, Florida Statutes, 1992 Supplement, are amended to read:

408.001 Florida Health Care Purchasing Cooperative.—

(3) BOARD OF DIRECTORS.—

(b) The ~~initial~~ board of directors shall consist of:

1. The Director of the *Agency for Health Care Administration* ~~Division of State Employees Insurance of the Department of Management Services~~;

2. The *Deputy Director of the Division of State Health Purchasing of the Agency for Health Care Administration* ~~Assistant Secretary for Medicaid of the Department of Health and Rehabilitative Services~~;

3. The Assistant Secretary for Health Services of the Department of Corrections;

4. Two persons who are responsible for purchasing health benefits for municipal employees and who are appointed by the Florida League of Cities;

5. A person who is responsible for purchasing health care benefits for county employees or health care services for county clients and who is appointed by the Florida Association of Counties; and

6. A person who is responsible for purchasing health care benefits for school district employees and who is appointed by the Florida Association of School Administrators.

~~Appointments to the initial board of directors shall be made by August 1, 1991.~~ The appointed members of the ~~initial~~ board of directors shall be appointed for 2 years and may be reappointed. ~~The Director of the Division of State Employees Insurance shall chair the initial board of directors.~~

~~(4) STAFF AND ADMINISTRATIVE SUPPORT.—The Health Care Cost Containment Board shall provide staff and administrative support to, and shall draft bylaws for, the Florida Health Care Purchasing Cooperative until the board of directors of the cooperative has organized itself and appointed an executive director. The board of directors shall conduct its first meeting on or before September 1, 1991.~~

Section 10. Section 409.701, Florida Statutes, is renumbered as section 408.0014, Florida Statutes, and paragraph (a) of subsection (4) of said section is amended to read:

408.0014 ~~409.701~~ The Florida Health Access Corporation Act.—

(4) BOARD OF DIRECTORS.—

(a) The Florida Health Access Corporation shall operate subject to the supervision and approval of a seven-member board of directors, which shall consist of:

1. Two members, one from an urban county and one from a rural county, who shall represent small businesses whose employees are eligible to participate in the Florida Health Access Corporation;

2. One member who shall represent consumers eligible to participate in the Florida Health Access Corporation;

3. One member who shall be a representative of a domestic health care insurer or of a private company which offers a self-insured program of health benefits to employees;

4. One member who shall be the *Director of Health Care Administration* ~~secretary of the Department of Health and Rehabilitative Services~~ or his designee;

5. One member who shall be a representative of the Florida Chamber of Commerce; and

6. One member who shall be a representative of an employer health coalition.

Section 11. The introductory paragraph of subsection (2) of section 408.033, Florida Statutes, 1992 Supplement, is amended to read:

408.033 Local and state health planning.—

(2) STATEWIDE HEALTH COUNCIL.—The Statewide Health Council is hereby established as a state-level comprehensive health planning and policy advisory board. For administrative purposes, the council shall be located within the *agency* ~~department~~. The Statewide Health Council shall be composed of: the State Health Officer and the Assistant Secretary for Medicaid of the Department of Health and Rehabilitative Services; the Deputy Director for Health Policy and *Cost Control* ~~Planning~~ and the Deputy Director for Health Quality Assurance of the department; the director of the Health Care Board; the Insurance Commissioner or his designee; the Vice Chancellor for Health Affairs of the Board of Regents; three chairmen of regional planning councils, selected by the regional planning councils; five chairmen of local health councils, selected by the local health councils; four members appointed by the Governor, one of whom is a consumer over 60 years of age, one of whom is a representative of organized labor, one of whom is a physician, and one of whom represents the nursing home industry; five members appointed by the President of the Senate, one of whom is a representative of the insurance industry in this state, one of whom is the chief executive officer of a business with more than 300 employees in this state, one of whom represents the hospital industry, one of whom is a primary care physician, and one of whom is a nurse, and five members appointed by the Speaker of the House of Representatives, one of whom is a consumer who represents a minority group in this state, one of whom represents the home health care industry in this state, one of whom is an allied health care professional, one of whom is the chief executive officer of a business with fewer than 25 employees in this state, and one of whom represents a county social services program that provides health care services to the indigent. Appointed members of the council shall serve for 2-year terms commencing October 1 of each even-numbered year. The council shall elect a president from among the members who are not state employees. The Statewide Health Council shall:

Section 12. Subsection (2) of section 408.062, Florida Statutes, 1992 Supplement, is amended to read:

408.062 Research, analyses, studies, and reports.—

(2) The board shall evaluate data from nursing home financial reports and shall document and monitor:

(a) Total revenues, annual change in revenues, and revenues by source and classification, including contributions for a *resident's* ~~patient's~~ care from the *resident's* ~~patient's~~ resources and from the family and contributions not directed toward any specific *resident's* ~~patient's~~ care.

(b) Average *resident* ~~patient~~ charges by geographic region, *payer* ~~payor~~, and type of facility ownership.

(c) Profit margins by geographic region and type of facility ownership.

(d) Amount of charity care provided by geographic region and type of facility ownership.

(e) *Resident* ~~Patient~~ days by payer category.

(f) Experience related to Medicaid conversion as reported under s. 408.061.

(g) Other information pertaining to nursing home revenues and expenditures.

The findings of the board shall be included in an annual report to the Governor and Legislature by January 1 each year.

Section 13. Subsection (9) of section 408.07, Florida Statutes, 1992 Supplement, is amended to read:

408.07 Definitions.—As used in this chapter, with the exception of ss. 408.031-408.045, the term:

(9) "Banked points" means the percentage points earned by a hospital when the actual rate of increase in *gross revenue per adjusted admission (GRAA) is less than the maximum allowable rate of increase (MARI) or the actual rate of increase in the net revenue per adjusted admission (NRAA) is less than the market basket index* ~~gross and net revenue per adjusted admission (GRAA) is less than the maximum allowable rate of increase (MARI)~~.

Section 14. Paragraph (a) of subsection (4) of section 408.061, Florida Statutes, is amended to read:

408.061 Data collection; uniform systems of financial reporting; information relating to physician charges; confidentiality of patient records; immunity.—

(4)(a) Within 120 days after the end of its fiscal year, each health care facility shall file with the agency, on forms adopted by the agency and based on the uniform system of financial reporting, its actual financial experience for that fiscal year, including expenditures, revenues, and statistical measures. Such data may be based on internal financial reports which are certified to be complete and accurate by the provider. However, hospitals' actual financial experience shall be their audited actual experience. *Nursing homes that do not participate in the Medicare or Medicaid programs shall also submit audited actual experience. Every nursing home shall submit to the agency, in a format designated by the agency, a statistical profile of the nursing home residents. The agency, in conjunction with the Department of Elder Affairs and the Department of Health and Rehabilitative Services, shall review these statistical profiles and develop recommendations for the types of residents who might more appropriately be placed in their homes or other non-institutional settings. The agency shall include its findings in the final Florida Health Plan which must be submitted to the Legislature by December 31, 1993. Included in the findings shall be outcome data and cost differential data as part of patient profiles.*

Section 15. Subsection (2), paragraphs (a), (b), and (c) of subsection (3), paragraphs (g) and (i) of subsection (5), paragraph (a) of subsection (6), paragraph (b) of subsection (9), and paragraph (a) of subsection (11) of section 408.072, Florida Statutes, 1992 Supplement, are amended to read:

408.072 Review of hospital budgets.—

(2) The projected budget shall be deemed approved unless it is disapproved by the board within 90 days after filing, except that where the hospital requests a hearing, the 90 days shall be tolled until 20 days after the board's receipt of the recommended order from the Division of Administrative Hearings of the Department of *Management Services* ~~Administration~~. Upon agreement by the board and the hospital, the 90-day period may be waived or extended. As part of the review process conducted by the board, the board may approve, disapprove, or disapprove in part the projected budget. Once submitted and reviewed by the board, a detailed budget *or budget amendment* shall not be withdrawn by a hospital unless the increase approved by the board is greater than the maximum allowable rate of increase, the gross revenue per adjusted admission, or the net revenue per adjusted admission.

(3)(a) Except for hospitals filing a budget pursuant to subsection (1), each hospital, at least 90 days prior to the commencement of its next fiscal year, shall file with the board a certified statement, hereafter known as the "budget letter," acknowledging its applicable maximum allowable rate of increase (MARI) in gross and net revenue per adjusted admission. Calculations shall be performed by the hospital using the methodology specified in s. 408.07. Through the budget letter, the hospital shall affirm that the hospital shall not exceed its applicable maximum allowable rate of increase in gross and net revenue per adjusted admis-

sion. However, the board shall have *90* ~~30~~ days from receipt of the budget letter to determine if the applicable maximum allowable rates of increase submitted by the hospital are within the levels calculated pursuant to this section. If the board determines that the maximum allowable rates of increase submitted by the hospital are not within the levels calculated by the board, then the budget letter shall be rejected.

(b) If a hospital's gross revenues per adjusted admission, as determined by its audited actual experience in any one year, increase at a percentage rate less than the maximum allowable rate of increase or board-approved rate of increase, whichever is lower, the hospital may carry forward the difference and earn up to a cumulative maximum for ~~both~~ gross ~~and net~~ revenues of 3 "banked" percentage points which may be banked to be used in the future. In no case shall a hospital that exceeds its maximum gross revenue per adjusted admission earn banked points.

(c) If a hospital's net revenue per adjusted admission, as determined by its audited actual experience in any one year, increases at a percentage rate less than the *market basket index* ~~maximum allowable rate of increase~~ or the board-approved rate of change, whichever is lower, the hospital may carry forward the difference and earn up to a cumulative maximum for ~~both gross and~~ net revenues of 3 "banked" percentage points which may be banked to be used in the future.

(5) The board shall review each budget filed pursuant to subsection (1) and amendments filed pursuant to subsection (6) to determine whether the gross revenue per adjusted admission or the net revenue per adjusted admission contained in the budget or amendment is just, reasonable, and not excessive. In making such determination, the board shall consider, and the hospital may use, the following criteria in the following priority, with paragraph (a) the highest priority and paragraph (i) the lowest priority.

(g) The change in hospital costs as measured by changes in the severity of illness, including changes in the case mix. For psychiatric and other hospitals that would *not* be reimbursed under a prospective payment system by the Federal Government, the impact on hospital costs associated with changes in the average length of stay of patients *or* ~~and~~, when available, case mix shall be considered.

(i) For psychiatric hospitals, the impact on hospital gross revenues associated with changes in the average length of stay of patients, changes in admissions to hospital units, and changes in admissions to specific services *or* ~~and~~, when available, case mix.

(6) After a hospital budget is approved, approved as amended, or disapproved for a given fiscal year, no amendment to such budget shall be made except in accordance with the following procedures:

(a) A request by a hospital to amend its budget shall be filed in writing with supporting documents no later than 90 days before the end of the hospital's fiscal year. The budget amendment shall be deemed approved unless it is disapproved or disapproved in part by the board within 90 days after the filing, except that where the hospital requests a hearing, the 90 days shall be tolled until 20 days after the board's receipt of the recommended order from the Division of Administrative Hearings of the Department of *Management Services* ~~Administration~~. Upon agreement by the board and the hospital, the 90-day period may be waived or extended.

(9)

(b) If a hearing is requested, it shall be conducted by the board or, at the election of the board, by a hearing officer of the Division of Administrative Hearings of the Department of *Management Services* ~~Administration~~, pursuant to the provisions of s. 120.57. Hearings shall be held within 30 days of filing the request unless waived by the board and the hospital. All hearings shall be held in Tallahassee unless the board determines otherwise.

(11) Notwithstanding any other provisions of this chapter:

(a) Any hospital operated by the Department of Health and Rehabilitative Services or the Department of Corrections; any rural hospital as defined in s. 408.07; and any intensive residential treatment program for children and adolescents as defined in s. 395.002(16) which received a certificate of need on or before January 1, 1991, and is licensed under chapter 395 for less than 33 beds, which is not part of a multifacility organization and which is part of a community mental health system, shall be exempt from filing a budget, and shall be exempt from budget review and approval for exceeding the maximum allowable rate of increase and from any penalties arising therefrom. However, each such hospital shall be required to submit to the board its audited actual experience, as required by s. 408.061(4)*(a)*~~(d)~~.

Section 16. Subsection (1), paragraph (c) of subsection (2), paragraph (c) of subsection (3), and subsection (9) of section 408.08, Florida Statutes, 1992 Supplement, are amended to read:

408.08 Inspections and audits; violations; penalties; fines; enforcement.—

(1) The agency may inspect and audit books and records~~, and records~~ of individual or corporate ownership, including books and records of related organizations with which a health care provider or a health care facility had transactions, for compliance with this chapter. Upon presentation of a written request for inspection to a health care provider or a health care facility by the agency or its staff, the health care provider or the health care facility shall make available to the agency or its staff for inspection, copying, and review all books and records relevant to the determination of whether the health care provider or the health care facility has complied with this chapter.

(2) The board shall annually compare the audited actual experience of each hospital to the audited actual experience of that hospital for the previous year.

(c) For a hospital submitting a budget letter and for a hospital subject to budget review, the board shall annually compare each hospital's audited actual experience for net revenues per adjusted admission to the hospital's audited actual experience for net revenues per adjusted admission for the previous year. If the rate of increase in net revenues per adjusted admission between the previous year and the current year was less than the market basket index ~~plus 2 percentage points~~, the hospital may carry forward the difference and earn up to a cumulative maximum of 3 banked net revenue percentage points. Such banked net revenue percentage points shall be available to the hospital to offset, in any future year, penalties for exceeding the approved budget or the maximum allowable rate of increase as set forth in subsection (3). Nothing in this paragraph shall be used by a hospital to justify the approval of a budget or a budget amendment by the board in excess of the maximum allowable rate of increase pursuant to s. 408.072.

(3) Penalties shall be assessed as follows:

(c) For the third occurrence within the 5-year period following the first occurrence as set forth in paragraph (a), the board shall:

1. Levy a fine against the hospital in the total amount of the excess, to be deposited in the Public Medical Assistance Trust Fund.

2. Notify the agency of the violation, whereupon the agency shall not accept any application for a certificate of need pursuant to ss. 408.031-408.045 from or on behalf of such hospital until such time as the hospital has demonstrated to the satisfaction of the board that, following the date the penalty was imposed under subparagraph 1., the hospital has stayed within its projected or amended budget or its applicable maximum allowable rate of increase for a period of at least 1 year. However, this provision does not apply with respect to a certificate-of-need application filed to satisfy a life or safety code violation.

3. Upon a determination that the hospital knowingly and willfully generated such excess, notify the agency, whereupon the agency shall initiate disciplinary proceedings to deny, modify, suspend, or revoke the license of such hospital or impose an administrative fine on such hospital not to exceed $20,000.

The determination of the amount of any such excess shall be based upon net revenues per adjusted admission, excluding funds distributed to the hospital from the Public Medical Assistance Trust Fund. However, in making such determination, the board shall appropriately reduce the amount of the excess by the total amount of the assessment paid by such hospital pursuant to s. 395.701 minus the amount of revenues received by the hospital through the Public Medical Assistance Trust Fund. It is the responsibility of the hospital to demonstrate to the satisfaction of the board its entitlement to such reduction. It is the intent of the Legislature that the Health Care Board, in levying any penalty imposed against a hospital for exceeding its maximum allowable rate of increase or its approved budget pursuant to this subsection, consider the effect of changes in the case mix of the hospital and in the hospital's intensity and severity of illness as measured by changes in the hospital's actual proportion of outlier cases to total cases and dollar increases in outlier cases'

average charge per case. It is the responsibility of the hospital to demonstrate to the satisfaction of the board any change in its case mix and in its intensity and severity of illness. For psychiatric hospitals *and other hospitals not reimbursed under a prospective payment system by the Federal Government, until a proxy for case mix is available*, the board shall also reduce the amount of excess by ~~utilizing as a proxy for case mix~~ the change in a hospital's audited actual average length of stay ~~as compared to the previous year's audited actual average length of stay~~ without any thresholds or limitations.

(9) In levying any administrative fine against a hospital pursuant to subsection (8), the board shall consider the effect of any changes in the hospital's case mix, and in the hospital's intensity and severity of illness as measured by changes in the hospital's actual proportion of outlier cases to total cases and dollar increases in outlier cases' average charge per case. The board shall adjust the amount of any excess by the changes in the hospital's case mix and in its intensity and severity of illness, based upon certified hospital patient discharge data provided to the board pursuant to s. 408.061. For psychiatric hospitals *and other hospitals not reimbursed under a prospective payment system by the Federal Government, until a proxy for case mix is available*, the board shall adjust the amount of any excess by ~~utilizing as a proxy for case mix~~ the change in a hospital's audited actual average length of stay *without any thresholds or limitation* ~~as compared to the previous year's audited actual average length of stay~~.

Section 17. Subsection (1) of section 409.7015, Florida Statutes, is amended to read:

409.7015 Unemployment compensation data availability.—

(1) In order to further the research and demonstration objectives of s. *408.0014* ~~409.701~~, the Division of Unemployment Compensation, Department of Labor and Employment Security, shall, notwithstanding the provisions of s. 443.171(7), make available to the Florida Health Access Corporation such information as the corporation requests so as to facilitate contact with employers who may be eligible for participation in the program of health insurance benefits arranged through the corporation. Such information as is obtained by the corporation through the provisions of this section is confidential and exempt from the provisions of s. 119.07(1). Neither the corporation nor the staff or agents of the corporation shall release to any state or federal agency, to any private business or person, or to any other entity any information received through the operation of this section. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Violation of this section shall be regarded as a violation of s. 443.171(7).

(2) This section shall stand repealed on October 1, *1995* ~~1993~~.

Section 18. Section 408.301, Florida Statutes, is created to read:

408.301 Legislative findings.—The Legislature has found that access to quality, affordable, health care for all Floridians is an important goal for the state. The Legislature has charged the Agency for Health Care Administration with the responsibility of developing the Florida Health Plan for assuring access to health care for all Floridians. At the same time, the Legislature recognizes that there are Floridians with special health care and social needs which require particular attention. The people served by the Department of Health and Rehabilitative Services are examples of citizens with special needs. The Legislature further recognizes that the Medicaid Program is an intricate part of the service delivery system for the special needs citizens served by or through the Department of Health and Rehabilitative Services. The Agency for Health Care Administration is not a service provider and does not develop or direct programs for the special needs citizens served by or through the Department of Health and Rehabilitative Services. Therefore, it is the intent of the Legislature that the Agency for Health Care Administration work closely with the Department of Health and Rehabilitative Services in developing plans for assuring access to all Floridians in order to assure that the needs of special citizens are met.

Section 19. Section 408.032, Florida Statutes, is created to read:

(1) The Agency for Health Care Administration shall enter into an inter-agency agreement with the Department of Health and Rehabilitative Services to assure coordination and cooperation in serving special needs citizens. The agreement shall include the requirement that the Secretary of the Department of Health and Rehabilitative Services approve, prior to adoption, any rule developed by the Agency for Health Care Administration where such rule has a direct impact on the mission of the Department of Health and Rehabilitative Services, its program, or its budget.

(2) For rules which indirectly impact on the mission of the Department of Health and Rehabilitative Services, its programs, or its budget, the concurrence of the Secretary of the Department of Health and Rehabilitative Services on the rule is required.

(3) For all other rules developed by the Agency for Health Care Administration, coordination with the Department of Health and Rehabilitative Services is encouraged.

(4) The inter-agency agreement shall also include any other provisions necessary to ensure a continued cooperative working relationship between the Agency for Health Care Administration and the Department of Health and Rehabilitative Services as each strives to meet the needs of the citizens of Florida.

Section 20. Section 455.201, Florida Statutes, 1992 Supplement, is amended to read:

455.201 Professions and occupations regulated by Department of Professional Regulation ~~or Agency for Health Care Administration~~; legislative intent; requirements.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the Department of Professional Regulation ~~or the Agency for Health Care Administration~~ shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further legislative intent that the use of the term "profession" with respect to those activities licensed and regulated by the Department of Professional Regulation ~~or the Agency for Health Care Administration~~ shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4) No board, nor the department~~, nor the Agency for Health Care Administration~~ shall create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. No board, nor the department, shall take any action which tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.

Section 21. Paragraph (a) of subsection (4) and subsection (6) of section 624.91, Florida Statutes, are amended to read:

624.91 The Florida Healthy Kids Corporation Act.—

(4) BOARD OF DIRECTORS.—

(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors chaired by the Insurance Commissioner or his designee, and composed of *12* ~~11~~ other members selected for 3-year terms of office as follows:

1. One member appointed by the Commissioner of Education from among three persons nominated by the Florida Association of School Administrators;

2. One member appointed by the Commissioner of Education from among three persons nominated by the Florida Association of School Boards;

3. One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education;

4. One member appointed by the Governor from among three members nominated by the Florida Pediatric Society;

5. One member, appointed by the Governor, who represents the Children's Medical Services Program;

6. One member appointed by the Insurance Commissioner from among three members nominated by the Florida Hospital Association;

7. Two members, appointed by the Insurance Commissioner, who are representatives of authorized health care insurers or health maintenance organizations;

8. One member, appointed by the Insurance Commissioner, who represents the Institute for Child Health Policy;

9. One member, appointed by the Governor, from among three members nominated by the Florida Academy of Family Physicians; ~~and~~

10. One member, appointed by the Governor, who represents the Agency for Health Care Administration; and

11. ~~10.~~ The State Health Officer or his designee.

In order to provide for staggered terms, the initial term of the members appointed under subparagraphs 1., 4., and 6. shall be for 2 years and the initial term of the members appointed under subparagraphs 2., 5., ~~and~~ 8., *and 10.* shall be for 4 years.

(6) THE FLORIDA HEALTHY KIDS TRUST FUND.—There is created the Florida Healthy Kids Trust Fund in the State Treasury to be administered by the *Agency for Health Care Administration* ~~Department of Insurance~~, to which all appropriations shall be deposited in order to carry out the purposes of this act. Other revenues of the corporation such as grants, contributions, matching funds, and participant payments shall not be considered revenue of the state, but rather shall be funds of the corporation. However, the corporation may designate portions of grants, contributions, matching funds, and participant payments as funds of the state and deposit those funds in the Florida Healthy Kids Trust Fund.

Section 22. Effective July 1, 1993, paragraph (d) of subsection (3) of section 766.1115, Florida Statutes, 1992 Supplement, is amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(3) DEFINITIONS.—As used in this section, the term:

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.

2. An ambulatory surgical center licensed under chapter 395.

3. A hospital licensed under chapter 395.

4. A physician licensed, or physician assistant certified, under chapter 458.

5. An osteopathic physician licensed, or osteopathic physician assistant certified, under chapter 459.

6. A chiropractic physician licensed under chapter 460.

7. A podiatrist licensed under chapter 461.

8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under chapter 464 or any facility which employs nurses licensed or registered under chapter 464 to supply all or part of the care delivered under this section.

9. A midwife licensed under chapter 467.

10. A health maintenance organization certificated under part I of chapter 641.

11. A health care professional association and its employees or a corporate medical group and its employees.

12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.

13. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(c) of the Internal Revenue Code which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

Section 23. The provisions of sections 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and 65 of chapter 92-33, Laws of Florida, notwithstanding, the amendments to sections 455.20, 455.203, 455.205, 455.207, 455.208, 455.209, 455.211, 455.214, 455.215, 455.2173, 455.2175, 455.218, 455.220, 455.2205, 455.221, 455.223, 455.224, 455.225, 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.241, 455.243, 455.245, and 455.26, Florida Statutes, and the repeal of s. 455.213(6) and (7), Florida Statutes, therein shall not take effect July 1, 1993, but rather shall take effect July 1, 1994.

Section 24. Paragraph (a) of subsection (2) of section 240.4067, Florida Statutes, 1992 Supplement, is amended to read:

240.4067 Medical Education Reimbursement and Loan Repayment Program.—

(2) From the funds available, the Department of Health and Rehabilitative Services shall make payments to selected medical professionals as follows:

(a) Up to $4,000 per year for licensed practical nurses and registered nurses, up to $10,000 per year for advanced registered nurse practitioners and physician's assistants, and up to $20,000 per year for physicians. *Penalties for noncompliance shall be the same as those in the National Health Services Corps Loan Repayment Program* ~~or an amount equivalent to one-third of the total of loans and other educational expenses that were incurred by the health care professional during his enrollment in medical or nursing school, whichever is less, for a maximum of 3 years.~~ Educational expenses include costs for tuition, matriculation, registration, books, laboratory and other fees, other educational costs, and reasonable living expenses as determined by the Department of Health and Rehabilitative Services.

Section 25. Subsection (1) and paragraph (a) of subsection (7) of section 240.4075, Florida Statutes, 1992 Supplement, are amended to read:

240.4075 Nursing Student Loan Forgiveness Program.—

(1) To encourage qualified personnel to seek employment in areas of this state in which critical nursing shortages exist, there is established the Nursing Student Loan Forgiveness Program. The primary function of the program is to increase employment and retention of registered nurses and licensed practical nurses in nursing homes and hospitals in the state and in state-operated medical and health care facilities, *birth centers,* federally sponsored community health centers and teaching hospitals by making repayments toward loans received by students from federal or state programs or commercial lending institutions for the support of postsecondary study in accredited or approved nursing programs.

(7)(a) Funds contained in the Nursing Student Loan Forgiveness Trust Fund which are to be used for loan forgiveness for those nurses employed by hospitals, *birth centers,* and nursing homes must be matched on a dollar-for-dollar basis by contributions from the employing institutions except that this provision shall not apply to state-operated medical and health care facilities, county public health units, federally sponsored community health centers, or teaching hospitals as defined in s. 408.07.

Section 26. Section 381.0302, Florida Statutes, 1992 Supplement, is amended to read:

381.0302 Florida Health Services Corps.—

(1) To encourage qualified medical professionals to practice in underserved locations where there are shortages of such personnel, the Legislature establishes the Florida Health Services Corps.

(2) As used in this section, the term:

(a) "Department" means the Department of Health and Rehabilitative Services.

(b) "Florida Health Services Corps" means a program authorized by this section which:

1. Offers scholarships to *allopathic, osteopathic,* ~~medical,~~ chiropractic, *podiatric,* dental, *physician assistant,* and nursing students, *and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractors, podiatrists, nurse practitioners, dentists, and physician assistants,* in return for service in a public health care program *or in a medically underserved area.*

2. Offers membership on a voluntary basis to physicians and other health care personnel who provide uncompensated care.

(c) "Medically underserved area" means:

1. A geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations;

2. A county public health unit, community health center, or migrant health center; or

3. A geographic area or facility designated by rule by the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients.

(d) "Medically indigent person" means a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with an income at or below 185 percent of the federal poverty level.

(e) "Public health program" means a county public health unit, a children's medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded *or nonprofit* health care program designated by the department.

(f) "Primary care" means family and general practice, general pediatrics, obstetrics/gynecology, and general internal medicine by primary care physicians licensed under chapters 458, 459, 460, and 461.

(3) The Florida Health Services Corps shall be developed by the State Health Office in cooperation with the programs in the area Health Education Center network as defined in s. 381.0402 and the state's health care education and training institutions. The State Health Officer shall be the director of the Florida Health Services Corps.

(4) Corps members shall be supervised by the State Health Officer, or his physician designee, for the purpose of practice guidelines, continuing education, and other matters pertaining to professional conduct.

(5) The department may award scholarships to students studying medicine, *osteopathic medicine,* chiropractic, *podiatric,* nursing, or dentistry.

(a) The program shall require a student who receives a scholarship to accept an assignment in a public health care program or work in a specific community located in a medically underserved area upon *completion of primary care training* ~~graduation~~. The department shall determine assignments. If a practitioner is assigned to a medically underserved area, the practitioner must treat Medicaid patients and other patients with low incomes.

(b) An eligible student must *be pursuing* ~~pursue~~ a full-time course of study in:

1. Allopathic or osteopathic medicine, including physician assistants;

2. Dentistry;

3. Podiatric medicine;

4. ~~3.~~ Nursing, including registered nurses, nurse midwives, and other nurse practitioners; or

5. ~~4.~~ Chiropractic medicine.

(c) In selecting students to participate in the scholarship program, priority shall be given to students who indicate a desire to practice a primary care specialty in a medically underserved area after their obligation is completed and who indicate an intent to practice medical specialties for which the department has a need.

(d) Scholarship assistance shall consist of reimbursement for tuition and other educational costs such as books, supplies, equipment, transportation, and monthly living expense stipends. The department shall pay the same amount for living expense stipends as is paid by the National Health Services Corps. Each monthly living expense stipend shall be for a 12-month period beginning with the first month of each school year in which the student is a participant. The department may reimburse a participant for books, supplies, and equipment based on average costs incurred by participants for these items. The department shall prescribe, by rule, eligible expenses for reimbursement and allowable amounts.

(e) For *an allopathic or osteopathic* ~~a~~ medical student, enrollment in the corps may begin in the second year of medical school or in any year thereafter. For a nursing student or other student, enrollment may occur in any year.

(f) For a student who receives scholarship assistance, participation in the corps after *completion of training* ~~graduation~~ shall be 1 year for each school year of *scholarship* ~~financial~~ assistance, up to a maximum of 3 years. The period of obligated service shall begin when the participant is assigned by the department to a public health program or to a medically underserved area.

(6) The department may provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last 2 years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of 2 years in the Florida Health Services Corps. During the period of service, the maximum amount of annual financial payments shall not be greater than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps loan repayment program.

(7)~~(6)~~ The financial penalty for noncompliance with participation requirements *for persons who have received financial payments under subsection (5) or subsection (6)* shall be determined in the same manner as in the National Health Services Corps scholarship program. In addition, noncompliance with participation requirements shall also result in ineligibility for professional licensure *or renewal of licensure* under chapter 458, chapter 459, chapter 460, chapter 464, chapter 465, or chapter 466. For a participant who is unable to participate for reasons *of* ~~beyond his control, such as~~ disability, the penalty is the actual amount of financial assistance provided to the participant. Financial penalties shall be deposited in the Florida Health Services Corps Trust Fund and shall be used to provide additional scholarship and financial assistance.

(8)~~(7)~~ Membership in the corps may be extended to any licensed physician or other health care practitioner who provides uncompensated care to medically indigent persons referred by the department. Participation in the corps is voluntary and subject to the supervision of the department for the purpose of practice guidelines, continuing education, and other matters pertaining to professional conduct.

(9) Persons who receive loan repayment assistance under s. 240.4067 shall be members of the Florida Health Services Corps.

(10) Corps members shall be enrolled in Medicaid and accept all patients referred by the department pursuant to an agreement with the department.

(11)~~(8)~~ A Florida Health Services Corps member is an agent of the state under s. 768.28(9) while providing uncompensated services to medically indigent persons who are referred by the department.

(12)~~(9)~~ Funds appropriated under this section shall be deposited in the Florida Health Services Corps Trust Fund, which shall be administered by the State Health Office. *The department may use funds appropriated for the Florida Health Services Corps as matching funds for federal service-obligation scholarship programs for health care practitioners, such as the Demonstration Grants to States for Community Scholarship Grants program. If funds appropriated under this section are used as matching funds, federal criteria shall be followed whenever there is a conflict between provisions in this section and federal requirements.*

(13)~~(10)~~ The department shall adopt rules to implement the Florida Health Services Corps. The rules must also quantify penalties for noncompliance.

Section 27. Section 381.0406, Florida Statutes, is created to read:

381.0406 Rural health networks.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that, in rural areas, access to health care is limited and the quality of health care is negatively affected by inadequate financing, difficulty in recruiting and retaining skilled health professionals, and because of a migration of patients to urban areas for general acute care and specialty services.

(b) The Legislature further finds that the efficient and effective delivery of health care services in rural areas requires the integration of public and private resources and the coordination of health care providers.

(c) The Legislature further finds that the availability of a continuum of quality health care services, including preventive, primary, secondary, tertiary, and long term care, is essential to the economic and social vitality of rural communities.

(d) The Legislature further finds that the creation of rural health networks can help to alleviate these problems. Rural health networks shall, to the extent possible, be structured to provide a continuum of quality health care services for rural residents through the cooperative efforts of rural health network members.

(e) The Legislature further finds that rural health networks shall have the goal of increasing the utilization of statutory rural hospitals for appropriate health care services whenever feasible, which shall help to ensure their survival and thereby support the economy and protect the health and safety of rural residents.

(f) Finally, the Legislature finds that rural health networks may serve as "laboratories" to determine the best way of organizing rural health services, to move the state closer to ensuring that everyone has access to health care, and to promote cost containment efforts. The ultimate goal of rural health networks shall be to ensure that quality health care is available and efficiently delivered to all persons in rural areas.

(2) DEFINITIONS.—

(a) "Rural" means an area with a population density of less than 100 individuals per square mile or an area defined by the United States Census as rural.

(b) "Health care provider" means any individual, group, or entity, public or private, that provides health care, including: preventive health care, primary health care, secondary and tertiary health care, in-hospital health care, public health care, and health promotion and education.

(c) "Rural health network" or "network" means a nonprofit legal entity, consisting of rural and urban health care providers and others, that is organized to plan and deliver health care services on a cooperative basis in a rural area, except for some secondary and tertiary care services.

(3) Because each rural area is unique, with a different health care provider mix, health care provider membership may vary, but all networks shall include members that provide public health, comprehensive primary care, emergency medical care, and acute inpatient care.

(4) Network membership shall be available to all health care providers, provided that they render care to all patients referred to them from other network members.

(5) Network areas do not need to conform to local political boundaries or state administrative district boundaries.

(6) Networks shall develop provisions for referral to tertiary inpatient care and to other services that are not available in rural areas.

(7) Networks shall make available health promotion, disease prevention, and primary care services to improve the health status of rural residents and to contain health care costs.

(8) Networks may have multiple points of entry, such as through private physicians, community health centers, county public health units, certified rural health clinics, hospitals, or other providers; or they may have a single point of entry.

(9) Networks shall establish standard protocols, coordinate and share patient records, and develop patient information exchange systems.

(10) Networks shall develop risk management and quality assurance programs for network providers.

(11) NETWORK GOVERNANCE AND ORGANIZATION.—

(a) Networks shall be incorporated under the laws of the state.

(b) Networks shall have a board of directors that derives membership from local government, health care providers, businesses, consumers, and others.

(c) Network boards of directors shall have the responsibility of determining the content of health care provider agreements that link network members. The agreements shall specify:

1. Who provides what services.

2. The extent to which the health care provider provides care to persons who lack health insurance or are otherwise unable to pay for care.

3. The procedures for transfer of medical records.

4. The method used for the transportation of patients between providers.

5. Referral and patient flow including appointments and scheduling.

6. Payment arrangements for the transfer or referral of patients.

(12) NETWORK SERVICES.—

(a) Networks, to the extent feasible, shall provide for a continuum of care for all patients served by the network. Each network shall include the following core services: disease prevention, health promotion, comprehensive primary care, emergency medical care, and acute inpatient care. Networks shall, to the extent feasible, also ensure the availability of the following services either directly, by contract, or through referral agreements:

1. Services available in the home.

a. Home health care.

b. Hospice care.

2. Services accessible within 30 minutes travel time or less.

a. Emergency medical services, including advanced life support, ambulance, and basic emergency room services.

b. Primary care.

c. Prenatal care.

d. Community-based services for elders, such as adult day care and assistance with activities of daily living.

e. Public health services, including communicable disease control, disease prevention, health education, and health promotion.

f. Outpatient psychiatric and substance abuse services.

3. Services accessible within 45 minutes travel time or less.

a. Hospital acute inpatient care for persons whose illnesses or medical problems are not severe.

b. Level I obstetrical care, which is labor and delivery for low-risk patients.

c. Skilled nursing services, long-term care, including nursing home care.

d. Dialysis.

e. Osteopathic and chiropractic manipulative therapy.

4. Services accessible within 2 hours travel time or less.

a. Specialist physician care.

b. Hospital acute inpatient care for severe illnesses and medical problems.

c. Level II and III obstetrical care, which is labor and delivery care for high-risk patients and neonatal intensive care.

d. Comprehensive medical rehabilitation.

e. Inpatient psychiatric and substance abuse services.

f. Magnetic resonance imaging, lithotripter treatment, advanced radiology, and other technologically advanced services.

g. Subacute care.

(b) Networks shall actively participate with area health education center programs, whenever feasible, in developing and implementing recruitment, training, and retention programs directed at positively influencing the supply and distribution of health care professionals serving in, or receiving training in, network areas.

(c) As funds become available, networks shall emphasize community care alternatives for elders who would otherwise be placed in nursing homes.

(13) TRAUMA SERVICES.—In those network areas which have an established trauma agency approved by the Department of Health and Rehabilitative Services, that trauma agency must be a participant in the network. Trauma services provided within the network area must comply with s. 395.037.

(14) NETWORK FINANCING. Networks may use all sources of public and private funds to support network activities.

(15) NETWORK IMPLEMENTATION.—As funds become available, networks shall be developed and implemented in two phases.

(a) Phase I shall consist of a network planning and development grant program administered by the Agency for Health Care Administration in consultation with the State Health Officer. Planning grants shall be used to organize networks, incorporate network boards, and develop formal provider agreements as provided for in this section. The Agency for Health Care Administration shall develop a request-for-proposal process to solicit grant applications.

(b) Phase II shall consist of network operations. As funds become available, certified networks shall be eligible to receive grant funds to be used to help defray the costs of providing patient care. A Phase II award may occur in the same fiscal year as a Phase I award.

(16) CERTIFICATION.—For the purpose of certifying networks that are eligible for Phase II funding, the Agency for Health Care Administration, in consultation with the State Health Office, shall certify networks that meet the criteria delineated in this section.

(17) RULES.—The Agency for Health Care Administration, in consultation with the State Health Office, shall establish rules that govern the creation and certification of networks, including establishing outcome measures for networks.

Section 28. Subsection (2) of section 395.1055, Florida Statutes, 1992 Supplement, is amended to read:

395.1055 Rules and enforcement.—

(2) Separate standards may be provided for general and specialty hospitals, ~~and~~ ambulatory surgical centers, *and statutory rural hospitals as defined in s. 395.602.*

Section 29. Section 395.606, Florida Statutes, is created to read:

395.606 Rural health network cooperative agreements.—

(1) INTENT.—It is the Legislature's intent that, to the extent necessary to foster the development of rural health networks as provided for in s. 381.0406, competitive market forces shall be replaced with state regulation, as provided for in subsections (2) and (3). It is also the intent of the Legislature that consolidation of hospital services or technologies undertaken pursuant to this section, and cooperative agreements between members of rural health networks, shall not violate the state's antitrust laws when such arrangements improve the quality of health care, moderate cost increases, and are made between members of rural health networks as defined in s. 381.0406. It is also the intent of the Legislature that such arrangements be protected from federal antitrust laws, subject to the approval and supervision of the Agency for Health Care Administration. Such intent is within the public policy of the state to facilitate the provision of quality, cost-efficient medical care to its citizens.

(2) STATE ACTION APPROVAL.—Providers who are members of certified rural health networks who seek to consolidate services or technologies or enter into cooperative agreements shall seek approval from the Agency for Health Care Administration, which may consult with the Department of Legal Affairs. The agency shall determine that the likely benefits resulting from the agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement and issue a letter of approval if, in its determination, the agreement reduces or moderates costs and meets any of the following criteria:

(a) Consolidates services or facilities in a market area used by rural health network patients to avoid duplication;

(b) Promotes cooperation between rural health network members in the market area;

(c) Encourages cost sharing among rural health network facilities;

(d) Enhances the quality of rural health care; or

(e) Improves utilization of rural health resources and equipment.

(3) STATE OVERSIGHT.—The Agency for Health Care Administration shall review each agreement approved under subsection (2) at least every 2 years. If the agency determines that the likely benefits resulting from its state action approval no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agency shall initiate proceedings to terminate its state action approval governing the agreement. Such termination proceeding shall be governed by chapter 120 of the Florida Administrative Procedure Act.

(4) JUDICIAL REVIEW.—Any applicant aggrieved by a decision of the Agency for Health Care Administration shall be entitled to both administrative and judicial review thereof in accordance with chapter 120. In such review, the decision of the agency shall be affirmed unless it is arbitrary, capricious, or it is not in compliance with this section.

Section 30. Paragraph (i) is added to subsection (3) of section 408.036, Florida Statutes, 1992 Supplement, to read:

408.036 Projects subject to review.—

(3) EXEMPTIONS.—Upon request, supported by such documentation as the department may require, the department shall grant an exemption from the provisions of subsection (1):

(i) For the conversion of licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital as defined in s. 395.602, so long as the conversion of the beds does not involve the construction of new facilities. The total number of skilled nursing beds, including swing beds, may not exceed one-half of the total number of licensed beds in the rural hospital as of July 1, 1993. Certified skilled nursing beds designated under this paragraph, excluding swing beds, shall be included in the community nursing home bed inventory. A rural hospital which subsequently decertifies any acute care beds exempted under this paragraph shall notify the agency of the decertification and the agency shall adjust the community nursing home bed inventory accordingly.

Section 31. Subsection (4) is added to section 408.043, Florida Statutes, 1992 Supplement, to read:

408.043 Special provisions.—

(4) RURAL HEALTH NETWORKS.—Preference shall be given in the award of a certificate of need to members of certified rural health networks, as provided for in s. 381.0406, subject to the following conditions:

(a) Need must be shown pursuant to s. 408.035.

(b) The proposed project must:

1. Strengthen health care services in rural areas through partnerships between rural care providers; or

2. Increase access to inpatient health care services for Medicaid recipients or other low-income persons who live in rural areas.

(c) No preference shall be given under this section for the establishment of skilled nursing facility services by a hospital.

Section 32. Subsection (8) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.—The department may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined by the department to be eligible on the

dates on which the services were provided. Any service under this section may be provided only when medically necessary, shall be provided in accordance with state and federal law, and is subject to the availability of moneys and any limitation established by the general appropriations act or chapter 216.

(8) NURSING FACILITY SERVICES.—The department shall pay for 24-hour-a-day nursing and rehabilitative services for a recipient in a nursing facility licensed under part I of chapter 400 *or in a rural hospital, as defined in s. 395.602*, which are ordered by and provided under the direction of a licensed physician.

Section 33. Section 409.9116, Florida Statutes, is created to read:

409.9116 Disproportionate share program for rural hospitals.—In addition to the payments made under s. 409.911, the Agency for Health Care Administration sha'l design and implement a system of making disproportionate share payments to statutory rural hospitals. This system of payments shall conform with federal requirements and shall distribute funds in each fiscal year for which an appropriation is made by making quarterly Medicaid payments. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) The following formula shall be used by the agency to calculate the total amount earned for hospitals that participate in the rural hospital disproportionate share program:

$$TAERH = (CCD + MDD)/TPD$$

Where:

CCD = total charity care-other, plus charity care-Hill Burton, minus 50 percent of unrestricted tax revenue from local governments, and restricted funds for indigent care, divided by gross revenue per adjusted patient day.

MDD = Medicaid inpatient days plus Medicaid HMO inpatient days.

TPD = total inpatient days.

TAERH = total amount earned by each rural hospital.

In computing the total amount earned by each rural hospital, the agency must use the most recent actual data reported in accordance with s. 408.061(4)(a).

(2) The distribution amount for each rural hospital under this section must be calculated by the agency as follows:

$$DAER = (TAERH \times TARH)/STAERH$$

Where:

DAER = distribution amount for each rural hospital.

STAERH = sum of total amount earned by each rural hospital.

TAERH = total amount earned by each rural hospital.

TARH = total amount appropriated or distributed under this section.

(3) The Agency for Health Care Administration shall recommend to the Legislature a formula to be used in subsequent fiscal years to distribute funds appropriated for this section that includes charity care, uncompensated care to medically indigent patients, and Medicaid inpatient days.

(4) In the event the disproportionate share program is not available for providing specific assistance to rural hospitals, there shall be created the Rural Hospital Financial Assistance Program. Funds appropriated to the rural hospital financial assistance program shall be allocated to rural hospitals based on the formulas in subsection (1) and subsection (2).

(5) In order to receive payments under this section, a hospital must be a rural hospital as defined in s. 395.602 and must meet the following additional requirements:

(a) Agree to conform to all agency requirements to ensure high quality in the provision of services, including criteria adopted by agency rule concerning staffing ratios, medical records, standards of care, equipment, space, and such other standards and criteria as the agency deems appropriate as specified by rule.

(b) Agree to accept all patients, regardless of ability to pay, on a functional space-available basis.

(c) Agree to provide backup and referral services to the county public health units and other low-income providers within the hospital's service area, including the development of written agreements between these organizations and the hospital.

Section 34. Paragraph (b) of subsection (9) of section 768.28, Florida Statutes, 1992 Supplement, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.—

(9)

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115, any member of the Florida Health Services Corps, as defined in s. *381.0302* ~~381.90~~, who provides uncompensated care to medically indigent persons referred by the Department of Health and Rehabilitative Services, and any public defender or his employee or agent, including, among others, an assistant public defender and an investigator.

Section 35. The Agency for Health Care Administration shall establish a workgroup for the purpose of examining personnel licensing and training issues related to rural hospitals, as defined in s. 395.602, and shortages of health care professionals.

(1) The agency workgroup shall make recommendations for specific statutory and regulatory changes necessary to accomplish the following goals:

(a) Enhancement of the quality and effectiveness of health care in rural areas.

(b) Development of a licensure category and cross-training program that allows rural hospitals, as defined in s. 395.602, flexibility in utilizing personnel licensed under chapter 464, chapter 483, or part III, part IV, or part V of chapter 468, who have at least 3 years' professional experience, to perform professional functions in one or more of the other areas of professional practice listed in this paragraph.

(c) Development of standards for a nonrenewable, temporary license to be issued by the appropriate licensing boards that would allow a health care professional licensed in another state to practice in areas of the state designated as areas of critical health professional shortage, or in a profession designated as a profession of critical shortage, for a period not to exceed 6 months. The agency workgroup shall make recommendations as to which areas of the state should be designated as areas of critical health professional shortage, as well as which health care professions should be designated as professions of critical shortage.

(2) The agency workgroup shall be composed of the following members:

(a) One member who is a representative of the Office of Licensure and Certification of the agency, appointed by the Director of Health Care Administration.

(b) One representative of the agency appointed by the Director of Health Care Administration.

(c) One representative of the Department of Professional Regulation appointed by the Secretary of Professional Regulation.

(d) One member who is a representative of the Division of Community Colleges of the Department of Education appointed by the Executive Director of the Division of Community Colleges.

(e) One member appointed by the Board of Medicine.

(f) One member appointed by the Board of Nursing.

(g) One member appointed by the Board of Clinical Laboratory Personnel.

(h) One member who is a representative of the Office of Rural Health appointed by the Secretary of Health and Rehabilitative Services.

(i) Two members who are representatives of statutory rural hospitals appointed by the Governor.

(j) Two members who are representatives of statutory rural hospitals appointed by the President of the Senate.

(k) Two members who are representatives of statutory rural hospitals appointed by the Speaker of the House of Representatives.

(l) One member appointed by the respective boards of practitioners licensed under the following chapters: 459, 460, and 461.

(3) The agency shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the workgroup's recommendations no later than December 31, 1993.

Section 36. Section 408.02, Florida Statutes, 1992 Supplement, is amended to read:

(Substantial rewording of section. See s. 408.02, F.S., 1992 Supp., for present text.)

408.02 Practice parameters.—

(1) The Agency for Health Care Administration shall coordinate the development, endorsement, implementation, and evaluation of scientifically sound, clinically relevant practice parameters in order to reduce unwarranted variation in the delivery of medical treatment, improve the quality of medical care, and promote the appropriate utilization of health care services. "Practice parameters" or "practice guidelines" are defined to mean strategies for patient management that are developed to assist physicians in clinical decision-making.

(2) The agency shall establish a workgroup of appropriate medical and technical professionals and agency personnel to develop uniform standards and methods for the collection and analysis of patient outcomes data. The workgroup shall focus on collecting data which measures both the efficient utilization of medical resources and the effectiveness of medical care, and shall include such factors as patient diagnosis, the severity of the patient's condition, patient length of stay, number of diagnostic tests and scans performed, procedures performed, medications prescribed, number of consultations, patient mortality, source and date of patient admission and readmission, total patient charges and source of payment, and patient discharge status. The workgroup shall seek to coordinate data collection with the data committee created pursuant to s. 408.7025. The workgroup shall have completed the development of such standards by December 31, 1993.

(3) Every hospital, in conjunction with the hospital medical staff, shall produce outcomes data by diagnosis for each patient treated in the hospital pursuant to the criteria developed under subsection (2). The hospital shall forward such data to the agency in a manner consistent with s. 408.061 on a quarterly basis beginning with the quarter ending June 30, 1994. The report shall also include a description of any practice guideline which has been adopted by the medical staff, as well as outcomes data for persons treated according to such practice guideline. As used in this section, "hospital" means an acute care hospital licensed under chapter 395.

(4) The agency shall summarize the effectiveness and cost of care outcomes for each diagnosis by hospital, by district, by region, and across the state, as well as by any other grouping which will facilitate the development of clinically relevant practice parameters. The agency shall make the report available to the public and all hospitals throughout the state on an annual basis beginning December 31, 1994. The agency shall also make detail data submitted pursuant to subsection (3) available for analysis by others, subject to protection of confidentiality pursuant to s. 408.05(6).

(5) The agency, in conjunction with the Florida Medical Association, the Florida Chiropractic Association, the Florida Osteopathic Medical Association, the Florida Podiatric Medical Association, and other health professional associations, and in conjunction with the respective boards within the Division of Medical Quality Assurance, shall develop and may adopt by rule state practice parameters based on the data received under subsection (4) as well as on nationally developed practice guidelines. However, practice parameters adopted by rule shall not provide grounds for any administrative action. The agency shall prioritize the development of those practice parameters which involve the greatest utilization of resources either because they are the most costly or because they are the most frequently performed. Prior to the development of practice parameters under this subsection, the agency in conjunction with the various health professional associations may proceed with the development of state practice parameters based on nationally developed practice guidelines.

(6) The agency, in conjunction with the appropriate health professional associations shall develop and may adopt by rule practice parameters for services provided by diagnostic imaging centers, radiation therapy services, clinical laboratory services, physical therapy services, and comprehensive rehabilitative services. Practice parameters applicable to diagnostic imaging services shall be developed by December 31, 1993.

(7) Parameters developed pursuant to this section shall be made available to the public and to all hospitals and health professionals throughout the state.

(8) Procedures shall be instituted which provide for the periodic review and revision of practice parameters based on the latest outcomes data, research findings, technological advancements, and clinical experiences, at least once every 3 years.

(9) The agency shall establish a demonstration project to evaluate the effectiveness of practice parameters with regard to the costs of defensive medicine and professional liability insurance.

(a) Under the demonstration project, the agency, in conjunction with the Board of Medicine, shall complete the adoption of as many practice parameters as practical, giving priority to those procedures and diagnoses that account for a significant percentage of total statewide health services and health care costs, no later than July 1, 1994.

(b) The practice parameters must establish standards of practice designed to avoid liability claims and to increase the defensibility of liability claims when they occur, thereby eliminating the need for physicians to practice defensive medicine.

(c) The Board of Medicine shall review the practice parameters used in the demonstration project and may adopt them by rule.

(d) Physicians selected by the agency may elect to:

1. Participate in the demonstration project; and

2. Practice in compliance with the practice parameters, beginning no later than October 1, 1994.

(e) A participating physician who is named as a defendant in a cause of action accruing on or after October 1, 1994, but before October 1, 1998, may introduce evidence of compliance with the practice parameters as an affirmative defense to a liability claim.

(f) The agency shall review the demonstration project and shall make recommendations to the Legislature by December 31, 1994, as to the effectiveness of practice parameters on reducing the cost of defensive medicine and professional liability insurance and whether using proof of compliance with the parameters as an affirmative defense should apply to all physicians who practice in conformity with the appropriate practice parameters.

(10) The agency shall include a progress report on the development of practice parameters in the final Florida Health Care Plan submitted to the Legislature by December 31, 1993. The report shall address the data collection, the development of state practice parameters, and the utilization of practice parameters by hospitals and health professionals.

Section 37. Effective July 1, 1993, section 408.90, Florida Statutes, is created to read:

408.90 Legislative findings and intent.—The Legislature finds that 2.5 million Floridians do not have access to health insurance coverage, often because the premiums are unaffordable It is the intent of the Legislature to provide a state health insurance program for those people who are without health insurance so that they may have access to preventive and primary care services. The state health insurance program shall offer basic, affordable health care services to those Floridians who have not had access to the private health insurance market. The Legislature intends that the state program shall target the uninsured and not those who currently have private health insurance coverage.

Section 38. Section 408.901, Florida Statutes, is created to read:

408.901 Definitions.—As used in ss. 408.901-408.908, except as otherwise specifically provided, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Agent" means a person who is licensed to sell health insurance in this state pursuant to chapter 626.

(3) "Applicant" means a person who provides a written application to the agency for enrollment in the MedAccess program but whose application has not received final action.

(4) "Eligible person" means any person who meets the residency requirements of ss. 408.901-408.908.

(5) "Employer" means the state, its political subdivisions, any individual, partnership, association, corporation, or business trust, or any person or group of persons, acting in the interest of any employer in relation to an employee.

(6) "Fund" means the Licensure Fees Trust Fund.

(7) "Health services" means a set of basic health services covered by the MedAcess Program.

(8) "Member" means a Florida resident who has enrolled in the MedAccess program provided in ss. 408.901-408.908.

(9) "Participating provider" means any person who has a current provider agreement with the agency and who is authorized to furnished covered health services pursuant to ss. 408.901-408.908. The agency shall integrate county public health units, federally funded primary care centers and other outpatient clinics as participating providers in the health insurance program.

(10) "Premium" means the consideration paid or to be paid to the agency for the issuance of health insurance coverage provided by the MedAccess program.

(11) "MedAccess" means the state health program created pursuant to ss. 408.901-408.908.

Section 39. Section 408.902, Florida Statutes, is created to read:

408.902 MedAccess program; creation; program title.—

(1) Effective July 1, 1994, there is hereby created the MedAccess program to be administered by the Agency for Health Care Administration. The MedAccess program shall not be subject to the requirements of the Department of Insurance or chapter 627. The director of the agency shall appoint an administrator of the MedAccess program which shall be located in the Division of State Health Purchasing.

(2) If the necessary federal waivers are obtained and state and federal funds are available to establish a Medicaid buy-in program pursuant to s. 409.914, the MedAccess program shall remain available to those members who do not qualify for enrollment or who do not choose to enroll in the Medicaid buy-in program.

Section 40. The Agency for Health Care Administration shall prepare a report on the implementation of the MedAccess program for the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 1993. The report shall include the agency's plan for establishing administrative and accounting procedures for the operation of the MedAccess program, securing staff to administer the program, establishing premiums, determining eligibility, enrolling individuals, billing and collecting premiums, establishing provider networks, enrolling providers, processing claims, marketing the program, collecting data, establishing a case management program, controlling utilization, and containing costs. The report shall also include an estimate of total start-up costs, ongoing administrative costs, and claims costs for the program.

Section 41. Section 408 903, Florida Statutes, is created to read:

408.903 Eligibility.—

(1) Every resident of this state who has a gross family income that is equal to or below 250 percent of the federal poverty level and who meets the requirements of this section is eligible to enroll in the MedAccess program. For purposes of ss. 408.901-408.908, a resident is defined as a person who has established a domicile in the state for a period of at least 6 months. As used in this section, the term "resident" shall mean United States citizens or United States legal permanent residents.

(2) A person or family who applies for enrollment in the MedAccess program must provide documentation that demonstrates he or she has not been been covered by a health insurance policy in the 12-month period prior to the effective date of enrollment in the program.

(3) A person or family who is currently eligible for health care benefits under Medicare or the Florida Medicaid program is not eligible for enrollment in the MedAccess program. However, a person may convert to the program upon losing eligibility either for Medicare or Medicaid or upon disenrolling from the Medicaid buy-in program established pursuant to s. 409.914.

(4) The agency shall not use any information related to an applicant's assets in determining eligibility for the program.

(5) Applicants for the program shall complete an application form developed by the agency and shall provide information related to the family dependents to be enrolled and supply documentation concerning family income and place of residence.

(6) Applications for enrollment in the MedAccess program shall be submitted to the agency during a single month-long open enrollment period each year. The agency shall review all completed applications within 45 days of receipt. Applicants who satisfy the eligibility criteria and have paid their initial premium shall be notified by the agency of the effective date of coverage.

(7) The agency may request verification of continued eligibility from members once every 12 months.

(8) The program may disenroll any member due to failure to meet eligibility criteria, nonpayment of premium, or good cause.

(9) Enrollment in the MedAccess program is subject to eligibility and fiscal limitations and shall be renewed annually.

(10) If the Agency for Health Care Administration obtains the necessary federal waivers to implement a Medicaid buy-in program, members of the MedAccess program who qualify shall be entitled to transfer their enrollment to the Medicaid buy-in program.

Section 42. Section 408.904, Florida Statutes, is created to read:

408.904 Benefits.—

(1) Every eligible person who enrolls in the MedAccess program is entitled to receive benefits for any covered service furnished within this state by a participating provider.

(2) Covered health services include:

(a) Physician services. Those services delivered by a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 463 that are medically necessary for the treatment of an injury, illness, or disease. Physician services shall not include those services that are clinically unproven, experimental, or purely for cosmetic purposes. Each member is limited to 12 physician visits per calendar year, excluding those visits related to annual or periodic physical examinations for wellness pursuant to paragraph (g) or for immunizations.

(b) Hospital inpatient services. Those services provided for the treatment of a member who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395 up to a limit of 10 days per calendar year per member.

(c) Hospital outpatient services. Those services provided to a member in the outpatient portion of a hospital licensed under part I of chapter 395, up to a limit of $1,000 per calendar year per member, that are preventive, diagnostic, therapeutic, or palliative.

(d) Laboratory services. Professional laboratory services ordered by a licensed physician or other licensed practitioner of the healing arts and provided in a laboratory that meets the requirements for Medicare participation and is licensed under chapter 483.

(e) X-ray services. Radiological services ordered by a licensed physician or other licensed practitioner of the healing arts and that are provided by a licensed professional.

(f) Family planning services. Drugs and supplies that will enable a member to plan family size.

(g) Health appraisals, including physician examinations and related tests. Routine annual physical examinations conducted by or under the direction of a licensed physician, without regard to medical necessity, in order to detect disease, disability, or other physical or mental conditions. These services include well-baby and well-child screening and diagnostic services provided on a periodic basis to members under the age of 21.

(h) Immunizations.

(i) Advanced registered nurse practitioner services.

(j) Outpatient mental health visits and substance abuse treatment. Outpatient mental health visits provided by community mental health centers as provided in chapter 394 and by a mental health therapist licensed under chapter 490 or chapter 491 and substance abuse treatment provided by a center licensed under chapter 396 or chapter 397, up to a total of five visits per calendar year per member.

(3) Covered health services do not include any of the following:

(a) Surgery solely for cosmetic purposes.

(b) Prescribed drugs.

(c) Nursing home services.

(d) Medical examinations conducted and medical reports prepared for either purchasing or renewing life insurance or participating as a plaintiff or defendant in a civil action for the recover or settlement of damages.

(e) Clinically unproven or experimental procedures.

Section 43. Section 408.905, Florida Statutes, is created to read:

408.905 Limitations and exclusions.—

(1) The MedAccess program shall not cover benefits that are provided as part of workers' compensation insurance.

(2) The MedAccess program shall exclude coverage for preexisting conditions, except pregnancy, during a period of 12 months following the effective date of coverage as long as:

(a) The condition manifested itself within a period of 6 months before the effective date of coverage; or

(b) Medical advice or treatment was recommended or received within 6 months before the effective date of coverage.

(3) In addition to the limitations otherwise provided in ss. 408.901-408.908, the MedAccess program shall not include coverage for outpatient prescription drugs, eyeglasses, dental services, custodial care, or emergency services for nonemergent conditions.

(4) Any member of the MedAccess program who is determined to be at "high risk" by a participating primary care provider shall, upon renewal, agree to be placed in a case management system when it is determined by the program to be in the best interest of the member and the MedAccess program.

(5) No person on whose behalf the program has paid out $500,000 in covered benefits is eligible for continued coverage in the MedAccess program.

Section 44. Section 408.906, Florida Statutes, is created to read:

408.906 Payment of claims.—

(1) The agency is designated as the single state agency authorized to make payments for health services covered under the MedAccess program. These payments shall be made only for services included in the MedAccess program and shall be made only on behalf of eligible members in accordance with the provisions of ss. 408.901-408.908.

(2) The agency shall pay claims for covered health services provided to members at the same reimbursement rates and fees that are provided under the Florida Medicaid program, pursuant to s. 409.908.

Section 45. Section 408.907, Florida Statutes, is created to read:

408.907 Collection of premiums.—

(1) Premiums collected from members or from employers on behalf of members shall be made in accordance with rules adopted by the agency.

(2) Premiums collected shall be deposited in the Licensure Fees Trust Fund of the agency. Moneys in this fund shall be used solely for the administration of the MedAccess program.

(3) Employers are encouraged to participate in the payment of all or a portion of their employees' premium obligation. The agency is authorized to offer discounts to the premium obligation to those employers who pay at least 50 percent of the premium and who collect the premium from the employees on behalf of the agency.

(4) The agency is authorized to contract with agents who may refer individuals to the MedAccess program and may pay those agents a modest referral fee if the individual's application is accepted for enrollment in the MedAccess program.

(5) The agency is directed to develop strategies for marketing MedAccess to increase public awareness about the state program.

Section 46. Section 408.908, Florida Statutes, is created to read:

408.908 Administration.—The agency shall be responsible for:

(1) Developing a network of health care providers for providing managed health care services on a statewide basis.

(2) Performing all eligibility and administrative claims payment functions relating to the program.

(3) Evaluating the eligibility of each claim for payment under the program.

(4) Establishing a premium billing procedure for the collection of premiums from insured persons.

(5) Developing a schedule of copayments and deductibles that will encourage the use of preventive and primary care services, will deter members from overutilizing services, and will discourage the use of expensive, technology-driven services.

(6) Marketing the MedAccess program.

(7) Providing that the direct and indirect expenses of the program are fully covered by the collection of premiums from members of the MedAccess program.

(8) Establishing policy and budget guidelines for the MedAccess program.

(9) Adopting rules to carry out the provisions of ss. 408.901-408.908.

(10) Implementing and administering the MedAccess program.

(11) Providing to the public and to health care providers information concerning the MedAccess program.

(12) Ensuring that the quality of service provided under the MedAccess program meets the standards of the community.

(13) Identifying and eliminating health care providers who engage in fraudulent or abusive activities related to the MedAccess program.

(14) Evaluating the adequacy of the services covered by the MedAccess program, the accessibility of the program to the uninsured, and the effectiveness of the MedAccess program in reducing the number of uninsured persons in the state.

Section 47. Subsection (12) of section 409.908, Florida Statutes, 1992 Supplement, is amended to read:

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

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

(b) The agency shall adopt a fee schedule based on a resource-based relative value scale for pricing Medicaid physician services. Under this fee schedule, physicians shall be paid a dollar amount for each service based on the average resources required to provide the service, including, but not limited to, estimates of average physician time and effort, practice expense, and the costs of professional liability insurance. The

fee schedule shall provide increased reimbursement for preventive and primary care services and lowered reimbursement for specialty services by utilizing at least two conversion factors, one for cognitive services and another for procedural services. The fee schedule shall not increase total Medicaid physician expenditures unless moneys are available, and shall be phased in over a 2-year period beginning on July 1, 1994. The Agency for Health Care Administration shall seek the advice of a 16 member advisory panel in formulating and adopting the fee schedule. The panel shall consist of Medicaid physicians licensed under chapters 458 and 459, F.S., and shall be composed of fifty percent primary care physicians and fifty percent specialty care physicians.

(c) The agency shall monitor closely the utilization rate for physicians services and identify any trends which may indicate an effort to increase the volume of services to counteract any losses that might result from the new fee schedule. The agency shall prepare a report to the Legislature on the overall effect of the resource-based relative value scale fee schedule by December 31, 1996.

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

Section 48. Section 409.9081, Florida Statutes, is created to read:

409.9081 Copayments.—

(1) Effective July 1, 1993, the agency shall require, subject to federal regulations and limitations, each Medicaid recipient to pay at the time of service a nominal copayment for the following Medicaid services:

(a) Hospital outpatient services: up to $2 for each hospital outpatient visit.

(b) Physician services: up to $2 copayment for each visit with a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461 or chapter 463.

(2) The Agency for Health Care Administration shall study the level of success in collecting copayments from recipients and the administrative costs in attempting to collect copayments. The agency shall report to the Legislature the results of its study by January 1, 1994.

(3) In accordance with federal regulations, the agency shall not require copayments of the following Medicaid recipients:

(a) Children under age 21.

(b) Pregnant women when the services relate to the pregnancy or to any other medical condition which may complicate the pregnancy up to 6 weeks after delivery.

(c) Any individual who is an inpatient in a hospital, long-term care facility, or other medical institution if, as a condition of receiving services in the institution, that individual is required to spend all but a minimal amount of his income required for personal needs for medical care costs.

(d) Any individual who requires emergency services after the sudden onset of a medical condition which, left untreated, would place the individual's health in serious jeopardy.

(e) Any individual when the services or supplies relate to family planning.

(f) Any individual who is enrolled in a Medicaid prepaid health plan or health maintenance organization.

(4) No provider shall impose more than one copayment for any encounter upon a Medicaid recipient.

(5) The agency shall develop a mechanism by which participating providers are able to identify those Medicaid recipients from whom they shall not collect copayments.

Section 49. Section 409.9117, Florida Statutes, is created to read:

409.9117 (1) If federal funds are available for disproportionate share programs in addition to those otherwise provided by law, there shall be created a primary care disproportionate share program.

(2) In the establishment and funding of this program, the agency shall use the following criteria in addition to those specified in s. 409.911, payments may not be made to a hospital unless the hospital agrees to:

(a) Cooperate with a Medicaid prepaid health plan, if one exists in the community.

(b) Ensure the availability of primary and specialty care physicians to Medicaid recipients who are not enrolled in a prepaid capitated arrangement and who are in need of access to such physicians.

(c) Coordinate and provide primary care services free of charge, except copayments, to all persons with incomes up to 100 percent of the federal poverty level, and to provide such services based on a sliding fee scale to all persons with incomes up to 200 percent of the federal poverty level, except that eligibility may be limited to persons who reside within a more limited area, as agreed to by the agency and the hospital.

(d) Contract with any federally qualified health center, if one exists within the agreed geopolitical boundaries, concerning the provision of primary care services, in order to guarantee delivery of services in a nonduplicative fashion, and to provide for referral arrangements, privileges, and admissions, as appropriate. The hospital shall agree to provide at an onsite or offsite facility primary care services within 24 hours to which all Medicaid recipients and persons eligible under this paragraph who do not require emergency room services are referred during normal daylight hours.

(e) Cooperate with the agency, the county, and other entities to ensure the provision of certain public health services, case management, referral and acceptance of patients, and sharing of epidemiological data, as the agency and the hospital find mutually necessary and desirable to promote and protect the public health within the agreed geopolitical boundaries.

(f) In cooperation with the county in which the hospital resides, develop a low-cost, outpatient, prepaid health care program to persons who are not eligible for the Medicaid program, and who reside within the area.

(g) Provide inpatient services to residents within the area who are not eligible for Medicaid or Medicare, and who do not have private health insurance, regardless of ability to pay, on the basis of available space, except that nothing shall prevent the hospital from establishing bill collection programs based on ability to pay.

(h) Work with the Florida Healthy Kids Corporation, the Florida Health Care Purchasing Cooperative, the Florida Health Access Corporation, and business health coalitions, as appropriate, to develop a feasibility study and plan to provide a low-cost comprehensive health insurance plan to persons who reside within the area and who do not have access to such a plan.

(i) Work with public health officials and other experts to provide community health education and prevention activities designed to promote healthy lifestyles and appropriate use of health services.

(j) Work with the local health council to develop a plan for promoting access to affordable health care services for all persons who reside within the area, including, but not limited to, public health services, primary care services, inpatient services, and affordable health insurance generally. Any hospital that fails to comply with any of the provisions of this subsection, or any other contractual condition, may not receive payments under this section until full compliance is achieved.

Section 50. Section 409.9121, Florida Statutes, is created to read:

409.9121 Legislative findings and intent.—The Legislature hereby finds that the Medicaid program has experienced an annual growth rate of approximately 28 percent per year for the past 5 years, and is consuming more than half of all new general revenue growth. The present Medicaid system must be reoriented to emphasize, to the maximum extent possible, the delivery of health care through entities and mechanisms which are designed to contain costs, to emphasize preventive and primary care, and to promote access and continuity of care. The Legislature further finds that the concept of "managed care" best encompasses these multiple goals. The Legislature also finds that, with the cooperation of the physician community, MediPass, the Medicaid primary care case management program, is responsible for ensuring that there is a sufficient supply of primary care to provide access to preventive and primary care services to Medicaid recipients. Therefore, the Legislature declares its intent that the Medicaid program require, to the maximum extent practicable and permitted by federal law, that all Medicaid recipients be enrolled in a managed care program.

Section 51. Section 409.9122, Florida Statutes, is created to read:

409.9122 Mandatory Medicaid managed care enrollment.—

(1)(a) The agency is directed to contract for an independent comprehensive evaluation of the primary care case management program in districts 5 and 6, known as MediPass, and report the findings to the Legislature on or before December 31, 1994. The evaluation shall include, but not be limited to, an assessment of the program's impact on quality of care, access to Medicaid services, cost effectiveness, and provider and recipient satisfaction. It is the intent of the Legislature that the agency apply for a federal freedom of choice waiver and any other federal waivers necessary to expand MediPass to five additional districts by December 31, 1994, and, subject to evaluation findings that the program is cost effective, provides quality health care, and improves access to health services, to the remaining districts in the state by December 31, 1996.

(b) The MediPass program may not be expanded unless the agency certifies, for each county where MediPasss is to be started, that the necessary resources, including staff, are available to adequately inform recipients of their choice of primary care providers and to enroll them with a provider and that the necessary resources, including staff, are available to adequately recruit providers, ensure access, monitor performance and patient satisfaction, and assess the quality of care provided.

(2)(a) The agency shall encourage Medicaid recipients who receive payments from or are determined eligible for the Supplemental Security Income program, to the maximum extent feasible, to enroll in Medicaid or Medicare managed care plans.

(b) The agency shall work cooperatively with the Social Security Administration to identify beneficiaries who are jointly eligible for Medicare and Medicaid and shall develop cooperative programs to encourage these beneficiaries to enroll in a Medicare participating health maintenance organization or prepaid health plans.

(c) The agency shall work cooperatively with the Department of Elderly Affairs to assess the potential cost effectiveness of providing MediPass to beneficiaries who are jointly eligible for Medicare and Medicaid on a voluntary choice basis. If the agency determines that enrollment of these beneficiaries in MediPass has the potential for being cost-effective for the state, the agency shall offer MediPass to these beneficiaries on a voluntary choice basis in the counties where MediPass operates.

(d) The agency shall require the enrollment of Medicaid recipients who are also Medicare beneficiaries but who are not enrolled in MediPass or another managed care program in all counties of the state where MediPass is in operation. Subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216, the agency may develop a special reimbursement rate, which takes into consideration the higher utilization of such Medicaid recipients, for payment to health maintenance organizations or prepaid health plans agreeing to enroll these recipients.

(3)(a) The agency shall conduct a study of the feasibility of establishing managed care programs for various special population groups within the Medicaid program, to the extent permitted by federal law, and report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 1994.

(b) The agency shall investigate the feasibility of developing managed care programs for the following groups of Medicaid recipients:

1. Pregnant women and infants.

2. Chronically ill children.

3. Elderly and disabled recipients, especially those who are at risk of nursing home placement.

4. Persons with developmental disabilities.

5. Qualified Medicare beneficiaries.

6. Adults who have chronic, high-cost medical conditions.

7. Adults and children who have mental health problems.

8. Other recipients for whom managed care programs offer the opportunity of more cost-effective care and greater access to qualified providers.

(4)(a) The agency shall encourage the development of public and private partnerships to foster the growth of health maintenance organizations and prepaid health plans that will provide high quality health care to Medicaid recipients.

(b) Subject to the availability of moneys and any limitations established by the general appropriations act or chapter 216, the agency is authorized to enter into contracts with traditional providers of health care to low-income persons to assist such providers with the technical aspects of cooperatively developing Medicaid prepaid health plans.

1. The agency may contract with disproportionate share hospitals, county public health units, federally initiated or federally funded community health centers, and counties that operate either a hospital or a community clinic.

2. A contract may not be for more than $100,000 per year, and no contract may be extended with any particular provider for more than 2 years. The contract is intended only as seed or development funding and requires a commitment from the interested party.

3. A contract must require participation by at least one community health clinic and one disproportionate share hospital.

(5)(a) The agency shall develop and implement a comprehensive plan to ensure that recipients are adequately informed of their choices and rights under all Medicaid managed care programs and that Medicaid managed care programs meet acceptable standards of quality in patient care, patient satisfaction, and financial solvency.

(b) The agency shall provide adequate means for informing patients of their choice and rights under a managed care plan at the time of eligibility determination.

(c) The agency shall monitor all managed care plans at least quarterly; review patient grievances, disenrollment forms, medical records, and financial records; and require all managed care plans to establish methods for assuring quality and patient satisfaction.

Section 52. Effective July 1, 1993, section 409.914, Florida Statutes, is amended to read:

409.914 Assistance for the uninsured.—

(1) The *agency* ~~department~~ shall use the claims payment systems, utilization control systems, cost control systems, case management systems, and other systems and controls that it has developed for the management and control of the Medicaid program to assist other agencies and entities, if appropriate, in paying claims and performing other activities necessary for the conduct of programs of state government, or for working with other public and private agencies to solve problems of lack of insurance, underinsurance, or uninsurability. When conducting these services, the department shall ensure:

(a)~~(1)~~ That full payment is received for services provided.

(b)~~(2)~~ That costs of providing these services are clearly segregated from costs necessary for the conduct of the Medicaid program.

(c)~~(3)~~ That the program conducted serves the interests of the state in ensuring that effective and quality health care at a reasonable cost is provided to the citizens of the state.

(2)(a) The agency shall seek federal statutory or regulatory reforms to establish a Medicaid buy-in program to provide medical assistance to

persons ineligible for Medicaid because of current income and categorical restrictions. The agency shall use funds provided by the Robert Wood Johnson Foundation to assist in developing the buy-in program, including, but not limited to, the determination of eligibility and service coverages; cost sharing requirements; managed care provisions; changes needed to the Medicaid program's claims processing, utilization control, cost control, case management, and provider enrollment systems to operate a buy-in program.

(b) The agency shall seek federal authorization and financial support for a buy-in program that provides federally supported medical assistance coverage for persons with incomes up to 250 percent of the federal poverty level. The agency shall not implement the Medicaid buy-in program until it has received necessary federal authorization and financial participation and state appropriations.

Section 53. Effective July 1, 1993, section 409.9114, Florida Statutes, as created by chapter 91-282, Laws of Florida, and amended by chapter 92-33, Laws of Florida, is hereby repealed.

Section 54. Section 407.60, Florida Statutes, 1992 Supplement, as created by chapter 92-178, Laws of Florida, is hereby repealed.

Section 55. Section 15 of chapter 92-178, Laws of Florida, is amended to read:

Section 15. This act shall apply to referrals for designated health services made on or after the effective date of this act, provided that with respect to an investment interest acquired before May 1, 1992, paragraph (a) of subsection (4) of section 7 shall not apply to referrals for designated health services occurring before October 1, *1994* ~~1995~~, and provided, further, that paragraphs (b)-(g) of subsection (4) of section 7 shall be effective on July 1, 1992, and provided further, that with respect to a facility which is providing a designated health service or other health care items or service which received its certificate of occupancy and began providing that service at that facility after May 1, 1991, and before January 1, 1992, section 7(4)(a)-(g) inclusive of this act shall not apply to referrals for such designated health services and other items or services occurring before October 1, 1996.

Section 56. Section 9 of chapter 92-178, Laws of Florida, appearing as section 455 238, Florida Statutes, 1992 Supplement, is hereby repealed.

Section 57. Health care fraud and abuse study.—

(1) FINDINGS AND INTENT.—The current level of state spending on health care has raised concerns as to whether Florida is getting full value for its health care dollar. One outcome of this concern is increased attention on health care fraud and abuse. A widely used estimate by the federal General Accounting Office is that up to 10 percent of health care expenditures are the result of fraudulent or abusive practices. Significant savings could be realized if coordinated attention were focused on ways to curb fraud and abuse in the health care system. The Legislature intends to establish a workgroup which will look at the nature and extent of health care fraud and abuse in the state and examine ways to systematically address this problem.

(2) DEFINITIONS.—

(a) "Abuse" means the provision of, or billing for, health care services that, while not fraudulent, have marginal medical utility, are inconsistent with acceptable business and medical practices, and are intended primarily to increase the income of a health care provider or facility.

(b) "Fraud" means the representation or omission of material facts with the intent of receiving payment for health care services that were not provided or were provided without medical necessity.

(3) WORKGROUP.—The Agency for Health Care Administration shall establish a workgroup on health care fraud and abuse. The workgroup shall include representatives of the Department of Legal Affairs, the Department of Health and Rehabilitative Services, the Office of the Auditor General, the Department of Insurance, the Department of Law Enforcement, the United States Department of Justice, and the private insurance sector.

(4) REPORT.—The workgroup shall prepare a report on health care fraud and abuse which shall include, but not be limited to, the following elements:

(a) The identification of the major forms of health care fraud and abuse, including an evaluation of present reimbursement procedures which provide opportunities for fraud and invite abusive practices.

(b) An assessment of current laws, rules, and regulations to determine if they are adequate to control fraudulent activities and, if not, recommendations for legislation to strengthen current laws, rules, and regulations.

(c) The identification of the key private and public agencies and organizations involved in the detection or prosecution of fraud, and a determination as to how these organizations can best coordinate their efforts to provide a more effective approach to controlling fraud and abuse.

(d) An assessment of the feasibility of permitting insurance companies to share information regarding provider billing, and an examination of methods to permit insurance companies to collaborate in the investigation of providers suspected of fraud.

(e) An evaluation of the potential impact of allowing persons who report fraud to receive a portion of the fine levied against a provider who is successfully prosecuted.

(f) The workgroup's report shall be included in the final Florida Health Plan, which shall be submitted to the Legislature by December 31, 1993.

Section 58. All powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Medicaid program within the Department of Health and Rehabilitative Services, as well as the infrastructure and support services that support the program, including, but not limited to, investigative, licensing, legal, and administrative activities, are transferred by a type four transfer, as defined in s. 20.06(4), Florida Statutes, to the Agency for Health Care Administration. Such transfer shall take effect July 1, 1993. Any rules promulgated by or for the Medicaid program are included in such transfer.

Section 59. Effective July 1, 1993, the powers, duties and functions, records, property and unexpended allocations of funds associated with three career service positions, including $88,881 from the State Employee Health Trust Fund in the State Employees Health Insurance Program shall be transferred from the Department of Management Services by a type four transfer, as defined in s. 20.06(4), Florida Statutes, to the Agency for Health Care Administration. The three positions include two benefit analysts and one secretary specialist from the benefits programs section.

Section 60. There is hereby appropriated to the Agency for Health Care Administration: 104 full time positions; $13,875,773 from the General Revenue Fund; and, the agency is authorized to transfer in accordance with Chapter 216 F.S., up to $165,204 in General Revenue from the Medicaid Hospital Outpatient Services Category and, $1,114,611 in General Revenue from the Medicaid Physican's Services Category as a result of the co-payment savings; $597,109 from the State Employees Health Insurance Trust Fund; $5,217,903 from the Medical Care Trust Fund; and $713,349 from the Health Care Trust Fund to be allocated as follows:

$597,109 from the State Employees Health Insurance Trust Fund in the Department of Management Services shall be transferred to the agency for the added responsibilities related to the State Employees Health Insurance Program, and 10 new positions

2 positions and $147,955 from the General Revenue Fund for Deputy Director's Office for State Health Purchasing

$1,000,000 from General Revenue Fund and $713,349 from the Health Care Trust Fund for Data Collection and Analysis

21 positions and $927,919 from the General Revenue Fund for MedAccess development and consultants

$50,000 from the General Revenue Fund for a fraud and abuse study

25 positions and $503,670 from the General Revenue Fund and $503,670 from the Medical Care Trust Fund for Medipass expansion

2 positions and $275,000 from the General Revenue Fund for the Community Health Purchasing Alliance Administration

2 positions and $100,000 from the General Revenue Fund for rural health network initiatives

$3,025,000 from the General Revenue Fund for grants to 11 Community Health Purchasing Alliances

$3,720,185 from the General Revenue Fund and $1,279,815 from the Medical Care Trust Fund for the rural hospital Financial Assistance Program

$3,826,044 from the General Revenue Fund and $4,417,233 from the Medical Care Trust Fund for Medicaid reimbursement for skilled nursing facility beds in acute care hospitals

$300,000 from the General Revenue Funds for 4 rural health network development grants

Section 61. There is hereby appropriated to the Department of Health Rehabilitative Services, 1 career service position and $2,050,000 from the General Revenue Fund to be allocated as follows:

$50,000 and 1 position for the Office of Rural Health

$2,000,000 for the Florida Health Services Corps. Program

Section 62. Paragraphs (d) and (e) of subsection (6) of section 627.410, Florida Statutes, 1992 Supplement, are added to read:

627.410 Filing, approval of forms.—

(6)

(d) Every filing made pursuant to this subsection shall be prohibited from applying the following rating practices:

1. Select and ultimate premium schedules.

2. Premium class definitions which classify insured based on year of issue or duration since issue.

3. Attained age premium structures on policy forms under which more than fifty percent of the policies are issued to persons age 65 or over.

(e) Except as provided in s. 627.410(6)(e)1., an insurer shall continue to make available for purchase any individual policy form issued on or after October 1, 1993. A policy form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous twelve (12) months.

1. An insurer may discontinue the availability of a policy form if the insurer provides to the department in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the department, the insurer shall no longer offer for sale the policy form or certificate form in this state.

2. An insurer that discontinues the availability of a policy form pursuant to s. 627.410(6)(e)1. shall not file for approval a new policy form providing similar benefits as the discontinued form for a period of five (5) years after the insurer provides notice to the department of the discontinuance. The period of discontinuance may be reduced if the department determines that a shorter period is appropriate.

3. The experience of all policy forms providing similar benefits shall be combined for all rating purposes.

Section 63. Paragraph (e) of subsection (1) of section 627.411, Florida Statutes, is amended to read:

627.411 Grounds for disapproval.—

(1) The department shall disapprove any form filed under s. 627.410, or withdraw any previous approval thereof, only if the form:

(e) *Is* ~~if~~ for health insurance, *and* provides benefits which are unreasonable in relation to the premium charged, ~~or~~ contains provisions which are unfair or inequitable or contrary to the public policy of this state or which encourage misrepresentation, *or which apply rating practices which result in premium escalations that are not viable for the policyholder market or result in unfair discrimination in sales practices.*

Section 64. Paragraph (c) of subsection (2) of section 627.4106, Florida Statutes, 1992 Supplement, is amended to read:

627.4106 Small group health insurance; rates; restrictions.—

(2) DEFINITIONS.—As used in this section:

(c) "Health benefit plan" means any hospital or medical policy or certificate or any health maintenance organization subscriber contract. "Health benefit plan" does not include *specified disease, individual hospital indemnity,* accident-only, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, workers' compensation and employers' liability or similar insurance, or motor vehicle medical-payment insurance.

Section 65. (1) Section 627.6699, Florida Statutes, 1992 Supplement, is amended 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, *the term:*

(a) "Actuarial certification" means a written statement, by a member of the American Academy of Actuaries or another person acceptable to the department, that a small employer carrier is in compliance with subsection (6), based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable health benefit plans.

(b)~~(a)~~ "Basic health benefit plan" and "standard health benefit plan" mean low-cost health care plans developed pursuant to subsection *(12)*~~(9)~~.

(c)~~(b)~~ "Board" means the board of directors of the program.

(d)~~(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. However, *the term* ~~"carrier"~~ does not include a multiple-employer welfare arrangement ~~established by an association of members of the same profession~~, which multiple-employer welfare arrangement operates solely for the benefit of the members or the members and the employees of such members, *and* was in existence on January 1, 1992~~, and provides coverage for any member of the association with 11 or more employees or any such member and dependents of the member, upon the member's request for such coverage~~.

(e)~~(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.

(f)~~(e)~~ "Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the health benefit plan covering that employee.

(g)~~(f)~~ "Eligible employee" means an employee who works full time, having a normal workweek of *25* ~~30~~ or more hours, and who has met any applicable waiting-period requirements *or other requirements of this act.* The term includes *a self-employed individual,* 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.

(h)~~(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.

(i) "Guarantee-issue basis" means an insurance policy that must be offered to an employer, employee, or dependent of the employee, regardless of health status, preexisting conditions, or claims history.

(j)~~(h)~~ "Health benefit plan" means any hospital or medical policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract. The term does not include accident-only, specified disease, individual hospital indemnity, credit, dental-only, vision-only, Medicare supplement, long-term care, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation or similar insurance; or automobile medical-payment insurance.

(k)~~(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.

(l)~~(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.

(m) "Modified community rating" means a method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments for age, gender, family composition, tobacco usage, and geographic area as determined under paragraph (5)(k).

(n)~~(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.

(o)~~(l)~~ "Plan of operation" means the plan of operation of the program, including articles, bylaws, and operating rules, adopted by the board *under* ~~pursuant to~~ subsection *(11)*~~(8)~~.

(p)~~(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.

(q)~~(n)~~ "Program" means the Florida Small Employer Carrier Reinsurance Program created under subsection *(11)*~~(8)~~.

(r)~~(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.

(s) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(t)~~(p)~~ "Reinsuring carrier" means a small employer carrier that elects to comply with the requirements set forth in subsection *(11)*~~(8)~~.

(u)~~(q)~~ "Risk-assuming carrier" means a small employer carrier that elects to comply with the requirements set forth in subsection *(10)*~~(7)~~.

(v) "Self-employed individual" means an individual or sole proprietor who derives his or her income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS Form 1040, schedule C or F, and which generated taxable income in one of the 2 previous years.

(w)~~(r)~~ "Small employer" means any person, *sole proprietor, self-employed individual, independent contractor,* 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 *50* ~~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. *For purposes of this section, a sole proprietor, an independent contractor, or a self-employed individual is considered a small employer only if all of the conditions and criteria established in this section are met.*

(x)~~(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, *unless the policy is marketed directly to the individual employee, and the employer does not participate in the collection or distribution of premiums or facilitate the administration of the policy in any manner.* ~~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.

(d) This section shall not apply to a carrier that does not issue new health benefit plans to small employers on or after January 1, 1994, except that it shall apply to any such carrier that renews a health benefit plan on or after January 1, 1995.

(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 which does not, on or after January 1, 1993, offer coverage but which does, on or after January 1, 1993, renew or continue coverage in force, such carrier shall be required to provide coverage to newly eligible employees and dependents on the same basis as small employer carriers which are offering coverage on or after January 1, 1993.

(c) Every small employer carrier must, as a condition of transacting business in this state:

1. Beginning January 1, 1994, offer and issue all small employer health benefit plans on a guarantee-issue basis to every eligible small employer, with 3 to 50 eligible employees, that elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section.

2. Beginning April 15, 1994, offer and issue basic and standard small employer health benefit plans on a guarantee-issue basis to every eligible small employer, with one or two eligible employees, which elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section.

3. Offer to eligible small employers the standard and basic health benefit plans. This subparagraph does not limit a carrier's ability to offer other health benefit plans to small employers if the standard and basic health benefit plans are offered and rejected.

~~(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 claims 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.~~

(d)~~(c)~~ A small employer carrier must file with the department, in a format and manner prescribed by the committee, a standard health care plan and a basic health care plan to be used by the carrier.

(e)~~(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.

(f)~~(e)~~ A health *benefit* ~~care~~ plan covering small employers, issued or renewed on or after October 1, 1992, 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

2. *Preexisting condition provisions* may ~~only~~ relate *only* 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.

(g) A health benefit plan covering small employers, issued or renewed on or after January 1, 1994, must comply with the following conditions:

1. All health benefit plans must be offered and issued on a guarantee-issue basis, except that benefits purchased through riders as provided in paragraph (c) may be medically underwritten for the group, but may not be individually underwritten as to the employees or the dependents of such employees. Additional or increased benefits may only be offered by riders.

2. The provisions of paragraph (f) apply to health benefit plans issued to a small employer who has three or more eligible employees, and to health benefit plans that are issued to a small employer who has fewer than three eligible employees and that cover an employee who has had qualifying previous coverage continually to a date not more than 30 days before the effective date of the new coverage.

3. With respect to any employee or dependent excluded from coverage due to disease or medical condition or whose coverage had been restricted for certain diseases or medical conditions prior to January 1, 1993, and who has continued to be an eligible employee or dependent as of April 1, 1993, an open enrollment period shall be provided for a 90-day period beginning within 60 days following the effective date of this act, during which period any such employee or dependent shall be entitled to be included within coverage and or issued coverage without restrictions for certain diseases or medical conditions.

4. For health benefit plans that are issued to a small employer who has fewer than three employees and that cover an employee who has not been continually covered by qualifying previous coverage within 30 days before the effective date of the new coverage, preexisting condition provisions must not exclude coverage for a period beyond 24 months following the employee's effective date of coverage and may relate only to:

a. Conditions that, during the 24-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.

(h) All health benefit plans issued under this section must comply with the following conditions:

1.~~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.

2.~~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. *For employers who have fewer than three employees, a late enrollee may be excluded from coverage for no longer than 24 months if he was not covered by qualifying previous coverage continually to a date not more than 30 days before the effective date of his new coverage.*

3.~~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.

4.~~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.

5.~~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.

6.~~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.

7.~~8.~~ A small employer carrier *may* ~~shall~~ not modify *any health benefit plan issued to a small employer* ~~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.

8.~~9.~~ An initial enrollment period of at least 30 days must be provided. *An annual 30 day open enrollment period must be offered to each small employer's eligible employees and their dependents.*

(i)~~(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, *provided such geographic service area shall not be less than a county*;

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 *50* ~~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 May 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 May 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.

(j)~~(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.

(k) The boundaries of geographic areas used by a small employer carrier must coincide with county lines. A carrier may not apply different geographic rating factors to the rates of small employers located within the same county.

(6) RESTRICTIONS RELATING TO PREMIUM RATES.—

(a) The department may, by rule, establish regulations to administer this section and to assure that rating practices used by small employer carriers are consistent with the purpose of this section, including assuring that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans.

(b) For all small employer health benefit plans that are subject to this section and are issued by small employer carriers on or after January 1, 1994, premium rates for health benefits plans subject to this section are subject to the following

1. Small employer carriers must use a modified community rating methodology in which the premium for each small employer must be determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area as determined under paragraph (5)(k).

2. Rating factors related to age, gender, family composition, tobacco use, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to department review and approval.

3. Small employer carriers may not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changes or benefits are changed.

4. Carriers participating in the alliance program, in accordance with ss. 408.700-408.707, may apply a different community rate to business written in that program.

(c) For all small employer health benefit plans that are subject to this section, that are issued by small employer carriers before January 1, 1994, and that are renewed on or after January 1, 1995, renewal rates must be based on the same modified community rating standard applied to new business.

(d) Notwithstanding s. 627.401(2), this section and ss. 627.410 and 627.411 apply to any health benefit plan provided by a small employer carrier that provides coverage to one or more employees of a small employer regardless of where the policy, certificate, or contract is issued or delivered, if the health benefit plan covers employees or their covered dependents who are residents of this state.

(7) RENEWABILITY OF COVERAGE.—

(a) Except as provided in paragraph (b), a health benefit plan that is subject to this section is renewable for all eligible employees and dependents at the option of the small employer, except for any of the following reasons:

1. Nonpayment of required premiums;

2. Fraud or misrepresentation by the small employer or fraud or misrepresentation by the insured individual or subscriber or the individual's or subscriber's representative;

3. Noncompliance with plan provisions;

4. Noncompliance with the carrier's minimum participation requirements;

5. Noncompliance with the carrier's employer contribution requirements;

6. The small employer's termination of the business in which it was engaged on the effective date of the plan; or

7. A determination by the department that the continuation of the coverage is not in the best interest of the policyholders or certificateholders or will impair the carrier's ability to meet its contractual obligations. In such instances, the department must assist affected small employers in finding replacement coverage.

(8) MAINTENANCE OF RECORDS.—

(a) Each small employer carrier must maintain at its principal place of business a complete and detailed description of its rating practices and renewal practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier must file with the department on or before March 15 of each year an actuarial certification that the carrier is in compliance with this section and that the rating methods of the carrier are actuarially sound. The certification must be in a form and manner and contain the information prescribed by the department. The carrier must retain a copy of the certification at its principal place of business.

(c) A small employer carrier must make the information and documentation described in paragraph (a) available to the department upon request. The information constitutes proprietary and trade secret information and may not be disclosed by the department to persons outside the department, except as agreed to by the carrier or as ordered by a court of competent jurisdiction. The exemption from s. 119.07 provided in this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(d) Each small employer carrier must file with the department quarterly an enrollment report as directed by the department. Such report shall not constitute proprietary or trade secret information.

(9)~~(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. *Each small employer carrier must make an initial election, binding through January 1, 1994.* ~~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~~. *By October 31, 1993, all small employer carriers must file a final election, which is binding for 2 years, from January 1, 1994 through December 31, 1995, after which an election shall be binding for a period of 5 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 *(10)*~~(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 *under* ~~pursuant to~~ subsection *(11)*~~(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 *(11)*~~(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.

(10)~~(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 *(9)*~~(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 *(11)*~~(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 *(11)*~~(8)~~.

(d) The department shall provide public notice of a small employer carrier's designation of election under subsection *(9)*~~(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).~~

(11)~~(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 are representatives of carriers and are appointed by the commissioner and serve as follows:

a. The commissioner shall include representatives of small employer carriers subject to assessment under this subsection. If two or more carriers elect to be risk-assuming carriers, the membership must include at least two representatives of risk-assuming carriers; if one carrier is risk-assuming, one member must be a representative of such carrier. At least one member must be a carrier who is subject to the assessments, but is not a small employer carrier. Subject to such restrictions, 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 subparagraph 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, *other than amounts payable to the administrative carrier,* 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. *By January* ~~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 the next $50,000 and 5 percent of the next $100,000 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 *area, as determined under this section,* ~~territory~~ to reflect differences in cost. The multiplying factors *must* ~~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. *Before* ~~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 0.5 percent of each carrier's health benefit plan premiums. *Except as provided in paragraph (n),* 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 assessments shall be credited against any additional assessments made.

b. The board shall equitably assess carriers *for operating losses of the plan* based on market share. The board shall annually assess each carrier 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 carrier'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 carriers 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 carriers 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 a carrier of the interim assessment notice. Interim assessment payments shall be credited against the carrier'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. *Before* ~~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 report 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 carrier retention under the program, and the costs of coverage for small employers. If the board fails to file a 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 establishing such standards, the board shall take into 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 ongoing 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.

(m) The board shall monitor compliance with this section, including the market conduct of small employer carriers, and shall report to the department any unfair trade practices and misleading or unfair conduct by a small employer carrier that has been reported to the board by agents, consumers, or any other person. The department shall investigate all reports and, upon a finding of noncompliance with this section or of unfair or misleading practices, shall take action against the small employer carrier as permitted under the Insurance Code or chapter 641. The board is not given investigatory or regulatory powers, but must forward all reports of cases or abuse or misrepresentation to the department.

(n) Notwithstanding paragraph (j), the administrative expenses of the program shall be recouped by assessment of risk assuming carriers and reinsuring carriers and such amounts shall not be considered part of the operating losses of the plan for the purposes of this paragraph. Each carrier's portion of such administrative expenses shall be determined by multiplying the total of such administrative expenses by a fraction, the numerator of which equals the carrier's earned premium pertaining to direct writing of small employer health benefit plans in the state during the calendar year for which the assessment is levied, and the denominator of which equals the total of such premiums earned by all carriers in the state during such calendar year.

(12)~~(9)~~ STANDARD, BASIC, AND LIMITED HEALTH BENEFIT PLANS.—

(a)1. *By May 15, 1993* ~~No later than May 15, 1992~~, the commissioner shall appoint a health benefit plan committee composed of four representatives of carriers *which shall include at least two representatives of HMO's, at least one of which is a staff model HMO, two representatives of agents, four* ~~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. *As alliances are established under s. 408.702, each alliance shall also appoint an additional member to the committee.*

2. The committee shall develop *changes to* 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 *September 30, 1993* ~~July 1, 1992~~. The department must approve such forms and levels of coverages by *November 30, 1993* ~~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 *November 30, 1993* ~~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 *revised* ~~standard health benefit plan and the basic~~ health benefit *plans* ~~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 issuing new health benefit plans shall offer 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. *A carrier may use preferred provider arrangements or exclusive provider arrangements to the same extent as allowed in group products that are not issued to small employers.*

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. *The carrier may use such provisions to the same extent as authorized for group products that are not issued to small employers.*

4. The standard health benefit plan shall include:

a. Coverage for inpatient hospitalization;

b. Coverage for outpatient services;

c. Coverage for newborn children pursuant to s. 627.6575;

d. Coverage for child care supervision services pursuant to s. 627.6579;

e. Coverage for adopted children upon placement in the residence pursuant to s. 627.6578;

f. Coverage for mammograms pursuant to s. 627.6613;

g. Coverage for handicapped children pursuant to s. 627.6615; and

h. Emergency or urgent care out of the geographic service area.

i. Coverage for services provided by a hospice licensed under s. 400.602 in cases where such coverage would be the most appropriate and the most cost effective method for treating a covered illness.

5. 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.

6. The basic health benefit plan shall include all of the benefits specified in subparagraph *4.* ~~5.~~; however, the basic health benefit plan shall place additional restrictions on the benefits and utilization and may also impose additional cost containment measures.

7. 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.

8. Each small employer carrier 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. *If a limited plan is requested,* acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase *any* ~~a standard~~ health benefit plan *offered by the carrier* ~~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, 627.4106, and 627.411.

2. A small employer carrier must file with the department *by December 1, 1993,* ~~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 *1994* ~~1993~~, together with the rates therefor, and the department must approve the submissions *by January 1, 1994* ~~no later than November 1, 1992~~.

(13)~~(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, *including any subsequent modifications or additions to those plans,* to eligible small employers in the state. *Before January 1, 1994,* 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. *Beginning January 1, 1994, small employer carriers must offer and issue all plans on a guarantee-issue basis.*

(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 the 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 *or ss. 641.3903 and 641.3907.*

(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.

(14)~~(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 *(11)(j)* ~~(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 *section* ~~act~~.

(15)~~(12)~~ RULEMAKING AUTHORITY.—The department may adopt rules *to administer* ~~for the implementation and administration of~~ this section, including *rules governing* compliance by small employer carriers and small employers.

(2) This section shall take effect January 1, 1994, except that subsections (6) and (9) of section 627.6699, Florida Statutes, 1992 Supplement, renumbered as subsections (9) and (12), respectively, of said section and as amended by this section, shall take effect upon becoming a law.

Section 66. Section 408.70, Florida Statutes, is created to read:

408.70 Community health purchasing; legislative findings and intent.—

(1) The Legislature finds that the current health care system in this state does not provide access to affordable health care for all persons in this state. Almost one in five persons is without health insurance. For many, entry into the health care system is through a hospital emergency room rather than a primary care setting. The availability of preventive and primary care and managed, family-based care is limited. Health insurance underwriting practices have led to the avoidance, rather than to the sharing, of insurance risks, limiting access to coverages for small-sized employer groups and high-risk populations. Spiraling premium costs have placed health insurance policies out of the reach of many small-sized and medium-sized businesses and their employees. Lack of outcome and cost information has forced individuals and businesses to make critical health care decisions with little guidance or leverage. Health care resources have not been allocated efficiently, leading to excess and unevenly distributed capacity. These factors have contributed to the high cost of health care. Rural and other medically underserved areas have too few health care resources. Comprehensive, first-dollar coverages have allowed individuals to seek care without regard to cost. Provider competition and liability concerns have led to a medical technology arms race. Rather than competing on the basis of price and patient outcome, health care providers compete for patients on the basis of service, equipping themselves with the latest and best technologies. Managed-care and group-purchasing mechanisms are not widely available to small group purchasers. Health care regulation has placed undue burdens on health care insurers and providers, driving up costs, limiting competition, and preventing market-based solutions to cost and quality problems. Health care costs have been increasing at several times the rate of general inflation, eroding employer profits and investments, increasing government revenue requirements, reducing consumer coverages and purchasing power, and limiting public investments in other vital governmental services.

(2) It is the intent of the Legislature that a structured health care competition model, known as "managed competition," be implemented throughout the state to improve the efficiency of the health care markets in this state. The managed competition model will promote the pooling of purchaser and consumer buying power; ensure informed cost-conscious consumer choice of managed care plans; reward providers for high-quality, economical care; increase access to care for uninsured persons; and control the rate of inflation in health care costs.

(3) The Legislature intends that state-chartered, nonprofit private purchasing organizations, to be known as "community health purchasing alliances," be established. The community health purchasing alliances shall be responsible for assisting alliance members in securing the highest quality of health care, based on current standards, at the lowest possible prices.

Section 67. Section 408.701, Florida Statutes, is created to read:

408.701 Community health purchasing; definitions.—As used in ss. 408.70-408.706, the term:

(1) "Accountable health partnership" means an organization that integrates health care providers and facilities and assumes risk, in order to provide health care services, as certified by the agency under s. 408.704.

(2) "Agency" means the Agency for Health Care Administration.

(3) "Alliance" means a community health-purchasing alliance.

(4) "Alliance member" means:

(a) A small employer as defined in s. 627.6699, or

(b) The state, for the purpose of providing health benefits to state employees and their dependents through the State Group Insurance Program and to Medicaid recipients, participants in the MedAccess program, and participants in the Medicaid buy-in program,

if such entities voluntarily choose to join an alliance.

(5) "Antitrust laws" means federal and state laws intended to protect commerce from unlawful restraints, monopolies, and unfair business practices.

(6) "Associate alliance member" means any purchaser who joins an alliance for the purposes of participating on the alliance board and receiving data from the alliance at no charge as a benefit of membership.

(7) "Benefit standard" means a specified set of health services that are the minimum that must be covered under a basic health benefit plan, as defined in s. 627.6699.

(8) "Business health coalition" means a group of employers organized to share information about health services and insurance coverage, to enable the employers to obtain more cost-effective care for their employees.

(9) "Community health purchasing alliance" means a state-chartered, nonprofit organization that provides member-purchasing services and detailed information to its members on comparative prices, usage, outcomes, quality, and enrollee satisfaction with accountable health partnerships.

(10) "Consumer" means an individual user of health care services.

(11) "Department" means the Department of Insurance.

(12) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.

(13) "Health care provider" or "provider" means a state-licensed or state-authorized facility, a licensed practitioner, or a county public health unit established under Part I of chapter 154, which delivers health care services to individuals.

(14) "Health insurer" or "insurer" means an organization licensed by the department under part III of chapter 624 or part I of chapter 641.

(15) "Health plan" means any hospital or medical policy or contract or certificate, hospital or medical service plan contract, or health maintenance organization contract as defined in the Insurance Code or Health Maintenance Organization Act. The term does not include accident-only, specific disease, individual hospital indemnity, credit, dental-only, vision-only, Medicare supplement, long-term care, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation or similar insurance; or automobile medical-payment insurance.

(16) "Health status" means an assessment of an individual's mental and physical condition.

(17) "Managed care" means systems or techniques generally used by third-party payers or their agents to affect access to and control payment for health care services. Managed-care techniques most often include one or more of the following: prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services; contracts with selected health care providers; financial incentives or disincentives related to the use of specific providers, services, or service sites; controlled access to and coordination of services by a case manager; and payer efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.

(18) "Managed competition" means a process by which purchasers form alliances to obtain information on, and purchase from, competing accountable health partnerships.

(19) "Medical outcome" means a change in an individual's health status after the provision of health services.

(20) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals.

(21) "Purchaser" means an individual, an organization, or the state that makes health-benefit purchasing decisions on behalf of a group of individuals.

(22) "Self-funded plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for all covered services provided to its enrollees.

(23) "Utilization management" means programs designed to control the overutilization of health services by reviewing their appropriateness relative to established standards or norms.

(24) "24-hour coverage" means the consolidation of such time-limited health care coverage as personal injury protection under automobile insurance into a general health insurance plan.

(25) "Agent" means a person who is licensed to sell insurance in this state pursuant to chapter 626.

Section 68. Section 408.702, Florida Statutes, is created to read:

408.702 Community health purchasing alliance; establishment.—

(1) There is hereby created a community health purchasing alliance in each of the 11 health service planning districts established under s. 408.032(5). Each alliance must be operated as a state-chartered, nonprofit private organization organized pursuant to chapter 617.

(2) Three or fewer alliances located in contiguous districts that are not primarily urban may merge into a single alliance upon approval of the agency based upon a showing by the alliance board members that the members of each alliance would be better served under a combined alliance. Board members of each alliance shall serve as the board of the combined alliance.

(3) An alliance is the only entity that is allowed to operate as an alliance in a particular district and must operate for the benefit of its members who are: small employers, as defined in s. 627.6699; the state on behalf of its employees and the dependents of such employees; Medicaid recipients; and associate alliance members. An alliance is the exclusive entity for the oversight and coordination of alliance member purchases. Any health plan offered through an alliance must be offered by an accountable health partnership and an alliance may not directly provide insurance; directly contract, for purposes of providing insurance, with a health care provider or provider network; or bear any risk, or form self-insurance plans among its members. An alliance may form a network with other alliances in order to improve services provided to alliance members. Nothing in ss. 408.70-408.706 limits or authorizes the formation of business health coalitions; however, a person or entity that pools together or assists in purchasing health coverage for small employers, as defined in s. 627.6699, state employees and their dependents, and Medicaid, Medicaid buy-in, and MedAccess recipients may not discriminate in its activities based on the health status or historical or projected claims experience of such employers or recipients.

(4) Each alliance shall capitalize on the expertise of existing business health coalitions.

(5) Membership or associate membership in an alliance is voluntary.

(6) Each community health purchasing alliance has the following powers, duties, and responsibilities:

(a) Establishing the conditions of alliance membership in accordance with ss. 408.70-408.706.

(b) Providing to alliance members clear, standardized information on each accountable health partnership and each health plan offered by each accountable health partnership, including information on price, enrollee costs, quality, patient satisfaction, enrollment, and enrollee responsibilities and obligations; and providing accountable health partnership comparison sheets in accordance with agency rule to be used in providing members and their employees with information regarding standard, basic, and specialized coverage that may be obtained through the accountable health partnerships.

(c) Annually offering to all alliance members all accountable health partnerships and health plans offered by the accountable health partnerships which meet the requirements of ss. 408.70-408.706, and which submit a responsive proposal as to information necessary for accountable health partnership comparison sheets, and providing assistance to alliance members in selecting and obtaining coverage through accountable health partnerships that meet those requirements.

(d) Requesting proposals for the standard and basic health plans, as defined in s. 627.6699, from all accountable health partnerships in the district; providing, in the format required by the alliance in the request for proposals, the necessary information for accountable health partnership comparison sheets; and offering to its members health plans of accountable health partnerships which meet those requirements.

(e) Requesting proposals from all accountable health partnerships in the district for specialized benefits approved by the alliance board based on input from alliance members, determining if the proposals submitted by the accountable health partnerships meet the requirements of the request for proposals, and offering them as options through riders to standard plans and basic plans. This paragraph does not limit an accountable health partnership's ability to offer other specialized benefits to alliance members.

(f) Distributing to health care purchasers, placing special emphasis on the elderly, retail price data on prescription drugs and their generic equivalents, durable medical equipment, and disposable medical supplies which is provided by the agency pursuant to s. 408.063(3) and (4).

(g) Establishing administrative and accounting procedures for the operation of the alliance and members' services, preparing an annual alliance budget, and preparing annual program and fiscal reports on alliance operations as required by the agency.

(h) Developing and implementing a marketing plan to publicize the alliance to potential members and associate members and developing and implementing methods for informing the public about the alliance and its services.

(i) Developing grievance procedures to be used in resolving disputes between members and the alliance and disputes between the accountable health partnerships and the alliance. Any member of, or accountable health partnership that serves, an alliance may appeal to the agency any grievance that is not resolved by the alliance.

(j) Ensuring that accountable health partnerships have grievance procedures to be used in resolving disputes between members and an accountable health partnership. A member may appeal to the alliance any grievance that is not resolved by the accountable health partnership. An accountable health partnership that is a health maintenance organization must follow the grievance procedures established in ss. 641.31(5) and 641.311.

(k) Maintaining all records, reports, and other information required by the agency, ss. 408.70-408.706, or other state and local laws.

(l) Receiving and accepting grants, loans, advances, or funds from any public or private agency; and receiving and accepting contributions, from any source, of money, property, labor, or any other thing of value.

(m) Contracting, as authorized by alliance members, with a qualified, independent third party for any service necessary to carry out the powers and duties required by ss. 408.70-408.706.

(n) Developing a plan to facilitate participation of providers in the district in an accountable health partnership, placing special emphasis on ensuring participation by minority physicians in accountable health partnerships if such physicians are available. The use of the term "minority" in ss. 408.70-408.706 is consistent with the definition of "minority person" provided in s. 288.703(3).

(o) Ensuring that any health plan reasonably available within the jurisdiction of an alliance, through a preferred provider network, a point-of-service product, an exclusive provider organization, a health maintenance organization, or a pure indemnity product, is offered to members of the alliance. For the purposes of this paragraph, "pure indemnity product", means a health insurance policy or contract that does not provide different rates of reimbursement for a specified list of physicians and a "point of service product" means a preferred provider network or a health maintenance organization which allows members to select at a higher cost a provider outside of the network or the health maintenance organization.

(p) Petitioning the agency for a determination as to the cost effectiveness of collecting premiums on behalf of participating accountable health partnerships. If determined by the agency to be cost-effective, the alliance may establish procedures for collecting premiums from members and distribute them to the participating accountable health partnerships. This may include the remittance of the share of the group premium paid by both an employer and an enrollee. If an alliance assumes premium collection responsibility, it shall also assume liability for uncollected premium. This liability may be collected through a bad debt surcharge on alliance members to finance the cost of uncollected premiums. The alliance shall pay participating accountable health partnerships their contracting premium amounts on a prepaid monthly basis, or as otherwise mutally agreed upon.

(7) Each alliance shall set reasonable fees for membership in the alliance which will finance all reasonable and necessary costs incurred in administering the alliance.

(8) Each alliance shall annually report on the operations of the alliance, including program and financial operations; and shall provide for annual internal and independent audits.

(9) A community health purchasing alliance may not engage in any activities for which an insurance agent's license is required.

(10) The powers and responsibilities of a community health purchasing alliance with respect to purchasing services from accountable health partnerships do not extend beyond those enumerated in ss. 408.70-408.706.

Section 69. Section 408.703, Florida Statutes, is created to read:

408.703 Small employer members of community health purchasing alliances; eligibility requirements.—

(1) The agency shall establish conditions of participation for small employers, as defined in s. 627.6699, which must include, but need not be limited to:

(a) Assurance that the group is a valid small employer and is not formed for the purpose of securing health benefit coverage. This assurance must include requirements for sole proprietors and self-employed individuals which must be based on a specified requirement for the time that the sole proprietor or self-employed individual has been in business, required filings to verify employment status, and other requirements to ensure that the individual is working.

(b) Assurance that the individuals in the small employer group are employees and have not been added for the purpose of securing health benefit coverage.

(2) The agency may not require a small employer to pay any portion of premiums as a condition of participation in an alliance.

(3) The agency may require a small employer seeking membership to agree to participate in the alliance for a specified minimum period of time, not to exceed 1 year.

(4) If a member small employer offers more than one accountable health partnership or health plan and the employer contributes to coverage of employees or dependents of the employee, the alliance shall require that the employer contribute the same dollar amount for each employee, regardless of the accountable health partnership or benefit plan chosen by the employee.

(5) An employer that employs 30 or fewer employees must offer at least two accountable health partnerships or health plans to its employees and an employer that employs 31 or more employees must offer three or more accountable health partnerships or health plans to its employees.

Section 70. Section 408.704, Florida Statutes, is created to read:

408.704 Agency duties and responsibilities related to community health purchasing alliances.—The agency shall assist in developing a statewide system of community health purchasing alliances. To this end, the agency is responsible for:

(1) Initially and thereafter annually certifying that each community health purchasing alliance complies with ss. 408.70-408.706 and rules adopted pursuant to ss. 408.70-408.706. The agency may decertify any community health purchasing alliance if the alliance fails to comply with ss. 408.70-408.706 and rules adopted by the agency.

(2) Providing administrative startup funds. Each contract for startup funds is limited to $275,000.

(3) Conducting an annual review of the performance of each alliance to ensure that the alliance is in compliance with ss. 408.70-408.706. To assist the agency in its review, each alliance shall submit, quarterly, data to the agency, including, but not limited to, employer enrollment by

employer size, industry sector, previous insurance status, and count; number of total eligible employers in the alliance district participating in the alliance; number of insured lives by county and insured category, including employees, dependents, and other insured categories, represented by alliance members; profiles of potential employer membership by county; premium ranges for each accountable health partnership for alliance member categories; type and resolution of member grievances; membership fees; and alliance financial statements. A summary of this annual review shall be provided to the Legislature and to each alliance.

(4) Developing accountable health partnership comparison sheets to be used in providing members and their employees with information regarding the accountable health partnership.

(5) Establishing a data system for accountable health partnerships.

(a) The agency shall establish an advisory data committee comprised of the following representatives of employers, medical providers, hospitals, health maintenance organizations, and insurers:

1. Two representatives appointed by each of the following organizations: Associated Industries of Florida, the Florida Chamber of Commerce, the National Federation of Independent Business, and the Florida Retail Federation;

2. One representative of each of the following organizations: the Florida League of Hospitals, the Association of Voluntary Hospitals of Florida, the Florida Hospital Association, the Florida Medical Association, the Florida Osteopathic Medical Association, the Florida Chiropractic Association, the Florida Chapter of the National Medical Association, the Association of Managed Care Physicians, the Florida Insurance Council, the Florida Association of Domestic Insurers, the Florida Association of Health Maintenance Organizations; and

3. One representative of governmental health care purchasers and three consumer representatives, to be appointed by the agency.

(b) The advisory data committee shall issue a report and recommendations on each of the following subjects as each is completed. A final report covering all subjects must be included in the final Florida Health Plan to be submitted to the Legislature on December 31, 1993. The report shall include recommendations regarding:

1. Types of data to be collected. Careful consideration shall be given to other data collection projects and standards for electronic data interchanges already in process in this state and nationally, to evaluating and recommending the feasibility and cost-effectiveness of various data collection activities, and to ensuring that data reporting is necessary to support the evaluation of providers with respect to cost containment, access, quality, control of expensive technologies, and customer satisfaction analysis. Data elements to be collected from providers include prices, utilization, patient outcomes, quality, and patient satisfaction. The completion of this task is the first priority of the advisory data committee. The agency shall begin implementing these data collection activities immediately upon receipt of the recommendations, but no later than January 1, 1994. The data shall be submitted by hospitals, other licensed health care facilities, pharmacists, and group practices as defined in s. 455.236(3)(g).

2. A standard data set, a standard cost-effective format for collecting the data, and a standard methodology for reporting the data to the agency, or its designee, and to the alliances. The reporting mechanisms must be designed to minimize the administrative burden and cost to health care providers and carriers. A methodology shall be developed for aggregating data in a standardized format for making comparisons between accountable health partnerships which takes advantage of national models and activities.

3. Methods by which the agency should collect, process, analyze, and distribute the data.

4. Standards for data interpretation. The advisory data committee shall actively solicit broad input from the provider community, carriers, the business community, and the general public.

5. Structuring the data collection process to:

a. Incorporate safeguards to ensure that the health care services utilization data collected is reviewed by experienced, practicing physicians licensed to practice medicine in this state;

b. Require that carrier customer satisfaction data conclusions are validated by the agency;

c. Protect the confidentiality of medical information to protect the patient's identity and to protect the privacy of individual physicians and patients. Proprietary data submitted by insurers, providers, and purchasers are confidential pursuant to s. 408.061(1); and

d. Afford all interested professional medical and hospital associations and carriers a minimum of 60 days to review and comment before data is released to the public.

6. Developing a data collection implementation schedule, based on the data collection capabilities of carriers and providers.

(c) In developing data recommendations, the advisory data committee shall assess the cost-effectiveness of collecting data from individual physician providers. The initial emphasis must be placed on collecting data from those providers with whom the highest percentages of the health care dollars are spent: hospitals, large physician group practices, outpatient facilities, and pharmacies.

(d) The agency shall, to the maximum extent possible, adopt and implement the recommendations of the advisory data committee. The agency shall report all recommendations of the advisory data committee to the Legislature and submit an implementation plan.

(e) The travel expenses of the participants of the advisory data committee must be paid by the participant or by the organization that nominated the participant.

(4) Collecting, compiling, and analyzing data on accountable health partnerships and providing statistical information to alliances.

(5) Receiving appeals by members of an alliance and accountable health partnerships whose grievances were not resolved by the alliance. The agency shall review these appeals pursuant to chapter 120. Records or reports submitted as a part of a grievance proceeding conducted as provided for under this subsection, or patient care quality assurance proceedings, records, or reports obtained or made by any member of a community health purchasing alliance or any member of an accountable health partnership shall be held confidential by the agency and are exempt from s. 119.07(1). The exemption from s. 119.07(1) provided in this subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 71. Effective July 1, 1993, section 408.7041, Florida Statutes, is created to read:

408.7041 Antitrust protection.—In addition to the duties described in s. 408.704, the agency shall actively supervise the community health purchasing alliances to ensure that actions that affect market competition are not for private interests, but accomplish the legislative intent found in s. 408.70, so as to provide state and federal antitrust protection of alliances and their board members.

Section 72. Section 408.7042, Florida Statutes, is created to read:

408.7042 Purchasing health care for state employees and Medicaid recipients through community health purchasing alliances.—

(1) Pursuant to legislative approval as provided in s. 110.123, and prior to the purchase of health care for state employees and their dependents through community health purchasing alliances, the Agency for Health Care Administration shall consult with collective bargaining organizations that represent state employees, the Department of Management Services, and the administrator of the State Group Insurance Program. Legislative approval for such purchase of health care is not required, however, if the employee benefit package remains unchanged, or is enhanced, the quality of care is increased, and there is no additional cost to the state or its employees. The purchase of health care for state employees and their dependents through a community health purchasing alliance will be determined by the ability of the alliance to meet or exceed the benefit standard that has been collectively bargained. When purchasing health care for state employees and the dependents of such employees through community health purchasing alliances, the Department of Management Services shall annually offer to all employees the opportunity to select from health plans offered by all accountable health partnerships in the district in which the employee lives. The Department of Management Services shall make available to state employees accountable health partnerships that offer health plans through health maintenance organizations, exclusive provider organizations, preferred provider organizations, and managed-care pure indemnity plans. An accountable health partnership is not required to provide all four types of health plans, but all four

types of plans must be made available through multiple accountable health partnerships to state employees, if the Department of Management Services elects to purchase health care for state employees through community health purchasing alliances. The Department of Management Services shall offer a minimum of five health maintenance organizations and five preferred provider organizations, where available to state employees. The agency shall select the accountable health partnerships based upon appropriate objective criteria, including premium price, access to quality care, and member satisfaction.

(2) When purchasing health care for Medicaid, MedAccess, and Medicaid buy-in recipients through community health purchasing alliances, the agency shall ensure that the claims experiences, rates, and charges for such recipients are not commingled with those of other alliance members. However, the claims experiences, rates, and charges for Medicaid recipients, participaints in the MedAccess program, and participants in the Medicaid buy-in program shall not be commingled with those of other alliance members. Prior to providing medical benefits to Medicaid recipients through a community health purchasing alliance, the agency shall seek consultation with the Legislature pursuant the provisions of s. 216.177(2). The state shall offer to all Medicaid, MedAccess, and Medicaid buy-in recipients the opportunity to select health plans from all accountable health partnerships, including providers that have a Medicaid managed-care contract or Medipass, that has been approved by the United States Health Care Financing Administration, or from physicians and facilities that participate in MediPass, in the district in which the recipient lives. For purposes of the purchase of health care for such recipients, current Medicard providers, including providers participating in the MediPass program and entities with Medicaid managed-care contracts are accountable health partnerships. An entity that provides managed-care for Medicaid recipients pursuant to a contract must obtain a certificate of authority from the agency. Purchase of health care for Medicaid, MedAccess, and Medicaid buy-in recipients by the agency through community health purchasing alliances may not result in a reduction of benefits or any increased costs for such recipients without prior legislative approval.

Section 73. Section 408.7045, Florida Statutes, is created to read:

408.7045 Community health purchasing alliance marketing requirements.—

(1) Each alliance shall use appropriate, efficient, and standardized means to notify members of the availability of sponsored health coverage from the alliance.

(2) Each alliance shall make available to members marketing materials that accurately summarize the benefit plans that are offered by its accountable health partnerships and the rates, costs, and accreditation information relating to those plans.

(3) Annually, the alliance shall offer each member small employer all accountable health partnerships available in the alliance and provide them with the appropriate materials relating to those plans. The member small employer may choose which health benefit plans shall be offered to eligible employees and may change the selection each year. The employee may be given options with regard to health plans and the type of managed care system under which his benefits will be provided.

(4) An alliance may notify the agency of any marketing practices or materials that it finds are contrary to the fair and affirmative marketing requirements of the program. Upon the request of an alliance, the agency shall request the Department of Insurance to investigate the practices and the Department of Insurance may take any action authorized for a violation of the Insurance Code or the Health Maintenance Organization Act.

Section 74. Section 408.705, Florida Statutes, is created to read:

408.705 Community health purchasing alliances; boards of directors.—

(1) Each community health purchasing alliance shall operate subject to the supervision and approval of a board of directors. The board of directors of each alliance must be composed of 17 members who reside within the alliance district and must be representative of alliance members, consumers, and government purchasers. The initial board members shall be appointed by October 1, 1993, by the Governor, the President of the Senate, and the Speaker of the House of Representatives as follows:

(a) Three consumer members, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor. A consumer member may not be, or in the past have been, employed by or affiliated with a health insurer, health maintenance organization, or health care provider. The consumer members must be employees of businesses located within the community health purchasing alliance region.

(b) Three members representing state and local governments, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor. Members representing government must currently be, or in the past have been, in positions of government.

(c) Eleven members representing business and industry, two appointed by the President of the Senate, two appointed by the Speaker of the House of Representatives, and seven appointed by the Governor. Six of the business representatives must be representatives of businesses with 50 or fewer employees, with the appointing officers each appointing two such members.

(2) Each initial appointment is for a 3-year term.

(3) This section expires July 1, 1995.

(4) A member of an alliance board of directors may not be employed by, affiliated with, an agent of, or otherwise a representative of any health care provider or insurance carrier.

(5) The alliance board shall adopt bylaws. The bylaws must include a procedure for the election of board officers. The board shall meet at times and places as it determines necessary to operate the alliance in accordance with ss. 408.70-408.706.

(6) Each board member is accountable to the Governor for proper performance of his duties as a member of the board. The Governor may remove from office any board member for neglect of duty.

(7) To the greatest extent possible, a community health purchasing alliance shall be representative of the racial, demographic, and gender mix of the community served by the alliance.

(8) The board may appoint an executive director to serve as the chief operating officer of the alliance, and other staff needed to administer the alliance. The executive director and other alliance staff serve at the pleasure of the board.

(9) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the board of directors, or its employees or agents, for any action taken by them in the performance of their powers and duties under ss. 408.70-408.706.

(10) Board members may be reimbursed from alliance funds for actual and necessary expenses incurred by them as members, according to state travel and per diem limitations as found in s. 112.061.

Section 75. Section 408.7055, Florida Statutes, is created to read:

408.7055 Practitioner advisory groups.—

(1) The agency shall by rule establish criteria and conditions for the formation and certification of practitioner advisory groups that may provide practitioner input into the utilization review, administration, coverage, cost effective medical management, and other operational decisions, except prices or fees, to be made by accountable health partnerships consistent with state and federal antitrust laws.

(2) No practitioner shall be required to join a practitioner advisory group in order to negotiate with any accountable health partnership.

(3) Nothing in this section shall authorize any practitioner advisory group or any of its members to boycott or threaten to boycott any accountable health partnership that does not accept the proposals made by a practitioner advisory group.

(4) The agency shall monitor and annually certify that each practitioner advisory group complies with this section and any implementing rules enacted by the agency. The agency may decertify any practitioner advisory group which fails to comply with this section or any implementing rules enacted by the agency.

(5) No accountable health partnership shall be required to accept any recommendations of a practitioner advisory group.

(6) Notice of each meeting of a practitioner advisory group must be provided to the agency at least three days prior to the meeting and such meeting shall be open to representatives of the agency.

Section 76. Section 641.311, Florida Statutes, is renumbered as section 408.7056, Florida Statutes, and is amended to read:

408.7056 ~~641.311~~ Statewide *Provider and* Subscriber Assistance Program.—

(1) The *Agency for Health Care Administration* ~~department~~ shall adopt and implement a program to provide assistance to subscribers *and providers*, including those whose grievances are not satisfactorily resolved by the *accountable health partnership or* health maintenance organization. *The panel shall not consider grievances which relate to an accountable health partnership's or health maintenance organization's refusal to accept a provider into its network of providers.* The program shall include the following:

(a) A review panel which may periodically review, consider, and recommend to the *agency* ~~department~~ any actions the *agency or the Department of Insurance* ~~department~~ should take concerning individual cases heard by the panel as well as the types of ~~subscriber~~ grievances which have not been satisfactorily resolved after ~~the~~ subscribers *or providers have followed* ~~follow~~ the full grievance procedures of the *accountable health partnership or* health maintenance organizations. The proceedings of the grievance panel shall not be subject to the provisions of chapter 120. The review panel shall consist of members employed by the *agency* ~~department~~ and members employed by the *Department of Insurance* ~~Department of Health and Rehabilitative Services~~, chosen by their respective agencies. The *agency* ~~Department of Insurance~~ may contract with a medical director and a primary care physician who shall provide additional technical expertise to the review panel. The medical director shall be selected from a health maintenance organization with acurrent certificate of authority to operate in Florida.

(b) A plan to disseminate information concerning the program to the general public as widely as possible.

(2) Every *accountable health partnership or* health maintenance organization shall submit a quarterly report to the *agency and the Department of Insurance* ~~department~~ listing the number and the nature of all subscribers' grievances which have not been resolved to the satisfaction of the subscriber after the subscriber follows the full grievance procedure of the organization.

(3)(a) The *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ may impose an administrative fine, after a formal investigation has been conducted on the *accountable health partnership's or* health maintenance organization's failure to comply with quality of health services standards set forth in statute or rule. The *Agency for Health Care Administration* ~~Department of Health and Rehabilitative Services~~ may initiate such an investigation based on the recommendations related to the quality of health services received from the Statewide *Provider and* Subscriber Assistance Panel pursuant to paragraph (1)(a). The fine shall not exceed $2,500 per violation and in no event shall such fine exceed an aggregate amount of $10,000 for noncompliance arising out of the same action.

(b) In determining the amount to be levied for noncompliance under paragraph (a), the following factors shall be considered:

1. The severity of the noncompliance, including the probability that death or serious harm to the health or safety of the subscriber will result or has resulted, the severity of actual or potential harm and the extent to which provisions of this part were violated.

2. Actions taken by the *accountable health partnership or* health maintenance organization to resolve or remedy any quality of care grievance.

3. Any previous incidences of noncompliance by the *accountable health partnership or* health maintenance organization.

(c) All amounts collected pursuant to this subsection shall be deposited into the Health Maintenance Organization Quality Care Trust Fund.

Section 77. Section 408.706, Florida Statutes, is created to read:

408.706 Community health purchasing alliances; accountable health partnerships.—

(1) An accountable health partnership may be created by health care providers, health maintenance organizations, and health insurers, for the purpose of providing health care services to alliance members.

(2) Each accountable health partnership that seeks to offer services to members of an alliance must first obtain agency designation. The agency shall adopt rules in accordance with ss. 408.70-408.706 for designating accountable health partnerships in each district. To qualify as an accountable health partnership, an applicant must submit information considered sufficient by the agency, in a format prescribed by the agency, to satisfactorily demonstrate that the partnership:

(a) Is licensed or certified and in good standing with the department and the licensure agency for participating providers;

(b) Has demonstrated the capacity to administer the health plans it is offering;

(c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;

(d) Has the ability, policies, and procedures to conduct utilization management;

(e) Has the ability to achieve, monitor, and evaluate the quality and cost-effectiveness of care provided by its provider network;

(f) Has the ability to assure enrollees adequate access to providers of health care, including geographic availability and adequate numbers and types;

(g) Has the ability and procedures to monitor access to its provider network;

(h) Has a satisfactory grievance procedure and the ability to respond to enrollees' calls, questions, and complaints;

(i) Has the ability to use medical outcome data to educate network providers, update utilization review procedures, and recommend modifications to benefit designs;

(j) Has the ability to recruit and retain health care practitioners who are minorities as defined in s. 288.703(3), with special emphasis on the recruitment and retention of African-American health care providers; and

(k) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting.

If an accountable health partnership is accredited by a nationally recognized accrediting body or federal agency whose standards are acceptable to the agency, or if it is qualified or accredited as a health maintenance organization, the accountable health partnership may be deemed to meet the requirements of paragraphs (a)-(h).

(3) The agency shall establish a designation fee to be paid by each accountable health partnership to cover the agency's cost in performing the designation review.

(4) An accountable health partnership shall:

(a) Require all providers that are part of the partnership to report medical outcomes in accordance with agency standards.

(b) Comply with all rating, underwriting, claims-handling, sales, solicitation, licensing, and unfair trade practices and other provisions of the Florida Insurance Code or of chapter 641.

(5) An accountable health partnership may provide services to more than one community health purchasing alliance.

(6) If an accountable health partnership elects to terminate its contract with an alliance member, the accountable health partnership must provide advance notice of its decision to the alliance at least 120 days prior to the nonrenewal of any health plan by the accountable health partnership.

(7) An accountable health partnership shall maintain records and submit reports to the alliance as required by ss. 408.70-408.706.

(8) An accountable health partnership shall use the services of a licensed agent for the solicitation of insurance or procurement of applications or any other activities for which a health insurance agent's license is required.

(9) An accountable health partnership may not require any greater coverage for professional liability insurance than is currently required by the state law.

(10) Notwithstanding any provision of this act to the contrary, if an accountable health partnership has entered into a contract with providers or facilities licensed or permitted under chapter 465 for the purpose of providing prescribed medicine services, an individual may use an independent pharmacy which is not a party to the contract, if such independent pharmacy selected agrees to provide the service at a rate equal to or less than the rate set forth in the contract negotiated by the accountable health partnership with parties to the contract and such independent pharmacy meets all of the qualifications for participation in the accountable health partnership including, but not limited to, qualifications related to professional education, skills, experience; documentation of the appropriateness, overuse or under-use of services as identified by utilization review mechanisms and criteria; and previous restrictions or sanctions imposed by licensing bodies, and favorable professional liability history. Nothing in this section applies to any health maintenance organization established under part I of chapter 641 which maintains an in-house pharmacy that is permitted under chapter 465. For the purposes of this subsection, the term "independent pharmacy" means a pharmacy facility which is not part of a group of affiliated pharmacy facilities which are under common ownership directly or indirectly in which the group has greater than 12 pharmacy facilities in the state or has directly or indirectly any interest in any facilities licensed under another state's laws for the purpose of providing prescribed medicine services, and the term "pharmacy facility" means a pharmacy facility which is permitted by the Board of Pharmacy in accordance with chapter 465.

(11) The ability to recruit and retain alliance district health care providers in its provider network. For provider networks initially formed in an alliance district after July 1, 1993, an accountable health partnership shall make offers as to provider participation in its provider network to relevant alliance district health care providers for at least sixty percent of the available provider positions. A provider who is made an offer may participate in an accountable health partnership as long as the provider abides by the terms and conditions of the provider network contract, provides services at a rate or price equal to the rate or price negotiated by the accountable health partnership, and meets all of the accountable health partnership's qualifications for participation in its provider networks including, but not limited to, network adequacy criteria. For purposes of this subsection, "alliance district health care provider", means a health care provider who is licensed under chapters 458, 459, 460, 461, or 465 who has practiced in Florida for more than one year within the alliance district served by the accountable health partnership.

(12)(a) Each accountable health partnership shall establish a panel of providers from its provider network to review and make recommendations to the accountable health partnership on the health plans and issues related to the plans offered by the accountable health partnership through the community health purchasing alliance.

(b) No accountable health partnership shall be required to accept any recommendations of the panel.

(13)(a) The agency shall suspend or revoke its designation of an accountable health partnership that fails to continue to meet the requirements of this section.

(b) The agency shall expedite proceedings to determine whether the designation of the accountable health partnership should be suspended or revoked.

Section 78. Community health purchasing alliances; assessment and participation study.—

(1) The Agency on Health Care Administration shall conduct a study that includes, but is not limited to, an assessment of community health purchasing alliances in relation to health care financing issues, the recovery of savings to increase health care coverages, cost shifting, 24-hour coverage, the effects of uninsurance on alliances, employer options under the alliances, accountable health partnership characteristics and requirements, enrollment and marketing requirements, community rating, and risk adjustment in premium allocation to the accountable health partnerships.

(2) The agency shall recommend to the Legislature the steps that must be taken, including federal and state regulatory and statutory reforms, to allow individuals who are not self-employed, self-insured employers, and other employers that are not small employers to participate in community health purchasing alliances.

(3) The agency shall include a report on the progress in implementing community health purchasing alliances, and the results of the study required by this section, in its final Florida Health Plan that is to be submitted to the Legislature by December 31, 1993.

Section 79. Community health purchasing alliances; antitrust study.—

(1) The Legislature recognizes that the health care reforms authorized by sections 408.70-408.706, Florida Statutes, require a different relationship between health insurers, hospitals, physicians, and other providers. The success of community health purchasing alliances depends on accountable health partnerships providing detailed information that can facilitate informed decisions by those who purchase health care. The Legislature intends to research antitrust laws, rules, and case law in order to determine their impact on community health purchasing alliances and accountable health partnerships in this state.

(2) Recognizing the need for more information on which to make future decisions, the Legislature directs the Agency for Health Care Administration, in consultation with the Department of Legal Affairs, the agency advisory council, and health care consumers, purchasers, providers, and insurers, to assess the effects of antitrust laws on community health purchasing alliances and accountable health partnerships. The findings and recommendations from this study must be provided by the agency in its final Florida Health Care Plan that is to be submitted to the Legislature by December 31, 1993.

(3) The antitrust study conducted by the agency must include, but need not be limited to, the following elements:

(a) A methodology, including regulation and state oversight, which would allow physicians, hospitals, insurers, and other providers to form accountable health partnerships in order to offer health care services to community health purchasing alliances and to purchasers of health care who are not alliance members.

(b) A methodology and guidelines that would prevent the formation of monopolies and oligopolies by accountable health partnerships, including limitations on the market share held by one or two accountable health partnerships.

(c) A working definition of a methodology to prevent predatory pricing and other anticompetitive activities such as price fixing and market allocation by insurers, physicians, hospitals, and other providers for the purpose of forcing providers out of business or to unfairly gain market share.

(d) A methodology to allow individual physicians and hospitals to come together in order to jointly offer services as part of an accountable health partnership to an alliance.

(e) Recommendations as to specific changes in federal and state antitrust laws which are required to facilitate the objectives set forth in sections 408.70-408.706, Florida Statutes.

(f) Recommendations on how to ensure a competitive marketplace despite the authorization of antitrust exemptions.

(g) An analysis and report on any other issues related to antitrust exemptions which meet the intent of this section.

Section 80. Sections 408.70-408.706 shall be effective July 1, 1993.

Section 81. Effective upon becoming a law, section 408.7071, Florida Statutes, is created to read:

408.7071 Standardized claim form.—

(1) The Agency for Health Care Administration shall develop a standardized claims form to be used by insurers and health care providers licensed in this state.

(2) In order to develop the standardized claim form, the agency shall appoint a 15-person committee. The committee shall consist of:

(a) The director of the Agency for Health Care Administration, or his designee.

(b) The Insurance Commissioner, or his designee.

(c) Two representatives of hospitals.

(d) Five representatives of physicians: two licensed under chapter 458, one licensed under chapter 459, one licensed under chapter 460, and one licensed under chapter 461.

(e) Two representatives of health insurers.

(f) Two representatives of health maintenance organizations.

(g) Two representatives of consumers.

(3) The committee shall issue a draft of the standardized claims form to the Agency for Health Care Administration by October 1, 1993. The agency may return the form to the committee for modification on a schedule that allows the agency to include the standardized claim form in the final Florida Health Plan, which must be submitted to the Legislature by December 1, 1993.

Section 82. The agency shall provide administrative support to the Statewide Provider and Subscriber Assistance Panel within existing resources.

Section 83. Effective January 1, 1994, section 627.4106, Florida Statutes, is repealed.

Section 84. Subsection (2) of section 627.4236, Florida Statutes, 1992 Supplement, is amended to read:

627.4236 Coverage for bone marrow transplant procedures.—

(2) An insurer *or a health maintenance organization* may not exclude coverage for bone marrow transplant procedures recommended by the referring physician and the treating physician under a policy exclusion for experimental, clinical investigative, educational, or similar procedures contained in any individual or group health insurance policy *or health maintenance organization contract* issued, amended, delivered, or renewed in this state that covers treatment for cancer, if the particular use of the bone marrow transplant procedure is determined to be accepted within the appropriate oncological specialty and not experimental pursuant to subsection (3).

Section 85. Except as otherwise provided herein, this act shall take effect October 1, 1993.

And the title is amended as follows:

Strike the entire title and insert: An act relating to health care; creating the Health Care and Insurance Reform Act of 1993; modifying organization and responsibilities of the Agency for Health Care Administration; revising division responsibilities; repealing s. 32 of ch. 92-33, Laws of Florida, and s. 2 of ch. 92-292, Laws of Florida, and amending s. 20.30, F.S., and s. 33 of ch. 92-33, Laws of Florida; delaying transfer to the agency of certain responsibilities relating to health care professionals; transferring to the agency certain responsibilities relating to state employee health insurance; amending ss. 32 and 33 of ch. 92-33, Laws of Florida; delaying transfer of the Division of Medical Quality Assurance, and the boards thereunder, from the Department of Professional Regulation to the agency; amending s. 110.123, F.S., relating to the state group insurance program; providing legislative intent; providing agency responsibilities; amending s. 112.0455, F.S.; providing agency responsibilities under the Drug-Free Workplace Act; retitling ch. 408, F.S.; amending s. 408.001, F.S.; revising membership of the board of directors of the Florida Health Care Purchasing Cooperative; deleting obsolete language; renumbering and amending s. 409.701, F.S.; revising membership of the board of directors of the Florida Health Access Corporation; amending ss. 408.033, 408.062, 409.7105, and 455.201, F.S.; conforming references and terminology to the provisions of the act; creating s. 408.301, F.S.; providing legislative findings and intent; creating s. 408.302, F.S.; providing for an inter-agency agreement between the Agency for Health Care Administration and the Department of Health and Rehabilitative Services; amending s. 408.07, F.S.; revising definition of "banked points"; amending ss. 408.072 and 408.08, F.S., relating to review of hospital budgets, inspections, audits, and enforcement; clarifying allowable rate of increase in net revenue per adjusted admission; authorizing the Health Care Board to adjust excess revenues for certain hospitals; amending s. 408.061, F.S., requiring the submission of certain data by nursing homes; requiring a study and a report to the Legislature; amending s. 624.91, F.S.; revising membership of the board of directors of the Florida Healthy Kids Corporation; transferring to the agency administration of the Florida Healthy Kids Trust Fund; amending s. 766.1115, F.S.; expanding the definition of "health care provider" under the Access to Health Care Act; delaying amendment and repeal of specified sections in ch. 455, F.S., to conform to the act; amending s. 240.4067, F.S., relating to the medical education reimbursement and loan repayment program; providing for penalties for noncompliance; deleting a 3-year limit on payment period; amending s. 240.4075, F.S.; adding birth centers to the list of eligible employing institutions for the nursing student loan forgiveness program; amending s. 381.0302, F.S.; providing additional membership in the Florida Health Services Corps; authorizing the Department of Health and Rehabilitative Services to provide certain financial assistance to primary care medical residents, physician assistants, and nurse practitioners; authorizing use of certain appropriated funds as federal matching funds; creating s. 381 0406, F.S., relating to rural health networks; providing legislative findings and intent; providing definitions; providing for organization, administration, and nonprofit corporate status; specifying services to be provided; requiring participation of certain trauma agencies; providing for public and private financing; providing for phased-in implementation; specifying responsibilities of the agency and the State Health Office relating to establishment and certification of rural health networks; providing for rules; amending s. 395.1055, F.S.; providing for separate standards for statutory rural hospitals; creating s. 395.606, F.S., relating to rural health network cooperative agreements; providing legislative intent with respect to antitrust laws; specifying conditions under which health care providers who are members of rural health networks may consolidate services or enter into cooperative agreements; requiring approval and oversight by the agency; providing for administrative and judicial review; amending s. 408.036, F.S.; providing an exemption from certificate-of-need review; amending s. 408.043, F.S.; providing a preference in the award of certificate of need for members of certified rural health networks; amending s. 409.905, F.S.; providing for Medicaid nursing facility services for recipients in rural hospitals; creating s. 409.9116, F.S.; creating a disproportionate share program for rural hospitals; establishing a funding formula; providing for creation of a rural hospital financial assistance program under certain circumstances; specifying requirements for participation; providing for a workgroup to examine personnel licensing and training issues; amending s. 768.28, F.S.; correcting a cross reference; directing the agency to establish a workgroup to examine personnel licensing and training issues relating to rural hospitals; providing membership; requiring a report; amending s. 408.02, F.S.; requiring hospitals and medical staffs to develop outcome measures; requiring the agency to summarize outcome measures and develop practice parameters; providing a liability defense; deleting the demonstration project; creating s. 408.90, F.S.; providing legislative findings and intent; creating s. 408.901, F.S.; providing definitions; creating s. 408.902, F.S.; creating the MedAccess program within the Agency for Health Care Administration; providing for a report; creating s. 408.903, F.S.; providing eligibility requirements; creating s. 408.904, F.S.; providing health care benefits; creating s. 408.905, F.S.; providing limitations and exclusions; creating s. 408.906, F.S.; providing for the payment of claims; creating s. 408.907, F.S.; providing for the collection of premiums; creating s. 408.908, F.S.; providing agency responsibilities for the administration of the MedAccess program; amending s. 409.908, F.S.; providing for a new methodology for reimbursing for Medicaid physician services; creating s. 409.9081, F.S.; providing for copayments for Medicaid services; providing for a study of the costs and benefits of collecting Medicaid copayments; creating s. 409.911, F.S., providing for a primary care disproportionate share program; creating s. 409.9121, F.S.; providing legislative findings and intent; creating s. 409.9122, F.S.; providing for an independent study of the MediPass program; providing for the expansion of the MediPass program; directing the agency to encourage the enrollment of Medicaid recipients in managed care plans; providing for a study of the feasibility of managed care programs for Medicaid recipients with special needs; providing for funds for technical assistance in developing Medicaid prepaid health plans; amending s. 409.914, F.S.; directing the agency to seek federal authority to establish a Medicaid buy-in program; providing for the consolidation of the state health insurance and Medicaid buy-in programs once federal waivers are obtained; repealing s. 409.9114, F.S., relating to the extraordinary disporportionate share program; repealing s. 407.60, F.S., relating to charges for radiation therapy procedures; amending s. 15 of ch. 92-178, Laws of Florida; revising the divestiture date for designated health services; repealing s. 455.238, F.S., relating to mark-ups by health care providers; providing legislative intent relating to health care fraud and abuse; establishing a workgroup on care fraud and abuse; requiring a report; transferring the Medicaid program from the Department of Health and Rehabilitative Services to the agency; transferring of certain positions from the Department of Management Services to the agency; providing appropriations; amending s. 627.410, F.S.; providing restrictions of specified rating practices; specifying restrictions on discontinuance of sale of certain forms; amending s. 627.411, F.S.; adding grounds

for disapproval of form filings; amending s. 627.4106, F.S.; revising a definition; amending s. 627.6699, F.S.; providing definitions; requiring guarantee issue of all health plans to small employers; requiring modified community rating of health plans issued to small employers; revising definition of small employer; revising preexisting conditions requirements for certain groups; requiring that geographic regions for rating purposes be by county line; providing for guaranteed renewability of small group health plans; requiring carriers to maintain records; providing confidentiality; providing for review and repeal; providing for revisions in the standard and basic health benefit plans; requiring the reinsurance board to report complaints of abuse and misrepresentation to the Department of Insurance; providing for alliance membership on the health benefit plan committee; creating s. 408.700, F.S.; creating s. 408.70, F.S.; providing findings; providing intent with respect to managed competition and community health purchasing alliances; creating s. 408.701, F.S.; providing definitions; creating s. 408.702, F.S.; creating community health purchasing alliances; authorizing mergers of alliances; specifying powers and duties of alliances; providing for membership; prohibiting certain discrimination by entities that pool or assist in purchasing health coverage for small employers; providing for fees; providing for reports; prohibiting certain activities; creating s. 408.703, F.S.; providing for establishment of conditions of participation; specifying the number of accountable health partnerships or health plans that must be offered by certain employers; creating s. 408.704, F.S.; specifying powers and duties of the Agency for Health Care Administration; providing for an advisory committee; providing for data collection; creating s. 408.7042, F.S.; providing for purchasing of health care for state employees and Medicaid recipients through alliances; creating s. 408.7045, F.S.; providing marketing requirements; requiring alliances to periodically offer all available accountable health partnerships to each member small employer; creating s. 408.705, F.S.; providing for boards of directors of alliances; providing for intial appointments; providing for bylaws; providing circumstances for removal; providing for management; providing immunity from liability; providing for reimbursement; creating s. 408.7055, F.S.; providing procedures for practitioner advisory groups; renumbering and amending s. 641.311, F.S.; renaming the Statewide Subscriber Assistance Program; expanding the responsibilities of the review panel; transferring program responsibilities to the Agency for Health Care Administration; providing the agency to provide administrative support within existing resources; creating s. 408.706, F.S.; providing for creation of accountable health partnerships; requiring agency designation and providing criteria therefor; providing for fees; specifying duties of accountable health partnerships; providing for records and reports; requiring use of an insurance agent for certain purposes; providing for suspension or revocation of designation; requiring a study relating to community health purchasing alliances; requiring a report; providing legislative intent with respect to certain antitrust issues; requiring the agency to make certain studies, recommendations, and reports; providing findings; requiring the agency to conduct an antitrust study; requiring consultation with specified entities and persons; requiring reports; creating s. 408.7071, F.S.; requiring the Agency for Health Care Administration to develop a standardized claims form; requiring the agency to appoint a committee to develop the form; specifying membership; requiring the committee to develop a draft of the form by a time certain; authorizing participants in certain health care programs to choose certain pharmacies; amending s. 627.4236, F.S.; prohibiting health maintenance organizations from excluding coverage for bone marrow transplant procedures under certain circumstances; repealing s. 627.4106, F.S., relating to small group health insurance; providing effective dates.

Senator Myers moved that the Senate concur in the House amendment. The motion was adopted. The vote was:

Yeas—30 Nays—9

CS for SB's 1914, 2006, 1784 and 406 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—29 Nays—10

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 1954 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 1954—A bill to be entitled An act relating to education; creating s. 233.0561, F.S.; creating the "Blind Persons' Literacy Rights and Education Act"; providing legislative intent; providing definitions; providing for assessment of blind students and development of individualized education programs; providing for instructional materials; providing teacher certification requirements; providing an effective date.

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

Section 1. Section 233.0561, Florida Statutes, is created to read:

233.0561 Literacy; blind persons.—

(1) SHORT TITLE.—This act may be cited as the "Blind Persons' Literacy and Education Act."

(2) LEGISLATIVE INTENT.—The Legislature recognizes that literacy is the foundation upon which students become employable, productive, and responsible citizens. The Legislature further recognizes that literacy is important for all students, regardless of their visual abilities. It is the intent of the Legislature that the provisions of this section be broadly construed to apply to elementary and secondary students, as well as adult basic, adult secondary, and supplemental vocational students.

(3) DEFINITIONS.—As used in this act, the term:

(a) "Blind student" means an individual who is eligible for special education services and who:

1. Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or

2. Has a medically indicated expectation of visual deterioration.

(b) "Braille" means the system of reading and writing through touch commonly known as standard English Braille.

(c) "Individualized education program" means a written statement developed for a student eligible for special education services pursuant to Section 602(a)(20), Part A of the Individuals with Disabilities Education Act, 20 U.S.C. s. 1401(a).

(4) INDIVIDUALIZED PLANNING AND ASSESSMENT.—In developing an individualized written education program for each blind student, the presumption shall be that blind students can communicate effectively and efficiently with the same level of proficiency expected of the student's peers of comparable ability and grade level. Accordingly, proficiency in reading and writing Braille shall be considered during the individualized planning and assessment processes in this context.

(5) INSTRUCTIONAL MATERIALS.—After July 1, 1994, any publisher of a textbook adopted pursuant to the state instructional materials adoption process shall furnish the Department of Education with a computer file in an electronic format specified by the department at least 2 years in advance that is readily translatable to Braille and can be used for large print or speech access. Any textbook reproduced pursuant to the provisions of this subsection shall be purchased at a price equal to the price paid for the textbook as adopted. The Department of Education shall not reproduce textbooks obtained pursuant to this subsection in any manner that would generate revenues for the department from the use of such computer files or that would preclude the rightful payment of fees to the publisher for use of all or some portion of the textbook.

(6) TEACHER CERTIFICATION.—Effective July 1, 1994, as a part of the certification process, teachers certified in the education of blind and visually impaired students shall be required to demonstrate competence in reading, writing, and teaching Braille pursuant to standards adopted by the Department of Education, comparable to the Braille reading and writing standards adopted by the National Library Service for the Blind and Physically Handicapped, Library of Congress, Washington, D.C. The department shall ensure that teachers of students with visual impairments have access to inservice instruction for the purpose of updating their Braille skill competence.

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

And the title is amended as follows:

Strike the entire title and insert: A bill to be entitled An act relating to education; creating the "Blind Persons' Literacy Rights and Education Act"; providing legislative intent; providing definitions; providing for assessment of blind students and development of individualized education programs; providing teacher certification requirements; providing an effective date.

House Amendment 1 to House Amendment 1 (with Title Amendment)—On page 3, between lines 16 and 17, insert:

Section 2. An asthmatic student shall be able to carry a metered dose inhaler on their person while in school when they have approval from their parents and their physician. The school principal shall be provided with a copy of the parent's and physician's approval.

(Renumber subsequent section.)

And the title is amended as follows:

On page 4, line 3, after the semicolon (;) insert: authorizing asthmatic students to carry inhalers in school under certain circumstances;

House Amendment 2 to House Amendment 1 (with Title Amendment)—On page 3, between lines 16 and 17, insert:

Section 2. Section 69 of the Conference Committee Report on Senate Bill 1802, the Implementing Bill for Fiscal Year 1993-1994, is hereby repealed, without regard to whether such bill or this act is the first to take effect.

(Renumber subsequent section.)

And the title is amended as follows:

On page 4, line 3, after the semicolon (;) insert: repealing s. 69 of the Conference Committee Report on Senate Bill 1802, relating to the exclusion of foreign students from school districts' FEFP student count;

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

CS for SB 1954 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—1

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 2376 and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 2376—A bill to be entitled An act relating to Alachua County; amending s. 8, ch. 90-496, Laws of Florida; requiring a referendum in an area proposed to be annexed; changing the time within which a referendum may be held; providing that, on a tie vote in the referendum, the area is not annexed; amending s. 14, ch. 90-496, Laws of Florida; providing that, on a tie vote in a deannexation referendum, an area proposed for deannexation is not deannexed; providing severability; providing an effective date.

House Amendment 1—On page 3, lines 19 and 20, strike:*", or portions of the area proposed to be annexed,"*

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

SB 2376 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—32 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed with amendment CS for SB 2382 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for SB 2382—A bill to be entitled An act relating to economic development; creating s. 288.046, F.S.; providing legislative intent; creating s. 288.047, F.S.; creating the Quick-Response Training Program to be administered by the Department of Commerce in conjunction with the Department of Education; providing responsibilities; creating a Quick-Response Advisory Committee to assist in the administration of the program; providing for membership; providing for appointment; providing for duties; providing for allocation of funds; providing for written agreements; providing authority to accept certain grants and donations; providing for the procurement and maintenance of equipment; providing certain public records exemptions and for future review and repeal thereof; providing legislative intent; providing definitions; creating the Enterprise Florida Innovation Partnership; providing for purpose and membership; providing for organization; providing for powers and authority; providing for authorized programs; providing for the development of measurable goals and objectives; providing for the Florida Innovation Alliance; providing for the Florida Technology Investment Fund; providing for technology commercialization programs; providing for audits and confidentiality; providing for indemnification; repealing s. 229.8053, F.S.; relating to the Florida High Technology and Industry Council; providing for the incorporation of the Florida High Technology and Industry Council as a not-for-profit corporation; amending s. 240.539, F.S.; providing that the Board of Regents may invest moneys for advanced technology research to the Enterprise Florida Innovation Partnership; deleting language relating to the Florida High Technology and Industry Council; providing review and repeal; creating s. 220.191, F.S.; providing legislative intent; creating s. 220.192, F.S.; providing a credit against the tax for businesses that incur expenses to relocate to, or retool in, Florida to fulfill requirements of a defense contract, or to convert existing defense-related jobs to civilian commercial jobs; providing limitations; providing for carryover of unused credits; requiring approval of the Secretary of Commerce; providing application procedures and requirements; requiring monitoring of businesses granted a credit; providing for assessment of amounts granted as credit if the business fails to create the required number of jobs; providing duties of the Department of Revenue; providing for expiration; amending s. 220.02, F.S.; providing order of credits against the tax; amending s. 120.54, F.S., relating to rulemaking; requiring that a state agency prepare an economic impact statement upon the written request of the Division of Economic Development of the Department of Commerce; deleting certain rulemaking requirements relating to small businesses; amending s. 288.063, F.S., relating to contracts for transportation projects of the Division of Economic Development of the Department of Commerce; deleting some obsolete dates; providing for the transfer of funds upon the commencement of the construction of the transportation project; providing for certain rules; providing an additional requirement in selecting projects; providing for monitoring of construction of the transportation project; amending s. 288.701, F.S.; revising and adding to the duties of the Division of Economic Development of the Department of Commerce; amending s. 288.703, F.S.; revising the definition of the term "ombudsman" for purposes of the duties of the Division of Economic Development; repealing s. 29, ch. 92-136, Laws of Florida, relating to the Sunshine State Skills Program; repealing s. 31, ch. 92-136, Laws of Florida, relating to the industry services training program; repealing s. 288.1161, F.S., relating to Sports Advisory Council; amending s. 288.03, F.S.; providing for the creating of the Florida State Rural Development Council; amending s. 20.17, F.S.; abolishing the Sports Advisory Council within the Department of Commerce; revising the membership of the direct-support organization that assists the department in promoting and developing the sports industry; creating the Enterprise Florida Capital Partnership Act; providing a short title; providing legislative findings; providing definitions; creating the Enterprise Florida Capital Partnership; providing its purpose and membership; providing for its organization; providing the powers and authority of its board; prescribing authorized programs; requiring an annual report; providing for audits and for confidentiality of certain records; providing for indemnification of officers, employees, agents, and directors; providing for severability of provisions; providing an effective date.

House Amendment 1 (with Title Amendment)—On page 4, line 17 through page 61, line 21, strike all of said lines and insert:

WHEREAS, Florida, hard hit by the national recession and losses in key industries has found its unemployment rate exceeding the nation's since 1983, and

WHEREAS, Florida's once-vibrant job growth has slowed and even declined in recent years, while our population has continued to grow, and

WHEREAS, Florida must attract and assist employers that offer quality jobs for its citizens if we hope to reverse these trends, and

WHEREAS, businesses have found it increasingly difficult to obtain adequate capital, technological, and other types of assistance necessary to remain competitive, and

WHEREAS, businesses have found it increasingly difficult to obtain necessary state, regional and local permits necessary to locate and expand in Florida, and

WHEREAS, businesses find the availability of incentives increasingly important in location and expansion decisions, and businesses seek out various incentives to reduce costs and improve their competitive position, and

WHEREAS, the Florida Legislature enacted the Florida Small and Minority Business Assistance Act of 1985 and subsequent amendments to ensure that economic opportunities are afforded small businesses owned and controlled by minorities to participate in state and local procurement and in Florida's economy, and

WHEREAS, there is a need to evaluate the effectiveness of state and local government efforts in implementing the provisions of the Florida Small and Minority Business Assistance Act of 1985 and subsequent amendments, and

WHEREAS, there is a need to evaluate the effectiveness of the assistance offered by state agencies toward the development of more stable minority businesses, and

WHEREAS, the availability of capital, training, and other types of business assistance can provide an invaluable stimulus to economic development in this state, and

WHEREAS, licensing processes and procedures conducted by the state for the regulation of impacts to water resources, including wetlands, should be as efficient and unobtrusive as possible, consistent with the protection and preservation of said resources and the environment, and

WHEREAS, the elimination of duplication and inefficiencies in government water resource regulatory programs will eliminate government waste, and enhance environmental protection and economic development, and

WHEREAS, Florida's economic future and development is tied to long-term strategic planning and the implementation of plans, procedures and programs that foster the growth of high technology and other value-added industries and jobs in the state, and NOW, THEREFORE,

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

Section 1. Section 288.046, Florida Statutes, is created to read:

288.046 Legislative intent.—The Legislature recognizes the importance of providing a skilled workforce for attracting new industries and retaining and expanding existing businesses and industries in this state. It is the intent of the Legislature that a program exist to meet the short-term, immediate, workforce-skill needs of such businesses and industries. It is further the intent of the Legislature that funds provided for the purposes of section 2 of this act be expended on businesses and industries that support the state's economic development goals, particularly high value-added businesses in Florida's Targeted Industrial Clusters or businesses that locate in and provide jobs in the state's distressed urban and rural areas, and that instruction funded pursuant to section 2 of this act lead to permanent, quality employment opportunities.

Section 2. Section 288.047, Florida Statutes, is created to read:

288.047 Quick-response training for economic development.—

(1) The Quick-Response Training Program is created to meet the work-force skill needs of existing, new, and expanding industries. The program shall be administered by the Department of Commerce, in conjunction with the Department of Education. The Department of Commerce shall adopt rules pursuant to chapter 120 for the administration of this program. The Department of Commerce shall provide technical services and shall identify businesses that seek services through the program. The Department of Education shall provide services related to the development and implementation of instructional programs.

(2)(a) A Quick-Response Advisory Committee, composed of the Director of the Division of Vocational, Adult, and Community Education of the Department of Education; the Director of the Division of Community Colleges of the Department of Education; and the Director of the Division of Labor, Employment, and Training of the Department of Labor and Employment Security, or their respective designees, and four private-sector members, shall review training funded through this program and shall provide policy advice to the Department of Commerce in the implementation of this program. The committee shall elect a chairman from among its members. Members of the committee may receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(b) The four private-sector members appointed to the Quick-Response Advisory Committee must be selected from a slate of nominees submitted by the board of directors of Enterprise Florida, Inc. The Secretary of Commerce shall appoint private-sector members from this slate for terms of 4 years, except that in making the initial appointments, the secretary shall appoint members for staggered terms, one for 1 year, 2 years, 3 years and 4 years, respectively. To the maximum extent possible, the secretary shall select private-sector members who are representative of diverse industries and regions of the state. The importance of minority representation must be considered when making appointments for each private-sector position. Private-sector members may be removed for cause. Absence from three consecutive meetings results in the automatic removal of a private-sector member.

(c) The Quick-Response Advisory Committee shall meet at the call of its chairman, at the request of a majority of the membership, at the request of the Department of Commerce, or at times prescribed by its rules. The committee shall serve to advise the Department of Commerce regarding the administration of the Quick-Response Training Program.

(3) The Department of Commerce shall ensure that instruction funded pursuant to this section is not available through the local community college, school district, or private industry council and that the instruction promotes economic development by providing specialized entry-level skills to new workers or supplemental skills to current employees whose job descriptions are changing or expanding, or by updating or upgrading the skills of current employees. Such funds may not be expended to subsidize the ongoing staff development program of any business or industry or to provide training for instruction related to retail businesses.

(4) Requests for funding through the Quick-Response Training Program may be produced through inquiries from a specific business or industry, inquiries from a school district director of vocational education or community college occupational dean on behalf of a business or industry, or through official state economic development efforts. In allocating funds for the purposes of the program, the Department of Commerce shall establish criteria for approval of requests for funding and shall select the entity that provides the most efficient, cost-effective instruction meeting such criteria. Program funds may be allocated to any area vocational-technical center, community college, or state university. Program funds may be allocated to private postsecondary institutions only upon a review that includes, but is not limited to, accreditation and licensure documentation and prior approval by a majority of the advisory committee. Instruction funded through the program must terminate when participants demonstrate competence at the level specified in the request; however, instruction may not exceed 18 months. Program participants may not be included in calculations of full-time equivalent enrollments for state funding purposes.

(5) Prior to the allocation of funds for any request pursuant to this section, the Department of Commerce shall prepare a grant agreement between the business or industry requesting funds, the educational institution receiving funding through the program, and the Department of Commerce. Such agreement must include, but is not limited to:

(a) An identification of the facility in which the instruction will be conducted and the respective responsibilities of the parties for paying costs associated with facility use.

(b) An identification of the equipment necessary to conduct the program, the respective responsibilities of the parties for paying costs associated with equipment purchase, maintenance, and repair, as well as an identification of which party owns the equipment upon completion of the instruction.

(c) An identification of the personnel necessary to conduct the instructional program, the qualifications of such personnel, and the respective responsibilities of the parties for paying costs associated with the employment of such personnel.

(d) An identification of the estimated length of the instructional program. Such program may not exceed 12 months of full-time instruction or 18 months of total instruction.

(e) An identification of special program requirements that are not addressed otherwise in the agreement.

(f) Permission to access information specific to the wages and performance of participants upon the completion of instruction for evaluation purposes. Information which, if released, would disclose the identity of the person to whom the information pertains or disclose the identity of the person's employer is confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The agreement must specify that any evaluations published subsequent to the instruction may not identify the employer or any individual participant.

(6) For the purposes of this section, the Department of Commerce may accept grants of money, materials, services, or property of any kind from any agency, corporation, or individual.

(7) The Department of Commerce may procure equipment as necessary to meet the purposes of this section. Title to and control of such equipment is vested in the Department of Education. Upon the conclusion of instruction, the Department of Education may transfer title to the district school board, community college district board of trustees, or Board of Regents on behalf of a specific state university, where the equipment is physically located. The department may also lease such equipment to the district school board, community college district board of trustees, or Board of Regents for a maximum of 1 year. Such lease may provide for automatic renewal. Either party to a lease has the right to cancel the lease upon a 60-day notice in writing. Any equipment for which no title transfer or lease exists must be returned to a warehouse reserve and be available for use by an instructional program in any area of the state.

(8) In providing instruction pursuant to this section, materials that relate to methods of manufacture or production, potential trade secrets, business transactions, or proprietary information received, produced, ascertained, or discovered by employees of the respective departments, district school boards, community college district boards of trustees, or other personnel employed for the purposes of this section is confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The state may seek copyright protection for all instructional materials and ancillary written documents developed wholly or partially with state funds as a result of instruction provided pursuant to this section.

Section 3. Legislative intent.—It is the intent of the Legislature to establish a public-private partnership to be known as Enterprise Florida Innovation Partnership to provide leadership and market-driven, performance-based economic development tools to create the diverse cross-section of innovation-driven firms that is essential to a competitive economy in this state, characterized by better employment opportunities leading to higher wages. The Legislature recognizes that the policies, institutions, and programs that govern the relationships between university researchers and private industry affect the rate of commercialization in this state.

Section 4. Definitions.—As used in sections 3-11 of this act, the term:

(1) "Educational institutions" means Florida technical institutes and vocational schools, and public and private community colleges, colleges, and universities in the state.

(2) "Enterprise" means a firm with its principal place of business in this state which is engaged, or proposes to be engaged, in this state in agricultural industries, natural-resource-based or other manufacturing, research and development, or the provision of knowledge-based services.

(3) "Partnership" means the Enterprise Florida Innovation Partnership.

(4) "Person" means any individual, partnership, corporation, or joint venture that carries on business, or proposes to carry on business, within the state.

(5) "Product" means any product, device, technique, or process that is, or may be, developed or marketed commercially; the term does not refer, however, to basic research, but rather to products, devices, techniques, or processes that have advanced beyond the theoretical stage and are in a prototype or industry practice stage.

(6) "Qualified security" means a public or private financial arrangement that involves any note, security, debenture, evidence of indebtedness, certificate of interest of participation in any profit-sharing agreement, preorganization certificate or subscription, transferable security, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application thereof, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a security or any certificate for, receipt for, guarantee of, or option warrant or right to subscribe to or purchase any of the foregoing to the extent allowed by law.

(7) "Technology application" means the introduction and adaptation of off-the-shelf technologies and state-of-the-art management practices to the specific circumstances of an individual firm.

(8) "Technology commercialization" means the process of bringing an investment-grade technology out of an enterprise, university, or federal laboratory for first-run application in the marketplace.

(9) "Technology development" means strategically focused research aimed at developing investment-grade technologies essential to market competitiveness.

Section 5. Enterprise Florida Innovation Partnership; creation; purpose; membership.—

(1) There is created a body politic and corporate known as Enterprise Florida Innovation Partnership. The purpose of the Enterprise Florida Innovation Partnership shall be to foster growth of high technology and other value-added industries and jobs in this state.

(2) Enterprise Florida Innovation Partnership shall be a corporation not for profit pursuant to chapter 617, Florida Statutes. The articles of incorporation and bylaws establishing Enterprise Florida Innovation Partnership shall be submitted to Enterprise Florida, Inc., and the Department of Commerce for review and approval prior to filing.

(3) Enterprise Florida Innovation Partnership shall be governed by a board of directors. The board of directors shall consist of the following members:

(a) The Commissioner of Education or his designee.

(b) The Chancellor of the State University System or his designee.

(c) The executive director of the State Community College System or his designee.

(d) A member of the Senate, who shall be appointed by the President of the Senate and serve at the pleasure of the President.

(e) A member of the House of Representatives, who shall be appointed by the Speaker of the House of Representatives and serve at the pleasure of the Speaker of the House of Representatives.

(f) Nine to eleven members from the public and private sector, consisting of, but not limited to, individuals who represent technology-based businesses and industrial interests throughout the state who shall be appointed by the Governor, subject to Senate confirmation.

(4) Members appointed by the Governor shall be appointed for terms of 4 years, except that, in making the initial appointments, the Governor shall appoint three to five members for terms of 4 years, three members for terms of 3 years, and three members for terms of 2 years.

(5) The chairman and vice chairman of Enterprise Florida, Inc., shall jointly select a list of nominees for appointment to the board of directors from a slate of candidates submitted by Enterprise Florida, Inc. The chairman and vice chairman of Enterprise Florida, Inc., may request that additional candidates be submitted by Enterprise Florida, Inc., if the

chairman and vice chairman cannot agree on a list of nominees submitted. Appointments to the board of directors shall be made by the Governor from the list of nominees jointly selected by the chairman and vice chairman of Enterprise Florida, Inc. Appointees shall represent all geographic regions of the state, including both urban and rural regions. The importance of minority and gender representation shall be considered when making nominations for each position on the board of directors.

(6) The Governor shall appoint the initial nine to eleven members from the public and private sector to the board of directors within 30 days after receipt of the nominations from the chairman and vice chairman of Enterprise Florida, Inc.

(7) A vacancy on the board of directors shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(8) A member may be removed by the Governor for cause. Absence from three consecutive meetings results in automatic removal.

Section 6. Organization.—

(1) The board of directors of Enterprise Florida Innovation Partnership shall be chaired by a board member selected by a majority vote of the board. The chair position shall be for a term of 2 years.

(2) The president of Enterprise Florida Innovation Partnership shall be appointed by the board of directors and shall serve in the capacity as an executive director and secretary of the board of directors, with additional staff being hired by the president within the parameters established by Enterprise Florida Innovation Partnership in its bylaws.

(3) The board of directors may establish an Executive Committee consisting of the chair, the secretary of the board of directors, and not more than three additional board members selected by the chair. The executive committee shall have such authority as the board of directors delegates to it, except that the board of directors may not delegate to the executive committee the authority to take actions that require approval by a majority of the board of directors as provided in subsection (6).

(4) The board of directors shall meet at least quarterly and at other times upon call of the chair.

(5) A quorum shall be a majority of the total current membership of the board of directors of Enterprise Florida Innovation Partnership.

(6) A majority of those voting is required to organize and conduct the business of Enterprise Florida Innovation Partnership, except that a majority of the entire board of directors is required to hire or fire the president and adopt or amend the operational plan.

(7) Except as delegated or authorized by the board of directors, individual board members have no authority to control or direct the operations of the Enterprise Florida Innovation Partnership or the actions of its officers and employees, including the president.

(8) Members shall serve without compensation but members of the board of directors, the president, and staff may be reimbursed for all reasonable, necessary, and actual expenses, as determined by Enterprise Florida Innovation Partnership in its bylaws.

Section 7. Powers and authority of board of directors.—

(1) Enterprise Florida Innovation Partnership shall achieve the purposes stated in section 3 of this act through technology application, technology commercialization, and technology development, as well as other activities related to building a competitive, knowledge-based economy. The Enterprise Florida Innovation Partnership board shall have all the powers and authority not explicitly prohibited by statute necessary or convenient to carry out and effectuate the functions, duties, and responsibilities of Enterprise Florida Innovation Partnership, including, but not limited to:

(a) Assisting in formulating and coordinating the state's economic development policy regarding technology development and expansion.

(b) Taking actions in partnership with private enterprise, educational institutions, and other organizations to:

1. Increase the rate of technology application across manufacturing and other knowledge-based firms throughout the state.

2. Increase the amount of technology development occurring in Florida.

3. Increase the rate at which technologies with potential commercial application are moved out of university, private, and public laboratories into the marketplace.

(c) Adopting, using, and altering at will a corporate seal.

(d) Hiring the president and employees of Enterprise Florida Innovation Partnership.

(e) Assisting in developing the state's technology development strategic planning process.

(f) Evaluating the performance and effectiveness of the state's technology enhancement and development programs.

(g) Reporting to the Board of Directors of Enterprise Florida, Inc., regarding its functions, duties, and responsibilities.

(h) Soliciting, borrowing, accepting, receiving, investing, and expending funds from any public or private source.

(i) Procuring insurance or requiring bond against any loss in connection with its property in such amounts and from such insurers as may be necessary or desirable.

(j) Contracting with public and private entities as necessary to further the directives of this act.

(k) Approving an annual budget.

(l) Carrying forward any unexpended state appropriations into succeeding fiscal years.

(m) Providing an annual report to the Governor and the Legislature by December 1 of each year setting forth:

1. Its operations and accomplishments during the fiscal year.

2. Its business and operation's plan and its technology development plan, including recommendations on methods for implementing and funding the technology development plan.

3. Its assets and liabilities at the end of its most recent fiscal year.

4. A copy of an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant performed in accordance with rules adopted by the Auditor General.

(2) Enterprise Florida Innovation Partnership shall design specific programs or entities to address the actions listed in paragraph (1)(b).

Section 8. Authorized programs.—

(1) The partnership shall create a technology applications service, to be called the Florida Innovation Alliance. The Florida Innovation Alliance shall serve as an umbrella organization for technology applications service-providers throughout the state which provide critical, managerial, technological, scientific, and related financial and business expertise essential for international and domestic competitiveness to small-sized and medium-sized manufacturing and knowledge-based service firms. The partnership shall have the following powers and duties in order to carry out the functions of the Florida Innovation Alliance:

(a) Providing communication and coordination services among technology applications service-providers throughout the state.

(b) Providing coordinated marketing services to small-sized and medium-sized manufacturers in the state on behalf of, and in partnership with, technology applications service-providers.

(c) Securing additional sources of funds on behalf of, and in partnership with, technology applications service providers.

(d) Developing plans and policies to assist small and medium-sized manufacturing companies or other knowledge-based firms in Florida.

(e) Entering into contracts with technology applications service-providers for expanded availability of high-quality assistance to small-sized and medium-sized manufacturing companies or knowledge-based service firms, including, but not limited to, technological, human resources development, market planning, finance, and interfirm collaboration. The partnership shall ensure that all contracts in excess of $20,000

for the delivery of such assistance to Florida firms shall be based on competitive requests for proposals. The partnership shall establish clear standards for the delivery of services under such contracts. Such standards include, but are not limited to:

1. The ability and capacity to deliver services in sufficient quality and quantity.

2. The ability and capacity to deliver services in a timely manner.

3. The ability and capacity to meet the needs of firms in the proposed market area.

(f) Assisting other educational institutions, enterprises, or the entities providing business assistance to small-sized and medium-sized manufacturing enterprises.

(g) Establishing a system to evaluate the effectiveness and efficiency of Florida Innovation Alliance services provided to small-sized and medium-sized enterprises.

(h) Establishing special education and informational programs for Florida enterprises and for educational institutions and enterprises providing business assistance to Florida enterprises.

(i) Evaluating and documenting the needs of firms in this state for technology application services, and developing means to ensure that these needs are met, consistent with the powers provided for in this subsection.

(j) Maintaining an office in such place or places as the partnership may designate.

(k) Making and executing contracts with any person, enterprise, educational institution, association, or any other entity necessary or convenient for the performance of its duties and the exercise of the partnership's powers and functions under this subsection.

(l) Receiving funds from any source to carry out the purposes of the Florida Innovation Alliance, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States or of the state, or any enterprise or person, for any purpose consistent with the provisions of the Florida Innovation Alliance.

(m) Acquiring or selling, conveying, leasing, exchanging, transferring, or otherwise disposing of the alliance's property or interest therein.

(2) When choosing contractors, preference shall be given to existing institutions, organizations, and enterprises so long as these existing institutions, organizations, and enterprises demonstrate the ability to perform at standards established by the partnership under paragraph (e). Neither the provisions of sections 3-11 of this act nor the actions of the alliance shall impair or hinder the operations, performance, or resources of any existing institution, organization, or enterprise.

(3) The partnership shall create a technology development financing fund, to be called the Florida Technology Research Investment Fund. The fund shall increase technology development in this state by investing in technology development projects that have the potential to generate investment-grade technologies of importance to the state's economy as evidenced by the willingness of private businesses to coinvest in such projects. The partnership shall also demonstrate and develop effective approaches to, and benefits of, commercially oriented research collaborations between businesses, universities, and state and federal agencies and organizations. The partnership shall endeavor to maintain the fund as a self-supporting fund once the fund is sufficiently capitalized as reflected in the minimum funding report required in section 9. The technology research investment projects may include, but are not limited to:

(a) Technology development projects expected to lead to a specific investment-grade technology that is of importance to industry in this state.

(b) Technology development centers and facilities expected to generate a stream of products and processes with commercial application of importance to industry in this state.

(c) Technology development projects that have, or are currently using, other federal or state funds such as federal Small Business Innovation Research awards.

(4) The partnership shall invest moneys contained in the Florida Technology Research Investment Fund in technology application research or for technology development projects that have the potential for commercial market application. The partnership shall coordinate any investment in any space-related technology projects with the Spaceport Florida Authority and the Technological Research and Development Authority.

(a) The investment of moneys contained in the Florida Technology Research Investment Fund is limited to investments in qualified securities in which a private enterprise in this state coinvests at least 40 percent of the total project costs, in conjunction with other cash or noncash investments from state educational institutions, state and federal agencies, or other institutions.

(b) For the purposes of sections 3-11 of this act, qualified securities include loans, loans convertible to equity, equity, loans with warrants attached that are beneficially owned by the partnership, royalty agreements, or any other contractual arrangement in which the partnership is providing scientific and technological services to any federal, state, county, or municipal agency, or to any individual, corporation, enterprise, association, or any other entity involving technology development.

(c) Not more than $175,000 or 5 percent of the revenues generated by investment of moneys contained in the Florida Technology Research Investment Fund, whichever is greater, may be used to pay the partnership's operating expenses associated with operation of the Florida Technology Research Investment Fund.

(d) In the event of liquidation or dissolution of the partnership or the Florida Technology Research Investment Fund, any rights or interests in a qualified security or portion of a qualified security purchased with moneys invested by the State of Florida shall vest in the state, under the control of the State Board of Administration. The state is entitled to, in proportion to the amount of investment in the fund by the state, any balance of funds remaining in the Florida Technology Research Investment Fund after payment of all debts and obligations upon liquidation or dissolution of the partnership or the fund.

(e) The investment of funds contained in the Florida Technology Research Investment Fund does not constitute a debt, liability, or obligation of the State of Florida or of any political subdivision thereof, or a pledge of the faith and credit of the state or of any such political subdivision.

(5)(a) The partnership shall create technology commercialization programs in partnership with private enterprises, educational institutions, and other institutions to increase the rate at which technologies with potential commercial application are moved from university, public, and industry laboratories into the marketplace. Such programs shall be created based upon research to be conducted by the partnership pursuant to paragraph (b).

(b) The partnership shall conduct a thorough research-gathering effort in partnership with the State University System. Such research shall include a review of policies and institutions in other states and nations, and an investigation of optimal policies to balance the teaching mission of the university with opportunities for effective commercially oriented university and industry research collaboration. The results of this research shall be presented by the partnership to the Governor, the State University System, the Legislature, and Enterprise Florida, Inc., by December 1, 1993.

Section 9. Annual report of Enterprise Florida Innovation Partnership.—

(1) By December 1, of each year, the partnership shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a complete and detailed report setting forth:

(a) The evaluation required in section 10(1).

(b) The operations and accomplishments of each of the programs or entities listed in section 8.

(c) Recommendation on methods for implementing and funding the programs or entities listed in section 8. This recommendation shall include the minimal levels of funding necessary for the partnership to continue to operate the programs or entities listed in section 8.

(d) An examination of comparable technology applications, commercialization, and development services in other states, including showing how and at what level these programs are funded by those states.

(e) Its assets and liabilities at the end of its most recent fiscal year.

Section 10. Audits; confidentiality.—

(1) By September 1, 1993, the partnership in cooperation with the Auditor General shall develop research designs, including goals and measurable objectives for each of the programs or entities listed in section 8, which will provide the Legislature with a quantitative evaluation of such programs. The partnership shall utilize the monitoring mechanisms and reports developed in the designs and provide these reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General.

(2)(d) Prior to the 1996 Regular Session of the Legislature, the Auditor General shall perform a review and evaluation of sections 3-11, together with the programs or entities listed in section 8, using the research designs promulgated pursuant to subsection (1). The report shall critique the partnership and each program or entity listed in section 8. A report of the findings and recommendations of the Auditor General shall be submitted to the President of the Senate and the Speaker of the House of Representatives prior to the 1996 Regular Session.

(3) The Auditor General may, pursuant to his own authority or at the direction of the Joint Legislative Auditing Committee, conduct an audit of Enterprise Florida Innovation Partnership or the programs or entities created by the partnership. The audit or report may not reveal the identity of any person who has anonymously made a donation to Enterprise Florida Innovation Partnership pursuant to subsection (4).

(4) When so requested in writing by a donor, prospective donor, or inventor, information that, if released, would identify the donor, prospective donor, or inventor is confidential and exempt from the provisions of s. 119.07(1), Florida Statutes. Information identifying such donor, prospective donor or inventor to Enterprise Florida Innovation Partnership shall not be included in audit reports. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14, Florida Statutes. All other records of Enterprise Florida Innovation Partnership constitute public records for the purposes of chapter 119, Florida Statutes.

Section 11. Indemnification of officers, directors, employees, and agents.—In addition to any indemnification available under chapter 617, Florida Statutes, the partnership may indemnify the board of the partnership, its officers, and employees against any personal liability or accountability by reason of actions taken while acting within the scope of their authority.

Section 12. (1) Section 229.8053, Florida Statutes, as amended by chapters 90-325, 91-429, and 9211, Laws of Florida, is repealed.

(2) The Florida High Technology and Industry Council is abolished. All records, property, funds, and obligations of the Florida High Technology and Industry Council revert to the Department of Commerce.

(3) It is the intent of the Legislature to promote the development of the state economy and to establish a not-for-profit organization that shall promote the competitiveness and profitability of high-technology business and industry through technology development projects of importance to specific manufacturing sectors in this state. This not-for-profit corporation shall work cooperatively with the Enterprise Florida Innovation Partnership, recognizing the partnership as the statewide organization responsible for the overall strategic technological advancement of the economic base of this state, and shall avoid duplicating the activities, programs, and functions of the Enterprise Florida Innovation Partnership.

(4) The Florida High Technology and Industry Council, Inc., incorporated under chapter 617, Florida Statutes, pursuant to section 229.8053, Florida Statutes, is the not-for-profit organization referred to in subsection (3). On July 1, 1994, the Florida High Technology and Industry Council, Inc., shall change its name to a name approved by its board of directors and developed in coordination with the Department of Commerce.

(5) In addition to all other powers and authority, not explicitly prohibited by statutes, this not-for-profit organization has the following powers and duties:

(a) To receive funds appropriated to the organization by the Legislature. Such funds may not duplicate funds appropriated to the Enterprise Florida Innovation Partnership, but shall serve to further the advancement of the state economy, jointly and collaboratively with the partnership.

(b) To submit a legislative budget request through a state agency.

(c) To accept gifts, grants, donations, expenses, in-kind services, or other valued goods or services for carrying out its purposes, and to expend such funds or assets in any legal manner according to the terms and conditions of acceptance and without interference, control, or restraint by the state.

(d) To carry forward any unexpended state appropriations into succeeding fiscal years.

(6) This section does not nullify or impair existing contracts of the Florida High Technology and Industry Council.

Section 13. Subsections (3), (4), (5), (6), (7), (8), (9), and (10) of section 240.539, Florida Statutes, are amended to read:

240.539 Advanced technology research.—

(3) The *Enterprise Florida Innovation Partnership* ~~Florida High Technology and Industry Council~~ shall recommend to the Board of Regents for funding consideration by the Legislature research priorities in technological areas including, but not limited to, computer technology, lightwave technology, biomedical technology and sciences, materials sciences, microelectronics, sensors, or robotics. No later than October 1, 1989, and every third year thereafter, the *partnership* ~~council~~ shall develop and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the research areas identified in this section and how each area affects the economic growth of the state. The Board of Regents shall allocate funds to priority research programs pursuant to the provisions of this section.

~~(4) The Florida High Technology and Industry Council shall direct and coordinate the scientific and technological resources of the state to undertake research projects which may alleviate problems of critical economic or environmental magnitude as identified by the Legislature. The first area of concern identified by the Legislature is solid waste disposal. With funds appropriated by the Legislature, the council shall develop research programs to resolve problems associated with designing and implementing programs to recycle materials such as plastics, rubber, metal, glass, paper, and other components of the solid waste stream. The council shall consult with the Department of Environmental Regulation in developing the research programs.~~

~~(5) The Florida High Technology and Industry Council shall:~~

~~(a) Identify technological areas related to industries that demonstrate significant potential for economic growth or development of areas related to the enhancement of industrial productivity.~~

~~(b) Identify universities, university affiliated research programs, or consortia of such programs that conduct basic and applied research, development, and technology transfer in the technological areas identified pursuant to paragraph (a).~~

~~(c) Establish eligibility criteria for research program funding in the technological areas identified pursuant to paragraph (a) including, but not limited to, the following:~~

~~1. An established record of instruction, research, and development in one or more technological areas identified by the council;~~

~~2. A capacity to conduct research and development activities in collaboration with business and industry;~~

~~3. A capacity to secure private and other nonstate funding for the center that is equal to or greater than the state funding sought;~~

~~4. An ability and willingness to cooperate with other institutions in the conduct of research and development activities, the dissemination of research results, and the enhancement of vocational and technical education in the technological area proposed for research; and~~

~~5. An ability and willingness to cooperate with the council and other economic development agencies in the promotion of industrial growth or development in the technological area proposed for research.~~

~~(d) Establish an application process.~~

~~(e) Establish procedures for the evaluation of applications that include peer review.~~

~~(6)(a) All program reviews by the council pursuant to subsection (5), of research programs to be funded from sources other than applied research funds provided in the General Appropriations Act may be conducted only with the consent of the Board of Regents. The council may participate in the program review process established and conducted by the Board of Regents pursuant to s. 240.2095. The council may recommend to the Board of Regents that a program review of a research area be conducted by the board if such a review will serve as an incentive for the location or expansion of a high technology company in the state.~~

~~(b) The council is not authorized to make recommendations related to basic research programs conducted in a university or university-affiliated research agency.~~

(4)~~(7)~~ The *Enterprise Florida Innovation Partnership* ~~Florida High Technology and Industry Council~~ shall make recommendations to the Board of Regents regarding the allocation of funds provided in the General Appropriations Act for research programs in advanced technology. Funds may be allocated for the purchase of equipment and fixtures, employment of faculty and support staff, provision of fellowships, and other purposes approved by the *partnership* ~~council~~ and the university. No such funds shall be used for capital construction. Each designated research program shall match its allocation of advanced technology research funds with an amount at least equal to the allocation from private or public, nonstate funds.

(5)~~(8)~~ The Board of Regents may allocate *or provide for the investment of* moneys provided in the General Appropriations Act for advanced technology research *to the Enterprise Florida Innovation Partnership, and* to universities or university-affiliated research agencies for the purpose of planning and program development for future designation as research programs in advanced technology. Such moneys shall be awarded based on the same application process as used in the designation of research programs and shall be awarded only to universities and institutions whose evaluations yield a reasonable expectation of future research program priority designation. No applicant shall receive more than one award per fiscal year pursuant to this subsection.

(6)~~(9)~~ No university or university-affiliated program shall derive overhead from moneys awarded pursuant to this section.

(7)~~(10)~~ Materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, or proprietary information that is received, generated, ascertained, or discovered during the course of research funded in whole or in part pursuant to this section shall be confidential and exempt from the provisions of s. 119.07(1), except that a recipient of such funds shall make available, upon request, the title and description of the research project, the name of the researcher, and the amount and source of funding provided for the project. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 14. *Sections 3 - 11 of this act are repealed December 31, 2003, and shall be reviewed by the Legislature prior to that date. The review must be in accordance with criteria set forth in law.*

Section 15. Section 229.6056, Florida Statutes, is renumbered as section 288.0251, Florida Statutes, and amended to read:

288.0251 ~~229.6056~~ Education outreach activities in Latin America and Caribbean Basin.—The Department of *Commerce* ~~Education~~ shall contract for the *implementation of Florida's international* ~~development of a~~ volunteer corps to provide short-term *training and technical assistance* ~~educational outreach~~ activities in Latin America and the Caribbean Basin. The entity contracted pursuant to this section shall require that such activities be conducted by qualified volunteers who are citizens of the state. The contracting agency shall have a statewide focus and experience in coordinating volunteer programs that are international in nature. The *Department of Commerce* ~~Office of International Education~~, in cooperation with the Florida International Affairs Commission, shall evaluate the results of the activities. Any contract issued under the authority of this section shall have the approval of the Florida International Affairs Commission.

Section 16. Section 288.063, Florida Statutes, is amended to read:

288.063 Contracts for transportation projects.—

(1) The Division of Economic Development is authorized to make expenditures and enter into contracts for direct costs of transportation projects with the appropriate governmental body.

(2) Any contract with a governmental body for construction of any transportation project executed by the Division of Economic Development shall:

(a) Specify and identify the transportation project to be constructed, ~~under construction, or which was constructed after July 1, 1980,~~ for a new or expanding business and the number of full-time permanent jobs *that* ~~which~~ will result from the project.

(b) ~~Effective December 1, 1981,~~ Require that the appropriate governmental body award the construction of the particular transportation project to the lowest and best bidder in accordance with applicable state and federal statutes or regulations unless the project can be constructed with existing local government employees within the contract period specified by the Division of Economic Development.

(c) Require that the appropriate governmental body provide the division with quarterly progress reports. Each quarterly progress report shall contain a narrative description of the work completed according to the project schedule, a description of any change orders executed by the appropriate governmental body, a budget summary detailing planned expenditures versus actual expenditures, and identification of minority business enterprises used as contractors and subcontractors. Records of all progress payments made for work in connection with such transportation projects, and any change orders executed by the appropriate governmental body and payments made pursuant to such orders, shall be maintained by that governmental body in accordance with accepted governmental accounting principles and practices and shall be subject to financial audit as required by law. In addition, the appropriate governmental body, upon completion and acceptance of the transportation project, shall make certification to the division that the project has been completed in compliance with the terms and conditions of the contractual agreements between the division and the appropriate governmental body and meets minimum construction standards established in accordance with s. 336.045.

(d) Specify that the Division of Economic Development shall transfer funds upon receipt of a request for funds from the local government, on no more than a quarterly basis, consistent with project needs. *The transfer of such funds must be made upon the commencement of the construction of the transportation project.* A contract totaling less than $200,000 is exempt from this transfer requirement. Local governments shall expend funds in a timely manner.

(e) Require that the governing board of the appropriate local governmental body agree by resolution to accept future maintenance and other attendant costs occurring after completion of the transportation project if the project is construction on a county or municipal system.

(3) With respect to any contract executed pursuant to this section, the term "transportation project" means a transportation facility as defined in s. 334.03(27) which is necessary in the judgment of the Division of Economic Development to facilitate the economic development and growth of the state. Except for applications received prior to July 1, 1988, such transportation projects shall be approved only as a consideration to attract new employment opportunities to the state or expand or retain employment in existing companies operating within the state. The Division of Economic Development shall institute procedures to ensure that small and minority businesses have equal access to funding provided under this section. Funding for approved transportation projects may include any expenses, other than administrative costs and equipment purchases specified in the contract, necessary for new, or improvement to existing, transportation facilities.

(4) The Division of Economic Development shall *adopt* ~~promulgate~~ rules, pursuant to chapter 120, setting forth the criteria by which transportation projects are to be specified and identified, *and providing for the administration of this section.* In selecting transportation projects for funding, the division shall consider factors including, but not limited to, the cost per job created or retained considering the amount of transportation funds requested; the average hourly rate of wages for jobs created; *the reliance on the program as an inducement for the project's location decision;* the amount of capital investment to be made by the business; the demonstrated local commitment; the location of the project in an enterprise zone approved pursuant to s. 290.0055; the location of the project in a community development corporation service area as defined in s. 290.035(2); the unemployment rate of the surrounding area; and the poverty rate of the community.

(5) The factors specified in subsection (4) shall be considered by a committee composed of the Secretary of Commerce, the Secretary of Transportation, the Secretary of Community Affairs, the Secretary of Labor and Employment Security, the Secretary of Environmental Regulation, the chairman of the Economic Development Advisory Council, and the chairman of the Small and Minority Business Advisory Council or their designees. The committee members shall provide a written record of their individual votes on each project considered. Four members present shall constitute a quorum for decisionmaking. Meetings of the committee shall be called by the Secretary of Commerce as needed.

(6) No project that has not been specified and identified by the division in accordance with subsections (4) and (5) prior to the initiation of construction shall be eligible for funding ~~after December 1, 1981~~.

(7) The Department of Transportation may be the contracting agency when the project is on the State Highway System. In addition, upon request by the appropriate governmental body, the department may advise and assist it or plan and construct other such transportation projects for it.

(8) Each local government receiving funds under this section shall submit to the Division of Economic Development a financial audit of the local entity conducted by an independent certified public accountant. The division shall develop procedures to ensure that audits are received and reviewed in a timely manner and that deficiencies or questioned costs noted in the audit are resolved.

(9) The Division of Economic Development shall monitor on site each grant recipient, *including, but not limited to, the construction of the transportation project,* to ensure compliance with contractual requirements.

(10) Notwithstanding the provisions of s. 216.301, funds appropriated for this purpose shall not be subject to reversion.

Section 17. Subsection (3) of section 288.701, Florida Statutes, is amended to read:

288.701 Assistance to small businesses.—

(3) DUTIES OF THE DIVISION OF ECONOMIC DEVELOPMENT OF THE DEPARTMENT OF COMMERCE.—The Division of Economic Development of the Department of Commerce shall establish and administer programs or shall coordinate with existing programs to:

(a) Educate existing small and minority businesses on:

1. State procurement policies.

2. The existence of a statewide contracts register maintained by the Small Business Development Centers.

3. Federal and state programs available to assist small and minority businesses.

(b) Compile packets of information useful to small and minority businesses and distribute such packets to all occupational licensing offices in the state. Information in the packets shall include, but not be limited to, information relating to:

1. Locations and functions of Small Business Development Centers.

2. Locations and functions of Minority Business Development Centers.

3. Functions of the Division of Economic Development and programs offered by the division.

4. Functions of the Small and Minority Business Advisory Council.

5. Florida taxes and licensing requirements.

6. Federal and state registration and reporting requirements for starting a business in Florida.

(c) Serve as ombudsman, as defined in s. 288.703, for small and minority businesses.

(d) Provide, in cooperation with the Florida Small Business Development Center and other existing small business assistance programs, a system for the development, collection, summarization, and dissemination of information helpful to any person in establishing or operating a small business, including information on:

1. The identification and development of new business opportunities.

2. Feasibility studies.

3. Market research.

4. The operation, management, and financing of small businesses.

5. Programs of federal, state, and local governmental agencies which benefit small businesses.

6. The incentives and programs listed in s. 290.007 which are available in enterprise zones in this state.

7. The right provided in s. 120.54(5) of any person regulated by an agency or having a substantial interest in an agency rule to petition such agency to adopt, amend, or repeal a rule or to provide the minimum public information required by s. 120.53.

(e) In cooperation with existing state and federal small business assistance programs, assist and counsel small businesses on:

1. How to deal with federal, state, or local governmental agencies.

2. How to meet federal, state, or local regulation.

3. Policies of federal, state, and local governments relating to procurement and disposal of government property and government contracts.

4. How to utilize the incentives and programs listed in s. 290.007 that are available in enterprise zones in this state.

(f) Receive complaints and suggestions concerning policies and activities of federal, state, and local governmental agencies which affect small businesses; *receive written complaints and act as ombudsman concerning state agency rules and proposed rules;* develop, in cooperation with the agency, proposals for changes in policies, rules, or activities to alleviate any unnecessary or disproportionate adverse effects to small businesses; and work with the agency in implementing the changes.

(g) In cooperation with the Florida Small Business Development Centers and other existing small business assistance programs, conduct studies, workshops, and seminars dealing with small businesses.

(h) Monitor public hearings pursuant to chapter 120 in order to provide comments and recommendations upon the effects on small business of proposed rules.

(i) Coordinate between agencies to consolidate and simplify rules, compliance requirements, and reporting requirements which affect small businesses.

(j) Request that each state agency that requires a license, permit, or registration for a business submit, to the division by August 1 of each year, a list of the types of professions that it regulates and of each license, permit, or registration that it requires for a type of business. Information may be made available through the toll-free business line.

Section 18. Subsection (6) of section 288.703, Florida Statutes, 1992 Supplement, is amended to read:

288.703 Definitions.—As used in this act, the following words and terms shall have the following meanings unless the content shall indicate another meaning or intent:

(6) "Ombudsman" means an office or individual whose responsibilities include providing assistance to small and minority businesses in dealing with governmental agencies *and in developing proposals for changes in state agency rules.*

Section 19. Section 29 of chapter 92-136, Laws of Florida, appearing as section 239.509, Florida Statutes, and section 31 of chapter 92-136, Laws of Florida, appearing as section 239.517, Florida Statutes, are repealed.

Section 20. Section 288.1161, Florida Statutes, as amended by chapter 91-274, Laws of Florida, is repealed.

Section 21. Subsection (28) is added to section 288.03, Florida Statutes, 1992 Supplement, to read:

288.03 Powers and duties of Division of Economic Development.—The general purposes of the Division of Economic Development of the Department of Commerce shall be to guide, stimulate, and promote the coordinated, efficient, and beneficial development of the state and its

regions, counties, and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenience, comfort, health, safety, and general welfare of the people of the state. For the accomplishment of such purposes, the division shall have the power and authority to make expenditures for and to:

(28) Promote short-term and long-term rural development goals through the creation of the Florida State Rural Development Council. The council shall be a partnership between federal, state, local, and tribal governments and the private sector. The division shall create and administer the council pursuant to federal guidelines and requirements and shall make every effort to ensure that participation in the council's activities is broad-based and inclusive, representing all geographic regions and sectors of the rural population.

Section 22. Subsections (6), (7), and (8) of section 20.17, Florida Statutes, 1992 Supplement, are amended to read:

20.17 Department of Commerce.—There is created a Department of Commerce.

~~(6) There is created within the Department of Commerce the Sports Advisory Council. The purpose of the council is to develop a statewide agenda for the promotion of sports, sports activities, and related industries. The council shall consist of 15 members who are residents of the state, each of whom is, or has been, actively engaged in the area of sports industry or a related activity. The members shall be appointed by the Secretary of Commerce, who shall appoint eight members to serve 4-year terms and seven members to serve 2-year terms. Thereafter, members shall be appointed for 4-year terms. Any vacancy shall be filled for the remainder of the unexpired term. A chairman shall be chosen from among the members by the council. The council shall advise the department as to what actions or proposals are needed throughout the state regarding sports. The council shall meet at the call of its chairman, at the request of a majority of its membership, at the request of the Secretary of Commerce, or at such times as may be prescribed by rule. The council shall meet no less than quarterly to offer its views on the state of the sports industry and to recommend action. Members shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061. The department shall provide necessary administrative or staff support to the council.~~

(6)~~(7)~~ The Department of Commerce may authorize a direct-support organization to assist the department in the promotion and development of the sports industry and related industries for the purpose of improving the economic presence of these industries in Florida.

(a) To be authorized as a direct-support organization, an organization must:

1. Be incorporated as a corporation not for profit pursuant to chapter 617.

2. Be governed by a board of directors, which must consist of 15 members ~~who shall be~~ appointed by the Governor *and up to 15 members appointed by the existing board of directors. In making appointments, the board must consider a potential member's background in community service and his sports activism in, and financial support of, the sports industry.* Members must be residents of the state and highly knowledgeable *about* ~~of~~ or active in professional sports. *The board must contain representatives of all geographical regions of the state and must represent ethnic and gender diversity.* The terms of office of the members shall be 4 years. No member may serve more than two consecutive terms. The Governor may remove any member for cause and shall fill all vacancies that occur.

3. Have as its purpose, as stated in its articles of incorporation, to receive, hold, invest, and administer property, to raise funds and receive gifts, and to promote and develop the sports industry and related industries for the purpose of increasing the economic presence of these industries in Florida.

4. Have a prior determination by the department that the organization will benefit the department and act in the best interests of the state as a direct-support organization to the department.

(b) The department shall contract with the organization and shall include in the contract that:

1. The department may review the organization's articles of incorporation.

2. The organization shall submit an annual budget proposal to the department, on a form provided by the department, in accordance with departmental procedures for filing budget proposals based upon the recommendation of the council.

3. Any funds that the organization holds in trust will revert to the state upon the expiration or cancellation of the contract.

4. The organization is subject to an annual financial and performance review by the department to determine whether the organization is complying with the terms of the contract and whether it is acting in a manner consistent with the goals of the department and in the best interests of the state.

5. The fiscal year of the organization will begin July 1 of each year and end June 30 of the next ensuing year.

(c) The department may allow the organization to use the property, facilities, personnel, and services of the department if the organization provides equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin, subject to the approval of the Secretary of Commerce.

(d) The organization shall provide an annual financial and compliance audit of its financial accounts and records by an independent certified public accountant pursuant to rules established by the department. The auditor shall submit the audit report to the Secretary of Commerce for review and approval. If the audit report is approved, the department shall certify the audit report to the Auditor General for review.

(e) Upon written request of the donor or prospective donor, information which, if released, would identify the donor or prospective donor is confidential and exempt from the provisions of s. 119.07(1). Information identifying *a* ~~such~~ donor or prospective donor shall not be included in audit reports. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. All other records of the direct-support organization constitute public records for the purposes of chapter 119.

(f) The organization is not granted any taxing power.

(7)~~(8)~~ The Department of Commerce may adopt rules to carry out any of the statutory duties and purposes of the department or its divisions.

Section 23. The Department of Commerce and the Department of Education shall not be required to implement sections 1-2 of this act until such time as a specific appropriation for such implementation is provided.

Section 24. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 25. Effective June 30, 1993, short title.—Sections 25-45 of this act may be cited as the "Florida Development Finance Corporation Act of 1993."

Section 26. Effective June 30, 1993, findings and declarations of necessity.—The Legislature finds and declares that:

(1) There is a need to enhance economic activity in the cities and counties of the state by attracting manufacturing, development, business enterprise management, and other activities conducive to economic promotion in order to provide a stronger, more balanced, and stable economy in the cities and counties of the state.

(2) A significant portion of businesses located in the cities and counties of the state or desiring to locate in the cities and counties of the state encounter difficulty in obtaining financing on terms competitive with those available to businesses located in other states and nations or are unable to obtain such financing at all.

(3) The difficulty in obtaining such financing impairs the expansion of economic activity and the creation of jobs and income in communities throughout the state.

(4) The businesses most often affected by these financing difficulties are small businesses critical to the economic development of the cities and counties of Florida.

(5) The economic well-being of the people in, and the commercial and industrial resources of, the cities and counties of the state would be enhanced by the provision of financing to businesses on terms competitive with those available in the most developed financial markets worldwide.

(6) In order to improve the prosperity and welfare of the cities and counties of this state and its inhabitants, to improve and promote the financing of projects related to the economic development of the cities and counties of this state, and to increase the purchasing power and opportunities for gainful employment of citizens of the cities and counties of this state, it is necessary and in the public interest to facilitate the financing of such projects as provided for in this act and to do so without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable.

(7) In order to promote and stimulate development and advance the business prosperity and economic welfare of the cities and counties of this state and its inhabitants; to encourage and assist new business and industry in this state through loans, investments, or other business transactions; to rehabilitate and assist existing businesses; to stimulate and assist in the expansion of all kinds of business activity; and to create maximum opportunities for employment, encouragement of thrift, and improvement of the standard of living of the citizens of Florida, it is necessary and in the public interest to facilitate the cooperation and action between organizations, public and private, in the promotion, development, and conduct of all kinds of business activity in the state.

(8) In order to efficiently and effectively achieve the purposes of this act, it is necessary and in the public interest to create a special development finance authority to cooperate and act in conjunction with public agencies of this state and local governments of this state, through interlocal agreements pursuant to the Florida Interlocal Cooperation Act of 1969, in the promotion and advancement of projects related to economic development throughout the state.

(9) The purposes to be achieved by the special development finance authority through such projects and such financings of business and industry in compliance with the criteria and the requirements of this act are predominantly the public purposes stated in this section, and such purposes implement the governmental purposes under the state constitution of providing for the health, safety, and welfare of the people, including implementing the purpose of s. 10(c), Art. VII of the State Constitution and simultaneously provide new and innovative means for the investment of public trust funds in accordance with s. 10(a), Art. VII of the State Constitution.

Section 27. Effective June 30, 1993, definitions.—

(1) "Act" means the Florida Development Finance Corporation Act of 1993, and all acts supplemental thereto and amendatory thereof.

(2) "Amortization payments" means periodic payments, such as monthly, semiannually, or annually, of interest on premiums, if any, and installments of principal of revenue bonds as required by an indenture of the corporation.

(3) "Applicant" means the individual, firm, or corporation, whether for profit or nonprofit, charged with developing the project under the terms of the indenture of the corporation.

(4) "Corporation" means the Florida Development Finance Corporation.

(5) "Economic development specialist" means a resident of the state who is professionally employed in the discipline of economic development or industrial development.

(6) "Financial institution" means any banking corporation or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds in this state.

(7) "Partnership" means the body corporate and politic created by the Enterprise Florida Capital Partnership created under this act.

(8) "Guaranty agreement" means an agreement by and between the corporation and a public agency pursuant to the provisions of section 31.

(9) "Guaranty fund" means the Revenue Bond Guaranty Reserve Account established by the corporation pursuant to section 8.

(10) "Interlocal agreement" means an agreement by and between the Florida Development Finance Corporation and a public agency of this state, pursuant to the provisions of s. 163.01, Florida Statutes.

(11) "Public agency" means a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state, government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected county officer, any agency of the United States Government, and any similar entity of any other state of the United States.

Section 28. Effective June 30, 1993, creation of the authority.—

(1) Upon a finding of necessity by a city or county of this state, selected pursuant to subsection (2), there is created a public body corporate and politic known as the "Florida Development Finance Corporation." The corporation shall be constituted as a public instrumentality of local government and the exercise by the corporation of the powers conferred by this act shall be deemed and held to be the performance of an essential public function. The corporation has the power to function within the corporate limits of any public agency with which it has entered into an interlocal agreement for any of the purposes of this act.

(2) A city or county of Florida shall be selected by a search committee of the Capital Partnership Board. This city or county shall be authorized to activate the corporation. The search committee shall be composed of two commercial banking representatives, the Senate member of the partnership, the House of Representatives member of the partnership, and a member who is an industry or economic development professional.

(3) Upon activation of the corporation, the Governor, subject to confirmation by the Senate, shall appoint the board of directors of the corporation, who shall be five in number. The terms of office for the directors shall be for 4 years, except that three of the initial directors shall be designated to serve terms of 1, 2, and 3 years, respectively, from the date of their appointment, and all other directors shall be designated to serve terms of 4 years from the date of their appointment. A vacancy occurring during a term shall be filled for the unexpired term. A director shall be eligible for reappointment. At least three of the directors of the corporation shall be bankers who have been selected by the Governor from a list of bankers who were nominated by the Enterprise Florida Capital Partnership and one of the directors shall be an economic development specialist. The Secretary of the Department of Commerce shall be an ex officio member of the board.

(4)(a) A director shall receive no compensation for his services, but is entitled to the necessary expenses, including travel expenses, incurred in the discharge of his duties. Each director shall hold office until his successor has been appointed.

(b) The powers of the corporation shall be exercised by the directors thereof. A majority of the directors constitutes a quorum for the purposes of conducting business and exercising the powers of the corporation and for all other purposes. Action may be taken by the corporation upon a vote of a majority of the directors present, unless in any case the bylaws require a larger number. Any person may be appointed as director if he resides, or is engaged in business which means owning a business, practicing a profession, or performing a service for compensation or serving as an officer or director of a corporation or other business entity so engaged, within the state.

(c) The directors of the corporation shall annually elect one of their members as chairman and one as vice chairman. The corporation may employ a president, technical experts, and such other agents and employees, permanent and temporary, as it requires and determine their qualifications, duties, and compensation. For such legal services as it requires, the corporation may employ or retain its own counsel and legal staff. The corporation shall file with the governing body of each public agency with which it has entered into an interlocal agreement and with the Governor, Speaker of the House of Representatives, President of the Senate, the Minority Leaders of the Senate and House of Representatives, and Auditor General, on or before 90 days after the close of the fiscal year of the corporation, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such fiscal year.

(5) The board may remove a director for inefficiency, neglect of duty, or misconduct in office only after a hearing and only if he has been given a copy of the charges at least 10 days prior to such hearing and has had an opportunity to be heard in person or by counsel. The removal of a director shall create a vacancy on the board which shall be filled pursuant to subsection (3).

Section 29. Effective June 30, 1993, exercise of powers by the corporation.—

(1) The powers of the corporation created by section 28 shall include all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act.

(2) The corporation is authorized and empowered to:

(a) Have perpetual succession as a body politic and corporate and adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal and alter the same at its pleasure.

(c) Maintain an office at such place or places as it may designate.

(d) Sue and be sued in its own name and plead and be impleaded.

(e) Enter into interlocal agreements pursuant to s. 163.01(7), Florida Statutes, with public agencies of this state for the exercise of any power, privilege, or authority consistent with the purposes of this act.

(f) Issue, from time to time, revenue bonds, including, but not limited to, bonds the interest on which is exempt from federal income taxation, for the purpose of financing and refinancing any capital projects for applicants and exercise all powers in connection with the authorization, issuance, and sale of bonds, subject to the provisions of section 6.

(g) Issue bond anticipation notes in connection with the authorization, issuance, and sale of such bonds, pursuant to the provisions of section 30.

(h) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers under the act.

(i) Disseminate information about itself and its activities.

(j) Acquire, by purchase, lease, option, gift, grant, bequest, devise, or otherwise, real property, or personal property for its administrative purposes, together with any improvements thereon.

(k) Hold, improve, clear, or prepare for development any such property.

(l) Mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property.

(m) Insure or provide for insurance of any real or personal property or operations of the corporation or any private enterprise against any risks or hazards, including the power to pay premiums on any such insurance.

(n) Establish and fund a guaranty fund.

(o) Invest funds held in reserve or sinking funds or any such funds not required for immediate disbursement in property or securities in such manner as the board shall determine, subject to the authorizing resolution on any bonds issued, and to terms established in the investment agreement pursuant to sections 30, 31 and 32, and redeem such bonds as have been issued pursuant to section 30 at the redemption price established therein or purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(p) Borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal Government or the state, county, or other public body or from any sources, public or private, for the purposes of this act and give such security as may be required and enter into and carry out contracts or agreements in connection therewith; and include in any contract for financial assistance with the Federal Government for, or with respect to, any purposes under this act and related activities such conditions imposed pursuant to federal laws as the county or municipality deems reasonable and appropriate which are not inconsistent with the provisions of this act.

(q) Make or have all surveys and plans necessary for the carrying out of the purposes of this act, contract with any person, public or private, in making and carrying out such plans, and adopt, approve, modify, and amend such plans.

(r) Develop, test, and report methods and techniques and carry out demonstrations and other activities for the promotion of any of the purposes of this act.

(s) Apply for, accept, and utilize grants from the Federal Government available for any of the purposes of this act.

(t) Make expenditures necessary to carry out the purposes of this act.

(u) Exercise all or any part or combination of powers granted in this act.

Section 30. Effective June 30, 1993, issue of revenue bonds.—

(1) When authorized by a public agency pursuant to s. 163.01(7), Florida Statutes, the corporation has power in its corporate capacity, in its discretion, to issue revenue bonds or other evidences of indebtedness which a public agency has the power to issue, from time to time to finance the undertaking of any purpose of this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and has the power to issue refunding bonds for the payment or retirement of bonds previously issued. Bonds issued pursuant to this section shall bear the name "Florida Development Finance Corporation Revenue Bonds." The security for such bonds may be based upon such revenues as are legally available. In anticipation of the sale of such revenue bonds, the corporation may issue bond anticipation notes and may renew such notes from time to time, but the maximum maturity of any such note, including renewals thereof, may not exceed 5 years from the date of issuance of the original note. Such notes shall be paid from any revenues of the corporation available therefor and not otherwise pledged or from the proceeds of sale of the revenue bonds in anticipation of which they were issued. Any bond, note, or other form of indebtedness issued pursuant to this act shall mature no later than the end of the 30th fiscal year after the fiscal year in which the bond, note, or other form of indebtedness was issued.

(2) Bonds issued under this section do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this act are declared to be for an essential public and governmental purpose. Bonds issued under this act, the interest on which is exempt from income taxes of the United States, together with interest thereon and income therefrom, are exempted from all taxes, except those taxes imposed by chapter 220, Florida Statutes, on interest, income, or profits on debt obligations owned by corporations.

(3) Bonds issued under this section shall be authorized by a public agency of this state pursuant to the terms of an interlocal agreement; may be issued in one or more series; and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payments at such place or places, be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics as may be provided by the interlocal agreement issued pursuant thereto. Bonds issued under this section may be sold in such manner, either at public or private sale, and for such price as the corporation may determine will effectuate the purpose of this act.

(4) In case a director whose signature appears on any bonds or coupons issued under this act ceases to be a director before the delivery of such bonds, such signature is, nevertheless, valid and sufficient for all purposes, the same as if such director had remained in office until such delivery.

(5) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act, or the security therefor, any such bond reciting in substance that it has been issued by the corporation in connection with any purpose of the act shall be conclusively deemed to have been issued for such purpose, and such purpose shall be conclusively deemed to have been carried out in accordance with the act. The complaint in any action to validate such bonds shall be filed only in the circuit court for Leon County. The notice required to be published by s. 75.06, Florida Statutes, shall be published only in Leon County and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county where the public agencies which were initially a

party to the interlocal agreement are located. Notice of such proceedings shall be published in the manner and the time required by s. 75.06, Florida Statutes, in Leon County and in each county where the public agencies which were initially a party to the interlocal agreement are located. Obligations of the corporation pursuant to a loan agreement as described in this subsection may be validated as provided in chapter 75, Florida Statutes. The validation of at least the first bond issue of the corporation shall be appealed to the Florida Supreme Court. The complaint in the validation proceeding shall specifically address the constitutionality of using the investment of the earning accrued and collected upon the investment of the minimum balance funds required to be maintained in the State Transportation Trust Fund to guarantee such bonds. If such proceeding results in an adverse ruling and such bonds and guaranty are found to be unconstitutional, invalid, or unenforceable, then the corporation shall no longer be authorized to use the investment of the earnings accrued and collected upon the investment of the minimum balance of the State Transportation Trust Fund to guarantee any bonds.

(6) The proceeds of any bonds of the corporation may not be used, in any manner, to acquire any building or facility that will be, during the pendency of the financing, used by, occupied by, leased to, or paid for by any state, county or municipal agency or entity.

Section 31. Effective June 30, 1993, guaranty of bond issues.—

(1) The corporation is hereby authorized to approve or deny, by a majority vote of the membership of the directors, the guaranty of any revenue bonds issued pursuant to this act.

(2) Any applicant for financing from the corporation, requesting a guaranty of the bonds issued by the corporation under this act must submit a guaranty application, in a form acceptable to the corporation, together with supporting documentation to the corporation as provided in this section.

(3) All applications for a guaranty must be accompanied by a premium payment to the guaranty fund established pursuant to section 32, in an amount which shall be determined by the corporation. The premium payment may be collected by the corporation from the lessee of the project involved or from the payee of the loan agreement involved.

(4) All applications for a guaranty must be accompanied by documentation providing that loans be secured by a first mortgage on the property financed, and that the financing include a personal guarantee by the principal owner of the business being financed.

(5) Personal financial records, trade secrets or proprietary information of applicants shall be confidential and exempt from the provisions of s. 119.07(1), Florida Statutes. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14, Florida Statutes.

(6) If the application for a guaranty is approved by the corporation, the corporation and the applicant shall enter into a guaranty agreement. In accordance with the provisions of the guaranty agreement, the corporation guarantees to use the funds on deposit in its Revenue Bond Guaranty Reserve Account to meet amortization payments on the bonds as they become due, in the event and to the extent that the applicant is unable to meet such payments in accordance with the terms of the bond indenture when called to do so by the trustee of the bondholders. Whenever the corporation, acting under the terms of the guaranty agreement, deems it necessary to assume the obligation of maintenance of any building or facility financed with bond proceeds, the corporation may use funds on deposit in the Revenue Bond Guaranty Reserve Account to pay insurance and maintenance costs required for the preservation of the building or facility and to protect the reserve account from loss, or to minimize losses, in such manner as deemed necessary and advisable by the corporation.

(7)(a) The corporation is authorized to enter into an investment agreement with the Department of Transportation and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(7)(b), Florida Statutes. Such investment shall be limited as follows:

1. Not more than $4 million of the investment earnings earned on the investment of the minimum balance of the State Transportation Trust Fund in a fiscal year shall be at risk at any time on one or more bonds or series of bonds issued by the corporation.

2. The investment earnings shall not be used to guarantee any bonds issued after June 30, 1998, and in no event shall the investment earnings be used to guarantee any bond issued for a maturity longer than 15 years.

3. The corporation shall pay a reasonable fee, set by the State Board of Administration, in return for the investment of such funds. The fee shall not be less than the comparable rate for similar investments in terms of size and risk.

4. The proceeds of bonds issued by the corporation for which a guaranty has been or will be issued pursuant to section 30, section 31, or section 32 used to make loans to any one person, including any related interests, as defined in s. 658.48, Florida Statutes, of such person, shall not exceed 20 percent of the principal of all such outstanding bonds of the corporation issued prior to the first composite bond issue of the corporation, or December 31, 1995, whichever comes first, and shall not exceed 15 percent of the principal of all such outstanding bonds of the corporation issued thereafter. The provisions of this subparagraph shall not apply when the total amount of all such outstanding bonds issued by the corporation is less than $2 million.

5. The corporation shall establish a debt service reserve account which contains not less than 6-months debt service reserves from the proceeds of the sale of any bonds guaranteed by the corporation.

6. The corporation shall establish an account known as the Revenue Bond Guaranty Reserve Account, the Guaranty Fund. The corporation shall deposit a sum of money into this fund and maintain a balance in this fund, from sources other than the investment of earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund, not less than a sum equal to 1 year of maximum debt service on all outstanding bonds of the corporation. In the event the corporation fails to maintain the balance required pursuant to this subparagraph for any reason other than a default on a bond issue of the corporation guaranteed pursuant to this section, any guaranty authorized for any bond issue of the corporation shall be void.

(b) Unless specifically prohibited in the General Appropriations Act, the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund may continue to be used pursuant to subsection (a).

(c) The guaranty shall not be a general obligation of the corporation or of the state, but shall be a special obligation, which constitutes the investment of a public trust fund. In no event shall the guaranty constitute an indebtedness of the corporation, the State of Florida, or any political subdivision thereof within the meaning of any constitutional or statutory limitation. Each guaranty agreement shall have plainly stated on the face thereof that it has been entered into under the provisions of this act and that it does not constitute an indebtedness of the corporation, the state, or any political subdivision thereof within any constitutional or statutory limitation, and that neither the full faith and credit of the State of Florida nor any of its revenues is pledged to meet any of the obligations of the corporation under such guaranty agreement. Each such agreement shall state that the obligation of the corporation under the guaranty shall be limited to the funds available in the Revenue Bond Guaranty Reserve Account as authorized by this section.

(8) In the event the corporation does not approve the application for a guaranty, the applicant shall be notified in writing of the corporation's determination that the application not be approved.

(9) The membership of the corporation is authorized and directed to conduct such investigation as it may deem necessary for promulgation of regulations to govern the operation of the guaranty program authorized by this section. The regulations may include such other additional provisions, restrictions, and conditions as the corporation, after its investigation referred to in this subsection, shall determine to be proper to achieve the most effective utilization of the guaranty program. This may include, without limitation, a detailing of the remedies that must be exhausted by the bondholders, or a trustee acting on their behalf, prior to calling upon the corporation to perform under its guaranty agreement and the subrogation of other rights of the corporation with reference to the project and its operation or the financing in the event the corporation makes payment pursuant to the applicable guaranty agreement. The regulations promulgated by the corporation to govern the operation of the guaranty program shall contain specific provisions with respect to the rights of the corporation to enter, take over, and manage all financed properties upon default. These regulations shall set forth the respective rights of the corporation and the bondholders in regard thereto.

Section 32. Effective June 30, 1993, creation and funding of the guaranty account.—

(1) The corporation shall establish a debt service reserve account which contains not less than 6-months debt service reserves from the proceeds of the sale of any bonds guaranteed by the corporation. Funds in such debt service reserve account shall be used prior to funds in the Revenue Bond Guaranty Reserve Account established in subsection (2). The corporation shall make best efforts to liquidate collateralized property and draw upon personal guarantees, and shall utilize the Revenue Bond Guaranty Reserve Account prior to use of supplemental funding for the Guaranty Reserve Account under the provisions of subsection (3).

(2)(a) The corporation shall establish an account known as the Revenue Bond Guaranty Reserve Account, the Guaranty Fund. The corporation shall deposit a sum of money into this fund and maintain a balance in this fund, from sources other than the State Transportation Trust Fund, not less than a sum equal to 1 year of maximum debt service on all outstanding bonds of the corporation.

(b) If the corporation determines that the moneys in the Guaranty Fund are not sufficient to meet the obligations of the Guaranty Fund, the corporation is authorized to use the necessary amount of any available moneys that it may have which are not needed for, then or in the foreseeable future, or committed to other authorized functions and purposes of the corporation. Any such moneys so used may be reimbursed out of the Guaranty Fund if and when there are moneys therein available for the purpose.

(c) The determination of when additional moneys will be needed for the Guaranty Fund, the amounts that will be needed, and the availability or unavailability of other moneys shall be made solely by the corporation in the exercise of its discretion. However supplemental funding for the Guaranty Fund as described in subsection (3) shall be made in accordance with the investment agreement of the corporation and the Department of Transportation and the State Board of Administration.

(3)(a) If the corporation determines that the funds in the Guaranty Fund will not be sufficient to meet the present or reasonably projected obligations of the Guaranty Fund, due to a default on a loan made by the corporation from the proceeds of a bond issued by the corporation which is guaranteed pursuant to section 31(7), no later than 90 days before amortization payments are due on such bonds, the corporation shall notify the Secretary of Transportation and the State Board of Administration of the amount of funds required to meet, as and when due, all amortization payments for which the Guaranty Fund is obligated. The Secretary of Transportation shall immediately notify the Speaker of the House of Representatives, the President of the Senate, and the chairmen of the Senate and House Committees on Appropriations of the amount of funds required, and the projected impact on each affected year of the adopted work program of the Department of Transportation.

(b) Within 30 days of the receipt of notification from the corporation, the Department of Transportation shall submit a budget amendment request to the Executive Office of the Governor pursuant to chapter 216, Florida Statutes, to increase budget authority to carry out the purposes of this section. Upon approval of said amendment, the department shall proceed to amend the adopted work program, if necessary, in accordance with the amendment. Within 60 days of the receipt of notification, and subject to approval of the budget authority, the Secretary of Transportation shall transfer, subject to the amount available from the source described in paragraph (c), the amount of funds requested by the corporation required to meet, as and when due, all amortization payments for which the Guaranty Fund is obligated. Any moneys so transferred shall be reimbursed to the Department of Transportation, with interest at the rate earned on investment by the State Treasury, from the funds available in the Guaranty Fund or as otherwise available to the corporation.

(c) Pursuant to section 31(7), the Secretary of Transportation and the State Board of Administration may make available for transfer to the Guaranty Fund, earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund. However, the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund which shall be subject to transfer shall be limited to those earnings accrued and collected on the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund for the fiscal year in which the notification is received by the Secretary and fiscal years thereafter.

(4) If the corporation receives supplemental funding for the Guaranty Fund under the provisions of this section, then any proceeds received by the corporation with respect to a loan in default, including proceeds from the sale of collateral for such loan, enforcement of personal guarantees or other pledges to the corporation to secure such loan, shall first be applied to the obligation of the corporation to repay the Department of Transportation pursuant to this section. Until such repayment is complete, no new bonds may be guaranteed pursuant to this section.

(5) Prior to the use of the guaranty provided in this section, and on an annual basis, the corporation must certify in writing to the State Board of Administration and the Secretary of Transportation, that it has fully implemented the requirements of this section and section 31 and the regulations of the corporation.

Section 33. Effective June 30, 1993, bonds as legal investments.—All banks, trust companies, bankers, savings banks and institutions, building and loan assocations, savings and loan associations, investment companies, and other persons carrying on a banking and investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by the corporation pursuant to an interlocal agreement with a public agency of this state. Such bonds and obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize all persons, political subdivisions, and officers, public and private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

Section 34. Effective June 30, 1993, annual reports of Florida Development Finance Corporation.—

(1) By December 1, of each year, the Florida Development Finance Corporation shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, the House Minority Leader, and the city or county activating the Florida Development Finance Corporation a complete and detailed report setting forth:

(a) The evaluation required in section 40(1).

(b) The operations and accomplishments of the Florida Development Finance Corporation, including the number of businesses assisted by the corporation.

(c) Its assets and liabilities at the end of its most recent fiscal year, including a description of all of its outstanding revenue bonds.

Section 35. Enterprise Florida Capital Partnership; creation, purpose, membership.—

(1) There is created a body politic and corporate known as the Enterprise Florida Capital Partnership. The purpose of the capital partnership shall be to create a Florida economy characterized by better employment opportunities leading to higher wages by building access to financial markets for firms critical to this mission. The capital partnership shall be a partnership of the private and public sectors of Florida which uses leadership, investment, and changes in public policy to ensure access to the most appropriate forms of finance for such firms on a scale sufficient to achieve the purpose of this partnership.

(2) The Enterprise Florida Capital Partnership shall be a not-for-profit corporation pursuant to chapter 617, Florida Statutes. The articles of incorporation and bylaws establishing the Enterprise Florida Capital Partnership shall be submitted to Enterprise Florida, Inc., and the Department of Commerce for review and approval prior to filing.

(3) The business and affairs of the partnership shall be managed and conducted by a board of directors, a chairman, a vice chairman, a secretary, a treasurer, and such other officers and such agents as the partnership bylaws shall authorize.

(4) Enterprise Florida Capital Partnership shall be governed by a board of directors. The board of directors shall consist of the following members:

(a) A member of the Senate, who shall be appointed by the President of the Senate and serve at the pleasure of the President.

(b) A member of the House of Representatives, who shall be appointed by the Speaker of the House of Representatives and serve at the pleasure of the Speaker.

(c) Nine to eleven members from the public and private sector consisting of, but not limited to, at least three representatives of the commercial banking industry, a representative of the venture capital industry, an economic development professional, and a manufacturing industry representative, who shall be appointed by the Governor from a list of nominees as provided herein, subject to Senate confirmation.

(5) Members appointed by the Governor shall be appointed for terms of 4 years, except that in making the initial appointments, the Governor shall appoint three members for terms of 4 years, three members for terms of 3 years, and three members for terms of 2 years.

(6) The chairman and vice chairman of Enterprise Florida, Inc., shall jointly select a list of nominees for appointment to the board of directors from a slate of candidates submitted by Enterprise Florida, Inc. The chairman and vice chairman of Enterprise Florida, Inc., may request that additional candidates be submitted by Enterprise Florida, Inc., if the chairman and vice chairman cannot agree on a list of nominees submitted. Appointments to the board of directors shall be made by the Governor from the list of nominees jointly selected by the chairman and vice chairman of Enterprise Florida, Inc. Appointees shall represent all geographic regions of the state, including both urban and rural regions. The importance of minority and gender representation shall be considered when making nominations for each position on the board of directors.

(7) The Governor shall appoint the initial nine to eleven members from the public and private sector to the board of directors within 30 days after receipt of the list of nominees from the chairman and vice chairman of Enterprise Florida, Inc.

(8) A vacancy on the board of directors shall be filled for the remainder of the expired term.

(9) Appointive members may be removed by the Governor for cause. Absence from three consecutive meetings results in automatic removal.

Section 36. Organization.—

(1) The board of the Enterprise Florida Capital Partnership shall be chaired by a board member selected by a majority vote of the board.

(2) The president of the partnership shall be appointed by the board and shall serve in the capacity of an executive director and secretary of the board, with additional staff being hired by the president within the parameters established by the partnership in its bylaws.

(3) The board may establish an executive committee consisting of the chair, the secretary of the board, and not more than three additional board members selected by the chair. The executive committee shall have such authority as the board delegates to it, except that the board shall not delegate to the executive committee the authority to take actions requiring the approval by a majority of the board as provided in subsection (6).

(4) The board shall meet at least quarterly and at other times upon call of the chair.

(5) A quorum shall be a majority of the total current membership of the board of the partnership.

(6) A majority of those voting shall be required to organize and conduct the business of the partnership, except that a majority of the entire board shall be required to hire or fire the president and adopt or amend the operational plan.

(7) Except as may be delegated or authorized by the board, individual board members shall have no authority to control or direct the operations of the partnership or the actions of its officers and employees, including the president.

(8) Members of the board shall serve without compensation, but members, the president, and all employees of the partnership may be reimbursed for per diem and travel expenses in accordance with s. 112.061, Florida Statutes. The president and all employees of the partnership shall be exempt from the provisions of part II of chapter 110, Florida Statutes, and the president shall be subject to the provisions of part IV of chapter 110, Florida Statutes.

Section 37. Powers and authority of the Enterprise Florida Capital Partnership board.—The Enterprise Florida Capital Partnership board shall have all the powers and authority, not explicitly prohibited by statute, necessary or convenient to carry out and effectuate the purposes of this act, as well as the functions, duties, and responsibilities of the partnership, including, but not limited to, the following:

(1) Assist in the formulation and coordination of the state's economic development policy regarding capital availability for the formation, growth, and development of firms critical to achieve the purposes of the capital partnership, as stated in this act.

(2) Adopt an official seal.

(3) Hire the president and employees of the partnership.

(4) Assist in developing the state's strategic capital availability development plan and subsequent implementation plans as part of the strategic economic development plan of Enterprise Florida, Inc.

(5) Assist in the state's capital availability development strategic planning process.

(6) Evaluate the performance and effectiveness of Florida's capital availability programs.

(7) Report to the board of directors of Enterprise Florida, Inc., regarding its functions, duties, and responsibilities.

(8) Solicit, borrow, accept, receive, invest, and expend funds from any public or private source.

(9) Contract with public and private entities as necessary to further the directives of this act.

(10) Approve an annual budget.

(11) Carry forward any unexpended state appropriations into succeeding fiscal years.

(12) Provide an annual report to Enterprise Florida, Inc., the Governor, the Speaker of the House of Representatives, and the President of the Senate.

(13) Annually review and prepare a report showing how and at what level other state governments support the availability of capital for businesses essential to economic growth and development. The partnership shall recommend appropriate levels of support from Florida state government, the Federal Government, and private enterprise which will cause the access of Florida businesses to capital which is competitive with those of other states. The findings and recommendations of the partnership shall be submitted to Enterprise Florida, Inc., the Governor, and the Legislature.

Section 38. Authorized programs.—The Enterprise Florida Capital Partnership shall take any action which it deems necessary to achieve the purposes of this act in partnership with private enterprises, public agencies, and other organizations, including, but not limited to, efforts to address the long-term debt needs of small and medium sized firms, to expand availability of venture capital, and to work closely with the Florida International Affairs Commission to increase international trade and export finance opportunities for firms critical to achieving the purposes of this act.

Section 39. Annual report of Enterprise Florida Capital Partnership.—

(1) By December 1, of each year, the partnership shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a complete and detailed report setting forth:

(a) The evaluation required in section 40(1).

(b) The operations and accomplishments of the partnership.

(c) The report required in section 37(13).

(d) Its assets and liabilities at the end of its most recent fiscal year.

Section 40. Audits; confidentiality.—

(1) By September 1, 1993, the Florida Development Finance Corporation and the partnership in cooperation with the Auditor General shall

develop research designs, including goals and measurable objectives for the Florida Development Finance Corporation and the partnership, which will provide the Legislature with a quantitative evaluation of the Florida Development Finance Corporation and the partnership. The Florida Development Finance Corporation and the partnership shall utilize the monitoring mechanisms and reports developed in the designs and provide these reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General.

(2) Prior to the 1996 Regular Session of the Legislature, the Auditor General shall perform a review and evaluation of the Florida Development Finance Corporation and the partnership using the research designs promulgated pursuant to subsection (1). The report shall critique the Florida Development Finance Corporation and the partnership. A report of the findings and recommendations of the Auditor General shall be submitted to the President of the Senate and the Speaker of the House of Representatives prior to the 1996 Regular Session.

(3) The Auditor General may, pursuant to his own authority or at the direction of the Joint Legislative Auditing Committee, conduct an audit of the Florida Development Finance Corporation or the Enterprise Florida Capital Partnership or the programs or entities created by the partnership. The audit or report may not reveal the identity of any person who has anonymously made a donation to Enterprise Florida Capital Partnership pursuant to subsection (4).

(4) When so requested in writing by a donor or prospective donor, information that, if released, would identify the donor or prospective donor is confidential and exempt from the provisions of s. 119.07(1), Florida Statutes. Information identifying such donor or prospective donor to Enterprise Florida Capital Partnership shall not be included in audit reports. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14, Florida Statutes. All other records of Enterprise Florida Capital Partnership constitute public records for the purposes of chapter 119, Florida Statutes.

Section 41. Indemnification of officers, directors, employees, and agents.—In addition to any indemnification available under chapter 617, Florida Statutes, the partnership shall have the power to indemnify the board of the partnership, its officers and employees against any personal liability or accountability by reasons of actions taken while acting within the scope of their authority.

Section 42. Effective June 30, 1993, subsection (5) is added to section 339.08, Florida Statutes, 1992 Supplement, to read:

339.08 Use of moneys in State Transportation Trust Fund.—

(5) The department may authorize the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(7)(b). Such investment shall be limited as provided in section 31(7) of this act.

Section 43. Effective June 30, 1993, paragraph (f) is added to subsection (7) of section 339.135, Florida Statutes, 1992 Supplement, to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(f) The department may authorize the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to paragraph (b). Such investment shall be limited as provided in section 31(7) of this act.

Section 44. Effective June 30, 1993, subsection (4) is added to section 206.46, Florida Statutes, 1992 Supplement, to read:

206.46 State Transportation Trust Fund.—

(4) The department may authorize the investment of the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(7)(b). Such investment shall be limited as provided in section 31(7) of this act.

Section 45. Effective June 30, 1993, subsection (13) is added to section 215.47, Florida Statutes, 1992 Supplement to read:

215.47 Investments; authorized securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(13) The State Board of Administration, consistent with sound investment policy, may invest the earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund pursuant to s. 339.135(7)(b). Such investment shall be limited as provided in section 31(7) of this act.

Section 46. Intent.—

(1) The Legislature finds that it is imperative that substantial reforms be accomplished in the state's efforts to develop minority entrepreneurs in order to achieve the objectives of the Legislature in enacting the Florida Small and Minority Business Assistance Act of 1985 and subsequent amendments.

(2) It is the intent of the Legislature to affirm that the provisions of ss. 288.702-288.714, s. 287.042, and ss. 287.093-287.0947, Florida Statutes, and other related provisions, are for the development and growth of viable small businesses owned and controlled by minorities to compete in the mainstream of the Florida economy and to:

(a) Affirm that the measure of success of these provisions is the extent to which the number of competitive minority firms in the state with paid employees increases and that such businesses become stable participants in the mainstream of the Florida economy.

(b) Affirm that the core benefits of these provisions accrue to racial and gender groups that have historically been discriminated against.

(c) Increase the number and diversity of stable small businesses owned and controlled by minorities.

(d) Ensure integrity, competency, and efficiency in the administration of procurement practices and business development services and the state contracting opportunities made available to eligible small businesses.

Section 47. Florida Commission on Minority Economic and Business Development.—

(1) There is created a Florida Commission on Minority Economic and Business Development.

(2) The commission shall be composed of 25 members, representative of all regions of the state, and shall consist of the following:

(a) The Governor, the Secretary of Commerce, the Commissioner of Education, the Chancellor of the State University System, the Secretary of Labor and Employment Security, the Secretary of Management Services, and the Comptroller, or their respective designees.

(b) One member of the Senate appointed by the President of the Senate and one member of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) One member each of the Florida Conference of Black State Legislators and the Cuban-American Caucus as appointed by the respective chairmen.

(d) Six members consisting of representatives of minority community support organizations and community advocacy agencies. Two of these members shall be appointed by the Governor, two by the President of the Senate, and two by the Speaker of the House of Representatives.

(e) Five members composed of representatives of private industry councils, minority supplier development councils and minority vendors, and other members of the private business sector. One of these members shall be appointed by the Governor, two by the President of the Senate, and two by the Speaker of the House of Representatives.

(f) Three representatives of local government, one of whom shall be a member of the Advisory Council on Intergovernmental Relations, appointed by the Governor.

(3) The commission shall elect from among its members, by majority vote, a chair and vice chair. The chair shall preside at meetings, appoint committees and committee chairs, and conduct other administrative matters as appropriate. In the absence of the chair, the vice chair shall pre-

side and undertake the duties of the chair. The commission shall have a quorum of 13 members. Members of the commission shall receive no salary but may receive travel expenses and per diem as provided in s. 112.061, Florida Statutes.

(4) The commission is assigned, for administrative purposes, to the Joint Legislative Management Committee. State agencies shall provide assistance when requested by the commission. Appropriate staff of substantive committees of the Legislature shall provide assistance to the commission. The Advisory Council on Intergovernmental Relations shall provide assistance on issues relating to local governments.

(5) The purpose of the commission is to review and conduct an assessment of the operations of all state programs that assist, promote, and foster the development of small businesses owned and controlled as minority business enterprises. The commission shall ascertain whether the purpose and objectives of such programs are being realized. The review shall provide recommendations to the Governor and the Legislature on ways to improve the effectiveness of efforts to:

(a) Encourage state and local governments to utilize minority business enterprises to redress past discrimination in the purchase of architectural and engineering services, commodities, construction services, and contractual services.

(b) Assist in the development of minority business enterprises in industries where minority-owned firms have been traditionally discriminated against, in industries where minority-owned firms do not currently exist, or as suppliers of commodities not otherwise available from minority business enterprises.

(c) Provide financial resources and technical assistance for the development of minority business enterprises and improved job opportunities for minorities.

(d) Address existing deficiencies in rule or law, or the application of either.

Section 48. Florida Commission on Minority Economic and Business Development; duties.—

(1) The commission shall review and assess the overall effectiveness of the provisions in ss. 288.702-288.714, s. 287.042, and ss. 287.093-287.0947, Florida Statutes, and other related provisions. The review and assessment shall include, but is not limited to:

(a) The policies and procedures of the Minority Business Enterprise Assistance Office in the Department of Management Services for certifying vendors, including the processing time of applications, criteria for admission, and consistency in the application of criteria.

(b) The resources necessary to conduct a competent investigation of ownership and control of applicants in the certification process.

(c) Compliance by local governments with s. 287.0943(12), Florida Statutes, and the impact of this provision on the Minority Business Enterprise Assistance Office.

(d) A review of a sample of certified minority business enterprises and a significant sampling of state transactions with the audited vendors, to ascertain if actual operations are consistent with certification and procurement criteria.

(e) The effectiveness of the efforts of the Minority Business Enterprise Assistance Office to monitor agency and contractor compliance, including the manner and degree to which the factors set out in s. 287.0945(3), Florida Statutes, are documented and evaluated.

(f) Compliance by agencies with s. 287.0947, Florida Statutes, and other data collection efforts by the Division of Purchasing in the Department of Management Services under s. 287.042(15), Florida Statutes, and whether these provide adequate input to fulfill the duties assigned to the Minority Business Enterprise Assistance Office.

(g) The appropriate agency assignment of the functions that identify, certify, counsel, train, and monitor minority businesses that provide goods and services to the state.

(h) The effectiveness of minority business development assistance under the Department of Commerce, the Department of Transportation, and the Department of Management Services and whether such assistance has resulted in measurable growth, expansion, or diversification of the client businesses or improved productivity and efficiency of such businesses.

(i) The policies and procedures of major procurement agencies in complying with s. 287.042(15)(a), Florida Statutes, and in encouraging major contractors and subcontractors to open and expand opportunities for small businesses owned by minorities. This review shall include a survey of the performance of a sample of contractors in attaining these goals.

(j) The successful efforts by various agencies in meeting the spirit and intent of the Florida Small and Minority Business Assistance Act of 1985.

(k) The obstacles to achieving an accurate measure of state businesses that are owned and controlled by minorities and available to perform state contracts.

(l) The effectiveness of ss. 287.042 and 287.0947, Florida Statutes, in eliminating or reversing discriminatory purchasing practices and the economic disadvantage that results, including a review and assessment of whether current agency practices result in an unfair and uneven distribution of the prescribed spending goals among commodity and contractual services budget classifications.

(m) Policies, directives, procedures, and techniques that may increase the number and diversity of businesses that are owned and controlled by minorities and that may overcome any economic disadvantages and strengthen financial, managerial, and marketing skills.

(n) Policies, directives, procedures, and techniques that effectively further the spirit and intent of the Florida Small and Minority Business Assistance Act of 1985.

(o) An examination of problems unique to subminority groups.

(p) Any other issue as determined appropriate by the commission.

(2) Based upon its review, the commission shall issue an interim and a final report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The interim report shall specifically state the commission's findings as to the efficiency of the certification process, the merits of state and local cooperative certification, state agency accountability in utilizing legitimate minority-owned businesses, and prosecution of abuses and fraud in the purchasing system. The commission's interim report should entail recommendations on those measures that may be undertaken under existing law through revisions in either policy or rule to change these areas. The interim report shall be completed by August 1, 1993. The final report shall indicate the full measure of changes in law required to reverse any discrimination in the purchasing process, to develop and promote minority entrepreneurs through opportunities in state purchasing, and to protect the legitimate economic and business interests of minorities. The report shall be completed by December 1, 1993, and shall be considered in the disparity study required under s. 287.042(4)(f), Florida Statutes, and shall detail the methodology used to reach any results contained therein. The commission shall further provide recommendations to the Governor and the Legislature on ways to improve the effectiveness of state efforts in all areas related to this act.

Section 49. Florida Commission on Minority Economic and Business Development; powers.—

(1) The commission may, for the purposes of carrying out the provisions of this act, sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information as the commission deems appropriate. The commission may administer oaths or affirmations for the receipt of such testimony.

(2) Except as otherwise prohibited by law, the commission may secure directly from any agency information necessary to enable it to carry out its duties under this act. Upon request of the chair, the head of such agency shall promptly furnish such information to the commission.

(3) The commission may perform all acts necessary or convenient to carry out the powers expressly granted and duties expressly imposed in this act.

Section 50. Minority Business Enterprise Utilization Pilot Project. In accordance with the commission's purpose and intent, the State University System, through its member institutions, shall conduct a pilot project designed to measure and enhance minority business enterprise participation and compliance reporting. The length of the project shall be for one year. An interim report from the project, containing findings and recommendations, shall be included in the commission's final report due on December 1, 1993.

Section 51. Performance Audit.—

(1) The Auditor General shall review the activities of the Division of Purchasing within the Department of Management Services relating to the certification of minority business enterprises, pursuant to s. 11.45. In conducting this review, the Auditor General shall:

(a) Examine the policies, procedures, and criteria used by the Division of Purchasing for certifying minority business enterprise vendors and the timeliness of these processes;

(b) Identify how some local governments certify minority business enterprise vendors, as compared with the Division of Purchasing;

(c) Assess the procedures used by the Division of Purchasing to investigate alleged violations of minority business enterprise requirements by such vendors;

(d) Assess the Division of Purchasing's activities and reporting systems used to monitor agency use of minority business enterprise vendors; and

(e) Assess state agency compliance with the provisions of s. 287.0947, regarding agency minority business enterprise assistance.

(2) The Auditor General shall submit a report containing his findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Florida Commission on Minority Economic and Business Development by November 1, 1993. This report shall be in lieu of the annual performance audit of the Division of Purchasing required under s. 287.114, for the 1993-94 fiscal year.

Section 52. Expiration.—The Florida Commission on Minority Economic and Business Development shall cease to exist on the date that the final report is transmitted as required in this act.

Section 53. Effective June 30, 1993, section 288.770, Florida Statutes, is created to read:

288.770 Short title.—Sections 288.771-288.779 may be cited as the "Florida Export Finance Corporation Act."

Section 54. Effective June 30, 1993, section 288.771, Florida Statutes, is created to read:

288.771 Legislative findings and intent.—The Legislature finds that the expansion of international trade is vital to the overall health and growth of Florida's economy; however, this expansion is severely slowed by the lack of financial and technical assistance for small and medium-sized Florida businesses. The Legislature further finds that these businesses could be assisted through the establishment of a Florida Export Finance Corporation designed to work with the United States Export-Import Bank, Small Business Administration, Foreign Credit Insurance Association, Overseas Private Investment Corporation, Private Export Funding Corporation, and other federal, state, and private agencies and institutions to provide Florida traders with information, technical assistance, and financial support. It is the intention of the Legislature to expand job opportunities for Florida's workforce. It is the intention of the Legislature to expand job opportunities for Florida's workforce. Furthermore, it is the intention of the Legislature to avoid duplicating existing programs, and to coordinate, assist, augment, and improve the access to those programs by Florida-based small and medium-sized businesses and to promote Florida products and services in the international marketplace.

Section 55. Effective June 30, 1993, section 288.772, Florida Statutes, is created to read:

288.772 Definitions.—For purposes of ss. 288.771-288.779:

(1) "Account" means the Florida Export Finance Corporation account in the Florida International Affairs Foundation, Inc.

(2) "Board" means the board of directors of the Florida Export Finance Corporation.

(3) "Commission" means the Florida International Affairs Commission as defined in s. 288.803.

(4) "Corporation" means the Florida Export Finance Corporation.

(5) "Council" means the Florida International Banking and Finance Council as defined in s. 288.819.

(6) "Department" means the Department of Commerce.

(7) "Domiciled in this state" means registered to do business in this state.

(8) "Executive director" means the chief executive officer of the Florida International Affairs Commission as defined in s. 288.803(2).

(9) "Financial institution" shall have the same meaning as that term is defined in s. 655.005(1)(h).

(10) "President" means the chief executive officer of the Florida Export Finance Corporation.

(11) "Small and medium-sized businesses" or "businesses" means businesses domiciled in this state which employ less than 250 people and have a net worth of less than $6 million.

Section 56. Effective June 30, 1993, section 288.773, Florida Statutes, is created to read:

288.773 Florida Export Finance Corporation.—The Florida Export Finance Corporation is hereby created as a corporation not for profit, to be incorporated under the provisions of chapter 617, and approved by the Department of State. The corporation is organized on a nonstock basis. The purpose of the corporation is to expand employment and income opportunities for residents of this state through increased exports of goods and services, by providing businesses domiciled in this state information and technical assistance on export opportunities, exporting techniques, and financial assistance through guarantees and direct loan originations for sale in support of export transactions. The corporation shall have the power and authority to carry out the following functions:

(1) To coordinate the efforts of the corporation with programs and goals of the United States Export-Import Bank, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, the Department of Commerce, the Florida International Affairs Commission and its related councils, and other private and public programs and organizations, domestic and foreign, designed to provide export assistance and export-related financing.

(2) To establish a network of contacts among those domestic and foreign public and private organizations which provide information, technical assistance, and financial support of exporting.

(3) To assemble, publish, and disseminate information on export opportunities, techniques of exporting, sources of public and private export assistance, and sources of export-related financing.

(4) To organize, host, and participate in seminars and other forums designed to disseminate information and technical assistance on exporting and export-related financing.

(5) To insure, coinsure, lend, and guarantee loans, and to originate for sale direct export-related loans, extended to small and medium-sized businesses in this state pursuant to criteria, bylaws, rules, and policies adopted by the board and approved by the commission.

Section 57. Effective June 30, 1993, section 288.774, Florida Statutes, is created to read:

288.774 Powers and limitations.—

(1) The corporation may charge fees to help defray the operating expenses of its programs. The amount of fees shall be determined by the board.

(2) The total of loans, guarantees, direct loan originations for sale and insured export transactions outstanding shall not be more than five times the balance of the account. The board may elect to require a higher reserve.

(3) The board shall adopt rules on the terms and limits for loans, guarantees, and direct loan originations, but a loan guarantee or a direct loan origination shall not exceed 90 percent of the transaction contract.

Section 58. Effective June 30, 1993, section 288.775, Florida Statutes, is created to read:

288.775 Florida Export Finance Corporation Account.—

(1) The Florida International Affairs Foundation, Inc., as established in s. 288.809, shall create the Florida Export Finance Corporation Account for the purpose of receiving state, federal, and private financial

resources, and the return from investments of those resources, and for the purposes of this part. The account shall be under the exclusive control of the board of the corporation.

(2) Resources in the account shall be allocated for operating expenses of the corporation and for other purposes authorized in this part.

(3) Appropriations for the corporation shall be deposited into the account.

(a) The board of the corporation may deposit the resources of the account designated for the purposes of this section with state or federally chartered financial institutions in this state and may invest the remaining portion in permissible securities.

(b) At all times, the board shall attempt to maximize the returns on these funds.

(c) All funds received from the activity of the corporation shall be redeposited in the account to be used to support the purposes of this part.

(4) Any claims against the account shall be paid solely from the account. Under no circumstances shall the credit of the state be pledged other than funds appropriated by law to the account, nor shall the state be liable or obligated in any way for claims on the account or against the corporation.

Section 59. Effective June 30, 1993, section 288.776, Florida Statutes, is created to read:

288.776 Board of directors.—

(1)(a) The corporation shall have a board of directors consisting of 15 members representing all regions of the state. The commission shall appoint 10 members of the board. The importance of minority and gender representation shall be considered when making appointments to the board. The board membership must include:

1. One member from each of the six regions established in s. 288.803.

2. A representative of the following businesses, all of which must be registered to do business in this state: a foreign bank, a state bank, a federal bank, an insurance company involved in covering trade financing risks, and a small or medium-sized exporter.

3. The following persons or their designee: the Secretary of Commerce, the Comptroller, the Executive Director of the Florida International Affairs Commission, a senior official of the United States Department of Commerce, and the chair of the Black Business Investment Board.

(b) Appointees who are not state or Federal Government officials shall serve for a period of 3 years and shall be eligible for reappointment on the recommendation of the commission. Nonstate and nonfederal official vacancies on the board shall be filled by the commission within 30 days after the effective date of the vacancy.

(c) The articles of incorporation shall reflect the provisions of this subsection and subsection (2).

(2) The board shall commence formal action pursuant to this part within 90 days after the establishment of the corporation.

(3) Board members shall serve without compensation but may be reimbursed for all necessary expenses in the performance of their duties, including attending board meetings and conducting board business.

(4) The board shall:

(a) Elect a chair and vice-chair from among its members. The chair shall preside at meetings of the board. In the absence of the chair, the vice-chair shall preside at meetings of the board. The board shall have a quorum of nine.

(b) Prior to the expenditure of funds from the export finance account, adopt bylaws, rules, and policies which are necessary to carry out the responsibilities under this part, particularly with respect to the implementation of the corporation's programs to insure, coinsure, lend, provide loan guarantees, and make direct, guaranteed, or collateralized loans by the corporation to support export transactions. The corporation's bylaws, rules, and policies shall be reviewed and approved by the commission prior to final adoption by the board.

(c) Hold regularly scheduled meetings, at least quarterly, in order to carry out the objectives and responsibilities of the board.

(d) Issue an annual report, no later than March 31 of each calendar year for the preceding calendar year or part thereof, on the activities of the corporation, including an evaluation of activities and recommendations for change. The evaluation shall include the corporation's impact on the following:

1. Participation of private banks and other private organizations and individuals in the corporation's export financing programs.

2. Access of small and medium-sized businesses in this state to federal export financing programs.

3. Export volume of the small and medium-sized businesses in this state accessing the corporation's programs.

4. Other economic and social benefits to international programs in this state.

The report must include statistics to indicate: the number of businesses which succeeded in independently obtaining export financing following program assistance; the number of businesses which had already completed export transactions before receiving program assistance; the level of businesses' export activity before program assistance; and the current operational status of the businesses. A copy of the report shall be sent to the Governor, the Speaker of the House of Representatives, the President of the Senate, the Comptroller, the Treasurer, and the Secretary of Commerce.

(e) Adopt policies, including criteria, establishing which exporters and export transactions shall be eligible for insurance, coinsurance, loan guarantees, and direct, guaranteed, or collateralized loans which may be extended by the corporation. Pursuant to this subsection, the board shall adopt rules to include the following criteria:

1. Any individual signing any corporation loan application and loan or guarantee agreement shall have an equity in the business applying for financial assistance.

2. Each program shall exclusively support the export of goods and services by small and medium-sized businesses which are domiciled in this state. Priority shall be given to goods which have value added in this state.

3. Financial assistance shall only be extended when at least one of the following circumstances exists:

a. The assistance is required to secure the participation of small and medium-sized export businesses in federal, state, or private financing programs.

b. No conventional source of lender support is available for the business from public or private financing sources.

Personal financial records, trade secrets or proprietary information of applicants shall be confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(f) Adopt requirements to ensure the full repayment of loans and loan guarantees, plus accrued interest, full-recourse claims, and indemnities on direct loan originations sold by the corporation, and the solvency of any insurance and coinsurance program extended under this part.

(g) Approve any extension of insurance, coinsurance, loans, loan guarantees, or direct loan originations for sale, under this part.

(h) Consult with the department, or any other state or federal agency, to ensure that the respective loan guarantee or working capital loan origination programs are not duplicative and that each program makes full use of, to the extent practicable, the resources of the other.

(i) Work to secure a delegated line of authority from the United States Export-Import Bank or other appropriate federal or state agency or private sector entity in order to take advantage of this possible funding or guarantee source.

(j) Develop a streamlined application and review process, including a survey of businesses to obtain the statistics required in paragraph 288.776 (4)(d).

Section 60. Effective June 30, 1993, section 288.777, Florida Statutes, is created to read:

288.777 President of the corporation.—

(1) The commission shall appoint a president of the Florida Export Finance Corporation from a list of nominees submitted by the board. The president shall be knowledgeable about private and public export assistance and export financing programs.

(2) The president shall serve at the pleasure of the board and shall receive a salary and benefits as shall be fixed by the board.

(3) The president shall administer the programs of the corporation and perform such duties as shall be delegated by the board.

(4) The president may, upon approval of the board:

(a) Contract for services.

(b) Hold public hearings.

(c) Call upon and reimburse for services any state agency or department for assistance in carrying out the objectives of this part.

(d) Participate with government or private industry in programs for technical assistance, loans, technology transfer, or any other programs related to this part.

(e) Undertake or commission studies on methods to increase financial resources to expand the exports of goods and services by small and medium-sized businesses in this state.

(f) Hire staff and provide export finance training for them and other individuals involved in export finance assistance, including such training sessions as may be provided by the United States Export-Import Bank and other organizations.

(g) Exercise any other powers as may be necessary to carry out the purposes of this part.

(5) The president shall provide staff to the board as requested.

(6) The president shall submit an annual budget to be approved by the board.

Section 61. Section 288.7771, Florida Statutes, is created to read:

288.7771 Annual report of Florida Export Finance Corporation.—

(1) By December 1, of each year, the corporation shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a complete and detailed report setting forth:

(a) The evaluation required in s. 288.7772(1).

(b) The report required in s. 288.776(4)(d).

(c) Its assets and liabilities at the end of its most recent fiscal year.

Section 62. Effective June 30, 1993, section 288.7772, Florida Statutes, is created to read:

288.7772 Audits.—

(1) By September 1, 1993, the Florida Export Finance Corporation in cooperation with the Auditor General shall develop a research design, including goals and measurable objectives for the corporation, which will provide the Legislature with a quantitative evaluation of the corporation. The corporation shall utilize the monitoring mechanisms and reports developed in the designs and provide these reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General.

(2) Prior to the 1998 Regular Session of the Legislature, the Auditor General shall perform a review and evaluation of the corporation using the research design promulgated pursuant to subsection (1). The report shall critique the corporation. A report of the findings and recommendations of the Auditor General shall be submitted to the President of the Senate and the Speaker of the House of Representatives prior to the 1998 Regular Session. The appropriate committees of the Senate and House of Representatives shall consider legislation to implement the recommendations of the Auditor General.

Section 63. Effective June 30, 1993, section 288.778, Florida Statutes, is created to read:

288.778 Department of Banking and Finance.—The Division of Banking of the Department of Banking and Finance shall review the corporation's activities once every 24 months to determine compliance with this part and other related laws and rules and to evaluate the corporation's operations. The division shall prepare a report based on its review and evaluation with recommendation for any corrective action. The president shall submit to the division regular reports on the corporation's activities. The content and frequency of such reports shall be determined by the division. The division shall charge a fee for conducting the review and evaluation and preparing the related report, which fee shall not be in excess of the examination fee paid by financial institutions chartered or licensed under the financial institutions code of this state.

Section 64. Effective June 30, 1993, section 288.765, Florida Statutes, is renumbered as section 288.779, Florida Statutes, and amended to read:

288.779 ~~288.765~~ Department of Commerce; export finance officer.—

(1) There is hereby created a position within the Division of International Trade and Development of the Department of Commerce which shall be designated the export finance officer, hereinafter referred to as the "officer." The officer shall be an individual who is or has been actively engaged in the area of international trade; is generally familiar with issues concerning export finance resources; possesses an ability to interpret and analyze rules, regulations, and statutes affecting export business; and possesses any other qualifications as determined by the department as necessary to fulfill the duties of the officer. Duties of the officer shall include, but not be limited to:

(a) Encouraging development of innovative programs that will link the needs of exporters with the wide assortment of export financing programs and options and providing technical assistance to make adequate use of existing programs.

(b) Reviewing the corporation's marketing strategy to ensure that it is consistent with, and effectively utilizes, programs of the department.

(c)~~(b)~~ Serving as a clearinghouse of export finance information.

(d)~~(c)~~ Identifying and providing information on export financing programs and options that can facilitate entry and participation in international markets which will expand exports, encourage domestic production, and increase employment.

(e)~~(d)~~ Developing counseling services to help businesses compile the necessary information enabling such businesses to contact a financial institution *and the corporation* in an informed fashion to secure export insurance and financing.

(f)~~(e)~~ Providing information on and assistance in accessing the programs offered by the Export-Import Bank of the United States and the Foreign Credit Insurance Association, and any other programs available for export finance.

(g)~~(f)~~ Coordinating activities with the Florida Small Business Development Centers *and the corporation* to provide training and counseling assistance to the business community.

(2) The officer shall:

(a) Serve as a source of expertise and information on export finance.

(b) Be trained in programs offered by the Export-Import Bank of the United States and the Small Business Administration and such other programs as shall be deemed appropriate by the department.

(c) Advise the department with respect to problems of, and matters affecting, the export finance business ~~and make recommendations regarding needed policy changes relating to export finance~~.

(d) Assist in the verification of matters before the corporation, as determined by the board.

(e)~~(d)~~ On or before September 1 of each year, submit an annual report to the Secretary of Commerce, which report shall include, but not be limited to:

~~1.~~ a description of the activities of the officer *and the corporation*~~, including the nature and extent of assistance provided to the international community by the officer~~.

~~2. Findings of the officer regarding export business finance.~~

Section 65. Effective June 30, 1993, paragraph (k) of subsection (1) of section 288.811, Florida Statutes, is amended to read:

288.811 Florida International Trade and Investment Council; creation; membership; duties.—

(1) There is hereby created within the Office of the Executive Director the Florida International Trade and Investment Council. The purpose of the council is to advise and assist the commission in carrying out its duties, to provide advisement to all state agencies or entities with international promotional programs and responsibilities pertaining to products, resources, or business promotion, and, further, to provide advisement regarding international promotion grants. The council shall consist of persons who are residents of the state, each of whom is, or has been, actively engaged in some aspect of international trade or investment. The council shall consist of the following:

(k) The chairman of the Florida International Banking *and Finance* ~~Advisory~~ Council or his designee.

Section 66. The introductory paragraph of subsection (1) of section 288.819, Florida Statutes, is amended to read:

288.819 Florida International Banking *and Finance* ~~Advisory~~ Council.—

(1) There is created within the Florida International Affairs Commission the Florida International Banking *and Finance* ~~Advisory~~ Council which shall be composed of 16 members, including the Comptroller or his designee and the Secretary of Commerce or his designee, both of whom shall serve ex officio as voting members of the council, and the following additional members to be appointed by the Comptroller unless otherwise designated:

Section 67. Effective June 30, 1993, sections 288.741, 288.742, 288.743, 288.744, 288.745, 288.746, 288.747, 288.748, 288.749, 288.750, 288.751, 288.752, 288.754, 288.755, 288.756, 288.757, 288.758, 288.759, and 288.760, Florida Statutes, and section 288.753, Florida Statutes, as amended by chapter 92-303, Laws of Florida, are hereby repealed.

Section 68. Effective June 30, 1993, notwithstanding the provisions of s. 288.826, F.S., there is hereby appropriated to the Florida Export Finance Corporation Account for Fiscal Year 1993-94, $750,000 from the Florida International Trade and Promotion trust fund established in the Department of Commerce and $250,000 from the Florida International Trade and Promotion trust fund established in the Executive Office of the Governor to implement the provisions of sections 53-66 of this act. No more than $100,000 of these funds may be used for administrative purposes.

Section 69. Effective October 1, 1993, part IX of chapter 403, Florida Statutes, consisting of ss. 403.950, 403.951, 403.952, 403.953, 403.954, 403.955, 403.9551, 403.956, 403.957, 403.958, 403.959, 403.960, 403.961, 403.9615, 403.962, 403.963, 403.964, 403.965, 403.966, 403.967, 403.968, 403.969, 403.970, 403.971, and 403.972, is created to read:

PART IX
JOB SITING

403.950 Short title.—Sections 403.950-403.972 may be cited as the "Florida Jobs Siting Act."

403.951 Legislative intent.—It is the policy of the State of Florida to improve the quality of life of all of its citizens both by building a globally competitive economy featuring high-quality job opportunities with increasing income levels and by protecting and enhancing its fragile natural resources and ecological systems. The Legislature finds that Florida's economy faces serious challenges in the form of recession, natural disaster, increasing economic competition from other states and nations, an uneven distribution of economic progress across the state, rapid technological change, and the restructuring of major economic sectors important to Florida. The Legislature further finds that opportunities arise, in the form of major projects, to address these economic challenges. These opportunities can result from domestic or international corporate decisions to locate or expand facilities in Florida, as well as government decisions to locate or expand research, technology, production, or service facilities in Florida. The Legislature further finds that the efficiency of the permit application and review process at both the state and local level would be improved with the implementation of a process whereby a permit application would be centrally coordinated and all permit decisions could be reviewed on the basis of standards and recommendations of the deciding agencies. The Legislature further finds that expedited, consolidated review of major proposed projects through a procedure resulting in a single license meeting all necessary environmental permitting and land use planning criteria would be an important asset for Florida in competing for such projects. It is the policy of this state, recognizing that such a review procedure would provide a significant economic development advantage, to ensure that the establishment and use of an expedited, consolidated procedure which:

(1) Will ensure compliance with agency nonprocedural standards.

(2) Will be consistent with the comprehensive plans of local governments in whose jurisdictions proposed projects would be located.

(3) Will provide reasonable participation by citizens.

(4) Will provide economic benefits.

(5) Ensure protection of public health.

The Legislature further finds that the procedure established by this part must be closely coordinated with all existing and future federally delegated or approved permit programs administered by the Department of Environmental Regulation. However, nothing in this part shall be deemed to supersede the Department of Environmental Regulation's authority separately to administer federally delegated or approved permit programs in accordance with the terms of federal delegation or approval in force at the time application is made for certification under this part.

403.952 Definitions.—As used in this act:

(1) "Act" means the Florida Jobs Siting Act.

(2) "Affected agencies" means those agencies listed in s. 403.961(2).

(3) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, district, division, bureau, board, section, or other unit or entity of government, including a state, regional or local governmental entity.

(4) "Amendment" means a material change in the information provided by the applicant to the application for certification made after the initial application filing.

(5) "Applicant" means any business, nonprofit or governmental entity which applies for certification pursuant to the provisions of this act.

(6) "Application" means the documents required by the State of Florida to be filed to initiate the certification proceeding and shall include the documents necessary to render a decision on any permit required pursuant to any federally delegated or approved permit program.

(7) "Board" means the Governor and Cabinet sitting as the siting board.

(8) "Certification" means the written order of the board approving an application in whole or with such changes or conditions as the board may deem appropriate, or if no certification hearing is held, the written order of the Department of Environmental Regulation pursuant to s. 403.963(3).

(9) "Completeness" means that the application has addressed all applicable sections of the prescribed application format, but does not mean that those sections are sufficient in comprehensiveness of data or in quality of information provided.

(10) "County average annual wage" means the arithmetic result of dividing the total wage and salary earnings from jobs in businesses located in the county wherein the project will be located by the number of jobs in businesses located in that county. Both of these figures are to be taken from the latest available calendar year reports compiled and published by the Department of Labor and Employment Security and drawn from employer unemployment compensation tax reports.

(11) "Designated hearing officer" means the hearing officer assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct any hearings required by this act.

(12) "Federally delegated or approved permit program" means any environmental regulatory program approved by an agency of the Federal

Government so as to authorize the Department of Environmental Regulation or any other agency to administer and issue licenses pursuant to federal law.

(13) "Fully operational" means the condition reached by the project when it has been constructed, has its work force in place and is producing goods or services in the quantity planned by its controlling interests.

(14) "Incubator" means a facility especially designed and funded to encourage small business formation and growth.

(15) "Industry" means a group of businesses producing the same or similar types of goods or services.

(16) "Installation" means any structure, equipment, facility or appurtenance thereto, operation, or activity which is or may be a source of pollution as defined in s. 403.031(7). The term "installation" includes dredging and filling as defined in s. 403.911.

(17) "Jobs" means the net number of additional positions, expressed in terms of full-time equivalent positions, resulting directly from the project in Florida. This number shall not include temporary construction jobs resulting from the construction of the project.

(18) "License" means a franchise, permit, authorization, approval, certification, registration, charter, comprehensive plan amendment, development order, or permit as defined in chapters 163 and 380, or similar form of authorization required by law, including permits issued under federally delegated or approved permit programs, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(19) "Location" means the placement of a project in a particular location. A location can result from the recruitment of the project from another state or nation, the creation of a new business, the expansion of an existing business in Florida, or a government decision to place a project in a particular area.

(20) "Affected local governments" means a municipality or county in the jurisdiction of which the project is proposed to be located.

(21) "Modification" means any change in certification order after issuance, including a change in conditions of certification.

(22) "Agency nonprocedural standards" means any agency's regulatory requirements established by statute, rule, ordinance, comprehensive plan, or land development regulation, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(23) "Notice of intent" means that notice which is filed with the Department of Commerce on behalf of an applicant prior to submission of an application pursuant to this act and which notifies that department of an intent to file an application.

(24) "Persons" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(25) "Preliminary statement of issues" means a listing and explanation of those issues within the affected agency's jurisdiction which are of major concern to the agency in relation to the proposed project.

(26) "Population" means the number of residents in the county wherein the proposed project is to be located, with this population figure taken from the latest available decennial census published by the Bureau of the Census, U.S. Department of Commerce.

(27) "Project" means any proposed business or government undertaking requiring the construction or operation of an installation, including a stationary installation, which could be regulated pursuant to any of the laws listed in s. 403.966(3), for which the project's controlling interests have elected to apply for use of the certification process established in this act, and which has been designated by the Department of Commerce as meeting the eligibility criteria for expedited permitting under this part.

(28) "Project average annual wage" means the arithmetic result of dividing the estimated worker payroll of the proposed project by the estimated average number of workers in the project work force once the project is fully operational.

(29) "Regional planning council" means a regional planning council as defined in s. 186.503(4) in the jurisdiction of which the project is proposed to be located.

(30) "Site" means the physical location where any installation associated with a proposed project will be constructed or operated.

(31) "State comprehensive plan" means that plan set forth in chapter 187.

(32) "Sufficiency" means that the application is not only complete but that all sections are sufficient in the comprehensiveness of data or in the quality of information provided to allow the Department of Commerce, the Department of Environmental Regulation, and the affected local government to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.961.

(33) "Water management district" means a water management district created pursuant to chapter 373, in the jurisdiction of which the project is proposed to be located.

403.953 Eligibility criteria.—The eligibility criteria for projects shall be:

(1) The permanent location of a business or government facility or the expansion of an existing business or government facility in Florida.

(2) As determined by the Department of Commerce, membership in at least one of the following industries: aerospace manufacturing, defense, business and financial services, environmental engineering services and related manufacturing, recycling, health technology manufacturing and services, computer and office equipment manufacturing, communications equipment manufacturing, electronic components manufacturing, computer programming and related services, instruments and controls manufacturing, lasers and electro-optics, motor vehicle parts and accessories; or representing the following facility types: corporate headquarters, regional headquarters, research and development facilities, or incubators; or any additional specified industries or facility types adopted by rule by the Department of Commerce in consultation with Enterprise Florida, Inc.

(3) The payment of an estimated annual average wage equaling at least 115 percent of the average wage in the county wherein the project is to be located, except that for projects to be located in areas officially designated by the State of Florida as enterprise zones, the wage criterion shall be payment of an estimated annual average wage equaling at least 80 percent of the county average annual wage.

(4) In the judgment of the Department of Commerce and based on available evidence, the proposed project is economically and technically feasible and viable.

(5)(a) For projects proposed for location in counties with a population of 50,000 or more residents, the creation of at least 500 jobs; or

(b) For projects proposed for location in counties with a population of fewer than 50,000 residents, the creation of at least 100 jobs.

(c) The number of jobs required to be created in paragraphs (a) and (b) may be reduced by 50 percent for projects proposed for location in counties which have an unemployment rate higher than the statewide average.

A project funded and operated by a local government, as defined in s. 377.709, and located within that government's jurisdiction is not an eligible project under this part.

(6) Projects not eligible include those projects which include as a primary purpose the final disposal through incineration of solid waste, biomedical waste, or hazardous waste in Florida. Such projects must obtain appropriate permits as otherwise provided by law.

403.954 Department of Commerce; powers and duties enumerated.—The Department of Commerce shall have the following powers and duties in relation to this act:

(1) To administer the processing of applications for project site certification and to ensure that the applications are processed as expeditiously as possible.

(2) In consultation with the other agencies listed herein, to adopt, promulgate, or amend by rule the application form to be used by the applicant for site certification.

(3) In consultation with the other agencies listed herein, to adopt, promulgate, or amend reasonable rules identifying targeted industries and facility types and implementing the procedural provisions of this act.

(4) To receive applications for project site certification and to determine the completeness thereof.

(5) To determine the sufficiency of applications for project site certification in matters not relating to environmental permitting or local comprehensive plans and land development regulations.

(6) In consultation with the other agencies listed herein, to make, or contract for, special studies of the project and site.

(7) To accept such fees as allowed by this act.

(8) To notify all affected agencies of the filing of a notice of intent within 5 days after receipt of the notice.

(9) To create and maintain mailing lists of persons and organizations substantially affected by the proposed project and affected persons who request to be notified of the filing of a notice of intent under this part. The mailing list must include organizations interested in the environmental, economic, social, or community impacts of projects sited under this part.

(10) To receive and compile comments regarding the proposed project.

403.955 Department of Environmental Regulation; powers and duties enumerated.—The Department of Environmental Regulation shall have the following powers and duties in relation to this act:

(1) To prescribe the form, content, and necessary supporting documentation and studies to be prepared by the applicant in regard to meeting the agency nonprocedural standards for environmental permitting.

(2) To determine the sufficiency of applications for project site certification as they pertain to meeting the agency nonprocedural standards relating to the environmental permitting of the state.

(3) To prescribe the methods for monitoring the environmental effects arising from the construction and operation of certified projects to assure continued compliance with the terms of the certification.

(4) To act as staff and agent for the siting board with respect to issuing a final order approving certification when no certification hearing has been conducted.

403.9551 Affected local governments; powers and duties enumerated.—The affected local government shall have the following powers and duties in relation to this act:

(1) To determine the sufficiency of applications for project site certification as they pertain to meeting the agency nonprocedural standards relating to local comprehensive plans and land development regulations.

(2) To amend a local government comprehensive plan pursuant to s. 403.9615.

403.956 Applicability and certification.—

(1) The provisions of this act shall apply to any projects as defined herein.

(2) At the option of the applicant, any project found by the Department of Commerce to be eligible under the criteria of s. 403.953 may utilize the procedures of this part to obtain agency licenses necessary to facilitate the location of the project in the State of Florida.

(3) Nothing in this part shall be construed to require any eligible project to utilize the procedures of this part in lieu of ordinary agency permit procedures prescribed by law.

(4) Nothing in this part shall create a presumption that a proposed project should be certified.

(5) No project authorized to utilize other siting acts in this chapter or chapter 341 shall be sited using the procedures of this part.

403.957 Application process.—

(1) The process for project site certification is commenced by the filing by the applicant with the Department of Commerce of a notice of intent to file a site certification application. When the notice is filed, a copy shall be served by the applicant on the Department of Environmental Regulation and on all other agencies whose jurisdiction is reasonably expected to be affected by the proposed project.

(2) The notice shall contain a description of the project which fully discloses the purpose, function, and number of jobs to be created by the project, a legal description, a map showing its location in relation to wetlands, water bodies, and the habitat of threatened or endangered species, highways, and adjacent pre-existing developments. The notice shall also indicate general information, the types of waste streams, pollutants expected to be discharged, if any, whether any hazardous materials are anticipated to be handled or used in manufacturing processes on the project site, and the size of any chemical or petroleum storage tanks proposed to be constructed. The notice shall include, in general terms, information on the appropriate number of square feet of buildings and paved areas proposed to be constructed, including all access roads and parking. If the project proposes to occupy public lands or to require an amendment to the zoning classification, or comprehensive land use plan of any local government, this information shall also be disclosed.

(3) The notice shall be in the form prescribed by rule of the Department of Commerce and shall include all information necessary for the Department of Commerce to render a decision concerning whether the proposed project is eligible for site certification under this part. Such information shall include:

(a) Applicant identification.

(b) Proposed project sites.

(c) Proposed installations, if any.

(d) The number of jobs expected to be created once the project is fully operational.

(e) The project annual average wage expected once the project is fully operational.

(f) A description of the nature of goods or services to be produced by the project.

(g) Other project information, including proposed timelines for project achievement.

(h) Evidence of the financial responsibility of the applicant.

(i) Agency licenses which the applicant believes are necessary for achievement of the proposed project.

(4) Within 7 days of the filing of the notice of intent, the applicant shall cause a notice to be published in newspapers of general circulation in the county or counties where the proposed project is to be located. The notice shall comply with s. 403.967 and shall be in a form prescribed by rule of the Department of Commerce.

(5) Within 10 days after filing of a notice of intent, the Department of Commerce shall conduct a meeting of all agencies having jurisdiction over the proposed project to ascertain what agency licenses would be necessary from the affected agencies for achievement of the proposed project, to identify the agencies required to participate in the processing of an application for siting of the project, and to identify other persons entitled to notice of any application. Persons and organizations on the mailing list identified in s. 403.954(9) shall be entitled to written notice of the application. Any agency's failure to attend shall be reported to the siting board. In identifying persons and organizations entitled to notice, the Department of Commerce shall consider persons and organizations that have concerns with environmental, economic, social and community impacts. No later than 14 days after the filing of a notice of intent, the Department of Commerce shall issue a decision as to whether the applicant is eligible to utilize the site certification procedure. The decision shall be in writing.

(6) Upon the issuance of the applicant eligibility decision, the applicant may file an application for site certification with the Department of Commerce. The application shall be processed by the Department of Commerce in consultation with the Department of Environmental Regulation, the local government and the other affected agencies of jurisdiction under the time schedule specified in this act.

(7) The applicant shall be responsible for distributing copies of its application and any amendments thereto to all affected agencies listed in s. 403.961(2). When the application is filed with the Department of Com-

merce, the applicant shall simultaneously serve a copy upon the affected agencies listed in s. 403.961(2). It shall be the responsibility of the Department of Commerce to assure that the applications and amendments are distributed in a timely fashion so that the application processing is not delayed.

403.958 Determination of completeness and sufficiency.—

(1) Within 7 days of the date an application is filed with the Department of Commerce, the Department of Commerce shall give written notification to the applicant and affected agencies as to whether the application is complete.

(2) If the applicant does not withdraw the application or does not desire to supply information deemed necessary to complete the application, the Department of Commerce shall recommend denial of the application in a written recommendation which shall be considered by the siting board at the next regularly scheduled meeting of the board. The applicant shall file a written response to the recommendation within 10 days of the issuance of the recommendation expressing its position as to the completeness issues identified in the order. The board may accept or reject the recommendation of denial or determine the application to be complete. If the application is denied for incompleteness, such denial shall be without prejudice to the refiling of the application including all information needed for completeness as previously determined and shall be without prejudice to the filing of separate applications for needed licenses.

(3) If the applicant accepts the determination of the Department of Commerce as to completeness, it shall file any additional information necessary to complete the application. Within 7 days after the receipt of additional information, the Department of Commerce shall inform the Department of Environmental Regulation, the affected local governments, and other affected agencies whether the application is complete.

(4) Within 7 days after an application has been determined to be complete, the Department of Commerce shall issue and serve on the applicant and all agencies a proposed schedule for processing of the application, including dates for sufficiency determinations, deadlines for report submissions by affected and other agencies, and other significant dates applicable to the certification process.

(5) Within 25 days of the date on which an application is deemed to be complete for purposes of this part, and after consultation with the affected agencies, the Department of Commerce shall give written notification to the applicant and the affected agencies and qualified organizations as defined in s. 403.962, as to whether the application is sufficient, with the Department of Environmental Regulation determining the sufficiency of information pertaining to environmental impacts and the affected local governments determining the sufficiency of information pertaining to local comprehensive plans and land development regulations. All affected agencies listed in s. 403.961(2) have 15 days from the date the application is declared complete in which to provide written sufficiency comments to the Department of Environmental Regulation and the affected local government. Within 20 days of the date on which an application is deemed complete, the Department of Environmental Regulation and the affected local government shall provide sufficiency comments to the Department of Commerce.

(6) If the application is declared insufficient, the applicant may, at its option, supply additional information necessary to make the application sufficient, request that the application be processed on the basis of information already submitted, or withdraw the application. If the applicant elects to supply additional information, within 25 days after the date on which additional information is received, the Department of Commerce shall give notification to the applicant and affected agencies as to whether the additional information renders the application sufficient, with the Department of Environmental Regulation determining the sufficiency of information pertaining to environmental impacts and the affected local governments determining the sufficiency of information pertaining to local comprehensive plans and land development regulations. Timeframes for affected agencies to provide sufficiency comments under this subsection shall be identical to those established in subsection (5). If an applicant desires that its application be processed on the basis of information already submitted, it shall inform the department and all affected agencies in writing, thereby waiving any further opportunity to render its application sufficient.

403.959 Initial public meeting.—Within 14 days of the determination of application completeness, the Departments of Commerce and Environmental Regulation, in cooperation with the local government, shall jointly conduct a public meeting in the county wherein the project is to be located.

(1) A notice announcing this public meeting shall be published by the Department of Commerce at least 10 days prior to the meeting date. The notice shall be published as specified in s. 403.967(2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(2) The purposes of this meeting shall be to:

(a) Describe for the general public the nature and location of the proposed project based on the completed application.

(b) Describe for the general public the possible environmental and other potential impacts which may result from the project.

(3) Describe for the general public procedures available for providing comments and participating in the certification process.

(4) Record initial public comments regarding the proposed project and its impacts.

403.960 Assignment of hearing officer.—

(1) Within 7 days after an application has been declared sufficient or an applicant has requested that its application be processed on the basis of information already submitted, the Department of Commerce shall request the director of the Division of Administrative Hearings to assign a hearing officer for all proceedings necessary under this act with respect to the application. A copy of the certification application shall accompany the request. The Division of Administrative Hearings shall assign a hearing officer within 7 days after receiving the request from the Department of Commerce. In assigning a hearing officer, the director shall, whenever practicable, assign a hearing officer with prior experience in site certification proceedings under this chapter.

(2) Within 7 days after receiving a copy of the certification application, the Division of Administrative Hearings shall issue a notification to affected agencies that the application is pending before the division.

403.961 Statements of issues and reports; written analyses.—

(1) Within 10 days of the date on which the hearing officer issues a notification to affected agencies that the application is pending before the Division of Administrative Hearings, each affected agency shall file with the hearing officer a preliminary statement of issues raised by the application. Copies shall be furnished to the applicant, the Department of Commerce, the Department of Environmental Regulation, the affected local governments, and all other affected agencies. No failure to raise any issue in this statement shall be deemed to preclude an agency from raising the issue in its final report.

(2) Each of the following agencies shall prepare a report as to matters within its jurisdiction expected to be affected by the proposed project, which report shall be submitted to the applicant, the Department of Commerce, the Department of Environmental Regulation, the affected local governments, and all other affected agencies, no later than 65 days after the date the application is determined to be sufficient:

(a) The Department of Transportation.

(b) The Department of Natural Resources.

(c) The Department of Community Affairs.

(d) The Florida Game and Fresh Water Fish Commission.

(e) Each water management district having jurisdiction over any proposed site or installation.

(f) Each regional planning council having jurisdiction over any proposed site or installation.

(g) Any other agency, if requested by the Department of Commerce, shall also prepare reports as to matters within that agency's jurisdiction expected to be affected by the proposed project.

(3) In order to maintain their right to petition for a certification hearing, qualified organizations as defined in s. 403.962 which were notified of the application by the Department of Commerce as set forth in s. 403.957(5) must notify the Department of Commerce in writing of their continuing interest in the project no later than 65 days after the date that

department has issued its written determination of sufficiency. This notification shall include an identification of project issues the qualified organization believes are raised by the application. The failure to notify the Department of Commerce in no way precludes qualified organizations from participating in the certification hearing if one is held.

(4) Each agency report shall contain all information on matters relating to the need for variances, exceptions, exemptions, or other relief which may be necessary to facilitate the location of the proposed project. The report shall also contain any proposed conditions of certification which the agency believes are necessary to meet agency nonprocedural standards. For each proposed condition of certification, the agency shall list the specific statute, rule, or ordinance which authorizes the proposed condition.

(5) No later than 85 days after the application was determined to be sufficient or an applicant has requested that its application be processed on the basis of information already submitted, the following reports shall be submitted to the Department of Commerce:

(a) An analysis by the Department of Environmental Regulation of all environmental impacts of the proposed project based on the reports submitted by other agencies and its own assessment. This analysis shall include the Department of Environmental Regulation's recommendations for:

1. Whether, from an environmental protection perspective, certification should be issued for the proposed project.

2. Any variances, exceptions, exemptions, or other relief which may be necessary to facilitate the location of the proposed project.

3. Any conditions of certification that the agency believes are necessary to meet agency nonprocedural standards.

(b) An analysis by the affected local governments of all local comprehensive plan and land development regulation impacts, including the impact of the proposed project on adjacent local governments or regionally significant resources, based on reports submitted by the regional planning council and the Department of Community Affairs and its own assessment. Prior to submission to the Department of Commerce, the affected local governments shall approve their analyses by resolution after a duly noticed public hearing. This analysis shall include the local government's findings as to:

1. Whether the project is consistent with agency nonprocedural standards in the local government comprehensive plan and land development regulations, including the status of any comprehensive plan amendment needed for the project.

2. Any variances, exceptions, exemptions, or other relief which may be necessary to facilitate the location of the project.

3. Any appropriate conditions of certification that should be imposed.

(6) Each agency preparing a report shall include in that report any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any projects proposed for certification. Failure to include such nonprocedural requirements shall be treated as a waiver from nonprocedural requirements of the Department of Environmental Regulation or any other affected agency. However, no variance shall be granted from standards or regulations of the Department of Environmental Regulation applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

(7) No later than 90 days after the date on which the application was determined to be sufficient or an applicant has requested that its application be processed on the basis of information already submitted, the Department of Commerce shall issue a compiled report to the applicant and all affected agencies, which shall include:

(a) Without modification the analyses and proposed conditions of certification provided by the Department of Environmental Regulation and the local government as provided for in subsection (4).

(b) Its own analyses and recommendations as to the economic and fiscal impacts of the proposed project.

(c) Copies of all reports and written analyses required by this section.

(d) Copies of written comments received by the Department of Commerce from any interested person with respect to the application.

(e) A discussion by the Department of Commerce of remedial measures, if any are necessary, which might remove barriers identified regarding the location of the proposed project in Florida.

(f) A recommendation by the Department of Commerce, as to whether, from an economic perspective, certification should be issued for the proposed project.

(8) The Department of Commerce shall publish a notice of the issuance of the compiled report. The notice shall be published on the same date the report is issued and shall state that the report is available to the public. The notice shall identify the proposed agency action reflected in the compiled report and shall contain a statement of the right to request a certification hearing. The notice shall be published as specified in s. 403.967(2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(9) Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report shall be grounds to deny or condition certification.

(10) In regard to the properties, including state-owned lands, and works of any state agency, Board of Trustees of the Internal Improvement Trust Fund, or any water management district which is a party to this siting process, each such agency shall submit to the Department of Commerce, no later than 85 days after the date the application was deemed sufficient or an applicant has requested that its application be processed on the basis of information already submitted, an analysis of project issues relating to the use of, the connection thereto, or the crossing thereof, such properties and works to site the project. This analysis shall include the issue of granting or denying any necessary license, easement, or other interest for such use, connection, or crossing and, as appropriate, the agency's schedule for processing an application for license, easement, or other interest. Should said agency be unable to complete its analysis within the specified timeframe, that agency shall report to the siting board the reasons for this inability at the next regularly scheduled meeting of the siting board. Nothing contained in this part shall relieve an applicant from any requirement to obtain permission to use or occupy lands owned by a state agency, Board of Trustees of the Internal Improvement Trust Fund, or any water management district. The applicant shall be required to seek any necessary interest in lands owned by a state agency, Board of Trustees of the Internal Improvement Trust Fund, or any water management district before, during, or after the certification proceeding, and certification may be made contingent upon the issuance of the appropriate interest in such lands.

403.9615 Plan amendment required.—In the event that an amendment to one or more local government comprehensive plans would be needed to make a project consistent with applicable local government comprehensive plans, the following process shall apply:

(1) Within 30 days after receipt of the determination of sufficiency, or within 30 days after the date an applicant has requested that its application be processed on the basis of information already submitted, the local government shall adopt a plan amendment to make the project consistent or choose not to adopt the plan amendment. This action shall be taken at a public hearing noticed in accordance with s. 163.3184(15)(b)2., except that the public hearing pursuant to s. 163.3184(15)(b)1. shall not be required. A decision to not adopt the plan amendment shall cause the project not to be eligible for processing under this act.

(2) If a plan amendment is adopted, the local government shall submit the plan amendment to the Department of Community Affairs within 5 days. Within 30 days of the receipt of the comprehensive plan amendment, the Department of Community Affairs shall, after consultation with other affected agencies, issue a notice of intent to find the plan amendment either in compliance or not in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act.

(3) If the Department of Community Affairs determines that the local government comprehensive plan amendment is not in compliance,

the Department of Community Affairs shall promptly initiate efforts to enter into a compliance agreement with the local government. In the event a compliance agreement is not entered into within 100 days of receipt of the determination of sufficiency, or an applicant has requested that its application be processed on the basis of information already submitted, the Department of Community Affairs shall request a certification hearing pursuant to s. 403.962 and the issues in dispute shall be consolidated into the certification hearing and be addressed in the recommended order issued by the hearing officer.

(4) In the event an affected person as defined in s. 163.3184(1)(a) files a petition challenging the notice of intent issued by the Department of Community Affairs within 21 days of the publication of the notice, the petition shall constitute a request for a certification hearing pursuant to s. 403.962 and such proceeding shall be consolidated into the certification hearing. The petition shall separately state with reasonable particularity the factual and legal bases for the challenge.

(5) A comprehensive plan amendment adopted pursuant to this act shall be exempt from the limitation on the frequency of plan amendments contained in s. 163.3187.

403.962 Certification hearing; cancellation; parties.—

(1) The assigned hearing officer shall conduct a certification hearing in the county of the proposed site no later than 150 days after the application for project certification is deemed to be sufficient or an applicant has requested that its application be processed on the basis of information already submitted. All proceedings are governed by chapter 120 except as modified by this act. The hearing shall only be conducted in the event that a hearing is requested by the applicant, an affected agency, a person having a substantial interest which is affected by the proposed certification, a qualified organization, or an affected person who files a petition pursuant to s. 403.9615(4). In determining whether a hearing shall be conducted, the following procedures shall apply:

(a) At any time following the assignment of the hearing officer, but no later than 10 days after the date on which the agency receives the compiled report, any affected agency listed below which opposes certification of the proposed project may request a hearing by filing with the hearing officer and serving on all parties a request for hearing. The request for hearing shall separately state with reasonable particularity the factual and legal bases for the agency's opposition to the certification or dispute with any recommendations or proposed conditions of certification contained in the compiled report.

(b) The following agencies shall be entitled to request the conduct of a certification hearing under this section:

1. The Department of Environmental Regulation.

2. The Department of Natural Resources.

3. The Florida Game and Fresh Water Fish Commission.

4. The Department of Community Affairs.

5. The Department of Transportation.

6. Any water management district having jurisdiction over a site or installation associated with the proposed project.

7. Any local government having jurisdiction over a site or installation associated with the proposed project.

(c) No later than 20 days after the date on which the applicant receives the compiled report of the Department of Commerce, if the applicant believes itself aggrieved by the report or any proposed conditions of certification, it may request the conduct of a hearing by filing with the hearing officer and serving on all parties a request for hearing. The request for hearing shall separately state with reasonable particularity the factual and legal bases for the applicant's dispute with any recommendation or proposed condition of certification contained in the compiled report. Failure of an applicant to request a hearing within the allotted time shall constitute a waiver of the applicant's right to request a hearing concerning the proposed certification decision or any term or condition of certification contained in the compiled report of the department.

(d) No later than 20 days after notice of the issuance of the compiled report is published in accordance with s. 403.961(8), any person having a substantial interest which would be affected by the proposed certification decision, or any qualified organizations, may request the conduct of a hearing by filing with the hearing officer and serving on all parties a request for hearing. The request for hearing shall separately state with reasonable particularity the factual and legal bases for the person's or qualified organization's challenge to any recommendation or proposed condition of certification contained in the compiled report. In order for a petition for a hearing to be granted under this paragraph, the factual and legal bases for the challenge must be cognizable within the context of the applicable agency nonprocedural standards, including applicable comprehensive plans and land use regulations of the affected local governments. Failure of any person to request a hearing within the allotted time shall constitute a waiver of the person's or qualified organization's right to request a hearing concerning the proposed certification decision or any term or condition of certification contained in the compiled report of the department.

(e) If a hearing is timely requested in accordance with the procedures of this section, the assigned hearing officer shall issue a notice of hearing for the hearing no later than 40 days prior to the scheduled date for the hearing. The applicant, and all the agencies identified in subparagraph (b)1.-7. shall be mandatory parties to the certification hearing. The following may become parties to the proceeding by filing with the hearing officer and serving on all parties a notice of intent to become a party at least 20 days prior to the date of the certification hearing:

1. Any agency not listed in subsection (b).

2. Any qualified organizations.

(f) If a hearing is timely requested under this section, the hearing officer shall make provision for the receipt of oral and written testimony from members of the public at a public hearing held in conjunction with the certification hearing. Such testimony shall be subject to cross examination. A record of the public hearing shall be part of the record in the certification hearing.

(2) For the purposes of this part, qualified organizations shall include only nonprofit corporations or associations, classified under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code, that were formed prior to the publication of the notice required by s. 403.957(3), with organizational purposes that promote conservation of natural resources or protection of the environment, public health, and biological values; or to promote consumer interests, economic development, comprehensive planning, or orderly development of the area in which the proposed project is to be located.

(3) If a certification hearing is conducted, the hearing officer shall, after consideration of all evidence received during the certification hearing, submit to the siting board a recommended order no later than 30 days after the filing of the transcript of the certification hearings with the Division of Administrative Hearings. Failure to submit a recommended order within this time shall be reported to the siting board. The recommended order shall be presented for final disposition of the application by the siting board at its next regularly scheduled agenda.

(4) If no hearing is timely requested under the procedures set forth in subsection (1), the hearing officer shall enter an order relinquishing jurisdiction of the application to the Department of Environmental Regulation for preparation of a final order approving certification.

403.963 Final disposition of application.—

(1) If a recommended order has been issued in connection with an application after a certification hearing, the siting board shall, after considering the recommended order and any exceptions thereto, act upon the application by written order approving or denying certification. If the siting board denies certification, it shall state its reasons for so doing and set forth in writing what action, if any, the applicant would have to take in order to secure approval of the application.

(2) In determining whether to approve or deny certification, the siting board must determine that the project is in compliance with the agency nonprocedural standards. The board shall base its decision to approve or deny certification upon consideration of whether the project will be in compliance with agency nonprocedural standards, including whether the project is consistent and in compliance with applicable comprehensive plans and land use regulations of the affected local governments.

(3) If no recommended order has been issued because no certification hearing has been held, the Department of Environmental Regulation, in

its capacity as staff and agent for the siting board, shall prepare and issue a final order approving certification within 5 days after the Division of Administrative Hearings issues an order relinquishing jurisdiction which incorporates all of the recommended conditions of certification proposed by the affected agencies.

403.964 Alteration of time limits.—Any time limitation in this act may be altered by the designated hearing officer upon stipulation among the Department of Commerce, the Department of Environmental Regulation, the affected local governments, and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party.

403.965 Superseded laws, regulations, and certification power.—

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any statute, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such statute, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the certification of projects and project sites as defined in this act.

(3) The board shall have the power to adopt reasonable procedural rules to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, onestop licensing process.

403.966 Effect of certification.—

(1) Subject to the conditions set forth therein, any certification signed by the Governor shall constitute the sole license of the state and any agency, whose authority to permit or license is derived by statute, as to the approval of the site and the construction and operation of the proposed project except for the issuance of Department of Environmental Regulation licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the applicant named therein to construct and operate the proposed project, subject only to the conditions of certification set forth in such certification, and except for the issuance of Department of Environmental Regulation licenses or permits required under any federally delegated or approved permit program.

(b) Except as provided in subsection (4), the certification may include conditions, to the extent authorized by the applicable law or rule, which constitute variances, exemptions, or exceptions from nonprocedural standards of the Department of Environmental Regulation, the local government, or any agency that were expressly considered during the proceeding unless waived by the agency as provided in s. 403.961(6) and that otherwise would be applicable to the construction and operation of the proposed project. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters, or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule.

(3) The certification shall be in lieu of any license required by any agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 298, chapter 370, chapter 373, chapter 376, s. 380.06, chapter 381, chapter 387, chapter 403, chapter 404, the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4) This act shall not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes, or preempt the right of any agency to charge fees for the renewal of any license necessary for the operation of projects receiving a certification under this part.

(5)(a) Any project certified pursuant to this act shall comply with rules adopted by the Department of Environmental Regulation and other affected agencies subsequent to the issuance of the certification which prescribed new or stricter criteria, to the extent that the rules are applicable to projects. Except when express variances, exceptions, exemptions, or other relief has been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the Department of Commerce, the Department of Environmental Regulation, and the affected local governments, any holder of a certification issued pursuant to this act may choose to operate the certified project in compliance with any rule subsequently adopted by the Department of Environmental Regulation which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

(6) A certification under this part shall authorize the construction and operation of all installations associated with the certified project, subject only to duration limitations expressly provided in applicable conditions of certification pertaining to the operation of such projects. Certification pertaining to the operation of such projects shall be issued for durations as established in requirements of the agencies. No later than 60 days prior to the expiration of any applicable duration limitation for the operation of any project covered by the certification, the applicant shall submit to the affected agency the appropriate license application necessary to secure continuing operational authorization. If a timely license application for continuing operational authorization is filed with the affected agencies, the applicant shall be authorized to operate any project pending final agency disposition of the license application.

403.967 Notice; costs of proceeding.—

(1) The following notices are to be published by the applicant:

(a) A notice of the filing of a notice of intent under s. 403.957 shall be published within 7 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) A notice of filing of the application, which shall be published as specified in subsection (2), within 15 days after the application has been determined complete. Such notice shall give notice of the provisions of s. 403.966(1) and (2).

(c) Notice of the certification hearing, which shall be published as specified in subsection (2), no later than 30 days before the hearing.

(d) Notice of modification when required by the Department of Environmental Regulation, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification, except that the newspaper notice shall be of a size as directed by the Department of Commerce commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be provided as specified in this paragraph.

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed project will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper and shall be published in a section of the newspaper other than the legal notices section. These notices shall include a map generally depicting the project and all associated facilities. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The Department of Commerce shall:

(a) Publish in the Florida Administrative Weekly notices of the filing of the notice of intent; of the filing of the application; of the certification hearing; of the hearing before the board; and of stipulations, proposed agency action, or petitions for modification.

(b) Provide copies of those notices to any persons who have requested to be placed on the Department of Commerce mailing list pursuant to s. 403.957(5).

(5) The notice requirements of this part shall supersede any notice requirements provided in chapters 125, 163, and 166, as such notice relates to any proposed project.

403.968 Review.—Proceedings under this act shall be subject to judicial review as provided in chapter 120. Separate appeals of the certification order issued by the board and of any Department of Environmental Regulation permit issued pursuant to a federally delegated or approved permit program shall be consolidated for purposes of judicial review.

403.969 Compliance and enforcement; revocation of certification.—

(1) The Department of Environmental Regulation shall be the designated agent of the siting board to assure compliance with the terms and conditions of any certification issued under this part.

(2) Violation of any term or condition of a certification issued under this part shall constitute conduct prohibited by s. 403.161(1) and a violation of this chapter, punishable as provided in ss. 403.121, 403.131, 403.141, and 403.161.

(3) A certification issued under this part may be revoked:

(a) For any material false statement in the application for certification which the applicant knew or should have known was not true on the date final action to approve the certification was taken by the siting board; or

(b) For any failure to comply with the terms or conditions of the certification.

(4) The Department of Environmental Regulation is hereby authorized to enter into interagency agreements with affected agencies with respect to delegation of compliance and enforcement activities for certifications issued under this part. However, nothing in this subsection shall be deemed to interfere with the ability of the Department of Environmental Regulation to undertake independent enforcement in the absence of action by any agency to whom enforcement has been delegated.

403.970 Availability of information.—The Department of Commerce shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this act.

403.971 Modification of certification.—

(1) A certification may be modified after issuance in any one of the following ways:

(a) The Department of Environmental Regulation, the Department of Commerce, or the local government may modify the terms and conditions of the certification if no party to the original certification objects in writing to such modification within 45 days after notice by mail to such party's last address of record, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice. If objections are raised, the applicant may file a petition for modification pursuant to paragraph (b).

(b) A petition for modification may be filed by the applicant, the Department of Commerce, the Department of Environmental Regulation, or the affected local governments setting forth:

1. The proposed modification.

2. The factual reasons asserted for the modification.

3. The anticipated effects of the proposed modification on the applicant, the public, and the environment.

(2) The petition for modification shall be filed with the Department of Environmental Regulation and the Department of Commerce and the Division of Administrative Hearings.

(3) Petitions filed pursuant to paragraph (1)(b) shall be disposed of in the same manner as an application, but with time periods established by the hearing officer commensurate with the significance of the modification requested.

(4) Any agreement for modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards of the Department of Environmental Regulation applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

403.972 Fees; disposition.—The Department of Commerce shall charge the following fees, as appropriate, which shall be paid into the Department of Commerce Economic Development Trust Fund:

(1) A fee for a notice of intent in the amount of $2,500, to be submitted to the department at the time of filing of a notice of intent. The notice of intent fee shall be used and disbursed in the same manner as the application fee.

(2) An application fee, which shall not exceed $150,000. The fee shall be fixed by rule on a sliding scale related to the proposed project size and the number and size of local governments in whose jurisdiction the project is located.

(a) Thirty percent of the fee shall go to the Department of Commerce to cover any costs associated with reviewing and acting upon the application, and to cover the costs of the public notices published by the Department of Commerce.

(b) Upon written request with proper itemized accounting, the Department of Commerce shall transfer to the Division of Administrative Hearings such funds as are required to cover the cost and expenses associated with proceedings conducted by the division under this part.

(c) Upon written request with proper itemized accounting within 90 days after final agency action or withdrawal of the application, the Department of Commerce shall reimburse the Department of Environmental Regulation, the Department of Community Affairs, the Department of Natural Resources, the Game and Fresh Water Fish Commission, and any water management district created pursuant to chapter 373, regional planning council, and affected local governments in the jurisdiction of which the proposed project is to be located, and any other agency from which the Department of Commerce requests special reports pursuant to s. 403.961(2)(g) or with which the Department of Commerce contracts for field services associated with the monitoring, construction, and operation of the facility. Such reimbursement shall be authorized for the preparation of any reports or studies or the conduct of any compliance monitoring required of the agencies by this act, and for agency travel and per diem to attend any hearing held pursuant to this act, and for local governments to participate in the proceedings. In the event the amount available for allocation is insufficient to provide for complete reimbursement to the agencies, reimbursement shall be on a prorated basis.

(d) If any sums are remaining, the Department of Commerce shall retain them for its use in the same manner as is otherwise authorized by this act. However, that if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after withdrawal.

(3) A certification modification fee, which shall not exceed $15,000, shall be submitted to the Department of Commerce with a formal petition for modification to the Department of Commerce pursuant to s. 403.971. This fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (2).

Section 70. Sections 288.501, 288.502, 288.505, 288.506, 288.507, 288.508, 288.509, 288.51, 288.511, 288.512, 288.513, 288.514, 288.515, 288.516, 288.517, and 288.518, Florida Statutes; section 288.503, Florida Statutes, as amended by chapter 90-331, Laws of Florida; and section 288.504, Florida Statutes, as amended by chapter 91-221, Laws of Florida, are hereby repealed.

Section 71. Effective October 1, 1993, there is hereby appropriated for fiscal year 1993-1994, $172,000 and three full-time employees to the Department of Environmental Regulation and $100,000 and two full-time employees to the Department of Commerce from the Economic Development Trust Fund to implement the provisions of Section 69 of this act.

Section 72. Effective July 1, 1993, it is the intent of the Legislature to transfer the protection of wetlands and the permitting of wetlands impacts encompassed by the Warren S. Henderson Wetlands Protection Act of 1984 to chapter 373, Florida Statutes. It is the further intent of the Legislature that the Department of Environmental Regulation and the water management districts shall consolidate all permits for activities involving dredging and filling, management and storage of surface waters including stormwater control, and the alteration of mangroves into a single type of permit, which shall be known as an "environmental resource permit."

Section 73. Effective July 1, 1993, subsection (17) is added to section 373.019, Florida Statutes, to read:

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the following words shall, unless the context clearly indicates otherwise, mean:

(17) For the sole purpose of serving as the basis for the unified statewide methodology adopted pursuant to s. 373.421(1), as amended, "wetlands" means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. Upon legislative ratification of the methodology adopted pursuant to s. 373.421(1), as amended, the limitation contained herein regarding the purpose of this definition shall cease to be effective.

Section 74. Effective July 1, 1993, subsection (4) is added to section 373.046, Florida Statutes, to read:

373.046 Interagency agreements.—

(4) The Legislature recognizes and affirms the division of responsibilities between the department and the water management districts as set forth in sections III. and X. of each of the operating agreements codified as rules 17-101.040(12)(a)3., 4., and 5., Florida Administrative Code. Section IV.A.2.a. of each operating agreement regarding individual permit oversight is rescinded. The department shall be responsible for permitting those activities under part IV of this chapter which, because of their complexity and magnitude, need to be economically and efficiently evaluated at the state level, including, but not limited to, mining, hazardous waste management facilities and solid waste management facilities that do not qualify for a general permit under chapter 403, Florida Statutes. With regard to post-certification information submittals for activities authorized under chapters 341 and 403 siting act certifications, the department, after consultation with the appropriate water management district and other agencies having applicable regulatory jurisdiction, shall be responsible for determining the permittee's compliance with conditions of certification which were based upon the non-procedural requirements of part IV of this chapter. The Legislature authorizes the water management districts and the department to modify the division of responsibilities referenced in this section and enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, to provide for greater efficiency and to avoid duplication in the administration of part IV of this chapter by designating certain activities which will be regulated by either the water management districts or the department. In developing such interagency agreements, the water management districts and the department should take into consideration the technical and fiscal ability of each water management district to implement all or some of the provisions of part IV of this chapter. Nothing herein rescinds or restricts the authority of the districts to regulate silviculture and agriculture pursuant to part IV of chapter 373 or s. 403.927. By December 10, 1993, the secretary of the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the efficiency of the procedures and the division of responsibilities contemplated by this subsection and regarding progress toward the execution of further interagency agreements and the integration of permitting with sovereignty lands approval. The report also will consider the feasibility of improving the protection of the environment through comprehensive criteria for protection of natural systems.

Section 75. Effective July 1, 1993, section 373.109, Florida Statutes, is amended to read:

373.109 Permit application fees.—When a water management district governing board, *the department, or a local government* implements a regulatory system under this chapter or one which has been delegated ~~to it~~ pursuant to chapter 403, it may establish a schedule of fees for filing applications for the required permits. Such fees shall not exceed the cost to the district, *the department, or the local government* for processing, monitoring, and inspecting for compliance with the permit.

(1) All moneys received under the provisions of this section shall be allocated for the use of the water management district, *the department, or the local government, whichever processed the permit,* and shall be in addition to moneys otherwise appropriated in any general appropriation act. *All moneys received by the department under the provisions of this section shall be deposited in the Florida Permit Fee Trust Fund established by s. 403.0871 and shall be used by the department as provided therein. Moneys received by a water management district or the department under the provisions of this section shall be in addition to moneys otherwise appropriated in any general appropriation act.*

(2) The failure of any person to pay the fees established hereunder constitutes grounds for revocation or denial of the permit.

Section 76. Effective July 1, 1993, subsection (1) of section 373.114, Florida Statutes, is amended to read:

373.114 Land and Water Adjudicatory Commission; review of district rules and orders; department review of district rules.—

(1) Except as provided in subsection (2), the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district, other than a rule relating to an internal procedure of the district, to ensure consistency with the provisions and purposes of this chapter. *Subsequent to the legislative ratification of the delineation methodology pursuant to s. 373.421(1), this subsection also shall apply to an order of the department, or a local government exercising delegated authority, pursuant to ss. 373.403-373.443, except an order pertaining to activities or operations subject to conceptual plan approval pursuant to chapter 378.*

(a) Such review may be initiated by the department or by a party to the proceeding *below* by filing a request for review with the Land and Water Adjudicatory Commission and serving a copy on the department and on any person named in the rule or order within 20 days after adoption of the rule or the rendering of the order~~; however, when the rule or order to be reviewed has statewide or regional significance, as determined by the Land and Water Adjudicatory Commission within 60 days after receipt of a request for review, the commission may accept a request for review from any affected person within 30 days after adoption of the rule or the rendering of the order~~. *For the purposes of this section, the term "party" means any affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the rule or order that are cognizable within the scope of the provisions and purposes of this chapter, or any person who participated as a party in a proceeding instituted pursuant to chapter 120. In order for the commission to accept a request for review initiated by a party below, with regard to a specific order, four members of the commission must determine on the basis of the record below that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. Review of an order may also be accepted if four members of the commission determines that the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from the standpoint of agency precedent. The party requesting the commission to review an order must allege with particularity, and the commission must find, that:*

1. The order is in conflict with statutory requirements; or

2. The order is in conflict with the requirements of a duly adopted rule.

(b) Review by the Land and Water Adjudicatory Commission is appellate in nature and shall be based *solely* on the record below. *If there was no evidentiary administrative proceeding below, the facts contained in the proposed agency action, including any technical staff report, shall be deemed undisputed.* The matter shall be heard by the commission not more than 60 days after receipt of the request for review, *unless waived by the parties* ~~or the determination by the commission that the rule or order has statewide or regional significance, whichever is later~~.

(c) If the Land and Water Adjudicatory Commission determines that a rule *of a water management district* ~~or order~~ is not consistent with the provisions and purposes of this chapter, it may~~, in the case of a rule,~~

require the water management district to initiate rulemaking proceedings to amend or repeal the rule. *If the commission determines that an order is not consistent with the provisions and purposes of this chapter, the commission may* ~~*or, in the case of an order,*~~ rescind or modify the order or remand the proceeding ~~to the water management district~~ for further action consistent with the order of the Land and Water Adjudicatory Commission *only if the commission determines that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. In the case of an order which does not itself substantially affect natural resources of statewide or regional significance, but which raises issues of policy that have regional or statewide significance from the standpoint of agency precedent, the commission may direct the district to initiate rulemaking to amend its rules to assure that future actions are consistent with the provisions and purposes of this chapter without modifying the order.*

(d) In a review under this section of a construction permit issued pursuant to a conceptual permit under part IV, which conceptual permit is issued after July 1, 1993, a party to the review may not raise an issue which was or could have been raised in a review of the conceptual permit under this section.

(e) ~~(d)~~ A request for review under this section shall not be a precondition to the seeking of judicial review pursuant to s. 120.68 or the seeking of an administrative determination of rule validity pursuant to s. 120.56.

(f) By July 1, 1994 the Florida Land and Water Adjudicatory Commission shall adopt amendments to its procedural rules to include provisions for the scheduling of meetings to hear requests for review to assure maximum participation by members of the commission.

Section 77. Effective July 1, 1993, subsection (7) is added to section 373.129, Florida Statutes, to read:

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

(7) Enforce the provisions of part IV of this chapter in the same manner and to the same extent as provided in ss. 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

Section 78. Effective July 1, 1993, subsections (13), (14), (15), (16), and (17) are added to section 373.403, Florida Statutes, to read:

373.403 Definitions.—When appearing in this part or in any rule, regulation, or order adopted pursuant thereto, the following terms mean:

(13) "Dredging" means excavation, by any means, in surface waters, as described in s. 403.031(13), or wetlands. It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters, as described in s. 403.031(13), or wetlands, directly or via an excavated water body or series of water bodies.

(14) "Filling" means the deposition, by any means, of materials in surface waters, as described in s. 403.031(13), or wetlands.

(15) "Estuary" means a semienclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(16) "Lagoon" means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(17) "Seawall" means a manmade wall or encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion.

Section 79. Effective July 1, 1993, section 373.4135, Florida Statutes, is created to read:

373.4135 Mitigation and mitigation banking.—The Legislature finds that the adverse impacts of activities regulated under this part may be offset by the creation and maintenance of regional mitigation areas or mitigation banks. Mitigation banks can minimize mitigation uncertainty and provide ecological benefits. Therefore, the department and the water management districts are directed to participate in and encourage the establishment of private and public regional mitigation areas and mitigation banks. The department and the districts are directed to adopt rules by January 1, 1994 governing the use of mitigation banks. Such rules shall include:

(1) Circumstances in which mitigation banking is appropriate or desirable;

(2) Provisions for the establishment of mitigation banks by governmental, nonprofit, or for-profit private entities with sufficient legal or equitable interest in the property proposed for mitigation banking;

(3) Procedures for the review of mitigation banking proposals in a timely manner pursuant to chapter 120;

(4) A framework for determining the value of a mitigation bank, considering the ecological value of the mitigation bank compared to the area where adverse impacts to wetlands or surface waters are proposed. Mitigation banks found to be successful prior to withdrawal of credit shall receive greater credit than mitigation which has not yet achieved success;

(5) Procedures for the administration of bank credits so that accounting responsibilities are not unnecessarily duplicated between a water management district and the department;

(6) Requirements to ensure the financial responsibility of nongovernmental entities proposing to develop mitigation banks;

(7) Measures required to ensure the long term management and protection of mitigation banks;

(8) Criteria for the withdrawal of mitigation credits by projects within or outside the watershed where the bank is located;

(9) Criteria governing the contribution of funds or land to an approved mitigation bank;

(10) Criteria allowing the withdrawal of credits by parties other than the party creating the bank; and

(11) Provisions for the consideration of creation, restoration, enhancement, and preservation of wetlands and uplands as part of a mitigation bank.

Section 80. Effective July 1, 1993, section 373.414, Florida Statutes, is amended to read:

373.414 *Additional criteria for activities in surface waters and* wetlands.—

(1) *As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031(13) will not be violated and reasonable assurance that such activity in, on, or over surface waters, as described in s. 403.031(13), or wetlands is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.*

(a) In determining whether an activity, which is in, on, or over surface waters, as described in s. 403.031(13), or wetlands and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

5. Whether the activity will be of a temporary or permanent nature;

6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or 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 regulated activity. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.

(c) Where activities for a single project regulated under this part occur in more than one local government jurisdiction, and where permit conditions or regulatory requirements are imposed by a local government for these activities which cannot be reconciled with those imposed by a permit under this part for the same activities, the permit conditions or regulatory requirements shall be controlled by the permit issued under this part.

(2) The governing board or the department is authorized to establish by rule ~~By March 31, 1987, for those water management districts to which the department has delegated the responsibility for administration of its stormwater rule, each district shall adopt a rule which establishes~~ specific permitting criteria *in addition to the other criteria in this part which provides* ~~for certain small isolated wetlands which are not within the jurisdiction of the department for purposes of regulation of dredging and filling. The rule shall include:~~

(a) One or more size thresholds of isolated wetlands below which impacts on fish and wildlife and their habitats will not be considered. These thresholds shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal.~~;~~

~~(b) Criteria for review of fish and wildlife and their habitats for isolated wetlands larger than the minimum size;~~

(b)~~(c)~~ Criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use.~~; and~~

~~(d) Provisions for consideration of the cumulative and offsite impacts of a project or projects.~~

(3) It is the intent of the Legislature to provide for the use of certain wetlands as a natural means of stormwater management and to incorporate these waters into comprehensive stormwater management when such use is compatible with the ecological characteristics of such waters and with sound resource management. To accomplish this, the governing board or the department is authorized to establish by rule performance standards for the issuance of permits for the use of certain wetlands for stormwater management. The compliance with such standards creates a presumption that the discharge from the stormwater management system meets state water quality standards.

(4) It is the intent of the Legislature to provide for the use of certain wetlands to receive and treat domestic wastewater that at a minimum has been treated to secondary standards. The department may, by rule, establish criteria for this activity, which criteria protect the type, nature, and function of the wetlands receiving the wastewater.

(5)(a) It is the intent of the Legislature to protect estuaries and lagoons from the damage created by construction of vertical seawalls and to encourage construction of environmentally desirable shore protection systems, such as riprap and gently sloping shorelines which are planted with suitable aquatic and wetland vegetation.

(b) No permit under this part to create a vertical seawall may be issued by the governing board or the department unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in s. 315.02 or s. 403.021;

2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;

3. The proposed construction is located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or

4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(c) When considering an application for a permit to repair or replace an existing vertical seawall, the governing board or the department shall generally require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in paragraph (b) exists.

(d) This subsection shall in no way hinder any activity previously exempt or permitted or those activities permitted pursuant to chapter 161.

(6)(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 section, such 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 part 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 part 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 regulated activities' adverse impacts on surface waters and wetlands.

(d) Onsite reclamation of the mine pit for limerock and sand mining shall be conducted in accordance with the requirements of chapter 378.

1. Mitigation activities for limerock and sand mining must offset the regulated activities' adverse impacts on surface waters and wetlands. Mitigation activities shall be located on site, unless onsite mitigation activities are not feasible, in which case, offsite mitigation as close to the activities as possible shall be required. However, mitigation banking may be an acceptable form of mitigation, whether on or off site, 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.

(7)~~(2)~~ This section *shall* ~~does~~ not *be construed to diminish* ~~affect~~ the *jurisdiction or* authority *granted prior to the effective date of this act to* ~~of~~ the water management districts *or the department pursuant to this part, including their jurisdiction and authority over isolated wetlands. The provisions of this section shall be deemed supplemental to the existing jurisdiction and authority under this part* ~~to regulate impacts on water quality and water quantity~~.

(8) The governing board or the department, in deciding whether to grant or deny a permit for an activity regulated under this part shall consider the cumulative impacts upon surface waters, as described in s. 403.031(13), and wetlands of:

(a) The project for which the permit is sought.

(b) Projects which are existing or under construction or for which permits or determinations pursuant to s. 373.421 or s. 403.914 have been sought.

(c) Projects which are under review, approved, or vested pursuant to s. 380.06, or other projects which may reasonably be expected to be located within surface waters, as described in s. 403.031(13), or wetlands based upon land use restrictions and regulations.

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate the provisions of this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(29) and may include the special criteria adopted pursuant to s. 403.061(35). Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any project permitted pursuant to this part, including any mitigation for such permitted project, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

(10) The department in consultation with the water management districts, by rule, shall establish water quality criteria for wetlands, which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

(11) In addition to the statutory exemptions applicable to this part, dredging and filling permitted under or exempted from ss. 403.91-403.929 shall be exempt from the rules adopted pursuant to s. 373.414(9) if the dredging and filling activity did not require a permit under this part prior to the effective date of such rules. The exemption from such rules shall extend to:

(a) The activities approved by said chapter 403 permit for the term of the permit; or

(b) Dredging and filling exempted from the permitting requirements of ss. 403.91-403.929 which is commenced prior to the effective date of such rules, is completed within 5 years after the effective date of such rules, and regarding which, at all times during construction, the terms of the dredge and fill exemption continue to be met.

(12) Activities permitted pursuant to this part and which were either exempt or permitted pursuant to ss. 403.91-403.929 prior to the implementation of rules adopted pursuant to s. 373.414(9) shall be exempt from such rules. This exemption shall be for the plans, terms, and conditions approved in the permit issued under this part or in any permit issued under ss. 403.91-403.929, and shall be valid for the term of such permits.

(13) Any declaratory statement issued by the department under s. 403.914 or a water management district under s. 373.421 prior to the effective date of the rules adopted under s. 373.414(9) shall continue to be valid for the duration of such declaratory statement. In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under s. 373.414(9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(21), the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in Rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall be revalidated and remain in effect for a period of five years following the effective date of this act if proof of such validation is submitted to the department within six months after the effective date of this act. Within 90 days of receipt of the request for revalidation the department shall confirm whether the request is valid. Activities proposed within the boundaries of a valid declaratory statement or revalidated jurisdictional determination prior to its expiration shall continue thereafter to be reviewed under the rules adopted pursuant to this part and part VIII of chapter 403 in existence prior to the effective date of the rules adopted under s. 373.414(9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with s. 373.414(9).

(14) An application under this part for dredging and filling or other activity, which is submitted and complete prior to the effective date of rules adopted pursuant to s. 373.414(9) shall be reviewed under the rules adopted pursuant to this part and part VIII of chapter 403 in existence prior to the effective date of the rules adopted pursuant to subsection (9) and shall be acted upon by the agency which received the application, unless the applicant elects to have such activities reviewed under the rules of this part as amended in accordance with s. 373.414(9).

(15) Activities associated with mining operations as defined by and subject to chapter 378 which are subject to an interagency agreement or water management district rule in effect as of January 1, 1993 pursuant to 373.046(3) shall continue to be reviewed under the rules of the department under part VIII of chapter 403, the rules of the water management districts under this part, and such interagency agreements, in effect on January 1, 1993, until such time as the department and the Department of Natural Resources are merged and such rules are modified or repealed or until January 1, 1996, whichever occurs first.

(16) Until October 1, 1994, permit applications for sand, limerock, and limestone mining activity which had qualified under the terms of s. 403.913(8) shall be reviewed under the rules adopted pursuant to this part and part VIII of chapter 403 in existence prior to the effective date of the rules adopted under s. 373.414(9), unless the applicant elects to have such activities reviewed under the rules of this part as amended in accordance with s. 373.414(9). Unless the applicant makes such an election, in reviewing an application under part VIII of chapter 403, the reviewing agency shall utilize the dredge and fill jurisdiction of the department as it existed prior to January 24, 1984.

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant hereto. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part.

Section 81. Effective July 1, 1993, section 373.421, Florida Statutes, is amended to read:

373.421 *Delineation methods;* formal ~~wetland~~ determinations.—

(1) By January 1, 1994, the Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019 (17). This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands as described in s. 403.031(13) for the purposes of regulation under s. 373.414. This methodology shall not become effective until ratified by the Legislature. Subsequent to legislative ratification, the wetland definition in s. 373.019(17) and the adopted wetland methodology shall be binding on the department, the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, the Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition and determines that the exclusive definition and delineation methodology for wetlands shall be that established pursuant to s. 373.019(17) and this section. Upon such legislative ratification, any existing wetlands definition or wetland delineation methodology shall be superceded by the wetland definition and delineation methodology established pursuant to this chapter. All existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. How-

ever, this shall not be construed to limit any power of the department, the water management districts and local governments to amend or adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

(2)~~(1)~~ A water management district *or the department* may provide a process by rule for formal ~~wetland~~ determinations *of the extent of surface waters, as described in s. 403.031(13), and wetlands. By interagency agreement, the department and each water management district shall determine which agency shall implement the determination process within the district.* If a rule is adopted, a property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in property may petition the district for a formal ~~wetland~~ determination. In such rule, the governing board *or the department* shall specify information which must be provided and may require authorization to enter upon the property. The rule shall also establish procedures for issuing a formal ~~wetland~~ determination. The governing board may authorize its executive director to issue formal ~~wetland~~ determinations. The governing board must, by rule, prescribe the circumstances in which its executive director may issue such determinations. The governing board *or the department* may require a fee to cover the costs of processing and acting upon the petition. That fee must be established by rule.

(3)~~(2)~~ A formal ~~wetland~~ determination is binding for a period not to exceed 5 years, as long as physical conditions on the property do not change so as to alter the ~~wetland~~ boundaries *of surface waters, as described in s. 403.031(13), or wetlands* ~~during that period~~.

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

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

(6)~~(5)~~ The district *or the department* may also issue *nonbinding* informal ~~wetland~~ determinations or otherwise institute ~~wetland~~ determinations on its own initiative as provided by law.

Section 82. Effective July 1, 1993, section 373.422, Florida Statutes, is created to read:

373.422 Applications for activities on state sovereignty lands or other state lands.—If sovereignty lands or other lands owned by the state are the subject of a proposed activity, the issuance of a permit by the department or a water management district shall be conditioned upon the receipt by the applicant of all necessary approvals and authorizations from the Board of Trustees of the Internal Improvement Trust Fund prior to the undertaking of such activity. The department or the governing board shall issue its permit conditioned upon the securing of the necessary consent or approvals from the Board of Trustees of the Internal Improvement Trust Fund by the applicant. If the approval or authorization of the board is required, the applicant may not commence any excavation, construction, or other activity until such approval or authorization has been issued.

Section 83. Effective July 1, 1993, section 373.430, Florida Statutes, is created to read:

373.430 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of part IV of this chapter, and it shall be prohibited for any person:

(a) To cause pollution, as defined in s. 403.031(7), except as otherwise provided in part IV of this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by part IV of this chapter or by rule or regulation adopted pursuant thereto, or to violate or fail to comply with any rule, regulation, order, or permit adopted or issued by a water management district, the department, or local government pursuant to their lawful authority under part IV of this chapter.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under part IV of this chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under part IV of this chapter or by any permit, rule, regulation, or order issued under part IV of this chapter.

(2) Whoever commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree, punishable as provided in ss. 775.082(3)(d) and 775.083(1)(g), by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in paragraph(1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g), by a fine of not more than $5,000 or 60 days in jail, or by both, for each offense.

(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree, punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000 or by six months in jail, or by both, for each offense.

(6) It is the intent of the Legislature that the civil penalties and criminal penalties imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

(7) All moneys recovered under the provisions of this section shall be allocated to the use of the water management district, the department or the local government, whichever undertook and maintained the enforcement action. All monetary penalties and damages recovered by the department or the state under the provisions of this section shall be deposited in the Pollution Recovery Fund established by s. 403.165 and shall be used by the department as provided therein. All monetary penalties and damages recovered pursuant to this section by a water management district shall be deposited in the Water Management Lands Trust Fund established under s. 373.59 and used exclusively within the territory of the water management district which deposits the money into the fund. Any such monetary penalties and damages recovered after the expiration of such fund shall be deposited in the Pollution Recovery Fund created by s. 403.165 and used exclusively within the territory of the water management district which deposits the money into the fund. All monetary penalties and damages recovered pursuant to this subsection by a local government to which authority has been delegated pursuant to s. 373.103(8) shall be used to enhance surface water improvement or pollution control activities. Moneys recovered by a water management district or the department under the provisions of this section shall be in addition to moneys otherwise appropriated in any general appropriation act.

Section 84. Effective July 1, 1993, section 373.441, Florida Statutes, is created to read:

373.441 Role of counties, municipalities and local pollution control programs in permit processing.—

(1) The department in consultation with the water management districts shall, by December 1, 1994, adopt rules to guide the participation of counties, municipalities and local pollution control programs in an efficient, streamlined permitting system. Such rules shall seek to increase governmental efficiency, shall maintain environmental standards, and shall include consideration of the following:

(a) Provisions under which the environmental resource permit program shall be delegated, upon approval of the department and the appropriate water management districts, to a county, municipality or local pollution control program which has the financial, technical, and administrative capabilities and desire to implement and enforce the program;

(b) Provisions under which a locally delegated permit program may have stricter environmental standards than state standards;

(c) Provisions for identifying and reconciling any duplicative permitting by January 1, 1995;

(d) Provisions for timely and cost-efficient notification by the reviewing agency of permit applications, and permit requirements, to counties, municipalities, local pollution control programs, the department or water management districts, as appropriate;

(e) Provisions for insuring the consistency of permit applications with local comprehensive plans;

(f) Provisions for the partial delegation of the environmental resource permit program to counties, municipalities or local pollution control programs, and standards and criteria to be employed in the implementation of such delegation by counties, municipalities and local pollution control programs;

(g) Special provisions under which the environmental resource permit program may be delegated to counties or municipalities with, or local pollution control programs serving, populations of 50,000 or less; and

(h) Provisions for the applicability of chapter 120 to local government programs when the environmental resource permit program is delegated to counties, municipalities or local pollution control programs.

(2) Nothing in this section affects or modifies land development regulations adopted by a local government to implement its comprehensive plan pursuant to chapter 163.

(3) The Partners for a Better Florida Advisory Council may recommend more specific guidelines to the Legislature to further direct the local permitting rules. The Legislature authorizes the appointment by the Governor of two additional voting members to the council, one representing the interests of counties and one representing the interests of municipalities.

Section 85. Effective upon the legislative ratification of the wetland delineation methodology pursuant to s. 373.421(1), Florida Statutes, as amended, the introductory paragraph of subsection (13) of section 403.031, Florida Statutes, 1992 Supplement, is amended to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(13) "Waters" include, but are not limited to, rivers, lakes, streams, springs, impoundments, *wetlands,* and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural. Solely for purposes of this chapter, waters of the state also include the area bounded by the following:

Section 86. Effective July 1, 1993, paragraph (c) is added to Subsection (11) of section 403.061, Florida Statutes, 1992 Supplement and subsection (35) is also added to said section to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules and regulations adopted and promulgated by it and, for this purpose, to:

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department is authorized to establish reasonable zones of mixing for discharges into waters.

(c) The department, by rule, shall establish water quality criteria for wetlands which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

Nothing in this act shall be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1).

(35) Adopt rules which may include stricter permitting and enforcement provisions within Outstanding Florida Waters, aquatic preserves, areas of critical state concern, and areas subject to chapter 380 resource management plans adopted by rule by the Administration Commission, when the plans for an area include waters that are particularly identified as needing additional protection, which provisions are not inconsistent with the applicable rules adopted for the management of such areas by the department and the Governor and Cabinet.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 87. Effective July 1, 1993, section 403.811, Florida Statutes, is created to read:

403.811 Dredge and fill permits issued pursuant to ss. 403.91-403.929 and s. 373.414.—Permits or other orders addressing dredging and filling in, on or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with ss. 373.414(13), (14), (15), or (16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

Section 88. Effective July 1, 1993, section 403.905, Florida Statutes, is created to read:

403.905 Removal of fill on sovereignty lands.—

The department or the Board of Trustees of the Internal Improvement Trust Fund has the authority to direct an abutting upland owner to remove from submerged sovereignty lands or state-owned lands any fill created in violation of ss. 403.91-403.929 or part IV of chapter 373, except that the department or the board may consider the time at which the submerged land was filled, the length of upland ownership by the current owner, and any other equitable consideration. In the event that the abutting upland owner does not remove such fill as directed, the department or board may remove it at its own expense, and the costs of removal will become a lien upon the property of such abutting upland owner. However, the department and board may, if they choose, allow such fill to remain as state-owned land and may employ a surveyor to determine the boundary between such state land and that of the abutting upland owner. The amount of the cost of such survey will become a lien on the property of the abutting upland owner. Nothing herein may be construed to grant the department or the board authority to direct an upland owner to adjust, alter, or remove silt, fill, or other solid material which has accumulated or has been deposited seaward of his property, through no fault of the owner.

Section 89. Effective July 1, 1993, section 403.9311, Florida Statutes, is created to read:

403.9311 Declaration of Policy.—It is the intent of the Legislature that the Department of Environmental Regulation's mangrove protection rule, which governs the alteration of mangroves, be the sole rule by which the state regulates the alteration of mangroves on privately and publicly owned lands. It is the further intent of the Legislature that the administration and enforcement of the Department of Environmental Regulation's mangrove protection rule be delegated to local governments, including municipalities, provided that the local governments' regulations are consistent with the department's rule and provided local governmental resources are adequate for such administration and enforcement. Such delegation is not limited to the local pollution control programs approved under s. 403.182, and nothing pursuant to these delegations shall prevent the state from pursuing enforcement of the provisions of chapters 253, 258, and 403, when appropriate.

Section 90. Effective July 1, 1993, section 403.931, Florida Statutes, is amended to read:

403.931 Alteration of mangroves; permit procedure.—

(1) No person may alter or cause to be altered any mangrove in waters where a permit is required *under part IV of chapter 373* ~~for dredging or filling~~ except pursuant to *an individual site-specific* a permit issued by the department *or a water management district* or as otherwise provided by ss. 403.93-403.938. Any violation of this section shall be presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property upon which such violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

(2) No separate application is required for an alteration permit if the alteration is *part of an activity that is exempt under s. 403.813 or is addressed in an application under part IV of chapter 373.* ~~addressed in~~

~~an application for a dredge or fill permit or certification or application for boat dock or walkway under this chapter;~~ The procedures for ~~dredge or~~ fill permitting *under part IV of chapter 373* will control in such instances.

(3) The department~~, on or before September 30, 1986,~~ shall adopt *by rule an exemption from the permitting requirements of this section for the following activities:* ~~a general permit in accordance with s. 403.814, which permit authorizes~~

(a) The alteration of mangroves in *all manmade canals that were totally dredged or excavated from uplands and that do not overlap historic natural waters of the state;* ~~accordance with procedures designed to protect the integrity of mangrove trees. The department, on or before September 30, 1986, shall establish a special general permit to allow for alteration of mangroves in manmade canals constructed after January 1, 1957, which were upland of waters of the state as defined in s. 403.817 and are not directly connected to a Class II water body or to Outstanding Florida Waters.~~

(b) The alteration of mangroves that are not located in or directly landward of waters that are designated as Outstanding Florida Waters, when the mangroves have been planted or when the mangroves have been altered according to a previously established pattern of regular maintenance;

(c) The alteration of dead mangroves and the dead portions of freeze-damaged mangroves that are not located in or directly landward of an aquatic preserve as designated in chapter 258.

(4) The department shall authorize by a general permit issued under s. 403.814 the following:

(a) The alteration of mangroves that are located in or directly landward of waters that are designated as Outstanding Florida Waters, except within aquatic preserves as designated in chapter 258, when the mangroves have been planted;

(b) The continued maintenance alteration of mangroves that are located in or directly landward of waters designated as Outstanding Florida Waters to the configuration that has been established in conformance with a department authorization on or after March 27, 1991;

(c) The continued alteration of mangroves that are located in waters designated as Outstanding Florida Waters, except within aquatic preserves as designated in chapter 258 in which the mangroves have been previously altered according to an established pattern of regular maintenance; and

(d) The alteration of dead mangroves and the dead portions of freeze-damaged mangroves that are located in or directly landward of an aquatic preserve as designated in chapter 258.

(5) Within an aquatic preserve, an individual site-specific permit is required to alter mangroves that were planted or were previously altered according to an established pattern of regular maintenance and without a department authorization. When evaluating an application for an individual permit for the alteration of mangroves within an aquatic preserve which have been previously altered according to an established pattern of regular maintenance, the department shall give special consideration to the existing configuration and current health of the mangroves. Mitigation is not required for the alteration of planted mangroves in an aquatic preserve.

(6)~~(4)~~ *Sections* ~~The provisions of ss.~~ 403.93-403.938 do not apply to any alteration that was addressed in a dredge and fill application *that* ~~which~~ was complete *before* ~~prior to~~ July 1, 1984, unless the applicant chooses to come under *these sections* ~~this act~~.

(7)~~(5)~~ *In addition to* ~~Notwithstanding the provisions in~~ subsection (3), a landowner *may* ~~has the right to~~ selectively trim ~~individual~~ mangrove plants in order to ~~better~~ enjoy the coastal water vistas and ~~other aesthetic~~ qualities associated with the ownership of riparian lands.

Section 91. Effective July 1, 1993, section 403.933, Florida Statutes, is amended to read:

403.933 Alteration of mangroves; criteria.—~~By June 1, 1985,~~ The department shall adopt a rule which specifies criteria for altering mangroves and a procedure for issuing permits to do so. Such criteria shall be based solely upon the ~~dredge and fill permit~~ criteria set forth in *s. 373.414(1)* ~~this chapter~~.

Section 92. Effective July 1, 1993, in addition to the permit streamlining process created by this act, the Legislature recognizes that market-based incentives and disincentives may create positive improvements in the environmental quality of this state which cannot be fully achieved by the streamlining of the permitting process alone. The Partners for a Better Florida Advisory Council and the Department of Environmental Regulation are directed to review and analyze the potential role of market-based incentives and disincentives in the streamlined environmental protection program for this state and to issue a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 1994. The report shall include:

(1) Recommendations for improving or expanding any siting acts.

(2) Short-term and long-term recommendations to achieve environmental protections through techniques other than permitting, which would reduce or obviate the need for regulation, including the identification of new and emerging technologies to enhance or improve environmental quality.

(3) The feasibility of linking tax exemptions or credits to compliance with short-term and long-term state and federal environmental policies and programs, including the identification of specific tax exemptions or credits that could be applied.

(4) Recommendations for improving or enhancing environmental protection, including natural system protection.

The Legislature authorizes the appointment to the Partners for a Better Florida Advisory Council of three additional voting members representing environmental interests, one each by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 93. Effective July 1, 1993, the repeal of any statutory sections under this act shall not be grounds for any dismissal or amendment of and shall have no effect on any administrative or judicial proceeding pending on the effective date of this act.

Section 94. Effective July 1, 1993, sections 403.931, and 403.933, Florida Statutes, as amended by this act, and sections 403.927, 403.93, 403.932, 403.935, 403.936, and 403.938, Florida Statutes, are transferred to part VII of chapter 403, Florida Statutes.

Section 95. Effective July 1, 1993, sections 403.91, 403.911, 403.912, 403.916, 403.919, 403.92, 403.921, 403.922, 403.923, 403.924, 403.925, and 403.929, Florida Statutes, and sections 403.914, and 403.918, Florida Statutes, 1992 Supplement, are hereby repealed.

Section 96. Effective July 1, 1993, section 403.913, Florida Statutes, is hereby repealed, except subsection (8) of said section which shall stand repealed on October 1, 1994.

Section 97. Effective July 1, 1993, sections 403.817 and 403.8171, Florida Statutes, are hereby repealed as of the effective date of the legislative ratification pursuant to section 373.421(1), Florida Statutes, as amended.

Section 98. Effective January 1, 1994, subsection (2) of section 517.021, Florida Statutes, is amended to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(2) "Associated person" means any of the following:

(a) Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;

(b) Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or

(c) Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section.

~~The partners of a partnership and the executive officers of a corporation or other association registered as a dealer are not "associated persons" within the meaning of this definition.~~

Section 99. Effective January 1, 1994, subsections (1) and (2) of section 517.07, Florida Statutes, are amended to read:

517.07 Registration of securities.—~~No~~ Securities, except *those* of a class exempt under any of the provisions of s. 517.051 or *those* ~~unless~~ sold in any transaction exempt under any of the provisions of s. 517.061, *may not* ~~shall~~ be sold or offered for sale *into or* within this state unless such securities have been registered~~, as hereinafter defined,~~ and unless *before* ~~prior to~~ each sale the purchaser is furnished with a prospectus meeting the requirements of rules adopted by the department. The department shall issue a permit when such registration has been granted by the department.

(1) A permit to sell securities is effective for 1 year from the date it was granted. Registration of securities *includes* ~~shall be deemed to include~~ the registration of rights to subscribe to such securities if the application under s. 517.081, *s. 517.0815,* or s. 517.082 for registration of such securities includes a statement that such rights are to be issued.

(2) A record of the registration of securities *must* ~~shall~~ be kept in the office of the department *in a register of securities*, in which ~~register of securities shall also be recorded~~ any orders entered by the department with respect to such securities *must also be recorded.* Such register, and all information with respect to the securities registered therein, shall be open to public inspection.

Section 100. Effective January 1, 1994, section 517.0815, Florida Statutes, is created to read:

517.0815 Registration of small corporate offerings.—

(1) Notwithstanding the provisions of ss. 517.081 and 517.082, securities offerings not exceeding $1 million in any 12-month period may be registered with the department under this section, if:

(a) An application, disclosure document, and financial statements, as prescribed by rule of the department, have been filed with the department.

(b) The securities are exempt from registration with the Securities and Exchange Commission under Rule 504 of Regulation D adopted under the Securities Act of 1933.

(c) The issuer of the securities:

1. Is a corporation that is organized under the laws of a state or possession of the United States and that engages in a business other than petroleum exploration, production, or mining or other extractive industries.

2. Is not an investment company.

3. Is not subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934.

(d) The issue is not a blind pool offering or an offering on behalf of a company for which the specific business or properties cannot be described on the date the application is filed with the department for registration under this section.

(e) The ratio of equity investment by promoters is at least 10 percent of the entire offering.

(f) All proceeds from sale of securities registered pursuant to this section shall be escrowed pursuant to an escrow agreement as provided by rule of the department.

(g) The issuer provides investors detailed information concerning the use of proceeds from the sale of the offering. Such information shall include the expenses incurred in the offering, the amount of all commissions and finders fees paid in connection with the offering, the payments to be made to management of the issuer or promoters, the amounts to be used to discharge indebtedness, the proceeds to be used to acquire assets, the amounts to be used to reimburse any officer, director, employee, or stockholder for services already rendered or moneys loaned or advanced, all legal and accounting fees incurred by the issuer, all copying and advertising fees incurred by the issuer, and detailed information on the expected use of the net proceeds from the offering.

(h) The issuer has complied with all requirements of the department governing registration of small corporate securities offerings.

(i) The issuer has paid to the department a nonrefundable registration fee of $1,000.

(2) The department may adopt rules to facilitate the registration of small corporate securities offerings. The rules must balance the interest of protecting the investing public with the capital needs of legitimate small businesses.

(3) Securities registered with the department pursuant to this section may only be sold into or within this state by a dealer or issuer-dealer registered with the department pursuant to the provisions of this chapter.

(4) Any security sold pursuant to this section shall include the following statement in bold-faced print on the outside cover of any disclosure document provided to an investor concerning these securities: THESE SECURITIES HAVE BEEN REGISTERED BY THE STATE OF FLORIDA, DEPARTMENT OF BANKING AND FINANCE, DIVISION OF SECURITIES AND INVESTOR PROTECTION, AS HAVING COMPLIED WITH CHAPTER 517, FLORIDA STATUTES. THE DIVISION OF SECURITIES AND INVESTOR PROTECTION HAS NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE DOCUMENT, AND SUCH REGISTRATION DOES NOT CONSTITUTE A RECOMMENDATION OF THE SECURITIES FOR INVESTMENT PURPOSES.

Section 101. Effective January 1, 1994, subsection (1) of section 517.101, Florida Statutes, is amended to read:

517.101 Consent to service.—

(1) Upon any application for registration under s. 517.081, *s. 517.0815, or s. 517.082, and when requested by the department,* the issuer shall file with such application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of any provision of this chapter, the service on the department of a notice, process, or pleading therein, authorized by the laws of this state, *is* ~~shall be~~ as valid and binding as if due service had been made on the issuer.

Section 102. Effective January 1, 1994, subsection (1) of section 517.111, Florida Statutes, 1992 Supplement, is amended to read:

517.111 Revocation or denial of registration of securities.—

(1) The department may revoke or suspend the registration of any security, or may deny any application to register securities, if upon examination into the affairs of the issuer of such security it *appears* ~~shall appear~~ that:

(a) The issuer is insolvent;

(b) The issuer or any officer, director, or control person of the issuer has violated any provision of this chapter or any rule *adopted under this chapter* ~~made hereunder~~ or any order of the department of which such issuer has notice;

(c) The issuer or any officer, director, or control person of the issuer has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any officer, director, or control person of the issuer has been found guilty of a fraudulent act in connection with any sale of securities, has engaged, is engaged, or is about to engage, in making a fictitious sale or purchase of any security, or in any practice or sale of any security which is fraudulent or a violation of any law;

(e) The issuer or any officer, director, or control person of the issuer has had a final judgment entered against such issuer or person in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit;

(f) The issuer or any officer, director, or control person of the issuer has demonstrated any evidence of unworthiness;

(g) The issuer or any officer, director, or control person of the issuer is in any other way dishonest or has made any fraudulent representations or failed to disclose any material information in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(h) The security registered or sought to be registered is the subject of an injunction entered by a court of competent jurisdiction or is the subject of an administrative stop-order or similar order prohibiting the offer or sale of the security;

(i) For any security for which registration has been applied *under* ~~pursuant to~~ s. 517.081 *or s. 517.0815*, the terms of the offer or sale of such securities would not be fair, just, or equitable; or

(j) The issuer or any person acting on behalf of the issuer has failed to timely complete any application for registration filed with the department *under* ~~pursuant to the provisions of~~ s. 517.081, *s. 517.0815,* or s. 517.082 or any rule adopted under such sections.

In making such examination, the department *must be given* ~~shall have~~ access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the department *considers* ~~may deem~~ it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the department *requires* ~~may require~~.

Section 103. Effective January 1, 1994, subsection (11) of section 517.12, Florida Statutes, 1992 Supplement, is amended to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(11) If the department finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules *adopted under this chapter* ~~made pursuant hereto~~, it shall register the applicant. The registration of each dealer, investment adviser, and associated person *expires* ~~will expire on~~ December 31~~,~~ *of the year in which it became effective and every December 31 thereafter, unless the registrant has renewed its registration before that date. Except as provided in this subsection,* ~~and~~ the registration of each branch office *expires* ~~will expire on~~ March 31 *following the date on*~~, of the year in~~ which it became effective *and every March 31 thereafter,* unless the *branch office* ~~registrant~~ has renewed its registration on or before that date. *The registration of each branch office of a dealer or investment adviser who fails to timely renew or reinstate its registration expires December 31 at the same time as the registration of the dealer or investment adviser.* Registration may be renewed by furnishing such information as the department *requires* ~~may require~~, together with payment of the fee required in subsection (10) for dealers, investment advisers, associated persons, or branch offices and the payment of any amount lawfully due and owing to the department pursuant to any order of the department or pursuant to any agreement with the department. Any dealer, investment adviser, or associated person registrant who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the department, on or before January 31 of the year following the year of expiration, such information as *is* ~~may be~~ required by the department, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the department during the month of January *is* ~~shall be deemed~~ effective *retroactively* ~~retroactive~~ to January 1 of that year.

Section 104. Effective January 1, 1994, subsections (3) and (4) of section 517.161, Florida Statutes, 1992 Supplement, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, associated person, or branch office.—

(3) *If* ~~In the event~~ the department *decides* ~~determines~~ to deny an application or revoke a registration, it shall enter a final order with its findings on the register of dealers, *investment advisers,* and associated persons; and *the termination,* denial, suspension, or revocation of the registration of a dealer or investment adviser ~~shall~~ also *constitutes the termination, denial, suspension, or revocation of* ~~deny, suspend, or revoke~~ the registration of all *the dealer's or investment adviser's* ~~his~~ associated persons *and branch offices.*

(4) It *is* ~~shall be~~ sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission *that* ~~which~~ would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, or associated person. As used in this subsection, *the term* "ultimate equitable owner" means a ~~natural~~ person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether *the* ~~such natural~~ person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

Section 105. Effective January 1, 1994, there is hereby appropriated for Fiscal Year 1993-1994 up to three full-time employees to the Department of Banking and Finance to implement the provisions of sections 98-104 of this act.

Section 106. Except as otherwise provided herein, this act shall take effect upon becoming a law.

And the title is amended as follows:

In title, on page 1, line 3 through page 4, line 15, strike all of said lines and insert: creating s. 288.046, F.S.; providing legislative intent; creating s. 288.047, F.S.; creating the Quick-Response Training Program to be administered by the Department of Commerce in conjunction with the Department of Education; providing responsibilities; creating a Quick-Response Advisory Committee to assist in the administration of the program; providing for membership; providing for appointment; providing for duties; providing for allocation of funds; providing for written agreements; providing authority to accept certain grants and donations; providing for the procurement and maintenance of equipment; providing certain public records exemptions and for future review and repeal thereof; providing legislative intent; providing definitions; creating the Enterprise Florida Innovation Partnership; providing for purpose and membership; providing for organization; providing for powers and authority; providing for authorized programs; providing for the development of measurable goals and objectives; providing for the Florida Innovation Alliance; providing for the Florida Technology Investment Fund; providing for technology commercialization programs; providing for audits and confidentiality; providing for indemnification; repealing s. 229.8053, F.S.; relating to the Florida High Technology and Industry Council; providing for the incorporation of the Florida High Technology and Industry Council as a not-for-profit corporation; amending s. 240.539, F.S.; providing that the Board of Regents may invest moneys for advanced technology research to the Enterprise Florida Innovation Partnership; deleting language relating to the Florida High Technology and Industry Council; providing review and repeal; renumbering and amending s. 229.6056, F.S.; changing authority over education outreach activities in Latin America and the Caribbean Basin; amending s. 288.063, F.S., relating to contracts for transportation projects of the Division of Economic Development of the Department of Commerce; deleting some obsolete dates; providing for the transfer of funds upon the commencement of the construction of the transportation project; providing for certain rules; providing an additional requirement in selecting projects; providing for monitoring of construction of the transportation project; amending s. 288.701, F.S.; revising and adding to the duties of the Division of Economic Development of the Department of Commerce; amending s. 288.703, F.S.; revising the definition of the term "ombudsman" for purposes of the duties of the Division of Economic Development; repealing s. 29, ch. 92-136, Laws of Florida, relating to the Sunshine State Skills Program; repealing s. 31, ch. 92-136, Laws of Florida, relating to the industry services training program; repealing s. 288.1161, F.S., relating to Sports Advisory Council; amending s. 288.03, F.S.; providing for the creating of the Florida State Rural Development Council; amending s. 20.17, F.S.; abolishing the Sports Advisory Council within the Department of Commerce; revising the membership of the direct-support organization that assists the department in promoting and developing the sports industry; providing for severability of provisions; creating the Florida Development Finance Corporation Act of 1993; providing findings and definitions; creating the corporation and providing for directors; providing powers of the corporation; authorizing issuance of revenue bonds and providing requirements related thereto; providing for guaranty of bond issues and specifying requirements related thereto; providing an exemption from public records requirements; providing for review and repeal of such exemption; requiring establishment of a guaranty fund and providing for funding thereof; providing for bonds as legal investments; providing for an annual report of the Florida Development Finance Corporation; creating the Enterprise Florida Capital Partnership; providing for a board of directors; providing for organization of the partnership; providing powers and duties of the partnership; providing authorized programs; providing for an annual report of the Enterprise Florida Capital Partner-

ship; providing for audits; providing an exemption from public records requirements; providing for review and repeal of such exemption; providing for indemnification; amending ss. 339.08, 339.135, 206.46, and 215.47, F.S.; allowing the investment of earnings collected upon the investment of the State Transportation Trust Fund; providing legislative intent; creating the Florida Commission on Minority Economic and Business Development; providing for membership; assigning the commission to the Joint Legislative Management Committee; providing purposes; providing duties and powers; requiring a report; providing for a pilot project; providing for a performance audit; providing for expiration; creating s. 288.770, F.S.; creating the "Florida Export Finance Corporation Act"; creating s. 288.771, F.S.; providing legislative intent; creating s. 288.772, F.S.; providing definitions; creating s. 288.773, F.S.; creating the Florida Export Finance Corporation; providing powers and duties of the corporation; creating s. 288.774, F.S.; authorizing the corporation to charge fees; providing a limitation on loans by the corporation; authorizing the corporation to adopt rules; creating s. 288.775, F.S.; establishing the Florida Export Finance Corporation Account; providing purposes of the account; providing for investment of moneys in the account; providing for payment of claims against the account; providing that the state is not liable for claims on the account; creating s. 288.776, F.S.; providing an exemption from s. 119.07(1), F.S.; providing for review and repeal; providing for a board of directors of the corporation; providing for appointment of members; providing duties of the board; creating s. 288.777, F.S.; providing for appointment of a president of the corporation; providing duties and powers of the president; creating s. 288.7771, F.S.; requiring an annual report; creating s. 288.7772, F.S.; requiring the development of measurable goals and objectives of the corporation; requiring an evaluation and report by the Auditor General; creating s. 288.778, F.S.; requiring the Department of Banking and Finance to review the corporation's activities periodically; amending s. 288.765, F.S.; revising the duties of the export finance officer in the Department of Commerce; amending ss. 288.811 and 288.819, F.S.; changing the name of the Florida International Banking Advisory Council to the Florida International Banking and Finance Council; repealing ss. 288.741, 288.742, 288.743, 288.744, 288.745, 288.746, 288.747, 288.748, 288.749, 288.750, 288.751, 288.752, 288.753, 288.754, 288.755, 288.756, 288.757, 288.758, 288.759, and 288.760, F.S., relating to export finance; providing an appropriation; creating part IX of Chapter 403, F.S.; creating the Florida Jobs Siting Act; providing legislative intent; providing definitions; providing for eligibility criteria for projects under the act; providing for the powers and duties of the Department of Commerce; providing for the powers and duties of the Department of Environmental Regulation; providing for the powers and duties of affected local governments; providing for applicability and certification; providing for the application process; providing for the determination of completeness and sufficiency; providing for an initial public meeting; providing for the assignment of a hearing officer; providing for statements of issues and reports and for written analysis; providing for comprehensive plan amendments; providing for certification hearing, cancellation, and parties; providing for the final disposition of application; providing for the alteration of time limits; providing for superseded laws, regulations, and certification power; providing for the effect of certification; providing for notice and costs of proceeding; providing for review; providing for compliance and enforcement; providing for revocation of certification; providing for availability of information; providing for modification of certification; providing for fees and the disposition of fees; repealing ss. 288.501-288.518, F.S., relating to the Florida Industrial Siting Act; providing an appropriation; providing legislative intent; providing for consolidation of permit processing into a single environmental resource permit; amending s. 373.019, F.S.; providing a definition; amending s. 373.046, F.S.; authorizing the Department of Environmental Regulation and the governing boards of water management districts to enter into additional interagency agreements under certain circumstances; amending s. 373.109, F.S.; authorizing the Department of Environmental Regulation and certain local governments to establish application fees under certain circumstances; providing for deposit and use of such fees; amending s. 373.114, F.S.; providing for review of certain rules of the department by the Land and Water Adjudicatory Commission; providing procedures for such review; amending s. 373.129, F.S.; providing for disposition and use of civil penalties under certain circumstances; amending s. 373.403, F.S.; providing definitions; creating s. 373.4135, F.S.; providing for mitigation and mitigation banking; requiring the department and water management districts to adopt rules governing mitigation banking; providing criteria; amending s. 373.414, F.S.; providing criteria for issuing permits for projects affecting surface waters and wetlands; amending s. 373.421, F.S.; requiring the Environmental Regulation Commission to adopt a unified statewide wetlands delineation methodology; providing for effectiveness of such methodology; preempting to the Legislature certain authority related to wetlands; creating s. 373.422, F.S.; providing for conditional issuance of certain permits under certain circumstances; creating s. 373.430, F.S.; prohibiting certain activities; providing penalties; providing legislative intent; creating s. 373.441, F.S.; specifying the role of local governments in permit processing; providing for rules by the reorganized Department of Environmental Regulation and Department of Natural Resources; specifying contents of such rules; amending s. 403.031, F.S.; including wetlands in the definition of waters; amending s. 403.061, F.S.; authorizing the department to adopt certain rules; creating s. 403.811, F.S.; providing for continuing validity of certain permits; creating s. 403.905, F.S.; authorizing the department or the Board of Trustees of the Internal Improvement Trust Fund to require certain landowners to remove fill from certain sovereignty lands under certain circumstances; creating s. 403.9311, F.S.; providing legislative intent regarding regulation of the alteration of mangroves; amending s. 403.931, F.S.; specifying application of certain permit provisions relating to mangroves; revising an exception for separate application requirements; amending s. 403.933, F.S.; deleting obsolete language; specifying application of certain provisions to mangrove alteration permits; directing Partners for a Better Florida Advisory Council and the Department of Environmental Regulation to conduct a specified review and report to the Legislature; specifying contents of the report; transferring ss. 403.927, 403.93, 403.931, 403.932, 403.933, 403.935, 403.936, and 403.938, F.S., to part VII of chapter 403, F.S.; repealing ss. 403.91, 403.911, 403.912, 403.914, 403.916, 403.918, 403.919, 403.92, 403.921, 403.922, 403.923, 403.924, 403.925, and 403.929, F.S., relating to permitting of activities in wetlands; repealing s. 403.913, except subsection (8) which shall stand repealed on October 1, 1994; repealing ss. 403.817 and 403.8171, F.S., relating to permitting of activities in wetlands, as of the effective date of legislative ratification pursuant to s. 373.421(1), F.S., as amended; amending s. 517.021, F.S.; deleting an exclusion from the definition of associated person; amending s. 517.07, F.S.; prohibiting selling unregistered securities, into or within the state; providing for registration of securities of small corporate offerings; creating s. 517.0815, F.S.; authorizing the registration of certain small corporate offerings; providing criteria; requiring a registration fee; authorizing the Department of Banking and Finance to adopt rules; requiring certain notice; amending s. 517.101, F.S.; requiring consent to service of process for certain applications for a registration; amending s. 517.111, F.S.; providing for revocation of registration of small corporate offerings; amending s. 517.12, F.S.; revising effective dates for registration of branch offices; amending s. 517.161, F.S.; revising provisions providing for termination of a registration; clarifying the meaning of the term "ultimate equitable owner"; providing for full-time employees; providing effective dates.

Senator Hargrett moved the following amendments which were adopted:

Senate Amendment 1 (with Title Amendment) to House Amendment 1—On page 97, line 12 through page 174, line 19, strike all of said lines

And the title is amended as follows:

In title, on page 188, line 28 through page 192, line 19, strike all of said lines

Senate Amendment 2 (with Title Amendment) to House Amendment 1—On page 73, line 9 through page 81, line 24, strike all of said lines

And the title is amended as follows:

In title, on page 187, strike all of lines 5-13 and insert: Fund; creating s. 288.770,

Senate Amendment 3 (with Title Amendment) to House Amendment 1—On page 183, between lines 15 and 16, insert:

Section 106. Sections 25 through 34 of this act are repealed December 31, 1998, and shall be reviewed by the Legislature prior to that date. However, existing obligations shall not be impaired by any such repeal.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 193, line 11, after the semicolon (;) insert: providing for future review and repeal of sections 25-34 of the act;

Senate Amendment 4 to House Amendment 1—On page 85, between lines 14 and 15, insert:

(4) The board shall adopt rules to ensure that program participants graduate from the program to private financing and that no applicant receives more than $500,000 of assistance over any 5-year period. On a case-by-case basis, the board may exempt applicants from this limitation if the applicant demonstrates that he cannot secure financing from traditional lending sources. The term "applicant," as used in this subsection, means any individual corporate officer or business owner regardless of whether the business name changes from application to application.

Senate Amendment 5 to House Amendment 1—On page 92, line 29 through page 93, line 2, strike all of said lines and insert: Representatives prior to the 1998 Regular Session.

Senate Amendment 6 (with Title Amendment) to House Amendment 1—On page 174, line 20 through page 183, line 15, strike all of said lines

And the title is amended as follows:

In title, on page 192, line 20 through page 193, line 11, strike all of said lines and insert: providing effective dates.

Senate Amendment 7 (with Title Amendment) to House Amendment 1—On page 183, between lines 15 and 16, insert:

Section 106. Paragraph (b) of subsection (2) of section 120.54, Florida Statutes, 1992 Supplement, is amended to read:

120.54 Rulemaking; adoption procedures.—

(2)

(b) Prior to the adoption, amendment, or repeal of any rule not described in subsection (9), an agency may provide information on its proposed action by preparing an economic impact statement, and must prepare an economic impact statement if:

1. The agency determines that the proposed action would result in a substantial increase in costs or prices paid by consumers, individual industries, or state or local government agencies, or would result in significant adverse effects on competition, employment, investment, productivity, ~~or~~ innovation, *or international trade,* and alternative approaches to the regulatory objective exist and are not precluded by law; or

2. Within 14 days after the date of publication of the notice provided pursuant to paragraph (1)(c) or, if no notice of rule development is provided, within 21 days after the notice required by paragraphs (1)(a) and (b), a written request for preparation of an economic impact statement is filed with the appropriate agency by the Governor, a body corporate and politic, at least 100 people signing a request, or an organization representing at least 100 persons, or any domestic nonprofit corporation or association.

An agency's determination regarding preparation of an economic impact statement pursuant to subparagraph (2)(b)1. shall not be subject to challenge. If an economic impact statement is prepared pursuant to paragraph (2)(b), at least 14 days prior to any public hearing on a proposed rule held pursuant to subsection (3), the agency shall make a draft copy of the economic impact statement available to any person who requests a copy of the statement.

Section 107. Section 229.6053, Florida Statutes, is transferred, renumbered as section 288.8185, Florida Statutes, and amended to read:

288.8185 ~~229.6053~~ Florida *Council* ~~Commission~~ on International Education; composition; powers; duties.—

(1) *There is created within the Florida International Affairs Commission* the Florida *Council* ~~Commission~~ on International Education, ~~a not-for-profit corporation, is created~~ for the purpose of planning, coordinating, and assisting educational entities in the role and scope of international education. The *council must* ~~commission shall~~ be composed of *15* ~~14~~ members, consisting of:

(a) The Commissioner of Education~~, the Secretary of State,~~ and the Secretary of Commerce, or their respective designees.

(b) The Chancellor of the State University System and the executive director of the State Community College System, or their respective designees.

(c) The Executive Director of the Florida International Affairs Commission.

(d)~~(c)~~ *Five* ~~Four~~ members appointed by the *Florida International Affairs Commission* ~~Commissioner of Education~~ to represent all levels of education in the state. At least one member so appointed *must be a representative of* ~~shall represent~~ a nonpublic postsecondary institution. The term of each member so appointed *is 4* ~~shall be 2~~ years.

(e)~~(d)~~ Three members to represent international business of whom one each *must* ~~shall~~ be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, respectively. The term of each member so appointed *is 2 years* ~~shall be 1 year~~.

(f)~~(e)~~ The President of the Florida Collegiate Consortium *for* ~~on~~ International/Intercultural Education and the President of the Florida Association of Voluntary Agencies for Caribbean Action, *or their designees.*

(2) The ~~commissioner shall call the~~ organizational meeting of the *council must be called* ~~commission~~ no later than October 1, *1993* ~~1986~~. The *council* ~~commission~~ shall annually elect a chairman and vice chairman. There *is* ~~shall be~~ no limitation on successive appointments to the *council* ~~commission~~ or successive terms that may be served by a chairman or vice chairman. Any vacancy *must* ~~shall~~ be filled by the appointment of a person of the same classification or status as his predecessor for the balance of the unexpired term. The *council* ~~commission~~ shall adopt internal organizational procedures or bylaws necessary for efficient operations. *Council* ~~Commission~~ members *are* ~~shall be~~ entitled to per diem and travel expenses pursuant to s. 112.061 for the performance of duties for the *council* ~~commission~~.

(3) The *council* ~~commission~~ shall:

(a) Advise the ~~Governor, Legislature, State Board of Education, Board of Regents, State Board of Community Colleges, and~~ Florida International Affairs Commission regarding recommendations related to international education and international affairs activities ~~such as the Hispanic Quincentennial Event of 1992~~.

(b) Recommend to the ~~Governor, Legislature, State Board of Education, Board of Regents, State Board of Community Colleges, and~~ Florida International Affairs Commission existing needs and resources related to international education, including the prioritization of necessary programs and services.

(c) Provide direction and guidance to the Office of *the Executive Director of the Florida* International *Affairs Commission,* ~~Education~~ *which serves as a liaison, as described in s. 288.817, and which shall also provide staff for the council* ~~except with respect to the Latin American and Caribbean basin Scholarship Program~~.

(4) The council shall continue the study of existing foreign language programs based on the 1991 and 1992 reports of the International Language Institute Advisory Council. On or before December 1, 1994, the council must submit a report to the Florida International Affairs Commission which sets forth its recommendations regarding the creation of a foreign language institute that will place special emphasis on serving the international business community in this state.

~~(4)(a) The commission may accept gifts, grants, donations, expenses, or other valued goods or services for carrying out its purposes and may expend such funds or assets in any legal manner according to the terms of acceptance. No such funds shall be commingled with funds appropriated by the state.~~

(5)~~(b)~~ The commission shall keep open for public review and inspection full, detailed, and accurate records and accounts of all proposals, acts, proceedings, orders, determinations, receipts, and disbursements made under its authority. ~~The commission shall produce an annual report that sets forth in appropriate detail the business transacted during the year and the financial condition of the commission at the close of the year.~~

~~(5) The commission shall be staffed by staff of the Department of Education.~~

Section 108. Section 229.6056, Florida Statutes, is amended to read:

229.6056 Education outreach activities in Latin America and Caribbean basin.—The Department of *Commerce* ~~Education~~ shall contract for the development of a volunteer corps to provide short-term educational

outreach activities in Latin America and the Caribbean basin. The entity contracted *under* ~~pursuant to~~ this section *must* ~~shall~~ require that such activities be conducted by qualified volunteers who are citizens of the state. The contracting agency *must* ~~shall~~ have a statewide focus and experience in coordinating *international* volunteer programs ~~that are international in nature. The Office of International Education, in cooperation with~~ The Florida International Affairs Commission~~,~~ shall evaluate the results of the activities. Any contract issued under the authority of this section *must be approved by* ~~shall have the approval of~~ the Florida International Affairs Commission.

Section 109. Section 240.137, Florida Statutes, is transferred, renumbered as section 288.8175, Florida Statutes, and amended to read:

288.8175 ~~240.137~~ Linkage institutes between postsecondary institutions *in this state* ~~of Florida~~ and foreign countries.—

(1) There are created, within the *Florida International Affairs Commission* ~~Department of Education~~, Florida linkage institutes. A primary purpose of these *institutes* ~~institutions~~ is to assist in the development of stronger economic and social ties between *this state* ~~Florida~~ and strategic foreign countries through the promotion of expanded *public and private* ~~public/private~~ dialogue on cooperative research and technical assistance activities, *increased bilateral commerce, student and faculty* ~~student/faculty~~ exchange, cultural exchange, and the enhancement of language training skills between *the* ~~Florida~~ postsecondary institutions *in this state* and those of *selected* ~~appropriate~~ foreign countries. *Each institute must ensure that minority students are afforded an equal opportunity to participate in the exchange programs.*

(2) Each institute *must* ~~shall~~ be governed by *an agreement, approved by the Florida International Affairs Commission,* ~~agreements~~ between the State University System and the Community College System with *the* counterpart *organization* ~~organizations~~ of higher education in *the foreign country* ~~other designated countries~~. *Each institute must* ~~The Florida International Affairs Commission shall assist the Office of International Education in the development and coordination of the institutes. The linkage institutes shall~~ report to the ~~Department of Education and shall furnish information to the~~ Florida International Affairs Commission regarding *its* program activities, expenditures, and policies.

(3) Each institute *must* ~~shall~~ be co-administered in *this state* ~~Florida~~ by a university-community college partnership, as designated in subsection (4), and *must* have a *private-sector and public-sector* ~~private/public sector~~ advisory committee. The advisory committee *must* ~~shall~~ be representative of the international education and commercial interests of the state *and may have members who are native to the foreign country partner. Six* ~~Three~~ members *must* ~~each shall~~ be appointed by the *Florida International Affairs Commission* ~~Secretary of State~~ and the Secretary of Commerce. *Both the commission and the Secretary of Commerce must appoint at least one member who is an international educator.* The presidents*, or their designees,* of the participating university and community college *must* ~~shall~~ also serve on the advisory committee. ~~The remaining members shall be appointed by the Commissioner of Education, who shall determine the appropriate number of additional members.~~ All appointments to the advisory committees *must* ~~shall~~ be ratified by the Florida International Affairs Commission.

(4) The ~~following~~ institutes are ~~created as provided below~~:

(a) Florida-Brazil Institute (University of Florida and Miami-Dade Community College).

(b) Florida-Costa Rica Institute (Florida State University and Valencia Community College).

(c) Florida Caribbean Institute (Florida International University and Daytona Beach Community College).

(d) Florida-Canada Institute (University of Central Florida and Palm Beach Junior College).

(e) Florida-China Institute (University of West Florida, *University of South Florida,* and Brevard Community College).

(f) Florida-Japan Institute (University of South Florida, *University of West Florida,* and St. Petersburg Community College).

(g) Florida-France Institute (New College of the University of South Florida, Miami-Dade Community College, and Florida State University).

(h) Florida-Israel Institute (Florida Atlantic University and Broward Community College).

(i) ~~The~~ Florida-West Africa Institute (Florida Agricultural and Mechanical University, University of North Florida, and Florida Community College at Jacksonville).

(j) *Florida-Eastern Europe* ~~Florida-Soviet Union~~ Institute (University of Central Florida and Lake Sumter Community College).

(k) Florida-Mexico Institute (Florida International University and Polk Community College).

(5) Each institute *is* ~~shall be~~ allowed to exempt from s. 240.1201 up to 25 full-time equivalent students per year from the respective host countries to study in any of *the* ~~Florida's~~ state universities or community colleges *in this state* as resident students for tuition purposes. The institute directors~~, in cooperation with the Florida Commission on International Education,~~ shall develop criteria*, to be approved by the commission,* for the selection of *these* ~~such~~ students. Students *must* ~~shall~~ return home *within 3 years* after their tenure of graduate or undergraduate study for a length of time equal to their exemption period.

(6) Each state university and community college linkage institute partner may enter into an agreement for a student exchange program, that requires that the tuition and fees of a student who is enrolled in a state university or community college and who is participating in an exchange program be paid to the university or community college while the student is participating in the exchange program. The agreement may also require that the tuition and fees of a student who is enrolled in a postsecondary institution in a foreign country and who is participating in an exchange program be paid to the foreign institution of enrollment.

(7)~~(6)~~ No later than 60 days *before* ~~prior to~~ every regular session of the Legislature, the Florida International Affairs Commission shall present to the Speaker of the House of Representatives, the President of the Senate, and the minority leaders of ~~both~~ the House of Representatives and the Senate a review of linkage institute program activity, criteria for *their* ~~the continued~~ operation, accountability standards, recommended funding levels, and recommendations *for establishing, maintaining, or abolishing linkage* ~~regarding the establishment of new or combinations of existing~~ institutes. *The criteria must include, but need not be limited to, the purpose stated in subsection (1) and* ~~based on criteria which shall include~~:

(a) The importance of economic, political, and social ties between *this state* ~~Florida~~ and the country or region.

(b) The potential for growth and expansion of commercial, educational, and cultural links.

(c) The viability of regionally oriented, rather than country-specific, linkages, based on historical or emerging regional economic or political trading blocs~~, including the European Economic Community, the greater Pacific rim, and central/west Africa~~.

(8)~~(7)~~ *A linkage* ~~No additional~~ institute *may not* ~~shall~~ be created or funded except upon the recommendation of the Florida International Affairs Commission and except by amendment to this section.

(9)~~(8)~~ The Florida International Affairs Commission shall ~~have the authority to~~ review and make *linkage-institute budget requests* ~~recommendations~~ to the *Governor* ~~Department of Education~~ and the Legislature ~~regarding linkage institute budget requests~~. State appropriations for institutes created *under* ~~pursuant to~~ this section *must* ~~shall~~ be made by a single lump-sum line item to the *Florida International Affairs Commission* ~~Department of Education~~, which *must* ~~shall~~ apportion *the* ~~such~~ funds among the various institutes in accordance with criteria *established* ~~to be approved~~ by the ~~Florida International Affairs~~ commission ~~in cooperation with the department. All state-funded grants to individual institutes shall be approved by the Florida International Affairs Commission.~~

Section 110. Subsection (1) of section 288.803, Florida Statutes, is amended to read:

288.803 Florida International Affairs Commission.—

(1)(a) There is created the Florida International Affairs Commission, assigned to the Executive Office of the Governor for administrative purposes. The Florida International Affairs Commission is not an executive department or agency for purposes of assignment under s. 6, Art. IV of the State Constitution, nor is it an agency within the legislative intent of chapter 216.

(b) The commission shall consist of the Governor, who shall serve as chairman; the Secretary of State; the Commissioner of Education; the Comptroller; the Commissioner of Agriculture; the Secretary of Commerce; the Chancellor of the State University System; the executive director of the State Community College System; a member of the House of Representatives who shall serve ex officio nonvoting, and be appointed by the Speaker of the House of Representatives and serve at his pleasure; a member of the Senate who shall serve ex officio nonvoting, and be appointed by the President of the Senate and serve at his pleasure; and members to be appointed by the Governor, subject to confirmation by the Senate, consisting of the following:

1. Two representatives of a world trade council, world trade center, chamber of commerce, the Florida Council of International Development, or other organization which is actively and substantially engaged in the promotion of international trade and commerce in *this state* ~~Florida~~.

2. A person experienced in the international trade and tourism aspects of *the state's* ~~Florida's~~ deepwater ports, chosen from a list of three names submitted to the Governor by the Florida Ports Council.

3. A person experienced in the operation of ~~Florida~~ international airports *in this state*.

4. A representative of the Florida International Trade and Investment Council.

5. A representative of the Florida Tourism Commission.

6. A representative of a statewide business promotion organization, such as the Florida Chamber of Commerce or the Florida Economic Development Council, who has had significant experience in the promotion of international trade or investment.

7. A person *having* ~~with~~ extensive experience in foreign language instruction or international education.

8. A person experienced in international law or international governmental relations.

9. A person experienced in international banking and financial services at a major banking institution in *this state* ~~Florida~~ which is actively engaged in the financing of international business transactions.

10. A representative of a company in *this state that is* ~~Florida~~ actively engaged in the manufacture of products in *this state* ~~Florida~~ for sale in foreign markets.

11. A representative of a major company in *this state that is* ~~Florida~~ actively engaged in the promotion of international tourism in *this state* ~~Florida~~.

12. A member of the Florida Citrus Commission experienced in the exportation of citrus products who owns, operates, or is employed by a major company in *this state that is* ~~Florida~~ actively engaged in the exportation of citrus products from *this state* ~~Florida~~ to international markets.

13. A representative of a major multinational company with offices in *this state* ~~Florida~~.

14. Two members possessing special competence in matters determined by the Governor to be of particular international concern, including, but not limited to, drug interdiction, law enforcement, immigration, and human rights.

15. A representative of the Small and Minority Business Advisory Council.

To the greatest possible extent, the Governor shall appoint persons to the commission who are recognized leaders within their respective areas of expertise and who hold positions of high stature within their respective companies or business entities, such as chairman of the board, president, chief executive officer, or chief operating officer, or positions of comparable importance or prestige. The importance of minority representation shall be considered when making appointments to the commission and to any advisory council created thereunder. In order to ensure that the commission maintains a statewide perspective, *the* membership of the commission *must* ~~shall~~ include at least one person from each of the following regions: Region 1, composed of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Counties; Region 2, composed of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Marion, Nassau, Putnam, St. Johns, Suwannee, Taylor, and Union Counties; Region 3, composed of Brevard, Indian River, Lake, Okeechobee, Orange, Osceola, Polk, St. Lucie, Seminole, Sumter, and Volusia Counties; Region 4, composed of Citrus, Hernando, Hillsborough, Pasco, and Pinellas Counties; Region 5, composed of Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, and Sarasota Counties; and Region 6, composed of Broward, Dade, Martin, Monroe, and Palm Beach Counties.

~~(c) The initial appointed members of the commission shall be appointed within 60 days after July 1, 1990.~~

(c)~~(d)~~ Of the initial appointees of the Governor, four shall serve a term of 4 years, four shall serve a term of 3 years, four shall serve a term of 2 years, and four shall serve a term of 1 year. Thereafter, all members shall serve terms of 4 years each.

(d)~~(e)~~ The commission shall ~~hold its first meeting by October 1, 1990, and shall~~ elect a vice chairman from among its members.

(e)~~(f)~~ A quorum of the commission *consists* ~~shall consist~~ of a majority of members qualified or appointed.

(f)~~(g)~~ The commission shall meet at the request of the chairman or of a majority of the members qualified or appointed.

(g)~~(h)~~ All actions of the commission *must* ~~shall~~ be by majority vote of the members present.

(h)~~(i)~~ The commission may request the assistance *or* ~~and/or~~ testimony of experts in the various aspects of international affairs, as needed.

(i)~~(j)~~ The commission may from time to time appoint ad hoc committees, including members from outside the commission, to study and advise the commission on special problems or issues *for no longer than*~~. Such committees shall be time limited, not to exceed~~ one year.

Section 111. Section 288.804, Florida Statutes, is amended to read:

288.804 Duties of commission.—The *Florida International Affairs* Commission shall serve as the primary state entity responsible for the oversight and coordination of policies and activities relating to international affairs for the state. The commission shall have authority to make policy for the state relating to international affairs. Within this statutory authority, the commission shall:

(1) Submit to the Speaker of the House of Representatives, the President of the Senate, and the minority leaders of ~~both~~ the House and the Senate, by January 1 *of each year, a written update for* ~~, 1992,~~ the strategic plan for international economic development for the state.

(2) Undertake a study and recommend to the Legislature by January 1, *1994* ~~1992, and thereafter at its discretion,~~ the location and staffing of ~~various~~ international affairs offices in *this state* ~~Florida~~ with due regard for regional needs and the maintenance of a statewide perspective*; and recommend any changes to the Legislature in writing by January 1 of each year.*

(3) Undertake a study and recommend to the Legislature by January 1, *1997* ~~1992, and thereafter at its discretion,~~ the location and staffing of various Florida offices in foreign countries and establish criteria for the evaluation of such offices*; and recommend any changes to the Legislature in writing by January 1 of each year.*

(4) Advise the Board of Regents, the State Board of Community Colleges, and the Department of Education with respect to international education and internationally related agricultural education programs within the state.

(5) Advise the Department of Commerce and the Department of Agriculture and Consumer Services regarding the representation of interests of Florida-based companies in foreign market transactions through trade delegations, missions, seminars, and additional appropriate promotional tools.

(6) Work to influence state, federal, and international trade policies that affect *the state's* ~~Florida's~~ ability to compete in world markets.

(7) Represent *the state's* ~~Florida's~~ interests in the enforcement of national and international trade laws.

(8) Conduct public hearings on trade-related issues of importance to ~~Florida~~ business and agribusiness *in this state*.

(9) Review the state's role and coordinate the state's functions relative to international relations.

(10) Review and advise the Legislature on the scope of the state's ability to enact legislation regarding foreign policy and related sanctions or restrictions.

(11) Study and make recommendations on appropriate bans, sanctions, or restrictions *that* the state may place on interaction with foreign nations or businesses.

(12) Study and make recommendations on the appropriateness of any special advantages or restrictions given or placed on foreign nationals while in the state.

(13) Review and make recommendations on the state's policy concerns related to immigration, criminal justice, human rights, drugs, and other internationally related issues.

(14) Until ~~such time as~~ s. 288.825 *is* ~~shall be~~ implemented pursuant to s. 288.820, assist and encourage the Department of Commerce to develop and implement a program to increase the availability of trade financing and the use of existing trade financing resources by ~~Florida~~ businesses *in this state*, including agribusinesses.

(15) Analyze and make recommendations to the Legislature regarding proposed legislation and appropriations with significant ramifications for international affairs.

(16) Secure funding of the commission's programs and activities from federal, state, local, and private sources in addition to fees charged for services and published materials. The commission shall have the power to solicit, receive, hold, invest, and administer property and make expenditures to or for the promotion of international programs.

(17) Provide advocacy and strong support for adequate and consistent funding of *the* international activities of *state* agencies ~~of the State of Florida~~.

(18) Obtain a copy of any agreement with a foreign government or agency ~~thereof~~ undertaken by *a state* ~~an~~ agency ~~of the state~~, which *state* agency shall furnish to the commission a copy of such agreement immediately upon the conclusion of the agreement.

(19) Submit to the Speaker of the House of Representatives, the President of the Senate, and the minority leaders of both the House and the Senate each year at least 60 days before the start of the regular legislative session a ~~prioritized~~ list of recommended grants, *arranged in order of priority*, to local governments and private ~~sector~~ organizations for purposes of international business promotion. *In* ~~When~~ formulating the list, the commission shall consider the recommendations of the International Trade and Investment Council.

(20) Adopt ~~such~~ rules, *using the rulemaking procedure under s. 120.54*, and exercise such additional powers as are necessary to the performance of its duties and responsibilities, including the power to enter into contracts, employ personnel, and create additional advisory councils as it *considers* ~~deems~~ necessary.

All state agencies shall cooperate with and assist the commission in the performance of its duties.

Section 112. Section 288.805, Florida Statutes, 1992 Supplement, is amended to read:

288.805 Strategic plan for international economic development in *this state* ~~Florida~~.—

~~(1) By January 1, 1992, the commission shall submit to the Speaker of the House of Representatives, the President of the Senate, and the minority leaders of both the House and the Senate, in the form of proposed legislation, a strategic plan to provide for orderly economic growth of the state through international trade, investment, and education. The plan shall establish policies and procedures for the state, and the various agencies thereof, to maximize the state's ability to participate in the global economy and to derive benefits therefrom.~~

~~(2) The plan shall contain:~~

~~(a) Qualitative and quantitative goals for the enhancement of international trade and commerce, including agricultural exports and international education.~~

~~(b) Qualitative and quantitative goals for the reduction or elimination of barriers or tax policies counterproductive to the expansion of international trade and commerce.~~

~~(c) A viable mechanism for the identification and development of foreign markets for Florida based manufacturers, growers, shippers, traders, and tourist attractions.~~

~~(d) A favored nation policy for joint educational and economic activities.~~

~~(e) A Caribbean Basin Initiative to complement federal programs.~~

~~(f) Procedures to ensure that education programs are adequate for understanding, communication in, and active participation in the global marketplace.~~

~~(g) Procedures to ensure that agencies of state government work together to fulfill the objectives of the plan, and to ensure that state government works closely with the private sector and with the Federal Government to implement the objectives of the plan.~~

~~(h) A viable mechanism to channel private and public resources of the state, including private and public educational resources, for the benefit of international economic development in Florida and for the promotion of Florida as a major center for international business, education, and understanding.~~

~~(i) Objective criteria for the evaluation of internationally related programs and activities and for the prioritization of revenues and appropriations related thereto.~~

~~(j) A viable mechanism to identify social, political, economic, and cultural trends in foreign nations and to determine their impact on Florida and the nation.~~

~~(k) The Seaport Mission Plan of the Florida Ports Council, accompanied by the commission's review of that plan.~~

~~(l) Such other trade, education, and internationally related programs, concepts, and activities as the commission deems appropriate.~~

~~(3) In the formulation of the plan, the commission shall consider:~~

~~(a) The development of the state's economy through international trade and investment.~~

~~(b) The integration of existing public and private trade and investment programs.~~

~~(c) The integration of such programs with international education programs.~~

~~(d) Existing reports and recommendations relative to these subjects, including the Project Cornerstone study prepared by the Florida Chamber of Commerce and the recommendations of the Florida Economic Growth and International Development Commission and the International Banking and Trade Study Commission.~~

~~(e) The development of linkages with foreign countries through trade and educational partnerships.~~

~~(f) The maximization of available resources.~~

~~(g) The revenues and expenditures that will be necessary to implement the plan.~~

~~(4) Within 30 days after a written request by the commission, every state agency shall submit to the commission a list of programs which relate to international trade and development for consideration by the commission in the formulation of the strategic plan.~~

~~(5) By September 1, 1991, the commission shall publish a draft strategic plan in order to more clearly focus the debate and provide ample opportunity for public input on international policy directions for the state.~~

(1)~~(6)~~ Upon the adoption of a strategic plan for international economic development in *this state* ~~Florida~~ by the Legislature, the *Florida International Affairs* Commission shall oversee its implementation. The commission may also recommend to the Legislature any modification of the plan. Each state agency shall monitor its programs and policies to determine whether they are consistent with the strategic plan. An agency may seek the advice of the commission in making this determination.

(2)~~(7)~~ In its review of substantive legislation and the proposed expenditure of state funds relating to matters within the purview of the strategic plan, the Legislature shall consider whether such legislation or expenditure is consistent with the plan and ~~shall~~ seek the advice of the commission in making this determination. Upon the adoption of the strategic plan, funds shall be appropriated by the Legislature only for internationally related programs or activities authorized by general law or recommended to the Legislature by the commission.

Section 113. Section 288.811, Florida Statutes, 1992 Supplement, is amended to read:

288.811 Florida International Trade and Investment Council; ~~creation;~~ membership; duties.—

(1) There is ~~hereby~~ created ~~within the Office of the Executive Director~~ the Florida International Trade and Investment Council, *within the Office of the Executive Director of the Florida International Affairs Commission.* The purpose of the council is to advise and assist the commission in carrying out its duties, to *advise* ~~provide advisement to all~~ state agencies or entities with international promotional programs and responsibilities pertaining to products, resources, or business promotion, and~~, further,~~ to *advise* ~~provide advisement~~ regarding international promotion grants. The council *must* ~~shall~~ consist of persons who are residents of the state, each of whom is, or has been, actively engaged in some aspect of international trade or investment. The council *must* ~~shall~~ consist of the following:

(a) One employee of the Department of Commerce *having* ~~with~~ experience in international trade or investment promotion, to be appointed by the Secretary of Commerce.

(b) One employee of the Department of Agriculture and Consumer Services with experience in export promotion, to be appointed by the Commissioner of Agriculture.

(c) One employee of the Department of Citrus *having* ~~with~~ experience in export promotion, to be appointed by the executive director of the Department of Citrus.

(d) One employee of the Department of Natural Resources *having* ~~with~~ experience in export promotion, to be appointed by the executive director of the Department of Natural Resources.

(e) One employee of the Department of Insurance *having* ~~with~~ experience in international aspects of the insurance industry, to be appointed by the Insurance Commissioner.

(f) The President of the Florida Chamber of Commerce or his designee.

(g) The President of the Florida Custom Brokers and Forwarders Association or his designee.

(h) The President of the Florida Exporters and Importers Association or his designee.

(i) The Chairman of the Florida High Technology and Industry Council or his designee.

(j) The President of the Florida International Bankers Association or his designee.

(k) The Chairman of the Florida International Banking Advisory Council or his designee.

(l) One member to be appointed by the president of the Florida Ports Council.

(m) One member to be appointed by the president of the Florida Airport Managers Association.

(n) The Chairman of the Economic Development Advisory Council or his designee.

(o) The President of the Latin Chamber of Commerce of the United States of America or his designee.

(p) A member of the House of Representatives, to be appointed by the Speaker of the House of Representatives and serve at his pleasure.

(q) A member of the Senate, to be appointed by the President of the Senate and serve at his pleasure.

(r) Eleven members *having experience* ~~experienced~~ in international business, including, but not limited to, international trade, law, governmental relations, agricultural interests, banking and financial services, shipping or maritime services, *international education,* and manufacturing of goods or provision of services for export. Three of the members *must* ~~shall~~ be actively engaged in attracting foreign investment to *this state* ~~Florida~~. *One of the members must be an individual who has demonstrated an interest in the economically depressed areas of central cities, such as a member of the Urban League, a community development corporation, or the Black Business Investment Board.* The 11 members shall be appointed as follows:

1. Five shall be appointed by the Governor, including a member of the United States and Foreign Commercial Service of the United States Department of Commerce stationed in *this state* ~~Florida~~, a person who is actively engaged as a trader experienced in the international trading of nonagricultural goods and services in foreign commerce, a person who is actively engaged in the retail sale of goods to visitors from other countries, and a person actively engaged in attracting foreign investment to *this state* ~~Florida~~.

2. Six shall be appointed by the Secretary of Commerce, including the director of one of the foreign trade zones operating in *this state* ~~Florida~~, the president or director of a local world trade council or other organization actively involved in the promotion of international business in *this state* ~~Florida~~, and two persons actively engaged in attracting foreign investment to *this state* ~~Florida~~.

(2) Of the initial members appointed pursuant to paragraph (1)(r), three each of the members appointed by the Governor and the Secretary of Commerce shall be appointed for terms of 4 years each and the remaining members appointed pursuant to said paragraph shall be appointed for terms of 2 years each. Thereafter, all members shall serve terms of 4 years each. Any vacancy shall be filled by appointment for the remainder of the unexpired term. The council shall annually elect a chairman and a vice chairman. It is the intent of the Legislature that the *public-sector* ~~public sector~~ appointments from within the Department of Commerce, the Department of Agriculture and Consumer Services, the Department of Citrus, the Department of Insurance, and the Department of Natural Resources be persons who have direct responsibility for trade promotion in their respective departments, and, further, that these persons be directly responsible for assuring close communication and cooperation among their respective departments and the commission and its staff. The council shall adopt internal organizational procedures or bylaws necessary for efficient operations. Members of the council shall serve without compensation or honorarium but shall be entitled to per diem and travel expenses pursuant to s. 112.061 for the performance of duties for the council. The appointing officer of the commission may remove a council member with or without cause.

~~(3) The members of the council shall be appointed no later than September 1, 1990.~~

(3)~~(4) The Florida International Affairs Commission shall call the organizational meeting of the council no later than December 1, 1990.~~ The council shall meet ~~thereafter~~ at the call of its chairman, at the request of a majority of its membership, at the request of the commission, or at such times as may be prescribed by rule, but not less than twice a year, to offer its views on the state of international trade in *this state* ~~Florida~~.

(4) The council shall conduct a systematic comparative analysis of trade and investment assistance and promotion in this state and report to the commission no later than December 1 each year. The analysis must consider the level of effort expended and client perceptions as to which programs are most helpful and most used. In addition, the analysis must measure program results in sales and in the proportion of small and minority businesses assisted to the total number of businesses assisted.

(5) The powers and duties of the council ~~shall~~ include, but are not limited to:

(a) Making recommendations to the commission, state agencies, and other state entities regarding promotion of the international sale of Florida goods and services.

(b) Advising the commission, state agencies, and other state entities regarding international trade programs and policies.

(c) Suggesting policies and practices for the administration of this act.

(d) Advising and informing the commission regarding trends in international trade.

(e) Considering all matters submitted to it by the executive director, the commission, or the Department of Commerce.

(f) Reviewing applications for grants to local governments and private ~~sector~~ organizations for purposes of international trade promotion, and submitting to the commission a list of such applications arranged in order of priority, employing criteria developed by the commission for such purpose.

(6) ~~On or before January 1, 1991, and annually~~ On November 1 *of each year* ~~thereafter~~, the council shall submit a report to the Florida International Affairs Commission *which* ~~that~~ sets forth in appropriate detail the business transacted during the year and any recommendations to the commission.

Section 114. Section 288.815, Florida Statutes, is amended to read:

288.815 International research.—For the accomplishment of the general purposes of the Florida International Affairs Commission, the Office of the Executive Director *of the Florida International Affairs Commission* shall have the power to:

(1) Serve as a clearinghouse for information to assist the private and public sectors of this state *in increasing* ~~to increase~~ the effectiveness of their international activities, *and create a common data base of international programs of state agencies and institutions of higher learning to be colocated with and managed under the auspices of the International Trade Data Resource and Research Center, under s 288 8155.*

(2) Plan and develop an effective international business information service that will directly assist *industries in this state* ~~Florida industry~~ and also encourage industries outside the country to use business facilities within the state *including the publication of a uniform promotional brochure for the state, to be used in all appropriate international program mailings by state agencies.*

(3) Compile, collect, and periodically make available scientific indexes and other information relating to current international business conditions.

(4) Investigate significant issues pertaining to barriers to the free and advantageous flow of international commerce, restrictions and burdens imposed by law or which otherwise retard or adversely affect the legitimate expansion and development of international commerce and industry, and costs and other factors affecting successful international operation of Florida business.

(5) Investigate and study conditions affecting the international activities of Florida commerce, agriculture, and education, and encourage technical studies, scientific investigations, statistical research, and educational activities necessary or useful for the proper execution of the general purposes or duties of the commission.

(6) Work to establish a strategic planning center to identify and anticipate the impact of international trends on *the state's* ~~Florida's~~ economic, social, cultural, and political sectors.

(7) Establish a resource development program to assist the academic, educational, and business communities in the areas of grant writing and public, private, and philanthropic fundraising. The program *must* ~~shall~~ also provide technical assistance for increasing the state's share of international education programs, technical training proposals, and debt-for-development and debt-for-education projects consistent with the development of ~~Florida~~ *private-sector* ~~private sector~~ and international education partnerships.

(8) Upon request of the commission or the Legislature, provide information, research, or reports on international matters or assist in the preparation thereof.

(9) In the performance of its duties, undertake or commission internationally related market research and advertising research studies and provide information regarding market opportunities to Florida businesses and *to* foreign investors considering ~~Florida~~ activities *in this state.*

(a) The identity of those who provide data or other information as responses to a research project undertaken by the office in performance of its research duties *is* ~~shall be~~ privileged and confidential, *may* ~~shall~~ not be published or open to public inspection, and *is* ~~shall be~~ exempt from ~~the provisions of~~ s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. This privilege and confidentiality *does* ~~shall~~ not apply to any data or information gathered.

(b) The following information, when obtained pursuant to an international marketing or advertising research project, *is* ~~shall~~ also ~~be~~ privileged and confidential, *may* ~~shall~~ not be published or open to public inspection, and *is* ~~shall be~~ exempt from ~~the provisions of~~ s. 119.07(1):

1. A "trade secret" as defined in s. 812.081.

2. "Trade secrets and commercial or financial information obtained from a person and privileged or confidential" as defined and interpreted under 5 U.S.C. s. 552(b)(4), or any amendments thereto.

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

(c) Any person who violates ~~the provisions of~~ this subsection *is guilty of* ~~commits~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

The Department of Commerce shall provide all necessary assistance to the office in the performance of its data collection, research, and reporting duties.

Section 115. Section 288.817, Florida Statutes, is amended to read:

288.817 International education ~~liaison~~.—The Office of the Executive Director *of the Florida International Affairs Commission* shall serve as a liaison between the commission, the Department of Education, the Board of Regents, the State Board of Community Colleges, the Postsecondary Education Planning Commission, and the international business community with duties including:

(1) In cooperation with the Department of Education, *serving as a* ~~providing~~ liaison with federal, state, and *local* governmental entities and the private sector, as requested, on issues related to international education.

(2) Overseeing the development of ~~the binational~~ linkage institutes.

(3) Administering the operation of *the Florida Council on International Education* ~~and providing funding to the International Language Institute Advisory Council~~.

(4) Recommending international education policies to the commission consistent with the strategic plan.

(5) Recommending funding for international education programs.

(6) Participating in evaluations of existing or proposed programs conducted by the Department of Education, the Board of Regents, the State Board of Community Colleges, and any other educational institution or entity in the state. The office shall include within its review a determination of the consistency of the proposed program with the strategic plan and shall provide the submitting entity with its recommendations and evaluations.

(7) Providing staff for the Florida Council on International Education.

(8) Selecting specific international education programs for achievement of national prominence by 1998.

(9) On or before May 1, 1994, submitting a report to the commission that sets forth recommendations regarding support of international education in the state, including, but not limited to, coordination of an international program chair at each institution of higher education, use of the data base developed by the International Trade Data Resource and Research Center, and creation of a yearly conference on international education to be held, on a rotating basis, in a different geographic region of the state each year.

Section 116. Budgets of state agencies that have international programs.—Each state agency that has an international program funded from the budget of that agency must establish a separate fiscal category for it in the legislative budget request submitted under section 216.031,

Florida Statutes. In addition, the agency must transmit a copy of the legislative budget request that contains the separate fiscal category for an international program to the Florida International Affairs Commission.

Section 117. Sections 229.605, 229.6051, and 288.818, Florida Statutes, are repealed.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 193, line 11, after the semicolon (;) insert: amending s. 120.54, F.S.; requiring an agency to prepare an economic impact statement if a proposed rule adoption, amendment, or repeal would result in significant adverse effects on international trade; transferring, renumbering, and amending s. 229.6053, F.S.; replacing the Florida Commission on International Education with the Florida Council on International Affairs within the Florida International Affairs Commission; providing for membership, terms, meetings, and travel and per diem expenses; requiring a study of existing foreign language programs; requiring a report regarding the creation of a foreign language institute; deleting provisions for accepting gifts, grants, donations, expenses, or other valued goods or services; deleting provisions for providing an annual business and financial transaction report; amending s. 229.6056, F.S.; requiring that the Florida International Affairs Commission evaluate certain educational outreach activities in Latin America and the Caribbean basin; transferring, renumbering, and amending s. 240.137, F.S.; creating Florida linkage institutes within the Florida International Affairs Commission, rather than within the Department of Education; revising the purposes of those institutes; requiring that institutes ensure minority student participation; revising the membership of the advisory committees of the institutes; revising and creating such institutes; providing for agreements by institutes regarding tuition and fees of students participating in exchange programs; requiring that appropriations for linkage institutes be made by a single lump-sum line item to the Florida International Affairs Commission; deleting a requirement that state-funded grants to individual institutes be approved by the commission; amending s. 288.803, F.S., relating to the Florida International Affairs Commission; adding a representative of the Small and Minority Business Advisory Council to the commission; deleting requirements that have been met; amending s. 288.804, F.S.; revising the duties of the Florida International Affairs Commission; requiring certain studies and reports; specifying the rulemaking procedure to be followed; amending s. 288.805, F.S.; deleting requirements for formulating a strategic plan for international economic development in the state; amending s. 288.811, F.S., relating to the Florida International Trade and Investment Council; providing requirements for one member; deleting certain requirements that have been met; requiring an analysis and a report; amending s. 288.815, F.S.; authorizing that the Office of the Executive Director of the Florida International Affairs Commission create a data base of international programs at the International Trade Data Resource and Research Center; requiring that office to publish a promotional brochure; amending s. 288.817, F.S.; deleting a requirement that the Office of the Executive Director of the Florida International Affairs Commission administer the operation of and provide funding to the International Language Institute Advisory Council; requiring that the Office of the Executive Director of the Florida International Affairs Commission select international education programs for achievement of national prominence; requiring a report on international education in the state; requiring agencies that have international programs to establish in their legislative budget requests a separate fiscal category for that program; repealing s. 229.605, F.S, which provides for the creation and duties of the Office of International Education of the Department of Education; repealing s. 229.6051, F.S., which provides for additional duties of the Office of International Education; repealing s. 288.818, F.S., which provide for the creation, membership, and duties of the International Language Institute Advisory Council;

Senate Amendment 8 to House Amendment 1—On page 1, line 26 through page 2, line 27, strike all of said lines and insert:

WHEREAS, the availability of capital, training, and other types of business assistance can provide an invaluable stimulus to economic development in this state, and

On motion by Senator Hargrett the Senate concurred in **House Amendment 1** as amended and requested the House to concur in the Senate amendments to the House amendment.

CS for SB 2382 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—33 Nays—None

Communication

On motion by Senator Diaz-Balart, the following communication from the Governor was published in the Journal.

Honorable Mario Diaz-Balart April 1, 1993
Senator, District 37

Dear Senator Diaz-Balart:

Should it appear there will be an interruption in the workplan that is funded by the State Transportation Trust Fund (STTF) as a result of its investment agreement with the Florida Development Finance Corporation (FDFC), I will propose the transfer of funds from the Ecomomic Development Transportation Projects Trust Fund pursuant to Chapter 216 to ensure that cash flow of the STTF is not interrupted.

The FDFC is extremely important to the small manufacturing firms of our community and the people that work for those firms. These are sound, highly credit worthy borrowers which, because of changes in the national banking system, are unable to borrow long term on the same terms available to you as a homeowner.

Florida's four largest super-regional banks are investing in a reserve fund which stands in front of the STTF. These bank investors have an equally strong, if not greater, self interest in ensuring there is never a call on their cash reserves, much less the STTF. This unique backing by Florida's largest banks creates no precedent for STTF in the future.

As always, your consideration and support are appreciated.

With kind regards, I am

Sincerely,
Lawton Chiles, Governor

RETURNING MESSAGES ON HOUSE BILLS

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26 and 27; refused to concur in Senate Amendment 21 and requests the Senate to recede; has passed CS for HB 461, as further amended and requests the Senate to concur.

John B. Phelps, Clerk

CS for HB 461—A bill to be entitled An act relating to waste management and regulation; amending ss. 125.01, 166.021, 381.0098, 403.702, 403.704, 403.7084, 403.727, and 483.615, F.S.; redesignating "biohazardous waste" as "biomedical waste"; amending s. 403.727, F.S.; providing for a right to contribution between certain parties under certain circumstances; amending s. 212.055, F.S.; providing additional uses for the local government infrastructure surtax; amending s. 287.045, F.S.; providing for purchase of materials with recycled content by agencies that use state contracts; allowing an additional price preference to bidders using certain materials relative to purchase of products or materials by the state; providing limitations on renewing certain contracts; providing an exception; requiring agencies to use certain contracts; requiring agencies to consider the life-cycle of products in making purchases; authorizing the Division of Purchasing of the Department of Management Services to adopt rules; creating s. 288.1185, F.S.; creating the Recycling Markets Advisory Committee; providing purposes; providing for membership; providing duties and responsibilities; requiring the committee to develop a plan to develop markets for recycled materials; providing considerations for the plan; requiring the committee to submit a report; authorizing the committee to hire staff; amending s. 403.703, F.S.; revising and adding definitions; creating s. 403.7031, F.S.; limiting the content of certain local ordinances; amending s. 403.7045, F.S.; deleting provisions providing for regulation of recovered materials; creating s. 403.7046, F.S.; providing for regulation of recovered materials; requiring the Department of Environmental Regulation to adopt rules; requiring the department to appoint a technical advisory committee; providing for membership; providing for the duties and responsibilities of the committee; authorizing a fee; providing for deposit of the fee; providing for an exception; providing confidentiality for certain trade secrets; providing for review and repeal; prohibiting local governments from imposing certain registration or reporting requirements; exempting certain recovered materials processing facilities from regulation under certain circumstances; providing for the distribution of grants

to local mosquito control agencies; providing an exception; providing definitions; amending s. 403.7049, F.S.; encouraging counties and municipalities to charge certain fees; providing for grants to such local governments under certain circumstances; amending s. 403.705, F.S.; changing the date for preparation of a report on solid waste management; amending s. 403.706, F.S.; revising certain local government solid waste responsibilities; including composting plans under such responsibilities; authorizing certain counties to provide alternate recycling programs; requiring counties to include in certain reports progress on composting programs; providing credits toward the county waste reduction goal; authorizing local governments to enact ordinances to require separation of recyclable materials; amending s. 403.7065, F.S.; providing additional criteria for procurement of products or materials with recycled content; amending s. 403.707, F.S.; changing a reference from "clean debris" to "construction and demolition debris"; exempting certain composting operations from certain permit requirements; prohibiting the Department of Environmental Regulation from permitting expansions of certain landfills; amending s. 403.708, F.S.; modifying the required coding design for certain plastic bottles and containers; exempting the disposal of incidental yard trash; amending s. 403.709, F.S.; prescribing research projects for which Solid Waste Management Trust Fund moneys may be used; authorizing the secretary of the department to reserve certain portions of appropriations to fund certain solid waste projects; amending s. 403.7095, F.S.; providing requirements to be considered in continuing grants to local governments; revising the criteria for certain grants; amending s. 403.7125, F.S.; requiring audit of landfill escrow accounts by independent certified public accountants; amending s. 403.713, F.S.; excluding recovered materials from local government authority to regulate the flow of solid waste across certain boundaries; specifying restrictions on local government regulation of recovered materials; revising authority of local governments; providing confidentiality; providing for review and repeal; amending s. 403.714, F.S.; requiring state institutions to participate in certain recycling programs; requiring the Department of Agriculture and Consumer Services to coordinate the development of specifications for use of compost by the state; requiring certain entities and persons to report to the department on expenditures and use of compost; requiring the department to report compost use summaries to the Governor and the Legislature; amending s. 403.716, F.S.; providing for training of operators of waste-to-energy facilities, biohazardous waste incinerators, and mobile soil thermal treatment units or facilities; amending s. 403.717, F.S.; revising provisions providing waste tire and lead-acid battery requirements; revising certain fees; revising department rulemaking authority; providing for an exemption; amending s. 403.719, F.S.; requiring certain counties to file an annual report of waste tire grant moneys; creating s. 403.7191, F.S.; regulating the use of certain materials in packaging; prohibiting the use of certain elements in packaging; providing exemptions; requiring certificates of compliance; prohibiting certain activities; providing a penalty; providing for review and a report; providing rulemaking authority; creating s. 403.7192, F.S.; regulating the manufacture and disposition of certain batteries; prohibiting the sale or distribution of certain batteries; providing criteria for selling or distributing products containing rechargeable batteries; providing a penalty; providing rulemaking authority; creating s. 403.7193, F.S.; prohibiting certain environmental representations on consumer products; providing a penalty; creating the Florida Packaging Waste Reduction Council; providing duties; providing an appropriation; providing for confidentiality; providing an exemption from open government Sunset requirements; amending s. 403.7195, F.S.; providing for minimum recycled content for newsprint; specifying certain content by certain dates; providing criteria for such newsprint; amending s. 403.7197, F.S.; revising provisions of the advance disposal fee program; providing definitions; requiring the department to consider certain proposals for designation of additional containers; requiring the department to determine the recycling rates of container types; providing an exemption from the advance disposal fee for recycled content; providing for collection of the fee; authorizing a collection allowance; excluding the advance disposal fee from estimated tax payments; authorizing the department to adopt emergency rules; requiring the Department of Environmental Regulation to adopt certain rules; providing for confidentiality of certain taxpayer information; providing that the proceeds of the fee be deposited into the Solid Waste Management Trust Fund; requiring the department to develop a grant program for recycling and litter prevention; providing requirements of the program; providing legislative intent with respect to uses of the advance disposal fee; specifying uses; requiring the department to evaluate establishing certain advance disposal fees; requiring a report; establishing a litter-reduction goal; requiring the Department of Environmental Regulation to contract with the Center for Solid and Hazardous Waste Management for an annual litter survey; providing for designation of additional containers or product packaging to be subject to the advance disposal fee; abolishing the Clean Florida Commission; repealing s. 403.7198, F.S.; relating to container deposits; amending ss. 403.7225, 403.7226, 403.7234, and 403.7236, F.S.; clarifying provisions requiring local hazardous waste management assessments; applying such requirements to small quantity generators of hazardous waste; revising provisions relating to regional planning council's regional hazardous waste management facility needs assessments; deleting a requirement that the department report to the Legislature; clarifying provisions of the small quantity generator notification and verification program; clarifying provisions relating to information sent to the department by local governments; creating s. 403.7238, F.S.; providing for expanded local hazardous waste management programs; providing for grants for start-up costs; amending s. 403.7265, F.S.; clarifying provisions relating to local hazardous waste collection programs; deleting a requirement that the department prepare a plan for collecting small quantities of hazardous waste from certain persons; requiring the department to establish a cooperative collection center arrangement grant program; providing for grants; providing limitations; amending s. 403.75, F.S.; revising certain definitions related to processing and rerefining oil; creating s. 403.7531, F.S.; requiring certain retail dealers to post a notice related to disposal of used oil; amending s. 403.754, F.S.; revising provisions requiring certain persons to register to transport, collect, or recycle used oil; amending s. 403.7545, F.S.; authorizing the department to regulate used oil consistently with certain federal requirements; amending s. 403.758, F.S.; providing for additional enforcement authority for the department; amending s. 403.769, F.S.; providing for a permit for used oil processing facilities; prohibiting state agencies from requiring certain labels relating to biomedical wastes; prohibiting incinerating or disposing of certain mercury-containing devices; prohibiting incineration of spent lamps; specifying uses of the Solid Waste Management Trust Fund; specifying moneys to be deposited into the trust fund; requiring the department to adopt rules; requiring certain public information and warning signs related to mercury contamination; providing a penalty; requiring the department to organize and coordinate a public-private demonstration project for collecting and recycling mercury-containing devices and spent lamps; providing an appropriation; providing requirements for review of new waste-to-energy facilities capacity by the Department of Environmental Regulation; providing a review process for certain waste-to-energy facilities; providing applicant requirements; requiring the department to study the use of incineration for waste disposal; prohibiting the department from issuing a permit for a construction of hazardous waste incinerators for a certain time; providing legislative findings; creating s.403.7895, F.S.; providing requirements for permitting and certification of commercial hazardous waste incinerators; providing legislative intent; providing applicability; requiring a certificate of need; requiring the Governor and Cabinet, sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board, to make certain determinations regarding such certificate of need; specifying additional permitting conditions; requiring the department to conduct a hazardous waste needs and capacity study; specifying criteria for the study; requiring a report to the Legislature; providing an appropriation; creating s. 403.4133, F.S.; creating the Adopt-a-Shore Program; providing purposes; amending s. 316.2045, F.S.; providing an exception to the prohibition on obstruction of public streets, highways, and roads for solid waste or recyclable or recovered materials collection vehicles; creating the phosphogypsum management program; providing definitions; providing for rules relating to construction and permitting criteria; providing for fees; providing for review and repeal; providing exceptions to mandatory closing of certain phosphogypsum stack systems; providing an appropriation; amending s. 72.011, F.S.; authorizing taxpayers to contest the assessment of a certain fee, penalties, and interest; amending s. 213.05, F.S.; authorizing the Department of Revenue to collect the advance disposal fee; amending s. 213.053, F.S.; providing for confidentiality of information obtained by the Department of Revenue pursuant to collecting the advance disposal fee; providing a finding of important state interest; amending s. 376.3071, F.S.; specifying additional conditions for entitlement to reimbursements for certain cleanup expenses; authorizing Enterprise Florida to contract with a plastic products manufacturer in a plastic recycling business venture; providing for the Departments of Corrections and Health and Rehabilitative Services to participate in the business venture; providing requirements and criteria for the business venture; authorizing other governmental entities to participate under certain circumstances; providing intent; requiring the departments to identify certain costs associated with plastic products; specifying the term of the business venture; requiring a report; providing appropriations; amending s. 403.7145, F.S.; requiring state agencies, the judicial branch, and the

State University System to collect and sell recyclable materials; authorizing the use of sale proceeds for certain purposes; providing an effective date.

On motion by Senator Kirkpatrick, the Senate receded from **Senate Amendment 21**.

CS for HB 461 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—31 Nays—2

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed as amended CS for CS for HB 557 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for CS for HB 557—A bill to be entitled An act relating to professional sports facilities; amending s. 212.20, F.S.; providing for distribution of a portion of revenues from the tax on sales, use, and other transactions to a professional golf hall of fame facility; creating s. 288.1168, F.S.; providing for certification of such facility by the Department of Commerce; providing requirements for certification and distribution of funds; providing for use of the funds distributed to the facility; providing for audits by the Department of Revenue; providing for confidentiality and for review and repeal; providing for periodic recertification; requiring the PGA Tour, Inc., to increase its advertising contribution under certain circumstances; providing an effective date.

On motion by Senator Bankhead, by unanimous consent **CS for CS for HB 557** was taken up out of order and by two-thirds vote read the second time by title. On motion by Senator Bankhead, by two-thirds vote **CS for CS for HB 557** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments 1, 2, 7; has amended Senate Amendments 3, 4, 5, 6; and passed CS for CS for HB 1751, as further amended and requests the Senate to concur.

John B. Phelps, Clerk

CS for CS for HB 1751—A bill to be entitled An act relating to the merging of the Department of Natural Resources and the Department of Environmental Regulation; providing a declaration of policy; creating the Department of Environmental Protection and transferring the Department of Natural Resources and the Department of Environmental Regulation to such department; providing for the appointment and establishment of the head of the department; establishing divisions within the department; providing for future review and repeal; amending ss. 253.002, 259.035, and 370.017, F.S.; conforming certain provisions; transferring the Department of Natural Resources, the Department of Environmental Regulation, including the Environmental Regulation Commission to the new department; transferring the Marine Fisheries Commission to the Board of Trustees of the Internal Improvement Trust Fund; organizing the Department of Environmental Protection as a single budget entity; requiring the department to report to the 1994 Legislature with certain recommendations; providing content of the report; mandating savings in the areas of executive direction and administration; repealing ss. 20.25 and 20.261, F.S., relating to the Department of Natural Resources and the Department of Environmental Regulation, respectively; providing a directive to the Division of Statutory Revision; providing an effective date.

House Amendment 1 to Senate Amendment 3—On page 12, lines 28 and 29, strike all of said lines and insert: *materials in surface waters or wetlands, as delineated in s. 373.421(1).*

House Amendment 2 to Senate Amendment 3—On page 33, line 28, strike all of said line and insert: and subsection (35) is also added

House Amendment 3 to Senate Amendment 3—On page 42, lines 5 and 6, strike all of said lines

House Amendment 1 (with Title Amendment) to Senate Amendment 4—On page 1, line 12, through page 28, line 5, strike all of said lines and insert:

Section 1. *Legislative intent.—It is the intent of the Legislature to acknowledge the valuable activities of the Department of Natural Resources, the Canal Authority of the State of Florida, the Canal Lands Advisory Committee created pursuant to s. 253.783(2)(f), Florida Statutes, and the University Planning Team of the University of Florida in proposing a variety of options for the future management of lands located within the corridor containing the former Cross Florida Barge Canal project. Such options for the management of these lands, contained in the Cross Florida Greenways State Recreation and Conservation Area Management Plan published on August 30, 1992, provide guidance and alternatives for establishing the boundaries of the greenways, the development of recreational facilities, the assignment of resource management designations, governance recommendations, funding sources, the disposition of canal works, and other valuable considerations. Because of the unique nature of the greenways and the need to preserve flexibility in future management strategies, the Legislature further intends that the management plan should be considered as providing guidance for management decisions. While the Legislature intends that a plan be considered to encompass the full range of management options, subject to available funding, it is not required that any specific recommendation contained within the plan be implemented unless specified in this act.*

Section 2. *Cross Florida Greenways State Recreation and Conservation Area assigned to the Office of the Executive Director.—*

(1) The Cross Florida Greenways State Recreation and Conservation Area is hereby established and is initially assigned to the Office of Greenways Management within the office of the Executive Director in the Department of Natural Resources. The office shall manage the greenways pursuant to the department's existing statutory authority until administrative rules are adopted by the department. However, the provisions of this act shall control in any conflict between this act and any other authority of the department.

(2) Prior to the 1995 regular session of the Legislature, legislative staff shall review the activities of the office in managing the greenways and make recommendations to the Legislature as to the most appropriate placement of greenways management functions within the department.

Section 3. *Boundaries of the Cross Florida Greenways State Recreation and Conservation Area; coordination of management activities.—*

(1) The initial boundaries of the greenways shall be as follows, as described in the August 30, 1992, management plan published by the University of Florida University Planning Team:

(a) Segments 1, 2, 5, 6, 7, 8, and 9 of the Base Boundary.

(b) Segments 3 and 4 of the Payback Boundary II.

(2) The Board of Trustees of the Internal Improvement Trust Fund is authorized to include other contiguous lands acquired after the effective date of this act which are suitable for recreation, conservation, or as wildlife corridors within the greenways. The board is also authorized to modify the greenways boundaries as needed to resolve boundary disputes and to reflect the sale of surplus lands; however, no such modifications may result in a discontinuous corridor or a corridor less than 300 yards in width, except as provided for by federal law.

(3) If lands located outside the greenways boundaries are designated by the Board of Trustees of the Internal Improvement Trust Fund as important to the overall management of the greenways and are purchased by other land acquisition programs, or are otherwise made available for management, the board may direct the greenways-managing entity to coordinate management activities to enhance the greenways to the greatest extent possible, or assume lead agency responsibilities when appropriate.

Section 4. *Disposition of surplus lands; compensation of counties located within the Cross Florida Canal Navigation District.—*

(1) The Department of Natural Resources shall identify parcels of former barge canal lands which may be sold or exchanged as needed to repay the counties of the Cross Florida Canal Navigation District any sums due them pursuant to s. 253.783(2)(e), Florida Statutes. In identi-

fying said surplus lands, the department shall give priority consideration to lands situated outside the greenways' boundaries, those not having high recreation or conservation values, and those having the greatest assessed valuations. Although the department shall immediately begin to identify the parcels of surplus lands to be sold, the department shall offer the lands for sale in a manner designed to maximize the amounts received over a reasonable period of time.

(2) Disbursements of amounts due the counties shall be made on a semiannual basis and shall be completed before any additional lands or easements may be acquired within the boundaries of the greenways.

(3) In addition to lands identified for sale to generate funds for repayment of counties pursuant to s. 253.783(2)(e), Florida Statutes, the department is authorized to sell surplus additional former canal lands if they are determined to be unnecessary to the effective provision of the type of recreational opportunities and conservation activities for which the greenways was created.

(4) Until repayment to the counties pursuant to s. 253.783(2)(e), Florida Statutes, has been completed, any agency wishing to use former canal lands must pay the full assessed value of said lands.

Section 5. *The Department may authorize the removal and sale of products from the land where environmentally appropriate, the proceeds from which shall be deposited in the Cross Florida Barge Canal Trust Fund.*

Section 6. *Recreational uses.—*

(1) The Cross Florida Greenways State Recreation and Conservation Area must be managed as a multiple use area pursuant to s. 253.034(1)(a), Florida Statutes, and as further provided herein. The University of Florida Management Plan provides a conceptual recreational plan that may ultimately be developed at various locations throughout the greenways corridor. The plan proposes to locate a number of the larger, more comprehensive and complex recreational facilities in sensitive, natural resource areas. Future site specific studies and investigations must be conducted by the Department of Natural Resources to determine compatibility with, and potential for adverse impact to, existing natural resources, need for the facility, the availability of other alternative locations with reduced adverse impacts to existing natural resources, and the proper specific sites and locations for the more comprehensive and complex facilities. Furthermore, it is appropriate, with the approval of the Department of Natural Resources, to allow more fishing docks, boat launches, and other user-oriented facilities to be developed and maintained by local governments.

(2) In determining appropriate recreational uses of greenways lands, the promotion and development of resources-based activities shall be given priority consideration, although user-oriented activities shall not be arbitrarily prohibited when site-specific studies indicate compatibility of the proposed use with natural or cultural resources.

(3) For purposes of this section, "user-oriented activities" are those which can be provided in a variety of locations and include such activities as golf, tennis, baseball, archery, target shooting, and playground activities. "Resources-based" activities are dependent on some particular element or combination of elements in the natural or cultural environment and include such activities as fishing, camping, hunting, boating, bicycling, nature study, horseback riding, visiting historical sites, and hiking.

(4)(a) A horsepark-agricultural center may be constructed by or on behalf of the Florida Department of Agriculture and Consumer Services on not more than 250 acres of former canal lands which meet the criteria for surplus lands and which lie outside the greenways boundary.

(b) A multipurpose visitor center may be constructed in conjunction with the horsepark-agricultural center on lands dedicated for the Horsepark/Agricultural Center.

(c) Resources-based recreational activities associated with the horsepark-agricultural center, including, but not limited to, recreational trails, trails for endurance or competitive riding, steeplechase, and other related activities may be permitted within the greenways boundary. The greenways managing entity headed by the Governor and Cabinet shall retain jurisdiction over such activities occurring within the greenways boundary.

(d) Those activities and structures associated with the horsepark-agricultural center which are determined by the greenways managing entity to be inappropriate uses of greenways lands shall be sited on lands outside the greenways boundary.

(e) The Legislature finds that the proposed horsepark-agricultural center constitutes a public-private partnership project entitling the state to share in the profits generated from the horsepark-agricultural center, in lieu of the payment of lease fees.

Section 7. *Canal structures.—*

(1) Before making a final decision on the disposition of the Inglis Lock the department must gather the following additional information to assess the situation and justify the final decision.

(a) Determine and explain the functions of the current lock and flow control structures, especially their function in flood control and weed control.

(b) Determine the operating conditions of these structures and recommend alternative design strategies to improve the current functions provided by existing works that will result in efficient operating and maintenance costs.

(c) Determine the navigability options provided by the current works and determine how these features can be reasonable maintained by an alternative design of the works.

Based on the additional information gathered, the department's recommendations must be presented to the Governor and Cabinet and to the Legislature by July 1, 1994.

(2) Prior to a final determination of the disposition of the canal works impounding the Oklawaha River at the Rodman Reservoir being made, the Department of Natural Resources shall study the efficacy, both environmental and economic, of complete restoration of the Oklawaha River, partial restoration of the river, total retention of the Rodman Reservoir, and partial retention of the reservoir. The department shall contact the U.S. Army Corps of Engineers to determine what elements of its study would mirror a federal environmental impact statement if required by the Corps before issuing permits regarding the disposition of the canal works. Based on all relevant information, including that obtained under this subsection, the efficacy of the options for restoring the Oklawaha River, retaining the Rodman Reservoir, and partial restoration or retention shall be summarized and evaluated by the department. The department shall present its findings and recommendations to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives by January 1, 1995. The final determination as to the disposition of the Rodman Reservoir shall be made following the submission of these findings and recommendations.

Section 8. *Transportation and utility crossings of greenways lands.—*

(1) The Legislature recognizes that from time to time it may be necessary to serve statewide public needs by allowing transportation and utility uses to cross the greenways lands. When these crossings are needed, the location and design should consider and mitigate the impact on environmental resources, and the value of the land shall be paid based on fair market value.

(2) In furtherance of previous legislative decisions and policy, the Legislature recognizes the need for the Lebanon Station-to-Wildwood Turnpike toll road extension and the need for it to cross greenways lands at the intersection of State Road 200 and State Road 484. The Department of Transportation shall pay fair compensation for the lands needed to accomplish the crossing of greenways lands and shall mitigate the impacts of the crossing to the extent practical.

(3) Furthermore, the Legislature recognizes the needs expressed by Marion County to provide for the southerly extension of Sixtieth Avenue between State Road 200 and Interstate 75 and for the extension to cross the greenways lands to allow for the orderly growth and development of Marion County. Right-of-way for this extension across greenways lands shall be designed to mitigate the impacts to the extent practical, and the value of such lands shall be paid based on fair market value or, at the option of Marion County, the value can be subtracted from the amount of reimbursement due the county pursuant to s. 253.783, Florida Statutes.

Section 9. Subsections (1) and (3) of section 253.781, Florida Statutes, are amended to read:

253.781 Retention of state-owned lands along former Cross Florida Barge Canal route; creation of Cross Florida Greenways State Recreation and Conservation Area; authorizing transfer to the Federal Government for inclusion in Ocala National Forest.—

(1) It is the intent of the Legislature to conserve and protect the natural resources and scenic beauty of the Oklawaha River Valley and all lands and interests formerly acquired by the state or Federal Government for construction and operation of the Cross Florida Barge Canal. It is the finding of the Legislature that these areas have a significant impact upon environmental and recreational resources of statewide importance and that public ownership of and access to such areas are necessary and desirable to protect the health, welfare, safety, and quality of life of the residents of this state and to implement s. 7, Art. II of the State Constitution. It is further the finding of the Legislature that retention of ownership and control of the majority of the lands by the state and the ownership and control of additional portions by the Federal Government as part of the Ocala National Forest will properly protect and conserve the natural resources and scenic beauty of Florida, enhance recreational opportunities, and be in the public interest. To achieve these goals, the Legislature hereby creates the Cross Florida Greenways State Recreation and Conservation Area~~, the specific boundaries of which shall be determined pursuant to s. 253.7829~~.

(3) The Governor and Cabinet as the head of the Department of Natural Resources *may* ~~are empowered, authorized, and directed to~~ acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to lands acquired in less-than-fee title *and to privately owned lands that break the continuity of publicly owned lands within the original canal corridor as specified in the University Planning Team Greenway Management Plan* along the canal route, *using* ~~utilizing~~ canal authority assets *transferred to the department, using state, local, or federal funds dedicated to acquiring lands for conservation and recreation,* or *using* funds from the Cross Florida Barge Canal Trust Fund. The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain *must* ~~shall~~ be exercised pursuant to ~~the provisions of~~ chapter 73.

Section 10. Subsection (3) of section 253.782, Florida Statutes, is amended to read:

253.782 Retention of state-owned lands in and around Lake Rousseau and the Cross Florida Barge Canal right-of-way from Lake Rousseau west to the Withlacoochee River.—

(3) The Governor and Cabinet as head of the Department of Natural Resources *may* ~~are empowered, authorized, and directed to~~ acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to any less-than-fee title interest in land owned by the Board of Trustees of the Internal Improvement Trust Fund, including interests previously owned by the canal authority, as described in subsection (2). The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain shall be exercised pursuant to the provisions of chapter 73.

Section 11. Subsection (1) of section 253.7829, Florida Statutes, 1992 Supplement, is amended to read:

253.7829 Management plan for retention or disposition of former Cross Florida Barge Canal lands; authority to manage lands until disposition.—

(1) It is declared to be in the public interest that ~~the canal authority, with the assistance of~~ the Department of Natural Resources~~,~~ shall do and is hereby authorized to do any and all things and incur and pay from the Cross Florida Barge Canal Trust Fund or from the canal authority assets, for the public purposes described herein, any and all expenses necessary, convenient, and proper to:

(a) Develop a management plan for the retention or disposition of lands acquired for the Cross Florida Barge Canal to be submitted to the Governor and Cabinet no later than 2 years after the date of enactment of the Cross Florida Barge Canal deauthorization act, which plan shall reflect a consideration of alternatives for disposition as provided in this section of all lands in fee or less than fee owned by the Board of Trustees of the Internal Improvement Trust Fund, including those lands previously owned by the canal authority and the United States Army Corps of Engineers, and lands to be transferred to the state by the United States Army Corps of Engineers. The management plan shall establish a plan for delineating the specific boundaries of the Cross Florida Greenways State Recreation and Conservation Area. The Legislature intends that such boundaries include, at a minimum, a 300-yard-wide corridor, except where the original corridor is a lesser width or except in areas where bridges and roads cross the canal corridor, on former canal lands within the original canal corridor extending from the St. Johns River to the Gulf of Mexico, including all of the Oklawaha River Valley and Rodman Reservoir, and all canal works in all areas whether completed and in use or not, but excluding all parts of Lake Rousseau. Such boundaries may include other former canal lands according to the following criteria:

1. The proximity of the lands to former canal corridor lands.

2. The environmental sensitivity or importance of the lands or its characteristics as a unique or significant wildlife habitat.

3. The proximity of the lands to existing state or federal land which is maintained, at least in part, as natural wildlife habitat, so that the addition of the parcel would function as a wildlife corridor, or as additional habitat.

4. The potential of the lands to be developed as outdoor recreation lands.

Commercially valuable parcels, including those parcels near road crossings, within the canal corridor which do not meet the criteria of subparagraphs 1.-4. and other former canal lands which are not included within the boundaries of the Cross Florida Greenways State Recreation and Conservation Area under the criteria of subparagraphs 1.-4., may be disposed of as surplus lands pursuant to s. 253.783(2)(a)-(d). Such alternatives for disposition will include retention by the state or any agency thereof for the specific public purposes outlined in this paragraph or by the counties or adjacent municipalities for recreational or conservation purposes, and a declaration of lands not to be retained as surplus lands to be disposed of pursuant to s. 253.783(2)(a)-(d). The management plan shall also address any remedial measures necessary to correct any environmental or economic damage caused by works constructed as a part of or as a result of the Cross Florida Barge Canal.

(b) Operate and maintain existing lands and interests in lands, appurtenances, structures, and facilities ~~until further disposition is directed by the Legislature pursuant to the management plan~~. Operation and maintenance of water control structures may be delegated by the department to the St. Johns River Water Management District or the Southwest Florida Water Management District, as necessary. Rights-of-way necessary for the construction and maintenance of electric transmission lines may be authorized ~~by the management plan~~.

(c) The development of hydro-electric power is a compatible use of greenway land and may be considered by the Board of Trustees of the Internal Improvement Trust Fund as an allowable use within the greenways of Lake Rousseau and the lower Withlacoochee River, provided that such hydro-electric power complies with all requisite state and federal environmental and water management standards.

(d)1. Before taking any action to control the rhesus monkey population located in Marion County, the Florida Game and Fresh Water Fish Commission shall conduct a study of the options available to them to deal with control of the rhesus monkeys located within a 10-mile radius of the convergence of the Oklawaha and Silver Rivers. The options studied shall include but not be limited to:

a. Developing a management plan to allow the monkeys to remain in their present locations.

b. Relocating all or some of the monkeys to appropriate private state or federal lands in the United States.

c. Sterilizing all or some of the monkeys, regardless of whether they remain in their present location or are relocated.

d. Euthanizing all or some of the monkeys.

2. During the time the study is being conducted, the Florida Game and Fresh Water Fish Commission may control monkeys that constitute a threat to visitors to such area. Such control includes, but is not limited to, the right to deny public access to any area where the monkeys are known to congregate. The Florida Game and Fresh Water Fish Commis-

sion shall post adequate warning signs in areas to which the public is denied access.

3. The Florida Game and Fresh Water Fish Commission may consult with any other local or state agency while conducting the study and may subcontract with any such agency to complete the study.

4. The study of the options shall be delivered to the Board of Trustees of the Internal Improvement Trust Fund.

5. Nothing in this paragraph affects the signed agreement between the Department of Natural Resources and the Silver Springs Attraction regarding the relocation of rhesus monkeys from Silver River State Park to the attraction, and such agreement continues to be valid.

The Governor and Cabinet may authorize the sale or exchange of surplus lands within the former Cross Florida Barge Canal project corridor and the acquisition of privately owned lands or easements over such privately owned lands within the project corridor necessary for purposes of completing a continuous corridor or for other management purposes provided by law. However, such acquisition shall be funded from the proceeds of any sale or exchange of surplus canal lands after repayment to the counties, as provided in s. 253.783(2)(e), or from other funds appropriated by the Legislature.

Section 12. Paragraphs (e), (f), and (g) of subsection (2) and subsection (3) of section 253.783, Florida Statutes, 1992 Supplement, are amended to read:

253.783 Additional powers and duties of the Department of Natural Resources; disposition of surplus lands; payments to counties.—

(2) It is declared to be in the public interest that the department shall do and is hereby authorized to do any and all things and incur and pay from the Cross Florida Barge Canal Trust Fund, for the public purposes described herein, any and all expenses necessary, convenient, and proper to:

(e) Refund to the counties of the Cross Florida Canal Navigation District moneys pursuant to this paragraph from the funds remaining in the Cross Florida Barge Canal Trust Fund~~, after the payment of the costs of acquiring lands under s. 253.781(3),~~ from the funds derived from the conveyance of lands of the project to the Federal Government or any agency thereof, pursuant to s. 253.781, and from the sales of surplus lands pursuant to this section. Following federal deauthorization of the project, such refunds shall consist of the $9,340,720 principal in ad valorem taxes contributed by the counties and the interest which had accrued on that amount from the time of payment to June 30, 1985. *In no event shall the counties be paid less than the aggregate sum of $32 million in cash or the appraised values of the surplus lands.* Such refunds shall be in proportion to the ad valorem tax share paid to the Cross Florida Canal Navigation District by the respective counties. Should the remaining funds in the Cross Florida Barge Canal Trust Fund and the funds derived from the conveyance of lands of the project to the Federal Government for payment or from the sale of surplus land be inadequate to pay the total of the principal plus interest, first priority shall be given to repaying the principal and second priority shall be given to repaying the interest. Interest to be refunded to the counties shall be compounded annually at the following rates: 1937-1950, 4 percent; 1951-1960, 5 percent; 1961-1970, 6 percent; 1971-1975, 7 percent; 1976-June 30, 1985, 8 percent. In computing interest, amounts already repaid to the counties shall not be subject to further assessments of interest. Any partial repayments provided to the counties under this act shall be considered as contributing to the total repayment owed to the counties. Should the funds generated by conveyance to the Federal Government and sales of surplus lands be more than sufficient to repay said counties in accordance with this section, such excess funds *may* ~~shall~~ be used for the maintenance of the greenways corridor. In no case shall general revenue funds be used to repay interest owed to the counties.

~~(f) Establish an advisory committee to report to the canal authority regarding the development of the management plan. This committee shall be composed of one representative from each of the following: the canal authority, Department of Natural Resources, Department of Environmental Regulation, Department of Agriculture and Consumer Services, Game and Fresh Water Fish Commission, Department of Transportation, Department of Community Affairs, Southwest Florida Water Management District, St. Johns River Water Management District, Duval County, Clay County, Putnam County, Marion County, Levy County, and Citrus County; and it shall also be composed of six members of the public at large, two of whom shall be appointed by the Governor and Cabinet, two of whom shall be appointed by the Speaker of the House of Representatives, and two of whom shall be appointed by the President of the Senate. The canal authority, with the assistance of the department, shall conduct public hearings to receive comments and recommendations as to the disposition of lands under the management plan.~~

(f)~~(g)~~ Carry out the purposes of this act.

~~(3) The canal authority shall bear its own costs in preparing the management plan, and each agency or local government shall bear its own cost of participation in the advisory committee.~~

Section 13. *All agencies of the state, regional planning councils, water management districts, and local governments shall recognize the special character of the lands and waters designated by the state as the Cross Florida Greenways State Recreation and Conservation Area and shall not take any action which will impair its use and conservation.*

Section 14. *Contingent upon HB 1743 or similar legislation becoming law establishing the Greenway Trust Fund, all cash balances, obligations and appropriations associated with the Cross Florida Barge Canal Trust Fund shall be transferred to the Greenway Trust Fund. All revenues authorized for deposit into the Cross Florida Barge Canal Trust Fund shall be deposited into the Greenway Trust Fund.*

Section 15. *The Canal Authority of the State of Florida is transferred by a type three transfer, as defined in s. 20.06(3), Florida Statutes, to the Department of Natural Resources, effective July 1, 1993. The sum of $1.2 million is hereby appropriated from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources, and no less than 10 positions are authorized to carry out the purposes of this act. At least three of these positions shall be experienced in real estate appraisals and real estate sales to assist in the timely disposition of surplus lands so that the corridor counties can be repaid as required by law.*

Section 16. *There is hereby appropriated $900,000 from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources for Fiscal Year 1993-1994 for contracting with the St. Johns River Water Management District and the Southwest Florida Water Management District for operation and maintenance of water control structures.*

Section 17. *There is hereby appropriated $900,000 from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources for Fiscal Year 1993-1994 for contracting with the St. Johns River Water Management District to implement the provisions of Section 7 (2) of this act.*

Section 18. There is hereby appropriated $50,000 from the Cross Florida Barge Canal Trust Fund to the Department of Natural Resources for the 1993-1994 fiscal year for carrying out the studies and analysis required before a final decision is made on the disposition of the Inglis Lock, required by the section 7(1) of this act. The department may contract with the Southwest Florida Water Management District and public or private agency consultants to complete the requirements of this section.

Section 19. Notwithstanding any provision in the 1993 budget implementing bill to the contrary, it is the intent of the Legislature that the Canal Authority of the State of Florida be transferred to the Department of Environmental Protection on the effective date of this act, and that its activities not, except as specified in this act, continue to be directed by the Governor and Cabinet.

Section 20. This act shall take effect July 1, 1993.

And the title is amended as follows:

On page 2, line 1, strike everything after the semicolon and insert: providing legislative intent; assigning the Cross Florida Greenways State Recreation and Conservation Area to the Office of Greenways Management within the Office of the Executive Director in the Department of Natural Resources; providing for legislative review and recommendations regarding greenways management; establishing boundaries of such area; authorizing the Board of Trustees of the Internal Improvement Trust Fund to include certain lands within such area; providing for disposition of surplus lands of the Cross Florida Canal Navigation District; providing for payment of compensation to certain counties with lands in the district; providing for recreational uses and management of such area; providing for construction of a horsepark-agricultural center;

specifying uses of such center; providing for the state to share in the profits of the center; providing for modification of certain canal structures; specifying certain studies related to certain canal structures; providing for transportation and utility crossings of greenways lands; providing for mitigation and valuation of such lands; amending ss. 253.781 and 253.782, F.S.; authorizing the Governor and Cabinet to acquire certain lands; amending s. 253.7829, F.S.; authorizing the Governor and Cabinet to sell or exchange certain surplus lands; providing for disposition of the proceeds of such sales; requiring the Department of Natural Resources to develop a management plan for rhesus monkeys on certain lands; requiring the chief epidemiologist of the Department of Health and Rehabilitative Services to review the plan for the purpose of minimizing public health risks; authorizing certain management options; authorizing a surcharge on greenways visitor entrance fees or concessions for certain purposes; authorizing consideration of hydroelectric power generating facilities on certain waters in the greenways; amending s. 253.783, F.S.; providing for refunding certain amounts to certain counties; specifying a minimum amount; deleting a requirement that an advisory committee be established for certain purposes; deleting a requirement that the Canal Authority of the State of Florida bear certain costs; providing for removal and sale of products from certain canal lands; providing for deposit of proceeds into the Cross Florida Barge Canal Trust Fund; providing for recognition of the Cross Florida Greenways State Recreation and Conservation Area; prohibiting certain actions with respect to such area; requiring the Florida Game and Fresh Water Fish Commission to conduct a study of options relating to the rhesus monkeys located in the Silver Springs Attraction area under certain circumstances; authorizing the Florida Game and Fresh Water Fish Commission to control certain monkeys under certain circumstances; authorizing the denial of public access to certain areas under certain circumstances; requiring notice; requiring a report to the Legislature; providing for transfer of monies from the Cross Florida Barge Canal Trust Fund to the Greenway Trust Fund; transferring the Canal Authority of the State of Florida to the Department of Natural Resources; providing an appropriation; providing for positions; providing appropriations for studies;

House Amendment 1 to Senate Amendment 5—On page 23, line 31, strike all of said line and insert:

Section 35. Except as specifically provided otherwise in this act and notwithstanding the last section of this act, this act shall not take effect upon becoming a law but shall take effect July 1, 1993.

House Amendment 1 (with Title Amendment) to Senate Amendment 6—On page 1, strike all of lines 12 through 22, and insert:

Section 13. *The Division of Statutory Revision of the Joint Legislative Management Committee is directed to prepare a reviser's bill for introduction at a subsequent session of the Legislature to conform the Florida Statutes to the organizational changes made by this act.*

Section 14. *Marine net ban compensation study.—The Marine Fisheries Commission, with the technical and funding assistance of the Department of Environmental Protection, shall conduct a study of the potential impacts of the "Save our Sealife" initiative petition and report back to the Legislature by December 31, 1993, with various options to compensate persons who may suffer direct economic loss as a result of its passage. The Marine Fisheries Commission may contract with other agencies, departments, or universities to complete this study.*

Section 15. *Notwithstanding the provisions of section 11.611, Florida Statutes, the Sundown Act, or section 5 of chapter 83-134, Laws of Florida, sections 370.025, 370.026, 370.027, 370.028, and 370.029, Florida Statutes, shall not stand repealed on October 1, 1993, as scheduled by such laws, but those sections are revived and readopted.*

Section 16. *Section 5 of chapter 83-134, Laws of Florida, is repealed.*

Section 17. *Sections 370.025-370.029, F.S., are repealed October 1, 1994 and shall be reviewed by the Legislature prior to that date.*

And the title is amended as follows:

On page 2, line 12, after the semicolon (;) insert: providing a directive to the Division of Statutory Revision; providing for a marine net ban compensation study and requiring a report;

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

CS for CS for HB 1751 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—35 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has amended Senate Amendment 1, has concurred in same as amended, passed as amended, HB 1835 and requests the concurrence of the Senate

John B. Phelps, Clerk

HB 1835—A bill to be entitled An act relating to the Control Release Authority; amending s. 947.146, F.S., relating to determination of eligibility for release; providing exceptions; authorizing release of certain offenders into drug offender probation; providing for critical depletion transfers of certain offenders; providing a repeal date; providing an effective date.

House Amendment 1 (with Title Amendment) to Senate Amendment 1—On page 1, line 12, through page 28, line 11, strike all of said lines and insert:

Section 1. 1993 Revision of the Sentencing Guidelines; legislative intent.—This revision of the sentencing guidelines may be cited as the "Safe Streets Initiative of 1993," and is designed to emphasize incarceration in the state prison system for violent offenders and nonviolent offenders who have repeatedly committed criminal offenses and have demonstrated an inability to comply with less restrictive penalties previously imposed.

Section 2. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 775.084, Florida Statutes, is amended to read:

775.084 Habitual felony offenders and habitual violent felony offenders; extended terms; definitions; procedure; penalties.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of any combination of *four* ~~two~~ or more felonies in this state or other qualified offenses;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior felony or other qualified offense of which he was convicted, or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;

3. The felony for which the defendant is to be sentenced is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.

4.~~3.~~ The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this section; and

5.~~4.~~ A conviction of a felony or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

a. Arson,

b. Sexual battery,

c. Robbery,

d. Kidnapping,

e. Aggravated child abuse,

f. Aggravated assault,

g. Murder,

h. Manslaughter,

i. Unlawful throwing, placing, or discharging of a destructive device or bomb,

j. Armed burglary, or

k. Aggravated battery;

2. The felony for which the defendant is to be sentenced *is a felony enumerated in subparagraph 1., and such felony* was committed within 5 years of the date of the conviction of the last prior enumerated felony or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony, whichever is later;

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section; and

4. A conviction of a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(c) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which he is to be sentenced was committed during such probationary period.

(3) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

(a) The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

(b) Written notice shall be served on the defendant and his attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence so as to allow the preparation of a submission on behalf of the defendant.

(c) Except as provided in paragraph (a), all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

(d) Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

(e) For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

(4)(a) The court, in conformity with the procedure established in subsection (3), shall sentence the habitual felony offender as follows:

1. In the case of a life felony, for life.

~~2.~~ In the case of a felony of the first degree, for *a term of years not exceeding 40* ~~life~~.

~~3.~~ In the case of a felony of the second degree, for a term of years not exceeding 30.

~~4.~~ In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in subsection (3), may sentence the habitual violent felony offender as follows:

1. In the case of a life felony, for life.

~~2.~~ In the case of a felony of the first degree, for *a term of years not exceeding 40* ~~life~~, and such offender shall not be eligible for release for 15 years.

~~3.~~ In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

~~4.~~ In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section. At any time when it appears to the court that the defendant is a habitual felony offender or a habitual violent felony offender, the court shall make that determination as provided in subsection (3).

(d) A sentence imposed under this section shall not be increased after such imposition.

(e) A sentence imposed under this section *is* ~~shall~~ not ~~be~~ subject to *sentencing guidelines* ~~the provisions of s. 921.001~~. *Until June 1, 1996,* the provisions of *s. 947.146* ~~chapter 947~~ shall *apply to a person sentenced as a habitual felony offender pursuant to paragraph (a) of subsection (1)* ~~not be applied to such person~~. A defendant sentenced under this section *is* ~~shall~~ not ~~be~~ eligible for gain-time granted by the Department of Corrections, except that the department may grant up to 20 days of incentive gain-time each month as provided ~~for~~ in s. 944.275(4)(b).

(5) In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

Section 3. The Division of Economic and Demographic Research of the Joint Legislative Management Committee shall examine the application of the habitual offender statute as amended in this act and shall submit such report, by December 1, 1995, to the Senate Committee on Criminal Justice; the Senate Committee on Corrections, Probation, and Parole; the House Committee on Corrections; and the House Committee on Criminal Justice. In conducting this research, the division shall determine:

(1) Given present and future state prison resources, if the habitual offender statute is being used selectively against the very worst offenders;

(2) If the habitual offender statute is being applied in a uniform manner throughout the state; and

(3) If the habitual offender statute is being applied in a racially neutral manner throughout the state.

Section 4. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 777.04, Florida Statutes, is amended to read:

777.04 Attempts, solicitation, *and* conspiracy~~, generally~~.—

(1) *A person who* ~~Whoever~~ attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such ~~an~~ offense, but fails in the perpetration or is intercepted or prevented in the execution *thereof* ~~of the same~~, commits the offense of criminal attempt, *ranked for purposes of sentencing* ~~and shall, when no express provision is made by law for the punishment of such attempt, be punished~~ as provided in subsection (4). ~~The offense of~~ Criminal attempt *includes* ~~shall include~~ the act of an adult who, with intent to commit an offense prohibited by law, allures, seduces, coaxes, or induces a child under the age of 12 to engage in an offense prohibited by law.

(2) *A person who* ~~Whoever~~ solicits another to commit an offense prohibited by law and in the course of such solicitation commands, encourages, hires, or requests another person to engage in specific conduct which would constitute such offense or an attempt to commit such offense commits the offense of criminal solicitation, *ranked for purposes of sentencing* ~~and shall, when no express provision is made by law for the punishment of such solicitation, be punished~~ as provided in subsection (4).

(3) *A person who* ~~Whoever~~ agrees, conspires, combines, or confederates with another person or persons to commit any offense commits the offense of criminal conspiracy and shall, when no express provision is made by law for the punishment of such conspiracy, be punished as provided in subsection (4).

(4)(a) Except as otherwise provided in s. 921.0012, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is ranked on the offense severity ranking chart in s. 921.0012 two levels below the

offense attempted, solicited, or conspired to is, was, or would have been ranked on the offense severity ranking chart.

(b) If the offense attempted, solicited, or conspired to is a capital felony, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the offense attempted, solicited, or conspired to is a felony of the second degree or a burglary that is a felony of the third degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) If the offense attempted, solicited, or conspired to is a felony of the third degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(f) If the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4) Whoever commits the offense of criminal attempt, criminal solicitation, or criminal conspiracy shall be punished as follows:~~

~~(a) If the offense attempted, solicited, or conspired to is a capital felony, the person convicted is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(b) If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the person convicted is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(c) If the offense attempted, solicited, or conspired to is a felony of the second degree or a burglary that is a felony of the third degree, the person convicted is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(d) If the offense attempted, solicited, or conspired to is a felony of the third degree, the person convicted is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(e) If the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, the person convicted is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(5) It is a defense *to a charge of criminal attempt, criminal solicitation, or criminal conspiracy* ~~under this section~~ that, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose, the defendant:

(a) Abandoned his attempt to commit the offense or otherwise prevented its commission;

(b) After soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense; or

(c) After conspiring with one or more persons to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense.

Section 5. Effective upon this act becoming a law and applicable to sentencing for offenses committed on or after October 1, 1993, section 921.001, Florida Statutes, 1992 Supplement, is amended to read:

921.001 Sentencing Commission *and sentencing guidelines generally.*—

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a uniform sentencing policy in cooperation with the Supreme Court. In furtherance of this cooperative effort, *the Legislature* ~~there is~~ created a Sentencing Commission, ~~which shall be~~ responsible for the initial development of a statewide system of sentencing guidelines, *evaluating.* ~~The commission shall evaluate~~ these guidelines periodically, and *recommending* ~~recommend such changes~~ on a continuing basis *changes* ~~as are~~ necessary to ensure incarceration of:

(a) Violent criminal offenders; and

(b) Nonviolent criminal offenders who commit repeated acts of criminal behavior and who have demonstrated an inability to comply with less restrictive penalties previously imposed for nonviolent criminal acts.

(2)(a) The commission *is* ~~shall be~~ composed of 17 members, consisting of: two members of the Senate ~~to be~~ appointed by the President of the Senate; two members of the House of Representatives ~~to be~~ appointed by the Speaker of the House of Representatives; the Chief Justice of the Supreme Court or a member of the Supreme Court designated by the Chief Justice; three circuit court judges, one county court judge, and one representative of the victim advocacy profession, ~~to be~~ appointed by the Chief Justice of the Supreme Court; the Attorney General or his designee; and the secretary of the Department of Corrections or his designee. The following members *are* ~~shall be~~ appointed by the Governor: one state attorney recommended by the Florida Prosecuting Attorneys Association; one public defender recommended by the Public Defenders Association; one private attorney recommended by the President of The Florida Bar; and two persons of the Governor's choice. The Chief Justice or the member of the Supreme Court designated by the Chief Justice *serves* ~~shall serve~~ as chairman of the commission.

(b) The members of the commission appointed by the Governor and the members from the Senate and the House of Representatives ~~shall~~ serve 2-year terms. The members appointed by the Chief Justice of the Supreme Court ~~shall~~ serve at his pleasure.

(c) Membership on the commission *does* ~~shall~~ not disqualify a member from holding any other public office or from being employed by a public entity. The Legislature finds and declares that the commission serves a state, county, and municipal purpose and that service on the commission is consistent with a member's principal service in a public office or in public employment.

(d) Members of the commission ~~shall~~ serve without compensation but *are* ~~shall be~~ entitled to be reimbursed for per diem and travel expenses as provided for in s. 112.061.

(e) The office of the State Courts Administrator shall act as staff for the commission and *shall* provide all necessary data collection, analysis, and research, and support services.

(3)*(a)* The commission shall meet annually or at the call of the chairman to review sentencing practices and recommend modifications to the guidelines. In *recommending modifications to* ~~modifying~~ the sentencing guidelines, the commission shall take into consideration *the existing* ~~current~~ sentencing and release practices and correctional resources, including the capacities of local and state correctional facilities, in addition to other relevant factors.

(b) For *the* ~~this~~ purpose *of assisting the commission in recommending modifications to the sentencing guidelines,* the *Department of Corrections* ~~commission~~ is authorized to collect and evaluate data on sentencing practices in the state from each of the judicial circuits *and provide technical assistance to the commission upon request. The Department of Corrections shall, no later than October 1 of each year, provide the commission with a yearly report detailing the rate of compliance of each judicial circuit in providing scoresheets to the department.*

(4) The purpose of the sentencing guidelines is to establish a uniform set of standards to guide the sentencing judge in the sentence decisionmaking process. The guidelines represent a synthesis of current sentencing theory, historical sentencing practices, and a rational approach to managing correctional resources. The sentencing guidelines are intended to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-related and offender-related criteria and in defining the relative importance of those criteria in the sentencing decision.

(a) The sentencing guidelines embody the principles that:

1. Sentencing is neutral with respect to race, gender, and social and economic status.

2. The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment.

3. The penalty imposed is commensurate with the severity of the primary offense and the circumstances surrounding the primary offense.

4. The severity of the sentence increases with the length and nature of the offender's prior record.

5. The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time.

6. Departures from the recommended sentences established in the guidelines are articulated in writing and made only when circumstances or factors reasonably justify the aggravation or mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the sentencing guidelines is a preponderance of the evidence.

7. Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities.

(b)~~(4)(a)~~ The guidelines *enacted effective October 1, 1983, apply* ~~shall be applied~~ to all felonies, except capital felonies, committed on or after October 1, 1983,; and to all felonies, except capital felonies and life felonies, committed prior to *that date and* ~~October 1, 1983,~~ for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to *such* ~~the~~ provisions ~~of this act~~. *The 1993 guidelines apply to sentencing for all felonies, except capital felonies, committed on or after October 1, 1993, and to sentencing for all felonies, except capital felonies, committed before October 1, 1993, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to the 1993 guidelines.*

(c)~~(b)~~ The commission shall, no later than October 1 of each year, make a recommendation to the members of the Supreme Court, the President of the Senate, ~~and~~ the Speaker of the House of Representatives, *and the chairpersons of the relevant substantive committees of both houses* on the need for changes in the guidelines. Upon receipt of such recommendation, the Supreme Court may revise the statewide sentencing guidelines to conform them with all or part of the commission recommendation. Such revision shall be submitted by the Supreme Court to the President of the Senate, ~~and~~ the Speaker of the House of Representatives, *and the chairpersons of the relevant substantive committees of both houses* no later than *December 1* ~~February 1~~ of each year following the receipt of the recommendations of the commission. However, such revision *is* ~~shall become~~ effective only upon the subsequent adoption by the Legislature of legislation implementing the guidelines as then revised. The court may also revise the statewide sentencing guidelines if it certifies that the revisions are necessary to conform the guidelines to previously adopted statutory revisions.

(d) The commission, with the assistance of the Department of Corrections, shall estimate how sentencing score thresholds and weights assigned to the sentencing factors will affect the rates of incarceration and the levels of prison population and shall submit to the Legislature, by October 1 of each year, recommended sentencing score thresholds, recommended weights assigned to the sentencing factors, and a recommended appropriation for state correctional resources that is sufficient to fund the estimated prison population.

~~(e) The Division of Economic and Demographic Research of the Joint Legislative Management Committee shall prepare alternative proposals which revise the statewide sentencing guidelines and submit such proposals to the Senate Committee on Corrections, Probation, and Parole; the Senate Committee on Criminal Justice; the House Committee on Corrections; the House Committee on Criminal Justice; and to the Sentencing Guidelines Commission by November 1, 1991. The commission is hereby ordered to develop revised statewide sentencing guidelines and provide them to the members of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by January 1, 1992, which emphasize incarceration for violent offenders and alternatives to incarceration for nonviolent offenders. In developing revised sentencing guidelines, the commission shall consider present and future state prison resources so that available spaces for incarceration are used as specified in paragraphs (1)(a) and (b).~~

~~(d) In developing revised sentencing guidelines to meet the requirements of paragraphs (1)(a) and (b) and (4)(c), the commission shall:~~

~~1. Rank the gravity of offenses to reflect judgments about harm or potential harm to the community, the culpability of the offender, and the physical injury to the victim.~~

~~2. Develop a scoring system to assign weight to such offender characteristics as the nature and extent of prior criminal convictions, the juvenile record, the offender's legal status at the time of the offense, whether extended periods of crime-free behavior will diminish the weight given to earlier convictions, and how multiple convictions arising out of a single criminal episode should be counted.~~

~~3. Define a dispositional policy to determine which offenders should go to state prison and which should be sanctioned in other ways.~~

~~4. Establish a durational policy to set the lengths of sentences.~~

~~5. Develop policy and procedure to govern when a judge may depart from the guidelines to impose a more severe or less severe sanction.~~

(5) Sentences imposed by trial court judges *under the 1993 revised sentencing guidelines on or after October 1, 1993,* must be ~~in all cases~~ within *the 1993 guidelines unless there is a departure sentence with written findings* ~~any relevant minimum and maximum sentence limitations provided by statute and must conform to all other statutory provisions~~. *If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence under the guidelines must be imposed, absent a departure. If a departure sentence, with written findings, is imposed, such sentence must be within any relevant maximum sentence limitations provided in s. 775.082.* The failure of a trial court to impose a sentence within the sentencing guidelines *is* ~~shall be~~ subject to appellate review pursuant to Chapter 924. *However, the extent of a departure from a guidelines sentence is not subject to appellate review.* ~~However, any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1). The extent of departure from a guideline sentence shall not be subject to appellate review.~~

(6) A court may impose a departure sentence outside the sentencing guidelines ~~A departure sentence shall be~~ based upon circumstances or factors which reasonably justify the aggravation or mitigation of the sentence *in accordance with s. 921.0016.* The level of proof necessary to establish facts supporting a departure from a sentence under the guidelines is a preponderance of the evidence. When multiple reasons exist to support a departure from a guidelines sentence, the departure shall be upheld when at least one circumstance or factor justifies the departure regardless of the presence of other circumstances or factors found not to justify departure.

~~(6) The sentencing guidelines shall provide that~~ Any *sentence* ~~sentences~~ imposed outside the range recommended by the guidelines *must* be explained in writing by the trial court judge.

(7) ~~A court may impose~~ A sentence *may be imposed* outside the guidelines *based on* ~~when~~ credible facts, which may include an oral or written statement submitted by the victim or next of kin pursuant to s. 921.143, proven by a preponderance of the evidence, *which* demonstrate that the victim suffered excessive physical or emotional trauma at the hands of the defendant*; and.* such departure is not barred because victim injury has been utilized in the calculation of the guidelines sentence.

~~(8) For purposes of the statewide sentencing guidelines, if the conviction is for an offense described in chapter 794, chapter 800, or s. 826.04 and such offense includes sexual penetration, the sexual penetration must receive the score indicated for penetration or slight injury, regardless of whether there is evidence of any physical injury. If the conviction is for an offense described in chapter 794, chapter 800, or s. 826.04 and such offense does not include sexual penetration, the sexual contact must receive the score indicated for contact but no penetration, regardless of~~

~~whether there is evidence of any physical injury. If the victim of an offense described in chapter 794, chapter 800, or s. 826.04 suffers any physical injury as a direct result of the primary offense or any other offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.~~

(8)~~(9) A trial court may impose~~ A sentence *may be imposed* outside the guidelines *based on* ~~when~~ credible facts, proven by a preponderance of the evidence, *which* demonstrate that the defendant's prior record, including offenses for which adjudication was withheld, and the current criminal offense for which the defendant is being sentenced, indicate an escalating pattern of criminal conduct. The escalating pattern of criminal conduct may be evidenced by a progression from nonviolent to violent crimes, ~~or~~ a progression of increasingly violent crimes, *or a pattern of increasingly serious criminal activity.*

(9)~~(10)~~ The Sentencing Commission and the office of the State Courts Administrator shall conduct ongoing research on the impact of *the* sentencing guidelines ~~adopted by the commission on sentencing practices~~, the use of imprisonment and alternatives to imprisonment, and plea bargaining. The commission, with the aid of the office of the State Courts Administrator, the Department *of Corrections*, and the Parole Commission, shall estimate the impact of any proposed *changes to the* sentencing guidelines on future rates of incarceration and levels of prison population. ~~Such estimates shall be~~ based in part on historical data of sentencing practices which have been accumulated by the office of the State Courts Administrator and on Department *of Corrections* records reflecting average time served for offenses covered by the proposed *changes to the* guidelines. ~~Projections of impact shall be reviewed by~~ The commission *shall review the projections of impact and shall make them* ~~and made~~ available to other appropriate agencies of state government, including the Legislature, by *October 1* ~~December 15~~ of each year.

(10)(a)~~(11)~~ A person who is convicted of a crime committed on or after October 1, 1983, *but before October 1, 1993, may* ~~shall~~ be released from incarceration only:

1.~~(a)~~ Upon expiration of his sentence;

2.~~(b)~~ Upon expiration of his sentence as reduced by accumulated gain-time;

3.~~(c)~~ As directed by an executive order granting clemency;

4.~~(d)~~ Upon attaining the provisional release date;

5.~~(e)~~ Upon placement in a conditional release program pursuant to s. 947.1405; or

6.~~(f)~~ Upon the granting of control release pursuant to s. 947.146.

(b) A person who is convicted of a crime committed on or after October 1, 1993, may be released from incarceration only:

1. Upon expiration of his sentence;

2. Upon expiration of his sentence as reduced by accumulated meritorious or incentive gain-time;

3. As directed by an executive order granting clemency;

4. Upon placement in a conditional release program pursuant to s. 947.1405; or

5. Upon the granting of control release pursuant to s. 947.146.

(11)~~(12)~~ A person who is convicted of a crime committed on or after December 1, 1990, and who receives a control release date may not refuse to accept the terms or conditions of control release.

Section 6. Subsection (1) of section 924.06, Florida Statutes, is amended to read:

924.06 Appeal by defendant.—

(1) A defendant may appeal from:

(a) A final judgment of conviction when probation has not been granted under chapter 948, except as provided in subsection (3);

(b) An order granting probation under chapter 948;

(c) An order revoking probation under chapter 948;

(d) A sentence, on the ground that it is illegal; or

(e) A sentence imposed outside the range recommended by the guidelines authorized by *chapter 921* ~~s. 921.001~~.

Section 7. Section 924.07, Florida Statutes, is amended to read:

924.07 Appeal by state.—

(1) The state may appeal from:

(a) An order dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release.

(b) An order granting a new trial.

(c) An order arresting judgment.

(d) A ruling on a question of law when the defendant is convicted and appeals from the judgment. Once the state's cross-appeal is instituted, the appellate court shall review and rule upon the question raised by the state regardless of the disposition of the defendant's appeal.

(e) The sentence, on the ground that it is illegal.

(f) A judgment discharging a prisoner on habeas corpus.

(g) An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure.

(h) All other pretrial orders, except that it may not take more than one appeal under this subsection in any case.

(i) A sentence imposed outside the range recommended by the guidelines authorized by *chapter 921* ~~s. 921.001~~.

(j) A ruling granting a motion for judgment of acquittal after a jury verdict.

(k) An order or ruling suppressing evidence or evidence in limine at trial.

(2) An appeal under this section shall embody all assignments of error in each pretrial order that the state seeks to have reviewed. The state shall pay all costs of such appeal except for the defendant's attorney's fee.

Section 8. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, subsection (3) of section 958.04, Florida Statutes, is amended to read:

958.04 Judicial disposition of youthful offenders.—

(3) The provisions of this section shall not be used to impose a greater sentence than the maximum recommended range as established by statewide sentencing guidelines pursuant to *chapter 921* ~~s. 921.001~~ unless reasons are explained in writing by the trial court judge which reasonably justify departure. A sentence imposed outside of such guidelines shall be subject to appeal pursuant to s. 924.06 or s. 924.07.

Section 9. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 921.0011, Florida Statutes, is created to read:

921.0011 Definitions.—As used in this chapter, the term:

(1) "Additional offense" means any offense other than the primary offense for which an offender is convicted and that is pending before the court for sentencing at the time of the primary offense.

(2) "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

(3) "Legal status violation" includes:

(a) An escape from incarceration.

(b) Flight to avoid prosecution.

(c) Failure to appear for a criminal proceeding.

(d) Violation of any condition of a supersedeas bond.

(4) "Primary offense" means the offense at conviction pending before the court for sentencing for which the total sentence points recommend a sanction that is as severe as, or more severe than the sanction recom-

mended for any other offense committed by the offender and pending before the court at sentencing. Only one count of one offense before the court for sentencing shall be classified as the primary offense.

(5) "Prior record" means a conviction for a crime committed by the offender, as an adult or a juvenile, prior to the time of the primary offense. Convictions by federal, out-of-state, military, or foreign courts, and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law, are included in the offender's prior record. Convictions for offenses committed by the offender more than 10 years before the primary offense are not included in the offender's prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. Juvenile dispositions of offenses committed by the offender within 3 years before the primary offense are included in the offender's prior record when the offense would have been a crime had the offender been an adult rather than a juvenile.

(6) "Release program" includes:

(a) Parole.

(b) Control release.

(c) Probation.

(d) Community control.

(e) Pretrial intervention or diversion.

(f) Provisional release supervision.

(g) Conditional release supervision.

(h) Supervised community release supervision.

(i) Conditional medical release supervision.

(7) "Victim injury" means the physical injury or death suffered by a person as a direct result of the primary offense, or any offense other than the primary offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense. If the conviction is for an offense involving sexual contact which includes sexual penetration, the sexual penetration must be scored as a severe injury regardless of whether there is evidence of any physical injury. If the conviction is for an offense involving sexual contact which does not include sexual penetration, the sexual contact must be scored as a moderate injury regardless of whether there is evidence of any physical injury. If the victim of an offense involving sexual contact suffers any physical injury as a direct result of the primary offense or any other offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.

Section 10. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 921.0012, Florida Statutes, is created to read:

921.0012 Sentencing guidelines offense levels; offense severity ranking chart.—A single offense severity ranking chart must be used to compute a sentence score for each felony offender. The offense severity ranking chart has 10 offense levels, ranked from least severe to most severe, and each felony offense is assigned to a level according to the severity of the offense.

OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		LEVEL 1
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $100 but less than $20,000.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212(1)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license.
322.212(5)	3rd	False application for driver's license.
370.13(4)(a)	3rd	Molest any stone crab trap, line, or buoy which is property of licenseholder.
370.135(1)	3rd	Molest any blue crab trap, line, or buoy which is property of licenseholder.
372.663(1)	3rd	Poach any alligator or crocodilia.
409.325(2)	3rd	Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than $200.
409.325(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.
458.327(1)(a)	3rd	Unlicensed practice of medicine.
466.026(1)(a)	3rd	Unlicensed practice of dentistry or dental hygiene.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
812.014(2)(d)	3rd	Petit theft (3rd conviction); theft of any property not specified in other paragraphs of subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(4)(a)	3rd	Offense against intellectual property (i.e. computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b)	3rd	Knowing, making, issuing worthless (4)(c)checks $150 or more or obtaining property in return for worthless check $150 or more.
838.015(3)	3rd	Bribery.
838.016(1)	3rd	Public servant receiving unlawful compensation.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.

934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

LEVEL 2

403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07	3rd	Registration of securities and furnishing of prospectus required.
590.28(1)	3rd	Willful, malicious, or intentional burning.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(a)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.60(6)(b)	3rd	Possess two or more false credit cards.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills or promissory note.
831.08	3rd	Possession of 10 or more forged notes.
831.09	3rd	Uttering forged bills; passes as bank bill or promissory note.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	Falsely impersonating an officer.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

LEVEL 3

39.061	3rd	Escapes from juvenile facility (secure detention or residential commitment facility).
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.08(2)(c)	3rd	Trespass on property armed with firearm or dangerous weapon.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)1.	3rd	Grand theft; $5,000 or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c), (3), or (4) drugs within 200 feet of university, public housing facility, or public park.
893.13(6)(a)	3rd	Possession of cocaine.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47(1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.

LEVEL 4

231.06(2)	3rd	Battery of school employee.
240.381(2)	3rd	Battery of community college security officer.
381.0025(4)(b)	3rd	Battery of HRS employee.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
787.03(1)	3rd	Interference with custody; wrongly takes child from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
790.01(2)	3rd	Carrying a concealed firearm.
810.02(3)	3rd	Burglary of an unoccupied conveyance or structure; unarmed; attempted burglary.
810.06	3rd	Burglary; possession of tools.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014(2)(c)2.-8.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).

893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), or (2)(a) or (b) drugs).
914.14(1)(b)	3rd	Witnesses accepting bribes to withhold testimony, information, document, or thing.
914.22(1)(a)	3rd	Force, threaten, etc., witness to withhold testimony, documents, or objects.
914.22(1)(f)	3rd	Force, threaten, bribe, etc., witness to testify falsely.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.

LEVEL 5

316.027(2)	3rd	Accidents involving death or personal injuries, failure to stop; leaving scene.
322.34(3)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
415.111(5)	3rd	Exploit an aged person or disabled adult by the improper or illegal use of funds, assets, property, power of attorney, or guardianship.
790.162	2nd	Threat to throw or discharge destructive device.
790.163	2nd	False report of deadly explosive.
790.164(1)	2nd	False report of deadly explosive or act of arson or violence to state property.
790.165(2)	3rd	Manufacture, sell, possess, or deliver hoax bomb.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
843.01	3rd	Resist officer with violence to his person; resist arrest with violence.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1)(c), (2)(c), (3), or (4) drugs) within 1,000 feet of a school.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 200 feet of university, public housing facility, or public park.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).
951.075	2nd	Prisoner commits assault or battery.

LEVEL 6

316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
775.087(2)(a)2.		Battery upon law enforcement officer or firefighter while possessing firearm.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
787.02(1)(a)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.041(2)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful carnal intercourse with unmarried person under 18 of previous chaste character.
810.02(3)	2nd	Burglary of occupied structure or unoccupied dwelling; not armed, no assault.
812.014(2)(b)	2nd	Property stolen over $20,000 and less than $100,000, grand theft in 2nd degree.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

LEVEL 7

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
415.111(3)	2nd	Knowingly abuse or neglect aged or disabled adult resulting in bodily harm or disability.
782.07	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	3rd	Killing of human being by the operation of a motor vehicle in a reckless manner (vehicular homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04	2nd	Handle, fondle, or assault child under 16 years in lewd, lascivious, or indecent manner.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)	2nd	Burglary of occupied conveyance or dwelling.
812.014(2)(a)	1st	Property stolen, valued at $100,000 or more; 1st degree grand theft.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
827.04(1)	3rd	Deprive child of necessities causing great bodily harm or disfigurement.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 1,000 feet of a school.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03 (1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 100 lbs., less than 2,000 lbs.
893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.

LEVEL 8

316.193(3)(c)3.	2nd	DUI manslaughter.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
812.13(2)(b)	1st	Robbery with a weapon.
827.03(1)(a)	2nd	Commits aggravated battery on a child.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135(1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135(1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135(1)(d)2.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135(1)(e)2.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135(1)(f)2.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.

LEVEL 9

782.04(1)	1st	Attempted premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
784.07(3)	Life	Attempted murder of law enforcement officer engaged in duty.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.
790.161	1st	Attempted capital firearms offense.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.041(2)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135(1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135(1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135(1)(d)3.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135(1)(e)3.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135(1)(f)3.	1st	Trafficking in amphetamine, more than 200 grams.

LEVEL 10

782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.
794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.

Section 11. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 921.0013, Florida Statutes, is created to read:

921.0013 Sentencing guidelines; ranking unlisted felony offenses.—A felony offense not listed in s. 921.0012 is ranked with respect to offense severity level by the Legislature, commensurate with the harm or potential harm that is caused by the offense to the community. Prior to the time the Legislature ranks an offense which has not been ranked, the severity level is within the following parameters:

(1) A felony of the third degree within offense level 1.

(2) A felony of the second degree within offense level 4.

(3) A felony of the first degree within offense level 7.

(4) A felony of the first degree punishable by life within offense level 9.

(5) A life felony within offense level 10.

Section 12. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 921.0014, Florida Statutes, is created to read:

921.0014 Sentencing guidelines; worksheet computations; scoresheets.—

(1) The sentencing guidelines worksheet is used to compute the subtotal and total sentence points. If two or more sentencing enhancements are applicable, only the enhancement with the highest multiplier is used in the total sentence points computation. The worksheet is used as follows:

FLORIDA SENTENCING GUIDELINES WORKSHEET
OFFENSE SCORE

Primary Offense

Level	Sentence Points		Total
10	84	=	
9	66	=	
8	54	=	
7	42	=	
6	36	=	
5	28	=	
4	22	=	
3	16	=	
2	10	=	
1	4	=	
		Total	

Additional Offenses

Level	Sentence Points		Counts	Total
10	12.0	x		=
9	10.8	x		=
8	9.6	x	____	=
7	8.4	x	____	=
6	7.2	x		=
5	5.4	x	____	=
4	3.6	x	____	=
3	2.4	x		=
2	1.2	x		=
1	0.7	x	____	=
M	0.2	x		=

Total

Additional Offenses if the Primary Offense is Level 7 or Above and the Additional Offense is Level 7 or Above

Level	Sentence Points		Counts	Total
10	21	x		=
9	16.5	x		=
8	13.5	x		=
7	10.5	x		=

Total

Victim Injury

Level	Sentence Points		Number	Total
Death	60	x		=
Severe	40	x		=
Sexual penetration	40	x		=
Moderate	18	x		=
Sexual contact	18	x		=
Slight	4	x		=

Total

Primary Offense + Additional Offenses + Victim Injury =

TOTAL OFFENSE SCORE

PRIOR RECORD SCORE

Prior Record

Level	Sentence Points		Number	Total
10	8.0	x		=
9	7.2	x		=
8	6.4	x		=
7	5.6	x		=
6	4.8	x		=
5	3.6	x		=
4	2.4	x		=
3	1.6	x		=
2	0.8	x		=
1	0.5	x		=
M	0.2	x	____	= ____

Total

Prior Record if the Primary Offense is Level 7 or Above and the Prior Offense is Level 7 or Above

Level	Sentence Points		Counts	Total
10	21	x		=
9	16.5	x		=
8	13.5	x		=
7	10.5	x		=

Total

Legal Status Violation

Sentence Points	Total
4	

Release Program Violation

Sentence Points	Total
6 for each violation, up to a total of 18	

Prior Record Score + Legal Status Violation + Release Program Violation = TOTAL PRIOR RECORD SCORE

TOTAL OFFENSE SCORE
TOTAL PRIOR RECORD SCORE

FIREARM OR DESTRUCTIVE DEVICE
SEMIAUTOMATIC WEAPON

SUBTOTAL

DRUG TRAFFICKER (no)(yes) (× multiplier)
LAW ENF. PROTECT. (no)(yes) (× multiplier)

TOTAL

WORKSHEET KEY:

Recommended Sentences:

If the total sentence points are less than or equal to 40, the recommended sentence shall not be a state prison sentence.

If the total sentence points are greater than 40 and less than or equal to 52, the decision to incarcerate in a state prison is left to the discretion of the court.

If the total sentence points are greater than 52, the sentence must be a state prison sentence calculated by total sentence points. A state prison sentence is calculated as follows:

State prison months = total sentence points minus 28.

The recommended sentence length in state prison months may be increased by up to, and including, 25 percent or decreased by up to, and including, 25 percent, at the discretion of the court. If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence recommended under the guidelines must be imposed absent a departure.

Legal status violation includes escape from incarceration, flight to avoid prosecution, failure to appear for a criminal proceeding, and violation of any condition of a supersedeas bond.

Release program violation includes violation of any condition of parole, control release, probation, community control, pretrial intervention or diversion, provisional release supervision, conditional release supervision, supervised community release supervision, or conditional medical release supervision.

Possession of a firearm or destructive device: If the offender is convicted of committing or attempting to commit any felony while having in his possession a firearm as defined in s. 790.001(6), an additional 18 sentence points are added to the offender's subtotal sentence points.

Possession of a semiautomatic weapon: If the offender is convicted of committing or attempting to commit any felony while having in his possession a semiautomatic firearm as defined in s. 775.087(2) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are added to the offender's subtotal sentence points.

If both of the following sentencing enhancements are applicable, only the enhancement with the highest multiplier is used:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, then the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. For a level 9 offense, the court must multiply the subtotal sentence points by 2.0. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7, level 8, or level 9 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), or (5), then the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 775.087(2)(a)2. or s. 775.0875(1), or of the Law

Enforcement Protection Act under s. 775.0823(6) or (7), then the subtotal sentence points are multiplied by 1.5.

(2) A single guidelines scoresheet shall be prepared for each defendant. The scoresheet must cover all the defendant's offenses pending before the court for sentencing. Either the office of the state attorney or the Probation Services Office, or both where appropriate, shall prepare the scoresheet and the scoresheet must be presented to the defense counsel for review for accuracy in all cases unless the judge directs otherwise. The defendant's scoresheet must be approved by sentencing judge.

(3) The Department of Corrections shall develop and submit the revised sentencing guidelines scoresheet to the Sentencing Commission by June 1, 1993. Following the Supreme Court's approval of the revised procedures, the Department of Corrections shall produce and provide the revised scoresheets to the clerks of the circuit courts by no later than September 30, 1993.

(4) Beginning October 1, 1993, the clerks of the circuit courts for the individual counties shall distribute sufficient copies of the sentencing guidelines scoresheets to those persons charged with the responsibility for preparing sentencing guidelines scoresheets, either the office of the state attorney or the Probation Services Office, or both where appropriate.

(5) The clerk of the circuit court shall transmit a complete, accurate, and legible copy of the guidelines scoresheet utilized in each guidelines sentencing proceeding to the Department of Corrections. Scoresheets must be transmitted no less frequently than monthly, by the first of each month, and may be sent collectively.

(6) A copy of the individual offender's sentencing guidelines scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Florida Rules of Criminal Procedure, must be attached to the copy of the uniform judgment and sentence form provided to the Department of Corrections.

Section 13. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 921.0016, Florida Statutes, is created to read:

921.0016 Recommended sentences; departure sentences; aggravating and mitigating circumstances.—

(1)(a) The recommended guidelines sentence provided by the total sentence points is assumed to be appropriate for the offender.

(b) A trial court judge may impose a state prison sentence which varies upward or downward by up to, and including, 25 percent from the recommended guidelines state prison sentence without issuing a written statement delineating the reasons for the variation.

(c) A state prison sentence which varies upward or downward from the recommended guidelines prison sentence by more than 25 percent is a departure sentence and must be accompanied by a written statement delineating the reasons for the departure, filed within 15 days after the date of sentencing. A written transcription of orally stated reasons for departure from the guidelines at sentencing is permissible if it is filed by the court within 15 days after the date of sentencing.

(d) The imposition of a split sentence of incarceration followed by community control or probation does not by itself constitute a departure from sentencing guidelines. For the purpose of determining the maximum sentence authorized by law, any community control portion of a split sentence does not constitute a term of imprisonment.

(e) A departure sentence must be within any relevant maximum sentence limitations provided by s. 775.082.

(2) A departure from the recommended guidelines sentence is discouraged unless there are circumstances or factors which reasonably justify the departure. Aggravating and mitigating factors to be considered include, but are not limited to, those listed in subsections (3) and (4). The failure of a trial court to impose a sentence within the sentencing guidelines is subject to appellate review under chapter 924, but the extent of departure from a guidelines sentence is not subject to appellate review.

(3) Aggravating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.

(c) The offenses before the court for sentencing arose out of separate episodes; the primary offense is scored at offense level 4 or higher; and the defendant has committed five or more offenses within a 30-day period that have resulted in convictions.

(d) The primary offense is scored at offense level 3 and the defendant has committed eight or more offenses within a 30-day period that have resulted in convictions.

(e) The offense before the court for disposition was committed within 6 months after the defendant was released from state prison.

(f) The defendant occupied a leadership role in a criminal organization.

(g) The offense was committed by a public official under color of office.

(h) The defendant knew the victim was a law enforcement officer at the time of the offense; the offense was a violent offense; and that status is not an element of the primary offense.

(i) The offense created a substantial risk of death or great bodily harm to many persons or to one or more small children.

(j) The victim was especially vulnerable due to age or physical or mental disability.

(k) The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.

(l) The victim suffered extraordinary physical or emotional trauma or permanent physical injury, or was treated with particular cruelty.

(m) The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.

(n) The offense resulted in substantial economic hardship to a victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:

1. The offense involved multiple victims or multiple incidents per victim;

2. The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

3. The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or

4. The defendant was in the past involved in other conduct similar to that involved in the current offense.

(o) The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.

(p) The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct as described in s. 921.001(8).

(q) The defendant induced a minor to participate in any of the offenses pending before the court for disposition.

(r) The primary offense is scored at offense level 7 or higher and the defendant has been convicted of one more offense that scored, or would have scored, at an offense level 8 or higher.

(4) Mitigating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.

(e) The need for payment of restitution to the victim outweighs the need for a prison sentence.

(f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(g) The defendant acted under extreme duress or under the domination of another person.

(h) Before the identity of the defendant was determined, the victim was substantially compensated.

(i) The defendant cooperated with the state to resolve the current offense or any other offense.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

(l) The defendant is to be sentenced as a youthful offender.

Section 14. Section 921.0017, Florida Statutes, is created to read:

921.0017 Credit upon recommitment of offender serving split sentence.—Effective for offenses committed on or after October 1, 1993, if probation or community control is revoked and the offender is serving a split sentence pursuant to s. 948.01, upon recommitment to the Department of Corrections, the court shall order credit for time served only, without considering any type of gain-time earned before release to supervision, or any type of sentence reduction granted to avoid prison overcrowding, including, but not limited to, any sentence reduction resulting from administrative gain-time, provisional credits, or control release. The court shall determine the amount of jail-time credit to be awarded for time served between the date of arrest as a violator and the date of recommitment and shall direct the Department of Corrections to compute and apply credit for all other time served previously on the prior sentence for the offense for which the offender is being recommitted. This section does not affect or limit the department's authority to forfeit gain time under s. 944.28(1).

Section 15. Notwithstanding ss. 921.0015 and 921.001(4)(c), Florida Statutes, the Department of Corrections shall develop and submit the sentencing guidelines scoresheet to the Sentencing Commission no later than June 1, 1993. Pursuant to the revision of chapter 921, Florida Statutes, by this act, the Sentencing Commission shall prepare, adopt, and, no later than July 1, 1993, submit to the Supreme Court for its approval procedures for implementing the 1993 revised sentencing guidelines in strict accordance with chapter 921, Florida Statutes, as revised by this act, applicable to sentencing for offenses committed on or after October 1, 1993. The Supreme Court shall have the new procedures in place no later than September 1, 1993.

Section 16. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 775.0823, Florida Statutes, is amended to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—Any provision of law to the contrary notwithstanding, the Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Article V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer ~~by imposing a mandatory minimum sentence without possibility of early release through any gain-time, provisional release credits, conditional release supervision, supervised community release, transition assistance program, or parole during the mandatory minimum portion of the sentence~~, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release ~~shall be imposed~~.

(2) For murder in the second degree as described in s. 782.04(2) and (3), a sentence *pursuant to the sentencing guidelines* ~~of imprisonment for 25 years before eligibility for release shall be imposed~~.

(3) For murder in the third degree as described in s. 782.04(4), a sentence *pursuant to the sentencing guidelines* ~~of imprisonment for 15 years before eligibility for release shall be imposed~~.

(4) For manslaughter as described in s. 782.07 during the commission of a crime, a sentence *pursuant to the sentencing guidelines* ~~of imprisonment for 10 years before eligibility for release shall be imposed~~.

(5) For kidnapping as described in s. 787.01, a sentence *pursuant to the sentencing guidelines* ~~of imprisonment for 15 years before eligibility for release shall be imposed~~.

(6) For aggravated battery as described in s. 784.045, a sentence *pursuant to the sentencing guidelines* ~~of imprisonment for 3 years before eligibility for release shall be imposed~~.

(7) For aggravated assault as described in s. 784.021, a sentence *pursuant to the sentencing guidelines* ~~of imprisonment for 1 year before eligibility for release shall be imposed~~.

~~Any person convicted of an offense under this section is ineligible to receive provisional release credits during any portion of his sentence.~~ Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 17. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 775.087, Florida Statutes, is amended to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

(a) In the case of a felony of the first degree, to a life felony.

(b) In the case of a felony of the second degree, to a felony of the first degree.

(c) In the case of a felony of the third degree, to a felony of the second degree.

(2)(a) Any person who is convicted of:

1. Any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, or any attempt to commit the aforementioned crimes; or

2. Any battery upon a law enforcement officer or firefighter while the officer or firefighter is engaged in the lawful performance of his duties

and who had in his possession a "firearm," as defined in s. 790.001(6), or "destructive device," as defined in s. 790.001(4), shall be sentenced *pursuant to the sentencing guidelines* ~~to a minimum term of imprisonment of 3 calendar years~~. Any person who is convicted of any of the crimes listed in this paragraph or the sale, manufacture, delivery, purchase, or possession with intent to distribute any controlled substance and who had in his possession a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in s. 790.001 shall be sentenced *pursuant to the sentencing guidelines* ~~to a minimum term of imprisonment of 8 calendar years. Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall the defendant be eligible for parole or statutory gain-time under s. 944.275, prior to serving such minimum sentence.~~

(b) As used in this subsection, the term:

1. "High-capacity detachable box magazine" means any detachable box magazine, for use in a semiautomatic firearm, which is capable of being loaded with more than 20 centerfire cartridges.

2. "Semiautomatic firearm" means a firearm which is capable of firing a series of rounds by separate successive depressions of the trigger and which uses the energy of discharge to perform a portion of the operating cycle.

Section 18. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 775.0875, Florida Statutes, is amended to read:

775.0875 Unlawful taking, possession, or use of law enforcement officer's firearm; crime reclassification; penalties.—

(1) A person who, without authorization, takes a firearm from a law enforcement officer lawfully engaged in law enforcement duties commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~, and shall serve a sentence of imprisonment for a mandatory minimum period of 3 calendar years before eligibility for release~~.

(2) A person who violates subsection (1) and commits any other crime involving the firearm taken from the law enforcement officer commits a crime which shall be reclassified as follows:

(a) In the case of a life felony, to a capital felony.

(b) In the case of a felony of the first degree, to a life felony.

(c) In the case of a felony of the second degree, to a felony of the first degree.

(d) In the case of a felony of the third degree, to a felony of the second degree.

(e) In the case of a misdemeanor, to a felony of the third degree.

(3) A person who possesses a firearm which he knows was unlawfully taken from a law enforcement officer commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 19. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 784.08, Florida Statutes, 1992 Supplement, is amended to read:

784.08 Assault or battery on persons 65 years of age or older; reclassification of offenses; minimum sentence.—

(1) A person who is convicted of an aggravated assault or aggravated battery upon a person 65 years of age or older shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of 3 calendar years~~ and fined not more than $10,000 and shall also be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence which may be imposed and shall not be in lieu thereof.

(2) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a person 65 years of age or older, regardless of whether he knows or has reason to know the age of the victim, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(d) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(3) Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 20. Effective October 1, 1993, and applicable to offenses committed on or after that date, section 790.161, Florida Statutes, is amended to read:

790.161 Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do, felony; penalties.—A person who willfully and unlawfully makes, possesses, throws, projects, places, discharges, or attempts to make, possess, throw, project, place, or discharge any destructive device:

(1) Commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084.

(2) If the act is perpetrated with the intent to do bodily harm to any person, or with the intent to do property damage, or if the act results in a disruption of governmental operations, commerce, or the private affairs of another person, commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.084~~, and the person shall be required to serve a term of imprisonment of not less than 5 calendar years before becoming eligible for parole~~.

(3) If the act results in bodily harm to another person or in property damage, commits a felony of the first degree, punishable as provided in s. 775.082 or s. 775.084~~, and the person shall be required to serve a term of imprisonment of not less than 10 calendar years before becoming eligible for parole~~.

(4) If the act results in the death of another person, commits a capital felony, punishable by death. In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment, and such person shall be required to serve a term of imprisonment of not less than 25 calendar years before becoming eligible for parole.

Section 21. Effective October 1, 1993, and applicable to offenses committed on or after that date, section 790.165, Florida Statutes, is amended to read:

790.165 Planting of "hoax bomb" prohibited; penalties.—

(1) For the purposes of this section, "hoax bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain, a destructive device or explosive as defined in this chapter, but is, in fact, an inoperative facsimile or imitation of such a destructive device or explosive, or contains no destructive device or explosive as was represented.

(2) Any person who manufactures, possesses, sells, or delivers a hoax bomb or mails or sends a hoax bomb to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax bomb commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Any person violating the provisions of this subsection shall be sentenced to a minimum term of imprisonment of 3 calendar years.~~ Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld. However, the state attorney or defense attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals.

(4) The provisions of subsection (2) shall not apply to any law enforcement officer, fireman, person, or corporation licensed pursuant to chapter 493, or member of the armed forces of the United States while engaged in training or other lawful activity within the scope of his employment, or to any person properly authorized to test a security system, or to any security personnel, while operating within the scope of their employment, including, but not limited to, security personnel in airports and other controlled access areas, or to any member of a theatrical company or production utilizing a hoax bomb as property during the course of a rehearsal or performance.

Section 22. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 790.221, Florida Statutes, is amended to read:

790.221 Possession of short-barreled rifle, short-barreled shotgun, or machine gun; penalty.—

(1) It is unlawful for any person to own or to have in his care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms.

(2) A person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Upon conviction thereof he shall be sentenced to a mandatory minimum term of imprisonment of 5 years.~~

(3) Firearms in violation hereof which are lawfully owned and possessed under provisions of federal law are excepted.

Section 23. Effective upon this act becoming a law, and applicable to sentencing for offenses committed on or after that date and through September 30, 1993, paragraphs (e) and (i) of subsection (1) of section 893.13, Florida Statutes, are amended to read:

893.13 Prohibited acts; penalties.—

(1)

(e) Except as authorized by this chapter, it is unlawful for any person to sell, ~~purchase,~~ manufacture, or deliver~~, or to possess with the intent to sell, purchase, manufacture, or deliver,~~ a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and *must* ~~shall~~ be sentenced to a minimum term of imprisonment of 3 calendar years and *is* ~~shall~~ not ~~be~~ eligible ~~for parole or release under the Control Release Authority pursuant to s. 947.146 or~~ statutory gain-time under s. 944.275 *before* ~~prior to~~ serving such minimum sentence.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, purchased, manufactured, delivered, or possessed, *must* ~~shall~~ be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(i) Except as authorized by this chapter, it is unlawful for any person to sell, ~~purchase,~~ manufacture, or deliver~~, or to possess with the intent to sell, purchase, manufacture, or deliver,~~ a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and *is* ~~shall~~ not ~~be~~ eligible for ~~parole or release under the Control Release Authority pursuant to s. 947.146 or~~ statutory gain-time under s. 944.275.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, purchased, manufactured, delivered, or possessed, *must* ~~shall~~ be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

Section 24. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 893.13, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 893.13, F.S., for present text.)

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, shall be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(d) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, shall be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(2)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to purchase in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who delivers, without consideration, not more than 20

grams of cannabis, as defined in this chapter, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this paragraph, "cannabis" does not include the resin extracted from the plants of the genus Cannabis or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(4) Except as authorized by this chapter, it is unlawful for any person 18 years of age or older to deliver any controlled substance to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of such a substance, or to use such person to assist in avoiding detection or apprehension for a violation of this chapter. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence shall not be suspended or deferred, nor shall the person so convicted be placed on probation.

(5) It is unlawful for any person to bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775 083.

(6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, that person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this subsection, "cannabis" does not include the resin extracted from the plants of the genus Cannabis, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(c) Except as provided in this chapter, it is unlawful to possess in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who he has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

(7)(a) It is unlawful for any person:

1. To distribute or dispense a controlled substance in violation of the provisions of this chapter relating thereto.

2. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. To refuse an entry into any premises for any inspection or to refuse to allow any inspection authorized by this chapter.

4. To distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

6. To use to his own personal advantage, or to reveal, any information obtained in enforcement of this chapter except in a prosecution or administrative hearing for a violation of this chapter.

7. To withhold information from a practitioner from whom he seeks to obtain a controlled substance or a prescription for a controlled substance that the person has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the last 30 days.

8. To possess a prescription form which has not been completed and signed by the practitioner whose name appears printed thereon, unless the person is that practitioner, is an agent or employee of that practitioner, is a pharmacist, or is a supplier of prescription forms who is authorized by that practitioner to possess those forms.

9. To acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. To affix any false or forged label to a package or receptacle containing a controlled substance.

11. To furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

(b) Any person who violates the provisions of subparagraphs 1.-8. of paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; except that, upon a second or subsequent violation, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who violates the provisions of subparagraphs 9.-11. of paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) Notwithstanding any provision to the contrary of the laws of this state:

(a) The court may assess for drug abuse programs as provided in s. 893.165 any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of this chapter punishable as a criminal offense, in addition to any fine and other penalty provided by law, an amount up to the amount of the fine authorized for the violation.

(b) The court may assess any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of this section, without regard to whether adjudication was withheld, in addition to any fine and other penalty provided or authorized by law, an amount of $100, to be paid to the clerk of the court, who shall forward it to the Operating Trust Fund of the Department of Law Enforcement to be used by the statewide criminal analysis laboratory system for the purposes specified in s. 943.361.

The court is authorized to order a defendant to pay an additional assessment if it finds that the defendant has the ability to pay the fine and the additional assessment and will not be prevented thereby from being rehabilitated or from making restitution.

(9) The provisions of subsections (1) through (7) are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by persons included in any of the following classes, or to the agents or employees of such per-

sons, for use in the usual course of their business or profession or in the performance of their official duties:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(d) Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(e) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(f) Common carriers.

(g) Manufacturers, wholesalers, and distributors.

(h) Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.

Section 25. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 100 pounds of cannabis is guilty of a felony of the first degree, which felony shall be known as "trafficking in cannabis." If the quantity of cannabis involved:

1. Is in excess of 100 pounds, but less than 2,000 pounds, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and ~~to~~ pay a fine of $25,000.

2. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and ~~to~~ pay a fine of $50,000.

3. Is 10,000 pounds or more, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 15 calendar years~~ and ~~to~~ pay a fine of $200,000.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine as described in s. 893.03(2)(a)4. or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine." If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and ~~to~~ pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and ~~to~~ pay a fine of $100,000.

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 15 calendar years~~ and ~~to~~ pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 150 kilograms or more of cocaine as described in s. 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine, punishable by a term of life imprisonment without the possibility of parole. However, if, in addition to the acts specified above, that person:

a. Intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results; or

b. Is determined to have had a highly culpable mental state which may be taken into account when making a capital sentencing judgment when the defendant's conduct causes its natural, though also not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Such person shall also be sentenced to pay the maximum fine provided under subparagraph 1. For the purposes of this section, a highly culpable mental state is represented by a reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death.

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and ~~to~~ pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 10 calendar years~~ and ~~to~~ pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 25 calendar years~~ and ~~to~~ pay a fine of $500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 30 kilograms or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b) or (2)(a), or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs, punishable by a term of life imprisonment without the possibility of parole. However, if, in addition to the acts specified above, that person:

a. Intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results; or

b. Is determined to have had a highly culpable mental state which may be taken into account when making a capital sentencing judgment when the defendant's conduct causes its natural, though also not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. Such person shall also be sentenced to pay the maximum fine provided under subparagraph 1. For the purposes of this section, a highly culpable mental state is represented by a reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death.

(d) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), is guilty of a felony of the first degree, which felony shall be known as "trafficking in phencyclidine." If the quantity involved:

1. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and ~~to~~ pay a fine of $50,000.

2. Is 200 grams or more, but less than 400 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and ~~to~~ pay a fine of $100,000.

3. Is 400 grams or more, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 15 calendar years~~ and ~~to~~ pay a fine of $250,000.

(e) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in s. 893.03(1)(d), is guilty of a felony of the first degree, which felony shall be known as "trafficking in methaqualone." If the quantity involved:

1. Is 200 grams or more, but less than 5 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and ~~to~~ pay a fine of $50,000.

2. Is 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and ~~to~~ pay a fine of $100,000.

3. Is 25 kilograms or more, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 15 calendar years~~ and ~~to~~ pay a fine of $250,000.

(f) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine as described in s. 893.03(2)(c)2. or methamphetamine as described in s. 893.03(2)(c)3. or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine is guilty of a felony of the first degree, which felony shall be known as "trafficking in amphetamine." If the quantity involved:

1. Is 14 grams or more, but less than 28 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and ~~to~~ pay a fine of $50,000.

2. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and ~~to~~ pay a fine of $100,000.

3. Is 200 grams or more, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 15 calendar years~~ and ~~to~~ pay a fine of $250,000.

(2) A person acts knowingly under subsection (1) if that person intends to sell, purchase, manufacture, deliver, or bring into this state, or to actually or constructively possess, any of the controlled substances listed in subsection (1), regardless of which controlled substance listed in subsection (1) is in fact sold, purchased, manufactured, delivered, or brought into this state, or actually or constructively possessed.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld~~, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section~~.

(4) The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance.

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) is guilty of a felony of the first degree and is punishable as if he had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

Section 26. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 893.20, Florida Statutes, is amended to read:

893.20 Continuing criminal enterprise.—

(1) Any person who commits three or more felonies under this chapter in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

(2)~~(a)~~ A person who commits the offense of engaging in a continuing criminal enterprise is guilty of a life felony, punishable *pursuant to the sentencing guidelines* ~~by a term of imprisonment for life or by a term of imprisonment of not less than 25 years~~ and by a fine of $500,000.

~~(b) A violation of this section is exempt from the application of sentencing guidelines pursuant to s. 921.001.~~

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld~~, nor is such person eligible for parole or provisional credits under s. 944.277 prior to serving the mandatory minimum term of imprisonment prescribed in this section~~.

(4) This section does not prohibit separate convictions and sentences for violation of this section and for felony violations of this chapter.

(5) This section must be interpreted in concert with its federal analog, 21 U.S.C. s. 848.

Section 27. Section 944.275, Florida Statutes, is amended to read:

944.275 Gain-time.—

(1) The department is authorized to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.

(2)(a) The department shall establish for each prisoner sentenced to a term of years a "maximum sentence expiration date," which shall be the date when the sentence or combined sentences imposed on a prisoner will expire. In establishing this date, the department shall reduce the total time to be served by any time lawfully credited.

(b) When a prisoner with an established maximum sentence expiration date is sentenced to an additional term or terms without having been released from custody, the department shall extend the maximum sentence expiration date by the length of time imposed in the new sentence or sentences, less lawful credits.

(c) When an escaped prisoner or a parole violator is returned to the custody of the department, the maximum sentence expiration date in effect when the escape occurred or the parole was effective shall be extended by the amount of time the prisoner was not in custody plus the time imposed in any new sentence or sentences, but reduced by any lawful credits.

(3)(a) The department shall also establish for each prisoner sentenced to a term of years a "tentative release date" which shall be the date projected for the prisoner's release from custody by virtue of gain-time granted or forfeited as described in this section. The initial tentative release date shall be determined by deducting basic gain-time granted from the maximum sentence expiration date. Other gain-time shall be applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, shall be applied to make the tentative release date proportionately later.

(b) When an initial tentative release date is reestablished because of additional sentences imposed before the prisoner has completely served all prior sentences, any gain-time granted during service of a prior sentence and not forfeited shall be applied.

(c) The tentative release date may not be later than the maximum sentence expiration date.

(4)(a) As a means of encouraging satisfactory behavior, the department shall grant basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner, subject to the following:

1. Portions of any sentences to be served concurrently shall be treated as a single sentence when determining basic gain-time.

2. Basic gain-time for a partial month shall be prorated on the basis of a 30-day month.

3. When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time shall be granted for the amount of time the maximum sentence expiration date was extended.

(b) For each month in which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant up to 20 days of incentive gain-time, which shall be credited and applied monthly.

(c) An inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his sentence may be granted meritorious gain-time of from 1 to 60 days.

(d) Notwithstanding paragraph (b), the education program manager shall recommend, and the Department of Corrections may grant, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a general educational development certificate or vocational certificate. Under no circumstances may an inmate receive more than 60 days for educational attainment pursuant to this section.

(5) When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law.

(6)(a) Basic gain-time under this section shall be computed on and applied to all sentences imposed for offenses committed on or after July 1, 1978, *and before October 1, 1993.*

(b) ~~On the effective date of the act,~~ All incentive and meritorious gain-time *is* ~~shall be~~ granted according to *this section* ~~the provisions of this act~~.

(c) All additional gain-time previously awarded under former subsections (2) and (3) and all forfeitures ordered prior to the effective date of *the* ~~this~~ act *that created this section* shall remain in effect and be applied in establishing an initial tentative release date.

(7) The department shall *adopt* ~~promulgate~~ rules to implement the granting, forfeiture, ~~and~~ restoration, *and deletion* of gain-time.

Section 28. Section 947.146, Florida Statutes, 1992 Supplement, is amended to read:

947.146 Control Release Authority.—

(1) There is created a Control Release Authority which shall be composed of the members of the Parole Commission and which shall have the same chairman as the commission. The authority shall utilize such commission staff as it determines is necessary to carry out its purposes.

(2) The authority *has* ~~shall have~~ as its primary purpose the implementation of a system of uniform criteria for the determination of the number and type of inmates who must be released into the community under control release in order to maintain the state prison system below 98 ~~97.5~~ percent of its lawful capacity as defined in s. 944.096. No inmate has a right to control release. Control release is an administrative function solely used to manage the state prison population within lawful capacity. *An inmate may not receive an advancement of his control release date by an award of control release award allotments for any period of time before the date the inmate becomes statutorily eligible for control release or before the subsequent date of establishment of his advanceable control release date.*

~~(3) There shall be no award of provisional credits by the secretary of the department pursuant to s. 944.277 unless either:~~

~~(a) The chairman of the Control Release Authority certifies in writing to the secretary of the department that the authority is unable to maintain the state prison system below 97.5 percent of its lawful capacity; or~~

~~(b) Based upon the failure of the authority to act, the state prison system reaches 98 percent of its lawful capacity as provided in s. 944.277.~~

(3)~~(4)~~ A panel of no fewer than two members of the authority shall establish a control release date for each parole ineligible inmate committed to the department and incarcerated within the state, within 90 days following notification by the department of receipt of the inmate *or within 90 days following the completion of proceedings revoking an offender's release and notification by the department of receipt of the inmate*, except an inmate who:

(a) Is serving a sentence *that* ~~which~~ includes a mandatory minimum provision for a capital offense, or *a mandatory minimum term of imprisonment of more than 5 years for a* drug trafficking offense, and has not served the number of days equal to the mandatory minimum term less any jail-time credit awarded by the court;

(b) Is serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2);

(c) Is convicted, or has been previously convicted, of committing or attempting to commit sexual battery, incest, or any of the following lewd or indecent assaults or acts: masturbating in public; exposing the sexual organs in a perverted manner; or nonconsensual handling or fondling of the sexual organs of another person;

(d) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, or aggravated battery, and a sex act was attempted or completed during commission of such offense;

(e) Is convicted, or has been previously convicted, of committing or attempting to commit kidnapping, burglary, or murder, and the offense was committed with the intent to commit sexual battery or a sex act was attempted or completed during commission of the offense;

(f) Is convicted, or has been previously convicted, of committing or attempting to commit false imprisonment upon a child under the age of 13 and, in the course of committing the offense, the inmate committed aggravated child abuse, sexual battery against the child, or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(g) Is sentenced, has previously been sentenced, or has been sentenced at any time under *s. 775.084(1)(b) for a crime committed on or after October 1, 1988* ~~s. 775.084~~, or has been sentenced at any time in another jurisdiction as a *violent* habitual offender;

(h) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, aggravated battery, kidnapping, manslaughter, or murder against an officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against a state attorney or assistant state attorney; or against a justice or judge of a court described in Article V of the State Constitution; or against an officer, judge, or state attorney employed in a comparable position by any other jurisdiction; or

(i) Is convicted, or has been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), or has ever been convicted of any degree of murder *or attempted murder* in another jurisdiction;

(j) Is convicted, or has been previously convicted, of DUI manslaughter under s. 316.193(3)(c)3., and is sentenced, or has been sentenced at any time, under s. 775.084 for such offense, or has been sentenced at any time in another jurisdiction as a habitual offender for such offense;

(k) Is serving a sentence for an offense committed on or after October 1, 1993, for drug trafficking for a level-9 offense, and the subtotal of the offender's sentence points is fully multiplied pursuant to s. 921.0014;

(l) Is serving a sentence for an offense committed on or after October 1, 1993, for a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), or (5), and the subtotal of the offender's sentence points is multiplied pursuant to s. 921.0014;

(m) Is serving a sentence for an offense committed on or after October 1, 1993, for possession of a firearm or destructive device in which additional points are added to the subtotal of the offender's sentence points pursuant to s. 921.0014; or

(n) Is serving a sentence for an offense committed on or after October 1, 1993, for possession of a semiautomatic weapon, and additional points are added to the subtotal of the offender's sentence points pursuant to s. 921.0014.

In making control release eligibility determinations under this subsection, the authority may rely on any document leading to or generated during the course of the criminal proceedings, including, but not limited to, any presentence or postsentence investigation or any information contained in arrest reports relating to circumstances of the offense. *The 90-day requirement for the establishment of a control release date for all eligible inmates for control release consideration does not apply to a person sentenced under s. 775.084(1)(a).*

(4)~~(5)~~ Control release dates shall be based upon a system of uniform criteria which shall include, but not be limited to, present offenses for which the person is committed, past criminal conduct, length of cumulative sentences, and age of the offender at the time of commitment, together with any aggravating or mitigating circumstances.

(5)~~(6)~~ For purpose of determining eligibility for control release, the mandatory minimum portion of a concurrent sentence will begin on the date the sentence begins to run as provided in s. 921.161. The mandatory minimum portions of consecutive sentences shall be served at the beginning of the maximum sentence as established by the Department of Corrections. With respect to offenders who have more than one sentence with a mandatory minimum portion, each mandatory minimum portion of consecutive sentences shall be served consecutively; provided, that in no case shall a sentence begin to run before the date of imposition of that sentence.

(6)~~(7)~~ The authority has the power and duty to:

(a) Extend or advance the control release date of any inmate for whom a date has been established, based upon one or more of the following:

1. Recently discovered information of:

a. Past criminal conduct;

b. Verified threats by inmates provided by victims, law enforcement, or the department;

c. Potential risk to or vulnerability of a victim;

d. Psychological or physical trauma to the victim due to the criminal offense;

e. Court-ordered restitution;

f.~~e.~~ History of abuse or addiction to a chemical substance verified by a presentence or postsentence investigation report;

g.~~d.~~ The inmate's ties to organized crime;

h.~~e.~~ A change in the inmate's sentence structure;

i.~~f.~~ Cooperation with law enforcement;

j.~~g.~~ Strong community support; and

k.~~h.~~ A documented mental condition as a factor for future criminal behavior.

2. The recommendation of the department regarding:

a. A medical or mental health-related condition; or

b. Institutional adjustment of the inmate, which may include refusal by the inmate to sign the agreement to the conditions of the release plan.

3. Lawful capacity of the state prison system.

(b) Authorize an individual commissioner to postpone a control release date for not more than 60 days without a hearing for any inmate who has become the subject of a disciplinary proceeding, a criminal arrest, an information, or an indictment; who has been terminated from work release; or about whom there is any recently discovered information as specified in paragraph (a).

(c)~~(b)~~ Determine the terms, conditions, and period of time of control release for persons released pursuant to this section.

(d)~~(c)~~ Determine violations of control release and what actions shall be taken with reference thereto.

(e)~~(d)~~ Provide for victim input into the decisionmaking process *which may be used by the authority as aggravation or mitigation in determining which persons shall be released* ~~for placing persons~~ on control release.

(f)~~(e)~~ Make such investigations as may be necessary for the purposes of establishing, modifying, or revoking a control release date.

(g)~~(f)~~ Contract with a public defender or private counsel for representation of indigent persons charged with violating the terms of control release.

(h)~~(g)~~ Create a periodic review process for inmates whose original control release dates are established at the maximum category.

(i)~~(h)~~ Adopt such rules as the authority deems necessary for implementation of the provisions of this section.

(7) If the population of the state correctional system, as defined in s. 944.02, exceeds 99 percent of lawful capacity, the Secretary of Corrections shall notify the chairman of the Parole Commission and certify to the chairman the lawful capacity of the state correctional system and the current population. Upon receiving such certification, the chairman of the Parole Commission shall advise the Governor that a state of emergency exists. When the Governor verifies the state of emergency to the Control Release Authority by letter, the Control Release Authority shall establish emergency control release dates for inmates who are ineligible for parole, who are excluded from control release under paragraphs (3)(a), (b), (g), or (h), and who the authority determines are the most suitable for release. Under no circumstances shall an inmate convicted of a capital felony be eligible for emergency control release.

(a) The authority shall extend or advance emergency control release dates pursuant to subsection (6) and subsections (9)-(12).

(b) The authority shall maintain the inmate population below 100 percent of lawful capacity by releasing inmates on emergency control release as well as control release as otherwise provided in this section.

(c) A state of emergency ceases to exist when the inmate population drops below 98 percent of lawful capacity and remains below that level for 30 consecutive days without requiring the release of inmates through the establishment of additional emergency control release dates.

(d) Nothing in this subsection prohibits the establishment of a control release date under other provisions of this section or creates any right to an early release for any inmate. An inmate has no right to be reviewed for the establishment of an emergency control release date. The establishment of emergency control release dates under this subsection is solely an administrative function used to manage the prison population within lawful capacity.

(e) When a state of emergency ceases to exist pursuant to paragraph (c), all emergency control release dates must be suspended and no inmate is eligible for release under any previously established emergency control release date.

(8) The Department of Corrections shall select and contract with public or private organizations for the provision of basic support services for inmates whose term of control release supervision does not exceed *180* ~~90~~ days. Basic support services shall include, but not be limited to, substance abuse counseling, temporary housing, family counseling, and employment support programs.

(9) The authority shall examine such records as it deems necessary of the department, the Department of Health and Rehabilitative Services, the Department of Law Enforcement, and any other such agency for the purpose of either establishing, modifying, or revoking a control release date. The victim impact statement shall be included in such records for examination. Such agencies shall provide the information requested by the authority for the purposes of fulfilling the requirements of this section.

(10) The authority shall determine the appropriate terms, conditions, and lengths of supervision, if any, for persons placed on control release, except that such lengths of supervision shall be determined as provided in s. 947.24 and *may* ~~shall~~ not exceed the maximum period for which the person has been sentenced. If the person's conviction was for a controlled substance violation, the conditions *must* ~~shall~~ include a requirement that the person submit to random substance abuse testing intermittently throughout the term of supervision, *and, when warranted, a requirement that the person participate in substance abuse assessment and substance abuse treatment services* upon the direction of the correctional probation officer as defined in s. 943.10(3). *If* ~~In the event~~ any inmate placed on control release supervision is also subject to probation or community control, the department shall supervise such person according to

the conditions imposed by the court, and the authority shall defer to such supervision. *If the court revokes the probation or community control, the authority, as the result of the revocation, may vacate the grant of control release and resulting deferred control release supervision or take other action it considers appropriate.* If the term of control release supervision exceeds that of the probation or community control, then supervision shall revert to the authority's conditions upon expiration of the probation or community control.

(11) If an inmate is released on control release supervision subject to a detainer for a pending charge and the pending charge results in a new commitment to incarceration before expiration of the terms of control release supervision, the authority may vacate the grant of control release and resulting deferred control release supervision or take other action it considers appropriate.

(12)~~(11)~~ When the authority has reasonable grounds to believe that an offender released under this section has violated the terms and conditions of control release, such offender shall be subject to the provisions of s. 947.141 and shall be subject to forfeiture of gain-time pursuant to s. 944.28(1).

(13)~~(12)~~ If it is discovered that any control releasee was placed on control release by error or while statutorily ineligible for such release, his order of control release may be vacated and the Control Release Authority may cause a warrant to be issued for the arrest and return of the control releasee to the custody of the Department of Corrections for service of the unserved portion of his sentence or combined sentences.

Section 29. (1) An offender designated for early release by the Control Release Authority who is serving:

(a) A mandatory minimum sentence of 5 years or less for a drug trafficking offense under s. 893.135, Florida Statutes (1991);

(b) A sentence for a controlled substance offense under s. 893.13(1)(e) or (i), Florida Statutes (1991); or

(c) A sentence, or has previously served a sentence, as a habitual offender under s. 775.084(1)(a), Florida Statutes, for a primary offense involving drug possession, purchase, sale, manufacture, delivery, or trafficking,

may be released into supervision under s. 948.001(3), Florida Statutes. Supervision may include a requirement that a substance-abuse assessment be conducted and, when warranted, appropriate substance-abuse treatment services shall be provided.

(2) This section expires June 1, 1996.

Section 30. (1) Any inmate who is sentenced under s. 775.084(1)(a), Florida Statutes, and whose primary offense at conviction is for burglary as provided in s. 810.02, Florida Statutes, shall only be placed in an advanceable category as the result of a critical depletion transfer.

(2) A critical depletion transfer occurs whenever the release of eligible inmates under control release depletes the total number of eligible inmates with advanceable control release dates to less than 4,000, and inmates in the nonadvanceable subdivision Maximum A category are transferred to the advanceable category with the control release date established at the tentative release date in compliance with the following specifications and criteria:

(a) The number transferred shall be equal to the minimum number needed to return the pool of inmates with control release dates established at tentative release dates or earlier to 4,020.

(b) Those inmates who are closest to their tentative release dates or presumptive release dates shall be eligible for transfer.

(c) Inmates shall be ineligible for transfer if subject to disciplinary proceedings during the 60 days prior to the transfer action.

(d) Inmates selected for transfer shall have their control release dates reestablished at their current tentative release date or presumptive release date, whichever is earlier.

Section 31. Effective on June 1, 1996:

(1) The amendments to paragraphs (a) and (g) of subsection (3) of s. 947.146, Florida Statutes, 1992 Supplement, contained in this act shall be null and void and those paragraphs shall revert to the language existing in those paragraphs on January 1, 1993.

(2) Section 29 of this act is repealed.

(3) Section 30 of this act is repealed.

Section 32. Before the release under s. 947.146, Florida Statutes, of any inmate sentenced as a habitual felony offender pursuant to this act, the Control Release Authority shall develop a uniform procedure for the award of control release dates to inmates sentenced under s. 775.084(1)(a), Florida Statutes. The procedure must give priority consideration for early release to habitualized offenders who have been in the state prison system on their current commitment for the longest period of time. It is the intent of the Legislature that the habitual felony offender serve at least a significant portion of the court-imposed sentence before release.

Section 33. Section 944.277, Florida Statutes, as amended by section 12 of chapter 92-310, Laws of Florida, and s. 944.598, Florida Statutes, as amended by section 10 of chapter 92-47, Laws of Florida, are repealed.

Section 34. Notwithstanding the holdings in Overstreet v. Blum, 227 So.2d 197 (Fla. 1969); Hecht v. Shaw, 112 Fla. 762, 151 So.333 (1933); and Van Pelt v. Hilliard, 75 Fla. 792, 78 So.693 (1918), to the effect that, as a general rule, a cross reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted unaffected by any subsequent amendments to or repeal of the incorporated statute, the Legislature intends that each reference to s. 775.084, Florida Statutes, appearing in each of the following sections of the Florida Statutes, refer to s. 775.084, Florida Statutes, as substantially reworded by this act, and that is hereby declared by the Legislature to be the meaning of each such reference:

Florida Statute Section	Relating to
11.05	Oath by lobbyist; penalty for false swearing.
11.143	Standing or select committees; powers.
24.118	Other prohibited acts; penalties.
39.001	Short title, purposes, and intent.
48.021	Process; by whom served.
48.31	Removal of certified process servers; false return of service.
63.212	Prohibited acts; penalties for violation.
92.525	Verification of documents; perjury by false written declaration, penalty.
103.121	Powers and duties of executive committees.
104.011	False swearing.
104.041	Fraud in connection with casting vote.
104.051	Violations; neglect of duty; corrupt practices.
104.061	Corruptly influencing voting.
104.13	Intermingling ballots.
104.15	Person knowing he is not qualified elector voting at any election.
104.16	Voting fraudulent ballot.
104.17	Voting in person after casting absentee ballot.
104.18	Casting more than one ballot at any election.
104.21	Changing electors' ballots.
104.22	Stealing and destroying records, etc., of election.
104.23	Disclosing how elector votes.
104.30	Voting machine; unlawful possession; tampering.
106.26	Powers of commission; rights and responsibilities of parties; findings by commission.
106.29	Reports by political parties; assessment on contributions.
110.1127	Employee security checks.
116.34	Facsimile signatures.
117.05	Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.
117.105	False or fraudulent acknowledgements; penalty.
138.11	Unlawful use of money in election to change county seat.
192.037	Fee time-share real property; taxes and assessments; escrow.
198.38	False return; penalty.
198.40	Failure to pay tax, evasion of tax, etc.; penalty.
199.282	Penalties for violation of this chapter.
201.18	Penalties for illegal use of stamps.
206.04	License number and cards; penalties.
206.11	Penalties.
206.18	Discontinuance or transfer of business; liability of tax, procedure; penalty for violation.

206.426	Resale and exemption certificates; offenses; penalties.
206.56	Unlawful use of tax collected; theft of state funds.
206.87	Levy of tax.
207.007	Offenses; penalties and interest.
210.18	Penalties for tax evasion; reports by sheriffs.
210.65	Penalties for tax evasion.
211.25	Tax crimes; punishment for violation of this part.
211.335	Tax crimes; punishment for violation of this part.
212.054	Discretionary sales surtax; limitations, administration, and collection.
212.085	Fraudulent claim of exemption; penalties.
212.15	Taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review.
212.62	Motor fuel and special fuel sales tax; tax upon ultimate consumer; determination; notification.
218.386	Bonds; finder's fees prohibited.
220.181	Enterprise zone jobs credit.
220.903	Willful failure to pay over.
231.06	Assault or battery upon district school board employee; penalties.
240.381	Assault or battery upon community college security officers; penalties.
240.5337	Entry into agent contracts by student athletes.
255.518	Obligations; purpose, terms, approval, limitations.
287.094	Minority business enterprise programs; penalty for false representation.
298.66	Obstruction of drainage canals, etc., prohibited; damages; penalties.
316.027	Accidents involving death or personal injuries.
316.193	Driving under the influence; penalties.
316.545	Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.
319.30	Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.
319.33	Offenses involving vehicle identification numbers, applications, certificates, papers; penalty.
319.35	Unlawful acts in connection with motor vehicle odometer readings; penalties.
320.26	Counterfeiting license plates, validation stickers, mobile home stickers, cab cards, trip permits, or special temporary operational permits prohibited; penalty.
322.212	Unauthorized possession of, and other unlawful acts in relation to, driver's license or identification card.
325.216	Violations; penalties.
326.005	Escrow depository, closing transactions.
327.29	Crimes relating to registration decals; penalties.
327.30	Collisions, accidents, and casualties.
328.05	Crimes relating to certificates of title to, or other indicia of ownership of, vessels; penalties.
328.07	Hull identification number required.
328.13	Manufacturer's statement of origin to be furnished.
329.10	Aircraft registration.
329.11	Aircraft identification numbers; penalties.
330.40	Aircraft fuel tanks.
337.135	Socially and economically disadvantaged business enterprises; punishment for false representation.
341.329	Bonds; project financing.
367.081	Rates; procedure for fixing and changing.
370.036	Dredge or fill activities, records; penalty.
370.0605	Saltwater fishing license required; fees.
370.135	Blue crab; regulation.
370.142	Spiny lobster trap certificate program.
370.15	Shrimp; regulation.
370.17	Sponges; regulation.
372.0725	Killing or wounding of any species designated as endangered, threatened, or of special concern; criminal penalties.
372.663	Illegal killing, possessing, or capturing of alligators or other crocodilia eggs; confiscation of equipment.
372.671	Florida or wild panther; killing prohibited; penalty.
372.99	Illegal taking and possession of deer and wild turkey; evidence; penalty.
376.07	Regulatory powers of department.
376.12	Liabilities and defenses of terminal facilities and vessels.
376.3071	Inland Protection Trust Fund; creation; purposes; funding.
377.2409	Geophysical activities; confidential information; penalties.
380.0668	Bonds; purpose, terms, approval, limitations.
381.0041	Donation and transfer of human tissue; testing requirements.
390.001	Termination of pregnancies.
391.205	License required; fee; exemption; display.
393.0674	Penalties.
394.457	Operation and administration.
394.458	Introduction or removal of certain articles unlawful; penalty.
396.0427	Penalties.
397.056	False information or lack of probable cause to secure an order to treatment; penalty.
397.0716	Penalties.
400.407	License required; fee, display.
400.427	Property and personal affairs of residents.
400.497	Rules establishing minimum standards; screening of home health agency personnel.
401.41	Penalties.
402.3025	Public and nonpublic schools.
402.319	Penalties.
404.161	Penalties.
409.175	Licensure of family foster homes, residential child-caring agencies, and child-placing agencies.
409.176	Registration of residential child-caring agencies.
409.325	Fraud.
409.920	Medicaid provider fraud.
415.111	Penalties relating to abuse, neglect, or exploitation of aged person or disabled adult.
420.509	Bonds; purpose, terms, approval, limitations.
440.10	Liability for compensation.
440.37	Misrepresentation; fraudulent activities; penalties.
440.381	Application for coverage; reporting payroll; payroll audit procedures; penalties.
443.071	Penalties.
450.151	Hiring and employing; infliction of pain or suffering penalty.
455.2175	Penalty for theft or reproduction of an examination.
455.2275	Penalty for giving false information.
458.327	Penalty for violations.
458.347	Physician assistants.
459.013	Penalty for violations.
459.022	Physician assistants.
460.411	Violations and penalties.
460.4165	Chiropractic physician's assistants.
461.012	Violations and penalties.
462.17	Penalty for offenses relating to naturopathy.
463.015	Violations and penalties.
464.016	Violations and penalties.
465.015	Violations and penalties.
466.026	Prohibitions; penalties.
466.0285	Proprietorship by nondentists.
468.366	Penalties for violations.
468.453	Registration.
468.454	Contracts.
474.213	Prohibitions; penalties.
483.325	Criminal penalties.
489.133	Pollutant storage systems specialty contractors; definitions; certification; restrictions.
491.0112	Sexual misconduct by a psychotherapist; penalties.
493.6405	Sale of motor vehicle, mobile home, or motorboat by a licensee; penalty.
494.0018	Penalties.
496.413	Contributions solicited for or accepted on behalf of a named individual.
496.417	Criminal penalties.
497.054	Penalties.

498.022	Jurisdiction over fraudulent acts.
498.059	Penalties.
499.03	Possession of new drugs or legend drugs without prescriptions unlawful; exemptions and exceptions.
499.06	Embargoing, detaining, or destroying article or processing equipment which is in violation of law or rule.
499.063	Seizure; procedure; prohibition on sale or disposal of article; penalty.
499.75	Penalties.
500.174	Seizure; procedure; prohibition on sale or disposal of article; penalty.
501.019	Health studios; penalties.
501.055	Home solicitation sale; penalties.
501.1375	Deposits received for purchase of residential dwelling units; placement in escrow required; exceptions.
501.623	Criminal penalties.
509.151	Obtaining food or lodging with intent to defraud; penalty.
509.506	Trust accounts.
513.121	Obtaining accommodations in a recreational vehicle park with intent to defraud; penalty; rules of evidence.
517.302	Criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.
527.02	License; penalty; fees.
538.04	Recordkeeping requirements; penalties.
538.23	Violations and penalties.
542.28	Civil investigative demand.
550.24	Conniving to prearrange result of race; using medication or drugs on horse or dog; penalty.
550.35	Transmission of racing and jai alai information.
550.361	Bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.
552.22	Penalties.
559.815	Penalties.
561.24	Licensing manufacturers as distributors or registered exporters prohibited; procedure for issuance and renewal of distributors' licenses and exporters' registrations.
562.23	Conspiracy to violate Beverage Law; penalty.
562.27	Seizure and forfeiture.
562.32	Moving or concealing beverage with intent to defraud state of tax; penalty.
562.34	Containers; seizure and forfeiture.
562.45	Penalties for violating Beverage Law; local ordinances.
562.451	Moonshine whiskey; ownership, possession, or control prohibited; penalties; rule of evidence.
562.455	Adulterating liquor; penalty.
567.14	Penalty for violation.
585.145	Control of animal diseases.
585.19	Duty of practitioners of veterinary medicine and owners of animals to report dangerous transmissible diseases or pests; penalty.
585.85	Prohibited transportation of certain animals and animal products.
586.15	Penalty for violation.
590.14	Penalties.
590.25	Penalty for preventing or obstructing extinguishment of woods fires.
590.30	Penalties for violating ss. 590.28 and 590.29.
593.116	Penalty for violation.
607.0505	Registered agent; duties.
609.06	Penalties.
620.192	Registered agent; duties.
624.401	Certificate of authority required.
624.424	Annual statement and other information.
626.561	Reporting and accounting for funds.
626.8473	Escrow; trust fund.
626.9541	Unfair methods of competition and unfair or deceptive acts or practices defined.
628.255	Person with effective control cannot receive commission unless contract approved; penalties.
628.271	Office and records; penalty for unlawful removal of records.
628.461	Acquisition of controlling stock.
628.4615	Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.
628.803	Sanctions.
629.401	Insurance exchange.
639.17	Penalty.
641.432	Providers of service; penalty for unauthorized use of providers; interference with judgment prohibited.
641.52	Suspension, revocation of certificate; administrative fine; notice of action to the Department of Insurance; penalty for use of unlicensed providers.
655.0322	Prohibited acts and practices; criminal penalties.
655.057	Records; limited restrictions upon public access.
655.059	Access to books and records; confidentiality; penalty for disclosure.
655.922	Banking business by unauthorized persons; use of name.
687.071	Criminal usury, loan sharking; shylocking.
687.146	Criminal penalties.
703.19	Filing untrue copies of abstracts ordered filed for use of public.
705.102	Reporting lost or abandoned property.
713.245	Conditional payment bond.
713.345	Moneys received for real property improvements; penalty for misapplication.
713.69	Unlawful to remove property upon which lien has accrued.
713.78	Liens for recovering, towing, or storing vehicles.
715.07	Vehicles parked on private property; towing.
718.202	Sales or reservation deposits prior to closing.
719.202	Sales or reservation deposits prior to closing.
721.08	Escrow accounts; nondisturbance instruments; alternate security arrangements.
721.09	Reservation agreements; escrows.
721.13	Management.
765.310	Falsification, forgery, or willful concealment, cancellation, or destruction of declaration or revocation; penalties.
767.13	Attack or bite by dangerous dog; penalties; confiscation; destruction.
775.0842	Persons subject to career criminal prosecution efforts.
775.0846	Wearing bulletproof vest while committing certain offenses.
777.03	Accessory after the fact.
782.04	Murder.
782.07	Manslaughter.
782.071	Vehicular homicide.
782.072	Vessel homicide.
782.08	Assisting self-murder.
782.09	Killing of unborn child by injury to mother.
782.11	Unnecessary killing to prevent unlawful act.
784.021	Aggravated assault.
784.045	Aggravated battery.
784.048	Stalking; definitions; penalties.
784.05	Culpable negligence.
787.01	Kidnapping; kidnapping of child under age 13, aggravating circumstances.
787.02	False imprisonment; false imprisonment of child under age 13, aggravating circumstances.
787.03	Interference with custody.
787.04	Removing minors from state or concealing minors contrary to state agency order or court order.
790.01	Carrying concealed weapons.
790.0655	Purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.
790.07	Persons engaged in criminal offense, having weapons.
790.115	Possessing or discharging weapons or firearms on school property prohibited; penalties; exceptions.

790.145	Crimes in pharmacies; possession of weapons; penalties.
790.15	Discharging firearm in public.
790.1615	Unlawful throwing, projecting, placing, or discharging of destructive device or bomb that results in injury to another; penalty.
790.162	Threat to throw, project, place, or discharge any destructive device, felony; penalty.
790.163	False report about planting bomb or explosive; penalty.
790.164	False reports of bombing or arson against state-owned property; penalty; reward.
790.19	Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles.
790.23	Felons; possession of firearms or electric weapons or devices unlawful; exception; penalty.
790.27	Alteration or removal of firearm serial number or possession, sale, or delivery of firearm with serial number altered or removed prohibited; penalties.
790.29	Paramilitary training; teaching or participation prohibited.
790.31	Armor-piercing or exploding ammunition or dragon's breath shotgun shells, bolo shells, or flechette shells prohibited.
794.011	Sexual battery.
794.041	Sexual activity with child by or at solicitation of person in familial or custodial authority; penalties.
794.05	Carnal intercourse with unmarried person under 18 years.
796.03	Procuring person under age of 16 for prostitution.
796.04	Forcing, compelling, or coercing another to become a prostitute.
796.05	Deriving support from the proceeds of prostitution.
800.04	Lewd, lascivious, or indecent assault or act upon or in presence of child.
806.01	Arson.
806.031	Arson resulting in injury to another; penalty.
806.10	Preventing or obstructing extinguishment of fire.
806.101	False alarms of fires.
806.111	Fire bombs.
806.13	Criminal mischief.
806.14	Art works in public buildings; willful damage; unauthorized removal; penalties.
810.02	Burglary.
810.06	Possession of burglary tools.
810.08	Trespass in structure or conveyance.
810.09	Trespass on property other than structure or conveyance.
810.095	Trespass on school property with firearm or other weapon prohibited.
812.014	Theft.
812.019	Dealing in stolen property.
812.13	Robbery.
812.15	Unauthorized reception of cable television services; penalties.
812.155	Hiring, leasing, or obtaining personal property or equipment with the intent to defraud; failing to return hired or leased personal property or equipment; rules of evidence.
812.16	Operating chop shops; definitions; penalties; restitution; forfeiture.
815.04	Offenses against intellectual property.
815.05	Offenses against computer equipment or supplies.
815.06	Offenses against computer users.
817.025	Home or private business invasion by false personation; penalties.
817.034	Florida Communications Fraud Act.
817.12	Penalty for violation of s. 817.11.
817.15	Making false entries, etc., on books of corporation.
817.19	Fraudulent issue of certificate of stock of corporation.
817.20	Issuing stock or obligation of corporation beyond authorized amount.
817.22	Making false invoice to defraud insurer.
817.23	Making false affidavit to defraud insurer.
817.233	Burning to defraud the insurer.
817.234	False and fraudulent insurance claims.
817.24	Unlawful to add or alter or deface existing brand.
817.26	Fraudulently changing marks on animal.
817.29	Cheating.
817.34	False entries and statements by investment companies offering stock or security for sale.
817.37	Touting; defining; providing punishment; ejection from racetracks.
817.482	Possessing or transferring device for theft of telecommunications service; concealment of destination of telecommunications service.
817.52	Obtaining vehicles with intent to defraud, failing to return hired vehicle, or tampering with mileage device of hired vehicle.
817.54	Obtaining of mortgage, mortgage note, promissory note, etc., by false representation.
817.562	Fraud involving a security interest.
817.5621	Unlawful subleasing of a motor vehicle.
817.563	Controlled substance named or described in s. 893.03; sale of substance in lieu thereof.
817.564	Imitation controlled substances defined; possession and distribution prohibited.
817.611	Traffic in counterfeit credit cards.
817.67	Penalties.
817.705	Waivers; burden of proof; penalties.
823.04	Animals suffering from disease or pests.
823.06	Doors of public buildings to open outward.
823.09	Violation of s. 823.07; penalty.
826.01	Bigamy; punishment.
826.03	Knowingly marrying husband or wife of another.
826.04	Incest.
827.03	Aggravated child abuse.
827.04	Child abuse.
827.071	Sexual performance by a child; penalties.
827.08	Misuse of child support money.
828.122	Fighting or baiting animals; offenses; penalties.
828.125	Killing or aggravated abuse of registered breed horses or cattle; offenses; penalties.
831.01	Forgery.
831.02	Uttering forged instruments.
831.04	Penalty for changing or forging certain instruments of writing.
831.07	Forging bank bills or promissory notes.
831.08	Possessing certain forged notes or bills.
831.09	Uttering forged bills.
831.10	Second conviction of uttering forged bills.
831.11	Bringing into the state forged bank bills.
831.13	Having in possession uncurrent bills.
831.14	Uttering uncurrent bills.
831.15	Counterfeiting coin; having 10 or more such coins in possession with intent to utter.
831.29	Making or having instruments and material for counterfeiting drivers' licenses.
831.31	Counterfeit controlled substance; sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver.
832.041	Stopping payment with intent to defraud.
832.05	Giving worthless checks, drafts, and debit card orders; penalty; duty of drawee; evidence; costs; complaint form.
832.062	Prosecution for worthless checks, drafts, or debit card orders given to pay any tax or associated amount administered by the Department of Revenue.
836.05	Threats; extortion.
836.10	Written threats to kill or do bodily injury; punishment.
837.02	Perjury in official proceedings.
837.021	Perjury by contradictory statements.
838.015	Bribery.
838.016	Unlawful compensation or reward for official behavior.
838.021	Corruption by threat against public servant.
838.12	Bribery in athletic contests.
838.15	Commercial bribe receiving.
838.16	Commercial bribery.
839.17	Misappropriation of moneys by commissioners to make sales.
839.25	Official misconduct.

843.01	Resisting officer with violence to his person.
843.025	Depriving officer of means of protection or communication.
843.081	Prohibited use of certain lights; penalty.
843.09	Escape through voluntary action of officer.
843.11	Conveying tools into jail to aid escape; forcible rescue.
843.12	Aiding escape.
843.14	Compounding felony.
843.15	Failure of defendant on bail to appear.
843.18	Boats; fleeing or attempting to elude a law enforcement officer.
843.19	Injuring or killing police dog or police horse prohibited; penalty.
847.011	Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.
847.012	Prohibition of sale or other distribution of harmful materials to persons under 18 years of age; penalty.
847.0145	Selling or buying of minors; penalties.
847.07	Wholesale promotion of obscene materials; penalties.
849.01	Keeping gambling houses, etc.
849.04	Permitting minors and persons under guardianship to gamble.
849.09	Lottery prohibited; exceptions.
849.0931	Bingo authorized; conditions for conduct; permitted uses of proceeds; limitations.
849.10	Printing lottery tickets, etc., prohibited.
849.23	Penalty for violations of ss. 849.15-849.22.
849.25	"Bookmaking" defined; penalties; exceptions.
856.04	Desertion; withholding support; proviso.
859.01	Poisoning food or water.
859.05	Narcotics not to be sold except on prescription.
860.05	Unauthorized person interfering with railroad train, cars, or engines.
860.08	Interference with railroad signals prohibited; penalty.
860.09	Interference with railroad track and other equipment prohibited; penalties.
860.11	Injuring railroad structures; driving cattle on tracks.
860.121	Crimes against railroad vehicles; penalties.
860.13	Operation of aircraft while intoxicated or in careless or reckless manner; penalty.
860.16	Aircraft piracy; penalty.
860.20	Outboard motors; identification numbers.
861.03	Injuries to dams.
861.06	Obstructing harbors.
870.01	Affrays and riots.
870.03	Riots and routs.
872.02	Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.
872.05	Unmarked human burials.
873.01	Purchase or sale of human organs and tissue prohibited.
873.05	Advertising or sale of human embryos prohibited.
876.02	Criminal anarchy, Communism, and other specified doctrines; prohibitions.
876.03	Unlawful assembly for purposes of anarchy, Communism, or other specified doctrines.
876.23	Subversive activities unlawful; penalty.
876.24	Membership in subversive organization; penalty.
876.32	Treason.
876.33	Misprision of treason.
876.34	Combination to usurp government.
876.35	Combination against part of the people of the state.
876.36	Inciting insurrection.
876.39	Intentionally defective workmanship.
877.08	Coin-operated vending machines and parking meters; defined; prohibited acts, penalties.
877.18	Identification card or document purporting to contain applicant's age or date of birth; penalties for failure to comply with requirements for sale or issuance.
893.1351	Lease or rent for the purpose of trafficking in a controlled substance.
893.147	Use, possession, manufacture, delivery, or advertisement of drug paraphernalia.
893.149	Unlawful possession of listed chemical.
895.04	Criminal penalties and alternative fine.
896.101	Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.
905.395	Unlawful acts related to disclosure of proceedings; penalty.
914.14	Witnesses accepting bribes.
914.22	Tampering with a witness, victim, or informant.
914.23	Retaliating against a witness, victim, or informant.
916.175	Escape from treatment program; penalty.
916.178	Introduction or removal of certain articles unlawful; penalty.
918.12	Tampering with jurors.
918.13	Tampering with or fabricating physical evidence.
921.18	Sentence for indeterminate period for noncapital felony.
934.03	Interception and disclosure of wire, oral, or electronic communications prohibited.
934.04	Manufacture, distribution, or possession of wire, oral, or electronic communication intercepting devices prohibited.
934.21	Unlawful access to stored communications; penalties.
934.43	Criminal disclosure of subpoena, order, or authorization.
943.0585	Court-ordered expunction of criminal history records.
943.059	Court-ordered sealing of criminal history records.
944.33	Failure of inspector to make report; false report; penalty.
944.35	Authorized use of force; malicious battery prohibited; reporting required; penalties.
944.36	Permitting inmates to escape.
944.40	Escapes; penalty.
944.42	Assault by prisoner serving less than life sentence; penalty.
944.44	Holding persons as hostages; penalty.
944.45	Mutiny, riot, strike; penalty.
944.46	Harboring, concealing, aiding escaped prisoners; penalty.
944.47	Introduction, removal, or possession of certain articles unlawful; penalty.
951.075	Assault, battery, or assault and battery in a county or municipal jail or detention facility; penalty.
951.22	County detention facilities; contraband articles.
960.18	Penalty for fraud.

Section 35. The Division of Statutory Revision of the Joint Legislative Management Committee is directed to prepare for introduction during the 1994 Regular Session of the Legislature a reviser's bill which reenacts all sections of the Florida Statutes listed in section 34 of this act that are not repealed during the 1993 Regular Session of the Legislature, and any sections of the Florida Statutes enacted in the 1992 and 1993 Sessions of the Legislature that are not listed in section 34 of this act and that contain references to s. 775.084, Florida Statutes, to reflect the intent to adopt the "Safe Streets Initiative of 1993."

Section 36. The Division of Statutory Revision of the Joint Legislative Management Committee is directed to prepare for introduction during the 1994 Regular Session of the Legislature a reviser's bill to conform all cross references to s. 893.13, Florida Statutes, to the amendment to that section in section 24 of this act.

Section 37. (1) The Inspector General of the Department of Corrections shall determine, by July 1, 1993, the maximum monthly average number of sentenced felony offenders who served a term of imprisonment in each county's jail facilities during calendar year 1992.

(2) Further, for calendar years 1988 through 1992, the Inspector General shall determine the annual average growth rate for the number of sentenced felony offenders serving a term of imprisonment in each county's jail facilities.

(3) By August 1, 1993, the Inspector General shall notify each county of:

(a) The county's maximum monthly average number of sentenced felony offenders; and

(b) The county's average annual growth rate,

as determined in accordance with this section.

(4) Additionally, by August 1, 1993, the Inspector General shall notify the Senate Committee on Corrections, the Senate Committee on Criminal Justice, the House Committee on Corrections, and the House Committee on Criminal Justice of each county's maximum monthly average number of sentenced felony offenders and each county's average growth rate.

Section 38. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, the number of sentenced felony offenders serving a term of imprisonment in each county's jail facilities shall not exceed that county's maximum monthly average number, adjusted annually for growth. For purposes of this section, offenders placed in a county jail facility pursuant to s. 948.51(6), Florida Statutes, shall not be included in the number of sentenced felony offenders.

Section 39. State correctional and detention facility bonds.—

(1) The issuance of revenue bonds to finance or refinance the construction of state correctional and detention facilities is hereby authorized pursuant to s. 11(d), Art. VII of the State Constitution and the State Bond Act. Except for revenue bonds issued to refinance state correctional and detention facilities previously financed by revenue bonds issued under this section, state correctional and detention facilities financed by revenue bonds issued under this section shall first be approved by the Legislature in an act relating to appropriations or by general law.

(2) Revenue bonds issued pursuant to this section shall be payable from rents paid by the Department of Corrections to the Division of Facilities Management of the Department of Management Services and from the first supervision and rehabilitation fees collected as authorized in s. 948.09(1)(a) and (5), Florida Statutes, as set forth in the resolution authorizing the bonds.

(3) The Department of Corrections shall have the authority necessary to carry out and effectuate the purposes and provisions of this section, including, but not limited to, the authority to:

(a) Request the Division of Bond Finance to issue revenue bonds pursuant to the State Bond Act, pledging revenues from financed facilities and supervision and rehabilitation fees, to finance or refinance facilities as approved by law.

(b) Pay rents for the use of and services provided for facilities financed in accordance with the provisions of this section.

(c) Borrow money as provided by the State Bond Act to finance facilities.

(d) Construct, acquire, or operate facilities financed pursuant to this section to the extent authorized by law.

(e) Do all other acts reasonably necessary to carry out the provisions of this section.

(4) In actions to validate the bonds issued pursuant to this section, the complaint shall be filed in the Circuit Court of Leon County, the notice required by s. 75.06, Florida Statutes, shall be published in Leon County and in two newspapers of general circulation in the state, and the complaint and order of the court shall be served on the state attorney of the Second Judicial Circuit.

Section 40. All firms, including, but not limited to, the financial advisors, legal counsel, and underwriters, providing professional services in the issuance of the bonds authorized in section 38 of this act shall include minority firms in the provision of such services. To meet such participation requirement, the minority firm must have full-time employees located in this state and a permanent place of business located in this state, and must be a firm which is at least 51 percent owned by minority persons. As used in this section, the term "minority person" means:

(1) A black American, a person having origins in any of the black racial groups of Africa.

(2) A Hispanic American, a person of Spanish or Portuguese culture with origins in Mexico, South America, Central America, or the Caribbean, regardless of race.

(3) An Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.

(4) A native American, a person having origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services.

(5) An American woman.

Section 41. Present subsections (6), (7), (8), and (9) of section 948.51, Florida Statutes, 1992 Supplement, are redesignated as subsections (7), (8), (9), and (10), respectively, and a new subsection (6) is added to that section, to read:

948.51 Community corrections assistance to counties.—

(6) PRISONERS COMMITTED TO CONTRACTING COUNTIES.—Notwithstanding an offender's eligibility for sentencing under the sentencing guidelines, an offender who is:

(a) Convicted for a felony offense which is, was, or would have been ranked in level 5, level 6, or level 7 of the offense severity ranking chart in s. 921.0012, except for a felony that involved the use, attempted use, or threat of physical force or violence; or

(b) Violated a condition of a release program and the primary offense for which the offender was placed in the release program is, was, or would have been ranked in levels 3 through 10 of the offense severity ranking chart in s. 921.0012

may be placed in a county or municipal detention facility as a condition of probation. However, a court may not place such an offender in a county correctional facility unless there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections as provided in this section. The contract must provide for a per diem reimbursement for each offender placed under this subsection, which is payable by the Department of Corrections for the duration of the offender's placement in the county correctional facility.

Section 42. Subsection (1) of section 775.08, Florida Statutes, is amended to read:

775.08 Classes and definitions of offenses.—When used in the laws of this state:

(1) The term "felony" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" shall include state correctional facilities. *Except as provided in s. 948.51(6),* a person shall be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

Section 43. Subsections (5) and (6) of section 944.02, Florida Statutes, are amended to read:

944.02 Definitions.—The following words and phrases used in this chapter shall, unless the context clearly indicates otherwise, have the following meanings:

(5) "Prisoner" means any person who is under arrest and in the lawful custody of any law enforcement official, or any person convicted and sentenced by any court and committed to any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the department, as provided by law. *The term does not include a person sentenced under s. 948.51(6).*

(6) "State correctional institution" means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department. *The term does not include a facility to which inmates are committed under s. 948.51(6).*

Section 44. Paragraphs (a) and (c) of subsection (1) of section 951.23, Florida Statutes, 1992 Supplement, are amended to read:

951.23 County and municipal detention facilities; definitions; administration; standards and requirements.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "County detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor. *The term does not include a facility to which inmates are committed under s. 948.51(6).*

(c) "County prisoner" means a person who is detained in a county detention facility by reason of being charged with or convicted of either felony or misdemeanor. *However, the term does not include a person sentenced under s. 948.51(6).*

Section 45. Except as otherwise provided herein, this act shall take effect upon becoming a law.

And the title is amended as follows:

Strike the entire title and insert: A bill to be entitled An act relating to criminal justice; creating the "Safe Streets Initiative of 1993"; providing legislative intent; amending s. 775.084, F.S.; redefining habitual felony offenders and habitual violent felony offenders; directing the Division of Economic and Demographic Research of the Joint Legislative Management Committee to study the application of the habitual offender statute and provide a report to the Legislature; stating legislative intent that all cross references to s. 775.084, F.S., refer to that section as amended and enumerating said references; amending s. 777.04, F.S., relating to criminal attempts, criminal solicitation, and criminal conspiracy, to conform to the sentencing guidelines revision; amending s. 921.001, F.S.; providing the purpose of and additional requirements for the sentencing guidelines that are recommended to the Supreme Court by the Sentencing Commission; requiring the commission, with the Department of Corrections, to estimate rates of incarceration in the state correctional system and make funding and other recommendations to the Legislature; deleting obsolete provisions pertaining to alternative sentencing guideline recommendations; providing that a departure sentence must be within any relevant statutory maximum sentence; amending ss. 924.06, 924.07, and 958.04, F.S., relating to appeal by defendant, appeal by the state, and judicial disposition of youthful offenders, to conform; creating s. 921.0011, F.S.; providing definitions; creating s. 921.0012, F.S.; providing sentencing guidelines offense levels based on severity rankings for specified crimes, including drug trafficking; providing multipliers for drug trafficking and Law Enforcement Protection Act violation; providing additional points for possession of a firearm or destructive device, and providing for scoring criminal attempt, solicitation, or conspiracy; creating s. 921.0013, F.S.; providing requirements for ranking unlisted felony offenses; creating s. 921.0014, F.S.; providing sentencing guidelines worksheet computations; creating s. 921.0016, F.S.; providing nonexclusive aggravating and mitigating circumstances supporting departure by increasing or decreasing the length of the guidelines sentence; requiring the Sentencing Commission to adopt procedures for implementing revised sentencing guidelines; creating s. 921.0017, F.S.; providing for credit for time served upon recommitment of offender serving split sentence; providing timeframes for the new scoresheets; amending ss. 775.0823, 775.087, 775.0875, 784.08, 790.161, 790.165, 790.221, 893.13, 893.135, and 893.20, F.S., relating to violent offenses committed against certain law enforcement officials, possession of a firearm or destructive device, unlawful taking of a law enforcement officer's firearm, assault or battery on persons 65 years of age or older, unlawful activities involving destructive devices, planting of hoax bombs, unlawful possession of certain guns, controlled substances violations, trafficking violations, and continuing criminal enterprise; revising elements of certain offenses; deleting provisions relating to mandatory minimum sentences and certain release, to conform to the sentencing guidelines revision; amending s. 944.275, F.S.; prohibiting the granting of basic gain-time for offenses committed after a specified date; amending s. 947.146, F.S.; providing that an inmate may not receive control release award allotments before he is statutorily eligible for control release or before the date his advanceable control release date is established; providing for certain persons convicted of drug trafficking offenses and sentenced to less than a specified term of imprisonment to be eligible for control release; providing for certain persons sentenced as habitual felony offenders to be eligible for control release; excluding certain persons from control release consideration; providing for the Control Release Authority to establish a control release date for offenders whose release has been revoked; providing additional circumstances under which the authority may extend, advance, or postpone an inmate's control release date; providing circumstances under which the authority may vacate a grant of control release; providing for future abrogation of certain amendments to s. 947.146, F.S.; increasing the threshold capacity of the correctional system above which inmates will be given control release; providing that certain offenders who are eligible for control release may be released into supervision; providing for critical depletion transfers of certain offenders; providing for the expiration of such provisions; providing for the emergency control release of prisoners; increasing the threshold capacity of the correctional system above which inmates will be granted emergency control release; providing emergency control release dates for certain parole ineligible inmates; requiring the Control Release Authority to develop uniform procedures for awarding control release to certain habitual offenders; repealing s. 944.277, F.S., relating to provisional release credits; repealing s. 944.598, F.S., relating to the emergency release of inmates; listing statutory cross references to s. 775.084, F.S., and providing directives to the Division of Statutory Revision; directing the Inspector General of the Department of Corrections to determine the maximum monthly average number of sentenced felony offenders for each county; providing that the number of sentenced felony offenders incarcerated in each county's jail facilities shall not exceed such number, adjusted for growth; providing for the issuance of revenue bonds to finance or refinance the construction of state correctional and detention facilities; providing authority of the Department of Corrections and the Division of Bond Finance with respect to such bonds; providing filing, notice, and service requirements in actions to validate such bonds; requiring firms providing professional services in the issuance of such bonds to include minority firms in the provision of such services; providing a definition; providing requirements of such minority firms; amending s. 948.51, F.S.; providing for certain felony offenders to be placed in county correctional facilities as a condition of probation; requiring a contract between the chief county correctional officer and the Department of Corrections before any such offender is placed in the custody of the county; amending s. 775.08, F.S., relating to classes and definitions of offenses; exempting certain felony offenders from commitment to a state correctional facility; amending ss. 944.02 and 951.23, F.S., relating to the state correctional system and county and municipal detention facilities; conforming definitions to changes made by the act; providing effective dates.

On motions by Senator Siegel, the Senate refused to concur in the House amendment and the House was requested to recede. The action of the Senate was certified to the House.

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendment 2, amended Senate Amendment 1 and concurred in same as amended, passed as further amended, HB 2007, and requests the concurrence of the Senate.

John B. Phelps, Clerk

HB 2007—A bill to be entitled An act relating to legislative and public records; creating s. 11.043, F.S.; specifying records of the legislative branch that are exempt from public disclosure; providing that certain records become public after a specified period; repealing s. 11.045(4)(b), F.S., which provides for confidentiality of persons' identities in advisory opinions relating to lobbyists; amending s. 11.26, F.S., relating to legislative employees, to conform; creating s. 14.27, F.S.; providing an exemption from public records and public meeting requirements for records relating to Board of Executive Clemency investigations and meetings between board members; amending s. 119.011, F.S.; including the Commission on Ethics and the Public Service Commission within the meaning of "agency" for purposes of ch. 119, F.S., relating to public records; reenacting ss. 119.012, 119.083(1)(a), and 281.301, F.S., relating to records associated with payment of dues and membership contributions by agencies, copyright of data processing software created by agencies, and information relating to security systems in the possession of agencies, to incorporate the amendment to s. 119.011, F.S., in references thereto; amending s. 119.07, F.S.; providing an exemption from public records requirements for records relating to allegations of employment discrimination, certain information relating to agency officers, employees, and applicants for employment and their spouses and dependents, certain agency correspondence, and certain medical information relating to agency officers and employees; amending s. 943.03, F.S.; providing an exemption from public records requirements for records relating to certain investigations

by the Department of Law Enforcement at the direction of the Governor; providing for review and repeal; providing an effective date.

House Amendment 1 (with Title Amendment) to Senate Amendment 1—On page 1, line 14, through page 3, line 19, strike all of said lines and insert:

11.043 Legislative records; intent of legislation; exemption from public disclosure.—

(1) It is the policy of the Legislature that every person has the right to inspect and copy records of the Senate and the House of Representatives received in connection with the official business of the Legislature as provided for by the constitution of this state. To that end, public records shall be open to personal inspection and copying at reasonable times except when specific public necessity justifies that public records be exempt from such inspection and copying.

(2) The following public records are exempt from inspection and copying:

(a) Records, or information contained therein, held by the legislative branch of government which, if held by an agency as defined in s. 119.011, or any other unit of government, would be confidential or exempt from the provisions of s. 119.07(1), or otherwise exempt from public disclosure, and records or information of the same type held by the Legislature.

(b) A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.

(c) Working papers of employees, officers, or members relating to their legislative responsibilities.

(d) Requests for, drafts of, and supporting documentation to or for bills, resolutions, memorials, amendments, bill analyses, fiscal notes, reapportionment plans, and redistricting plans.

(e) Records prepared for or used in executive sessions of the Senate until 10 years after the date on which the executive session was held.

(f) Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any person to whom reference is made in such records.

(g) Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics, unless the member requesting the opinion authorizes in writing the release of such information. All advisory opinions shall be open to inspection except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.

(h) Portions of correspondence held by the legislative branch which, if disclosed, would reveal: information otherwise exempt from disclosure by law; an individual's medical treatment, history, or condition; the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.

(3) Any record created prior to July 1, 1993, which was not available to the public from the house, commission, committee, or office of the legislative branch which created the record, is exempt from inspection and copying until July 1, 1993. Prior to July 1, 1993, the presiding officer of each house shall determine which records held by that house should remain exempt from inspection and copying. The presiding officers of both houses shall jointly determine which records held by joint committees should remain exempt from inspection and copying. No later than July 1, 1993, the presiding officers shall publish a list of records that remain exempt from inspection and copying.

(4) For purposes of this section, "public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.

(5) Nothing herein shall be construed to limit the authority of each house of the Legislature to adopt rules pursuant to Article I, section 24 of the state constitution.

Section 2. Paragraph (a) of subsection (1) of section 11.26, Florida Statutes, is amended to read:

11.26 Legislative employees; employment restrictions.—

(1) No employee of the Legislature shall:

(a) *Subject to the provisions of s. 11.043,* reveal to any person outside the area of his direct responsibility the contents or nature of any request for services made by any member of the Legislature, except with the ~~written~~ consent of the *member* ~~person~~ making such request.

Section 3. For the purpose of incorporating the amendment to section 119.011(2), Florida Statutes, in references thereto, section 119.012, and paragraph (a) of subsection (1) of section 119.083, Florida Statutes, are reenacted to read:

119.012 Records made public by public fund use.—If public funds are expended by an agency defined in s. 119.011(2) in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group, or other organization, then all the financial, business and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of s. 119.07.

119.083 Copyright of data processing software created by governmental agencies.—

(1) As used in this section:

(a) "Agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

Section 4. Paragraphs (bb), (cc), and (dd), are added to subsection (3) of section 119.07, Florida Statutes, 1992 Supplement, to read:

119.07 Inspection and examination of records; exemptions.—

(3)

(bb) Where the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from the provisions of subsection (1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(cc) Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is confidential and exempt from the provisions of subsection (1). However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(Renumber subsequent sections.)

And the title is amended as follows:

On page 1, line 16, through page 2, line 6, strike all of said lines and insert: An act relating to legislative and public records; creating s. 11.043, F.S., providing legislative intent, specifying public records of the legislative branch that are exempt from public disclosure, providing that certain records become public after a specified period, and defining public record; amending s. 11.26, F.S., relating to legislative employees, to conform; reenacting ss. 119.012 and 119.083(1)(a), F.S., relating to records associated with payment of dues and membership contributions by agencies and copyright of data processing software created by agencies to incorporate the amendment to s. 119.011, F.S., in references thereto; amending s. 119.07, F.S., providing an exemption from public records requirements for records relating to certain allegations of employment discrimination, and certain medical information relating to agency officers and employees; amending s. 119.011, F.S., to include the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel within the meaning of "agency" for purposes of the public records law; creating s. 14.27, F.S., providing an exemption from public records and public meetings requirements for records relating to Board of Executive

Clemency investigations and meetings between board members; amending s. 943.03, F.S., providing an exemption from public records requirements for records relating to certain investigations by the Department of Law Enforcement at the direction of the Governor, and providing for subsequent review and repeal; providing an effective date.

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

HB 2007 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—30 Nays—5

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has amended Senate Amendment 1, concurred in same as amended, passed as amended HB 2065, and requests the concurrence of the Senate.

John B. Phelps, Clerk

HB 2065—A bill to be entitled An act relating to long-term care ombudsmen; creating s. 400.0060, F.S.; providing definitions; creating ss. 400.0061 and 400.0063, F.S.; providing legislative intent; establishing the Office of State Long-Term Care Ombudsman; providing for designation of ombudsman and legal advocate; creating s. 400.0065, F.S.; providing ombudsman duties and responsibilities; creating s. 400.0067, F.S.; establishing the State Long-Term Care Ombudsman Council; providing membership and duties; providing for initial appointments and meeting; providing for conflicts of interest; providing for separate appropriations; renumbering and amending s. 400.307, F.S.; establishing the district long-term care ombudsman councils; revising membership and duties; providing for administrative support of the Department of Health and Rehabilitative Services; providing for conflicts of interest; renumbering and amending s. 400.314, F.S., relating to state and district ombudsman council investigations; renumbering and amending s. 400.317, F.S., relating to complaint resolution procedures; authorizing state and district ombudsman councils to seek immediate legal or administrative remedies, under certain circumstances; renumbering and amending s. 400.321, F.S.; revising provisions relating to confidentiality; providing for rules relating to disclosure of files; renumbering and amending s. 400.324, F.S.; providing immunity from liability for official actions of the ombudsman or council members; creating s. 400.0081, F.S.; providing for access to facilities, residents, and records; creating s. 400.0083, F.S.; prohibiting interference with persons performing ombudsman duties; prohibiting retaliation against persons reporting to ombudsman representatives; providing penalties; creating s. 400.0087, F.S.; providing for oversight duties of the Department of Elderly Affairs; creating s. 400.0089, F.S.; providing for a uniform data collection and reporting system; requiring biennial reports; creating s. 400.0091, F.S.; establishing a training program for persons carrying out responsibilities of the ombudsman or state or district ombudsman councils; renumbering ss. 400.311 and 400.327, F.S., relating to complaint procedures and penalty; amending ss. 20.41, 394.715, 395.3025, 400.19, 400.407, 400.417, 400.434, 400.441, 402.165, and 415.106, F.S.; conforming language and correcting cross references; amending s. 400.021, F.S.; revising definitions; repealing ss. 400.301, 400.304, and 400.308, F.S., relating to legislative intent and the establishment of the State Nursing Home and Long-Term Care Facility Ombudsman Council and the Legal Advocate for Nursing Home and Long-Term Care Facility Residents; saving pt. I of ch. 400, F.S., from Sunset repeal; saving s. 400.307, F.S., from Sundown repeal; providing for future review and repeal; providing an effective date.

House Amendment 1 (with Title Amendment) to Senate Amendment 1—On page 1, line 12, through page 26, line 31, strike all of said lines and insert:

Section 1. Section 400.0060, Florida Statutes, is created to read:

400.0060 Definitions.—When used in this part, unless the context otherwise requires, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Long-term care facility" means a skilled nursing facility, nursing facility, adult congregate living facility, adult foster home, board and care facility, or any other similar adult care center.

(3) "Office" means the Office of State Long-Term Care Ombudsman.

(4) "Ombudsman" means the individual designated to head the Office of State Long-Term Care Ombudsman.

(5) "Resident" means an individual 60 years of age or older who resides in a long-term care facility.

(6) "Secretary" means the Secretary of Elderly Affairs.

Section 2. Section 400.0061, Florida Statutes, is created to read:

400.0061 Legislative findings and intent; long-term care facilities.—

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not ensured by rules of the Department of Health and Rehabilitative Services or the Agency for Health Care Administration, or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident or his representative may make a complaint against the facility or its employees, or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of the resident. The Legislature finds that concerned citizens are more effective advocates of the rights of others than governmental agencies. The Legislature further finds that in order to be eligible to receive an allotment of funds authorized and appropriated under the federal Older Americans Act, the state must establish and operate an Office of State Long-Term Care Ombudsman, to be headed by the State Long-Term Care Ombudsman, and carry out a long-term care ombudsman program.

(2) It is the intent of the Legislature, therefore, to utilize voluntary citizen ombudsman councils under the leadership of the ombudsman, and through them to operate an ombudsman program which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the ombudsman and ombudsman councils and their designated representatives not be required to obtain warrants in order to enter into or conduct administrative inspections of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities shall be conducive to the dignity and independence of residents and that investigations by ombudsman councils shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

Section 3. Section 400.0063, Florida Statutes, is created to read:

400.0063 Establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.—

(1) There is created an Office of State Long-Term Care Ombudsman, which shall be located for administrative purposes in the Department of Elderly Affairs.

(2)(a) The Office of State Long-Term Care Ombudsman shall be headed by the State Long-Term Care Ombudsman who shall have expertise and experience in the fields of long-term care and advocacy, who shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Office of State Long-Term Care Ombudsman in accordance with state and federal law.

(b) The State Long-Term Care Ombudsman shall be appointed by and shall serve at the pleasure of the State Long-Term Care Ombudsman Council. No person who has a conflict of interest, or has an immediate family member who has a conflict of interest, may be involved in the designation of the ombudsman.

(c) The council shall annually evaluate the performance of the ombudsman and submit a written report to the secretary.

(3)(a) There is created in the Office of State Long-Term Care Ombudsman the position of legal advocate, who shall be selected by and serve at the pleasure of the ombudsman, and who shall be a member in good standing of The Florida Bar.

(b) The duties of the legal advocate shall include, but not be limited to:

1. Assisting the ombudsman in carrying out the duties of the office with respect to the abuse, neglect, or violation of rights of residents of long-term care facilities.

2. Assisting the state and district ombudsman councils in carrying out their responsibilities under this part.

3. Initiating and prosecuting legal and equitable actions to enforce the rights of long-term care facility residents as defined in this chapter.

4. Serving as legal counsel to the state and district ombudsman councils, or individual members thereof, against whom any suit or other legal action is initiated in connection with the performance of the official duties of the councils or an individual member.

Section 4. Section 400.0065, Florida Statutes, is created to read:

400.0065 State Long-Term Care Ombudsman; duties and responsibilities; conflict of interest.—

(1) The purpose of the Office of State Long-Term Care Ombudsman shall be to:

(a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities, relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.

(b) Provide services to assist residents in protecting the health, safety, welfare, and rights of the residents.

(c) Inform residents about obtaining the services of the Office of State Long-Term Care Ombudsman and its representatives.

(d) Ensure that residents have regular and timely access to the services provided through the office and that residents and complainants receive timely responses from representatives of the office to their complaints.

(e) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(f) Provide administrative and technical assistance to state and district ombudsman councils.

(g) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, rules, and regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state, and recommend any changes in such laws, rules, regulations, policies, and actions as the office determines to be appropriate.

(h) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

(2) The State Long-Term Care Ombudsman shall have the duty and authority to:

(a) Assist and support the efforts of the State Long-Term Care Ombudsman Council in the establishment and coordination of district ombudsman councils throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of federal and state funding authorized and appropriated, employ such personnel, including staff for district ombudsman councils, as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and district ombudsman councils in the performance of their duties. Staff positions for each district ombudsman council may be established as career service positions, and shall be filled in consultation with the respective district ombudsman council.

(d) Contract for services necessary to carry out the activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

(f) Perform the duties specified in state and federal law without interference by officials of the Department of Elderly Affairs, the Agency for Health Care Administration, or the Department of Health and Rehabilitative Services. The ombudsman shall report to the Governor, President of the Senate, and Speaker of the House of Representatives whenever organizational or departmental policy issues threaten the ability of the Office of State Long-Term Care Ombudsman to carry out its duties under state or federal law.

(g) Coordinate, to the greatest extent possible, state and district ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

(3) The State Long-Term Care Ombudsman shall not:

(a) Have a direct involvement in the licensing or certification of, or an ownership or investment interest in, a long-term care facility or a provider of a long-term care service.

(b) Be employed by, or participate in the management of, a long-term care facility.

(c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long-term care facility.

The Department of Elderly Affairs shall adopt rules to establish procedures to identify and eliminate conflicts of interest as described in this subsection.

Section 5. Section 400.0067, Florida Statutes, is created to read:

400.0067 Establishment of State Long-Term Care Ombudsman Council; duties; membership.—

(1) There is created within the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

(a) Assist the ombudsman in reaching a consensus among district ombudsman councils on issues of statewide concern.

(b) Serve as an appellate body in receiving from the district ombudsman councils complaints not resolved at the district level. The state ombudsman council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0069(3).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to develop procedures, in consultation with the Department of Elderly Affairs, relating to such investigations. Investigations may consist, in part, of one or more onsite administrative inspections.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of long-term care facility residents and in developing procedures, in consultation with the Department of Elderly Affairs, relating to the receipt and resolution of such complaints.

(e) Elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents of a long-term care facility.

(f) Be authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, including assistance from the adult protective services program of the Department of Health and Rehabilitative Services.

(g) Enter into a cooperative agreement with the statewide and district human rights advocacy committees for the purpose of coordinating advocacy services provided to residents of long-term care facilities.

(h) Prepare an annual report describing the activities carried out by the ombudsman and the State Long-Term Care Ombudsman Council in the year for which the report is prepared. The State Long-Term Care Ombudsman Council shall submit the report to the Commissioner of the United States Administration on Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the House and Senate, the chairpersons of appropriate House and Senate committees, the Secretaries of Elderly Affairs and Health

and Rehabilitative Services, and the Director of Health Care Administration. The report shall be submitted at least 30 days before the convening of the regular session of the Legislature and shall, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities.

2. Evaluate the problems experienced by residents of long-term care facilities.

3. Contain recommendations for improving the quality of life of the residents and for protecting the health, safety, welfare, and rights of the residents.

4. Analyze the success of the ombudsman program during the preceding year and identify the barriers that prevent the optimal operation of the program. The report of the program's successes shall also address the relationship between the state long-term care ombudsman program, the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Health and Rehabilitative Services, and an assessment of how successfully the state long-term care ombudsman program has carried out its responsibilities under the Older Americans Act.

5. Provide policy and regulatory and legislative recommendations to solve identified problems, resolve residents' complaints, improve the quality of care and life of the residents, protect the health, safety, welfare, and rights of the residents, and remove the barriers to the optimal operation of the state long-term care ombudsman program.

6. Contain recommendations from the district ombudsman councils regarding program functions and activities.

7. Include a report on the activities of the legal advocate and other legal advocates acting on behalf of the district and state councils.

(3)(a) The State Long-Term Care Ombudsman Council shall be composed of a number of members equal to the number of district councils in the state plus three. Each district ombudsman council, including the ombudsman councils for subdistricts 3A and 3B, shall appoint one member and the Governor shall appoint three members to the State Long-Term Care Ombudsman Council. An individual designated by a district ombudsman council must have been a member of a district ombudsman council for at least 1 year, and shall continue to serve as an active member at the district level. The Governor's appointments shall be made from a list of not fewer than eight nominees, to be selected by the secretary in consultation with the State Long-Term Care Ombudsman Council and submitted to the Governor. If the appointments are not made within 30 days after the Governor receives the list of nominees, the secretary shall, in consultation with the State Long-Term Care Ombudsman Council, appoint three members from the list of nominees submitted to the Governor. At least one member appointed by the Governor must be over 60 years of age.

(b) All members shall be appointed to serve 3-year terms. Any vacancy shall be filled in the same manner as the original appointment. The position of any member missing three consecutive regular meetings without cause shall be declared vacant.

(c) The state ombudsman council shall elect a chairman for a term of 1 year from among the members who have served for at least 1 year. The chairman shall select a vice chairman from among the members. The vice chairman shall preside over the council in the absence of the chairman.

(d) The state ombudsman council shall meet upon the call of the chairman, at least quarterly or more frequently as needed.

(e) Members shall receive no compensation but shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(4)(a) Within 30 days after the effective date of this act, each district ombudsman council shall appoint one member to the council and the secretary shall submit a list of not fewer than eight council nominees to the Governor.

(b) Within 60 days after the effective date of this act, the Governor shall appoint three members to the council, or the provisions of paragraph (3)(a) shall apply.

(c) The initial appointments shall be for staggered terms. The members from districts 1, 2, 3A, 3B, and 4 shall serve for 1 year; the members from districts 5, 6, 7, 8, and 9 shall serve for 2 years; and the members from districts 10 and 11 and the Governor's three appointees shall serve for 3 years. Thereafter, members shall be appointed and serve 3-year terms as provided by this section.

(d) Within 60 days after the effective date of this act, or as soon thereafter as practicable, the State Long-Term Care Ombudsman Council shall hold its first meeting and shall elect a chairman from among its members, without regard to the minimum time served on the council. All other provisions of paragraph (3)(c) shall apply.

(5) No officer, employee, or representative of the Office of State Long-Term Care Ombudsman or of the State Long-Term Care Ombudsman Council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. The Department of Elderly Affairs, in consultation with the ombudsman, shall adopt rules to identify and remove conflicts of interest.

(6) The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for all expenses for the state and district ombudsman councils.

Section 6. Section 400.307, Florida Statutes, 1992 Supplement, is renumbered as section 400.0069, Florida Statutes, and amended to read:

400.0069 ~~400.307~~ District ~~nursing home and~~ long-term care ~~facility~~ ombudsman councils; duties; membership.—

(1) There shall be at least one ~~nursing home and~~ long-term care ~~facility~~ ombudsman council in each of the *planning and service areas* ~~districts~~ of the Department of *Elderly Affairs* ~~Health and Rehabilitative Services~~, which shall function under the direction of the state ombudsman council.

(2) The duties of the district ombudsman council are:

(a) To serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents of a ~~nursing home or~~ long-term care facility.

(b) To discover, investigate, and determine the existence of abuse or neglect in any ~~nursing home or~~ long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable. Investigations may consist, in part, of one or more onsite administrative inspections.

(c) To elicit, receive, *investigate,* respond to, and resolve complaints made by, or on behalf of, ~~nursing home or~~ long-term care facility residents.

(d) To review *and, if necessary, to comment on,* for their effect on the rights of ~~nursing home or~~ long-term care facility residents, all existing or proposed rules, ~~and~~ regulations, *and other governmental policies* relating to ~~nursing home or~~ long-term care facilities.

(e) To review personal property and money accounts of Medicaid residents pursuant to an investigation to obtain information regarding a specific complaint or problem.

(f) To represent the interests of residents before government agencies and to seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(g) To carry out other activities that the ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), the district ombudsman council is authorized, pursuant to ss. 400.19(1) and 400.434, to enter any ~~nursing home or~~ long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. *400.0073(5)* ~~400.314(5)~~.

(4) Each district ombudsman council shall be composed of no less than 15 members and no more than *30* ~~20~~ members from the district, to include the following: one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may have limited practice in a long-term care facility; one registered nurse who has geriatric experience, if possible; ~~one nursing home administrator; one owner or operator of an adult congregate living facility;~~ one licensed pharmacist; one registered dietitian; at least *six* ~~five~~ nursing home residents or representative consumer advocates for nursing home residents; at least *three* ~~two long-term care facility~~ residents *of*

adult congregate living facilities or adult foster homes or *three* representative consumer advocates for long-term care facility residents; one attorney; and one professional social worker. In no case shall the medical director of ~~a nursing home or~~ a long-term care facility or an employee of the Agency for Health Care Administration, the Department of Health and Rehabilitative Services, or the Department of Elderly Affairs serve as a member or as an ex officio member of a council. ~~Except for the nursing home administrator, adult congregate living facility owner or operator, medical or osteopathic physician, licensed pharmacist, registered dietitian, and registered nurse,~~ Each member of the council shall certify *that neither the council member nor any member of the council member's immediate family has any conflict of interest pursuant to subsection (10)* ~~to having no association with a nursing home or long term care facility for reward or profit.~~ *District ombudsman councils are encouraged to recruit council members who are 60 years of age or older.* ~~Any member who has an affiliation with a nursing home, adult congregate living facility, or adult foster home may not participate in any investigation or inspection of any facility with which he has such affiliation.~~

(5) All members shall be appointed to serve 3-year terms. Upon expiration of a term and in case of any other vacancy, the council shall appoint a replacement by majority vote of the council, subject to the approval of the Governor. If no action is taken by the Governor to approve or disapprove the replacement of a member within 30 days after the council has notified the Governor of the appointment, the appointment of the replacement shall be considered approved. The term of any member missing three consecutive regular meetings without cause shall be declared vacant.

(6) The district ombudsman council shall elect a chairman for a term of 1 year from members who have served at least 1 year. ~~In no case shall a person who is an owner, administrator, operator, or employee of a nursing home or long-term care facility, as defined in s. 400.301(2), be elected as chairman of the council.~~ The chairman shall select a vice chairman from among the members of the council. The vice chairman shall preside over the council in the absence of the chairman.

(7) The district ombudsman council shall meet upon the call of the chairman, at least once a month or more frequently as needed to handle emergency situations.

(8) A member of a district ombudsman council shall receive no compensation but shall be reimbursed for travel expenses both within and outside the county of residence in accordance with the provisions of s. 112.061.

(9) The district ombudsman councils are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the district ombudsman councils in providing requested information and agency representatives at council meetings. *The Department of Health and Rehabilitative Services shall continue to provide space and in-kind administrative support for each district ombudsman council staff within available resources until the Legislature appropriates funds for office space and administrative support.*

(10) No officer, employee, or representative of a district long-term care ombudsman council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. The Department of Elderly Affairs, in consultation with the ombudsman, shall adopt rules to identify and remove conflicts of interest.

Section 7. Section 400.314, Florida Statutes, is renumbered as section 400.0073, Florida Statutes, and paragraph (f) of subsection (5) and subsection (6) of said section are amended to read:

400.0073 ~~400.314~~ State and district ombudsman council investigations.—

(5) Any onsite administrative inspection conducted by an ombudsman council shall be subject to the following:

(f) All inspections shall be limited to compliance with parts ~~I and~~ II, *III, and VII* of this chapter and 42 U.S.C. s. 1396(a) et seq. and any rules or regulations promulgated pursuant to such laws.

(6) An inspection may not be accomplished by forcible entry. Refusal of a ~~nursing home or~~ long-term care facility to allow entry of any ombudsman council member constitutes a violation of ~~part I or~~ part II, *part III, or part VII* of this chapter.

Section 8. Section 400.317, Florida Statutes, is renumbered as section 400.0075, Florida Statutes, and amended to read:

400.0075 ~~400.317~~ Complaint resolution procedures.—

(1) Any complaint, including any problem identified by an ombudsman council as a result of an investigation, deemed valid and requiring remedial action by the district ombudsman council shall be identified and brought to the attention of the ~~nursing home or~~ long-term care facility administrator in writing. Upon receipt of such document, the administrator, in concurrence with the district ombudsman council chairman, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the district ombudsman council may:

(a) Extend the target date if the council has reason to believe such action would facilitate the resolution of the complaint.

(b) In accordance with s. *400.0077* ~~400.321~~, publicize the complaint, the recommendations of the council, and the response of the ~~nursing home or~~ long-term care facility.

(c) Refer the complaint to the state ombudsman council.

If the health, safety, welfare, or rights of the resident are in imminent danger, the district long-term care ombudsman council may seek immediate legal or administrative remedies to protect the resident.

(2) Upon referral from the district ombudsman council, the state ombudsman council shall assume the responsibility for the disposition of the complaint. If a ~~nursing home or~~ long-term care facility fails to take action on a complaint found valid by the state ombudsman council, the state council may:

(a) In accordance with s. *400.0077* ~~400.321~~, publicize the complaint, the recommendations of the council, and the response of the ~~nursing home or~~ long-term care facility.

(b) Recommend to the *agency* ~~department~~ a series of facility reviews pursuant to s. 400.19(4) to assure correction and nonrecurrence of conditions that give rise to complaints against a *long-term care* ~~nursing home~~ facility.

(c) Recommend to the *agency* ~~department~~ changes in rules ~~and regulations~~ for inspecting and licensing or certifying ~~nursing home or~~ long-term care facilities, *and recommend to the Department of Health and Rehabilitative Services changes in rules for licensing and regulating long-term care facilities.*

(d) Refer the complaint to the state attorney for prosecution if there is reason to believe the ~~nursing home or~~ long-term care facility or its employee is guilty of a criminal act.

(e) Recommend to the Department *of Health and Rehabilitative Services* that the *long-term care facility* ~~nursing home~~ no longer receive payments under the State Medical Assistance Program (Medicaid).

(f) Recommend that the *agency* ~~Department of Health and Rehabilitative Services~~ initiate procedures for revocation of license in accordance with chapter 120.

(g) Seek legal, administrative, or other remedies to protect the health, safety, welfare, or rights of the resident.

If the health, safety, welfare, or rights of the resident are in imminent danger, the State Long-Term Care Ombudsman Council shall seek immediate legal or administrative remedies to protect the resident.

(3) The state ombudsman council must inform the Department of Elderly Affairs quarterly, in a written report, of the disposition of all complaints.

Section 9. Section 400.321, Florida Statutes, is renumbered as section 400.0077, Florida Statutes, and amended to read:

400.0077 ~~400.321~~ Confidentiality.—

(1) The following are confidential and exempt from the provisions of s. 119.07(1):

(a) *Resident* ~~Patient~~ records held by *the* ~~an~~ ombudsman *or by the state or a district ombudsman* council.

(b) The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless:

1. The complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing;

2. The complainant or resident consents orally and the consent is documented contemporaneously in writing by the ombudsman council requesting such consent; or

3. The disclosure is required by court order. ~~the complainants and residents or their legal representatives provide their written consent to have their names released, or unless a court of competent jurisdiction orders that the names or identities of complainants or residents be public record.~~

(c) Any other information about a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless an ombudsman council determines that the information does not meet any of the criteria specified in s. 119.14(4)(b)*; or unless the information is to collect data for submission to those entities specified in section 712(c) of the federal Older Americans Act for the purpose of identifying and resolving significant problems.*

These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(2) That portion of an ombudsman council meeting in which an ombudsman council discusses information that is confidential and exempt from the provisions of s. 119.07(1) is closed to the public and exempt from the provisions of s. 286.011. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(3) All other matters before the council shall be open to the public and subject to chapter 119 and s. 286.011.

(4) Members of any state or district ombudsman council shall not be required to testify in any court with respect to matters held to be confidential under s. 400.414 except as may be necessary to enforce the provisions of this act.

(5) Subject to the provisions of this section, the Department of Elderly Affairs, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall adopt rules for the disclosure by the ombudsman or district ombudsman councils of files maintained by the program.

Section 10. Section 400.324, Florida Statutes, is renumbered as section 400.0079, Florida Statutes, and amended to read:

400.0079 ~~400.324~~ Immunity.—

(1) Any person making a complaint pursuant to this act who does so in good faith shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(2) The ombudsman or any person acting on behalf of the Office of State Long-Term Care Ombudsman or the state or a district long-term care ombudsman council shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed, during the good faith performance of official duties.

Section 11. Section 400.0081, Florida Statutes, is created to read:

400.0081 Access.—

(1) The Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the district long-term care ombudsman councils, or their representatives, shall have access to:

(a) Long-term care facilities and residents.

(b) Medical and social records of a resident for review, if:

1. The office has the permission of the resident or the legal representative of the resident; or

2. The resident is unable to consent to the review and has no legal representative.

(c) Medical and social records of the resident as necessary to investigate a complaint, if:

1. A legal guardian of the resident refuses to give permission.

2. The office has reasonable cause to believe that the guardian is not acting in the best interests of the resident.

3. The representative obtains the approval of the ombudsman.

(d) The administrative records, policies, and documents to which the residents, or the general public, have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

(2) Notwithstanding paragraph (1)(b), if, pursuant to a complaint investigation by the state ombudsman council or a district ombudsman council, the legal representative of the resident refuses to give permission for the release of the resident's records, and if the Office of the State Long-Term Care Ombudsman Council has reasonable cause to find that the legal representative is not acting in the best interests of the resident, the medical and social records of the resident must be made available to the state or district council as is necessary for the members of the council to investigate the complaint.

(3) The Department of Elderly Affairs, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall adopt rules to establish procedures to ensure access as described in this section.

Section 12. Section 400.0083, Florida Statutes, is created to read:

400.0083 Interference; retaliation; penalties.—

(1) It shall be unlawful for any person, long-term care facility, or other entity to willfully interfere with a representative of the Office of the State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, or a district long-term care ombudsman council in the performance of official duties.

(2) It shall be unlawful for any person, long-term care facility, or other entity to retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office of the State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, or a district long-term care ombudsman council.

(3)(a) Any person, long-term care facility, or other entity who violates this section shall be liable for damages and equitable relief as determined by law.

(b) Any person, long-term care facility, or other entity who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 13. Section 400.0087, Florida Statutes, is created to read:

400.0087 Agency oversight.—

(1) The Department of Elderly Affairs shall monitor the district ombudsman councils responsible for carrying out the duties delegated by s. 400.0069 and federal law. The department, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall adopt rules to establish the policies and procedures for the monitoring of district ombudsman councils.

(2) The department is responsible for ensuring that the Office of State Long-Term Care Ombudsman prepares its annual report, provides information to public and private agencies, legislators, and others, provides appropriate training to representatives of the office or of the state or district long-term care ombudsman councils, and coordinates ombudsman services with the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

(3) The Department of Elderly Affairs is the designated state unit on aging for purposes of complying with the federal Older Americans Act. The Department of Elderly Affairs shall ensure that the ombudsman program has the objectivity and independence required to qualify it for funding under the federal Older Americans Act, and shall carry out the long-term care ombudsman program through the Office of the

State Long-Term Care Ombudsman Council. The Department of Elderly Affairs shall also:

(a) Receive and disburse state and federal funds for purposes that the state ombudsman council has formulated in accordance with the Older Americans Act.

(b) Act as liaison between the federal program representatives, the staffs of the state and district ombudsman councils, and members of the state and district ombudsman councils.

(c) Submit annually to the Legislature, at least 30 days before the convening of the regular session of the Legislature, a report that must include an assessment of the success of the ombudsman program during the preceding year; the degree of compliance by the program with the Older Americans Act; and an assessment of the level of cooperation between the Department of Elderly Affairs, the Department of Health and Rehabilitative Services, the agency, and the state ombudsman council regarding shared responsibilities, including, but not limited to, access to records and actions taken on behalf of residents of long-term care facilities. The report must be submitted in conjunction with the report submitted by the state ombudsman council required by this section.

Section 14. Section 400.0089, Florida Statutes, is created to read:

400.0089 Agency reports.—The Department of Elderly Affairs, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents, for the purpose of identifying and resolving significant problems. The department shall submit the data, at least biennially, to the Agency for Health Care Administration, the Department of Health and Rehabilitative Services, the State Long-Term Care Ombudsman Council, the Statewide Human Rights Advocacy Committee, the Advocacy Center for Persons with Disabilities, the Commissioner for the United States Administration on Aging, the National Ombudsman Resource Center, and any other state or federal entities that the ombudsman determines appropriate.

Section 15. Section 400.0091, Florida Statutes, is created to read:

400.0091 Training.—The ombudsman shall provide appropriate training to all employees of the Office of State Long-Term Care Ombudsman and to the state and district long-term care ombudsman councils, including all unpaid volunteers. The ombudsman shall implement the training program no later than June 1, 1994. No employee, officer, or representative of the office or of the state or district long-term care ombudsman councils, other than the ombudsman, may carry out any authorized ombudsman duty or responsibility unless the person has received the training required by this section and has been approved by the ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or district long-term care ombudsman councils.

Section 16. *Sections 400.311 and 400.327, Florida Statutes, are renumbered as sections 400.0071 and 400.0085, Florida Statutes, respectively.*

Section 17. Subsection (3) of section 20.41, Florida Statutes, is amended to read:

20.41 Department of Elderly Affairs.—There is created a Department of Elderly Affairs.

(3) ~~The State Nursing Home and Long-Term Care Facility Ombudsman Council, created by s. 400.304, and the district nursing home and long-term care facility ombudsman councils, created by s. 400.307, are hereby transferred from the Pepper Commission on Aging by a type one transfer, as defined in s. 20.06(1), to the department.~~ The department shall administratively house the State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Council, *created by s. 400.0067,* and *the* district ~~nursing home and~~ long-term care ~~facility~~ ombudsman councils, *created by s. 400.0069* ~~through a contract with the Department of Health and Rehabilitative Services~~. The councils in performance of their duties shall not be subject to control, supervision, or direction by the department.

Section 18. Paragraph (e) of subsection (2) of section 394.715, Florida Statutes, is amended to read:

394.715 District alcohol, drug abuse, and mental health planning councils.—

(2)

(e) In filling such vacancies as may occur by reason of resignation, dismissal, expiration of term, or change in district boundaries, the county governing body or bodies responsible for appointments to a planning council shall consider a roster of qualified candidates to be prepared and presented by a nominating committee which has been appointed by the planning council. All members of the roster shall be legal residents of the district to which they are nominated. Nothing herein shall be construed as limiting the authority of a county governing body to appoint a qualified candidate who has not been included on the roster, so long as the appointee is a legal resident of the service district to which he is appointed.

1. The nominating committee shall be comprised of five members, including:

a. A member of the planning council;

b. A representative selected by the service providers within the service district;

c. A representative of a patient or client advocacy group or consumer group within the service district;

d. A member of an elected governing body within the service district; and

e. The district administrator, or his representative.

2. The nominating committee shall select a chairman from among its members and shall meet as often as necessary to assemble a roster of candidates for council membership.

3. The nominating committee shall present a roster of qualified candidates to the governing body or bodies when necessary to fill any vacancy. Nominees shall include, but are not limited to:

a. Representatives of district human rights advocacy committees, district long-term care ~~facility~~ ombudsman councils, and the multiagency service network for severely emotionally disturbed students or other statewide recognized patient advocacy groups.

b. Members of the judiciary.

c. Representatives of law enforcement.

d. Representatives of the school systems.

e. Clients or their families.

Section 19. Paragraph (h) of subsection (4) of section 395.3025, Florida Statutes, 1992 Supplement, is amended to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records shall be confidential and shall not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:

(h) The State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Council and the district ~~nursing home and~~ long-term care ~~facility~~ ombudsman councils, with respect to the records of a patient who has been admitted from a nursing home or long-term care facility, when the councils are conducting an investigation involving the patient as authorized under part *II* ~~I~~ of chapter 400, upon presentation of identification as a council member by the person making the request. Disclosure under this paragraph shall only be made after a competent patient or the patient's representative has been advised that disclosure may be made and the patient has not objected.

Section 20. Subsections (6) and (15) of section 400.021, Florida Statutes, are amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(6) "District ombudsman council" means *a* ~~each~~ district ~~nursing home and~~ long-term care ~~facility~~ ombudsman council established pursuant to s.

400.0069, located within the Older Americans Act planning and service areas ~~400.307~~.

(15) "State ombudsman council" means the State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Council established pursuant to s. *400.0067* ~~400.304~~.

Section 21. Subsection (4) of section 400.19, Florida Statutes, is amended to read:

400.19 Right of entry and inspection.—

(4) The *agency* ~~department~~ shall conduct unannounced onsite facility reviews following written verification of licensee noncompliance in instances in which a *long-term care* ~~nursing home~~ ombudsman council, pursuant to ss. *400.0071* ~~400.311~~ and *400.0075* ~~400.317~~, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents, or when the *agency* ~~department~~ documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the *agency* ~~department~~ shall conduct four or more unannounced onsite reviews within a 12-month period of each facility which has a conditional rating. Deficiencies related to physical plant do not require followup reviews after the *agency* ~~department~~ has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be reasonably expected.

Section 22. Paragraph (b)2. of subsection (3) of section 400.407, Florida Statutes, is amended to read:

400.407 License required; fee, display.—

(3) Any license granted by the department shall state the maximum resident capacity of the facility, the type of care for which the license is granted, the date the license is issued, the expiration date of the license, and any other information deemed necessary by the department. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health services.

(b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including acts performed pursuant to chapter 464 by persons licensed thereunder, and supportive services which may be defined by rule to persons who otherwise would be disqualified from continued residence in a facility licensed under this part.

2. Facilities which are licensed to provide extended congregate care services shall maintain a written progress report on each person who receives such services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse, or appropriate designee, representing the department shall visit such facilities at least three times a year to monitor residents who are receiving extended congregate care services and to determine if the facility is in compliance with applicable provisions of this part and with related rules. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall serve as part of the team that biennially inspects such facility. The department may waive one of the required yearly monitoring visits for a facility that has been licensed for at least 24 months to provide extended congregate care services, if, during the biennial inspection, the registered nurse determines that extended congregate care services are being provided appropriately, and if the facility has no class I or class II violations and no uncorrected class III violations. Before such decision is made, the department shall consult with the long-term care ~~facility~~ ombudsman council for the area in which the facility is located to determine if any complaints have been made and substantiated about the quality of services or care.

Section 23. Subsection (1) of section 400.417, Florida Statutes, is amended to read:

400.417 Expiration of license; renewal; conditional license.—

(1) Biennial licenses issued for the operation of a facility, unless sooner suspended or revoked, shall expire automatically 2 years from the date of issuance. The department shall notify the facility by certified mail 120 days prior to the expiration of the license that relicensure is necessary to continue operation. Ninety days prior to the expiration date, an application for renewal shall be submitted to the department. A license shall be renewed upon the filing of an application on forms furnished by the department if the applicant has first met the requirements established under this part and all rules promulgated hereunder. The failure to file a timely application shall result in a late fee charged to the facility in an amount equal to 50 percent of the fee in effect on the last preceding regular renewal date or $100, whichever is greater. Late fees shall be deposited into the Licensure Fees Trust Fund of the department as provided in s. 400.418. The facility shall file with the application satisfactory proof of ability to operate and conduct the facility in accordance with the requirements of this part. An applicant for renewal of a license who has complied on the initial license application with the provisions of s. 400.411 with respect to proof of financial ability to operate shall not be required to provide proof of financial ability on renewal applications unless the facility or any other facility owned or operated in whole or in part by the same person or business entity has demonstrated financial instability as evidenced by bad checks, delinquent accounts, or nonpayment of withholding taxes, utility expenses, or other essential services or unless the department suspects that the facility is not financially stable as a result of the annual survey or complaints from the public or a report from the State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Council. Each facility shall report to the department any adverse court action concerning the facility's financial viability, within 7 days after its occurrence. The department shall have access to books, records, and any other financial documents maintained by the facility to the extent necessary to carry out the purpose of this section. A license for the operation of a facility shall not be renewed if the licensee has any outstanding fines assessed pursuant to this part which are in final order status.

Section 24. Section 400.434, Florida Statutes, is amended to read:

400.434 Right of entry and inspection.—Any duly designated officer or employee of the department, the state or local fire marshal, or a member of the state or district ~~nursing home and~~ long-term care ~~facility~~ ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the department has reason to believe is being operated or maintained as a facility without a license; but no such entry or inspection of any premises may be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing such entry. The warrant requirement shall extend only to a facility which the department has reason to believe is being operated or maintained as a facility without a license. Any application for a license or renewal thereof made pursuant to this part shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. Any current valid license shall constitute unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel.

Section 25. Subsection (4) of section 400.441, Florida Statutes, is amended to read:

400.441 Rules establishing standards.—

(4) The department may use an abbreviated biennial inspection which consists of a review of key quality-of-care standards in lieu of a full inspection in facilities which have a good record of past performance. However, a full inspection shall be conducted in facilities which have had a history of class I or class II violations or uncorrected class III violations within the previous licensure period immediately preceding the inspection or when a potentially serious problem is identified during the abbreviated inspection. The department shall develop the key quality-of-care standards with input from the State Long-Term Care ~~Facilities~~ Ombudsman Council and representatives of provider groups for incorporation into its rules. On or before March 1, 1991, the department shall report to the Legislature concerning its implementation of this subsection. The report shall include, at a minimum, the key quality-of-care standards which have been developed; a description of the process used to develop the standards, including other groups involved; the number of facilities identified as being eligible for the abbreviated inspection; the number of facilities which have received the abbreviated inspection and, of those, the number that were converted to full inspection; the number and type of subsequent complaints received by the department on facilities which have had abbreviated inspections; any recommendations for modification

to this subsection; any plans by the department to modify its implementation of this subsection; and any other information which the department believes should be reported.

Section 26. Paragraph (g) of subsection (7) of section 402.165, Florida Statutes, 1992 Supplement, is amended to read:

402.165 Statewide Human Rights Advocacy Committee.—

(7) The responsibilities of the committee include, but are not limited to:

(g) Developing and adopting uniform procedures to be used to carry out the purpose and responsibilities of the human rights advocacy committees, which procedures shall include, but need not be limited to, the following:

1. The responsibilities of the committee;

2. The organization and operation of the statewide committee and district committees, including procedures for replacing a member, formats for maintaining records of committee activities, and criteria for determining what constitutes a conflict of interest for purposes of assigning and conducting investigations and monitoring;

3. Uniform procedures for the statewide committee and district committees to receive and investigate reports of abuse of constitutional or human rights;

4. The responsibilities and relationship of the district human rights advocacy committees to the statewide committee;

5. The relationship of the committee to the Department of Health and Rehabilitative Services, including the way in which reports of findings and recommendations related to reported abuse are given to the Department of Health and Rehabilitative Services;

6. Provision for cooperation with the State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Council;

7. Procedures for appeal. An appeal to the state committee is made by a district human rights advocacy committee when a valid complaint is not resolved at the district level. The statewide committee may appeal an unresolved complaint to the Secretary of the Department of Health and Rehabilitative Services. If, after exhausting all remedies, the statewide committee is not satisfied that the complaint can be resolved within the Department of Health and Rehabilitative Services, the appeal may be referred to the Governor or the Legislature;

8. Uniform procedures for gaining access to and maintaining confidential information; and

9. Definitions of misfeasance and malfeasance for members of the statewide committee and district committees.

Section 27. Subsection (1) of section 415.106, Florida Statutes, is amended to read:

415.106 Cooperation by the department and criminal justice and other agencies with respect to investigation of known or suspected cases of abuse, neglect, or exploitation of aged persons or disabled adults.—

(1) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of aged persons or disabled adults, the department shall develop and maintain interprogram agreements or operational procedures among the Aging and Adult Services Program Office, those departmental programs which serve aged persons or disabled adults as defined in s. 415.102, and the State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Council and Statewide Human Rights Advocacy Committee. These agreements or procedures shall cover such subjects as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of aged persons or disabled adults; the provision of services; and related coordinated activities.

Section 28. *Section 400.301, Florida Statutes, section 400.304, Florida Statutes, as amended by chapters 91-115 and 92-33, Laws of Florida, and section 1 of chapter 91-125, Laws of Florida, appearing as section 400.308, Florida Statutes, are hereby repealed.*

Section 29. *Notwithstanding the provisions of the Sundown Act or of any other provision of law which provides for review and repeal in accordance with s. 11.611, Florida Statutes, sections 400.307, 400.311, 400.314, 400.317, 400.321, 400.324, and 400.327, Florida Statutes, shall not stand repealed on October 1, 1993, and shall continue in full force and effect as amended and renumbered herein.*

Section 30. *Part I of chapter 400, Florida Statutes, is repealed on October 1, 2003, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes. In the event that s. 11.61, Florida Statutes, is repealed prior to October 1, 2003, this section shall stand repealed on the effective date of the repeal of said section.*

Section 31. *Sections 400.0067 and 400.0069, Florida Statutes, are repealed on October 1, 2003, and the state district long-term care ombudsman councils shall be reviewed by the Legislature pursuant to s. 11.611, Florida Statutes, the Sundown Act. In the event that s. 11.611, Florida Statutes, is repealed prior to October 1, 2003, this section shall stand repealed on the effective date of the repeal of said section.*

Section 32. This act shall take effect upon becoming a law.

And the title is amended as follows:

On page 1, line 1, strike the entire title insert: A bill to be entitled An act relating to long-term care ombudsmen; creating s. 400.0060, F.S.; providing definitions; creating ss. 400.0061 and 400.0063, F.S.; providing legislative intent; establishing the Office of State Long-Term Care Ombudsman; providing for designation of ombudsman and legal advocate; creating s. 400.0065, F.S.; providing ombudsman duties and responsibilities; creating s. 400.0067, F.S.; establishing the State Long-Term Care Ombudsman Council; providing membership and duties; providing for initial appointments and meeting; providing for conflicts of interest; providing for separate appropriations; renumbering and amending s. 400.307, F.S.; establishing the district long-term care ombudsman councils; revising membership and duties; providing for administrative support of the Department of Health and Rehabilitative Services; providing for conflicts of interest; renumbering and amending s. 400.314, F.S., relating to state and district ombudsman council investigations; renumbering and amending s. 400.317, F.S., relating to complaint resolution procedures; authorizing state and district ombudsman councils to seek immediate legal or administrative remedies, under certain circumstances; renumbering and amending s. 400.321, F.S.; revising provisions relating to confidentiality; providing for rules relating to disclosure of files; renumbering and amending s. 400.324, F.S.; providing immunity from liability for official actions of the ombudsman or council members; creating s. 400.0081, F.S.; providing for access to facilities, residents, and records; creating s. 400.0083, F.S.; prohibiting interference with persons performing ombudsman duties; prohibiting retaliation against persons reporting to ombudsman representatives; providing penalties; creating s. 400.0087, F.S.; providing for oversight duties of the Department of Elderly Affairs; creating s. 400.0089, F.S.; providing for a uniform data collection and reporting system; requiring biennial reports; creating s. 400.0091, F.S.; establishing a training program for persons carrying out responsibilities of the ombudsman or state or district ombudsman councils; renumbering ss. 400.311 and 400.327, F.S., relating to complaint procedures and penalty; amending ss. 20.41, 394.715, 395.3025, 400.19, 400.407, 400.417, 400.434, 400.441, 402.165, and 415.106, F.S.; conforming language and correcting cross references; amending s. 400.021, F.S.; revising definitions; repealing ss. 400.301, 400.304, and 400.308, F.S., relating to legislative intent and the establishment of the State Nursing Home and Long-Term Care Facility Ombudsman Council and the Legal Advocate for Nursing Home and Long-Term Care Facility Residents; saving pt. I of ch. 400, F.S., from Sunset repeal; saving s. 400.307, F.S., from Sundown repeal; providing for future review and repeal; providing an effective date.

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

HB 2065 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—27 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has amended Senate Amendment 1, concurred in same as amended, passed as amended, HB 2071 and requests the concurrence of the Senate.

John B. Phelps, Clerk

HB 2071—A bill to be entitled An act relating to health care; amending s. 483.021, F.S.; providing legislative intent; amending s. 483.031, F.S.; revising exemptions; creating s. 483.035, F.S.; providing for licensure and operation of exclusive use clinical laboratories; amending s. 483.041, F.S.; providing definitions; amending s. 483.051, F.S.; providing powers and duties of the Agency for Health Care Administration; providing for biennial licensure; revising requirements for clinical laboratory construction and safety conditions; requiring policy and procedure manuals; requiring standards for patient test management; providing for alternate site testing; amending s. 483.061, F.S.; revising inspection requirements; amending s. 483.091, F.S.; requiring application for new license after change in laboratory ownership; amending s. 483.101, F.S.; providing for applicants to be given copies of rules; creating s. 483.106, F.S.; providing for certificates of exemption; authorizing waived tests; amending s. 483.172, F.S.; revising licensure fees; specifying a biennial certificate-of-exemption fee; amending s. 483.221, F.S.; increasing administrative fine; amending s. 483.809, F.S.; providing for alternate site testing; amending s. 483.823, F.S.; providing for hospital or clinical laboratory training programs for laboratory technicians; authorizing the agency to establish a technical advisory panel; amending s. 483.800, F.S.; expanding legislative purpose and policy provisions; amending s. 483.801, F.S.; deleting exemption for specified laboratories; amending s. 483.811, F.S.; directing the Board of Clinical Laboratory Personnel to approve certain laboratory technician training programs; amending ss. 483.111, 483.181, 483.191, 483.201, 483.23, 483.245, and 483.25, F.S.; conforming language; repealing s. 455.238, F.S., relating to prohibition against markup on charges by health care providers; providing an appropriation; saving pt. I of ch. 483, F.S., from Sunset repeal; providing for future review and repeal; providing an effective date.

House Amendment 1 to Senate Amendment 1—On page 2, strike all of line 25, through page 3, line 14, and insert:

Section 3. Section 483.035, Florida Statutes, is created to read:

(1) A clinical laboratory operated by one or more practitioners licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, or chapter 466, exclusively in connection with the diagnosis and treatment of their own patients, must be licensed under this part and must comply with the provisions of this part, except that the agency shall adopt rules for staffing, proficiency testing, and construction standards relating to the licensure and operation of the laboratory based upon and not exceeding the same standards contained in the federal Clinical Laboratory Improvement Amendments of 1988 and the federal regulations adopted thereunder.

(2) Subsection (1) does not apply to a clinical laboratory operated by one or more practitioners who hold the facilities of the laboratory out as available for the performance of diagnostic tests for other practitioners or their patients. All provisions of this part apply to a clinical laboratory that receives any referred work or performs any work for patients referred by another practitioner.

House Amendment 2 to Senate Amendment 1—On page 24, strike line 28, and insert: *clinical laboratory operated by one or more practitioners who hold the*

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

HB 2071 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—35 Nays—1

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has again refused to concur in Senate Amendment 2 to CS for HB 2197, and insists that the Senate recede therefrom.

John B. Phelps, Clerk

CS for HB 2197—A bill to be entitled An act relating to adult congregate living facilities; amending s. 400.401, F.S.; providing legislative findings; amending s. 400.402, F.S.; revising definitions; amending s. 400.404, F.S.; revising exemptions; amending s. 400.407, F.S.; providing penalties for neglect; providing for care of residents designated as being mentally ill; revising requirements for existing facilities requesting to provide extended congregate care services; requiring annual monitoring of facilities with substantiated complaints; revising a restriction on facilities providing limited mental health services; providing for biennial license fees; providing a duplicate license fee; amending s. 400.408, F.S.; providing penalties for referral to an unlicensed facility, a facility whose license is under denial or has been suspended or revoked, or a facility that has a moratorium on admissions; amending s. 400.411, F.S.; providing an additional license application requirement; amending s. 400.412, F.S.; requiring a corrective action plan prior to transfer of ownership; amending s. 400.414, F.S.; providing additional grounds for license suspension, denial, or revocation, or administrative fine; providing for hearing; requiring provision of specified information to the Division of Hotels and Restaurants of the Department of Business Regulation; amending s. 400.415, F.S.; providing for moratorium on admissions after license denial, suspension, or revocation; amending s. 400.4174, F.S.; requiring certain notice of confirmed reports of child abuse or neglect by a facility owner or employee; amending s. 400.4176, F.S.; increasing time period for notice of change of facility administrator; amending s. 400.418, F.S.; providing use of fees and fines; amending s. 400.419, F.S.; providing penalties for certain action by an administrator; providing an additional classification of violations; providing a penalty; providing for dissemination of information on facilities with violations; providing a fee; amending s. 400.42, F.S.; authorizing acceptance of third-party supplementation under specified circumstances; amending s. 400.422, F.S.; providing certain notice of receivership proceedings; revising provisions relating to expenditures to correct or eliminate deficiencies; amending s. 400.424, F.S.; requiring contract notice of a facility's policy on advance deposits; providing for disposition of personal belongings after termination date; specifying time period for refunds; providing a penalty; providing for disposition of fines; revising requirement for physical examination; amending s. 400.4255, F.S.; expanding authorized use of licensed personnel; providing for use of certified nursing assistants; amending s. 400.426, F.S.; revising provisions relating to assessment of appropriateness of placement and requirements for continued residency; requiring certain agreement or notice prior to moving a resident to another facility; amending s. 400.427, F.S.; modifying provisions relating to personal affairs of residents; prohibiting payment of benefits to an owner, administrator, or staff member without resident's consent; providing a penalty for certain misuse of a resident's personal needs allowance; amending s. 400.428, F.S.; revising the resident bill of rights; providing for extended visiting hours; requiring a grievance procedure; requiring telephone access to advocacy or special interest groups; requiring monitoring visits to facilities with certain violations; amending s. 400.431, F.S.; providing for relocation of residents receiving services from the Department of Health and Rehabilitative Services when a facility discontinues operation; extending period for return of payments by such a facility; amending s. 400.434, F.S.; authorizing inspection of facilities after license suspension or revocation; providing restrictions; amending s. 400.435, F.S.; providing copies of inspection reports to certain persons; amending s. 400.441, F.S.; revising rules relating to minimum standards for fire safety, food service inspection, and use of restraints; providing for distinct standards for facilities of different sizes; providing a restriction; amending s. 400.442, F.S.; requiring a corrective action plan for deficiencies in provision of medication; amending s. 400.444, F.S.; conforming terminology; amending s. 400.447, F.S.; deleting restrictions on advertising while under construction; providing a penalty for certain advertising violations; amending s. 400.452, F.S.; revising core educational requirements for staff; amending ss. 400.417, 400.4195, 400.421, 400.429, 400.4445, and 400.453, F.S.; conforming language to transfer of responsibilities to the Agency for Health Care Administration from the Department of Health and Rehabilitative Services; amending s. 509.032, F.S.; providing duties of the Division of Hotels and Restaurants of the Department of Business Regu-

lation relating to inspection of public lodging establishments; amending s. 651.011, F.S.; correcting a cross reference; providing an appropriation; saving pt. II of ch. 400, F.S., from Sunset repeal; providing for future review and repeal; providing an effective date.

On motion by Senator McKay, the Senate receded from the Senate amendment.

CS for HB 2197 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed as amended HB 2297 and requests the concurrence of the Senate.

John B. Phelps, Clerk

HB 2297—A bill to be entitled An act relating to thoroughbred horse races; creating s. 550.09515, F.S.; providing for thoroughbred horse taxes; providing exceptions; providing for an abandoned interest in a permit for nonpayment of taxes; providing for repeal; amending s. 550.615, F.S.; providing for intertrack wagering; providing for a Breeders' Cup Meet; amending s. 550.2625, F.S.; authorizing an additional percentage of handle to be withheld to be paid to the purse pool as additional overnight purses; amending s. 550.2415, F.S.; prescribing limits on the use of drugs on animals; amending s. 550.5251, F.S.; providing for additional races per racing day for certain quarter horses; providing effective dates.

On motions by Senator Grant, by unanimous consent **HB 2297** was taken up out of order and by two-thirds vote read the second time by title, and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—39 Nays—None

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed as amended CS for CS for HB 2315 and requests the concurrence of the Senate.

John B. Phelps, Clerk

CS for CS for HB 2315—A bill to be entitled An act relating to planning and growth management; amending s. 163.3161, F.S.; providing additional legislative intent with respect to the Local Government Comprehensive Planning and Land Development Regulation Act; amending s. 163.3164, F.S.; providing definitions; amending ss. 186.515 and 369.303, F.S.; correcting references; amending s. 163.3167, F.S.; providing that local governments are encouraged to articulate a vision of the future of their communities as part of their comprehensive plans; amending s. 163.3177, F.S.; revising requirements relating to the housing element of comprehensive plans; providing for affordable housing needs assessments; revising requirements relating to the intergovernmental coordination element; providing additional requirements for that element and providing for implementation; providing duties of the state land planning agency; requiring a transportation element for certain local governments and providing requirements with respect thereto; providing duties of the agency regarding land use issues in the vicinity of airports; encouraging certain local governments to adopt hazard mitigation/post-disaster redevelopment plans and providing for grants to assist in developing these plans; amending s. 163.3178, F.S.; revising requirements relating to the coastal management element; providing requirements relating to port master plans, marina siting plans, disposal sites for dredged materials, and acquisition of coastal property; creating s. 163.3180, F.S.; specifying the facilities and services subject to the concurrency requirement on a statewide basis and providing requirements with respect thereto; authorizing local governments to extend the requirement to other facilities; restricting establishment of binding level of service standards by certain governmental entities; specifying application of concurrency requirements to public facilities; providing for granting exceptions to the transportation concurrency requirement; providing guidelines for granting those exceptions; defining a de minimis impact and providing for methodologies that encourage such an impact; providing for designating transportation concurrency management areas; providing for assessing the transportation impacts of certain proposed urban redevelopment; providing for adopting long-term transportation concurrency management systems as part of the local plan; providing guidelines for level-of-service standards; providing for a local government to allow a landowner to develop his land, despite a failure to satisfy transportation concurrency, as specified; amending section 163.3181, F.S., relating to public participation in the comprehensive planning process; providing public participation procedures for a local government considering undertaking a publicly financed capital project; providing for public notice; specifying when an affected person may file an administrative pleading; providing for application of the doctrine of res judicata to certain matters; amending s. 163.3184, F.S., which provides the process for adoption of comprehensive plans or plan amendments; revising requirements relating to transmittal of proposed plans or amendments by local governments, and state land planning agency, intergovernmental, and regional and county review; providing that the state land planning agency, in reviewing local government comprehensive plans shall not require a local government to duplicate or exceed an existing permitting program in its comprehensive plan or land development regulations; revising restrictions on the state land planning agency's authority to find a plan or plan amendment not in compliance; providing for disposition of funds withheld as a sanction for noncompliance; limiting imposition of sanctions; amending s. 163.3187, F.S.; providing requirements for amendment of comprehensive plans; amending s. 163.3189, F.S.; specifying the procedure for amendment of a plan which has been found to be in compliance; providing for application of sanctions; providing for mediation and resolution; amending s. 163.3191, F.S.; providing additional requirements regarding periodic evaluation and appraisal reports and related plan amendments; revising times for submission of reports; providing for sufficiency reviews; authorizing delegation of review of reports to regional planning councils; providing conditions for imposition of sanctions; authorizing certain local governments to focus planning resources on selected issues when updating their plans and providing requirements with respect thereto; providing for incorporation of interagency hazard mitigation reports; amending s. 163.3202, F.S.; providing requirements relating to land development regulations which implement certain requirements of the intergovernmental coordination element; amending s. 171.031, F.S.; defining "enclave"; amending s. 171.0413, F.S.; revising provisions relating to annexation; amending procedures relating to a referendum on annexation; providing for annexation of areas with no registered electors; amending s. 171.062, F.S.; amending provisions specifying the continuing applicability of county regulations to an area annexed by a municipality; creating s. 171.046, F.S.; providing for municipal annexation of enclaves; amending s. 186.002, F.S.; providing findings and intent relating to state planning; amending s. 186.003, F.S.; providing definitions; amending s. 186.004, F.S.; revising provisions relating to the Governor's duties as chief planning officer; amending s. 186.007, F.S.; including objectives within the state comprehensive plan; revising program areas; providing requirements for revision of the plan; amending s. 186.008, F.S.; providing for biennial revision of the plan; creating s. 186.009, F.S.; providing for preparation of the growth management portion of the state comprehensive plan by the Executive Office of the Governor; providing for review by the Administration Commission and adoption by the Legislature; providing for revision of the plan; amending ss. 186.021 and 186.022, F.S.; revising provisions relating to state agency strategic plans; amending s. 186.502, F.S.; providing findings regarding regional planning councils; amending s. 186.503, F.S.; providing definitions; amending s. 186.504, F.S.; revising provisions relating to membership of the councils; amending s. 186.505, F.S.; providing additional powers of the councils; amending s. 186.506, F.S.; providing for revision of the boundaries of comprehensive planning districts; amending s. 186.507, F.S.; providing for strategic regional policy plans to be adopted by the councils and providing requirements with respect thereto; providing status of standards included therein; limiting establishment of binding level of service standards by the councils; amending s. 408.033, F.S., to conform; amending s. 186.508, F.S.; providing requirements for plan adoption; amending s. 186.509, F.S.; directing each council to establish a dispute resolution process; amending s. 419.001, F.S., to conform; amending s. 186.511, F.S.; providing requirements for evaluation of plans; repealing s. 1(3), ch. 92-182, Laws of Florida, which provides for review and repeal of the Florida Regional Planning Council Act; amending s. 193.501, F.S.; revising provisions that provide for assessment of environmentally endangered land or land used for outdoor recreational or park purposes when land development rights have been conveyed or conservation restrictions covenanted; including land for which a conservation easement is conveyed; authorizing conveyance to or covenant with any public agency or a charitable corporation or

trust; revising provisions relating to conveyance of development rights; amending s. 336.025, F.S.; authorizing levy of an additional local option tax on motor fuel by ordinance or by referendum; providing for distribution and use of tax revenues; providing an additional authorized use for the revenues from the local option gas tax for county transportation systems; providing for collection and administration; amending s. 235.193, F.S.; providing requirements regarding notice by a school board to the local governing body with respect to temporary relocatable educational facilities; creating s. 240.155, F.S.; requiring the Board of Regents to prepare a campus master plan for each institution under its jurisdiction; prescribing requirements for the plans; providing for amendment of the plans; requiring the Board of Regents to enter into campus development agreements with units of local government within which universities are located or which are affected by the universities; prescribing requirements for the agreements; specifying responsibility for costs of certain improvements; providing for amendment of the agreements; providing for resolution of disputes; providing relationship to other comprehensive planning requirements; creating the State University System Concurrency Trust Fund; providing for service charges on certain local-option motor fuel taxes to be deposited into the fund for offsite improvements needed to meet concurrency requirements; amending s. 253.023, F.S.; providing additional purposes for which lands may be acquired with moneys in the Conservation and Recreation Lands Trust Fund; amending s. 288.063, F.S.; providing for preference in Division of Economic Development transportation project contracts to local governments that have adopted an economic element as part of their comprehensive plans; amending s. 336.021, F.S.; removing the referendum requirement for levy of the ninth-cent gas tax and authorizing levy by extraordinary vote of the county governing body or referendum; directing the Departments of Transportation and Community Affairs to develop a model Transportation Corridor Protection Ordinance and recommend guidelines regarding land use near airports; amending s. 380.05, F.S.; revising requirements relating to the state land planning agency's recommendations regarding areas of critical state concern; revising requirements regarding the rule designating such an area; providing additional requirements for repeal of a rule; providing duties of state agencies with rulemaking authority for programs that affect such areas; amending s. 380.0555, F.S.; revising the Apalachicola Bay Area Protection Act; providing procedures for removal of parts of the area from designation as an area of critical state concern; amending s. 380.06, F.S., relating to developments of regional impact; providing for increases in statewide guidelines and standards applicable to certain areas in jurisdictions whose comprehensive plans are in compliance; revising conditions under which a developer may request a determination from the state land planning agency; providing circumstances in which changes do not divest certain vested rights; providing procedures for processing comprehensive plan amendments; providing for expedited review; limiting requests for additional information by the regional planning agency under certain conditions; specifying time limits for holding a public hearing under certain conditions; revising requirements relating to the regional planning agency's report and recommendations; providing requirements for adoption of rules by the state land planning agency and eliminating adoption of rules by regional planning agencies; clarifying that abandonment orders shall not be conditioned upon contributions where there is no existing development within a development of regional impact and the owner or developer does not propose development therein; providing for termination of the development-of-regional-impact program in certain jurisdictions; authorizing continued participation by certain local governments; amending s. 380.061, F.S.; restricting Florida Quality Developments to jurisdictions where the development-of-regional-impact program has not been terminated; providing an exception to DRI standards for certain ports; amending s. 380.0651, F.S., amending s. 380.07, F.S.; revising duties of regional planning agencies regarding appeals to the Florida Land and Water Adjudicatory Commission; providing for appeal of development orders in jurisdictions that have terminated development-of-regional-impact review; amending s. 380.11, F.S.; providing for judicial and administrative remedies with respect to projects that would have been required to undergo development-of-regional-impact review but for termination of such review; amending s. 380.205, F.S.; defining "coastal zone"; amending s. 380.21, F.S.; providing legislative intent regarding acquisition of coastal lands; amending s. 380.22, F.S.; amending s. 380.23, F.S.; deleting the October 1, 1994, sunset date for the Governor to resolve disputes on federal consistency reviews; providing duties of the Department of Community Affairs regarding such acquisition; providing criteria; amending s. 380.31, F.S.; revising membership of the Coastal Resources Interagency Management Committee and providing for an executive committee thereof; amending s. 380.32, F.S.; providing additional duties of the Coastal Resources Interagency Management Committee; amending s. 259.101, F.S., the Florida Preservation 2000 Act; providing purposes of the Florida Communities Trust program; providing a deadline for identifying a funding source; deleting obsolete language; providing purposes for which Preservation 2000 funds may be spent; revising provisions relating to title to purchased lands; providing additional criteria for acquisition of coastal lands under the act; amending s. 380.502, F.S.; revising intent regarding duties of the Florida Communities Trust; amending s. 380.503, F.S.; providing definitions; amending s. 380.504, F.S.; revising the membership of the governing body of the trust; deleting obsolete language; amending s. 380.507, F.S.; revising powers of the trust; providing land acquisition procedure requirements; amending s. 380.508, F.S.; providing criteria for the project application process; amending s. 380.510, F.S.; revising provisions to the reversion of title to land for certain violations; repealing s. 380.509 and s. 380.512(6), F.S., relating to duties and activities pertaining to the trust which have already been performed; amending s. 380.511, F.S.; providing additional authorized expenditures from the Florida Communities Trust Fund; amending s. 403.0891, F.S.; directing the Departments of Environmental Regulation and Community Affairs to develop a model stormwater management program; amending s. 704.06, F.S.; revising the definition of "conservation easement"; revising the types of charitable corporations or trusts that may acquire such easements; specifying that recording an easement entitles the owner to revaluation of the property; providing for the enforcement of rights held by the holder of an easement; relieving the holder of potential liability, as specified; amending s. 823.14, F.S.; providing an additional condition under which a farm operation does not become a nuisance; directing the state land planning agency to make certain recommendations regarding the development-of-regional-impact program; directing the Governor to establish a task force to make recommendations regarding the relationship between water and land planning; directing the Coastal Resources Interagency Management Committee to study and prepare recommendations on coastal management funding and to report to the Governor and the Legislature; directing the Advisory Council on Intergovernmental relations to study the cost to local governments of certain amendments contained in the act and make recommendations with respect thereto; requiring reports; directing that changes in terminology in the Florida Statutes be made; amending s. 253.12, F.S., relating to title to such lands; providing that certain lands which might be owned by the state be granted to the upland landowner; providing for application; providing legislative intent; providing for severability; providing effective dates.

On motions by Senator Kiser, by unanimous consent **CS for CS for HB 2315** was taken up out of order and by two-thirds vote read the second time by title, and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—2

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendment 4; refused to concur in Senate Amendments 2 and 3 and requests the Senate to recede; has passed HB 2345, as further amended and requests the Senate to concur.

John B. Phelps, Clerk

HB 2345—A bill to be entitled An act relating to funeral, cemetery, and crematory services; merging chapter 470, F.S., relating to funeral directors, embalmers, and direct disposition, and chapter 639, F.S., relating to preneed funeral contracts, into chapter 497, F.S., relating to cemeteries, and placing them under the jurisdiction of the Department of Banking and Finance; creating s. 497.101, F.S.; providing a short title; amending and renumbering s. 470.001, F.S.; expanding legislative findings and intent; amending and renumbering s. 470.002, F.S.; revising and providing definitions; amending and renumbering s. 470.003, F.S.; renaming the Board of Funeral Directors and Embalmers as the Board of Funeral and Cemetery Services; providing procedure for appointment of members and for filling vacancies; providing qualifications for membership on the board; amending and renumbering s. 470.005, F.S.; providing rulemaking authority of the board and department; creating s. 497.111, F.S.; providing legislative intent with respect to the professions and occupations regulated by the department under the chapter; creating s. 497.113, F.S.; providing general powers and duties of the department with respect to such regulation; creating s. 497.115, F.S.; providing that the board may be contacted through the headquarters of the department

in Tallahassee; creating s. 497.117, F.S.; providing for officers, meetings, official business, and compensation of the board; creating s. 497.119, F.S.; authorizing the board and department to publish an advisory newsletter; creating s. 497.121, F.S.; providing accountability and liability of board members; creating s. 497.123, F.S.; providing for board rules, final agency action, and challenges; creating s. 497.125, F.S.; providing general licensing provisions; creating s. 497.127, F.S.; providing general provisions relating to the procurement, administration, security, and recordkeeping requirements of examinations; providing exemptions from public records requirements relating to examination results and meetings held to create or review examination questions; providing for future review and repeal; creating s. 497.129, F.S.; prohibiting theft or reproduction of examinations and providing a penalty therefor; creating s. 497.131, F.S.; providing general requirements with respect to fees, receipts, disposition of such funds, and periodic management reports; creating s. 497.133, F.S.; providing for legal and investigative services, including duties of the Department of Legal Affairs with respect thereto; creating s. 497.135, F.S.; providing a mediation process applicable to certain violations of the chapter; creating s. 497.137, F.S.; providing for the issuance of citations applicable to certain violations of the chapter; creating s. 497.139, F.S.; providing powers to administer oaths and issue subpoenas; creating s. 497.141, F.S.; providing for the admission of financial examiners' worksheets, investigative reports, and other related documents as evidence under certain circumstances; creating s. 497.143, F.S.; providing for injunction; creating s. 497.145, F.S.; providing for cease and desist orders, civil penalties, and enforcement; creating s. 497.147, F.S.; providing disciplinary proceedings; providing exemptions from public records and public meetings requirements relating to probable cause investigations; providing for future review and repeal; creating s. 497.149, F.S.; providing disciplinary guidelines; creating s. 497.151, F.S.; prohibiting the giving of false information, misleading statements, or knowing misrepresentations relating to obtaining or attempting to obtain licensure under the chapter; providing a penalty; creating s. 497.153, F.S.; providing public access to records required by the department; providing exemptions from public records requirements relating to financial information, examination questions, answers, papers, grades, and grading keys, and challenged examination questions and answers; providing for future review and repeal; creating s. 497.155, F.S.; prohibiting the disclosure of confidential information; providing a penalty; amending and renumbering s. 470.006, F.S., relating to licensure as an embalmer by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.007, F.S., relating to licensure as an embalmer by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable disease as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering s. 470.008, F.S.; correcting a cross reference; renumbering s. 470.0085, F.S., relating to the embalmer apprentice program; creating s. 497.208, F.S.; describing the functions that constitute the practice of funeral directing; amending and renumbering s. 470.009, F.S.; revising requirements for licensure as a funeral director by examination; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to taking the examination; providing for provisional licensure under certain circumstances; amending and renumbering s. 470.011, F.S., relating to licensure as a funeral director by endorsement; revising examination and application fees; requiring submission of proof of completion of a board-approved course on communicable diseases as a prerequisite to licensure by endorsement; authorizing renewal of temporary registration one time; amending and renumbering ss. 470.012 and 470.013, F.S.; providing editorial changes; amending and renumbering s. 470.014, F.S.; amending and renumbering s. 470.015, F.S.; authorizing the board to prescribe by rule certain continuing education requirements for renewal of license of a funeral director or embalmer; amending and renumbering s. 470.016, F.S.; requiring a board-approved course on communicable diseases in addition to other continuing education requirements for reactivation of an inactive license; providing for automatic expiration of any license not renewed or reactivated after one renewal cycle; requiring certain fees for reactivation; creating s. 497.222, F.S.; prescribing authorized duties of direct disposers; amending and renumbering s. 470.017, F.S., relating to registration as a direct disposer; revising registration and application fees; requiring applicants to have completed a course on communicable diseases and a college credit course on state mortuary law; requiring registrations to have a recent photograph of the registrant; providing for the registration of certain applicants who are not high school graduates; amending and renumbering s. 470.018, F.S.; requiring the board to prescribe by rule continuing education requirements, including a board-approved course on communicable diseases, for renewal of registration as a direct disposer; amending and renumbering s. 470.019, F.S.; including a ground for disciplinary action against a direct disposer or direct disposal establishment relating to discipline by other jurisdictions for violations relating to the disposition of dead human bodies; creating s. 497.228, F.S.; providing for health and safety education; amending and renumbering s. 470.021, F.S., relating to standards, location, and registration of direct disposal establishments; revising registration and inspection fees; eliminating the prohibition against reinspection fees; providing for automatic expiration of registration under certain circumstances; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of person identified in the application; requiring certain display of the establishment name and the name of the direct disposer in charge; restricting the direct disposer in charge to one establishment; requiring prior notification to the board of any change in ownership, name, or direct disposer in charge; requiring a direct disposer in charge and providing the requirements thereof; requiring the establishment to transact its business under the name by which it is registered; creating s. 497.230, F.S.; providing for regulation of removal services, refrigeration facilities, and centralized embalming facilities; renumbering s. 470.022, F.S.; relating to direct disposing; amending and renumbering s. 470.023, F.S., relating to the penalty for the practice of direct disposition without registration; providing editorial changes; amending and renumbering s. 470.024, F.S., relating to licensure as a funeral establishment; prescribing additional requirements for funeral establishments; revising licensure and inspection fees; providing for automatic expiration of license under certain circumstances; eliminating the prohibition against reinspection fees; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the establishment; authorizing the board to deny, suspend, or revoke a registration based on the histories of persons identified in the application; requiring certain display of the establishment name and of the funeral director in charge; restricting the funeral director in charge to one establishment; amending and renumbering s. 470.025, F.S., relating to licensure as a cinerator facility; revising licensure and inspection fees; eliminating the prohibition against reinspection fees; requiring the board to establish by rule standards for cinerator facilities; expanding the contents of reports to the department; expanding facility inspection authorities to include the Department of Environmental Regulation; requiring applicants to identify persons having ability to direct the management or policies of the establishment and persons having a specified ownership interest in the facility; authorizing the board to deny, suspend, or revoke a license based on the histories of persons identified in the application; requiring certain display of the facility name and of the direct disposer in charge; requiring the facility to transact business in the name by which it is licensed; amending and renumbering s. 470.0255, F.S.; providing a time within which cremation must be performed; amending and renumbering s. 470.026, F.S.; transferring from the department to the board rulemaking and regulation of solicitation of goods and services; prohibiting at-need solicitation of burial rights, merchandise, and services; amending and renumbering s. 470.029, F.S.; requiring the reporting of cases embalmed and bodies handled directly to the department and eliminating the local registrar of vital statistics as an intermediary; amending and renumbering s. 470.031, F.S., relating to prohibitions and penalties; providing editorial changes; amending and renumbering s. 470.036, F.S., relating to disciplinary proceedings; revising and providing grounds for disciplinary action, including having been disciplined in another jurisdiction for a violation relating to the disposition of dead human bodies; authorizing assessment of costs associated with investigation and prosecution; providing that license revocation is permanent; creating s. 497.243, F.S.; providing for cash advance and escrow refund accounts for funeral establishments; amending and renumbering s. 470.038, F.S., relating to reciprocity; revising terminology; amending and renumbering s. 470.039, F.S., relating to exceptions to regulation; providing editorial changes; amending and renumbering s. 470.0395, F.S.; updating saving clauses; amending and renumbering s. 497.003, F.S.; exempting certain family cemeteries and certain mausoleums; applying to all cemeteries laws relating to solicitation of goods and services, illegal tying arrangements, and abandoned cemeteries; requiring certain exempt cemeteries to submit to investigation and mediation by the department; amending and renumbering s. 497.006, F.S., relating to licensure as a cemetery company; requiring applicants to provide information necessary to determine eligi-

bility; requiring a financial statement attesting to a specified minimum net worth; raising the minimum amount care and maintenance trust funds must contain; revising the requirements of savings and loan associations certifying care and maintenance trust funds; amending and renumbering s. 497.007, F.S.; revising requirements relating to the purchase or acquisition of control of an existing cemetery; requiring a financial statement attesting to a specified minimum net worth; amending and renumbering s. 497.008, F.S.; revising provisions relating to change of control of an existing cemetery company; requiring a financial statement attesting to a specified minimum net worth; requiring an investigation rather than an initial filing fee; amending and renumbering s. 497.009, F.S., relating to annual license fees; increasing the late renewal fee and providing for timely submission of renewal applications and fees; amending and renumbering s. 497.021, F.S., relating to care and maintenance trust funds; revising provisions relating to the entities with which such trust funds may be established; providing requirements and investment restrictions of trustees; amending and renumbering s. 497.023, F.S.; deleting reference to monument maintenance fees; raising the minimum amount per grave space required to be deposited in a care and maintenance trust fund; revising deposit requirements for cemeteries losing their exempt status; eliminating a provision relating to minimum deposits in new trust funds; amending and renumbering s. 497.025, F.S., relating to liability; amending and renumbering s. 497.029, F.S.; revising deposit requirements of preconstruction trust funds to conform to other cemetery trust funds; amending and renumbering s. 497.031, F.S.; eliminating a penalty applicable to failure to display the cemetery license; amending and renumbering s. 497.033, F.S.; requiring preneed burial contracts to disclose certain information relating to the opening and closing of a burial space; requiring cemeteries offering preneed contracts to offer opening and closing of the burial space as part of the contract; amending and renumbering s. 497.035, F.S.; authorizing cemetery companies to keep financial records at a location other than the principal place of business; authorizing the board to prescribe the minimum information required to be kept; creating s. 497.331, F.S.; authorizing charges for opening and closing a grave, transferring burial rights, certain taxes, credit life and disability insurance, and interest on unpaid balances; amending and renumbering s. 497.041, F.S.; prohibiting cemetery companies from requiring monument dealers to obtain insurance, bond, or surety as a condition of access to the cemetery; eliminating monument maintenance fees; deleting a provision authorizing a cemetery company to charge a fee for marking the grave and inspecting a monument not installed by the cemetery company or its agents; amending and renumbering s. 497.044, F.S., relating to illegal tying arrangements; eliminating a cemetery company's right to require monument dealers to maintain certain insurance; creating s. 497.337, F.S.; requiring registration of brokers of burial rights; amending and renumbering s. 497.048, F.S.; prohibiting the sale of personal property and services by a cemetery company under certain circumstances; amending and renumbering s. 497.0484, F.S., relating to alternatives to deposits in a merchandise trust fund; transferring regulation from the department to the board; amending and renumbering s. 497.049, F.S., relating to proof of compliance with law applicable to existing merchandise trust funds, to conform; amending and renumbering s. 497.054, F.S., relating to penalties; amending and renumbering s. 497.056, F.S., relating to civil remedies; revising terminology; creating s. 497.515, F.S.; providing additional prohibited acts; amending and renumbering s. 497.057, F.S., relating to attorney's fees; amending and renumbering s. 497.061, F.S., relating to burial without regard to race or color; providing editorial changes; amending and renumbering s. 497.071, F.S., relating to abandoned cemeteries; providing editorial changes; creating s. 497.345, F.S.; providing procedures applicable to inactive cemeteries; amending and renumbering s. 497.091, F.S.; conforming terminology and correcting cross references; creating s. 497.349, F.S.; providing for registration of exempt cemeteries; creating s. 497.351, F.S.; providing for registration of monument establishments; amending and renumbering s. 639.085, F.S.; including preneed burial merchandise and service contracts under regulation of the chapter; amending and renumbering s. 639.087, F.S., relating to insurance business not authorized, to conform; amending and renumbering s. 639.09, F.S., relating to certificate of authority required to sell preneed contracts, to include reference to cemeteries; prohibiting the sale of preneed services, merchandise, or burial rights without a license or registration to sell on an at-need basis; amending and renumbering s. 639.10, F.S.; transferring from the department to the board rule and regulatory authority relating to certificates of authority; revising certification fees; revising the payee and depository of fees and other funds; amending and renumbering s. 639.105, F.S., relating to approval of forms; transferring responsibilities from the department to the board; amending and renumbering s. 639.107, F.S., relating to nonconforming contracts; correcting cross references; amending and renumbering s. 639.108, F.S., relating to the Preneed Funeral Contract Consumer Protection Trust Fund; transferring authority over the administration and regulation of the trust fund to the board; amending and renumbering s. 639.11, F.S., relating to disposition of proceeds received on preneed funeral and burial contracts; revising the amounts required to be deposited based on the merchandise or service sold or rented; providing for the holding of deposited funds in trust; providing for transfer of merchandise and burial rights; amending and renumbering s. 639.13, F.S.; revising provisions relating to cancellation of or default on preneed contracts; amending and renumbering s. 639.14, F.S.; relating to payment of funds upon death of named beneficiary; amending and renumbering s. 639.145, F.S., relating to evidence of financial responsibility as alternative to trust deposit; transferring from the department to the board such regulatory responsibility; amending and renumbering s. 639.149, F.S., relating to alternative preneed contracts; making the board the responsible regulatory party; amending and renumbering s. 639.15, F.S., relating to examinations and investigations; making the board the responsible regulatory party; authorizing the department to charge an examination fee and certain travel expenses; amending and renumbering s. 639.16, F.S., relating to grounds for discipline; making the board the responsible regulatory party; removing the requirement that certain violations be willful; amending and renumbering s. 639.162, F.S., relating to administrative fine in lieu of revocation or suspension of certificate of authority; making the board the responsible regulatory party; changing the fine depository; amending and renumbering s. 639.165, F.S., relating to dissolution or liquidation; making the board the responsible regulatory party; creating s. 497.439, F.S.; providing for registration of preneed sales agents; amending and renumbering s. 639.21, F.S., relating to acceptability of funeral and burial merchandise; amending and renumbering s. 639.22, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited; amending and renumbering s. 639.23, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined; amending and renumbering s. 639.25, F.S., relating to hearings, witnesses, appearances, production of books, and service of process relating to unfair methods of competition or unfair or deceptive acts or practices; making the board the responsible regulatory party; amending and renumbering s. 639.30, F.S., relating to civil liability; providing editorial changes; amending ss. 245.07, 381.0098, 382.002, 403.703, 406.02, 455.2226, 501.022, 624.01, 626.785, 628.4615, and 732.919, F.S.; correcting cross references; repealing s. 20.30(4)(h), F.S., relating to the Board of Funeral Directors and Embalmers; repealing ss. 470.027, 470.028, 497.001, 497.002, 497.004, 497.005, 497.011, 497.012, 497.014, 497.015, 497.016, 497.018, 497.026, 497.043, 497.0435, 497.046, 639.055, 639.07, 639.08, 639.106, 639.17, 639.185, 639.20, 639.24, 639.26, 639.27, 639.28, 639.29, and 639.33, F.S., relating to various aspects of funeral, cemetery, and crematory regulation rendered redundant or unnecessary by the other provisions of this act; repealing s. 501.604(16), F.S., relating to exemptions to the Florida Telemarketing Act; repealing s. 624.523(1)(m), F.S., relating to the Insurance Commissioner's Regulatory Trust Fund; transferring the Board of Funeral Directors and Embalmers to the Department of Banking and Finance; providing for termination of present terms on the board; providing for appointment of new members and for qualifications and terms thereof; continuing the validity of licenses, registrations, and certificates of authority issued under chapters 470, 497, and 639, F.S.; providing for transfer of funds in the Preneed Funeral Contract Consumer Protection Fund to the Division of Finance of the Department of Banking and Finance; preserving the validity of any judicial or administrative proceedings pending on the effective date of the act and substituting the Department of Banking and Finance as a party in interest, if applicable; saving chapters 470, 497, and 639, F.S., from Sunset repeal; providing for type four transfer of positions and funding from the Department of Insurance to the Department of Banking and Finance; providing effective dates.

On motions by Senator Grant, the Senate receded from Senate **Amendments 2** and **3.**

HB 2345 passed as amended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—36 Nays—None

RETURNING MESSAGES—FINAL ACTION

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed CS for SB 152, CS for SB 176, SB 280, SB 364, CS for SB 390,

CS for CS for SB 516, CS for SB 536, SB 662, SB 680, SB 698, SB 794, CS for SB 828, SB 888, CS for SB 1000, CS for SB 1084, CS for SB 1208, SB 1214, CS for SB 1582, CS for SB 1600, SB 1654, CS for SB 1658, CS for SB 1692, SB 1810, CS for CS for CS for SB 1858, SB 1930, CS for SB 1982, SB 2084, SB 2258, SB 2274, SB 2276, SB 2278, SB 2280, SB 2282, SB 2284, SB 2286, SB 2288, SB 2290, SB 2292, SB 2294, SB 2296, SB 2298, SB 2300, SB 2302, SB 2304, SB 2306, SB 2308, SB 2310, SB 2312, SB 2314, SB 2316, SB 2318, SB 2320, SB 2322, SB 2324, SB 2326, SB 2328, SB 2330, SB 2332, SB 2344, SB 2378, SB 2390, SB 2396, SB 2398, SB 2412 and SB 2416; has adopted SCR 2438; and has receded from House Amendment 1 and passed CS for SB 1128.

John B. Phelps, Clerk

The bills contained in the foregoing message were ordered enrolled.

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments to House Amendments and passed as further amended CS for CS for SB 162, SB 448 and CS for SB 2382; and has receded from House Amendment 1 and passed as amended CS for SB 158.

John B. Phelps, Clerk

The bills contained in the foregoing message were ordered engrossed and then enrolled.

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments and passed as amended CS for CS for HB 497, CS for HB 469, CS for HB 881, CS for CS for HB 911, HB 1037, HB 1987; has concurred in Senate Amendment 1 and passed as amended CS for HB 1269; has concurred in Senate Amendments 1, 2 and 3 and passed as amended HB 541; and has concurred in Senate Amendment 1 and passed as amended CS for HB 2069.

John B. Phelps, Clerk

ROLL CALLS ON SENATE BILLS

CS for SB 124

Yeas—36

Mr. President	Dudley	Jenne	Scott
Bankhead	Dyer	Jennings	Siegel
Beard	Foley	Johnson	Silver
Boczar	Forman	Jones	Sullivan
Brown-Waite	Grant	Kirkpatrick	Thomas
Burt	Gutman	Kiser	Turner
Childers	Harden	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams

Nays—None

SB 128

Yeas—35

Bankhead	Dyer	Jennings	Scott
Beard	Foley	Johnson	Siegel
Boczar	Forman	Jones	Silver
Brown-Waite	Grant	Kirkpatrick	Sullivan
Casas	Gutman	Kiser	Thomas
Childers	Harden	Kurth	Weinstein
Dantzler	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams
Dudley	Jenne	Myers	

Nays—1

Crist

CS for SB 152

Yeas—34

Mr. President	Dantzler	Jenne	Siegel
Bankhead	Diaz-Balart	Jennings	Silver
Beard	Dudley	Johnson	Sullivan
Boczar	Dyer	Jones	Thomas
Brown-Waite	Foley	Kiser	Turner
Burt	Forman	Kurth	Weinstein
Casas	Grant	McKay	Wexler
Childers	Gutman	Meadows	
Crist	Holzendorf	Myers	

Nays—None

SB 174

Yeas—34

Beard	Foley	Johnson	Silver
Boczar	Forman	Jones	Sullivan
Burt	Grant	Kirkpatrick	Thomas
Casas	Gutman	Kiser	Turner
Childers	Harden	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams
Dudley	Jenne	Myers	
Dyer	Jennings	Siegel	

Nays—None

SB 188

Yeas—30

Beard	Dyer	Jones	Silver
Boczar	Foley	Kirkpatrick	Sullivan
Burt	Forman	Kiser	Turner
Casas	Grant	Kurth	Weinstein
Childers	Gutman	McKay	Wexler
Crist	Harden	Meadows	Williams
Diaz-Balart	Jennings	Myers	
Dudley	Johnson	Siegel	

Nays—None

SB 270

Yeas—38

Mr. President	Diaz-Balart	Jenne	Siegel
Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	Kurth	Wexler
Childers	Harden	McKay	Williams
Crist	Hargrett	Meadows	
Dantzler	Holzendorf	Myers	

Nays—None

CS for SB 428

Yeas—36

Mr. President	Burt	Diaz-Balart	Grant
Bankhead	Casas	Dudley	Gutman
Beard	Childers	Dyer	Harden
Boczar	Crist	Foley	Hargrett
Brown-Waite	Dantzler	Forman	Holzendorf

Jenne	Kiser	Siegel	Turner
Jennings	McKay	Silver	Weinstein
Johnson	Meadows	Sullivan	Wexler
Kirkpatrick	Myers	Thomas	Williams

Nays—None

SB 448

Yeas—35

Mr. President	Diaz-Balart	Jenne	Siegel
Beard	Dudley	Jennings	Silver
Boczar	Dyer	Johnson	Sullivan
Brown-Waite	Foley	Jones	Thomas
Burt	Forman	Kirkpatrick	Turner
Casas	Grant	Kiser	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams
Dantzler	Holzendorf	Myers	

Nays—None

SB 458

Yeas—29

Beard	Dudley	Jones	Thomas
Brown-Waite	Dyer	Kiser	Turner
Burt	Foley	Kurth	Weinstein
Casas	Forman	Meadows	Wexler
Childers	Gutman	Myers	Williams
Crist	Harden	Siegel	
Dantzler	Holzendorf	Silver	
Diaz-Balart	Jenne	Sullivan	

Nays—None

Vote after roll call:

Yea—Grant, Johnson

CS for CS for SB 516

Yeas—31

Mr. President	Dyer	Johnson	Silver
Bankhead	Foley	Jones	Sullivan
Boczar	Forman	Kurth	Thomas
Brown-Waite	Grant	McKay	Turner
Casas	Gutman	Meadows	Weinstein
Childers	Holzendorf	Myers	Wexler
Dantzler	Jenne	Scott	Williams
Diaz-Balart	Jennings	Siegel	

Nays—4

Beard	Burt	Crist	Dudley

CS for SB 592

Yeas—37

Bankhead	Dyer	Johnson	Silver
Beard	Foley	Jones	Sullivan
Boczar	Forman	Kirkpatrick	Thomas
Brown-Waite	Grant	Kiser	Turner
Burt	Gutman	Kurth	Weinstein
Casas	Harden	McKay	Wexler
Childers	Hargrett	Meadows	Williams
Crist	Holzendorf	Myers	
Diaz-Balart	Jenne	Scott	
Dudley	Jennings	Siegel	

Nays—None

CS for SB's 722, 1284 and 1952

Yeas—29

Beard	Dyer	Jenne	Siegel
Boczar	Foley	Johnson	Silver
Burt	Forman	Jones	Turner
Casas	Grant	Kirkpatrick	Weinstein
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	
Diaz-Balart	Hargrett	Meadows	
Dudley	Holzendorf	Myers	

Nays—None

CS for SB 772

Yeas—34

Bankhead	Diaz-Balart	Jenne	Silver
Beard	Dudley	Johnson	Sullivan
Boczar	Dyer	Jones	Thomas
Brown-Waite	Foley	Kirkpatrick	Turner
Burt	Forman	Kurth	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Hargrett	Myers	
Dantzler	Holzendorf	Siegel	

Nays—None

SB 820

Yeas—34

Mr. President	Diaz-Balart	Holzendorf	Silver
Bankhead	Dudley	Jennings	Sullivan
Boczar	Dyer	Johnson	Thomas
Brown-Waite	Foley	Kirkpatrick	Turner
Burt	Forman	Kiser	Weinstein
Casas	Grant	Kurth	Wexler
Childers	Gutman	McKay	Williams
Crist	Harden	Meadows	
Dantzler	Hargrett	Scott	

Nays—None

Vote after roll call:

Yea—Siegel

CS for SB 1002

Yeas—36

Bankhead	Diaz-Balart	Jennings	Scott
Beard	Dudley	Johnson	Siegel
Boczar	Foley	Jones	Silver
Brown-Waite	Forman	Kirkpatrick	Sullivan
Burt	Grant	Kiser	Thomas
Casas	Gutman	Kurth	Turner
Childers	Harden	McKay	Weinstein
Crist	Hargrett	Meadows	Wexler
Dantzler	Holzendorf	Myers	Williams

Nays—None

CS for SB 1044

Yeas—35

Bankhead	Brown-Waite	Childers	Diaz-Balart
Beard	Burt	Crist	Dudley
Boczar	Casas	Dantzler	Dyer

Foley	Holzendorf	Kurth	Sullivan
Forman	Jenne	McKay	Thomas
Grant	Johnson	Meadows	Turner
Gutman	Jones	Myers	Weinstein
Harden	Kirkpatrick	Siegel	Williams
Hargrett	Kiser	Silver	

Nays—1

Jennings

Vote after roll call:

Yea to Nay—Dantzler, Hargrett, Holzendorf, Johnson, Kurth, Siegel

CS for SB 1090

Yeas—37

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Foley	Kirkpatrick	Turner
Brown-Waite	Forman	Kiser	Weinstein
Burt	Grant	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Jenne	Siegel	

Nays—1

Holzendorf

CS for SB 1106

Yeas—36

Mr. President	Dudley	Jenne	Myers
Bankhead	Dyer	Jennings	Siegel
Beard	Foley	Johnson	Silver
Boczar	Forman	Jones	Sullivan
Brown-Waite	Grant	Kirkpatrick	Thomas
Casas	Gutman	Kiser	Turner
Childers	Harden	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams

Nays—None

CS for SB 1128
Motion

Yeas—10

Beard	Dudley	Harden	Sullivan
Brown-Waite	Foley	Johnson	
Dantzler	Grant	Myers	

Nays—27

Bankhead	Dyer	Jones	Silver
Boczar	Forman	Kiser	Thomas
Burt	Gutman	Kurth	Turner
Casas	Hargrett	McKay	Weinstein
Childers	Holzendorf	Meadows	Wexler
Crist	Jenne	Scott	Williams
Diaz-Balart	Jennings	Siegel	

SB 1204

Yeas—33

Bankhead	Brown-Waite	Childers	Diaz-Balart
Beard	Burt	Crist	Dudley
Boczar	Casas	Dantzler	Dyer
Foley	Jenne	Myers	Weinstein
Forman	Jones	Siegel	Wexler
Gutman	Kirkpatrick	Silver	Williams
Harden	Kurth	Sullivan	
Hargrett	McKay	Thomas	
Holzendorf	Meadows	Turner	

Nays—None

CS for SB 1246—Amendment 1

Yeas—17

Bankhead	Childers	Harden	Sullivan
Beard	Crist	Johnson	Thomas
Boczar	Dantzler	McKay	
Brown-Waite	Dudley	Myers	
Burt	Grant	Siegel	

Nays—13

Casas	Gutman	Meadows	Wexler
Diaz-Balart	Hargrett	Silver	
Foley	Holzendorf	Turner	
Forman	Kurth	Weinstein	

CS for SB 1246—Amendment 2

Yeas—17

Burt	Forman	Kurth	Weinstein
Casas	Gutman	Meadows	Wexler
Crist	Hargrett	Siegel	
Diaz-Balart	Holzendorf	Silver	
Foley	Jones	Turner	

Nays—14

Bankhead	Dudley	Johnson	Sullivan
Boczar	Grant	Kiser	Thomas
Brown-Waite	Harden	McKay	
Childers	Jenne	Myers	

CS for SB 1246

Yeas—30

Boczar	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Thomas
Casas	Grant	Kiser	Turner
Childers	Gutman	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams
Dudley	Jenne	Siegel	
Dyer	Johnson	Silver	

Nays—4

Bankhead	Brown-Waite	Harden	Myers

SJR 1370

Yeas—34

Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Hargrett	Myers	
Diaz-Balart	Jenne	Siegel	

Nays—2

Holzendorf	Kurth		

CS for SB 1438

Yeas—33

Bankhead	Diaz-Balart	Jennings	Silver
Beard	Dudley	Johnson	Sullivan
Boczar	Dyer	Jones	Turner
Brown-Waite	Foley	Kirkpatrick	Weinstein
Burt	Forman	Kiser	Wexler
Casas	Grant	McKay	Williams
Childers	Gutman	Meadows	
Crist	Hargrett	Myers	
Dantzler	Holzendorf	Siegel	

Nays—None

CS for CS for SB 1550

Yeas—32

Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dyer	Jennings	Siegel
Boczar	Foley	Johnson	Silver
Brown-Waite	Forman	Jones	Sullivan
Burt	Grant	Kirkpatrick	Thomas
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams

Nays—None

SB 1552

Yeas—32

Bankhead	Diaz-Balart	Holzendorf	Scott
Beard	Dudley	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kurth	Turner
Casas	Gutman	McKay	Weinstein
Childers	Harden	Meadows	Wexler
Crist	Hargrett	Myers	Williams

Nays—None

CS for SB 1668

Yeas—34

Bankhead	Dudley	Jenne	Myers
Beard	Dyer	Jennings	Siegel
Boczar	Foley	Johnson	Sullivan
Brown-Waite	Forman	Jones	Thomas
Burt	Grant	Kirkpatrick	Turner
Casas	Gutman	Kiser	Weinstein
Childers	Harden	Kurth	Wexler
Crist	Hargrett	McKay	
Diaz-Balart	Holzendorf	Meadows	

Nays—None

SB 1702

Yeas—36

Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dudley	Jenne	Siegel
Boczar	Dyer	Jennings	Silver
Brown-Waite	Foley	Johnson	Sullivan
Burt	Forman	Jones	Thomas
Casas	Grant	Kirkpatrick	Turner
Childers	Gutman	Kurth	Weinstein
Crist	Harden	McKay	Wexler
Dantzler	Hargrett	Meadows	Williams

Nays—None

CS for SB's 1708 and 1884

Yeas—33

Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Foley	Kirkpatrick	Turner
Brown-Waite	Forman	Kurth	Weinstein
Burt	Grant	McKay	Wexler
Casas	Gutman	Meadows	Williams
Childers	Harden	Myers	
Crist	Holzendorf	Siegel	
Diaz-Balart	Jenne	Silver	

Nays—None

Vote after roll call:

Yea—Scott

CS for SB 1714
Motion

Yeas—29

Boczar	Foley	Kirkpatrick	Sullivan
Brown-Waite	Forman	Kurth	Thomas
Burt	Gutman	McKay	Turner
Casas	Hargrett	Meadows	Weinstein
Childers	Holzendorf	Myers	Wexler
Crist	Jenne	Scott	
Diaz-Balart	Johnson	Siegel	
Dyer	Jones	Silver	

Nays—10

Mr. President	Dantzler	Harden	Williams
Bankhead	Dudley	Jennings	
Beard	Grant	Kiser	

CS for SB 1742

Yeas—33

Mr. President	Dyer	Johnson	Sullivan
Bankhead	Foley	Jones	Thomas
Beard	Forman	Kirkpatrick	Turner
Boczar	Grant	Kiser	Weinstein
Brown-Waite	Gutman	McKay	Wexler
Burt	Harden	Meadows	Williams
Crist	Hargrett	Myers	
Dantzler	Holzendorf	Siegel	
Dudley	Jenne	Silver	

Nays—None

SB 1760

Yeas—36

Mr. President	Diaz-Balart	Holzendorf	Meadows
Bankhead	Dudley	Jenne	Scott
Beard	Dyer	Jennings	Siegel
Boczar	Foley	Johnson	Silver
Brown-Waite	Forman	Jones	Sullivan
Burt	Grant	Kirkpatrick	Thomas
Casas	Gutman	Kiser	Turner
Childers	Harden	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler

Nays—None

SB 1762

Yeas—36

Bankhead	Diaz-Balart	Holzendorf	Meadows
Beard	Dudley	Jenne	Myers
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Turner
Childers	Gutman	Kiser	Weinstein
Crist	Harden	Kurth	Wexler
Dantzler	Hargrett	McKay	Williams

Nays—None

SB 1762—After Reconsideration

Yeas—34

Bankhead	Dudley	Jenne	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams
Dantzler	Hargrett	Meadows	
Diaz-Balart	Holzendorf	Siegel	

Nays—None

CS for SB 1794

Yeas—33

Beard	Dyer	Jennings	Silver
Boczar	Foley	Johnson	Sullivan
Burt	Forman	Jones	Turner
Casas	Grant	Kirkpatrick	Weinstein
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams
Dantzler	Hargrett	Meadows	
Diaz-Balart	Holzendorf	Myers	
Dudley	Jenne	Siegel	

Nays—None

CS for SB 1844

Yeas—31

Beard	Dudley	Jenne	Myers
Boczar	Dyer	Jennings	Silver
Burt	Foley	Johnson	Sullivan
Casas	Forman	Jones	Thomas
Childers	Grant	Kirkpatrick	Turner
Crist	Gutman	Kurth	Weinstein
Dantzler	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	

Nays—None

CS for SB's 1914, 2006, 1784 and 406
Amendment 128

Yeas—14

Beard	Dudley	Kiser	Turner
Burt	Foley	McKay	Wexler
Childers	Harden	Myers	
Crist	Hargrett	Sullivan	

Nays—20

Mr. President	Bankhead	Boczar	Casas
Dantzler	Grant	Jones	Siegel
Diaz-Balart	Gutman	Kirkpatrick	Silver
Dyer	Holzendorf	Kurth	Thomas
Forman	Johnson	Meadows	Williams

CS for SB's 1914, 2006, 1784 and 406

Yeas—21

Mr. President	Crist	Holzendorf	Sullivan
Bankhead	Diaz-Balart	Jennings	Thomas
Boczar	Dudley	Johnson	Williams
Brown-Waite	Foley	McKay	
Burt	Gutman	Scott	
Casas	Hargrett	Siegel	

Nays—17

Beard	Grant	Kurth	Weinstein
Childers	Harden	Meadows	Wexler
Dantzler	Jenne	Myers	
Dyer	Jones	Silver	
Forman	Kiser	Turner	

CS for SB's 1914, 2006, 1784 and 406
Motion to Concur

Yeas—30

Mr. President	Dudley	Jones	Siegel
Bankhead	Dyer	Kirkpatrick	Sullivan
Brown-Waite	Foley	Kiser	Thomas
Burt	Forman	Kurth	Turner
Casas	Gutman	McKay	Weinstein
Childers	Harden	Meadows	Williams
Dantzler	Jenne	Myers	
Diaz-Balart	Jennings	Scott	

Nays—9

Beard	Grant	Johnson	
Boczar	Hargrett	Silver	
Crist	Holzendorf	Wexler	

CS for SB's 1914, 2006, 1784 and 406
Final Passage

Yeas—29

Mr. President	Dudley	Jones	Sullivan
Bankhead	Dyer	Kirkpatrick	Thomas
Brown-Waite	Foley	Kiser	Turner
Burt	Forman	Kurth	Weinstein
Casas	Gutman	McKay	Williams
Childers	Harden	Myers	
Dantzler	Jenne	Scott	
Diaz-Balart	Jennings	Siegel	

Nays—10

Beard	Grant	Johnson	Wexler
Boczar	Hargrett	Meadows	
Crist	Holzendorf	Silver	

SB 1946

Yeas—35

Mr. President	Diaz-Balart	Jenne	Scott
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kiser	Thomas
Burt	Grant	Kurth	Turner
Casas	Gutman	McKay	Weinstein
Crist	Hargrett	Meadows	Wexler
Dantzler	Holzendorf	Myers	

Nays—None

Vote after roll call:

Yea—Williams

CS for SB 1954

Yeas—36

Bankhead	Diaz-Balart	Jennings	Scott
Beard	Dudley	Johnson	Siegel
Boczar	Dyer	Jones	Silver
Brown-Waite	Foley	Kirkpatrick	Sullivan
Burt	Forman	Kiser	Thomas
Casas	Grant	Kurth	Turner
Childers	Gutman	McKay	Weinstein
Crist	Harden	Meadows	Wexler
Dantzler	Jenne	Myers	Williams

Nays—1

Holzendorf

Vote after roll call:

Nay to Yea—Holzendorf

SB 1992—Amendment 4A

Yeas—18

Boczar	Holzendorf	Kurth	Turner
Childers	Jenne	Meadows	Weinstein
Dyer	Johnson	Siegel	Wexler
Forman	Jones	Sullivan	
Hargrett	Kirkpatrick	Thomas	

Nays—15

Beard	Diaz-Balart	Gutman	Scott
Brown-Waite	Dudley	Harden	Silver
Casas	Foley	Jennings	Williams
Crist	Grant	Myers	

SB 1992

Yeas—31

Bankhead	Dyer	Jenne	Silver
Beard	Foley	Johnson	Sullivan
Boczar	Forman	Jones	Thomas
Brown-Waite	Grant	Kirkpatrick	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Myers	Williams
Dudley	Holzendorf	Siegel	

Nays—1

Diaz-Balart

Vote after roll call:

Yea to Nay—Casas

SB 1992—After Reconsideration

Yeas—29

Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Burt	Forman	Kirkpatrick	Turner
Casas	Grant	Kiser	Weinstein
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	
Diaz-Balart	Hargrett	Meadows	
Dudley	Holzendorf	Siegel	

Nays—None

SB 2024

Yeas—37

Mr. President	Dudley	Johnson	Silver
Bankhead	Dyer	Jones	Sullivan
Boczar	Foley	Kirkpatrick	Thomas
Brown-Waite	Forman	Kiser	Turner
Burt	Grant	Kurth	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Hargrett	Myers	
Dantzler	Holzendorf	Scott	
Diaz-Balart	Jenne	Siegel	

Nays—None

CS for SB's 2078 and 1608—Amendment 1A

Yeas—21

Boczar	Hargrett	Kurth	Weinstein
Burt	Holzendorf	McKay	Wexler
Childers	Jenne	Meadows	Williams
Dantzler	Johnson	Siegel	
Dyer	Jones	Thomas	
Forman	Kirkpatrick	Turner	

Nays—16

Mr. President	Crist	Grant	Myers
Beard	Diaz-Balart	Gutman	Scott
Brown-Waite	Dudley	Harden	Silver
Casas	Foley	Jennings	Sullivan

CS for SB's 2078 and 1608

Yeas—35

Mr. President	Dudley	Jenne	Myers
Beard	Dyer	Jennings	Siegel
Boczar	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Turner
Childers	Gutman	Kiser	Weinstein
Crist	Harden	Kurth	Wexler
Dantzler	Hargrett	McKay	Williams
Diaz-Balart	Holzendorf	Meadows	

Nays—None

SB 2108

Yeas—31

Bankhead	Diaz-Balart	Holzendorf	Silver
Beard	Dudley	Jenne	Sullivan
Boczar	Dyer	Jennings	Thomas
Brown-Waite	Foley	Jones	Turner
Burt	Forman	McKay	Weinstein
Casas	Grant	Meadows	Wexler
Childers	Gutman	Myers	Williams
Crist	Hargrett	Siegel	

Nays—4

Dantzler	Harden	Johnson	Kurth

CS for SB 2130

Yeas—37

Bankhead	Brown-Waite	Childers	Diaz-Balart
Beard	Burt	Crist	Dudley
Boczar	Casas	Dantzler	Dyer

Foley	Jennings	Meadows	Turner
Forman	Johnson	Myers	Weinstein
Grant	Jones	Scott	Wexler
Gutman	Kirkpatrick	Siegel	Williams
Harden	Kiser	Silver	
Hargrett	Kurth	Sullivan	
Jenne	McKay	Thomas	

Nays—1

Holzendorf

CS for SB 2224

Yeas—30

Mr. President	Dantzler	Johnson	Silver
Bankhead	Diaz-Balart	Jones	Thomas
Beard	Dyer	Kurth	Turner
Boczar	Forman	McKay	Weinstein
Brown-Waite	Gutman	Meadows	Wexler
Burt	Holzendorf	Myers	Williams
Casas	Jenne	Scott	
Crist	Jennings	Siegel	

Nays—5

Dudley	Grant	Sullivan
Foley	Harden	

SB 2376

Yeas—32

Bankhead	Dantzler	Holzendorf	Myers
Beard	Diaz-Balart	Jenne	Silver
Boczar	Dudley	Jennings	Sullivan
Brown-Waite	Foley	Jones	Thomas
Burt	Forman	Kirkpatrick	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams

Nays—None

CS for SB 2382

Yeas—33

Beard	Dyer	Jennings	Siegel
Boczar	Foley	Johnson	Silver
Brown-Waite	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Thomas
Childers	Gutman	Kiser	Turner
Crist	Harden	Kurth	Wexler
Dantzler	Hargrett	McKay	
Diaz-Balart	Holzendorf	Meadows	
Dudley	Jenne	Myers	

Nays—None

Vote after roll call:

Yea—Bankhead, Scott

SCR 2438

Yeas—38

Mr. President	Casas	Dyer	Hargrett
Bankhead	Childers	Foley	Holzendorf
Beard	Crist	Forman	Jenne
Boczar	Dantzler	Grant	Jennings
Brown-Waite	Diaz-Balart	Gutman	Johnson
Burt	Dudley	Harden	Jones
Kirkpatrick	Myers	Sullivan	Wexler
Kurth	Scott	Thomas	Williams
McKay	Siegel	Turner	
Meadows	Silver	Weinstein	

Nays—None

ROLL CALLS ON HOUSE BILLS

CS for HB 77

Yeas—32

Beard	Dudley	Holzendorf	Myers
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Foley	Johnson	Silver
Burt	Forman	Kirkpatrick	Sullivan
Casas	Grant	Kiser	Thomas
Childers	Gutman	Kurth	Turner
Crist	Harden	McKay	Weinstein
Diaz-Balart	Hargrett	Meadows	Wexler

Nays—1

Dantzler

CS for HB 153

Yeas—36

Bankhead	Diaz-Balart	Jenne	Scott
Beard	Dudley	Jennings	Siegel
Boczar	Dyer	Johnson	Silver
Brown-Waite	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Thomas
Casas	Grant	Kiser	Turner
Childers	Gutman	Kurth	Weinstein
Crist	Hargrett	Meadows	Wexler
Dantzler	Holzendorf	Myers	Williams

Nays—None

HB 173

Yeas—34

Mr. President	Dantzler	Jennings	Silver
Bankhead	Diaz-Balart	Johnson	Sullivan
Beard	Dudley	Jones	Thomas
Boczar	Dyer	Kirkpatrick	Turner
Brown-Waite	Foley	Kiser	Weinstein
Burt	Forman	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Myers	
Crist	Jenne	Siegel	

Nays—None

HB 201

Yeas—34

Bankhead	Diaz-Balart	Jenne	Siegel
Beard	Dudley	Johnson	Silver
Boczar	Dyer	Jones	Sullivan
Brown-Waite	Foley	Kirkpatrick	Turner
Burt	Forman	Kiser	Weinstein
Casas	Grant	Kurth	Wexler
Childers	Gutman	McKay	Williams
Crist	Harden	Meadows	
Dantzler	Hargrett	Myers	

Nays—1

Holzendorf

CS for HB 257

Yeas—36

Bankhead	Dudley	Jennings	Scott
Beard	Dyer	Johnson	Siegel
Boczar	Forman	Jones	Silver
Brown-Waite	Grant	Kirkpatrick	Sullivan
Burt	Gutman	Kiser	Thomas
Casas	Harden	Kurth	Turner
Childers	Hargrett	McKay	Weinstein
Crist	Holzendorf	Meadows	Wexler
Diaz-Balart	Jenne	Myers	Williams

Nays—None

CS for HB 387

Yeas—37

Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	Kurth	Wexler
Childers	Harden	McKay	Williams
Crist	Hargrett	Meadows	
Dantzler	Holzendorf	Myers	
Diaz-Balart	Jenne	Siegel	

Nays—None

CS for HB 461

Yeas—31

Mr. President	Dudley	Johnson	Siegel
Bankhead	Dyer	Jones	Silver
Beard	Foley	Kirkpatrick	Thomas
Burt	Forman	Kiser	Turner
Casas	Grant	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Dantzler	Jenne	Meadows	Williams
Diaz-Balart	Jennings	Myers	

Nays—5

Boczar	Crist	Holzendorf
Brown-Waite	Hargrett	

Vote after roll call:

Yea—Scott

CS for HB 461—Final Passage

Yeas—31

Bankhead	Diaz-Balart	Jenne	Myers
Beard	Dudley	Jennings	Silver
Boczar	Dyer	Johnson	Sullivan
Brown-Waite	Forman	Jones	Thomas
Burt	Grant	Kirkpatrick	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Dantzler	Hargrett	Meadows	

Nays—2

Crist	Holzendorf

CS for HB 463

Yeas—35

Beard	Dyer	Jennings	Scott
Boczar	Foley	Johnson	Siegel
Burt	Forman	Jones	Silver
Casas	Grant	Kirkpatrick	Sullivan
Childers	Gutman	Kiser	Thomas
Crist	Harden	Kurth	Turner
Dantzler	Hargrett	McKay	Weinstein
Diaz-Balart	Holzendorf	Meadows	Wexler
Dudley	Jenne	Myers	

Nays—None

CS for HB 491

Yeas—32

Bankhead	Dudley	Jenne	Myers
Beard	Dyer	Jennings	Scott
Brown-Waite	Foley	Johnson	Siegel
Burt	Forman	Jones	Sullivan
Casas	Grant	Kiser	Thomas
Childers	Gutman	Kurth	Weinstein
Dantzler	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams

Nays—2

Boczar	Crist

CS for CS for HB 497

Yeas—36

Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dudley	Jenne	Siegel
Boczar	Dyer	Jennings	Silver
Brown-Waite	Foley	Johnson	Sullivan
Burt	Forman	Kirkpatrick	Thomas
Casas	Grant	Kiser	Turner
Childers	Gutman	Kurth	Weinstein
Crist	Harden	McKay	Wexler
Dantzler	Hargrett	Meadows	Williams

Nays—None

HB 501

Yeas—35

Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Holzendorf	Meadows	Williams
Diaz-Balart	Jenne	Myers	

Nays—None

CS for HB's 505 and 959

Yeas—37

Bankhead	Burt	Dantzler	Foley
Beard	Casas	Diaz-Balart	Forman
Boczar	Childers	Dudley	Grant
Brown-Waite	Crist	Dyer	Gutman

Harden	Jones	Myers	Weinstein
Hargrett	Kirkpatrick	Scott	Wexler
Holzendorf	Kiser	Siegel	Williams
Jenne	Kurth	Silver	
Jennings	McKay	Sullivan	
Johnson	Meadows	Turner	

Nays—None

CS for CS for HB 557

Yeas—31

Bankhead	Diaz-Balart	Holzendorf	Silver
Beard	Dudley	Jenne	Sullivan
Boczar	Dyer	Johnson	Thomas
Brown-Waite	Forman	Jones	Turner
Casas	Grant	Kiser	Weinstein
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams
Dantzler	Hargrett	Meadows	

Nays—None

CS for HB 565

Yeas—37

Mr. President	Diaz-Balart	Jennings	Silver
Bankhead	Dudley	Johnson	Sullivan
Beard	Dyer	Jones	Thomas
Boczar	Foley	Kirkpatrick	Turner
Brown-Waite	Forman	Kiser	Weinstein
Burt	Grant	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Hargrett	Scott	
Dantzler	Holzendorf	Siegel	

Nays—None

CS for HB 699

Yeas—31

Bankhead	Dudley	Jenne	Silver
Boczar	Dyer	Johnson	Sullivan
Brown-Waite	Foley	Jones	Thomas
Burt	Forman	Kiser	Turner
Casas	Grant	Kurth	Weinstein
Childers	Gutman	McKay	Wexler
Crist	Harden	Meadows	Williams
Diaz-Balart	Holzendorf	Myers	

Nays—None

CS for HB 761

Yeas—37

Mr. President	Dudley	Jennings	Silver
Bankhead	Dyer	Johnson	Sullivan
Beard	Foley	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Brown-Waite	Grant	Kiser	Weinstein
Burt	Gutman	Kurth	Wexler
Casas	Harden	McKay	Williams
Childers	Hargrett	Myers	
Crist	Holzendorf	Scott	
Diaz-Balart	Jenne	Siegel	

Nays—None

CS for HB 767

Yeas—35

Bankhead	Dudley	Jenne	Scott
Beard	Dyer	Jennings	Siegel
Boczar	Foley	Johnson	Silver
Brown-Waite	Forman	Jones	Thomas
Casas	Grant	Kirkpatrick	Turner
Childers	Gutman	Kiser	Weinstein
Crist	Harden	Kurth	Wexler
Dantzler	Hargrett	Meadows	Williams
Diaz-Balart	Holzendorf	Myers	

Nays—None

CS for HB 795

Yeas—35

Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dudley	Jenne	Siegel
Boczar	Dyer	Jennings	Silver
Brown-Waite	Foley	Johnson	Sullivan
Burt	Forman	Jones	Thomas
Casas	Grant	Kirkpatrick	Turner
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams
Dantzler	Hargrett	Meadows	

Nays—None

CS for HB 899

Yeas—36

Mr. President	Diaz-Balart	Jenne	Myers
Bankhead	Dyer	Jennings	Siegel
Beard	Foley	Johnson	Silver
Brown-Waite	Forman	Jones	Sullivan
Burt	Grant	Kirkpatrick	Thomas
Casas	Gutman	Kiser	Turner
Childers	Harden	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler
Dantzler	Holzendorf	Meadows	Williams

Nays—None

Vote after roll call:

Yea—Dudley

CS for HB 933

Yeas—37

Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kurth	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Hargrett	Myers	
Dantzler	Holzendorf	Scott	
Diaz-Balart	Jenne	Siegel	

Nays—None

CS for HB 955

Yeas—31

Bankhead	Diaz-Balart	Jennings	Scott
Beard	Dudley	Johnson	Siegel
Boczar	Dyer	Kirkpatrick	Sullivan
Brown-Waite	Foley	Kiser	Thomas
Burt	Forman	Kurth	Weinstein
Casas	Grant	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Holzendorf	Myers	

Nays—None

CS for HB 975

Yeas—33

Bankhead	Dudley	Jennings	Sullivan
Beard	Dyer	Johnson	Thomas
Boczar	Foley	Jones	Turner
Brown-Waite	Forman	Kirkpatrick	Weinstein
Burt	Grant	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Crist	Holzendorf	Myers	
Diaz-Balart	Jenne	Siegel	

Nays—None

CS for HB 1085

Yeas—35

Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Holzendorf	Meadows	Williams
Diaz-Balart	Jenne	Myers	

Nays—None

Vote after roll call:

Yea—Scott

CS for HB 1117

Yeas—36

Bankhead	Dudley	Jenne	Myers
Beard	Dyer	Jennings	Scott
Boczar	Foley	Johnson	Silver
Brown-Waite	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Thomas
Childers	Gutman	Kiser	Turner
Crist	Harden	Kurth	Weinstein
Dantzler	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams

Nays—None

Vote after roll call:

Yea—Siegel

CS for HB 1199

Yeas—38

Mr. President	Diaz-Balart	Jenne	Siegel
Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	Kurth	Wexler
Childers	Harden	Meadows	Williams
Crist	Hargrett	Myers	
Dantzler	Holzendorf	Scott	

Nays—None

CS for HB 1199—After Reconsideration

Yeas—35

Mr. President	Diaz-Balart	Jenne	Myers
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Wexler
Childers	Harden	McKay	Williams
Crist	Hargrett	Meadows	

Nays—1

Holzendorf

HB 1217

Yeas—32

Bankhead	Dantzler	Harden	Meadows
Beard	Diaz-Balart	Jenne	Myers
Boczar	Dudley	Jennings	Siegel
Brown-Waite	Dyer	Johnson	Silver
Burt	Foley	Jones	Sullivan
Casas	Forman	Kirkpatrick	Turner
Childers	Grant	Kurth	Weinstein
Crist	Gutman	McKay	Wexler

Nays—2

Hargrett Holzendorf

CS for HB 1235

Yeas—34

Beard	Dyer	Jennings	Siegel
Boczar	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Thomas
Childers	Gutman	Kiser	Turner
Crist	Harden	Kurth	Weinstein
Dantzler	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	
Dudley	Jenne	Myers	

Nays—None

HB 1247

Yeas—33

Bankhead	Brown-Waite	Childers	Diaz-Balart
Beard	Burt	Crist	Dudley
Boczar	Casas	Dantzler	Dyer

Foley	Johnson	Myers	Weinstein
Forman	Jones	Siegel	Wexler
Grant	Kirkpatrick	Silver	Williams
Gutman	Kiser	Sullivan	
Harden	McKay	Thomas	
Jenne	Meadows	Turner	

Nays—2

Hargrett	Holzendorf

CS for HB 1273

Yeas—34

Bankhead	Dudley	Johnson	Siegel
Beard	Dyer	Jones	Silver
Boczar	Foley	Kirkpatrick	Sullivan
Brown-Waite	Forman	Kiser	Thomas
Casas	Grant	Kurth	Turner
Childers	Gutman	McKay	Weinstein
Crist	Harden	Meadows	Wexler
Dantzler	Hargrett	Myers	
Diaz-Balart	Jenne	Scott	

Nays—None

CS for HB 1283

Yeas—36

Mr. President	Diaz-Balart	Jenne	Scott
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Jones	Silver
Boczar	Foley	Kirkpatrick	Sullivan
Burt	Forman	Kiser	Thomas
Casas	Gutman	Kurth	Turner
Childers	Harden	McKay	Weinstein
Crist	Hargrett	Meadows	Wexler
Dantzler	Holzendorf	Myers	Williams

Nays—None

CS for HB 1293

Yeas—30

Bankhead	Dudley	Johnson	Silver
Beard	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Hargrett	Myers	
Dantzler	Holzendorf	Scott	

Nays—5

Boczar	Kurth	Sullivan
Jenne	Siegel	

HB 1375

Yeas—38

Mr. President	Diaz-Balart	Jennings	Siegel
Bankhead	Dudley	Johnson	Silver
Beard	Dyer	Jones	Sullivan
Boczar	Foley	Kirkpatrick	Thomas
Brown-Waite	Forman	Kiser	Turner
Burt	Grant	Kurth	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Holzendorf	Myers	
Dantzler	Jenne	Scott	

Nays—None

CS for HB 1391

Yeas—31

Beard	Dyer	Jenne	Siegel
Boczar	Foley	Jennings	Silver
Burt	Forman	Johnson	Sullivan
Casas	Grant	Jones	Thomas
Childers	Gutman	Kurth	Turner
Crist	Harden	McKay	Weinstein
Dantzler	Hargrett	Meadows	Wexler
Diaz-Balart	Holzendorf	Myers	

Nays—None

CS for HB 1423

Yeas—35

Bankhead	Diaz-Balart	Jenne	Myers
Beard	Dudley	Jennings	Siegel
Boczar	Foley	Johnson	Sullivan
Brown-Waite	Forman	Jones	Thomas
Burt	Grant	Kirkpatrick	Turner
Casas	Gutman	Kiser	Weinstein
Childers	Harden	Kurth	Wexler
Crist	Hargrett	McKay	Williams
Dantzler	Holzendorf	Meadows	

Nays—None

HB 1487

Yeas—37

Mr. President	Dudley	Jennings	Silver
Bankhead	Dyer	Johnson	Sullivan
Beard	Foley	Jones	Thomas
Boczar	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	Kurth	Wexler
Childers	Harden	McKay	Williams
Crist	Hargrett	Meadows	
Dantzler	Holzendorf	Myers	
Diaz-Balart	Jenne	Siegel	

Nays—None

CS for HB 1573

Yeas—29

Beard	Dyer	Johnson	Silver
Boczar	Forman	Jones	Sullivan
Burt	Grant	Kurth	Turner
Casas	Gutman	McKay	Weinstein
Crist	Harden	Meadows	Wexler
Dantzler	Hargrett	Myers	
Diaz-Balart	Holzendorf	Scott	
Dudley	Jenne	Siegel	

Nays—None

CS for HJR 1579

Yeas—33

Mr. President	Foley	Jones	Sullivan
Bankhead	Forman	Kirkpatrick	Thomas
Beard	Grant	Kiser	Turner
Boczar	Gutman	Kurth	Weinstein
Brown-Waite	Harden	McKay	Wexler
Childers	Hargrett	Meadows	Williams
Crist	Jenne	Myers	
Dudley	Jennings	Siegel	
Dyer	Johnson	Silver	

Nays—4

Casas	Dantzler	Diaz-Balart	Holzendorf

HB 1633

Yeas—35

Bankhead	Dyer	Johnson	Siegel
Beard	Foley	Jones	Silver
Boczar	Forman	Kirkpatrick	Sullivan
Brown-Waite	Grant	Kiser	Thomas
Burt	Gutman	Kurth	Turner
Childers	Harden	McKay	Weinstein
Crist	Hargrett	Meadows	Wexler
Diaz-Balart	Holzendorf	Myers	Williams
Dudley	Jennings	Scott	

Nays—None

CS for HB 1647

Yeas—31

Bankhead	Dantzler	Jenne	Siegel
Beard	Diaz-Balart	Johnson	Silver
Boczar	Dyer	Jones	Sullivan
Brown-Waite	Foley	Kirkpatrick	Thomas
Burt	Grant	Kurth	Turner
Casas	Harden	McKay	Weinstein
Childers	Hargrett	Meadows	Wexler
Crist	Holzendorf	Myers	

Nays—None

CS for HB 1665

Yeas—37

Bankhead	Dyer	Johnson	Silver
Beard	Foley	Jones	Sullivan
Boczar	Forman	Kirkpatrick	Thomas
Brown-Waite	Grant	Kiser	Turner
Burt	Gutman	Kurth	Weinstein
Casas	Harden	McKay	Wexler
Childers	Hargrett	Meadows	Williams
Crist	Holzendorf	Myers	
Diaz-Balart	Jenne	Scott	
Dudley	Jennings	Siegel	

Nays—None

HB 1679

Yeas—35

Mr. President	Diaz-Balart	Jennings	Siegel
Bankhead	Dudley	Johnson	Silver
Beard	Dyer	Jones	Sullivan
Boczar	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Hargrett	McKay	Wexler
Crist	Holzendorf	Meadows	Williams
Dantzler	Jenne	Myers	

Nays—None

CS for HB 1685

Yeas—34

Bankhead	Boczar	Burt	Childers
Beard	Brown-Waite	Casas	Crist
Diaz-Balart	Harden	Kirkpatrick	Thomas
Dudley	Hargrett	Kurth	Turner
Dyer	Holzendorf	McKay	Weinstein
Foley	Jenne	Meadows	Wexler
Forman	Jennings	Myers	Williams
Grant	Johnson	Silver	
Gutman	Jones	Sullivan	

Nays—None

CS for HB 1699

Yeas—32

Mr. President	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Thomas
Casas	Gutman	Kiser	Turner
Childers	Hargrett	Kurth	Weinstein
Crist	Holzendorf	Meadows	Wexler
Diaz-Balart	Jenne	Myers	Williams

Nays—1

Harden

Vote after roll call:

Yea—Grant

CS for CS for HB 1751

Yeas—38

Mr. President	Diaz-Balart	Jennings	Siegel
Bankhead	Dudley	Johnson	Silver
Beard	Dyer	Jones	Sullivan
Boczar	Foley	Kirkpatrick	Thomas
Brown-Waite	Forman	Kiser	Turner
Burt	Grant	Kurth	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Harden	Meadows	Williams
Crist	Holzendorf	Myers	
Dantzler	Jenne	Scott	

Nays—None

CS for CS for HB 1751
After Reconsideration

Yeas—35

Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Brown-Waite	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Thomas
Casas	Grant	Kiser	Turner
Childers	Gutman	Kurth	Weinstein
Crist	Harden	McKay	Wexler
Dantzler	Hargrett	Meadows	Williams
Diaz-Balart	Holzendorf	Myers	

Nays—None

CS for CS for HB 1751
Final Passage

Yeas—35

Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dudley	Jennings	Siegel
Boczar	Dyer	Johnson	Silver
Brown-Waite	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Turner
Casas	Grant	Kiser	Weinstein
Childers	Gutman	Kurth	Wexler
Crist	Harden	McKay	Williams
Dantzler	Hargrett	Meadows	

Nays—None

HB 1817

Yeas—36

Bankhead	Diaz-Balart	Holzendorf	Meadows
Beard	Dudley	Jenne	Myers
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Turner
Childers	Gutman	Kiser	Weinstein
Crist	Harden	Kurth	Wexler
Dantzler	Hargrett	McKay	Williams

Nays—None

HB 1851

Yeas—32

Bankhead	Dantzler	Hargrett	Siegel
Beard	Diaz-Balart	Jennings	Silver
Boczar	Dudley	Johnson	Sullivan
Brown-Waite	Dyer	Jones	Thomas
Burt	Foley	Kurth	Turner
Casas	Forman	McKay	Weinstein
Childers	Grant	Meadows	Wexler
Crist	Gutman	Myers	Williams

Nays—1

Holzendorf

HB 1925

Yeas—37

Bankhead	Dudley	Johnson	Silver
Beard	Dyer	Jones	Sullivan
Boczar	Foley	Kirkpatrick	Thomas
Brown-Waite	Forman	Kiser	Turner
Burt	Gutman	Kurth	Weinstein
Casas	Harden	McKay	Wexler
Childers	Hargrett	Meadows	Williams
Crist	Holzendorf	Myers	
Dantzler	Jenne	Scott	
Diaz-Balart	Jennings	Siegel	

Nays—None

CS for HB 1959

Yeas—36

Bankhead	Diaz-Balart	Holzendorf	Meadows
Beard	Dudley	Jenne	Myers
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Thomas
Childers	Gutman	Kiser	Turner
Crist	Harden	Kurth	Weinstein
Dantzler	Hargrett	McKay	Wexler

Nays—None

HB 1969

Yeas—36

Bankhead	Brown-Waite	Childers	Diaz-Balart
Beard	Burt	Crist	Dudley
Boczar	Casas	Dantzler	Dyer
Foley	Holzendorf	Kiser	Sullivan
Forman	Jenne	McKay	Thomas
Grant	Jennings	Meadows	Turner
Gutman	Johnson	Myers	Weinstein
Harden	Jones	Siegel	Wexler
Hargrett	Kirkpatrick	Silver	Williams

Nays—None

HB 1991

Yeas—32

Mr. President	Crist	Hargrett	Siegel
Bankhead	Dantzler	Holzendorf	Silver
Beard	Dyer	Jenne	Sullivan
Boczar	Foley	Jennings	Thomas
Brown-Waite	Forman	Johnson	Turner
Burt	Grant	Kirkpatrick	Weinstein
Casas	Gutman	Kiser	Wexler
Childers	Harden	Meadows	Williams

Nays—1

Dudley

HB 1993

Yeas—32

Mr. President	Dantzler	Hargrett	Siegel
Beard	Diaz-Balart	Holzendorf	Silver
Boczar	Dyer	Jenne	Sullivan
Brown-Waite	Foley	Jennings	Thomas
Burt	Forman	Johnson	Turner
Casas	Grant	Kirkpatrick	Weinstein
Childers	Gutman	Kiser	Wexler
Crist	Harden	Meadows	Williams

Nays—1

Dudley

HB 2007

Yeas—30

Mr. President	Crist	Holzendorf	Meadows
Bankhead	Dantzler	Jenne	Scott
Beard	Diaz-Balart	Jennings	Sullivan
Boczar	Dudley	Johnson	Thomas
Brown-Waite	Forman	Jones	Wexler
Burt	Grant	Kirkpatrick	Williams
Casas	Harden	Kurth	
Childers	Hargrett	McKay	

Nays—5

Kiser	Silver	Weinstein
Siegel	Turner	

Vote after roll call:

Yea—Foley

Nay to Yea—Silver

CS for CS for HB 2013

Yeas—38

Mr. President	Burt	Dudley	Gutman
Bankhead	Casas	Dyer	Harden
Beard	Childers	Foley	Hargrett
Boczar	Crist	Forman	Holzendorf
Brown-Waite	Diaz-Balart	Grant	Jenne

Jennings	Kurth	Siegel	Weinstein
Johnson	McKay	Silver	Wexler
Jones	Meadows	Sullivan	Williams
Kirkpatrick	Myers	Thomas	
Kiser	Scott	Turner	

Nays—None

HB 2019

Yeas—30

Mr. President	Dyer	Kirkpatrick	Sullivan
Bankhead	Forman	Kiser	Thomas
Boczar	Grant	Kurth	Turner
Brown-Waite	Hargrett	McKay	Weinstein
Casas	Jenne	Meadows	Wexler
Childers	Jennings	Myers	Williams
Dantzler	Johnson	Siegel	
Diaz-Balart	Jones	Silver	

Nays—5

Beard	Dudley	Holzendorf
Crist	Harden	

HB 2019—After Reconsideration

Yeas—30

Mr. President	Dudley	Johnson	Siegel
Bankhead	Dyer	Jones	Silver
Beard	Foley	Kirkpatrick	Sullivan
Boczar	Forman	Kiser	Weinstein
Brown-Waite	Grant	Kurth	Wexler
Casas	Gutman	McKay	Williams
Childers	Harden	Meadows	
Diaz-Balart	Jenne	Scott	

Nays—2

Crist	Jennings

Vote after roll call:

Yea—Holzendorf

HB 2065

Yeas—27

Beard	Diaz-Balart	Holzendorf	Siegel
Boczar	Dudley	Jenne	Silver
Burt	Dyer	Jennings	Thomas
Casas	Foley	Jones	Weinstein
Childers	Forman	McKay	Wexler
Crist	Gutman	Meadows	Williams
Dantzler	Hargrett	Myers	

Nays—None

Vote after roll call:

Yea—Bankhead, Scott

HB 2071

Yeas—35

Bankhead	Diaz-Balart	Jenne	Siegel
Beard	Dudley	Johnson	Silver
Boczar	Dyer	Jones	Sullivan
Brown-Waite	Foley	Kirkpatrick	Thomas
Burt	Forman	Kiser	Turner
Casas	Grant	Kurth	Weinstein
Childers	Gutman	McKay	Wexler
Crist	Harden	Meadows	Williams
Dantzler	Hargrett	Myers	

Nays—1

Holzendorf

CS for HB 2197

Yeas—36

Mr. President	Diaz-Balart	Jenne	Scott
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Thomas
Casas	Grant	Kiser	Turner
Childers	Harden	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler
Dantzler	Holzendorf	Myers	Williams

Nays—None

CS for CS for HB 2203

Yeas—36

Mr. President	Diaz-Balart	Holzendorf	Myers
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams

Nays—None

HB 2297

Yeas—39

Mr. President	Diaz-Balart	Jenne	Scott
Bankhead	Dudley	Jennings	Siegel
Beard	Dyer	Johnson	Silver
Boczar	Foley	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams
Dantzler	Holzendorf	Myers	

Nays—None

CS for CS for HB 2315

Yeas—35

Mr. President	Dyer	Jennings	Siegel
Bankhead	Foley	Johnson	Silver
Boczar	Forman	Jones	Sullivan
Brown-Waite	Grant	Kirkpatrick	Thomas
Casas	Gutman	Kiser	Turner
Childers	Harden	Kurth	Weinstein
Dantzler	Hargrett	McKay	Wexler
Diaz-Balart	Holzendorf	Meadows	Williams
Dudley	Jenne	Scott	

Nays—2

Beard	Crist

HB 2345—Amendment 2

Yeas—21

Bankhead	Dudley	Kiser	Turner
Beard	Dyer	Kurth	Wexler
Boczar	Gutman	McKay	Williams
Burt	Hargrett	Myers	
Crist	Jenne	Silver	
Dantzler	Jones	Sullivan	

Nays—13

Mr. President	Diaz-Balart	Holzendorf	Weinstein
Brown-Waite	Forman	Jennings	
Casas	Grant	Siegel	
Childers	Harden	Thomas	

Vote after roll call:

Yea to Nay—Silver

HB 2345

Yeas—35

Mr. President	Dantzler	Hargrett	Siegel
Bankhead	Diaz-Balart	Johnson	Silver
Beard	Dudley	Jones	Sullivan
Boczar	Dyer	Kirkpatrick	Thomas
Brown-Waite	Foley	Kiser	Turner
Burt	Forman	Kurth	Weinstein
Casas	Grant	McKay	Wexler
Childers	Gutman	Meadows	Williams
Crist	Harden	Scott	

Nays—None

HB 2345—Final Passage

Yeas—36

Bankhead	Diaz-Balart	Holzendorf	Myers
Beard	Dudley	Jenne	Scott
Boczar	Dyer	Jennings	Siegel
Brown-Waite	Foley	Johnson	Silver
Burt	Forman	Jones	Sullivan
Casas	Grant	Kirkpatrick	Turner
Childers	Gutman	Kiser	Weinstein
Crist	Harden	McKay	Wexler
Dantzler	Hargrett	Meadows	Williams

Nays—None

ROLL CALL ON LOCAL BILLS

The following roll call was taken on **House Bills 109, 487, 893, 897, 1063, 1697, 1911, 2355, 581, 1057, 753** and **995** which passed this day:

Yeas—36

Bankhead	Diaz-Balart	Jenne	Myers
Beard	Dudley	Jennings	Siegel
Boczar	Dyer	Johnson	Silver
Brown-Waite	Foley	Jones	Sullivan
Burt	Forman	Kirkpatrick	Thomas
Casas	Grant	Kiser	Turner
Childers	Gutman	Kurth	Weinstein
Crist	Hargrett	McKay	Wexler
Dantzler	Holzendorf	Meadows	Williams

Nays—None

The following roll call was taken on **House Bills 479, 1765, 865, 91, 93, 1065, 1789, 1913** and **2033** which passed this day:

Yeas—38

Mr. President	Diaz-Balart	Jennings	Siegel
Bankhead	Dudley	Johnson	Silver
Beard	Dyer	Jones	Sullivan
Boczar	Foley	Kirkpatrick	Thomas
Brown-Waite	Forman	Kiser	Turner
Burt	Grant	Kurth	Weinstein
Casas	Gutman	McKay	Wexler
Childers	Hargrett	Meadows	Williams
Crist	Holzendorf	Myers	
Dantzler	Jenne	Scott	

Nays—None

The following roll call was taken on **House Bills 107, 2293** and **1421** which passed this day:

Yeas—35

Bankhead	Diaz-Balart	Jenne	Siegel
Beard	Dudley	Johnson	Silver
Boczar	Dyer	Jones	Sullivan
Brown-Waite	Forman	Kirkpatrick	Thomas
Burt	Grant	Kiser	Turner
Casas	Gutman	Kurth	Weinstein
Childers	Harden	McKay	Wexler
Crist	Hargrett	Meadows	Williams
Dantzler	Holzendorf	Myers	

Nays—None

The following roll call was taken on **House Bills 439** and **1193** which passed this day:

Yeas—37

Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	Kurth	Wexler
Childers	Harden	McKay	Williams
Crist	Hargrett	Meadows	
Dantzler	Holzendorf	Myers	
Diaz-Balart	Jenne	Siegel	

Nays—None

ROLL CALLS ON EXECUTIVE BUSINESS

Confirmations

Yeas—38

Mr. President	Diaz-Balart	Jenne	Siegel
Bankhead	Dudley	Jennings	Silver
Beard	Dyer	Johnson	Sullivan
Boczar	Foley	Jones	Thomas
Brown-Waite	Forman	Kirkpatrick	Turner
Burt	Grant	Kiser	Weinstein
Casas	Gutman	Kurth	Wexler
Childers	Harden	McKay	Williams
Crist	Hargrett	Meadows	
Dantzler	Holzendorf	Scott	

Nays—None

Suspension
Daniel E. Schramek

Yeas—35

Mr. President	Dantzler	Hargrett	Siegel
Bankhead	Diaz-Balart	Holzendorf	Silver
Beard	Dudley	Jenne	Sullivan
Boczar	Dyer	Jennings	Thomas
Brown-Waite	Foley	Johnson	Turner
Burt	Forman	Kirkpatrick	Weinstein
Casas	Grant	Kiser	Wexler
Childers	Gutman	Meadows	Williams
Crist	Harden	Scott	

Nays—None

VOTES RECORDED AFTER ROLL CALL

On motions by Senator Silver, by unanimous consent of the Senate, he was recorded as changing his vote from "yea" to "nay" on **Senate Amendment 2** to **HB 2345** and changing his vote from "nay" to "yea" on **HB 2007**.

On motion by Senator Foley, by unanimous consent of the Senate, he was recorded as voting "yea" on **HB 2007**.

On motion by Senator Scott, by unanimous consent of the Senate, he was recorded as voting "yea" on **CS for HB 461**.

On motion by Senator Holzendorf, by unanimous consent of the Senate, she was recorded as voting "yea" on **HB 2019**.

On motions by Senators Dantzler, Hargrett, Holzendorf, Johnson, Kurth and Siegel, by unanimous consent of the Senate, they were recorded as changing their vote from "yea" to "nay" on **CS for SB 1044**.

On motion by Senator Childers, by unanimous consent of the Senate, he was recorded as voting "yea" on **Confirmation of Executive Appointments** in the original roll call.

On motion by Senator Brown-Waite, by unanimous consent of the Senate, she was recorded as voting "yea" on **Confirmation of Executive Appointments** in the original roll call.

On motion by Senator Casas, by unanimous consent of the Senate, he was recorded as changing his vote from "yea" to "nay" on **SB 1992**.

On motions by Senator Scott, by unanimous consent of the Senate, he was recorded as voting "yea" on **CS for HB 1085, CS for SB's 1708 and 1884, HB 2065** and **CS for SB 2382**.

On motions by Senator Bankhead, by unanimous consent of the Senate, he was recorded as voting "yea" on **HB 2065** and **CS for SB 2382**.

On motion by Senator Holzendorf, by unanimous consent of the Senate, she was recorded as changing her vote from "nay" to "yea" on **CS for SB 1954**.

On motion by Senator Dudley, by unanimous consent of the Senate, he was recorded as voting "yea" on **CS for HB 899**.

On motion by Senator Williams, by unanimous consent of the Senate, he was recorded as voting "yea" on **SB 1946**.

On motion by Senator Grant, by unanimous consent of the Senate, he was recorded as voting "yea" on **CS for HB 1699** and **SB 458**.

On motion by Senator Siegel, by unanimous consent of the Senate, he was recorded as voting "yea" on **CS for HB 1117** and **SB 820**.

On motion by Senator Johnson, by unanimous consent of the Senate, she was recorded as voting "yea" on **SB 458**.

ENROLLING REPORTS

Senate Bill 6, CS for SB 160, CS for SB 232, CS for SB's 256 and 244, CS for SB's 340 and 358, SB 408, CS for SB 438, CS for SB 488, CS for SB 568, CS for SB 598, SB 610, SB 682, CS for SB 688, CS for SB 718, SB 720, CS for SB 1066, CS for SB 1112, SB 1300 and SB 1508 have been enrolled, signed by the required Constitutional Officers and presented to the Governor on April 2, 1993.

Joe Brown, Secretary

SCR 2438 has been enrolled, signed by the required Constitutional Officers and filed with the Secretary of State on April 2, 1993.

Joe Brown, Secretary

CORRECTION AND APPROVAL OF JOURNAL

The Journal of April 1 was corrected and approved.

CO-SPONSORS

Senator Johnson—CS for CS for SB 48, CS for SB 50, CS for SB 148, SB 262, SB 386, SB 400, SB 412, CS for SB 536, CS for SB 554, SB 570, SB 734, CS for SB 780; SB 926, SB 1334, SB 1400, SB 1454, SB 1466, SB 1752, SB 1786, SB 1882; Senator Boczar—CS for SB 148, SB 190, SB 290, SB 412, CS for SB 536, SB 538, SB 926, CS for SB 932, SB 1466, SB 1570, SB 1786; Senator Jones—SB 188, SB 412, CS for SB 532; Senator Kurth—SB 242, CS for SB 312, SB 400, SB 414, CS for SB 532, SB 570, SB 734, CS for SB 932, SB 1334; Senator Brown-Waite—SB 400, SB 414, SB 820; Senator Silver—CS for SB 1552; Senator Turner—CS for SB 1714; Senator Williams—CS for SB 1962

MOTION

On motion by Senator Jennings, all bills, concurrent resolutions, resolutions, joint resolutions and all matters pending before the Senate were referred to the Committee on Rules and Calendar.

RECESS

On motion by Senator Jennings, the Senate recessed at 1:00 a.m., April 3, to reconvene at 5:30 p.m., Sunday, April 4.