

FLORIDA HOUSE OF REPRESENTATIVES

HISTORICAL POLICY BRIEFING



AUGUST 2000

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HEALTH CARE AND WELFARE

Overview

During the past four years, Florida's health care and welfare delivery systems have undergone tremendous change. The Florida Legislature has been at the forefront in providing access to health care for Florida families, protecting health care consumers and elders, and promoting personal responsibility for welfare recipients.

As more Floridians receive health care through managed care organizations, the need for ensuring quality and containing costs has also increased. Concerns have arisen regarding the adequacy of consumer protections and whether consumers are even fully aware of existing protections they have regarding the care they receive. The Florida Legislature has responded to this challenge by strengthening and publicizing health care consumer protection laws. Existing patient protections, including the right to a second medical opinion, the right to emergency care, and the right to have licensed physicians make treatment denial decisions, are now clearly delineated in one statutory section to increase public awareness of protections available in other sections of law.

The Legislature has created several important initiatives to provide access to health care for families and children, including Medicaid and Florida Kidcare. Medicaid is a federally and state funded medical assistance program that pays for health care for the poor and disabled. The state budget for the Medicaid program for the current fiscal year is over \$8.3 billion, and the program anticipates serving more than 1.6 million clients. Given the size of the Medicaid budget and the percentage of the state budget that Medicaid represents, the Legislature has been forced, over the past several years, to pursue fairly substantial Medicaid cost containment initiatives that have primarily focused on three fronts: disease management; fraud and abuse; and prescribed drugs. These and other initiatives have resulted in a total of over \$1 billion in projected Medicaid budget reductions.

In 1998, the Legislature created the Florida Kidcare program, Florida's Title XXI child health insurance program, designed to make affordable health care coverage available for low-income uninsured children. Florida Kidcare currently consists of four components: Medicaid for children, the MediKids program, Healthy Kids, and the Children's Medical Services (CMS) Network.

As Florida's elderly population continues to grow, the demand for services increases. The impact of the needs of the elderly and disabled on the Medicaid budget is particularly significant. While the elderly and disabled represent about 20 percent of the Medicaid population, they account for almost 80 percent of the Medicaid budget. In addition to a focus on controlling the growth and utilization of nursing homes, the Legislature has addressed quality of care issues in nursing homes, including the strengthening of early warning systems, staffing ratios and inspection standards.

Any discussion of Florida's health care delivery system must certainly include reference to recent actions involving tobacco use and related litigation. Florida entered into a settlement

agreement with tobacco companies in 1997 that is expected to result in more than \$11 billion to the State over a 25-year period. The Legislature subsequently created a Tobacco Endowment Fund to serve as a recurring source of revenue for Florida's children and elderly and for research into tobacco-related diseases.

Finally, in addition to ensuring healthier Floridians, the Legislature has actively sought to make Floridians more productive and self-sufficient. Florida became the first state in the nation to implement far-reaching welfare reform when it created the Work and Gain Economic Self-sufficiency (WAGES) Program in 1996. Through WAGES, Florida used flexibility provided by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to place lifetime limits on cash assistance, provide job training, and require families to work. Florida has used funds saved from the Temporary Assistance for Needy Families (TANF) federal block grant that replaced federal Aid to Families with Dependent Children (AFDC) to provide childcare and other support to enable families to become self-sufficient. Since 1996, the monthly number of families receiving cash assistance has dropped 67 percent from 200,292 to 64,829. To continue to improve support for Florida families, the 2000 Legislature reorganized federal and state job training, employment, and welfare transition programs in a new Agency for Workforce Innovation under the leadership of a public-private board, Workforce Florida, Inc.

MANAGED CARE

Introduction

Dramatically increasing health care costs have paved the way in Florida for significant health care reforms and placed managed health care arrangements at center stage in efforts to restructure the health care delivery system. Florida has been on the cutting edge in developing various forms of managed care arrangements and continues to experiment with different options as managed care evolves.

Summary of Legislative Action Taken

The Legislature has acted numerous times to reform the business practices of managed care entities. Specific reform initiatives addressed in the 1999 legislative session include: providing patients greater choice in the selection of physicians and other health care providers; establishing mechanisms to ensure patients a remedy, legal or otherwise, when needed medical care is denied by their health plan; ensuring due process for providers terminated from a managed care panel; and refining health insurance laws to ensure available and affordable coverage.

Reacting to the public outcry about managed care's failure to cover "necessary" health care services, the Legislature has recently mandated that certain procedures be covered. Recent mandates include benefits relating to breast cancer, maternity care length of stay, and bone marrow transplants. Because each new mandated benefit increases the cost of an insurance or HMO policy, the Legislature continues to proceed very cautiously in requiring any new mandated benefits for insurance plans – carefully weighing the need for each mandated benefit against the potential for increased costs.

Most recently in the 2000 Session, the Legislature passed the Patient Protection Act of 2000 (chapter 2000-256, Laws of Florida), a comprehensive bill that builds on the successes Florida has realized in the health care arena and addresses a number of issues in order to guarantee existing patient protections, ensure quality of health care, and improve affordability and availability of health care. As part of the act, the Legislature has required that consumers and providers be notified of managed care entities' policies and procedures for the handling of grievances against the managed care entity and that the managed care entity provide the patient and provider with information about treatment denials in an expedient manner. In addition, the act requires that managed care organizations only allow doctors to make treatment denial decisions and that the patient and treating physician have an opportunity to appeal such decision in a timely manner.

Implementation

Managed care entities have continued to be a source of public concern since their creation in 1972. Despite the best efforts of legislators to take advantage of the benefits of increased efficiencies and cost savings, concerns about quality, choice, and the impact on total health continue to be widely voiced.

Due to the nature of managed care and its focus on cutting costs, there has been ongoing friction between managed care entities and their contract providers, such as physicians and hospitals, as well as between the managed care entities and their subscribers (patients). This has led to many changes to the law over the last 28 years, including provisions mandating that managed care entities provide certain services deemed by the public and the Legislature to be medically necessary health care services. Managed care entities oppose mandates on the basis that they cut into profits and result in increased premiums. In the 2000 Session, the Legislature determined that a more systematic approach should be used to balance the needs and desires of the public and providers with the costs to the patient and to employers who purchase health insurance for their employees. The legislation enacted provides for an assessment of the impact, including costs and benefits, of mandated health coverages.

Results and Impact

One of the most dramatic changes resulting from the advent of managed care is the manner in which providers and reimbursers interact. The relationship between managed care plans and providers is now largely a contractual one. Physicians who contract with managed care entities are concerned that their ability to pursue their profession and their livelihood is being compromised by the power managed care plans have to hire and fire physicians. Physicians want assurances that their professional judgment will not be impaired in their quest to provide the very best care for their patients. On the other hand, managed care plans want the latitude to ensure that quality of care is provided in the most cost efficient manner possible.

The impact of managed care legislation is a source of constant debate. Some critics have called for the complete dismantling of managed care in Florida. Others insist that managed care is the only way to handle what some perceive as a health care crisis. While the concept of managed care has been generally supported as a means of increased efficiency and cost reduction, there is

a heightened awareness on the part of consumers and legislators that improved efficiencies must not be achieved at the expense of quality.

THE FLORIDA KIDCARE PROGRAM

Introduction

In 1996, only 66 percent of U.S. children younger than 18 (47 million) were covered by private health insurance, while 10.6 million children (14.8%) were uninsured, living generally in lower-income working families. Florida had one of the nation's largest uninsured populations. Nearly 23 percent of those below the age of 65 were uninsured. At that time, of Florida's 2.8 million uninsured non-elderly residents, approximately one-third were children. Despite eligibility expansions in the Medicaid program and an increase in enrollment in the Florida Healthy Kids Program, more than 823,000 of Florida's 3 million children remained uninsured. Of this number, an estimated 293,885 lived in families that were potentially Medicaid eligible due to family income below 100 percent of the federal poverty level; 259,336 lived in families with income between 101 and 200 percent of the federal poverty level; and 270,246 lived in families with income in excess of 200 percent of the federal poverty level.

In an effort to provide a mechanism for states to make affordable health care coverage available for low-income uninsured children, Congress passed the federal Balanced Budget Act of 1997 (P.L. 105-33), which created Title XXI of the Social Security Act and allocated funds to states for the purpose of providing health insurance to uninsured children who live in low-income families.

Summary of Legislative Action Taken

Chapter 98-288, Laws of Florida, created the Florida Kidcare program, Florida's Title XXI child health insurance program. Florida Kidcare consists of five components: Medicaid for children; the MediKids program; Healthy Kids; the Children's Medical Services (CMS) Network; and employer-sponsored dependent (ESD) coverage. (Florida's Kidcare ESD coverage proposal has been denied by the federal Health Care Financing Administration, according to a November 5, 1999 letter from HCFA.)

Chapter 2000-253, Laws of Florida, provides improvements to the existing Florida Kidcare Program. The new law: adds certain elements to Kidcare reporting requirements; requires a monthly enrollment report; includes Kidcare in the revenue estimating process; modifies eligibility review processes; accelerates Kidcare enrollment; directs that a more simple eligibility redetermination process be developed; clarifies the Children's Medical Services (CMS) screening and referral process; ensures smooth transition across program components; adds a dental benefit for the Kidcare program, subject to a specific appropriation; and specifies a study of the feasibility of subsidizing health insurance coverage for children of certain state employees.

Implementation

Medicaid, MediKids, and the CMS Network are administered by state agencies. The three programs, which include dental coverage, offer the Medicaid benefit package for children. Medicaid and MediKids are administered by the Agency for Health Care Administration. The CMS Network, a division of the Department of Health, serves children with special health care needs - those with serious or chronic physical or developmental conditions who require extensive preventive and maintenance care. The CMS Network is a system of managed care with multi-disciplinary, regional, and tertiary pediatric care providers who offer prevention and early intervention services, primary care and specialty care, as well as long-term care for medically complex, fragile children. A sub-component, the Behavioral Health Specialty Care Network, provides behavioral health care services for children with severe mental health problems.

The Healthy Kids Program is administered by the nonprofit Florida Healthy Kids Corporation created under s. 624.91, F.S. The program began in the early 1990s and offers a benefit package through commercially licensed insurers, which differs from the Medicaid benefit package for children. As created, it does not include dental coverage (except for cleanings and x-rays, provided at local option) and certain other services that are included in the Medicaid benefit package. The Healthy Kids Program is the largest non-entitlement program under the Florida Kidcare program. It was authorized to offer a certain number of enrollment slots to each county without requiring local matching funds (currently established at 500 slots per county). If a county wants to offer more enrollment slots, a local match is required. Currently, the program is operational in all but three counties, where provider networks are currently under review.

As Kidcare partners, each department, agency, and program involved in the Kidcare Program has specified duties and responsibilities. The Agency for Health Care Administration administers the Medicaid and MediKids programs and processes premium payments for the Florida Healthy Kids and CMS programs. The Department of Children and Family Services is responsible for developing a simplified application process and determining eligibility for the Florida Kidcare program. The original Kidcare law provided the opportunity to use a third party administrator for the purposes of determining eligibility for the Kidcare program. The Department of Health administers the CMS Network and is responsible for outreach and the Kidcare Coordinating Council. The Florida Healthy Kids Corporation administers the Healthy Kids Program and contracts with the Agency for Health Care Administration to provide a third party administrator for the purposes of premium collection and eligibility screening/processing. The Department of Insurance is responsible for certifying qualified health plans and is designated to be responsible for the administration of the ESD coverage.

Results and Impact

As of July 1, 2000, Title XXI-funded Kidcare enrollment by program component was as follows:

Healthy Kids	120,686
MediKids	19,330
CMS Network	4,989
Medicaid for teens	<u>17,487</u>
TOTAL	162,674

This represents a significant increase in enrollment since the inception of the program.

The FY 2000-2001 General Appropriations Act funds 102,000 new slots for Kidcare coverage, for a total of 309,482 children. This represents an increase of \$96 million in the state's obligation to insure children. Proviso language caps the Healthy Kids local match at \$14,448,850, which will save counties an estimated \$8.6 million. The Florida Healthy Kids Corporation is directed to review current local match requirements and develop a recommendation for a multi-year proposal related to the reduction of local match, with a report by November 1, 2000. A cap of \$13.5 million is imposed for state-only funding for children not eligible for Title XXI funding.

MEDICAID

Introduction

Medicaid is a medical assistance program, jointly funded by the federal, state, and county governments, which pays for health care for the poor and disabled. The federal government, through law and regulations, has established extensive requirements for the Medicaid Program. The Agency for Health Care Administration (AHCA) is the single state agency responsible for administering the Florida Medicaid Program. Statutory provisions for the Medicaid Program appear in ss. 409.901 through 409.9205, F.S. The state budget for the Medicaid program for the current fiscal year is \$8.3 billion and the program expects to serve 1.6 million clients this year.

Summary of Legislative Action Taken

Given the size of the Medicaid budget and the percentage of the state budget that Medicaid represents, the Legislature has been forced over the past several years to achieve fairly substantial Medicaid cost savings. Medicaid cost containment initiatives have primarily focused on three fronts: disease management; fraud and abuse; and prescribed drugs.

Disease Management

Beginning in 1997, the Legislature directed AHCA to establish disease management programs under the Medicaid program.

Fraud and Abuse Initiatives

The Legislature, the Attorney General's Office (specifically the Medicaid Fraud Control Unit), the Agency for Health Care Administration, the Office of Statewide Prosecutor, and the federal government have taken numerous steps over the past several years to combat fraud and abuse within the Florida Medicaid program. Past initiatives have included: claims payment analyses and controls; provider surety bonds and financial background checks; on-site provider visits; Level I and Level II criminal background checks; additional Medicaid Management Information System edits; and improved interagency coordination. More recent initiatives include: pharmacy audits, including on-site audits and audits specific to overpayments; an explanation of medical benefits mailing to some recipients; pharmacy lock-in, whereby a federal waiver has been obtained to permit the state to lock-in an abusive Medicaid recipient to a single pharmacy; recipient fingerprinting demonstration project at approximately 200 pharmacies to ensure that only the eligible recipient or an authorized representative is picking up prescribed drugs; enhanced claims analysis and automated fraud and abuse detection capabilities; additional pharmacy fraud and abuse controls, including surety bonds and on-site inspections prior to entering provider agreements; fraud detection system enhancements to identify patterns of fraud; and Physician Practice Pattern review, including drug usage evaluation, prescribing profiles, physician education, and outcomes analysis. Medicaid fraud issues adopted by the 2000 Legislature addressed additional surety bond requirements based on volume of business for certain Medicaid providers, additional authority for AHCA to deny Medicaid provider applications, and easier access to otherwise confidential patient information by the Attorney General's Medicaid Fraud Control Unit.

Prescribed Drug Initiatives

A more recent concern with the Medicaid budget has been the continued spiraling cost of the prescribed drug program. The 1999 Legislature established the Medicaid Formulary Study Panel by budget proviso to prepare recommendations on the advisability, feasibility, and cost-effectiveness of implementing an appropriate formulary for the Medicaid prescribed drug program. The following information was included in the panel's findings: "Since the mid-1990s the rate of increase in overall Medicaid expenditures has not exceeded 6 percent per year. However, the rate of increase for prescribed drugs has continued to grow at double-digit levels. In FY 1999-00 the rate of increase for the entire Medicaid program will be 6.0 percent compared to 16.9 percent for prescribed medicines. Some factors that contribute to increasing [prescribed drug] costs include direct marketing to consumers, increased marketing to providers, new and more expensive drug therapies for chronic illnesses, higher ingredient costs, multiple drug therapies, an aging population, recognition of new diseases, new uses of existing drugs, and changes in patient demographics." The panel supported maintaining an open formulary for Medicaid prescribed medicines and enhancing disease management initiatives to control prescription drug expenditures. The 2000 Legislature imposed prescribed drug reductions in Medicaid totaling \$240.6 million.

Implementation

Disease management programs initially targeted were those specific to Medicaid recipients with a diagnosis of diabetes, hemophilia, asthma, and HIV/AIDS. In 1998, the Legislature added end stage renal disease, congestive heart failure, cancer, sickle cell anemia, and hypertension to the targeted disease list. In 1999, legislation was adopted to permit implementation of disease management programs for any condition. Through FY 1999-2000, the Medicaid budget had been reduced by \$42 million in anticipation of savings resulting from implementation of the disease management initiative.

Through FY 1999-2000, budget reductions of \$75 million had been made in expectation of savings from the various fraud and abuse activities and the Practice Pattern Review program.

Medicaid uses an open drug formulary, where recipients may obtain most prescription drugs without restriction. Adult recipients are limited to six prescriptions per month, but additional prescriptions are readily obtained if medically necessary. Many utilization limits are in place to prevent overuse or misuse, but most brand and generic drugs are available within their medically-accepted standards. Prescribed drug cost containment efforts in FY 2000-2001 include specific reductions resulting from: ingredient costs; a limit of four brand name prescription drugs per month (with exceptions and exclusions); a secure prescription program; a generic drug rebate program; pharmacy network controls; drug plan management program; a voluntary preferred drug list; and drug therapy limits.

Results and Impact

While the initiatives highlighted above have been a primary focus of cost containment, the Legislature has imposed a number of policy and funding reforms designed to achieve Medicaid budget reductions. Over the course of the last six fiscal years, a total of just over \$1 billion has been projected for reduction from the Medicaid budget as a result of these specific initiatives.

LONG-TERM CARE

Introduction

Long-term care includes health-related services provided to elderly and disabled persons, and is frequently organized around the location in which it is delivered, i.e., nursing homes, assisted living facilities (ALF), intermediate care facilities for persons with developmental disabilities (ICFDD), mental health clinics, state institutions, and in homes. Services related to long-term care that are not location specific include home health, prescribed drugs, assistive technology, and personal care. Medicaid pays the majority of long-term care expenses. In Florida, two-thirds of all nursing home beds are paid for by Medicaid. Nursing home payments comprise 19.1 percent of the total Medicaid budget.

Elderly and disabled persons are about 20 percent of the Medicaid population. Their needs, however, account for almost 80 percent of the Medicaid budget. To manage these costs, Florida has primarily focused on controlling the growth and utilization of nursing homes.

The Committee on Elder Affairs and Long-Term Care has focused attention on nursing home quality of care for the past four years. Consumer advocates have raised a litany of complaints about patient abuse and neglect, theft of property, “patient dumping”, and other problems. Litigation against nursing homes has increased significantly over the last few years. In 1998, the committee assembled a broad-based workgroup on nursing home quality improvement to recommend solutions. The 1999 Legislature enacted major reforms as a result of that study.

Summary of Legislative Action Taken

Chapter 99-394, Laws of Florida, addressed the most critical areas identified by the workgroup as related to quality of care: patient protection; financial stability; staffing; strong regulatory enforcement; and the availability of consumer information. Inadequate staffing in nursing homes was the most frequently cited problem during committee proceedings.

An early warning system was created, directing the Agency for Health Care Administration (AHCA) to track incident and trend data to identify and intervene when nursing homes decline or become financially unstable. Specialized nurses to work as “Quality of Care Monitors” were approved for each AHCA area office. Local Ombudsman Councils were directed to review patient transfer and discharge orders to prevent unfair and inappropriate movement of residents.

A study of issues related to training and availability of certified nursing assistants (CNAs) was prescribed. An appropriation of \$32 million was provided to allow Medicaid to reimburse facilities for costs incurred to hire or retain direct care staff. AHCA was directed to measure customer satisfaction in nursing homes. That data and other specified information was to be provided to the public in booklets and on the Internet to assist consumers and their families in choosing a nursing facility. The Panel on Excellence in Long-Term Care was established to implement the “Gold Seal Program” to recognize outstanding performance by nursing homes.

To improve enforcement, fines for serious violations were substantially increased. AHCA was given the authority to compel facilities providing poor patient care related to inadequate staffing to hire more staff immediately. A Panel on Medicaid Reimbursement was established to study funding of nursing home care.

Implementation

The Quality of Care Monitors were hired, trained, and in the field by August 1999. The agency has developed a complex early warning system that includes evaluation of the financial well-being of each nursing home’s corporation. AHCA also maintains detailed maps which precisely locate each licensed facility and those facilities near enough to act as an emergency placement for residents in case of an emergency shut down of the facility. In addition, the Department of Elder Affairs has completed a study of CNAs.

The agency has not been able to execute a contract for a vendor to conduct the satisfaction surveys. However, revisions made to the statute by the 2000 Legislature should provide the agency with sufficient flexibility to accomplish this before January 2001. The other required information has been published on the Internet and in booklet form for the public. The agency

promulgated a revised administrative rule to implement the revised fines and the authority to require facilities to add additional direct care staff immediately.

The Panel on Excellence in Long-Term Care has met four times since January 2000. The Panel on Medicaid Reimbursement issued an interim report in January 2000 and will submit a final report in December 2000.

Results and Impact

The industry has responded favorably to the assistance and oversight provided by the Quality of Care Monitors. To improve staffing, 600 of 650 Medicaid-participating nursing facilities have elected to participate in the reimbursement of additional costs associated with hiring and retaining direct care staff.

The 2000 Legislature created a Task Force on Long-Term Care to study and make recommendations about a number of critical issues. Included among these are alternatives to nursing home care, cost of various housing and care environments, the financial stability of nursing facilities, quality of care, effects of litigation, nursing home liability, and the cost and availability of insurance.

TOBACCO ENDOWMENT

Introduction

The State of Florida commenced a legal action against various tobacco manufacturers and other defendants in February 1995, asserting various claims for monetary and injunctive relief on behalf of the state. On August 25, 1997, Florida entered into a settlement agreement with several of the tobacco companies which called for approximately \$11.2 billion to be received by the state over a 25-year period for reimbursement of Medicaid expenses, punitive damages, fraud, and RICO.

Summary of Legislative Action Taken

In 1999, to provide a mechanism for generating a recurring revenue stream from the non-recurring portions of the settlement receipts and to maximize the rate of return earned by the state, the Legislature created a new trust fund--the Lawton Chiles Endowment Fund (Endowment)--to be administered by the State Board of Administration (s. 215.5601, F.S.) The Endowment serves as a clearing trust fund and is funded by settlement moneys received from the tobacco industry. These moneys are to support increases in clients served or in costs in health and human services program areas.

The 2000 Legislature expanded legislative intent to provide a perpetual source of funding for health and human services initiatives for children and elders and for biomedical research programs. Two million dollars in nonrecurring funds were appropriated for the Biomedical Research Program, providing a dedicated funding stream for research of cancer, heart disease, stroke, pulmonary, and other diseases – all connected to tobacco consumption.

Implementation

For FY 2000-2001, funds in the Lawton Chiles Endowment Fund are to be distributed based on legislative appropriations. For FY 2001-2002 and beyond, funds are to be distributed as follows: (1) 50 percent to the Department of Children and Family Services (DCF) to be used for children's services; (2) 33.5 percent to the Department of Health (DOH) to be used for the biomedical research initiatives established in s. 215.5602, F.S.; (3) the remaining funds to the Department of Elder Affairs (DOEA) for elder services.

The Secretaries of the Department of Health, the Department of Children and Family Services, the Department of Elder Affairs, and the Agency for Health Care Administration are to develop a list of the top five funding priorities for children's and elder services eligible for funding from the Endowment. These lists are to be developed no later than October 1 of each year, and recommendations made available no later than November 15 of each year to the advisory councils for children's and elder services for evaluation and ranking for legislative consideration. Recommendations due to the Legislature by February 1 of each year are to include recommendations on funding levels for the ranked programs.

Results and Impact

Over 4 years, beginning with fiscal year 1999-2000, a total of \$1.7 billion will be deposited into the Endowment from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund (s. 17.41, F.S.). In fiscal year 1999-2000, the amount deposited is \$1.1 billion, with \$200 million being deposited in each of the next 3 years. The State Board of Administration invests the Endowment funds, in accordance with an approved investment plan, as an annuity to protect the real value of the Endowment principal and to provide a predictable source of non-recurring revenue for Florida's children and elderly and for research into tobacco-related diseases.

WELFARE

Introduction

Aid to Families with Dependent Children (AFDC) (originally called Aid to Dependent Children) was created during the Depression as part of the Social Security Act of 1935. The program was administered by individual states, but jointly funded by both the federal and state governments. To qualify for AFDC, a child must be deprived of parental care and support due to the death, incapacity, continued absence from the home, or, in some states, unemployment of a parent. In 1992, the AFDC caseload was 252,276 families or 684,088 individuals. A sizeable percentage of the welfare population, in the range of 20 to 30 percent, was on welfare for substantial periods of time. Many of these families had cross-generational welfare dependency.

Summary of Legislative Action Taken

Largely in response to public demand for reform of the welfare system, in 1987 the Florida Legislature enacted the Florida Employment Opportunity Act, known as Project Independence -

the first attempt to move AFDC from a cash assistance program to a program that provided education and training to end the welfare dependency cycle.

In 1992, the Florida Legislature responded to continuing public dissatisfaction with welfare policy by passing the Family Transition Program (FTP), which reflected greater emphasis on work and training. Although limited to demonstration projects in two counties, FTP put Florida at the forefront of national welfare reform efforts - in particular, with its introduction of an innovative, new element to the work or learn for benefits approach - time limits on program benefits (AFDC grants) and other support services of 24 months for applicants and 36 months for recipients.

A new federal law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) repealed the 61-year-old entitlement, the AFDC program, and replaced it with a flat or capped block grant to states giving them primary control over eligibility and benefits. The law created the Temporary Assistance for Needy Families (TANF) Funds. TANF is a block grant that replaces the Aid to Families with Dependent Children (AFDC) welfare program.

Implementation

In 1996, the Legislature created the Work and Gain Economic Self-Sufficiency (WAGES) Program to take advantage of flexibility provided by the new federal law. Most Florida recipients are subject to a 24-month time limit on cash assistance out of any consecutive 60-month period. The more difficult participants to serve, those who have education deficits or health or other problems, are subject to a 36-month time limit on cash assistance out of any consecutive 72-month period. All recipients are limited to receiving benefits for a total of 48 months during their lifetime.

With the Workforce Innovation Act of 2000, the Legislature consolidated the many federal and state job training, employment support, and welfare transition programs implemented over the years to improve workforce development. The programs were removed from the Department of Labor and Employment Security and the Department of Children and Families and moved to a new Agency for Workforce Innovation under the leadership of a public-private board, Workforce Florida, Inc.

Results and Impacts

Florida has made great strides in removing barriers to employment and reducing reliance on welfare. Since October 1996 when the WAGES program began, the total number of families receiving cash assistance each month has declined 67 percent from 200,292 to 64,829 in June 2000. Welfare reform has not yet been tested by an economic downturn in which the low wage service jobs of the tourism industry in Florida may be vulnerable. To ensure long-term success, welfare reform and employment programs need to continue to improve their effectiveness and accountability. Welfare transition information systems and contract management need to be improved to ensure contracted services provide participants with long-term economic independence so they can avoid a return to cash assistance.

**HEALTH CARE AND WELFARE
APPENDICES**

Managed Care Reform Legislative Highlights 1996 - 2000

1996

Medicaid Managed Care and Emergency Care Access (CS/CS/SB 886; Ch. 96-199, Laws of Florida). Focused on emergency care issues relating to managed care organizations, and quality of care and enrollment standards relating to Medicaid health maintenance organizations (HMOs).

1997

Managed Health Care Entities (CS/CS/HBs 297 & 325; Ch. 97-159, Laws of Florida). Specified procedures, requirements and time frames for addressing subscriber grievances.

Managed Care/Direct Access to Dermatologists (SB 244; Ch. 97-171, Laws of Florida). Provided direct access to dermatologists who are under contract with HMOs and exclusive provider organizations without the need for a subscriber/member to go through a primary care physician.

1998

Managed Care/Subscriber Grievances (CS/SB 162; Ch. 98-10, Laws of Florida). Revised criteria and procedures for review of grievances against managed care entities by the Statewide Provider and Subscriber Assistance Panel.

Managed Care/Claims (SB 1584; Ch. 98-79, Laws of Florida). Provided additional procedures and timeframes for reimbursement by HMOs to providers for services rendered.

Health Insurance (CS/CS/SB 1800; Ch. 98-159, Laws of Florida). Increased HMO surplus and solvency requirements.

1999

HMO Contracts (CS/SB 232; Ch. 99-264, Laws of Florida). Provided due process protections regarding communication between providers and patients, and delineated termination rights for providers and patients.

Managed Care (CS/HB 1927 & 961; Ch. 99-393, Laws of Florida). Required publication of HMO report cards and authorized HMOs to offer an optional "point-of-service" benefit plan rider under specified circumstances.

Health Care (HB 2231; Ch. 99-356, Laws of Florida). Required exclusive provider organizations (EPOs) and HMOs to allow direct access for their female subscribers to a contracted obstetrician/gynecologist for one annual visit and medically necessary follow-up care detected during the annual visit, and authorized EPOs and HMOs to require such an

obstetrician/gynecologist treating a covered patient to coordinate the medical care provided through the patient's primary care physician, if applicable.

Health Provider Contracts (CS/SB 2554; Ch. 99-275, Laws of Florida). Clarified payment arrangements involving fiscal intermediaries, required advance notice of any increase in copayments, clarified circumstances under which coverage cancellation for nonpayment of premium must occur, and addressed provider exclusive contract issues.

2000

Patient Protection Act of 2000 (CS/HB 2339; Ch. 2000-256, Laws of Florida). Provided summary of patient protections relating to managed care, ensured continuity of care for hospital patients, required adverse determinations to be made by physicians only, and increased consumer awareness regarding grievance procedures and dispute resolutions.

Prompt Payment of Claims (CS/CS/SB 1508 & CS/SB 706; Ch. 2000-252, Laws of Florida). Clarified and strengthened requirements for claim submissions and reimbursements between providers and managed care organizations.

MEDICAID COST CONTAINMENT INITIATIVES (IN MILLIONS)

Fiscal Year 1994-1995:

New fiscal agent contract	\$10.6
Childhood immunizations—OBRA '93	\$3.5
Developmentally disabled bed and waiver revisions	\$0.9
Reinstatement of pharmacy copayments	\$6.0
Total for fiscal year 1994-95	\$21.0

Fiscal Year 1995-1996:

Start prospective drug utilization review system	\$7.6
Increase or establish copayments	\$5.1
Reform community mental health	\$26.0
Reform transportation	\$17.0
Reform case management	\$7.6
HMO age band and regional rates	\$74.3
Accelerate managed care enrollment	\$19.1
3% reduction for non-institutional services excluding physician services	\$9.1
Reduce pharmacy cost increase	\$32.7
Hospital reimbursement reforms	\$30.0
Eliminate pressure ulcer pilot	\$6.1
Nursing home incentive payments	\$13.6
Total for fiscal year 1995-96	\$248.2

Fiscal Year 1996-1997:

Intermediate Care Facility/Development Disabled (ICF/DD)	\$34.3
Community mental health	\$21.4
Hospital inpatient psychiatric	\$12.3
HMO and prepaid health plans	\$24.7
Pharmacy	\$23.1
Transportation	\$22.9
County billing/HMO inpatient days	\$18.5
Nursing home reforms	\$17.0
Hospital outpatient	\$13.7
Home health care	\$13.4
Provider enrollment reforms	\$11.0
Estate recovery	\$7.0
Medicaid administrative reform	\$2.0
Total for fiscal year 1996-97	\$221.3

Fiscal Year 1997-1998

Expand nursing home diversion waiver	\$12.4
Third-party liability enhanced functions	\$10.0
Variable pharmacy dispensing fee	\$6.2
Mental health provider credentialing	\$5.0

Disease management initiatives	\$4.2
Competitive bidding of selected services	\$3.9
Contracting with provider service networks and local governments	\$3.3
Total for fiscal year 1997-98	\$45.0

Fiscal Year 1998-1999

Intensified third party liability	\$12.4
Eliminate adult cardiac transplant program	\$1.6
Recalculation of drug rebate program	\$11.3
Expanded fraud and abuse recoupment	\$9.1
Disease management (current)	\$24.7
Disease management (new)	\$14.7
Modify methodology for Medicaid cross-over claims	\$63.6
Total for fiscal year 1998-99	\$137.4

Fiscal Year 1999-2000

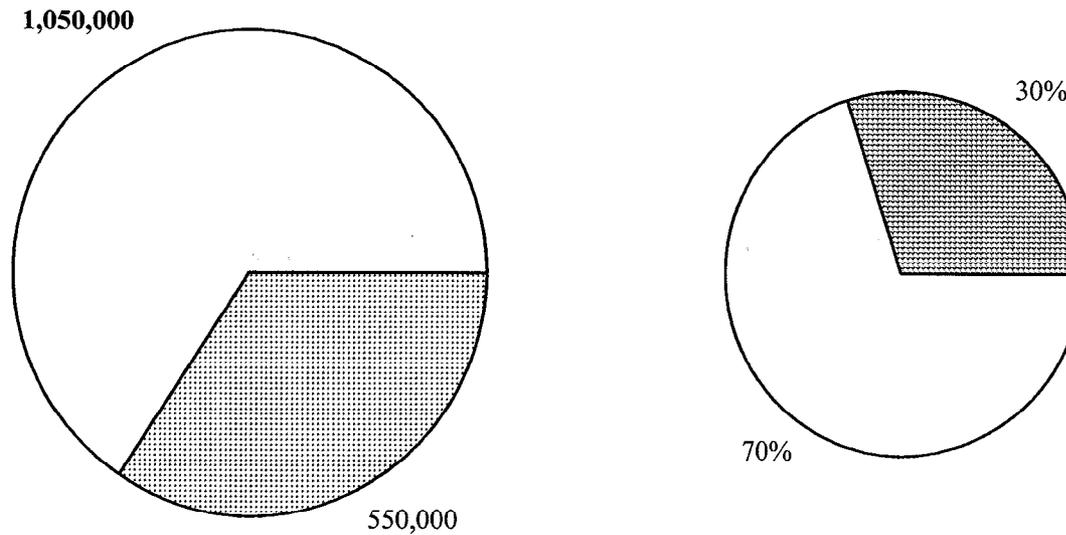
Enroll pregnant women in managed care programs	\$18.2
Prescribed drug fraud and abuse initiatives	\$34.5
Prescribed drug provider profiling and medical utilization review	\$40.7
Total for fiscal year 1999-00	\$93.4

Fiscal Year 2000-2001

Ingredient cost adjustments/prescribed drugs	\$24.2
Drug benefit management program	\$41.0
Pharmacy network controls	\$22.6
Secure prescription pads	\$18.0
Generic drug rebates	\$3.0
Monthly limit on recipient drugs	\$70.0
Improve case management of MediPass recipients	\$46.1
Improve disease management efficiencies	\$23.0
Voluntary preferred drug list	\$25.0
Drug therapy limits	\$10.0
Total for fiscal year 2000-01	\$282.9

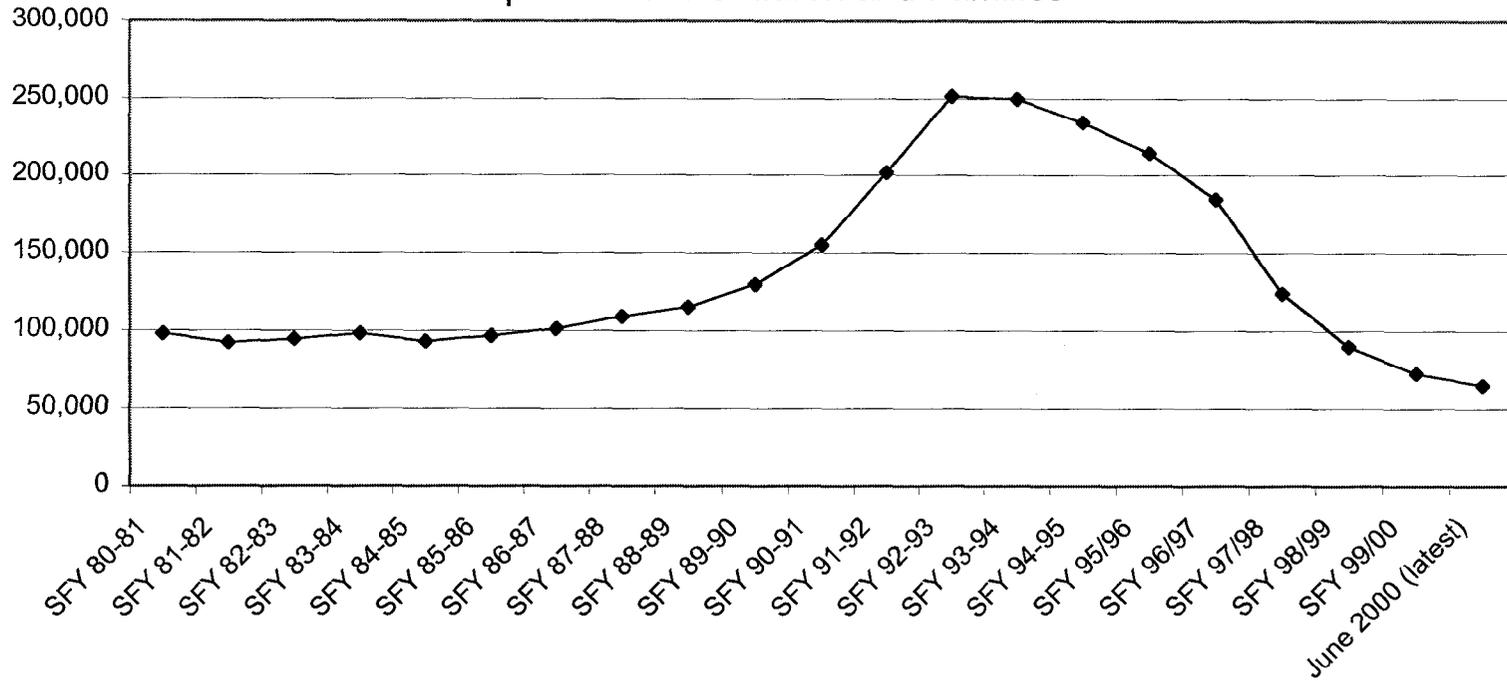
Grand Total \$1,068.3

Comparison of Number of Persons by Category of Eligibility with
Percent Expenditures by Category of Eligibility



- Number of Elderly / Disabled
- Number of Families / Children
- Percent Medicaid Expenditures Elderly / Disabled
- Percent Medicaid Expenditures Families / Children

Monthly Cash Assistance Case Loads 1980-Present
Department of Children and Families



MAKING GOVERNMENT MORE EFFECTIVE

Overview

Florida's state government includes over 126,000 employees, with an Executive budget of \$49.9 billion.

Three areas with major legislative packages in recent years include: **Reorganization**, **Privatization** and **Accountability**. The Florida Legislature has attempted *bureaucratic reorganization*, with the intent to either streamline the agency to help it focus its resources on core programs, or to consolidate related programs in a single agency to improve program effectiveness. Another attempt to maximize resource allocations has involved the Legislature *privatizing* areas where the private sector is expected to be more cost-effective or efficient in delivering services formerly provided by the state.

Accountability in government is an issue that is increasingly important in an environment of distrust of government. *Performance-Based Program Budgeting* or "PB²," has been developed by the Legislature as a method of program funding which encourages agencies to provide the maximum possible quality in the performance of their activities. This effort is designed to focus on performance or quality of government functions, holding the government accountable for its spending and delivering the services paid for. A major enhancement to this effort has been the addition of *unit cost reporting* in budget documents.

State policy makers constantly strive to improve the cost-effectiveness of public programs and services. Both internal and external fiscal pressures force adoption of less expensive alternatives for providing such programs and services. Such fiscal pressures and other factors influencing decisions may include budget cuts, revenue shortfalls, and legal restrictions on raising taxes, pitched against increasing and competing demands on finite resources.

State policy makers are constantly challenged to balance the needs and demands on available resources without significantly sacrificing the level of quality of programs and services. These policy makers use the methods of reorganization, privatization, accountability enhancement and budget reform as weapons in their arsenal to create a government that is more efficient and effective. Major legislation has been passed over the past six years establishing such methods with the goal of a streamlined, cost-effective, and accountable government that meets the needs of Florida's citizens.

CABINET AND AGENCY REORGANIZATION

Introduction

Revision 8 to the Florida Constitution – Cabinet Reorganization

In the November 1998 General Election, Florida voters approved Revision 8 to the Florida Constitution. Revision 8 merges the elected cabinet offices of Treasurer and Comptroller into one Chief Financial Officer (CFO). The Cabinet is reduced from seven to four members,

consisting of the Governor, the CFO, the Attorney General, and the Commissioner of Agriculture. The Secretary of State and the Education Commissioner are eliminated from the elected Cabinet. The composition of the State Board of Education (SBE) is changed from the Governor and Cabinet, to a seven-member Florida Board of Education (FBE) appointed by the Governor and confirmed by the Senate, with the Board appointing the Commissioner of Education. Revision 8 does not address the regulatory functions assigned to the cabinet officers by statute.

Treasurer and Comptroller

In addition to the constitutional duty to “keep all state funds and securities,” the Treasurer heads the Department of Insurance (DOI), invests the state’s general revenue funds and trust funds, administers the Florida Security for Deposits Act and the State Employees Deferred Compensation Program, and serves as the State Fire Marshal. In addition to the constitutional duty to serve as the Chief Financial Officer of the state, the statutory duties of the Comptroller include examining, auditing and settling claims and demands against the state and serving as the head of the Department of Banking and Finance (DBF), which is responsible for regulating financial institutions and those conducting securities related business, providing for consumer financial protection, and administering the Unclaimed Property Act.

Secretary of State

The Secretary is part of the seven-member Cabinet, and heads the Department of State (DOS), which has seven divisions: Office of the Secretary/Division of Administration, Division of Elections, Division of Historical Resources, Division of Corporations, Division of Library and Information Services, Division of Licensing, and Division of Cultural Affairs.

State Board of Education

Currently, the Governor is the chair of the SBE and the Commissioner of Education is the secretary and executive officer. There is a Department of Education (DOE) headed by the elected Commissioner of Education. DOE has the following divisions: Community Colleges, Public Schools and Community Education, Universities, Workforce Development, Human Resource Development, Administration, Financial Services, Support Services, and Technology.

Department of Management Services

The Department of Management Services (DMS) serves as the administrative arm of state government. The mission of DMS is accomplished primarily through the Workforce, Technology, Support, and Facilities programs. Additionally, DMS houses other autonomous agencies, such as the Division of State Group Insurance, the Division of Retirement, the Correctional Privatization Commission, and the Division of Administrative Hearings (DOAH).

Department of Labor and Employment Security

Seven divisions are currently established within the Department of Labor and Employment Security (DLES): Jobs and Benefits, Unemployment Compensation, Administrative Services,

Workers' Compensation, Vocational Rehabilitation, Safety, and Blind Services. Two commissions are established within the department: the Public Employees Relations Commission (PERC) and the Unemployment Appeals Commission.

Summary of Legislative Action Taken

Treasurer and Comptroller

In May 1999, an internal work group identified three organizational structures that could be considered for reorganizing the constitutional and statutory duties of the Comptroller and Treasurer: (1) *one department* (two into one), combining all the constitutional and statutory duties in a single agency headed by the CFO; (2) *two departments* (two into two), consolidating the constitutional and related functions in a department headed by the CFO, and combining the regulatory and related functions in a new department; and (3) *three departments* (two into three), consolidating the constitutional and related functions in one department headed by the CFO, keeping the regulatory and related functions in separate departments. During the 2000 Session, two major bills surfaced to implement the reorganization, generally proposing the *two departments* and the *one department* option. Neither bill passed, and consequently the Legislature must revisit the issue.

Commissioner of Education

In 1999, the Commissioner of Education appointed a 35-member Blue Ribbon Committee on Educational Governance, whose recommendations are generally encompassed in the "Florida Education Governance Reorganization Act of 2000." This act establishes legislative policy for a seamless kindergarten through graduate school education system with consistent education policy; alignment of academic and funding responsibility with accountability; effective articulation; and devolution of authority to the schools, community colleges, universities, and other education institutions that are the actual deliverers of educational services.

Effective January 7, 2003, a seven-member FBE will be appointed by the Governor; a Commissioner of Education will be appointed by the FBE; Chancellors of K-12 Education, State Universities, and Community Colleges and Career Preparation, and an Executive Director of Nonpublic and Nontraditional Education will be appointed by the Commissioner; and nine-member boards of trustees for each state university will be appointed by the Governor.

Secretary of State

In 1999, the Secretary created a Constitutional Transition Task Force, whose recommendations were largely implemented by the 2000 Legislature. The legislation maintains the basic structure of DOS, but transfers sweepstake regulation to the Department of Agriculture and Consumer Services; provides that financial disclosure filings should be filed directly with the Ethics Commission rather than the Division of Elections; and transfers responsibility for linkage institutes from DOE to DOS.

Department of Management Services

Over the years, DMS has had several transfers of divisions and offices into and out of its control. The Division of Retirement (Division) was established to administer the Florida Retirement System (FRS) and to consolidate existing state-administered retirement systems. In 1994 the Division became independent of the operational control of DMS. During the 1999 Legislative Session, however, legislation was passed which moved the Division back into DMS.

In the 2000 Legislative Session, legislation transferred the Minority Business Advocacy and Assistance Office from the Department of Labor and Employment Security to DMS, renamed as the Office of Supplier Diversity. In addition, the "itflorida.com Act of 2000" became law, transferring the powers and duties relating to information technology in the Executive Branch to the State Technology Office in DMS. The "Workforce Innovation Act of 2000," reorganized the state and regional workforce development and WAGES (Work and Gain Economic Self-Sufficiency) systems by creating the Agency for Workforce Innovation within, but not under the control of DMS, and created a private nonprofit entity, Workforce Florida, Inc., to develop policy for the agency and regional boards. Workforce development staff, programs and functions in the DLES (including the Division of Unemployment Compensation) were transferred to the Agency for Workforce Innovation. Workforce transition and support components of the WAGES program (child care, transportation, education and job training) were transferred from the Department of Children and Family Services to the Agency for Workforce Innovation.

Department of Labor and Employment Security

In 1999, the Legislature passed legislation that substantially reorganized DLES and continued the process of moving the WAGES program out of DLES, which was begun by the 1998 Legislature by transferring funding for the WAGES coalitions to DMS. In the 2000 Session, the "Workforce Innovation Act of 2000," as indicated previously, reorganized the state and regional workforce development and WAGES systems by creating the Agency for Workforce Innovation within, but not under the control, of DMS. Workforce development staff (including the Division of Unemployment Compensation), programs and functions in DLES were transferred to the Agency for Workforce Innovation.

Implementation

Commissioner of Education

By October 1, 2000, the Governor, President of the Senate and Speaker of the House of Representatives shall appoint a reorganization transition task force to accomplish an effective, orderly 3-year phase in. The timetable for recommendations is: March 1, 2001 (system merger/devolution); March 1, 2002 (systemwide coordination/boards of trustees); March 1, 2003 (statutes/rules revisions, waivers, contracts); and May 1, 2003 (final report).

Results and Impact

As with most attempts at bureaucratic reorganization, the intent is to either streamline the agency to help it focus its resources on core programs, or to consolidate related programs in a single agency to improve program effectiveness. The breakup of the old Health & Rehabilitative Services was an attempt to accomplish the former, as the current consolidation of the WAGES programs is an attempt to accomplish the latter.

PRIVATIZATION

Introduction

State policy makers constantly strive to improve the cost-effectiveness of public programs and services. Internal and external fiscal pressures force adoption of alternative, less expensive ways to provide such programs and services. Furthermore, state policy makers must meet this goal without significantly sacrificing the level of quality of such programs and services. When successful, privatization enables state government to meet growing demands for public programs and services despite limited resources.

Accordingly, private sector delivery of public services is expected to continue growing. Authors have used the terms “privatization,” “alternative service delivery,” and “entrepreneurial government” interchangeably. The literature has defined privatization in a variety of ways: transferring government functions or assets, or shifting of government management and service delivery, to the private sector; shifting from publicly- to privately-produced goods and services; engaging the private sector to provide services or facilities that are usually regarded as public-sector responsibilities; and attempting to alleviate the disincentives toward efficiency in public organizations by subjecting them to the incentives of the private market.

The literature has also defined privatization by revealing what it is *not*. If a private, not-for-profit entity relies solely or almost entirely on state dollars to provide a particular public program or service, privatization has not occurred. The public program or service is merely provided by a different entity other than state government. Similarly, if the state creates and funds only one private entity to provide the public program or service, then true competition is nonexistent and the “government monopoly” has simply become a “private monopoly.”

Over the past 3 decades, proponents and critics of privatization have engaged in extensive debate. Those who favor privatization envision it as a means of trimming government expenditures—a concrete method of curtailing public sector growth.

Retirement-Defined Contribution Programs

Up to the 2000 Legislative Session, the State of Florida administered three defined contribution programs: the State University System Optional Retirement Program (about 10,000 participants); the Senior Management Service Optional Annuity Program (fewer than 100 participants); and the Community College Optional Retirement Program (about 920 participants).

Legislation was passed in the 2000 Legislative Session requiring the Trustees of the State Board of Administration to establish and administer an optional defined contribution retirement program within the existing Florida Retirement System. Participation in the defined contribution retirement program will be in lieu of participation in the defined benefit retirement program. This legislation privatizes some portion of the public retirement system by authorizing the State Board of Administration to contract with private sector investment managers to invest the public pension funds under the Public Employee Optional Retirement Program. In addition, a new third party administrator will administer the optional program, potentially reducing the responsibility of the Division of Retirement.

Corrections

The Florida Legislature authorized the construction and operation of private correctional institutions in 1989. The purposes of correctional privatization are to reduce the costs associated with the state's inmate population and to identify innovative and effective approaches to corrections. The inclusion of private prisons within Florida's correctional system provides a comparison for evaluations of the quality and cost of public corrections. Private vendors operate five of Florida's prisons. One female prison is contracted through the Department of Corrections, while four male prisons are contracted through the Correctional Privatization Commission.

Education

Over the past 10 years, the public school system has steadily increased its contracting out such areas as food and custodial services, transportation and security.

Recently, TaxWatch did a study of privatization in the public school system. They found that a number of school districts have contracted for custodial services. Services range from management only (district staff or an employee of the private provider), to the full provision of services districtwide. In some instances, the private provider employs all management, supervisory staff, and employees. However, the usual mode is for existing employees, at the time of conversion to a private contractor, to remain district employees. Through growth (new schools) and attrition, new employees are employed by the private provider.

In some districts, building maintenance and grounds maintenance are also contracted. Similar variations as to the scope of the private providers' responsibilities (management only to full-service) and employee considerations (employed by the district or the private provider) exist in these services as in custodial services. In Florida, three districts have contracted for food services; two of these began in 1997.

Juvenile Justice

In 1994, the Florida Legislature created the Department of Juvenile Justice, one of the most privatized agencies in the country. This did many things, one of which was placing a greater emphasis on prevention and diversion programs, 85 percent of which were privatized. This privatization occurred as a result of a convergence of events: changing of social trends

combined with Florida's rapid population growth; the demand for de-institutionalization of our youth; and a lack of capacity to meet demands.

The state also recognized the intense labor needed to address the problems within juvenile justice. Some of the solutions were to turn to community-based, nonprofit organizations to identify problems, and work collectively with all government to address social issues. The state currently provides 2 percent of the services and programs, while 98 percent is provided by the private sector.

Department of Revenue

The Department of Revenue periodically contracts with private certified public accountants for auditing services, however, the Department sees the contracts as a leverage of resources, not as privatization. Another area privatized is the collection and disbursement of child support funds. The state was federally mandated to create the State Disbursement Unit, which is responsible for the collection and disbursement of child support.

The Department of Revenue contracts out for electronic funds transfer services, as well as for the Electronic Data Interchange, which retrieves data from private sources for tax purposes. The electronic services are relatively new and the use of contracting with private sources for these services is increasing. The Department of Revenue also contracts with private collection agencies for collection services periodically, when it would be more cost-efficient.

Health Care

In 1997, the Legislature authorized the Department of Children and Family Services to privatize the operation of the South Florida State Hospital, beginning with implementation by July 1, 1998. The contractor operates the hospital as a state-owned mental health institution that serves voluntary or involuntary committed indigent adults who meet Baker Act criteria or live in the service area.

An area where privatization has been federally mandated is at-home care for the elderly. The federal government has mandated that instead of the state paying home caregivers directly, funds be directed to local Agencies on Aging by contract. This federal mandate is part of the "Older Americans Act."

PERFORMANCE-BASED PROGRAM BUDGETING (PB²)

Introduction

After taking a hard look at the budget process for state agencies, the Florida Legislature decided to change the way it funds government programs. By enacting the Government Performance and Accountability Act of 1994, the state began moving from a process that emphasized expenditures by organization (factoring in additional tasking and inflation) to a process that emphasizes results.

The new PB² system links funding to agency products or services, and ultimately to results. This system not only identifies measures of key agency outputs, but also specifies outcomes that describe the extent to which programs are accomplishing their goals. In addition to defining programs and performance measures, the Legislature sets performance targets that are referred to as “standards” in the annual budget. The Governor and agencies report annually on the performance of programs.

PB² allows agency managers greater flexibility in using their resources when necessary, and provides rewards for achievement, or sanctions in case of failure. Florida has introduced the system in phases, and currently most of the scheduled entities are funded under PB².

Performance-Based Program Budgeting Background

Performance-based budgeting is the latest in a series of national and state budget reform efforts. Since the 1940s and 1950s, federal and state governments have initiated major budget reforms to increase the information basis and rationality of the budget process to improve government performance. Florida’s own reform efforts took shape in the late 1960s with a planning-programming-budgeting system, and were re-examined in the 1980s with the effort to integrate planning and budgeting, and have again returned to the forefront in the 1990s.

As early as the 1950s, academic articles from Florida institutions contrasted budgeting by objects of expenditure with budgeting by government functions and objectives. Such commentary noted that as the state’s needs become more complex, legislators need a budget that provides greater information. The 1967 State Planning and Programming Act introduced to Florida government the concepts of long-range state planning and short-range action programs.

With the 1969 statutory reorganization of Florida government came the legal requirement that each department compile a comprehensive program budget reflecting all program and fiscal matters related to the department and each program, sub-program, and activity.

Although the resulting program structure described the services and programs of state government, the effort to link planning to budgeting was relatively unsuccessful for some of the same reasons that national efforts failed. Interviews with staff involved in this effort indicate that Department of Administration budget staff were reluctant to abandon the line-item system that facilitated expenditure control in favor of long-range planning that did not take fiscal constraints into account.

Ideas of planning and measuring achievement by objectives were not embraced by the Legislature, and so were not central to the budget decision-making process. In the 1980s, the Legislature passed major legislation establishing the framework for strategic planning in Florida state and local government based on a state comprehensive plan. As with past efforts, this initiative has achieved limited results.

While past reform efforts have had some effect on the government budgeting process, they were not sustained for several reasons. First, the information requirements of these systems were extensive but were not supported by adequate historical record-keeping, staff expertise, or computer support for the type of analysis required, and typically collapsed under paperwork.

Second, requiring all programs to justify their existence under a system like zero-based budgeting was a laborious exercise that did not produce substantial resource reallocation. Third, these systems did not acknowledge the political choices inherent in budgeting, so they tended to have little impact on (political) funding decisions. Finally, prior reform efforts have often not had the backing from both the executive and legislative branches needed for any system to succeed.

Summary of Legislative Action Taken

Based on experience from past efforts, the Florida Legislature decided to change the way government programs are funded. By enacting the Government Performance and Accountability Act of 1994, the state began moving from a process that emphasized expenditures by organization (factoring in additional tasking and inflation), to a process that emphasizes results.

The new performance-based program budgeting (PB²) system links funding to agency products or services, and ultimately to results. This system not only identifies measures of key agency outputs, but also specifies outcomes that describe the extent to which programs are accomplishing their goals. In addition to defining programs and performance measures, the Legislature sets performance targets that are referred to as standards in the annual budget. The Governor and agencies report annually on the performance of programs.

A major adjustment in PB² is the passage of legislation in 1998 requiring agencies to include *unit cost* data in an annual submission to the Executive Office of the Governor. Whereas PB² has its primary impact on the improvement of quality, *unit cost measures* improve policy makers' ability to measure and compare program efficiency ("bang-for-the-buck").

The Key Players in the PB² Process

State agencies are responsible for administering programs funded under PB², but the Executive Office of the Governor and the Florida Legislature are two other key players, in addition to the Office of Program Policy Analysis and Government Accountability (OPPAGA).

The Office of Program Policy Analysis and Government Accountability

OPPAGA was created as a result of the same legislation that created PB², and is the primary oversight, review and accountability arm of the Legislature with regard to PB². As agencies implement PB², OPPAGA consults with them while they develop proposed PB² programs, providing feedback as agencies develop performance measures and standards. OPPAGA also advises the Governor's Office and Legislature about proposed PB² programs, measures, and standards, and conducts program evaluation and justification reviews, providing an accountability mechanism.

Implementation, Results and Impact

Currently, 33 state agencies are operating at least in part under a PB² budget. Each year agencies, the Legislature, the Executive Office of the Governor and OPPAGA work together to refine measures by adding, removing, or modifying them. In numerous cases, agencies have

restructured their organizations along program lines to accommodate the PB2 accountability structure.

Three examples of agencies that have restructured along program lines are the Florida Department of Law Enforcement (FDLE), the Department of Management Services (DMS) and the Department of Revenue (DOR).

FDLE has restructured its organization into four primary program components. They are the Investigations and Forensic Sciences, Criminal Justice Information, Criminal Justice Professionalism, and Business Support Programs.

DMS is now also organized into four primary program components, including the Support, Facilities, Information Technology, and Work Force Programs.

DOR is organized into the Property Tax, Administrative Services, General Tax Administration, Operations and Account Management, Information Services, and Child Support Enforcement Programs.

At this time, PB² has not been fully implemented, and its impact on the efficiency and effectiveness of state government is difficult to determine. However, the legislative and executive branches have demonstrated a sustained commitment to PB² not evidenced under past reforms.

BUSINESS REGULATION

Overview

The area of business regulation includes issues relating not only to the regulation of business by the State but also to the business climate in the state. Legislation designed to improve the business climate in the state includes efforts to reform the civil justice system and to limit state agency discretion to adopt rules to implement legislative mandates.

Recently, the Legislature's major consumer protection and regulatory initiatives have been directed toward addressing new economic challenges while improving Florida's general business climate. After Hurricane Andrew made private sector homeowners' and other property insurance coverage unavailable, the Legislature created a publicly supported insurance provider and a fund to back up the private sector's ability to pay claims. The entire workers' compensation law was restructured in response to a cost spiral that threatened the viability of many businesses. Unregulated areas of consumer lending have been brought under control. The Legislature has adopted initiatives to simplify telecommunications taxes and to enable Florida to take the fullest advantage of the opportunities offered by the Internet. In the face of financial declines in the pari-mutuel industry, the Legislature adopted significant regulatory reforms and tax reductions. For regulated nonmedical professionals, the Legislature recently authorized license fee waivers and began the process of privatizing regulatory support services.

CIVIL LITIGATION REFORM (TORT REFORM)

Introduction

Chapter 99-225, Laws of Florida, adopts comprehensive modifications to Florida's civil justice system. The law is the culmination of over 2 years of debate, hearings, and review of the litigation system by the Florida Legislature. It incorporates several provisions passed by the Legislature but vetoed by Governor Chiles in 1998, as well as some revisions of the 1998 proposals and new provisions.

Commonly known as "tort reform," the law creates or modifies many aspects of Florida's civil justice system, and provides for voluntary trial resolution, alternative dispute resolution, increased juror participation in trials, and other mechanisms that are designed to make the civil litigation process fairer and more efficient for all parties.

In particular, the law modifies the burden of proof, revises conditions affecting recovery, and reconfigures caps related to punitive damages; restricts subsequent punitive damage awards under certain circumstances; abolishes joint and several liability for non-economic damages in all cases; establishes new limitations and maximum liability amounts, which increase with a defendant's share of fault, on joint and several liability for economic damages; and limits the vicarious liability of certain motor vehicle owners or rental companies for damages due to the operation of the vehicle by short term lessees or other permissive operators.

Summary of Legislative Action Taken

The "tort reform" legislation arose out of a 2-year process of hearings and negotiation in the Legislature. The House Civil Justice & Claims Committee, then chaired by Representative Tom Warner, began hearings in September 1997 to develop the House version of the 1998 legislation. The committee received extensive testimony from academics, practitioners and policy advocates. A Senate select committee conducted similar hearings in early 1998.

The 1998 legislation, SB 874 (vetoed by the Governor), which is substantially similar to HB 775, was the result of these two independent processes. The chief differences between the 1998 and 1999 final bills are the details of the products liability, punitive damages, and joint and several liability provisions. The policies underlying the 1998 and 1999 bills are substantially the same.

Implementation

Governor Bush signed HB 775 (third engrossed) into law on May 26, 1999, and it is codified as chapter 99-225, Laws of Florida.

Results and Impact

Chapter 99-225, Laws of Florida is currently the subject of a constitutional challenge in Leon County Circuit Court. The plaintiffs make a number of arguments including, but not limited to, vagueness, violation of the right to access to courts, use of the taxing power of the state to aid private parties, and equal protection.

CREATION OF THE STATUTORY STANDARD FOR ADMINISTRATIVE RULEMAKING (ADMINISTRATIVE PROCEDURE ACT)

Agency rulemaking has been an issue before the Florida Legislature for almost 10 years. Recent amendments to the Administrative Procedure Act (APA) have limited agencies' discretion in adopting administrative rules to implement statutory mandates.

The 1996 revisions to the APA were a culmination of 5 years of legislative and gubernatorial efforts to address agency rulemaking. These efforts addressed concerns that agencies were not fairly treating persons regulated by these agencies when applying policies that affected the substantial interests of those persons. Prior to 1991, agencies did not necessarily adopt all policies affecting regulated persons. Agencies were allowed, through an appellate court decision, to adopt a rule when the agency believed that it had acquired sufficient knowledge of the situation to promulgate a rule that could be generally applied. The discretion provided through this decision was viewed by many as an abuse of the rulemaking authority granted in the APA, because it meant that all those regulated by the agency might not be treated in a similar manner; it was called "phantom government." To address this phenomenon, the Legislature enacted, in 1991, a provision in the APA stating that rulemaking was not a discretionary decision of the agency. Agencies were to initiate rulemaking as soon as it was feasible and practicable. This provision resulted in an explosion of rules adopted by state agencies. This situation, to the public, was no better than the phantom government of the previous years. In addition, judicial

decisions developed a lenient standard for determining the validity of proposed rules. A challenged rule would be deemed valid if it was found to be reasonably related to the implementing statute. Over the years, this “reasonably related” standard had been stretched so far that few, if any, rules would be found invalid if challenged. Thus the public felt that not only was it over regulated, but that no recourse was available to challenge the regulatory decisions.

Subsequent to the 1991 amendments to the APA, the Legislature conducted investigations into agency rulemaking. For several years, proposals were developed to limit agency discretion in rulemaking and to increase legislative oversight of agency rulemaking activities. In 1996, the Legislature passed a bill that reorganized and revised the APA, provided for uniform rules, and in general made the APA more accessible to the lay public as well as to attorneys who do not normally practice administrative law. Specific to this discussion, the 1996 bill included a provision that addressed the standard to be used by agencies when adopting administrative rules. The Legislature overruled the judicially created “reasonably related” standard in the 1996 legislation and created a statutory standard for rulemaking. This standard reads, in part, that “an agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. . . . Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.”

In 1997, the district courts of appeal provided an interpretation of the new rulemaking standard through three cases arising from challenges to proposed administrative rules. In the lead case, *St. Johns River Water Management District v. Consolidated-Tomoka Land Co.*, the court examined the application of the standard in an effort to resolve what it believed to be a conflict between the limiting nature of the standard and other provisions in the APA that stated that rulemaking was not a discretionary act. The facts in that case were that the petitioner land owners challenged proposed rules of the water management district that would create a regulatory subdistrict in the Spruce Creek and Tomoka River Hydrologic Basins, and would create new standards for managing and storing surface waters in developments within this basin. The Administrative Law Judge (ALJ) held that the proposed rules were not arbitrary or capricious, were supported by competent and substantial evidence, and substantially accomplished the statutory objectives. However, the ALJ found the rules invalid because they lacked the underlying statutory detail required by the new rulemaking standard. The water management district appealed on this issue.

The First District Court of Appeal reversed the ALJ’s final order, holding the proposed rules valid. The court applied a “functional test” based on the nature of the power or duty at issue and not on the level of detail in the language of the applicable statute. To the court, “the question is whether the rule falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented.” In applying this test, the court found that delegated legislative authority was to identify the geographic areas that required greater environmental protection and to impose more restrictive permitting requirements in those areas. The challenged rules fell within the class of powers delegated by the statute and therefore were a valid exercise of delegated legislative authority.

This interpretation was not well received in the Legislature and it expressed its disapproval through legislation passed in 1999. The legislation included a statement of legislative intent that disapproved the analysis of the *Tomoka* case but did not overrule the decision. The Legislature also amended the rulemaking standard to provide that an agency may only adopt rules that implement or interpret a specific grant of rulemaking authority. Several administrative decisions currently on appeal will provide the courts of appeal another opportunity to review the application of the rulemaking standard to proposed administrative rules.

PROPERTY INSURANCE

Summary of Legislative Action Taken

Background

Hurricane Andrew created a crisis in availability of property insurance for homeowners and businesses throughout Florida. With \$16 billion in insurance claims payments, Hurricane Andrew's costs were about twice as high as the then-existing consensus worst-case estimate for a Florida hurricane. Recognizing that their old loss projections were grossly understated and that Hurricane Andrew was not "the big one," but just one of the 10 Category 4 or 5 hurricanes to hit Florida since 1919, various insurance companies decided to restrict their exposure to future Florida hurricane losses. The result of these business decisions was that soon after Hurricane Andrew many property buyers could not obtain necessary insurance and many property owners could not get replacement insurance after being dropped by their property insurers.

Beginning with two Special Sessions in 1993 (the year following Hurricane Andrew), and continuing through recent years, the Legislature has repeatedly addressed both the short-term and the long-term aspects of the property insurance crisis caused by Hurricane Andrew. In the short term, the Legislature sought to assure that all Florida property owners or buyers could obtain reasonably priced property insurance. For the long term, the purpose was to restore a competitive private sector market that was capable of growing to meet the needs of a growing Florida population.

Insurers Of Last Resort ("Residual" Markets)

In order to assure that all property owners are able to obtain insurance, even where no private sector companies are accepting new business, the Legislature created one insurer of last resort and significantly expanded the role of another. These state-created entities function like insurance companies, except that instead of maintaining large amounts of capital and surplus, they have the ability to levy assessments on the general public.

The Residential Property and Casualty Joint Underwriting Association (RPCJUA) was created in the December 1992, Special Session. It is required by law to write a full homeowners' (or other property) insurance policy to any applicant who cannot obtain coverage from a Florida-licensed insurance company. When the RPCJUA's premiums and other resources are not sufficient to pay claims, the RPCJUA incurs debt by issuing bonds and levies assessments against all Florida property insurance policyholders to pay off the debt. Major amendments to the RPCJUA law

have included provisions facilitating lines of credit and other financial arrangements, and provisions intended to assure that the RPCJUA does not charge rates that compete with the private sector. The Legislature also authorized a series of incentives to encourage private sector companies to take over RPCJUA policies.

The Florida Windstorm Underwriting Association (FWUA) has been an insurer of last resort providing windstorm coverage (i.e., hurricane, tornado, hail, and other wind losses) in a limited coastal area since 1970, but it did not provide coverage in hurricane-prone Dade, Broward, and Palm Beach Counties until after Hurricane Andrew. Subsequent legislation provided for financing similar to the RPCJUA (i.e., the ability to levy assessments on non-FWUA policyholders to cover deficits), for rates that are not lower than private sector rates, for barriers to entry to assure that the FWUA did not take business away from the private sector, and for a freeze on further geographic expansion. When the FWUA provides windstorm coverage on a property, another insurer provides coverage for other perils, such as fire, theft, and liability.

Florida Hurricane Catastrophe Fund (“Cat Fund”)

The insurance that insurance companies buy to protect themselves against catastrophic claims is known as “catastrophe reinsurance.” The cost and availability of catastrophe reinsurance fluctuate greatly from year to year. In an attempt to assure a stable supply of reinsurance to protect Florida property insurers from catastrophic losses, to protect Florida property owners from premium increases based on rising reinsurance costs, and to attract new property insurers to the Florida market, the Legislature created the Florida Hurricane Catastrophe Fund. The Catastrophe Fund provides up to \$11 billion of catastrophe reinsurance in the aggregate to Florida residential property insurers in exchange for actuarially determined premiums, but the fund’s obligations apply only if the total residential insured losses in Florida exceed a statutory trigger of approximately \$3 billion. When the fund’s cash balance is not sufficient to meet the fund’s obligations, it may issue bonds and levy assessments of up to 6 percent on all property and casualty insurance premiums (including homeowners’, auto, and liability) other than workers’ comp. The Internal Revenue Service has ruled that the fund is exempt from federal income tax and that its bonds are to be treated the same as tax-free municipal bonds.

Ratemaking

After Hurricane Andrew, methods of ratemaking for property insurance became controversial. Old ratemaking methods did not take into account such factors as Florida’s dramatic population shifts or the long-term cyclical nature of the hurricane threat, and therefore produced inadequate rates. The actuarial community was nearly unanimous in the view that computer models offered the best assurance that rates were neither inadequate nor excessive, while regulators rejected any method that indicated significant rate increases. In order to resolve the controversy, the Legislature created the Florida Commission on Hurricane Loss Projection Methodology (Commission) to provide continuing expert review of hurricane loss models. The Commission’s findings are admissible and relevant in any rate proceeding.

Moratorium On Hurricane-Related Cancellations And Nonrenewals

In 1993, the Legislature responded to several insurers' threats to leave Florida by enacting a 3-year moratorium on hurricane-related cancellations and nonrenewals. Insurers were limited to dropping no more than 5 percent of their policies (no more than 10 percent in any one county) a year for reasons of reducing hurricane losses. The moratorium has been extended over the years, and is now set to expire on June 1, 2001.

Implementation

There are no current implementation issues in this area.

Results and Impact

A private sector property insurance market exists today in all but the most vulnerable areas of the state. At the peak of the property insurance crisis in late 1996, private sector property insurance coverage was unavailable in most of the state and nearly 1 million Florida homeowners, in both coastal and inland areas, were able to obtain coverage only through the RPCJUA and another 300,000 coastal homeowners could obtain coverage only through the FWUA. Today, private sector insurance coverage is again available almost everywhere except in Dade, Broward, Palm Beach, and Monroe Counties and in limited coastal areas of other counties. Today, the FWUA insures approximately 425,000 properties with a combined insured value of \$88 billion; two-thirds of the FWUA's exposure is in Dade, Broward, Palm Beach, and Monroe Counties. The RPCJUA today insures approximately 60,000 properties with a combined insured value of \$9.5 billion, almost entirely in Dade, Broward, and Palm Beach Counties. Except for these 485,000 properties, private sector insurers cover all other Florida properties. The restoration of the private market was in part the result of incentives to depopulate the residual market, and in part the result of significant premium increases that reflected current information about hurricane costs.

Premiums for residual market coverage have also increased significantly, but the RPCJUA and FWUA continue to impose costs on holders of private sector property insurance policies. Even though the Florida hurricanes in recent years have been relatively minor, since 1995 the RPCJUA has levied \$41 million in assessments on the public and the FWUA has levied \$217 million in assessments on the public. Although recently-approved rate increases reduce the potential size of future FWUA assessments, the FWUA's projected losses from a 100-year hurricane are still more than 10 times as high as their projected annual premium revenues, and any major hurricane is expected to result in major assessments.

The Catastrophe Fund had a balance of \$3 billion as of the beginning of 2000, and projects a balance of \$3.6 billion at the end of the year (presuming no significant hurricane losses during the year). The fund is able to issue up to \$7.4 billion in bonds if needed.

The Florida Commission on Hurricane Loss Projection Methodology annually reviews commercially available hurricane loss projection models to determine whether they meet a detailed set of criteria. This review has included examination of proprietary information that had

previously been kept confidential by the modeling companies. There are currently five models that have met the Commission's standards for reliability.

WORKERS' COMPENSATION

Summary of Legislative Action Taken

Background

Double-digit rate increases in the early 1990's culminated in a legislative overhaul of the workers' compensation system in 1993. Except for a few narrowly tailored bills enacted within the last few years, Florida's current workers' compensation system is largely the product of the Legislature's major reform effort from 1993. Legislation since 1993 has focused on areas such as the Special Disability Trust Fund (SDTF), fraud, and funding of system administration.

Workers' Compensation Act of 1993

The Workers' Compensation Act of 1993 represented a substantial rewrite of the workers' compensation laws in a number of areas, including: managed care, indemnity benefits, attorney's fees, dispute resolution, residual market, the SDTF, workplace safety, and fraud. Some of the key changes included: mandatory use of managed care for the delivery of medical benefits, effective January 1, 1997; limiting permanent total disability benefits to certain catastrophic injuries; reducing the cap on temporary disability benefits; eliminating wage-loss benefits; reducing the attorney's fee schedule; enhancing the informal dispute resolution functions of the Division of Workers' Compensation; expediting the formal dispute resolution process; creating a self-funding joint underwriting association as an insurer of last resort for employers having difficulty obtaining workers' compensation insurance; requiring certain employers to rehire injured employees; delineating conduct constituting criminal fraud; authorizing the Division to issue stop-work orders and civil penalties to employers that fail to obtain workers' compensation coverage; authorizing premium credits for employers implementing safety programs; shifting regulatory responsibility of self-insurance funds from the Division to the Department of Insurance; and creating the Workers' Compensation Oversight Board.

Subsequent Revisions to the Workers' Compensation Act

Since the passage of the 1993 Act, the Legislature has revised the workers' compensation act in a few areas, as indicated below.

Special Disability Trust Fund. The Legislature terminated the SDTF for accidents occurring on or after January 1, 1998, and capped the SDTF assessment rate at 4.52 percent.

Fraud and Noncompliance. In 1997, the Statewide Grand Jury and the Workers' Compensation Oversight Board issued reports and recommendations on workers' compensation fraud. In response, the Legislature revised provisions relating to exemptions, increased the criminal penalties for workers' compensation fraud, increased the statute of limitations for prosecuting

workers' compensation fraud cases, and granted the Division investigatory and subpoena powers.

Funding of Administration. The Legislature clarified that the terms "net premiums written" and "net premiums collected"-the bases for the SDTF and Workers' Compensation Administration Trust Fund (WCATF) assessments, respectively-include premiums ceded to reinsurers. Also, beginning July 1, 2001, insurers are required to report the full premium value of large deductible policies for the WCATF assessment. On January 1, 2000, the cap on the WCATF assessment was reduced from 4 percent to 2.75 percent.

Implementation

There are some areas of the 1993 reform that remain unimplemented. For example, the Division of Workers' Compensation has not enacted rules on employer sanctions for failing to observe obligation to rehire requirements, and the Office of the Judge of Compensation Claims has not adopted uniform rules of procedure and performance measures. Implementation challenges remain in other areas of workers' compensation, including enforcement of the managed care requirement, which affects the degree to which employers provide medical care through approved managed care arrangements.

Results and Impact

The 1993 reforms have reduced rates and reduced the size of the residual market for workers' compensation coverage. Other results are less clear.

Rates

Compared to 1993 rates, the workers' compensation rates are 17.3 percent lower in 2000 (rates were as much as 25.1% lower than 1993 rates in 1998).

Attorney Involvement

In 1993, the Legislature created the Employee Assistance and Ombudsman Office (EAO) in the Division of Workers' Compensation to assist in the informal resolution of disputes without the accrual of attorney's fees. According to the division, attorneys file 95 percent of requests for assistance (which initiate the EAO process). In 1994, 30,400 employees filed 41,268 petitions for benefits (which initiates formal dispute resolution). In 1998, 35,003 employees filed 96,791 petitions for benefits.

Dispute Resolution

According to the 1993 reform, the dispute resolution process should take 120 days from beginning to end. According to a House Committee on Insurance interim report, dispute resolution actually takes an average of 268 days (excluding settled cases, which are estimated in the report to be 85% of all litigated cases).

Residual Market

The amount of premiums written by the Workers' Compensation Joint Underwriting Association in 1999 was \$6.4 million, down from \$328.2 million in 1993.

CONSUMER LENDING

Summary of Legislative Action Taken

Background

A growing number of people are using nonbank entities such as title loan companies, pawnbrokers, and "payday lenders" as sources of emergency cash.

In 1995, legislation was passed that allowed some secondhand dealers to engage in motor vehicle title loans. The borrower maintains physical possession of the motor vehicle and the lender holds the motor vehicle title. Because the title lender does not physically hold the motor vehicle, the transaction is classified as a title loan and not a pawn. At that time, secondhand dealers were permitted to charge a maximum fee (as distinguished from an interest rate) of 22 percent per month on a title loan transaction. There was no prohibition against capitalizing (same effect as compounding) the 22 percent rate. This capitalization, or "roll-over" of the agreement, seems to have caused consumers the most trouble as interest rates, per annum, have been estimated by some accounts to be as high as 296 percent.

2000 Legislation

Legislation was passed in the 2000 Legislative Session, which provided: agency oversight by the Department of Banking and Finance (DBF); interest rates that mirror those in the consumer finance loan statute (chapter 516, F.S.); criminal penalties for violators of the act; and interest rate disclosures mirroring those of the Federal Truth in Lending Act. In short, the overall effect of the bill was to reduce the amount of interest currently charged to each consumer and, in addition, to establish a regulatory framework for the title loan industry that provides consumer protections.

Implementation

The DBF has not yet noticed for a rules workshop, but anticipates one will be held in August 2000.

Results and Impact

Action by the Legislature appears to have put a damper on the growth of the title loan industry. However, the need for nonbank loans remains. Apart from a title loan, a person in need of cash and lacking traditional lending sources could get a "payday loan" through a person licensed by the DBF under Part II of chapter 560, F.S., as a check casher. Under the statute, a check casher may charge up to 10 percent of the face amount of a personal check as a fee for the service of

cashing the check. A practice has begun whereby the check casher accepts a post-dated check or agrees to wait a certain number of days before cashing the check. If a licensed check casher defers the presentment of the check for a period of time the transaction appears to have the characteristics of a loan, and it is the department's position that, although the statute does not expressly prohibit this, it is probable the drafters of the legislation did not contemplate this practice.

It is the DBF's position that licensed check cashers are not permitted to execute "roll-overs" of these transactions because the resulting compounding of interest would clearly convert the transaction into a type of loan not authorized by any Florida statute. Should a licensee engage in a roll-over, the DBF maintains that such action is a regulatory violation which could result in civil penalties and a criminal violation of chapter 687, F.S., should the interest rate exceed 18 percent per annum.

In the 2000 Legislative Session, the Legislature attempted, but failed to pass a bill regulating this practice. The DBF has scheduled a rules workshop for check cashers on July 17, 2000.

TELECOMMUNICATIONS AND TECHNOLOGY

Summary of Legislative Action Taken

Telecommunications

In 1995, the Legislature adopted a comprehensive rewrite of the law governing telecommunications. That rewrite was followed by passage of the federal Telecommunications Act in 1996. The Florida Act was intended to open the local telephone exchange market to competition and streamline its regulation.

The Florida Act opened the local exchange market by authorizing alternative local exchange companies to provide telecommunication services in territories that were served by the three largest local exchange companies (Sprint, GTE, and BellSouth). The Florida Act allowed each of those companies to either continue rate-of-return as the method of ratemaking or adopt price cap regulation. All have elected price cap regulation. (Price cap regulation capped the local exchange companies rates for basic local telecommunications service at the rates in effect on July 1, 1995.)

The smaller companies may stay under rate-of-return regulation until they either elect price regulation or January 1, 2001, whichever occurs first. After January 1, 2001, a smaller local exchange company may continue rate base regulation only until an alternative company is certificated to operate in its territory.

The Legislature recognized that full competition may not immediately occur, and therefore protected residential and business customers by capping rates of basic local telecommunications services for GTE and Sprint until January 1, 2000, and limiting rate increases after that date.

The Florida Act also maintained Universal Service requirements for local telephone service along with Carrier of Last Resort responsibilities of the local exchange companies. Universal Service is the concept that everyone who wants local telecommunications service should have access to that service at just, reasonable, and affordable rates. The Carrier of Last Resort requirement mandates that the local exchange company furnish basic local telecommunications service within a reasonable time to any person requesting such service within the company's service territory. These requirements have now been extended through January 1, 2004.

The original Florida Act provided for a gradual reduction in the amount of access charges. (Access charges are charges paid by the long distance companies to the local exchange companies for the use of their networks.) This section was amended in 1998 to provide for Sprint and GTE to reduce their access charges by a total of 15 percent. The annual reductions were eliminated.

In 1998, the Legislature enacted laws to protect consumers from both slamming and cramming. Slamming is the unauthorized changing of a customer's long distance carrier. Cramming is placing charges on a customer's bill for services that were not ordered. The Public Service Commission (PSC) has adopted rules to protect consumers from these practices.

During the 2000 Legislative Session, the Legislature passed CS/CS/CS/SB 1338 (chapter 2000-260, Laws of Florida), which established a unified communications taxation scheme for the state. This legislation combined the different types of communications taxes and fees into one tax to be divided between the state and local governments. The legislation combines the sales tax on communications services, the local public services tax, local franchise and permit fees on telecommunications companies and cable companies, and allocates the gross receipts tax on communications into a single taxing scheme. This will be administered by the Florida Department of Revenue and distributed to the Public Education Capital Outlay Fund, the General Revenue Fund and to local governments.

Internet

In 2000, the Legislature enacted major legislation addressing the ways businesses and state government use the Internet.

The law adopts the Uniform Electronic Transactions Act to facilitate Internet-based commerce by specifying the criteria that must be met in order for contracts signed over the Internet to be binding. The new law also requires each county to establish an Internet-based index of public records.

The law establishes the State Technology Office within the Governor's Office and provides duties of the new Chief Information Officer. The law also allows the state to accept credit card payments over the Internet and to use the Internet in the procurement process.

The new law also requires Enterprise Florida, Inc. to engage in a campaign to attract, retain, and grow information technology businesses in Florida, and creates incentives for the establishment

of a network access point in the state. A Network Access Point (NAP) is a switching facility that acts as a point for exchange of Internet traffic served by different Internet Service Providers.

Results and Impact

The telecommunications industry in Florida is continuing its transition to a competition market from a regulatory scheme. There are many alternative local exchange companies certificated in Florida, primarily to compete for the business customer. There are very few, if any, competing for the residential customer at this time. The telecommunications industry continues to be a declining cost industry as new innovations reach the market.

PARI-MUTUELS

Summary of Legislative Actions Taken

Background

Pari-mutuel wagering is a system of betting where all the money wagered is combined in a single pool. A portion of the money is withheld; the rest is paid to the winners. The takeout – the portion not returned to the bettors – is split in some manner between the track, the state, and purses for the players or racing animals. As a matter of custom, when the reference is made to pari-mutuel wagering, it is generally understood to mean wagering on horseracing, dog racing, or jai alai games. These groups collectively make up Florida's pari-mutuel industry.

Over the last decade, there has been a steady decline in attendance and wagering handle for horseracing, dog racing, and jai alai games. ("Wagering handle" means the aggregate contribution to a pari-mutuel pool; i.e., the total of all dollars wagered.) The trend has resulted in lower state revenues from pari-mutuel activities. Total state revenue collections from all pari-mutuel operations alone have decreased from \$118,466,567 in FY 1988-89 to \$62,934,837 for FY 1998-99. Likewise, over the past decade, numerous amendments to the pari-mutuel statutes have been adopted in efforts to mitigate the impact of this decline.

Recent Legislation

Major legislation enacted in 1996 established minimum purse requirements, implemented tax savings by creating daily license fee tax credits for greyhound permit holders, implemented additional annual tax savings of up to \$500,000 each for greyhound permit holders in the panhandle and \$360,000 each for other greyhound tracks, and authorized card rooms at pari-mutuel facilities. The tax relief provided by the 1996 legislation was approximately \$15,000,000 annually.

The 1996 revisions also provided increased opportunities for intertrack wagering and full-card simulcasting. Intertrack wagering allows a Florida permit holder to accept wagers on pari-mutuel events broadcast from another Florida pari-mutuel facility. With full-card simulcasting, a Florida permit holder may receive and broadcast an out-of-state pari-mutuel facility's entire schedule of horse races, dog races, or jai alai games.

In 1998, the Legislature addressed tax relief for greyhound permit holders once again by allowing permit holders who are unable to utilize their tax credit fully to transfer, for eventual reimbursement, the unused credit to another greyhound track. Among its other provisions, that legislation also required purse and reporting requirements for host greyhound tracks sending simulcast and intertrack broadcasts outside the market area; clarified that greyhound permit holders must pay purses when conducting intertrack wagering on any day falling within a race meet; and, provided a formula for the weekly disbursement of purses.

Most recently, in the 2000 Session, the Legislature extended approximately \$20 million in additional tax relief to the pari-mutuel industry by reducing tax rates and providing tax credits for the various classes of permit holders. This latest reduction in taxes is anticipated to reduce total state revenues from pari-mutuels for FY 2000-2001 to approximately \$35 million.

Implementation

There are no current implementation issues in this area.

Results and Impact

The legislation described above is too recent to determine the extent to which it may have enhanced the long-term survival of the pari-mutuel industry. The amounts of the tax reductions are specified in "Summary of Legislative Actions Taken" under the Pari-Mutuels section on the previous page.

ALCOHOLIC BEVERAGE SURCHARGE

Summary of Legislative Action Taken

Over the last four years, Legislative efforts to provide tax relief to the Alcoholic Beverage industry have been aimed at eliminating entirely or at least reducing the alcoholic beverage surcharge, which has been the subject of much controversy and debate since its inception in 1990. In 1997, the Legislature enacted a conditional repeal of the surcharge, but the conditions that would have triggered the repeal never materialized. The Legislature took a different approach in the 1999 Session – a phased in repeal of the surcharge. Legislation was passed which reduced the surcharge by one-third, cutting the levy on each ounce of liquor and 4 ounces of wine from 10 cents to 6.67 cents, on each 12 ounces of beer from 4 cents to 2.67 cents, and on each 12 ounces of cider from 6 cents to 4 cents. This reduction had an annual tax relief impact of approximately \$37.7 million. The Legislature in the 2000 Session continued the phase-in of tax relief by reducing the surcharge by one-half. The annual tax relief impact of the latest reduction equals about \$39.7 million.

Results and Impact

The amount of the tax reduction is specified in "Summary of Legislative Actions Taken," above.

PROFESSIONAL REGULATION

Summary of Legislative Action Taken

License Renewal Fee Waiver

The Department of Business and Professional Regulation (DBPR) licenses approximately 676,000 individuals practicing in 22 non-medical professions in Florida. These professionals must renew their licenses every 2 years, along with paying a renewal fee. As of July 1, 1999, the Professional Regulation Trust Fund showed a balance of approximately \$43.6 million. The DBPR studied each profession's account within the fund and determined that 14 of the 22 profession's accounts had sufficient balances to pay for the cost of regulation for 2 years. Based on these findings, the 2000 Legislature gave DBPR authority to waive licensure renewal fees for up to 2 years when BBPR determines that a profession's account balance warrants such a waiver.

Privatization of Regulatory Support Services

The DBPR provides support services, such as issuing licenses and collecting fees, to all of the professional boards except the Board of Professional Engineers. The 1997 Legislature statutorily established a nonprofit organization to provide all support services to that board.

At the request of professional engineers, the 2000 Legislature allowed the nonprofit corporation to continue providing support services to the Board of Professional Engineers. However, the law was changed to ensure the nonprofit corporation spends public funds prudently, and is fully accountable for its actions. The 2000 Legislature also took DBPR's recommendation in authorizing the privatization of support services to the other boards. The act requires DBPR to enter into a contract by October 1, 2000, with a private company to provide support services to the Board of Architecture and Interior Design. To help with the company's start-up costs, \$500,000 was appropriated.

Implementation

The DBPR intends to waive licensure renewal fees for 14 regulated professions in 2000 and 2001. Implementation issues with respect to privatization of support services have not yet arisen.

Results and Impact

The fee waiver will save approximately 250,000 licensees a total of approximately \$15.5 million in license renewal fees, in lieu of the trust fund continuing to increase its balance. Privatization of regulatory support services, as authorized in 2000, has not yet been implemented.

ECONOMIC DEVELOPMENT

Overview

Florida is one of the fastest growing states in the country. The state's population has more than doubled since 1970 to more than 15 million people, and is expected to grow to about 20 million by 2020. The number of visitors to Florida has grown from 39.9 million in 1994 to over 50 million in 1999. Tourism/recreation taxable sales alone have increased from \$33.49 billion to \$46.7 billion, and sales tax revenues have increased from \$2 billion to nearly \$3 billion during those same years.

The intense race to maintain existing market share for new industry technology, tourism, sports, and entertainment has forced Florida to rethink how it approaches economic development. When compared to the economies of other nations, Florida's economy ranks sixteenth. A positive business climate is conducive to attracting new industries, both nationally and internationally, as well as increasing the state's existing industries. One factor contributing to a positive business climate is the use of tax cuts and tax incentives to encourage business development. Other factors include workforce development efforts for the training and retraining of Florida's citizens, construction of infrastructure to attract tourists and business clients to the state, importing and exporting of goods and services, maintenance of the quality of life for the citizens of the state, and protection of the state's natural assets.

Florida has made both short-term and long-term business growth top priorities of its economic development efforts. Fulfilling the economic growth potential of both rural counties and urban communities is a goal of these initiatives. Additionally, the state has examined its own structure to determine how programs and requirements could be consolidated, eliminated, or privatized through public-private partnerships to more efficiently serve business and the needs of the state.

Three primary parts of the state's economic growth and well-being are: (1) business development and international trade; (2) tourism, sports and entertainment promotion, marketing, and development; and (3) transportation. These areas are critical as Florida's economy moves into the next century. Business development, trade, and tourism initiatives are integral to efficient transportation systems encompassing highways and shipping and transportation by air, rail, public transportation, and water.

Over the past 5 years, major legislation was passed based on a central theme of continued economic growth and addressed the elements to give Florida a positive business climate.

ENTERPRISE FLORIDA, INC.

Summary of Legislative Action Taken

In 1992, Enterprise Florida, Inc., was created as a nonprofit public-private partnership responsible for the development of Florida's economy. While not a state agency, Enterprise Florida, Inc., receives state funding matched by private contributions and is one of several public-private partnerships organizationally assigned to the Governor's office. In 1996, the

Department of Commerce was abolished and Enterprise Florida, Inc., was designated as the sole economic development entity primarily responsible for creating and retaining healthy businesses offering jobs for Florida's citizens. In 1999, the organizational structure of Enterprise Florida, Inc., was substantially streamlined.

Implementation

Enterprise Florida, Inc., markets Florida for potential business investment and assists in the retention and expansion of existing businesses. It assists in the identification and development of new economic development opportunities for job creation. Enterprise Florida, Inc., assesses Florida's competitiveness as compared to other states and incorporates the needs of minority and small businesses into its core functions of economic, international, and workforce development.

Enterprise Florida, Inc., promotes business formation, expansion, recruitment, and retention through marketing, international development and export assistance, and workforce development. Significant importance is placed on the promotion of long-term economic development of the state, market research, and the generation of foreign direct investment in Florida.

Results and Impact

Enterprise Florida, Inc., has been integral to the state's economic development strategy. Its efforts have assisted in increasing business startups in Florida's booming economy. More than 65,000 new businesses have started operations in Florida since 1994, an average of more than 13,000 per year. The state's ratio of business starts to failures is five successful businesses for each failed one. This ratio exceeds the national average of one failed attempt for each two starts. Tax receipts continue to rise at over 6 percent per year with both gross state product and personal income out-pacing the national average.

WORKFORCE DEVELOPMENT

Summary of Legislative Action Taken

In 1996, the Legislature established the state Workforce Development Board of Enterprise Florida, Inc., as the entity responsible for overseeing workforce development activities. In addition, the legislation provided for the chartering of regional workforce development boards and for the establishment of one-stop career centers that provide coordinated, customer-focused services.

As a leader in workforce development, Florida's workforce system was aligned with the requirements of federal legislation passed in 1998 changing the national policy governing job training and other workforce activities. The state's system incorporated the federal principles of better integration of services, individual empowerment, universal access, increased accountability, strong roles for local workforce partners and the private sector, state and local flexibility, and improved youth programs.

The 2000 Legislature reorganized the state and regional workforce development and welfare transition (WAGES) systems to create the Agency for Workforce Innovation. It also consolidated the current Workforce Development Board and the state WAGES Board into a private nonprofit entity called Workforce Florida, Inc., to develop workforce policy for the Agency for Workforce Innovation and regional workforce boards. The regional workforce development boards and WAGES boards are merged into regional workforce boards.

The workforce development and the unemployment compensation programs and functions in the Department of Labor and Employment Security were transferred to Workforce Florida, Inc. Also, workforce transition and support components of the WAGES program (e.g., child care, transportation, education and job training) were transferred from the Department of Children and Family Services to the Agency for Workforce Innovation to provide assistance in job retention and economic stability for persons leaving the welfare system.

Implementation

During fiscal year 2000-2001, programs affected by the reorganization will be transferred to the newly created Agency for Workforce Innovation within the Department of Management Services. The Department of Labor and Employment Security will develop plans to accomplish its revised mission based on a legislatively mandated reduction in workforce. The Agency for Workforce Innovation will contract with the Department of Revenue to provide unemployment tax collection services by January 1, 2001. The Office of Program Policy Analysis and Governmental Accountability will conduct two studies over the next 2 years relating to privatization of unemployment tax services and improved efficiency within the apprenticeship program.

Results and Impact

The 2000 reorganization enhances the relationship between the workforce development system and the business community by: identifying workforce needs of employers; linking students and other persons seeking employment with employers through the use of Internet-based technology; providing training opportunities for incumbent workers with special emphasis on small business needs; and directing resources to activities that support economic development. Placing the administration of the state's workforce development activities under a single agency is designed to make the state's workforce development efforts more effective and efficient. Increased coordination of activities and a singular focus on developing a trained workforce will make Florida a more attractive place for businesses. The ultimate result is to more adequately equip Florida's potential employees with technical or professional skills, as well as ensure adequate literacy skills, a strong work ethic and good work habits to meet the needs of Florida employers.

FLORIDA'S TAX ADVANTAGES

Summary of Legislative Action Taken

In the past 6 years, the Florida Legislature has enacted many legislative measures to lessen the tax burdens imposed on businesses in order to increase the likelihood that existing businesses in

Florida will survive, grow and prosper, that new businesses will develop in Florida, and that businesses in other states and countries will relocate to or establish a presence in Florida. One example is the legislation that was enacted in 1998 and 1999 to reduce unemployment compensation taxes. Those reductions were made in recognition of the excess tax revenue that had and was continuing to accumulate in the Unemployment Compensation Tax Trust Fund as a result of unnecessarily high tax rates being imposed on Florida businesses. That reduction of unemployment compensation taxes lowered the overhead costs of operating Florida businesses and allowed Florida businesses to operate more profitably. Other examples are the many legislative measures that have been enacted in recent years to exempt certain business transactions from the imposition of sales and use taxes.

In 1999 and 2000, legislation was enacted creating tax holidays for retail consumers. That legislation exempted the imposition of sales taxes on retail sales of clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of \$100 or less for a certain number of days in August immediately preceding commencement of the school year for public schools in Florida.

In 2000, the Florida Legislature also enacted legislation that reduced the taxes imposed on intangible personal property from 1.5 mills to 1 mill and exempted the value of accounts receivable from imposition of any intangible personal property tax.

Results and Impact

Florida's business climate has improved over the course of the past few years allowing businesses to be more productive, reinvest in themselves, and enhance the state's healthy economy. As a result, state revenues have been sufficient to allow the largest tax cuts in history over the past two legislative sessions: \$945 million in 1999, and \$455 million in 2000.

TOURISM PROMOTION & MARKETING: FLORIDA COMMISSION ON TOURISM AND VISIT FLORIDA

Summary of Legislative Action Taken

In 1996, the Department of Commerce was dismantled and the responsibilities for domestic and international promotion and marketing of tourism for Florida were transferred to the newly created public-private partnership composed of the Florida Commission on Tourism (Commission) and a not-for-profit corporation known as the Florida Tourism Industry Marketing Corporation (FTIMC). The Commission is authorized to adopt policies governing tourism. FTIMC is charged with the responsibility for implementing the policies adopted by the Commission by marketing the state in accord with the Commission's 4-year marketing plan. By December 31, 1996, the Commission contracted with FTIMC to perform those functions. The law that made these changes authorized adoption of the marketing plan to give the partnership the ability to make its own decisions. With the following caveats, the plan had to include: an emergency response component; a requirement that the private sector reach a targeted one-to-one match of private to public contributions within four calendar years; a plan to address Florida's Official Welcome Centers being transferred from the Department of Transportation to FTIMC

within 3 years to complete the privatization of all state tourism efforts and staff; and, performance standards and measurable outcomes. The law authorized FTIMC to adopt an incentive plan to boost private contributions, a membership plan for private participation in the corporation, and a plan for strategic alliances. The reporting of measurable outcomes included quarterly business reports with release of state funds tied to realization of certain objectives; legislative review of the marketing plan, the partnership contract, and standards and outcomes; and legislative performance reviews in 2000 and 2003 to determine continued state funding.

A Commission advisory committee was required to develop a plan by December 1997 for promotion and protection of all of Florida's tourism assets, including nature-based and heritage. In 1999, the law was amended to specify elements for calculating the one-to-one match, clarify Commission staffing, reestablish the advisory committee, require the marketing plan to include nature-based and heritage tourism components, and transfer the Welcome Centers Office.

Implementation

By January 1, 1997, transition to a public-private partnership was finalized. The Commission signed a contract with the Governor's Office of Tourism, Trade, and Economic Development. FTIMC had been incorporated, a contract signed, offices set up, staff hired, and the first marketing plan had been submitted for review.

Since then, FTIMC has been doing business as VISIT FLORIDA. The logo *FLAUSA* was licensed for exclusive use by VISIT FLORIDA in its advertising programs. Products such as tee shirts, beach bags, hats, cups, disposable cameras, etc., are sold through licensed vendors. Strategic alliances have been formed with airline, rental car, telephone card, charge card, and bottled water companies to become the official representatives to bear the *FLAUSA* logo. Money from product sales and use of the designation are used to meet the private sector match and fund marketing efforts. VISIT FLORIDA solicits businesses of all sizes to become partners. For a fee, it will in return provide market information, assistance in information distribution, etc.

VISIT FLORIDA instituted a toll-free telephone line for visitors to call for travel information. Visitor guides have been published in several languages and are distributed worldwide. Web pages have been developed specifically for visitors, businesses, partners, and journalists with linkages to local county tourist and business web pages and state agency and other partnership web pages. Marketing and promotion is handled by employees in the VISIT FLORIDA main office and by staff strategically located throughout the state and the country. The strategic plan was developed addressing state visitation after natural disasters or emergencies.

In December 1997, the Ecotourism/Heritage Tourism Advisory Committee presented its plan to protect and promote the state's natural, heritage, and other assets. The plan and activities of the advisory committees brought about the following: an ecotourism/heritage tourism committee with over 300 volunteers and a rural task force in VISIT FLORIDA; an office in VISIT FLORIDA dedicated to the marketing, promotion and research of those areas; an inventory of the state's natural and heritage/cultural assets built from the local level; a variety of publications on these assets; research projects dedicated to these tourism areas; grants to counties for inventory collection and advertising; marketing and packaging workshops and a "how-to"

manual for counties; and dedication of \$150,000 for assistance in developing and implementing a marketing program for five pilot projects in rural counties with limited or no tourist tax funding.

Results and Impact

Florida's partnership structure has become a model for other states for improving funding and flexibility to meet changing market demands. The structure has allowed the partnership to react quickly to business changes and natural disasters, and not be hampered by government red tape. The partnership has exceeded the required one-to-one private to public match. Florida has grown from a \$14 million tourism program in 1995 to a program valued at \$54.8 million in June 1999, of which \$22 million is state dollars. VISIT FLORIDA partners have grown from 70 in 1996-1997 to 2424 in 1999-2000, generating over \$2 million in fees.

Nature-based and heritage tourism marketing and promotion are receiving more attention. Florida is the first state to compile a comprehensive inventory of these resources. VISIT FLORIDA has dedicated almost \$3 million to support nature-based and heritage tourism efforts.

The partnership has consistently met the statutorily mandated, performance-based budgeting, and contract requirements. Fulfillment of the requirement to add nature-based and heritage tourism to the marketing plan is in the process of being realized. In the 2000 Legislative Session, the Office of Program Policy Analysis and Government Accountability recommended that return on investment measures be developed and used to determine the cost-effectiveness of the tourism partnership. The research office of VISIT FLORIDA is now developing measures.

TRANSPORTATION: TRANSPORTATION FUNDING & MOBILITY 2000

Summary of Legislative Action Taken

The 2000 Legislature addressed Florida's transportation infrastructure needs by passing major transportation legislation that included increased transportation dollars to fund five new transportation programs. These programs included the Mobility 2000 initiative, the State Infrastructure Bank, the Transportation Outreach Program, the County Incentive Grant Program, and the Small County Outreach Program.

Transportation Funding

Over \$2.5 billion of additional transportation funding was provided over a 10-year period without raising taxes. For many years, a portion (7.3%) of gas tax collections and motor vehicle fees has been diverted from transportation projects to other general needs of the state. For example, the General Revenue Fund service charge for various state gas tax collections totaled more than \$100 million in fiscal year 1998-99 and was used for a number of non-transportation purposes. Modifications to law provided for a portion of these diversions from various taxes and fees that have a direct nexus with transportation to be deposited to the State Transportation Trust Fund to fund state and local transportation needs. Approximately \$2 billion of these diverted transportation user taxes will provide a majority of the additional transportation funding over a 10-year period.

Additionally, \$605 million of direct General Revenue funds generated from the state's growing economy are to be appropriated over 3 years and invested in transportation facilities.

Federal law allows states to borrow against future year apportionments of federal funds for the payment of debt service on bonds issued to fund federal-aid transportation projects. In 1999, the Legislature authorized a bond program for Federal Aid Highway Construction that allows for a pledge of up to 10 percent of the state's future federal-aid allocations as payment for debt service with a maximum term of 12 years. A total of \$325 million of Grant Anticipation Revenue Vehicle (GARVEE) bonds should be issued between 2005-2007 to help fund Mobility 2000 projects. These bonds will be paid with future federal transportation funds, which will commit about 3 percent of future federal funds for bond repayment.

Mobility 2000 Initiative

The transportation initiative known as Mobility 2000 advances over \$4 billion of major transportation improvements to the Florida Intrastate Highway System (FIHS) planned over 20 years to be advanced from 1 to 10 years. The FIHS is important to Florida's economy because major economic activity is located along this network of roads providing connections to regional and interstate markets.

State Infrastructure Bank (SIB)

An infrastructure bank was designed to be a self-sustaining revolving loan fund. An infrastructure bank can be capitalized with state or federal funds, and can make loans and provide credit enhancement assistance to public and private entities. The Department of Transportation (DOT) currently has a federally funded infrastructure bank, but the uses of these funds are limited to projects that meet federal standards. Federal law authorized four pilot states to establish infrastructure bank programs, including Florida, California, Rhode Island, and Missouri. Florida's federally funded infrastructure bank has awarded loans totaling \$140 million that supports over \$500 million in total project costs.

The Legislature provided for a state-funded SIB with initial capitalization of the bank at \$150 million over 3 years. This loan program will provide for loans, credit enhancements and other forms of financial assistance to public and private entities for transportation projects on the state highway system or that relieve congestion on the state highway system. This program will provide more flexibility in project selection and financial management than is available under the federally funded infrastructure bank program and can provide a mechanism to significantly increase the state's ability to meet unfunded transportation needs. The use of SIB financial assistance has the potential to leverage at least \$500 million and perhaps as much as \$1 billion in additional transportation projects over a 10-year period.

Transportation Outreach Program

A Transportation Outreach Program (TOP) was established, including a dedicated funding source of approximately \$1 billion over a 10-year period, to fund transportation projects of a high priority. Projects will be identified and prioritized by the TOP Advisory Council that is

made up of representatives of private or public interests appointed by the Governor, Speaker of the House of Representatives and the President of the Senate. The Council will annually submit to the Legislature its recommendations for projects to be funded.

Eligible projects include major highway improvements; major public transportation projects; and projects that facilitate retention and expansion of military installations or that facilitate reuse and development of any military base designated for closure by the Federal government.

County Incentive Grant Program

The County Incentive Grant Program was created to provide matching grants to counties to improve transportation facilities located on the State Highway System or that relieve congestion on the State Highway System. Funding of approximately \$490 million over a 10-year period is provided for this program.

Small County Outreach Program

The Small County Outreach Program is a matching grant program created to assist small county governments (populations of 150,000 or less) in resurfacing or reconstructing county roads or in constructing capacity or safety improvements to county roads. Approximately \$122 million over a 10-year period is provided for this program.

Implementation

The Department of Transportation (DOT) is in the process of implementing the programs created by the 2000 Legislature. For example, DOT has already sent requests to counties eligible for the Small County Outreach Program to submit candidate projects for the program. Some of the programs will require DOT's to adopt rules for implementation. Over the interim, Transportation Committee staff will be actively monitoring the department's implementation efforts, and will make recommendations for legislative changes as necessary.

Results and Impact

These programs are the most significant transportation initiatives that have passed in the last 10 years and will provide needed resources to help meet Florida's transportation infrastructure requirements. These additional resources will target transportation projects that facilitate economic growth and enhance economic competitiveness in Florida. The additional resources provided by the 2000 Legislature combined with existing transportation funding provide for transportation improvements valued at over \$6 billion.

FLORIDA SEAPORT TRANSPORTATION & ECONOMIC DEVELOPMENT PROGRAM

Summary of Legislative Action Taken

The Florida Seaport Transportation and Economic Development (FSTED) Program was created within DOT to finance port transportation and seaport facility projects to improve the movement and intermodal transportation of cargo and passengers in commerce and trade in Florida. By law, a minimum of \$8 million annually is allocated to fund approved seaport projects on a 50-50 matching basis. Over the past 4 years the Legislature has allocated an additional \$25 million annually to finance revenue bonds totaling \$375 million to fund seaport and intermodal access projects on a match basis.

Implementation

Florida's seaports have been successful in forming a multi-faceted partnership with DOT and other state entities to invest in major capital improvements. The FSTED Council, along with DOT and the Governor's Office of Tourism, Trade and Economic Development, review and approve each project proposed for funding under the FSTED Program. In performing this approval process, the FSTED Council uses criteria for evaluating the economic benefit of the project, which is measured by increased cargo flow, cruise passenger movement, international commerce, port revenues, and jobs for the port's local community.

Results and Impact

As trade facilitators, Florida's seaports are the key to the state's fast growing international trade industry. This trade (two-thirds of which flowed through the state's seaports) reached \$64 billion in 1997 and is estimated to double by the year 2005 to \$130 billion. Seaport Program funds, along with matching funds, have resulted in nearly \$1 billion being invested in seaport projects. Under the program, economic development opportunities have increased and jobs have been created in local communities statewide. These investments build a seaport system that is dynamic and responsive to the state's global trading partners.

TRANSPORTATION CONTRACT ADMINISTRATION

Summary of Legislative Action Taken

In November 1995, a House Transportation Committee study showed that DOT construction projects were taking longer and costing more to complete than originally provided in the contract documents. In response, the 1996 Legislature authorized DOT to use innovative techniques for highway construction and finance that were intended to control time and cost increases on construction projects. Such techniques included: 1) time-plus-money contracts which allow DOT to consider the time to complete a project when awarding construction contracts; 2) design-build contracts which combine the design and construction phases of projects into a single contract; 3) no-excuse bonus contracts which reward a contractor for early completion of a contract without allowing time-extensions; and, 4) incentive/disincentive contracts which

provide incentive payments for early completion of the contract and which increase penalties for failure to complete the project within the contract time allowed.

Implementation

DOT has applied a number of these innovative concepts in transportation project contracts. For example, in the past fiscal year 26 projects were let to contract using the cost-plus-time bidding method and 12 projects were let to contract using the no-excuse bonus method. DOT is documenting the types of projects and under what circumstances these techniques can best be used, either alone or in combination with other innovative practices.

Results and Impact

DOT is evaluating the impact of innovative contracting techniques. Because of the long duration of transportation construction contracts (some are even multi-year) documentation of benefits from using these techniques will take time. Anecdotal results indicate that use of these techniques have benefited the traveling public and the affected community by reducing time and disruption associated with road building projects.

CRIMINAL JUSTICE

Overview

In the late 1980's, Florida's citizens were barraged with bad news concerning crime and demanded results from state officials. Violent crime in Florida had been increasing since the 1970's, and in response to the rise in crime, the Legislature passed a number of bills requiring stiffer sentencing. Construction of new prison beds was limited however. As a result, Florida's prisons were crowded beyond capacity. In 1975, the federal courts granted an injunction requiring Florida to alleviate prison overcrowding. A decade later, Florida's prisons were still overflowing and army-style tents on prison grounds housed yet more prisoners.

To avoid an across the board release ordered by federal judges, the Legislature enacted an administrative gain time statute which served as a population pressure relief valve. While the measure prevented a judicial release of offenders, it reduced time-served for many prisoners to 20 to 37 percent of sentence. This rendered the sentencing structure ineffectual.

In 1987, serious expansion of prison capacity began, but crime was reaching an all time high, in part as a result of the early releases. Since 1988, bed space and time served in Florida's prisons has doubled. Early release has been replaced with conditional release with the possibility of return to prison for the duration of the sentence.

The decision to incarcerate involves a substantial commitment of taxpayer resources. An efficient and effective criminal justice system must prioritize the incarceration of individuals based upon the actual threat to public safety. Recently in Florida, the policy decision has been made to reserve the stiffest sentences for habitual and violent offenders and those who use firearms in the commission of a crime. The table that concludes this section illustrates, over time, the policies and their results.

There has also been a recent trend to balance the threat posed to public safety by the older and more violent juvenile offenders with the same policies and balances previously reserved for adults. Current policies also recognize, however, that some young adult offenders can be rehabilitated through youthful offender status and programs designed to rescue them from becoming incorrigible, hardened lifelong criminals.

Beyond punishment for criminal acts, the Legislature has taken significant steps to directly enhance personal safety and prevent criminal conduct. Some sexual offenders are likely to pose a continuing threat to others, even after extensive incarceration. To control this threat, the Florida Legislature has provided for registration of sexual offenders and, in some cases, civil commitment. In addition, Florida was an early state to adopt a permit system to empower law-abiding citizens to carry concealed weapons for self-defense. These policies are also explained below.

CRIMINAL PUNISHMENT

Since the 1980s, the Florida Legislature has taken a number of steps to ensure that criminals are fully punished. These steps reached their greatest intensity in 1994 and 1995, when sentencing guidelines were reformed and then strengthened and a major prison construction initiative begun. Policies have also been adopted to more severely punish those who reoffend after an early release, those who repeatedly commit violent crimes, and those who use firearms in the commission of a crime.

The 85 Percent Rule

Prior to 1995, prisoners were awarded various types of gain-time, which resulted in prisoners serving a small percentage of the sentence received. Under one sentencing scheme, the Safe Streets Initiative of 1994, a prisoner could be awarded up to 25 days of gain-time for each month of prison served. In 1995, the Legislature passed the Stop Turning Out Prisoners Act, which mandates that, for offenses committed on or after October 1, 1995, inmates be required to serve a minimum of 85 percent of their sentence. As a result, on average, prisoners serve a much higher percentage of their sentence than they had previously. Prisoners released in June 2000 served an average of 80.9 percent of their sentence. In comparison, prisoners released in June 1990 served an average of 33.1 percent of their sentence.

The Punishment Code

The sentencing guidelines, which became effective January 1, 1994, and were subsequently revised October 1, 1995, divided most felony crimes into 10 levels of severity. A point system was used to determine sentence recommendations for felony offenders. An offender would receive a score based on the severity of the primary offense, additional offenses committed during the primary crime, the offender's prior record, and the extent of victim injury. The score would then be converted into a sentence recommendation of either a "non-state prison sanction" or a specific term of months in prison. A 25 percent increase or decrease in the number of prison months recommended was still considered "within the guidelines range" and not considered a "departure" sentence. Judges were prohibited from sentencing defendants above or below the sentencing guidelines unless statutorily authorized as an upward or downward departure sentence. Sentencing an offender to the statutory maximum provided for life felonies, or felonies of the first, second, and third degree, was only authorized if the court imposed an upward departure sentence based upon the existence of "aggravating" factors.

Effective October 1, 1998, the Florida Criminal Punishment Code (the Code) replaced the guidelines. All noncapital felony offenders in adult court are subject to the Code for offenses committed on or after October 1, 1998. The Code establishes a "floor," or minimum sentence that a court may impose for the offenses before it, unless a reason for a more lenient sentence (a "downward departure sentence") is authorized by statute. This minimum sentence is called the "lowest permissible sentence." Unlike the sentencing guidelines, however, the Code does not establish an upward "cap" on a prison sentence based on points. Under the Code, the judge has the discretion to sentence an offender up to the statutory maximum based on the severity of the offense, rather than on aggravating factors. For third degree felonies the statutory maximum is

5 years, for second degree felonies the maximum is 15 years, and for first degree felonies the maximum is 30 years.

The Prison Releasee Reoffender Act

In late 1996 and early 1997, two court decisions were issued that affected previous legislative efforts to restrict several early release mechanisms used to control prison population.

In October 1996, the Florida Supreme Court ruled in Gwong v. Singletary that the Department of Corrections (DOC) could not change the manner in which “incentive gain time” had been previously awarded, because a retrospective change violated the Ex Post Facto Clause of the U.S. Constitution. As a result of Gwong, approximately 500 inmates were immediately released in November and December of 1996. By August 1997, approximately 1,800 additional inmates were released. Most inmates affected by Gwong, had been convicted of murder and sexual battery.

In February 1997, the U.S. Supreme Court held in Lynce v. Mathis that Florida’s 1992 and 1993 statutes, which canceled administrative gain-time and provisional release credits, violated the Ex Post Facto Clause,¹ because it disadvantaged the affected inmates by increasing their time served. As a result of Lynce, approximately 2,700 inmates had their sentences reduced from 30 days to as much as 7 years. Of those affected, approximately 500 were released during the first 2 weeks of March 1997. Since then, the remaining inmates have been released on an average of 10 to 12 inmates per month, and they will continue to be released over the next several years.

In order to address the anticipated likelihood that many of these offenders would reoffend shortly after their release, in 1997, the Legislature passed the Prison Releasee Reoffender Act. The act did not exclusively apply to this particular group of offenders due to constitutional concerns. The bill was designed to reach any offender (including those released as a result of the two court rulings) who, after serving a prison sentence, commits a qualifying violent felony within 3 years of being released from prison. Persons sentenced under this act must be sentenced to the maximum period of incarceration for their crimes and serve 100 percent of the court-imposed sentence. A court is not precluded from imposing a greater sentence if a longer sentence is otherwise provided by law through the use of sentencing enhancements.

Three-Time Violent Felony Offenders/“Three Strikes”

In 1999, the Legislature passed the Three-Time Violent Felony Offender Act, which requires the court to impose a minimum mandatory term of imprisonment if the defendant is being sentenced for one of a list of violent felonies, has two previous convictions for violent felonies, and the offense before the court was committed within 5 years of serving a sentence for a violent felony. The minimum mandatory sentence that must be imposed is equal to the statutory maximum sentence for the crime committed: 30 years in prison for a first degree felony; 15 years in prison for a second degree felony; and 5 years in prison for a third degree felony. Florida statutes

¹ Article I, Sections 9 and 10 of the Florida Constitution prohibit laws that retrospectively change the legal consequences of acts or deeds.

contain other sentencing enhancement mechanisms with different specific criteria for sentencing a defendant with prior felony convictions, including the Habitual Felony Offender Act, Habitual Violent Felony Offender Act, and the Violent Career Criminal Act.

However, in February 2000 the Florida Supreme Court struck down the Violent Career Criminal Act passed in 1995, which increased punishment for certain offenses under the sentencing guidelines and created civil remedies for victims of domestic violence, because the bill violated Article III, Section 6 of the Florida Constitution, requiring every law to have only one subject. As a result, more than 12,000 inmates who were adversely affected by the 1995 guidelines are entitled to file motions in circuit court to be sentenced under the 1994 guidelines and receive a lesser sentence.

GUN CRIMES

In recent years the Florida Legislature has enacted a number of laws relating to the sale, possession, and use of weapons and firearms. The Legislature has been proactive in areas such as sentencing of offenders who use firearms in the commission of a crime. These laws have targeted the punishment of armed criminals and the protection of the public, without damaging the rights of law-abiding citizens of the State.

10-20-Life

In 1999, Florida enacted one of the toughest gun crime laws in the country. Section 775.087, F.S., popularly known as “10-20-Life,” established new and longer minimum mandatory prison sentences for criminals convicted of committing violent crimes or drug trafficking offenses while armed with a firearm. The minimum prison sentences apply to specific violent felonies including murder, sexual battery, robbery, arson, kidnapping, home-invasion robbery, and carjacking. Criminals who possess a firearm during the commission of any of the specified felonies are subject to a 10-year minimum term of imprisonment. If the firearm possessed is a semi-automatic weapon or machine gun, the minimum mandatory prison term is increased to 15 years. If the perpetrator discharges the gun during the commission of the crime, the minimum term of imprisonment is increased to 20 years. If the gun is fired and someone is seriously injured or killed, the perpetrator is subject to a minimum term of 25 years imprisonment, and may be sentenced to life imprisonment.

Despite the name, “10-20-Life,” the law actually provides for a 3-year minimum mandatory prison term (as opposed to the 10-year minimum term) for aggravated assault, burglary of a conveyance, and possession of a firearm by a convicted felon. Criminals serving the minimum mandatory portion of their sentence under “10-20-Life” are not eligible for discretionary early release.

10-20-Life “Junior”

During the 2000 Legislative Session, legislation was passed (chapter 2000-136, Laws of Florida) to apply the provisions of “10-20-Life” to juvenile offenders 16 and 17 years of age, who either

possess a firearm during the commission of a crime and meet specific eligibility criteria, or discharge a firearm during the commission of a crime.

Weapons in Schools

The 1999 Legislature passed legislation (chapter 99-284, Laws of Florida) to restrict weapons and firearms on school property in response to the number of firearms and weapons related acts of violence on school premises throughout the country.

Florida law provides that a minor charged with possessing or discharging a firearm on school property be held in secure detention, with a probable cause hearing to be held within 24 hours after the child is taken into custody. The court may order that the child continue to be held in secure detention for a period up to 21 days, during which time the appropriate medical, psychiatric, psychological, or substance abuse examinations can take place and a written report can be completed. The penalty for a minor charged with possession of a firearm for a second or subsequent offense was increased from a first degree misdemeanor to a third degree felony. The allowable time in detention was also increased and minimum mandatory detention periods were provided, as well as other treatment provisions for offenses involving the use or possession of a firearm. In addition, juveniles who are convicted of any felony are prohibited from possessing firearms for any purpose until they reach age 24.

Constitutional Waiting Period on Handguns

A constitutional waiting period on retail delivery of handguns adopted by voters in 1990 was implemented by the 1991 Legislature and has been revised by the Legislature in 1992, 1998, and 1999. A 3-day waiting period (excluding weekends and legal holidays) is required between the purchase and the delivery of any handgun. The 3-day waiting period does not apply when a citizen, who holds a valid concealed carry permit, is the purchaser of the handgun or if there is a trade-in of another handgun at the time of purchase. After Florida adopted its handgun waiting period, Congress passed a similar law in 1999.

CRIME PREVENTION

Sexual Predator Registration, Commitment and Treatment

Sexual predator registration has been broadened and expanded over the years since the initial enactment of the Florida Sexual Predators Act in 1993. The original purpose of the act was to enhance public safety by requiring the registration of sexual predators, providing for the monitoring of their activities, tracking their whereabouts, and facilitating law enforcement investigation and prosecution.

The original act applied to offenders who were convicted of specified crimes committed on or after October 1, 1993. The designation of "sexual predator" applied to individuals who committed a single offense that was a capital, life, or first degree felony violation for sexual battery or selling or buying of minors for sexual purposes. "Second offense" sexual predators were those convicted of second degree or greater felony violations for sexual battery, lewd,

lascivious, or indecent acts, or for sexual performance by a child, where the offender had a previous conviction for a specified sex offense. If the court made a written finding of sexual predator status, the individual was required to provide registration information to the Florida Department of Law Enforcement (FDLE). Any change of residence of the sexual predator required reregistration within 48 hours. However, these individuals were not subject to agency-initiated community and public notification.

In 1996, chapter 96-388, Laws of Florida, broadened the criteria for determining who would meet sexual predator status. This act further provided that sexual predators who committed an offense on or after October 1, 1996, were required to register with FDLE and were subject to broad agency-initiated community and public notification. This included FDLE's notification to the sheriff, the state attorney, and the chief of police of the community within 48 hours of the sexual predator's registration. Law enforcement could provide the community with information including the name of the predator, a description and photograph, the predator's current address, and the circumstances of the predator's offense. In addition, sexual predators were prohibited from working with children.

Effective October 1, 1997, the Public Safety Information Act established that all sexual predators who committed crimes on or after October 1, 1993, would be subject to mandatory community notification and registration requirements. Additionally, the act broadened registration requirements to include sex offenders who had been released from any sanction of the court, or from the custody of the DOC, on or after October 1, 1997.

Effective July 1, 1998, notification requirements were broadened further by mandating that the sheriff or chief of police must notify each public or private day care center, elementary school, middle school, and high school of the sexual predator's presence in the community. Also in 1998, the Sexual Predators Act amended Florida's laws relating to registration of sexual predators to comply with federal standards conditioning federal funding, which the state receives.

Since January 1, 1999, the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act has been in force. The act establishes legal procedures by which sexually violent predators may be committed to the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.

Self-Defense: Concealed Carry Permits

The concealed carry permit system was passed into law by the 1987 Legislature. The original law allowed citizens of Florida to carry a weapon or firearm concealed on their person, provided they were in possession of a valid permit issued by the Secretary of State's office. At the time, Florida was one of the first states to issue such permits and has since been a model for other states.

Since 1987, the Legislature has revisited the concealed carry permit law nearly every year. The program was modified by the 1999 Legislature to allow citizens of other states to carry a

concealed firearm in Florida, so long as they hold a valid permit in their home state, and the home state allows citizens of Florida to carry a concealed weapon or firearm in that state.

Section 790.06, F.S., establishes who is authorized to carry a concealed weapon or firearm and what individuals are exempt from the permitting process (primarily law enforcement officers). The statute mandates a training course prior to the application process for a concealed carry permit. The law also provides that a license will be revoked for circumstances including, but not limited to, convictions related to the use of controlled substances, any felony or misdemeanor of the first degree conviction relating to a domestic violence conviction, or an adjudication of incapacitation. A permit does not authorize a citizen to carry a concealed weapon or firearm in an airport, a place that serves alcoholic beverages, any school, or a jail or detention facility.

JUVENILE JUSTICE

In contrast to the adult criminal justice system, which is generally considered to operate under a “retributive” model of justice, Florida has traditionally managed juvenile offenders under a “rehabilitative” model of justice. A juvenile who is alleged to have committed a violation of law is formally charged by the filing of a petition for delinquency by the state attorney. The issue of delinquency is decided by the court in a proceeding called an adjudicatory hearing. A finding of delinquency does not operate as a criminal conviction, but may result in the offender being placed in a residential commitment facility against his or her will. Because a juvenile is subject to serious deprivation of liberty upon adjudication, federal constitutional law requires that juveniles be afforded many of the same due process safeguards afforded adult criminal defendants. For example, a juvenile offender has the same right to counsel as an adult defendant. The standard of proof at an adjudicatory hearing is the same as at a criminal trial -- proof beyond a reasonable doubt. In other respects, juvenile proceedings differ from criminal trials. A jury is not involved.

Ultimately, a juvenile charged with a violation of law has a state constitutional right to be charged and tried as an adult.² Florida law specifies several circumstances where the state is afforded the right to initiate the prosecution of a juvenile offender in the adult criminal system. Nonetheless, many of these offenders remain subject to juvenile, rather than adult, sanctions at the discretion of the trial judge. Changes in policy have set forth the circumstances where the state no longer has a primary interest in rehabilitating juvenile offenders.

In 1994, Florida began changing its direction away from a social service approach to delinquent behavior, toward a criminal justice approach. Prior to that time, all “proceedings relating to children” were contained in chapter 39, F.S., which addressed all manner of actions involving children, ranging from dependency actions in child abuse cases to delinquency proceedings for juvenile offenders charged with criminal acts. The administrative responsibility for all children affected by chapter 39, F.S., was assigned to the Department of Health and Rehabilitative Services (HRS). The agency’s approach to handling “dependent” children (typically children under state care for abuse, neglect or abandonment) and “delinquent” children (children found to

² Article I, Section 15 of the Florida Constitution

have committed a crime) was the same--provide social services to the child and the family in order to fix what was is broken.

In 1994, the Legislature created the Department of Juvenile Justice (DJJ), providing for the transfer of powers, duties, property, records, personnel, and unexpended balances of related appropriations and other funds from the HRS Juvenile Justice Program Office to the new agency. The DJJ was assigned responsibility for children and families in need of services (CINS/FINS) cases and juvenile delinquency cases. Substantively, juvenile justice provisions of chapter 39, F.S. remained virtually unchanged until 1997 when they were removed and recreated as chapters 984 and 985. Many of the DJJ employees had previously been employees of HRS. Philosophically, DJJ continued to approach juvenile offenders as children needing social services, rather than as juvenile offenders in need of both rehabilitation and punishment.

A 1998 DJJ caseload examination revealed that although "chronic offenders" made up only 16.2 percent off all juvenile offenders, they accounted for 72.1 percent of the adjudicated cases, and 46.2 percent of all cases. In fiscal year 1997-98, juveniles released from "minimum risk" commitment programs averaged nearly nine prior delinquency referrals upon entry into the programs. Juveniles released from "high risk" and "maximum risk" commitment programs averaged nearly 18 prior delinquency referrals with more than 6 felony adjudications. It became apparent that a great deal of juvenile justice resources were being consumed by the older repeat and more violent juvenile offenders cycling in and out of programs without success. For every older, repeat and violent juvenile offender consuming resources in an expensive juvenile program without success, younger more impressionable youth with less serious delinquency histories were forced either onto waiting lists or into less structured community programs with minimal supervision. It was not uncommon for a juvenile waiting to be placed into a commitment program for a serious crime to commit more serious crimes while waiting for placement, further reinforcing patterns of delinquent behavior.

In the 2000 session the Legislature passed HB 69. This bill defined a class of primarily 16 and 17 year old violent and repeated felony juvenile offenders for mandatory removal from the juvenile system and placement into the adult system for prosecution and disposition. The purpose of the bill was twofold. First, it attached more adult consequences for 16 and 17 year old offenders who commit repeated and violent "adult" crimes. Second, it removed a class of offenders from the juvenile system who are believed unamenable to rehabilitative efforts of the juvenile system, thereby making room for those younger more impressionable youth who have been previously denied the most appropriate commitment program due to lack of bed space.

EXPANSION OF CORRECTIONAL INSTITUTION CAPACITY

Florida's state correctional facilities housed 71,233 prisoners on June 30, 2000. About one-third of the residential beds space available for these prisoners were created during the past 12 years. About 12,000 of these new beds were authorized in the single budget year of 1994-95. This expansion of institutional capacity has ended the earlier practice of early release to ease overcrowding. Florida now has the ability to carry out its policy that prisoners serve a minimum of 85 percent of their sentences. Completion of an additional 20,000 beds is scheduled under the 1999-2004 5-year plan of the DOC.

Prior to 1995, the DOC's measurement of bed capacity was greatly influenced by the Costello v. Wainwright lawsuit.³ As a result of this lawsuit, the state signed an agreement in 1979 that allowed the correctional system to operate at maximum capacity, until June 1985, at which time the agreed-upon capacity (lawful capacity) would be reduced to 33 percent above design capacity. In effect, for every 100 design beds in the system, the department can house 133 inmates.

The Florida Legislature provided the assurance that the DOC would continue to abide by the lawful capacity agreement by codifying these standards into Florida statute. The 1995 Legislature redefined the lawful capacity as "total capacity" and increased it from 133 percent to 150 percent of design capacity.⁴

Private Prisons

In 1989, the Legislature authorized the DOC to enter into contracts with private corrections firms for the construction and operation of private prisons. (See section 944.105, F.S.). The goal of the privatization was to promote cost-savings, speedy construction, and efficient management. Implementation of the law was delayed by a series of bid protests, legal challenges, budget reductions, inability of bidders to meet the 10 percent cost savings criterion and disagreements on cost estimates produced by the DOC. Finally, the State of Florida opened a 768-bed private prison in Gadsden County in March 1995.

The 1993 Legislature established in chapter 957, F.S., a five-member Correctional Privatization Commission (CPC) within the Department of Management Services. The CPC was charged with entering into a contract with vendors for the financing, construction and management of two 750-bed private correctional facilities. These two facilities were opened in July and August of 1995. Since 1995, two more private prisons have opened, and the Gadsden County facility was placed under the jurisdiction of the CPC in 1999. Currently, the state contracts through CPC for approximately 4,000 privatized beds serving the adult correctional system.

Results of Legislative Policy

As a result of the changes in sentencing laws, supported by expansion of prison capacity, criminals convicted of violent crimes in Florida are serving longer terms of imprisonment and crime rates have fallen substantially. The following chart reflects the changes in sentencing laws, prison capacity and the rate of and time served for violent offenses during recent years.

³ This case was originally filed in 1972 as a health care lawsuit and was later expanded to cover overcrowding and general prison condition issues. The case was active for 21 years.

⁴ The new law provided a few exceptions to the 150 percent requirement, such as medical or mental health beds and confinement beds. The bill also provided that when it is evident that the system may exceed total capacity, the Secretary shall devise a plan which addresses alternatives to prevent over capacity from occurring. The plan must be submitted to the Governor and the Legislature at least 30 days prior to any projected bed deficit.

CRIMINAL JUSTICE POLICIES, POPULATIONS AND RESULTS

Sentencing Policy	Gaintime Policy	Release Practices	New Construction Authorized	Inmate Population June 30	YEAR	Years Served For Violent Crimes	Crime Rate
Indeterminate sentencing through a parole system	Up to 20 or 36 days per month served for Incentive or Work/ Extra Gaintime	Parole or expiration of sentence	NA		1979-80	6.0	787.0
					1980-81	5.7	965.1
					1981-82	6.4	970.1
					1982-83	6.4	897.7
Determinate sentencing under 1983 Sentencing Guidelines	Basic gaintime reduced sentences by one-third upon entering prison. Incentive gaintime up to 20 days per month served.	Expiration of sentence	NA	28,310	1983-84	5.4	826.8
					1984-85	4.8	869.7
					1985-86	4.5	949.0
Determinate sentencing under 1983 Sentencing Guidelines	Basic gaintime reduced sentences by one-third upon entering prison. Incentive gaintime up to 20 days per month served.	Expiration of sentence and early prison release due to overcrowding	NA	32,764	1986-87	4.0	1,044.0
			4,158	33,681	1987-88	3.6	1,032.5
			4,085	38,059	1988-89	3.7	1,131.1
			8,022	42,733	1989-90	4.4	1,159.6
			6,508	46,233	1990-91	5.1	1,240.9
			178	47,012	1991-92	5.4	1,198.7
				50,603	1992-93	5.9	1,200.3
6,951	56,052	1993-94	6.3	1,188.9			
1994 Sentencing Guidelines	Up to 20 or 25 days of incentive gaintime per month served	Expiration of sentence	17,033	61,992	1994-95	6.7	1,136.6
1995 Sentencing Guidelines and Criminal Punishment Code	Incentive gaintime up to 10 days per month served, however, gaintime cannot cause inmate to serve below 85% of sentence	Expiration of sentence	3,552	64,333	1995-96	6.5	1,061.6
			0	64,713	1996-97	7.3	1,050.2
			534	66,280	1997-98	7.7	1,025.0
			806	68,599	1998-99	8.6	931.1

Note: Sources-Department of Corrections and F.D.L.E. Not all authorized construction was completed due to changing budgetary requirements. Major prison expansion, low time served and high crime rates are in bold.

EDUCATION

Overview

Over the past 6 years, Florida's education system has undergone major change with a renewed focus on the needs of the student, a commitment to increased student performance, and expanded parental choice. Most recently, the Legislature responded to state constitutional revisions and established a new governance structure for the education system with the goal of creating a seamless system that focuses on the needs of the student.

Addressing school overcrowding in 1997, the Legislature passed the SMART Schools Act, a comprehensive plan for realizing efficiency in and providing for new school construction. The seven parts of the SMART Schools plan are: Classrooms First Funding (bonding program financed with lottery funds); SIT Program (incentive fund for frugal school construction); Effort Index Grant Fund (supplemental funds to local funds for certain districts for school construction); SMART Schools Clearinghouse (recommends SIT Awards, distribution for EIG Funds and construction standards); Small County Assistance (funding for immediate assistance in school construction); 5-Year Capital Plans (requires annual school facilities work plan); and Frugal Schools Program (publicly recognizes school districts using "best financial management practices").

The Legislature has also responded to the concern about low performing public schools. As part of the A+ plan, the Legislature created the Opportunity Scholarship Program. This program gives students who attend public schools designated as low performing under certain criteria, the choice to go to a higher performing eligible school.

The Legislature has also passed legislation authorizing local school districts to allow nonprofit private groups and municipalities to operate schools under charter agreements. The intent of charter schools is to increase student-learning opportunities, to encourage innovative learning methods, to improve accountability, and to provide new professional opportunities for teachers.

In addition to improving schools and ensuring opportunities, the Legislature created a number of merit-based scholarship programs to reward individual high school students for high academic achievement as well as community involvement. The scholarship program has been designated as the Florida Bright Futures Scholarship program.

FLORIDA EDUCATION GOVERNANCE REORGANIZATION ACT OF 2000

Introduction

In the 1998 General Election, Floridians amended the State Constitution, effective January 7, 2003, to require a new state board of education consisting of seven members appointed by the Governor, subject to confirmation by the Senate; and to require that the State Board of Education appoint the Commissioner of Education.

The current State Board of Education consists of the Governor and elected Cabinet members. This board is the chief policy making body of public education in the state. Additionally, there is a Department of Education under an elected Commissioner of Education, with divisions of: community colleges, public schools, universities, workforce development, human resource development, administration, financial services, support services, and technology. The Board of Regents directs the Division of Universities, and the State Board of Community Colleges directs the Division of Community Colleges. The Commissioner appoints the directors of the other divisions.

The amendment to the constitution will dramatically alter the state's education structure and, therefore, work has begun to determine the direction and process for achieving transition to the new system. In 1999 the Commissioner of Education convened a 35-member Blue Ribbon Committee representing all regions of the state and all sectors of the education community. In February 2000, this committee presented its final report and recommendations for a seamless education system under the new state board.

Summary of Legislative Action Taken

The 2000 Legislature addressed the constitutional amendment by passing legislation that creates, for the first time in Florida or anywhere in the country, a process like this to change the state's education system into a "unified," efficient, seamless system of kindergarten through postgraduate education. This legislation will provide Florida's citizens and students an accountable, diverse, and academically uncompromising education system.

This legislation establishes a set of five guiding principles for Florida's new education governance: a coordinated, seamless system for kindergarten through graduate school; a system that is student-centered in every facet; a system that maximizes education access and academic success; a system that safeguards equity; and a system that refuses to compromise academic excellence.

Education governance reorganization must comply with five specific legislative policies: true systemic change resulting in an integrated continuum, within existing resources; centralization to align responsibility with accountability for academic success and funding efficiency; consistent vertical and horizontal education policy focusing on those receiving education; articulation across all delivery systems while ensuring the independence, autonomy, and nongovernmental status of nonpublic institutions and home education programs; and devolution to the actual deliverers of education to provide education that is student-centered.

Several time lines for education reorganization have been established. By October 1, 2000, the Governor, President of the Senate, and Speaker of the House of Representatives must appoint an 11-member education reorganization transition task force to provide recommendations to the Legislature to accomplish an effective phase-in. The task force has a specific timetable over the next 3 years: (1) by March 1, 2001, the task force must recommend structure changes to achieve system integration; decentralization of education services; and a single or coordinated kindergarten through postgraduate education budget; (2) by March 1, 2002, the task force must recommend changes to achieve systemwide coordination among all the education sectors;

interactions between education institutions and boards of trustees; and a postsecondary education strategic plan; (3) by March 1, 2003, the task force must recommend statutory changes, rules revisions, and rulemaking and waiver authority; and (4) by May 1, 2003, the task force must submit its final report, including a summary of work and a status of all contracts and enforcement matters.

The legislation establishes, beginning January 7, 2003, a seven-member Florida Board of Education, appointed by the Governor; a Commissioner of Education, appointed by the Board; a Florida Board of Education Office; a Chancellor of K-12 Education appointed by the Commissioner, and an Office of K-12 Education; a Chancellor of State Universities appointed by the Commissioner and an Office of State Universities; a Chancellor of Community Colleges and Career Preparation appointed by the Commissioner and an Office of Community Colleges and Career Preparation; an Executive Director of Nonpublic and Nontraditional Education appointed by the Commissioner and an Office of Nonpublic and Nontraditional Education; nine-member boards of trustees for each state university, appointed by the Governor; and a Citizen Information Center.

Effective January 7, 2003, the legislation abolishes the Board of Regents; the State Board of Community Colleges; the State Board of Independent Colleges and Universities; the State Board of Nonpublic Career Education; the Postsecondary Education Planning Commission; the Articulation Coordination Committee; and the Divisions of Workforce Development, Human Resource Development, Administration, Financial Services, Support Services, Technology, Universities, Community Colleges, and Student Financial Assistance of DOE; together with all authorizing statutes and rules.

Implementation

Education reorganization legislation became effective on June 19, 2000. The transition task force will begin reviewing the education system as soon as it is appointed and will provide initial recommendations to the Legislature by March 1, 2001. Officers, agencies, and subdivisions of the state must assist the task force by providing relevant information and assistance. Additionally, the Board of Regents must submit, no later than April 1, 2001, a plan for organizational and operational functions.

As task force recommendations are made and approved, the Legislature must anticipate and provide staff and committee time for drafting and hearing the major legislation that will be necessary to transition the Florida Statutes so that the new education system can be implemented.

Results and Impact

Because this legislation has potential impact on the jobs of all the people who work for the abolished entities, it can be anticipated that there will be attempts on numerous fronts to change some or all of the directions of the bill. Until the new education governance system envisioned by this bill is fully in place and all its supporting statutes signed into law, extreme vigilance will be required to ensure the careful crafting and committee work necessary to the ultimate success of Florida's new seamless education system by January 2003.

EDUCATION/SCHOOL CONSTRUCTION

Introduction

Prior to 1995, the Office of Educational Facilities (office), housed in the Department of Education (DOE), was responsible for oversight of the site planning and placement of schools, the Florida Inventory of School Houses (FISH) database, and capital need surveys of school construction. This office was eliminated in 1995 to provide better local district control of school construction programs.

Prior to eliminating this office, the House formed a Select Committee on Educational Facilities. The purpose of the committee was to perform a sunset review of educational facility laws and to determine Florida's educational facility needs, funding, and sources of funding. The committee completed its work and concluded there was no need to change an existing revenue source, create a new revenue source, or shift any existing revenue to educational facilities.

Summary of Legislative Action Taken

In 1997, the Legislature responded to the school overcrowding issue by passing legislation that required specific cost per square foot and minimum space requirements on new school construction. In addition, districts were required to limit use of local millage to specific capital expenditures. In November 1997, the Governor called a legislative special session to deal with the school overcrowding. During the special session the "SMART Schools Act" (Soundly-Made, Accountable, Reasonable and Thrifty Schools Act), was passed.

This legislation is the Legislature's long-term solution to school overcrowding and was based on four basic principles to provide *immediate assistance* to the school districts, maintain *functional, frugal* school construction standards, be a *balanced plan* with respect to all 67 school districts, and to raise *no new taxes*.

To accomplish a long-term solution and incorporate principles established, the Legislature provided seven components to the SMART Schools Plan: Classrooms First Funding, SIT Program, Effort Index Grant Fund, SMART Schools Clearinghouse, Small County Assistance, 5-year Capital Plans, and Frugal Schools Program.

Classrooms First Funding

Classrooms First Funding is a \$2 billion bonding program financed with lottery funds. The Legislature made a 20-year pledge of approximately \$180 million a year for school construction. Depending on new school construction needs, districts have the option to receive funding as bond proceeds or cash. All 67 school districts receive some funding based on a modified Public Education Capital Outlay (PECO) distribution.

As the name indicates, districts must build "Classrooms First." After a school district has met its need for new classroom space, funding may be used for major repair or maintenance or the replacement of unsatisfactory relocatables. These funds *cannot* be used to purchase more

relocatables. This component of the SMART Schools Plan provided immediate funding assistance to the school districts.

The SIT (School Infrastructure Thrift) Program

The School Infrastructure Thrift (SIT) Program is an incentive fund that encourages functional, frugal school construction. A school district may obtain a SIT award by: (1) demonstrating “savings realized through functional, frugal construction” or (2) demonstrating “savings realized through the operation of charter schools in non-school-district facilities.” These awards are based on 50 percent of the savings calculated on the statutorily defined cost-per-student station.

In 1999, the SIT Program was amended to *end* the SIT award that school districts receive for the operation of charter schools in nonschool-district facilities. This change was implemented because the charter school SIT award was growing so rapidly that the funds available to provide incentives for functional, frugal school construction would be depleted before the Classrooms First construction was completed. Charter schools were also attempting to claim a portion of the school districts’ SIT funds for capital needs.

The Effort Index Grant (EIG) Fund

The Effort Index Grant (EIG) Fund was originally a \$400 million, long-term incentive program designed to provide funding to select districts for *new construction only* if these districts still had a *need* for new student stations after a certain level of *local effort* was met.

The EIG program was changed in 1999 to allocate available funding to the four districts identified by the SMART Schools Clearinghouse as eligible for the original Effort Index Grant Program: Clay County, Dade County, Hendry County, and Madison County. In addition, \$100 million from the EIG fund was transferred to the SIT program. The remaining \$227.8 million of EIG funds was distributed based on the 1997 Classrooms First distribution formula to districts that either (1) received direct proceeds from the half-cent sales surtax for public school capital outlay or any portion of the local government infrastructure sales surtax between July 1, 1995 and June 30, 1999; or (2) met any two of the following four criteria: a) levy the full 2 mills of nonvoted discretionary capital outlay during 1995 - 1999; b) levy a cumulative voted millage equal to 2.5 mills for fiscal years 1995 - 1999; c) receive proceeds of school impact fees greater than \$500 per dwelling unit which were in effect on July 1, 1998; or d) receive direct proceeds from either the half-cent sales tax for school capital outlay or any portion of the local government infrastructure sales surtax.

Districts may use these EIG funds for construction, renovation, repair, maintenance, or payment of debt service.

The SMART School Clearinghouse (Clearinghouse)

The SMART School Clearinghouse (Clearinghouse) is comprised of five members appointed by the Governor, Speaker of the House of Representatives and President of the Senate. The Clearinghouse is responsible for recommending SIT Program awards. From 1998 to 1999, the

SMART Schools Clearinghouse also made recommendations for the distribution of Effort Index Grant funds. The Clearinghouse recommends construction standards and reviews school districts' performance in meeting these standards.

The Small County Assistance Program

The Small County Assistance Program provides funding for immediate assistance in school construction. This program includes a one-time \$50 million appropriation from bond proceeds for construction, repair, renovation or remodeling in small, rural districts.

5-year Capital Plans

Annually, each school district must annually prepare a 5-year district facilities' work plan showing estimated revenues, facility needs, a schedule of all capital outlay projects, and major repair and renovation projects.

The Frugal Schools Program

The Frugal Schools Program was created to publicly recognize school districts that implement "best financial management practices" in planning, constructing and operating educational facilities. Districts meeting statutory criteria receive a "Seal of Best Financial Management." This program is expected to restore public confidence in local school boards and school construction programs.

The Smart Schools Act also established a goal that all relocatables over 20 years of age be removed and relocatables at overcrowded schools be decreased by half by July 1, 2003. In addition, the legislation provided relocatable standards and established functional, frugal costs per student station.

The Smart Schools Act also requires the Commissioner of Education to establish construction standards for long-term relocatables by July 1, 2000.

Implementation

As of April 2000, SIT awards totaling \$88.6 million and \$55.4 million, respectively, have been distributed to school districts for functional, frugal school construction and the operation of charter schools. As of June 2000, \$1 billion (less than half of the \$2.02 billion provided) in Classrooms First awards has been distributed to school districts and \$1.5 billion has been encumbered for specific school projects.

There has been no distribution of the \$300 million in Effort Index Grants because the law specifies that these funds are not to be distributed until after a district has encumbered all of its Classrooms First dollars.

Results and Impact

Since the passage of the Smart Schools Act in the 1997 Special Session, districts have been provided incentives to build functional, frugal schools as evidenced by the awards given in the SIT Program. Although some school districts are still complaining of school overcrowding and of schools in need of repair, the majority of the funds provided in the 1997 Special Session have not been used. The State's increased role in the construction of local schools has made Florida, except for Hawaii and Alaska, the largest state contributor to local school construction.

OPPORTUNITY SCHOLARSHIP PROGRAM/SCHOOL GRADING SYSTEM

Introduction

In 1999, the Legislature created the Opportunity Scholarship Program as part of the A+ Education Plan. Opportunity Scholarships are available for students to attend an eligible public or private school of choice. The School Grading System was also a part of the A+ Education Plan. It is an accountability system based on student performance to assign school grades ranging from "A"—schools making excellent progress, through "F"—schools making inadequate progress.

Summary of Legislative Action Taken

In 1991, with the enactment of the School Improvement and Education Accountability Act, the state made a commitment to improving education accountability and ensuring that poorly performing schools were provided assistance and intervention, and that corrective actions would be taken in schools showing little or no improvement.

In the fall of 1995, the State Board of Education (SBE) adopted a rule defining criteria for identifying schools with critically low student performance. Initially, the criteria used for determining a school's performance level were students' scores on Reading and Math and writing proficiency. In the 1998-1999 school year, the Florida Comprehensive Assessment Test (FCAT), in conjunction with the Florida Writes! assessment, replaced the prior student performance measures.

In 1995, 158 public schools were included on a critically low performing list, meaning that a majority of the students performed below an acceptable level in reading, writing, and mathematics. In 1996, 71 schools were classified as critically low performing. In 1997, this number dropped to 30 schools. And in 1998, there were only 4 schools on the critically low performing list. Schools could get off the critically low performing list by improving student performance in only one of the three measured areas -- even if student performance decreased in the other two areas.

In the fall of 1998, the SBE adopted a rule that created five school performance levels. (Level I was the lowest performing level and Level V was the highest performing level). These levels are based on student performance on the FCAT and other select performance indicators. This rule raised the bar on school performance by making it more difficult to move from one performance

level to the next. If a school were deemed to be Performance Level I (compatible with a prior critically low performing designation) the school had to improve student performance in one of the three measured areas, while at least *maintaining* student performance levels in the other two areas. According to DOE, this rule was never implemented because of the passage of the A+ Plan in the 1999 Legislative Session.

In 1999, the Legislature passed the A+ Education Plan. This legislation expanded upon the concept of school performance ratings. Schools would now be graded on the basis of letter grades (A-F). For purposes of implementing the Opportunity Scholarship Program, school grades "A"–"F" for the 1998-1999 school year are equivalent to corresponding School Performance Levels "I"–"V".

The A+ Education Plan also created School Improvement Ratings. These ratings will indicate whether a school's performance improved, remained the same, or declined. Annually, DOE must publish both the School Grade and School Improvement Rating.

School grades are primarily based on student performance; however, additional criteria may be included. Beginning in the 2001-2002 school year and thereafter, a school's grade is determined by student *learning gains* as measured by the FCAT, and other performance data, such as dropout rate, cohort graduation rate, and student readiness for college.

Learning gain is defined as the degree of learning achieved by one student in one school year's worth of time. Beginning in the 2001-2002 school year, learning gains will become the primary performance criteria for a school's grade. DOE will determine a student's learning gain by comparing a student's FCAT scores at the end of one year to the student's FCAT scores at the end of the prior school year. The increase in student learning over that 1-year period will represent that student's learning gain.

A *public* school student is eligible for an Opportunity Scholarship to attend public or private schools if one of the following criteria are met: (1) the student spent the prior school year in attendance at a public school which was graded "F", and the school has had such low performance for 2 years in a 4-year period; (2) the student was in attendance elsewhere in the public school system and has been assigned to such school; (3) the student is entering kindergarten or first grade and has been assigned to such school.

Once a school has been designated as "F" for 2 years in a 4-year period, eligible students have several options available to them, including: (1) attendance at a higher performing public school within the district; (2) attendance at a higher performing public school in an adjacent district, as long as space is available; (3) attendance at an eligible private, sectarian or nonsectarian, school; or (4) remain at their current school.

There are several statutory criteria that a private school must meet to become eligible to participate in the Opportunity Scholarship Program. Some of the criteria are as follows: demonstrate fiscal soundness; comply with antidiscrimination provisions of federal law; meet state and local health and safety laws and codes; accept scholarship students on a random, religious-neutral basis; be subject to the instruction, curriculum, and attendance criteria adopted

by an appropriate governing body; employ or contract with teachers that meet certain criteria; accept as full tuition and fees the amount of the scholarship provided by the state for each student; agree not to compel any scholarship students to profess a specific ideological belief, to pray, or to worship; and adhere to published disciplinary procedures prior to the expulsion of any scholarship student.

The amount of the scholarship that students receive is the *calculated* amount (the base student allocation multiplied by the appropriate cost factor for the educational program that would have been provided for the student multiplied by the district cost differential and the per-student share of instructional materials funding, technology funding, and other categoricals provided in the GAA) or the amount of the private school's tuition and fees, *whichever is less*. (Eligible private school fees may include book fees, lab fees, and other fees related to instruction, including transportation.)

Upon proper documentation by DOE, the Comptroller is responsible for Opportunity Scholarship payments to the student's parent or guardian for a chosen private school.

Implementation

As of July 1999, students in only 2 public schools are eligible to participate in the Opportunity Scholarship Program (Spencer Bibbs Elementary and A.A. Dixon Elementary in Escambia County). There were a total of 140 students at both schools who applied for an Opportunity Scholarship and 5 private schools that volunteered to participate in the program. Forty-eight students received scholarships to attend an eligible private school and 78 students elected to attend a higher performing public school.

For the 1998-1999 school year there were 78 schools total in 15 districts that received a performance score of "F". If those schools receive another "F" in any of the next 3 school years, the Opportunity Scholarship Program would be available for students.

Immediately after the A+ Education Plan became law, lawsuits were filed relating to unconstitutional issues on public funds used at private, sectarian institutions. In the fall of 1999, a Leon County Court Judge ruled that the Opportunity Scholarship Program violated the Florida Constitution. This ruling is being appealed and during the time of appeal, the judge authorized a stay of the program so that students currently participating could remain at private schools. The appeal, filed by the state, is scheduled to commence with oral arguments in the District Court of Appeals in late June 2000.

Results and Impact

Since implementation of School Grading Systems and the Opportunity Scholarship Program the Legislature and school districts have targeted resources and attention to "D" and "F" schools.

In addition to the more than \$662 million in Supplemental Academic Instruction funds allocated to "D" and "F" schools, the Legislature committed to improving poorly performing schools by providing \$17.25 million in lottery funds for reading initiatives, \$22.05 million to improve

student achievement and readiness for college, and \$3.4 million for challenge grants to match private contributions. The Legislature encouraged school improvement through the School Recognition Program so that schools, regardless of grade, could receive up to \$100 per student for improving student's academic performance. The Legislature appropriated \$60 million for this program.

CHARTER SCHOOLS

Introduction

As part of the state's system of public education, the Florida charter school law provides for local school districts to allow private groups, municipalities and entire school districts to operate a school under a charter or contract. The purpose of charter schools is to improve student learning, to increase student-learning opportunities, to encourage innovative learning methods, to improve accountability, to require certain performance standards, and to create new professional opportunities for teachers.

The charter must specify the school's educational goals and strategy for performance and accountability. The charter includes the school curriculum and academic standards that are used as a basis for renewal or termination of the charter. New schools may be created or existing public schools may be converted to charter status. Charter schools must be nondiscriminatory and may not charge tuition. Charter schools are excluded from restrictive regulations, except for the regulations relating to students with disabilities, civil rights, and health, safety, and welfare.

Summary of Legislative Action Taken

The charter school law was enacted in 1996 with revisions each subsequent year. The original 1996 law provided that entities applying for a charter had to organize as a nonprofit organization, and private schools, home education programs, and religious schools were not eligible to become charter schools. A state university, after consultation with a district school board, may grant a charter to a developmental research school. The law established limits on the number of public schools that could convert to charter status and the number of newly created schools, which could become chartered, based on the student population of the school district. Developmental research schools were not included in the limit.

In 1997, revisions clarified aspects of the application and appeals process, charter approval, reporting, Florida Education Finance Program (FEFP) funding distribution, and the use of facilities and property. The revisions established timeframes for districts to accept applications and criteria for review of applications. If a district denied an application, the district board was required to state the reason in writing, and the applicant had to notify the district school board if the applicant chose to appeal.

The revisions in 1998 provided for: doubling the cap on the number of charter schools allowed, extending the term of a charter, requiring that employees remain public employees unless they choose not to do so, creating "charter schools-in-the-workplace" to promote business partnerships in education, reducing overcrowding, and offsetting the high costs of educational

facilities construction and allowing for some use of capital outlay funds. A charter school-in-the-workplace was allowed to limit enrollment to children of employees.

The 1999 revisions extended the term of a charter and required that employees, including governing board members, be fingerprinted and have not been dismissed or resigned in lieu of dismissal from a traditional public school for reasons involving the health, safety, and welfare of children.

The 2000 Legislature streamlined and clarified the application, approval, and operation process; encouraged conversion charter schools; increased the charter schools capital outlay allocation from one-thirtieth to one-fifteenth of the cost per student station; and revised provisions for developmental research charter schools and charter technical centers. An applicant may appeal to the State Board of Education if the district board fails to act on an application. Reasonable costs incurred in a dispute are awarded to the prevailing party. To encourage conversions, *parents* are allowed to submit an application for conversion, conversion schools do not count towards the cap on charters, districts and applicants may petition the State Board to exceed the cap, and a “whistle blower” protection is created for principals or school personnel who propose converting a traditional public school to a charter. Facilities used for charter schools are given an ad valorem tax exemption. A developmental research charter school is open to any student eligible to attend the traditional developmental research school or residing in the district where the school is located. The developmental research charter school receives categorical funds just as a traditional developmental research school receives, but the amount of traditional capital outlay funds is limited to an amount sufficient to meet the one-fifteenth of the cost per student station.

Implementation

The 1996 law creating charter schools required a review of charter schools during the 2000 Legislative Session of the Legislature. Two entities conducted studies to aid in that review: one by the Office of Program Policy Analysis and Government Accountability (OPPAGA); and another by the Charter School Review Panel. The Charter School Review Panel was created by the 1999 Legislature for the purpose of making recommendations for improving charter school operations, providing oversight, and ensuring fair and best business practices and relationships. Recommendations and options were reviewed and considered before changes were made to the charter school law during the 2000 Regular Legislative Session.

To help improve academic accountability and clarify the requirements of the law to both school districts and charter school operators, the DOE recently extended and expanded the contract with the University of South Florida to provide technical assistance to charter school operators and school districts. A regional office of the Florida Charter Resource Center has been set up in Fort Lauderdale and Palm Beach to assist schools in developing applications and contracts, analyze the Auditor General reports and audits of charter schools, and host conferences.

In 2000-2001, the Legislature appropriated \$20,000,000 for Charter School Capital Outlay, which is an increase of \$15,000,000 over the amount appropriated in the 1999-2000 fiscal year.

Results and Impact

In 1996, the first year that charter schools were allowed, five charter schools were in operation. Since then, the numbers have increased from 33 in 1997 to 112 in 1999. The number of students served has increased from 3,000 in 1996 to approximately 18,566 students in 1999-2000. The Florida Charter School Resource Center at the University of South Florida estimates the number of charter schools in 2000-2001 will increase 46 percent, from 112 to 164, and the number of students attending charter schools will increase 58 percent, from 18,566 to 29,285 in 2000-2001. The following provides information of how charter schools are meeting statutory requirements.

Purpose: Improve Student Learning/Increasing Learning Opportunities for All Students

Sixty-two percent of charter schools serve at-risk/dropout prevention students, early intervention students, or students with disabilities. For the 1999-2000 school year, the overall percentage of charter school students from minority groups and disabled students is essentially the same as that of Florida's overall student population.

Purpose: Encourage Use of Innovative and Different Learning Methods/Increase Choice of Learning Opportunities for Students

According to OPPAGA, at least 5 percent of students need to be served by a charter school for the program to have any impact on the traditional public school system. Other research shows that 15 to 20 percent in charter alternatives are needed to exert pressure on the system. Florida's 1999-2000 student population is approximately 2.3 million; charter schools account for less than 1 percent of statewide base funding for the Florida Education Finance Program. The changes made in the law during the 2000 Legislative Session are expected to encourage the conversion and creation of more charter schools.

Purpose: Establish a New Form of Accountability for Schools/Require Measurement of Outcomes/Make the School the Unit for Improvement/Create New Professional Opportunities for Teachers

OPPAGA reported that current state and local accountability mechanisms need to be strengthened to hold charter schools accountable for student performance. Charter schools are intended to be graded as part of the state's accountability system. However, in 1998-99 two-thirds of charter schools were not graded because this accountability system was not designed to cover very small schools and those with special student populations that smaller charter schools typically serve. The accountability systems used by districts are established in the charter (or contract) the district has with the charter school. OPPAGA concluded after examining charters that were in operation for at least 2 years that the district's agreement with charter schools often did not contain adequate goals and objectives to measure student performance.

A related accountability weakness is that charter schools' required annual progress reports are often incomplete. Half of the 31 annual reports did not include all of the required information. One of the difficulties in reporting on student progress is the lack of baseline data. Either the data is not obtained from the school district or the charter school does not pretest when the

student enrolls. Due to the weakness in the accountability systems, there is little useful information available to assess the academic progress of charter school students. The DOE plans to offer more technical assistance to districts and charter operators to explain the requirements of the charter school law and to help charter operators attain needed skills.

Since 1996, a total of six charter schools have been voluntarily or involuntarily closed for reasons that include declining enrollment, fiscal issues, or insufficient academic performance. If enrollment declines, that in itself is an accountability measure. If the school does not perform as parents want to see it perform, they always have the option of withdrawing their children. The closure of schools, therefore, represents a working market system. Unlike traditional schools where poor performing schools are allowed to continue to operate, charter schools that are not performing academically or financially can be closed by the district school board.

FLORIDA BRIGHT FUTURES SCHOLARSHIP PROGRAM

Introduction

Since 1980, the Florida Legislature has created a number of state-supported merit scholarship programs to reward Florida high school graduates for high academic achievement. These programs include the Florida Undergraduate Scholars' Program, the Vocational Gold Seal Endorsement Scholarship Program, the Florida Postsecondary Tuition Program, and most recently, the Florida Bright Futures Scholarship Program. Each of these scholarship programs requires a student to achieve a minimum grade point average in high school as a condition of student eligibility. Eligibility criteria also included additional factors such as the achievement of a minimum test score on a standardized test and the performance of community service.

Summary of Legislative Action Taken

The 1997 Legislature established the Florida Bright Futures Scholarship Program and repealed the Florida Undergraduate Scholars' Program, the Vocational Gold Seal Endorsement Scholarship Program, and the Florida Postsecondary Tuition Program.

The Florida Bright Futures Scholarship Program is administered by the DOE and funded with lottery revenues. The Florida Bright Futures Scholarship Program consists of three separate awards: the Florida Academic Scholars Award, the Florida Merit Scholars Award, and the Florida Gold Seal Vocational Scholars Award.

Current law relating to the Florida Bright Futures Scholarship Program establishes eligibility criteria for students and institutions to participate in the scholarship program, prescribes the application and disbursement process, and defines award amounts. To be eligible for an initial award students must, at a minimum, complete a prescribed high school curriculum, achieve a minimum grade point average in high school, and achieve a minimum score on a standardized test as determined by the DOE. Further, the law establishes the renewal eligibility criteria for students. The award amount for a Bright Futures Scholarship is calculated as a percentage of the amount assessed to a student for tuition and fees. The initial eligibility criteria, renewal eligibility criteria, and award amounts vary by the type of award a student receives.

Implementation

The DOE administers the Florida Bright Futures Scholarship Program according to the rules and procedures established by the Commissioner of Education.

Application Process

According to the DOE, the application used to begin the evaluation process for the Florida Bright Futures Scholarship Program is called a "Student Authorization Form." This form serves as the single application for all students applying for a Bright Futures Scholarship regardless of the type of secondary education received or the type of award for which the student may qualify. Upon receiving a completed Student Authorization Form and any required documentation, the DOE is responsible for calculating grade point averages, determining awards, and notifying students of their eligibility.

Disbursement Process

According to the DOE, a preliminary disbursement is transmitted to each participating institution at the beginning of each school term. This preliminary institutional disbursement is based on the DOE's projection of the number of students participating in the Florida Bright Futures Scholarship Program at each institution. Any preliminary funds disbursed to institutions that are not eventually disbursed to scholarship recipients must be returned to the DOE within 60 days after the end of each institution's drop/add period. The DOE sends written notices to the institution's Financial Aid Director requesting immediate return of all funds not disbursed if the institution has not returned funds not disbursed within the 60-day deadline. The DOE's records indicate that for the 1998-1999 academic year, only 10 percent (\$1.1 million) of the \$11.3 million in unused funds were returned to the DOE within the 60-day deadline (Table 1). As of June 30, 1999, institutions still owed the DOE 47 percent (\$5.3 million) of the \$11.3 million in unused funds.

Award Amount

The actual amount that is awarded to a Bright Futures Scholarship recipient differs among the three scholarship components that comprise the Florida Bright Futures Scholarship Program. The award amount for all of the three scholarship components is calculated on a certain percentage of the recipient's matriculation and fees. Statutory provisions governing the award amount for all of the three scholarship components do not define the term "fee." Consequently, the DOE transmits Bright Futures payments to eligible institutions that cover not only an award recipient's mandatory fees, but also any other fees billed to the DOE by the institutions. During the 1998-1999 academic year, the DOE transmitted \$1.6 million to institutions to cover fees that exceeded award recipients' mandatory fees. However, the DOE recently defined the term "fee" in policy as any mandatory fee that is charged to all students at an eligible postsecondary education institution and lab fees that do not exceed \$300 per semester.

Summer Awards

Current law permits a student to use a Bright Futures Scholarship during the summer term of an academic year if funds are available. During the 1997-1998 academic year, the Legislature appropriated \$75 million for the Florida Bright Futures Scholarship Program and the DOE actually expended \$69.6 million. The DOE estimated that this balance was not sufficient to fund all potentially eligible students for the 1998 summer term. During the 1998-1999 academic year, the Legislature appropriated \$120 million for the program and the DOE actually expended \$93.3 million. Although this balance appeared to be potentially large enough to accommodate summer funding, students were not awarded scholarships during the 1999 summer term as a result of the DOE's priority to program and develop a data base system to facilitate the administration of scholarship eligibility determination. The DOE reports that students are being awarded scholarships during the 2000 summer term.

Results and Impact

During the 1997-1998 academic year, Bright Futures Scholarships were awarded to 43,244 students in an amount totaling \$69.6 million. Academic Scholars Awards were disbursed to 18,866 students (44% of total recipients) in an amount totaling \$43.6 million (66% of total dollars awarded); Merit Scholars Awards were disbursed to 13,387 students (31% of total recipients) in an amount totaling \$15.2 million (22% of total dollars awarded); and Gold Seal Vocational Scholars Awards were disbursed to 10,791 students (25% of total recipients) in an amount totaling \$10.4 million (15% of total dollars disbursed). Most students (72%) receiving an Academic or Merit Scholars Award enrolled at a state university. Meanwhile, 55% (5,951) of Gold Seal Vocational Scholars enrolled at a community college. Students attending a state university received \$50.8 million (73%) in Bright Futures Scholarships and students attending a private institution received \$9.7 million (14%) in Bright Futures Scholarships.

During the 1998-1999 academic year, Bright Futures Scholarships were awarded to 57,436 students in an amount totaling \$93.3 million. Academic Scholars Awards were disbursed to 21,846 students (38% of total recipients) in an amount totaling \$51.8 million (56% of total dollars disbursed); Merit Scholars Awards were disbursed to 25,745 students (45% of total recipients) in an amount totaling \$31.2 million (33% of total dollars disbursed); and Gold Seal Vocational Scholars Awards were disbursed to 9,629 students (17% of total recipients) in an amount totaling \$10.0 million (11% of total dollars disbursed). Most students (71%) receiving an Academic or Merit Scholars Award attended a state university. Meanwhile, the percent of Gold Seal Vocational Scholars attending a community college declined (from 55% to 48%) and the percent of Gold Seal Vocational Scholars attending a state university increased (from 37% to 44%). Students attending a state university received \$69.6 million (75%) in Bright Futures Scholarships and students attending a private institution received \$12.6 million (13%) in Bright Futures Scholarships.

During the 1999-2000 academic year, the DOE estimates that **more** than 65,000 students will receive Bright Futures Scholarships in an amount totaling approximately \$112 million. For the 2000-2001 academic year, the Legislature has appropriated \$143.1 million for the Florida Bright Futures Scholarship Program.

ENVIRONMENT

Overview

Florida's economy is connected to the environment in every aspect. Without clean air, without clean beaches and shores, without pristine and well-stocked lakes and rivers, without an ample supply of safe drinking water, and without high quality agricultural products such as cattle, citrus, and vegetables, Florida cannot develop and maintain its reputation as a prime destination for industry, tourism, and business. Most importantly, without a continued commitment to preserve, protect and enhance its natural systems, Florida's environment will not support the state's growing population.

Florida has a total area of 58,560 square miles—54,252 square miles of land and 4,308 square miles of water. The state has 663 miles of beaches, 27 first-magnitude springs, and 3 million acres of wetlands. Outside of the Great Lakes, Florida is home to the largest freshwater lake in the continental United States. Lake Okeechobee is about 760 square miles in size, and flows into one of the world's greatest natural wonders – the Everglades, commonly referred to as the “River of Grass.” The Everglades, now about one-third of its original size, once covered most of the southern half of the Florida Peninsula. Water that overflowed from Lake Okeechobee was purified as it passed through the “River of Grass” before soaking into the aquifer to replenish the state's natural water supply, and emptying into the salty Florida Bay and Biscayne Bay, which are dependant on those purified waters to control salinity for fishery habitat.

In Florida, agriculture is big business. With approximately 10 million acres in production in 1998, Florida's farmers produced 20 percent of the nation's vegetables, ranked first in citrus production, and sold more than \$6 billion worth of agricultural products. Such large-scale production requires consumption of great amounts of water. In fact, agriculture represents the largest single water user category in the state. Conversely, these same production lands are also valuable water recharge areas. Statewide, farmers in Florida are implementing best management practices (BMPs) in an effort to assist in protecting the environment and water resources. Some BMPs now being utilized include reuse of water for irrigation purposes, less acreage being planted, and better use of fertilizers to reduce nutrient content and runoff.

Florida's nationally recognized land acquisition program has been a major factor in protecting the environment. Within the Everglades Agricultural Area, agricultural lands have been purchased and taken out of production. Programs like Save our Rivers and Preservation 2000 have provided for the acquisition of more than 3 million acres of land, including property fronting rivers and shorelines. A dedicated funding source provides for the control and replenishment of beaches eroded by hurricanes and development. The Department of Environmental Protection (DEP) and the Fish and Wildlife Conservation Commission are actively purchasing recreation lands. Better management of state lands increases recreational opportunities for residents and visitors alike.

Florida's five water management districts (WMDs) are developing programs to replenish and enhance natural water supplies. Lands purchased with state funding will be used to develop and hold alternative sources and supplies of water. Aquifer recovery and storage, reverse osmosis

plants, and aboveground reservoirs help supply water to areas of the state facing critical shortages.

The newly implemented Florida Forever Program provides for coordinated efforts in land restoration. Further, the state and the federal government are partnering to restore the Everglades. Agriculture is protecting the state's resources and maintaining a safe and plentiful food supply for its citizens. Florida's Legislature remains committed to a healthy economy and a healthy environment.

BROWNFIELDS REDEVELOPMENT

Introduction

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by environmental contamination. Nationally, brownfields represent an enormous waste of resources. It has been estimated that there are from 100,000 to 450,000 brownfield sites nationwide. Federal, state, and local environmental laws have unwittingly contributed to the creation and expansion of brownfields. Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these abandoned, generally urban sites, in favor of developing open greenspace areas, even though many of the sites in a brownfield area may actually contain little or no environmental contamination.

Summary of Legislative Action Taken

Florida's Brownfield Redevelopment Act was created in 1997 (chapter 97-277, Laws of Florida) and subsequently amended in 1998 (chapter 98-75, Laws of Florida) and 2000 (chapter 2000-317, Laws of Florida) to encourage the reuse and redevelopment of brownfield sites. In addition, the act provided a framework for the state's brownfields program to facilitate site redevelopment, clean-up, and protection of the public health and the environment.

Implementation

DEP is responsible for the development and implementation of the brownfields program. To date, a series of administrative actions has been undertaken, including negotiating agreements with the U.S. Environmental Protection Agency (EPA). These agreements specify criteria under which the EPA will forego oversight at brownfield sites.

A Brownfields Clean-up Criteria Rule was adopted in July 1998, and subsequently amended in 1999. The rule establishes clean-up standards and procedures that utilize cost-effective, risk-based corrective action principles to protect human health and safety and the environment.

In 1998, a Voluntary Clean-up Tax Credit was created for taxpayers voluntarily participating in the clean-up of a brownfield site in a designated brownfield area. The Voluntary Clean-up Tax Credit rule was adopted in March 1999 to implement these provisions.

Significant features of the Brownfields Redevelopment Act include emphasis on redevelopment and economic incentives to encourage the private sector to redevelop blighted urban properties. Economic incentives offered by state and local governments include financial, regulatory, and technical assistance. Also, brownfield redevelopment bonus refunds of \$2,500 are available to qualified target industry businesses that create Florida jobs in a brownfield.

Local governments are designated for key roles in identifying parcels to be included in a brownfield area. An important component of this process is the formation of an advisory committee to improve public participation and to receive public comment on rehabilitation and redevelopment of the designated brownfield area, on future land use, on local employment opportunities, on community safety, and on environmental justice.

Results and Impact

The number of designated brownfield areas in Florida increased from 3 in 1998 to 25 in 1999. These designated areas encompass over 54,000 acres of contaminated and uncontaminated properties including residential and viable business properties. Additionally, the DEP has projected that up to 22 additional brownfield area designations may occur during 2000. DEP also reports that as a result of the bonus refund, 1,298 direct jobs and 1,546 indirect jobs have been created and \$41 million in new capital investments have been realized.

APPLICATION OF RISK-BASED CORRECTIVE ACTION PRINCIPLES TO ENVIRONMENTAL CLEAN-UPS

Introduction

Risk-based Corrective Action (RBCA), or "Rebecca" (as it is commonly referred to) represents a balanced, pragmatic approach to the clean-up of contaminated sites. RBCA was created in the mid-1990s as a result of the discovery by the state, insurers, and private industry of a lack of necessary resources to finance clean-ups meeting the stringent levels required by regulatory programs. The American Society for Testing and Materials (ASTM) undertook the development of a standardized process for making risk-based decisions at contaminated sites to allocate limited resources to high-risk sites.

The standard adopted by ASTM describes a framework, or philosophy, by which regulatory agencies can develop risk-based guidance. This standard was adopted by the EPA, first for use in petroleum storage tank clean-ups, and then for other types of contamination clean-up programs.

RBCA involves a process for managing contamination clean-up on a site-specific basis and is defined as a streamlined approach in which exposure and risk assessment practices are integrated with traditional components of the clean-up process. The purpose is to ensure that appropriate and cost-effective remedies are selected and that limited resources are properly allocated.

The RBCA process includes three goals: to ensure protection of human health and the environment, to be practical and cost-effective, and to provide a consistent and technically

defensible clean-up process. Under this approach, decisions related to resource allocation, urgency of response, target clean-up levels, and remedial measures are based on current and potential risks to human health and the environment.

RBCA can result in overall cost savings because, as opposed to a one-size-fits-all approach to site clean-up, RBCA involves site-specific decision-making designed to achieve desired levels of clean-up. Also, RBCA can be used to group sites within ranges of high, medium, and low risk so that all sites can progress toward clean-up completion while limited resources can be directed at the highest risk sites.

Summary of Legislative Action Taken

Florida's adoption of RBCA dates back to the mid-1990s. It is codified in the petroleum underground storage tanks program (chapter 96-277, Laws of Florida), dry cleaning rehabilitation program (chapters 95-239, 96-321, and 96-410, Laws of Florida), and the brownfield redevelopment act (chapter 97-277, Laws of Florida).

Implementation

The DEP administers the state RBCA program. Rules have been adopted that establish minimum clean-up standards, provide for site prioritization, and allow for the determination that no further action is needed at a site. Since its original implementation, five core issues remain concerning the use of the RBCA process and any future expansion of the approach to cover other clean-up scenarios.

The "Point of Compliance" is the point at which contaminated land or water must meet applicable clean-up standards. The "Point of Exposure" is the point at which contaminants reach a human or environmental receptor. "Institutional Controls" are administrative or legal tools utilized to prevent future uses of soil and groundwater at a contaminated site where there is potential for human or environmental exposure to those contaminants. "Engineering Controls" use engineered systems to protect human health and the environment from contact with contaminated soil or groundwater. Finally, "Risk-Based Screening Levels" are the levels of contaminant concentration that establish parameters for site clean-up standards.

The state has adopted the following minimum clean-up standards to be applied at a point immediately adjacent to the point of exposure: applicable state standards if they exist; calculations using a life-time cancer risk level of 10 to the minus 6 (one in one million); a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic (relating to perception by a sensory organ), and aesthetic considerations.

Results and Impact

The use of RBCA in the state has directed resources to those sites that pose the highest risk to human health or the environment. Cost savings are being realized because clean-ups are now

based on risk. In addition, the use of institutional and engineering controls has allowed sites to be quickly released from clean-up programs and the property put back into productive use.

PUBLIC LAND ACQUISITION PROGRAMS: PRESERVATION 2000 TO FLORIDA FOREVER

Introduction

Florida began acquiring lands for public use in the 1920s, but had no formal land-buying program until the 1960s. The Legislature established a \$20 million bond program to acquire lands for outdoor recreation in 1964, followed 4 years later by an additional \$40 million bond program to acquire more outdoor recreational lands. In 1972, the Legislature created the Environmentally Endangered Lands program. A state referendum later that year approved a \$240 million bond issue, most of which was earmarked to acquire environmentally sensitive lands.

Subsequent land buying programs relied on either bond issues or earmarked general revenue funds. In 1979, the Conservation and Recreations Lands (CARL) program was created by the Legislature to acquire and manage public lands, conserve and protect environmentally unique and irreplaceable lands and lands of critical state concern. Documentary stamp tax revenues, an annual \$10 million general revenue fund transfer, and lease fees remain the primary sources of revenue for the CARL program, which in recent years received between \$45 million and \$55 million.

In 1981, the Legislature created two additional land acquisition programs. The Save Our Coast program, funded with \$250 million in bond proceeds, was aimed at acquiring beachfront properties to protect them from development. This program has expired and bonds have been retired. Water management district acquisition of buffer areas along surface water bodies was the original purpose of the Save Our Rivers program, but over the years the program has been expanded to include all types of land acquired by the districts. The Save Our Rivers program is funded from documentary stamp tax revenues with current funding totaling \$55 million.

Summary of Legislative Action Taken

The funding levels of the early programs, although significant for their time, are pale in comparison to the Florida Preservation 2000 (P2000) program. The P2000 is a 10-year, \$3 billion program to acquire environmentally significant lands for preservation, conservation and recreational purposes. Bonds finance the acquisition program, and debt service is paid from documentary stamp proceeds. By all accounts, it remains the largest state-funded land acquisition program in the nation. The agencies receiving P2000 bond proceeds will spend down P2000 balances over the next 2 years.

In response to the expiration of the P2000 program, the Legislature enacted the Florida Forever program (chapter 99-247, Laws of Florida) during the 1999 Regular Legislative Session. This program authorizes the issuance of bonds in an amount not to exceed \$3 billion for acquisition of land and water resources. This revenue is to be used for restoration, conservation, recreation,

water resource development, historical preservation, and capital improvements to land and water areas. The program will provide for environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development. The first bond series for the Florida Forever program is scheduled in the 2000-2001 fiscal year.

Bond revenue from the Florida Forever program will be allocated annually as follows: 35 percent to the DEP for land acquisition and capital projects; 35 percent to the WMDs for land acquisition and capital project expenditures necessary to implement their priority project; 24 percent to the Florida Communities Trust program; 1.5 percent for purchases of inholdings and additions to state parks; 1.5 percent to fund state forest inholdings and additions, and implement reforestation plans or best management practices; 1.5 percent to the Fish and Wildlife Conservation Commission; and 1.5 percent to the Florida Greenways and Trails Program.

Implementation

Both P2000 and the Florida Forever program are administered by several agencies, each with expertise in acquiring and managing specific land types. Funds appropriated to the DEP for acquisition of conservation and recreation lands are spent on lands identified in a priority list compiled by the Acquisition and Restoration Council (formerly called the Land Acquisition and Management Council). The Council consists of representatives from various state agencies who review and rank eligible projects. The Governor and Cabinet then approve the project list, commonly referred to as the CARL list.

Funds appropriated to the WMDs are spent on Save Our Rivers projects that are ranked and approved by the governing boards of the districts. Funds appropriated from the Florida's Communities Trust program are spent on projects ranked by an independent Board of Trustees.

Results and Impact

Since its creation, the P2000 program has provided \$3 billion for environmental and recreational land acquisition. Nearly \$2 billion of the available funds have been spent to acquire in excess of 1 million acres. Approximately one-half of the unspent funds are currently encumbered or earmarked for project acquisitions.

WATER RESOURCE/WATER SUPPLY DEVELOPMENT

Introduction

Prior to the 1950s, single-purpose special districts handled water management activities in Florida. Concerned that this fragmented approach to water management was not effective in dealing with Florida's future needs, the 1955 Legislature created the Florida Water Resources Study Commission. Based on the commission's recommendations, the Legislature passed the state's first significant water law, the Florida Water Resources Act of 1957, which created the precursor to the present-day consumptive use permit program and allowed the state to mandate water conservation.

In 1972, the Legislature passed a Water Resources Act creating the water-management administrative structure that is in place today. The 1972 Act, based in part on a Model Water Code developed at the University of Florida, established a two-tiered approach to water management. The DEP administers state water policy while five WMDs (WMDs) perform the day-to-day implementation of water law. WMD activities include issuing consumptive use permits for water withdrawals, environmental resource permits (ERPs) for construction in wetlands activities, and well-drilling permits; acquiring lands for water-related purposes; building and operating flood-control projects; establishing minimum flows or levels for public water bodies; and restoring degraded water bodies. These activities are funded through a combination of state, federal, and local resources.

The 1972 act remained substantially unchanged until the early 1990s when state policy makers began rethinking Florida water policy in light of urbanization patterns and population growth. According to the U.S. Census, Florida's population nearly doubled over a 20-year period growing from 6.7 million residents in 1970 to 12.9 million in 1990. Today, Florida's population is estimated at more than 15 million residents.

The Governor, the Speaker of the House of Representatives, and the Senate President appointed members to the Water Management District Review Commission in 1994 to evaluate the effectiveness of the current system. The Commission's findings were submitted to the executive and legislative branches in December 1995, but resulted in minimal changes in state water policy.

In the 1994-1996 biennium, the House created a Select Committee on Water Policy to review Florida's existing water policy. In 1996-1997, the Governor appointed a task force to focus on promoting and paying for water resource and water supply development projects in Florida. The task force proposed a number of statutory changes that were incorporated into the 1997 legislation summarized below, but its funding recommendations were not adopted.

More than 40 years since the first Water Resources Study Commission was established, saltwater intrusion is still affecting Florida's water resources. Further, the public demand for water, particularly in the heavily populated southern half of the state, has created a huge strain on Florida's aquifers and rivers. The state's natural water supply is being used faster than nature can replenish it.

Summary of Legislative Action Taken

In 1997, the Legislature passed comprehensive state water policy legislation. Water resource and water supply development were emphasized as the way to ensure adequate water supplies for current and future users, and to protect natural systems. Development of water resources is a designated responsibility of the WMDs, while water supply development remains the primary responsibility of public and private utilities, regional water supply authorities and local governments. The WMDs also must adopt 20-year regional water supply plans for areas where shortages are occurring or are expected to occur, and which local governments and others can use as a planning tool.

The 1997 law also required WMDs to initiate development of minimum flows and levels for ground and surface waters, meaning the point at which additional withdrawals from a water body would cause significant harm to the resource. WMDs were directed to implement a recovery or prevention strategy for any water body that has fallen below, or is expected within 20 years to fall below, its minimum flows and levels. Also, the WMDs were given flexibility not to adopt minimum flows and levels on water bodies where restoration is not practicable or feasible, or on water bodies altered by natural or manmade activities so that historic hydrologic functions cannot be restored.

Finally, the legislation provided major changes to the West Coast Regional Water Supply Authority, now called Tampa Bay Water, the public water supplier for Hillsborough, Pasco and Pinellas counties, and their key municipalities. It also helped formalize an agreement between the Authority and the Southwest Florida WMD to enter into a partnership to jointly develop alternative water supplies for the Northern Tampa Bay area. Southwest Florida WMD has committed \$183 million, from 1995-2007, for qualified water supply projects for the Authority.

Implementation

The South Florida WMD, the Southwest Florida WMD and the St. Johns River WMD have completed several regional water supply plans that are being reviewed and approved by their governing boards. The Northwest Florida WMD's one regional water supply plan, for the Santa Rosa-Walton county area, is expected to be completed in the Fall of 2000. The Suwannee River WMD is not required to draft a regional water supply plan because it identified no areas with projected water shortages in the next 20 years. The plans include actual and projected use data, discussions of current water resource development projects of each WMD, and recommendations of the types of projects that could be permitted for water resource or water supply development.

In addition, the WMDs have accelerated development of minimum flows and levels for lakes, rivers and other water sources. This is an important first step in planning water resource/water supply development. Knowing a waterbody's minimum flow or level helps water managers determine how much water can be withdrawn from an existing source before negative environmental impacts occur, and thus alternative water supplies have to be developed. The goal is to link the minimum flows and levels of key water bodies to the relevant regional water supply plan.

As for the specific partnership agreement between Tampa Bay Water and the Southwest Florida WMD, the money continues to accrue in escrow as the Authority moves forward on approved projects, such as the desalination treatment plant near Apollo Beach in Hillsborough County.

Results and Impact

It is too soon to determine the impact of state water policy legislation, because water resource and water supply projects are long-term endeavors. A better picture will emerge over the next six months as the WMDs formally adopt regional water supply plans and release their minimum flows and levels rules for specific water bodies. The Tampa Bay Water/Southwest Florida

WMD partnership plan projects are more problematic because of opposition by certain citizens and groups to the location of the desalination plant and other proposed projects.

TOTAL MAXIMUM DAILY LOADS

Introduction

The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA), established the framework for pollution control in the nation's water bodies. Its goal was "fishable and swimmable water for every American." By establishing national standards and regulations for pollution discharge, the CWA sought to restore and protect the health of the nation's water bodies. Pollution could no longer be discharged without a permit, the use of best available technologies for pollution control was encouraged, and funds for building and improving sewage treatment plants were provided. National water-quality standards were strengthened.

The CWA requires states to provide Congress a biennial report on the water quality of lakes, streams, and rivers. Those waters that qualify as "impaired" must be submitted to the U.S. Environmental Protection Agency. For water bodies designated as impaired, states must develop total maximum daily loads (TMDLs) for each pollutant exceeding the legal limit for that water body. A TMDL is the numeric point at which a water body can no longer assimilate a specific pollutant, and still meet its designated use. Typically, a water body will have several TMDLs – one for each pollutant discharged into it. A TMDL's numeric point is the sum of point source discharges (typically an identifiable point of discharge such as a power plant or wastewater treatment plant), nonpoint source discharges (a source with no identifiable point of discharge such as farms and urban runoff), and the margin of safety (the maximum amount of exposure that produces no measurable effect in animals divided by the actual amount of human exposure in a population). If states fail to develop TMDLs, then the EPA must.

Impaired water body listings and TMDL development were largely ignored for 20 years until lawsuits filed by conservation groups against the EPA brought renewed attention. Florida was one of the 30 states listed by EarthJustice and other environmental organizations in their lawsuits as not having implemented the TMDL provisions. A settlement agreement has been negotiated.

In anticipation of the legal action, DEP in early 1998 submitted a list of impaired water bodies to EPA and initiated TMDL planning. In November 1998, the federal government approved DEP's list. Over a 12-year period TMDLs will be developed and implemented for 711 water segments, representing 590 water bodies. Also, DEP has established TMDLs for Tampa Bay, Lake Thonatosassa, the Halifax River, and the Manatee River, although implementation has been slow because all parties contributing to the pollution are not participating in the proposed clean-up solutions. Further, DEP proposed to develop and implement TMDLs using a basin/watershed approach as a way to incorporate ecosystem management into the process and to alleviate the regulatory burden on individual property owners and industries.

However, DEP was concerned that it did not have express legislative authority to fully implement a TMDL program. Representatives of industries operating to discharge pollutants to

waters using approved permits were also concerned. Industries did not want to obtain additional permits or endure restricted operating conditions to help meet a basin or watershed TMDL if other sources of pollution were not being required to participate. The agricultural industry was concerned about new requirements on farming operations. Business groups and development companies were concerned about how TMDL implementation would affect their interests. These different groups made a commitment to work with the Legislature on a consensus regulatory framework for TMDLs in Florida.

Summary of Legislative Action Taken

In 1999, the Legislature established a regulatory framework for a TMDL program in Florida. The legislation addresses further development of the impaired water body list, and TMDL assessment, calculation, allocation, and implementation. The bill requires that the TMDL process be integrated with existing protection and restoration programs in Florida, such as the Surface Water Improvement and Management (SWIM) program and the Everglades Restudy, and provides for coordination with state agencies and affected parties.

The legislation directs DEP to adopt by rule: a methodology to determine whether a water body should be listed as impaired; a methodology to remove water bodies from the list; the actual TMDLs themselves; and how DEP plans to allocate the TMDL to the pollutant sources. Broad-based technical advisory committees (TACs) will assist DEP with these activities, as will other agencies, local governments and citizens.

Nonpoint source pollution is considered the most significant cause of water degradation in Florida. At this time, there are limited regulatory tools to manage it. The law promotes the use of "best management practices" (BMPs) to reduce pollutants. DEP and the WMDs are authorized to promulgate rules relating to BMPs and other measures necessary to achieve the pollution reduction targets established by the TMDLs for non-agricultural nonpoint sources of pollution. The Department of Agriculture and Consumer Services (DACS) is required to do the same for agricultural nonpoint sources of pollution.

The DEP must report to the Legislature in February 2001 on the status of the TMDL allocation program and make recommendations for improvement. In addition, DEP will document the effectiveness of BMPs used and the effectiveness of implementing TMDLs, and report back to the Legislature by January 2005 with recommendations.

Implementation

In 1999, DEP created a technical advisory committee (TAC) to assist in development of a methodology for determining impaired water bodies. A draft rule has been circulated and final rule adoption is expected by the end of 2000. A second TAC met for the first time in June to begin work on TMDL allocation issues. Its comments and suggestions will be used to draft the February 2001 report.

DEP, the WMDs and DACS have initiated work on the BMPs for nonpoint source pollutant reductions. The WMDs, for example, expect to use data accumulated in the pollutant load reduction goal program in the non-agricultural BMP development.

Agricultural BMP development is being accomplished on a commodity-by-commodity basis with measures being modified and customized to fit needs and conditions within the state's various geographic regions. Agriculture in Florida is very diverse, ranging from beef and dairy cattle to citrus, vegetables, poultry, agronomic crops, tree farming, and ornamental plant production. Areas of the state differ greatly in soil type and amounts of rainfall received, thus requiring development of a variety of BMPs.

In 1994, legislation was passed to protect Florida groundwater from nitrate contamination that was found in 36 of 38 Florida counties tested. The law created a 50 cents per ton assessment on nitrate fertilizer to develop and implement groundwater protection measures. The 1999 TMDL legislation takes some of those concepts and applies them to surface water protection.

Interim measures or BMPs are in various stages of development for aquaculture statewide, for citrus production affecting the St. Lucie estuary, for dairy and poultry in the middle Suwannee River basin, for vegetable and forage grass production in the Suwannee River/North Florida area, and for beef cattle/dairy cattle/vegetable production around Lake Okeechobee. A key component to the success of BMP development and adoption is cooperation, acceptance, and endorsement by the producers of the crop or commodity for which BMPs are being created.

As a result of the Consent Agreement reached with EarthJustice, in December 1999, EPA proposed a TMDL for Lake Okeechobee that has not been adopted as EPA is amenable to allowing the state to develop its own TMDL. A TAC, consisting of most of the researchers dealing with the phosphorous dynamics in Lake Okeechobee, has been working to develop a simplified model to create a defensible TMDL for the lake. The TAC's next meeting in August 2000 will address the biggest outstanding issue—what effect reducing the flow of phosphorus into Lake Okeechobee from external pollutant sources will have on the amount of phosphorus already in the lake.

DEP expects the Lake Okeechobee TMDL to be developed by August 31, 2000. At that time, the formal rulemaking process will begin.

Results and Impact

TMDL development and implementation represents a dynamic and lengthy process. The legislation's impact will likely be better gauged when DEP attempts to allocate the first TMDL. The groups that worked to create the legislation are pleased that Florida has its own program, since EPA is expected to release new draft rules by July that could impose more regulations on nonpoint source polluters.

WETLANDS MITIGATION BANKING

Introduction to Wetlands

In the 1970s, as scientific research confirmed the benefits of wetlands for flood control, water quality, aquifer recharge, and wildlife habitat, the federal and state governments enacted laws to regulate wetland activities. Congress passed three federal laws that included requirements for obtaining permits from the U.S. Army Corps of Engineers to dredge, fill or otherwise disturb wetlands.

Florida law authorizes the state's lead environmental agency to issue dredge-and-fill permits for proposed projects adjacent to surface water bodies, in mangrove stands, on sovereign submerged lands, or in other "waters of the state." In general, the state's jurisdiction ended at the landward extent of these waters. WMDs issued "management and storage of surface water" (MSSW) permits regulating activities in wetlands, as well as dredge-and-fill permits for projects proposed to impact isolated wetlands (not connected to surface waters) and thus outside of the state's jurisdiction at the time.

By 1979, state and WMD regulators were regularly including mitigation of adverse impacts to wetlands as a condition of these permits, although there was no statutory recognition of a statewide mitigation policy. The creation of wetlands on or adjacent to a mining or development project was the typical type of mitigation attempted.

In 1984, the Legislature passed the Warren S. Henderson Wetlands Protection Act to address property owners' concerns that wetlands permitting laws were confusing and duplicative, and regulators' and environmental advocates' concerns that the laws were ineffective. This Act consolidated the state's wetlands permitting authority and, among other things, expanded the criteria by which the state could evaluate project proposals and allow mitigation considerations.

The next significant change in wetlands permitting law occurred in 1993, when the Legislature merged the state's dredge-and-fill permitting program with the WMDs' MSSW program, to create the "Environmental Resource Permit" (ERP) program. One of the goals of the ERP program was to establish consistent wetlands regulations, including a definition of "wetlands" applicable throughout the state. DEP and four of the five WMDs operate the ERP program. A hybrid wetlands regulatory program solely within the Northwest Florida WMD is administered by DEP.

Introduction to Mitigation Banking

In the early 1990s, studies compiled by the state, the South Florida WMD, and the St. Johns River WMD showed mixed success with mitigation projects connected to wetlands permitting. Lack of compliance with the mitigation requirements, and poor siting or design of the projects were cited as common factors.

Federal and state regulatory agencies, environmental advocates and property owners began to reassess the effectiveness of on-site mitigation. In addition, there was growing interest in

regional approaches to environmental protection. A 1988 report by the National Wetlands Policy Forum recommended establishment of “mitigation banks” as a way for wetland-impact permittees to satisfy mitigation requirements.

“Mitigation banks” are parcels of land where wetlands are created, restored, enhanced, or preserved. Under the program, parcel owners (called bankers) are awarded “credits” which may be used for personal wetlands development projects, or which may be sold to other ERP applicants who must provide mitigation as a permit condition. The credits are supposed to represent the ecological value of creating, restoring, enhancing or preserving a wetland. Mitigation banks are not necessarily located adjacent to the wetlands being impacted by proposed development.

In 1991, the Florida Environmental Regulation Commission (ERC), which oversees the development of state environmental rules, created a Mitigation Banking Task Force, comprised of a cross-section of interest groups. The task force concluded that mitigation banks were a feasible and acceptable alternative, as long as the emphasis was on wetlands restoration, enhancement or preservation, and not creation.

The same 1993 legislation that created the ERP program also directed DEP and the WMDs to adopt rules, by January 1, 1994, governing the use, establishment and permitting of mitigation banks. Current state administrative rules detail the criteria for establishing a mitigation bank, the process by which mitigation credits are awarded, how a mitigation bank’s service area is drawn, and each mitigation bank’s financial responsibility requirements.

Before selling credits, mitigation banks must obtain a federal Mitigation Banking Instrument. In order to expedite and streamline the permitting process, mitigation bank applicants are encouraged to meet with the joint state-federal Interagency Mitigation Bank Review team. However, because state and federal mitigation regulations have differences, most crucial among them being how credits are “valued,” some mitigation banks in Florida are required to keep two ledgers. One shows available credits under the state permit, and the other shows federally approved credits.

Currently, 24 mitigation banks in Florida have received state construction permits, and 6 others have received conceptual permits. An estimated 10 of the mitigation banks with state construction permits have some form of federal authorization to sell credits.

Summary of Legislative Action Taken

In 1996 and 2000, the Legislature passed laws addressing mitigation banking criteria and financing issues, partly in response to industry and WMD concerns that private mitigation banks remained at a competitive disadvantage to other public entities. The 1996 legislation clarified requirements for establishing mitigation banks. The legislation also provided that the “full cost” of a donation for mitigation work had to include land costs and administrative overhead when DEP or a WMD accepted a cash donation from a wetlands permit applicant.

Legislation passed in 2000 addressed the issue of full-cost accounting by requiring a WMD or other public entity to enter into agreements when an offsite environmental restoration project is established which will be financed by cash donations from at least five ERP applicants, or which will offset at least 35 acres of adverse impacts to wetlands. These agreements must specify the location of the project, the type of mitigation and restoration planned, how the donations or payments of money will be spent, the total costs of the project, the time frame of the project, and how the project will demonstrate mitigation success.

Recognizing the growing expense of mitigation, the legislation includes a provision allowing DEP, the WMDs and local governments to establish environmental restoration projects that do not have to comply with the full-cost accounting provisions of law. This exemption may be used to mitigate adverse wetlands impacts caused by single-family homeowners on their own property.

The legislation also responds to the problems of keeping two ledgers by directing DEP and the WMDs to develop by October 1, 2001, a uniform wetlands mitigation assessment methodology. The methodology must be adopted by rule no later than January 31, 2002. DEP and the other agencies must seek input from the U.S. Army Corps of Engineers (Corps) in order to promote consistency in the mitigation methodologies used by the federal and state agencies.

This new wetlands mitigation assessment methodology is expected to replace all other mitigation methodologies. However, agencies may develop minimum thresholds or categories of permits where minor wetlands impacts need not be subject to this functional assessment. Mitigation banks in existence prior to the adoption of the uniform methodology have the option to request credits under the new assessment.

Implementation

DEP and the WMDs are in the early stages of drafting the new functional assessment methodology, due in 18 months, and developing a basic contract for the formal agreements.

Results and Impact

Private mitigation banks have been marginally successful because of problems associated with the rigorous, dual permitting system. Over the next 2 years, major benefits are expected from using "credits" awarded by the state and the Corps using the same methodology.

As to whether full-cost accounting and other financial accountability requirements for public banks will actually level the playing field for private bankers, only time will tell. It is likely that as mitigation options increase, competition will increase. The cost of mitigation may decline for home and business development in wetland areas.

SOUTH FLORIDA ECOSYSTEM RESTORATION

Introduction

The Everglades is universally recognized for its ecological significance, but it is also an ecosystem that has been fundamentally altered and subjected to significant adverse impacts. Although the Everglades is important, there are equally significant risks to the South Florida ecosystem—for example, the Kissimmee River, Lake Okeechobee, the St. Lucie and Caloosahatchee estuaries, and Florida Bay. South Florida restoration and protection is a key component of the state's overall environmental policy.

The Central & South Florida (C&SF) Project, first authorized by Congress in 1948, is a multi-purpose project providing flood control; water supply for agricultural, municipal, and industrial use; prevention of saltwater intrusion; water supply for the Everglades National Park; and protection of fish and wildlife resources. In 1992, the U.S. Congress authorized the Comprehensive Review, or Restudy, of the C&SF Project. The purpose of the Restudy is to develop modifications to the C&SF Project to restore the Everglades and Florida Bay ecosystems while providing for other water-related needs of the region. The estimated cost of land acquisition and construction for the Restudy is \$7.8 billion. In addition, annual operations and maintenance costs are estimated at \$162 million, and annual monitoring costs are estimated at \$10 million.

Summary of Legislative Action Taken

The 1994 Legislature passed the Everglades Forever Act (EFA) providing for a comprehensive Everglades restoration program. The critical element of the program is the Everglades Construction Project (ECP), an \$800 million project involving the construction and operation of six "stormwater treatment areas" (or STAs) designed to reduce the high phosphorus runoff entering the Everglades.

Because of concerns of project cost over-runs in the ECP, the 1997 Legislature created the Joint Legislative Committee on Everglades Oversight (JLCEO) to provide better oversight and accountability of the South Florida Water Management District (District). The JLCEO has been active in legislative oversight of the ECP, and has helped maintain legislative interest and involvement in all aspects of South Florida restoration. During the 1998 Interim, the JLCEO reviewed the Restudy. The 1999 Legislature, building on the interim work of the JLCEO, passed legislation to support the District in its role as local sponsor for the Restudy, to ensure effective state oversight of projects resulting from the Restudy, and to ensure that implementation of Restudy project components is consistent with state law. In addition, the 1999 Legislature passed legislation to ensure that the stormwater treatment areas (STAs), once constructed, would be able to begin operation even in the face of a permit challenge.

In 1999, the JLCEO reviewed the Restudy to identify the amounts and timing of funding necessary to implement project components and to determine if the District would meet financial responsibilities as a local sponsor. The 2000 Legislature provided up to \$1 billion in state funding over a 10-year period for the implementation of Restudy project. Also, the 2000

Legislature created a comprehensive Lake Okeechobee Protection Program and appropriated \$38.5 million for projects benefiting the lake.

Implementation

A number of the STAs included in the Everglades Construction Project have been completed, largely on time and on budget. The remaining major construction project is a 16,000-acre facility scheduled for completion in 2003. Once constructed this will represent completion of Phase I of the project, which has a "design" goal of limiting the phosphorus concentration of discharges to the Everglades Protection Area to no more than 50 parts per billion (ppb). The EFA requires the state to adopt by rule a numeric criterion for allowable phosphorus concentrations of discharges. If a numeric criterion is not adopted by December 31, 2003, current law provides for a "default standard" of 10 ppb.

Supplemental technologies are to be developed for incorporation in the STAs in order to ultimately meet the numeric criterion for phosphorus concentrations in water discharged to the Everglades Protection Area. By December 31, 2003, the District must submit a permit modification to the DEP that incorporates changes necessary to achieve compliance with the numeric criterion. Presently, the District is conducting research on supplemental technologies, and the DEP has initiated a process for establishing the numeric criterion.

Funding is the most critical issue related to Phase II. Phase I is funded by state sources in the EFA, but no provisions were made for Phase II funding. Until the supplemental technologies are fully developed and proposed for incorporation into the STAs, it will be difficult to estimate the amount of funding needed, though estimates run into the hundreds of millions of dollars.

On July 1, 1999, the Restudy was completed with submission of the Comprehensive Plan to the U.S. Congress. Presently, Congress is deliberating the Water and Resources Development Act of 2000 (WRDA 2000), which includes approval of the comprehensive plan as well as authorization for 10 initial project components.

Results and Impact

The benefits of the state efforts to restore the South Florida ecosystem are expected in the near future. One initial success is that discharges from the STAs currently in operation have phosphorus concentrations well below the design parameter of 50 ppb. Past trends that have damaged the ecosystem have been reversed, and long-term programs appear to be effective.

BUILDING COMMUNITIES

Overview

As one of the fastest growing states in the country, Florida's communities face a variety of challenging issues. In recent years, the Florida Legislature has addressed several such issues that are crucial to the maintenance and development of Florida's communities, including:

- Growth Management;
- Property Rights;
- Affordable Housing;
- Building Codes; and
- Emergency Shelter and Special Needs.

Rapid population growth and the corresponding development place pressures on both Florida's natural and built environments. To address these pressures, the Florida Legislature adopted a series of laws that govern growth management. Through a system of state, regional, and local government planning processes, these laws attempt to provide for the orderly development of Florida's communities. The Legislature has enacted several refinements to the state's growth management system since its original adoption in 1985.

State and local governments are restricted in their attempts to manage the state's growth by the U.S. Constitution and the Florida Constitution, which place limits on the state's ability to regulate the use of private property. Government must balance society's goals with individual property rights, and striking the appropriate balance between the two has been an ongoing issue for the Legislature.

The availability of safe, decent, affordable housing is vital to healthy communities and is an important element of the state's growth management system. In 1992, the Legislature dramatically increased its commitment to the provision of affordable housing by earmarking a portion of the state's documentary stamp taxes to fund state and local government affordable housing initiatives. Despite this commitment of resources, state and local governments continue to struggle to meet the growing demand for affordable housing.

While not an explicit part of the state's growth management system, building codes serve the complementary role of ensuring the safety of Florida's built environment. The reform of Florida's building codes system has been an issue within the construction industry for many years. It was not until Florida endured a series of natural disasters – Hurricane Andrew in August 1992, the "Storm of the Century" in March 1993, Tropical Storms Alberto and Beryl in the Summer of 1994, and Hurricanes Erin and Opal during the 1995 Hurricane Season – that the building code system's effectiveness took on statewide significance for all of the stakeholders in the building codes system. During the 1998 and 2000 Legislative Sessions, the Legislature enacted major reforms of the building code system.

Finally, Florida's susceptibility to natural disasters, including hurricanes, floods, and wildfires, requires policy makers not only to provide for the safety of the state's built environment, but also

to address the availability of shelters to house and protect citizens. In the wake of Hurricane Andrew, the 1993 Legislature declared its intent to not have a deficit of safe shelter space in any region of the state by 1998 and thereafter. Achieving this goal has been an ongoing challenge.

GROWTH MANAGEMENT

Summary of 1985 Legislation

Local Comprehensive Plans

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ss. 163.3161-163.3244, Florida Statutes, established a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as a future land use plan, a capital improvements element, and an intergovernmental coordination element. The local government comprehensive plan is the policy document guiding local governments in their land use decision-making. Under the act, the Department of Community Affairs was required to adopt, by rule, minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the act. The minimum criteria rule (Rule 9J-5, Florida Administrative Code) includes specific elements to be included in the plan and provides criteria for reviewing local comprehensive plan amendments.

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map; and 2) text amendments that change the goals, objectives or policies of the plan. In addition, every 7 years a local government must adopt an Evaluation and Appraisal Report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required to amend its comprehensive plan based on the recommendations in the report. Local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions. In 1999, the Department of Community Affairs reviewed 12,000 local comprehensive plan amendments.

Developments of Regional Impact

Chapter 380, Florida Statutes, provides for the Development of Regional Impact (DRI) program, which provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified. Any proposed change to a previously approved DRI that creates a substantial likelihood of additional regional impact, or any type of regional impact that constitutes a "substantial deviation," requires further DRI review and requires a new or amended local development order.

Regional Planning Councils

The State of Florida's 67 counties are divided into 11 planning regions, each of which is represented by a Regional Planning Council. Chapter 186, Florida Statutes, provides for the creation of 11 regional planning councils and for the adoption of strategic regional policy plans by the RPCs. The Strategic Regional Policy Plan is a long-range guide for physical, economic, and social development of a planning district through the identification of regional goals and policies. These strategic regional policy plans must be consistent with the State Comprehensive Plan.

State Comprehensive Plan

The State Comprehensive Plan, Chapter 187, Florida Statutes, enacted in 1985, provides long-range guidance for the orderly, social, economic, and physical growth of the state. The plan includes twenty-six goals covering subjects that include land use, urban and downtown revitalization, public facilities, transportation, water resources, natural systems, and recreational lands. By October 1st of each odd-numbered year, the Governor's Office is required to prepare any proposed revisions to the plan deemed necessary and present proposed revisions to the Administration Commission. The Administration Commission must review such recommendations and forward to the Legislature any proposed amendments approved by the Commission.

Concurrency

The concurrency requirement of the Local Government Comprehensive Planning and Land Development Regulation Act (part II, chapter 163, Florida Statutes) is a growth management tool designed to accommodate development by ensuring that adequate facilities are available as growth occurs. The "cornerstone" of the concurrency requirement is the concept that development should be coordinated with capital improvements planning to ensure that the necessary public facilities are available with, or within a reasonable time of, the impacts of new development. Under the requirements for local comprehensive plans, each local government must adopt levels of service (LOS) standards for certain types of public services and facilities. Generally, LOS standards apply to sanitary sewer, solid waste, drainage, potable water, parks and recreation, roads and mass transit. School concurrency may be imposed by local option. The local government must ensure that transportation facilities needed to serve new development are in place or under actual construction within 3 years after issuance of the certificate of occupancy. The intent is to keep new development from significantly reducing the adopted LOS by increasing the capacity of the infrastructure to meet the demands of new development.

Summary of 1998 - 2000 Legislative Action Taken

In 1998, the Legislature enacted chapter 98-176, Laws of Florida, which included planning for educational facilities. This legislation expanded the minimum criteria of the future land use element to require criteria to encourage the location of schools proximate to urban residential areas; to require that local governments seek to co-locate public facilities with public educational facilities; and to comply with these school siting requirements no later than October 1, 1999, or

the deadline for their evaluation and appraisal report (EAR), whichever comes first. The school siting requirement can be met by the adoption of an optional public school facilities element adopted to implement a school concurrency plan. In addition, this legislation created concurrency and interlocal coordination requirements for local governments that chose to adopt a public schools facilities element to implement school concurrency in the comprehensive plan. School districts are required to create 10-year and 20-year school facilities programs, including proposed funding amounts and sources, and “to seek” co-location facilities with local governments with or close to residential areas.

The 1998 legislation also addressed the State Comprehensive Plan and strategic regional policy plans. The review responsibilities of the Executive Office of the Governor were revised relating to the strategic regional policy plans, and the Governor was directed to appoint a committee to review the State Comprehensive Plan.

In 1999, the Legislature enacted chapter 99-378, Laws of Florida, the “Growth Policy Act.” As part of this legislation, all local government comprehensive plans are required to comply with school siting requirements by October 1, 1999. Local governments that do not comply with this requirement are prohibited from adopting comprehensive plan amendments until such time as they are in compliance.

The “Growth Policy Act” also addressed urban infill and development by authorizing municipalities and counties to designate urban infill and redevelopment areas based on specified criteria and provided economic incentives for these areas. An Urban Infill and Redevelopment Assistance Grant Program, to be used by local governments to develop community participation processes for the development of an urban infill and redevelopment plan, was also created. Matching grants funds are also provided for implementing urban infill and redevelopment projects that assist the goals identified in a local governments’ urban infill and redevelopment plan. The act also increased the number of policies adopted as specific goals of the state comprehensive plan relating to urban redevelopment and downtown revitalization. Furthermore, the substantial deviation numerical standards under the DRI program were increased by 50 percent for a project located wholly within an urban infill and redevelopment area.

During the 2000 Session, related legislation passed in chapter 2000-317, Laws of Florida, which revised provisions relating to the financial incentives a local government may offer in an urban infill and redevelopment area and authorized the transfer of unused funds between grant categories under the Urban Infill and Redevelopment Assistance Grant Program.

Implementation

Fifteen years have passed since the enactment of the state’s growth management system in 1985. At this time, all counties and municipalities, except newly created municipalities, have adopted a local comprehensive land use plan to guide their land use decision-making. As discussed above, the planning process is intended to evolve as state, regional, and local conditions change. As a result, implementation is an ongoing process.

Results and Impact

The results and impacts of the state's growth management legislation are in dispute and are difficult to quantify. Some argue that factors, including but not limited to, state and local budgetary constraints, political climates and increased population in the state, have contributed to the inability to fully realize the goals envisioned by the 1985 Legislature. Concerns were expressed during the 2000 Legislative Session that DRIs have outlived their usefulness, the Department of Community Affairs is too regulatory-minded in its approach to the comprehensive planning process, and that other substantive changes are needed. Others argue that these laws have been very successful in directing growth patterns. The Governor has issued an Executive Order to create a Commission to study growth management prior to the 2001 Legislative Session. It is anticipated that the Governor's Commission will study the issues raised during the 2000 Legislative Session.

Since the urban infill and redevelopment programs are newly created, it is difficult to ascertain the results and successes of these programs. The Department of Community Affairs is currently attempting to determine the proper timetable and benchmark. For fiscal year 2000-01, the Legislature reappropriated \$2.4 million for the Urban Infill and Redevelopment Assistance Grant Program.

PROPERTY RIGHTS

Summary of Legislative Action Taken

Before the legislature passed the Bert J. Harris Private Property Rights Protection Act (Harris Act), Florida landowners had two judicial remedies available when their properties' value or usefulness was destroyed or severely diminished by government regulation. A property owner could proceed against the governmental entity under the doctrine of equitable estoppel to enjoin the government from revoking a permit or attempting to apply a new regulation. This doctrine applies when a property owner, in good faith reliance on a governmental act or omission with respect to governmental regulations, has made a substantial change in position or incurred substantial expenses. Alternatively, if a regulation directly caused a substantial diminution in value, one that reached the level of a taking of the property, the property owner could file an inverse condemnation claim under the Fifth Amendment of the United States Constitution or Article X, section 6 of the Florida Constitution. However, a property owner would not be entitled to any relief if the government action was not a "taking" or the property owner did not satisfy the equitable estoppel requirements.

The 1995 Legislature passed the "Bert J. Harris Jr., Private Property Rights Protection Act." The Harris Act provides for a circuit court cause of action for property owners whose current use or vested right in a specific use of real property is inordinately burdened by the actions of a governmental entity. The Harris Act authorizes relief, including compensation, to be granted by the court to the private property owner for the actual loss to the fair market value of the real property at issue. Under the Harris Act, a property owner may also be entitled to an award of attorney's fees. The Harris Act provides parameters that describe when private property is "inordinately burdened." The Harris Act defines "existing uses" which include actual, present

uses or activities on the property and reasonably foreseeable, non-speculative land uses which are suitable for the property; are compatible with adjacent land uses; and have created a fair market value in the property greater than the fair market value of the actual, present use or activity.

Implementation

Since the 1995 act became law, there have been numerous court cases filed by property owners. In addition, an Attorney General opinion, Fla. AGO 95-78, states that the Harris Act does not provide for an award of damages to property that is not the subject of a governmental action, but that suffered a diminution in value as a result of the regulation of the subject property.

Results and Impact

It is difficult to ascertain the true result of the 1995 legislation. It is impossible to determine how many actions were not taken due to fear of a lawsuit under the Harris Act. It appears as though the Harris Act benefits property owners as it gives them a right to compensation not otherwise granted.

AFFORDABLE HOUSING

Summary of Legislative Action Taken

The Florida Housing Finance Agency was created nearly 20 years ago to meet the growing demand for affordable housing for Florida's families. In 1997, the Legislature enacted chapter 97-167, Laws of Florida, to reconstitute the Florida Housing Finance Agency as the Florida Housing Finance Corporation (Corporation). The Corporation is now a public corporation and public body corporate and politic that consists of a board of directors composed of the Secretary of the Department of Community Affairs as an ex officio and voting member and eight members appointed by the Governor, subject to confirmation by the Senate.

The 1997 legislation transferred all of the Agency's assets and liabilities to the Corporation. The Corporation continues to perform most of the functions traditionally performed by the Agency. Under the new structure, the Department of Community Affairs contracts with the Corporation on a multi-year basis to administer state housing programs. The Corporation is required to maintain a business plan, which includes performance measures and targets.

During the 2000 Legislative Session, the Legislature passed chapter 2000-290, Laws of Florida, which addresses a variety of affordable housing issues. The law created, but does not fund, the State Farmworker Housing Pilot Loan Program to provide low interest loans for the construction of affordable housing for farmworkers, and modifies several current affordable housing programs. The law also revised the current low-income housing property tax exemption to ensure that housing provided through local housing finance authorities is covered under the exemption, and addresses discrimination against affordable housing by prohibiting discrimination in land use decisions and in permitting of development based on race, color, national origin, sex, disability, familial status, religion, or the source of financing of a

development or proposed development. Finally, the law modified statutes governing the State's Private Activity Bond Allocation to allow more time to complete affordable housing bond deals and to ensure that allocations are not lost.

Implementation

In fiscal year 1999-2000, the program allocation from the documentary stamp tax collections for the State Housing Initiative Partnership (SHIP) program, through which funds are provided to local governments, was \$90,900,000. Tax collections in excess of anticipated revenues provided an additional \$33,129,018 to SHIP recipients -- counties and specified municipalities. The total SHIP disbursement to all participating counties and cities totaled \$124,029,018. The state affordable housing allocation from the documentary stamp tax was \$40,085,00. The Corporation allocated these funds to several state housing programs, which are described in the "Florida Housing Finance Corporation: 1999 Annual Report."

Results and Impact

The Florida Legislature established the goal that by the year 2010, "this state shall ensure that decent and affordable housing is available for all its residents." Despite having housing programs and a delivery system considered the best in the nation by many, Florida's progress in meeting its 2010 affordable housing goal has been limited.

The Affordable Housing Study Commission (Commission), is a statutory body (s. 420.609, F.S.) whose duties include analyzing solutions and programs to address the state's acute need for housing for people with very low to moderate income, and making policy and funding recommendations to the Governor and the Legislature. In its "1999 Final Report," the Commission presented the results of its biennial evaluation of Florida's progress towards meeting the 2010 affordable housing goal. In brief, the Commission found that the additional 22,134 housing units provided with 1998 program funds allowed Florida to keep up with only two-thirds of the growth of cost burdened households during that year, and did not provide for the backlog of 1.35 million cost burdened households.

BUILDING CODES

Summary of 1998 Legislation

In 1996, Governor Chiles established a Building Codes Study Commission to evaluate Florida's building codes system and develop recommendations to reform and improve it. In 1998, the study commission issued its findings and proposed a building codes system. The proposed system included a single, statewide building code that would govern all technical requirements for Florida's public and private buildings and take into account appropriate local variations.

The 1998 Legislature considered the findings and recommendations of the Building Codes Study Commission and enacted chapter 98-287, Laws of Florida, which implemented many of the Commission's recommendations.

Chapter 98-297, Laws of Florida, reconstituted the Board of Building Codes and Standards as the Florida Building Commission, which was required to submit the Florida Building Code, as adopted by the Commission, to the Legislature before the 2000 Legislative Session for review and approval or rejection. In addition, the Commission was required to prepare a list of recommended revisions to the Florida Statutes necessitated by the adoption of the Florida Building Code. The act required the Department of Insurance to adopt the Florida Fire Prevention Code and the Life Safety Code, and provided that upon initial adoption, the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are deemed adopted by all local jurisdictions. The act allowed, with some restrictions, local governments to adopt more stringent requirements to the code, and expanded the responsibilities of local governments for permitting, plans review and inspection of facilities that are currently reviewed by state agencies. Finally, the act authorized the Florida Building Commission to create and administer a statewide product evaluation system.

Implementation of 1998 Legislation

On February 14, 2000, the Florida Building Commission adopted the Florida Building Code as an administrative rule and submitted it, together with proposed conforming amendments to the Florida Statutes, to the 2000 Legislature for consideration. The draft code was noticed for rule adoption on February 18, 2000, in the Florida Administrative Weekly.

The Commission established standards for hurricane protection in the proposed code that are based on a national model building code, federal regulations, and standards evolving out of southeast Florida's experience with Hurricane Andrew. Specifically, for protection against hurricane waters, the code incorporates the flood plain management standards of the Federal Emergency Management Agency's National Flood Insurance Program. For coastal construction, it incorporates the Florida "coastal building zone" storm surge protection standards for coastal construction. For protection against hurricane winds, the Commission proposed adoption of the American Society of Civil Engineers (ASCE), Standard 7, 1998 edition.

Under the ASCE standard, buildings constructed in regions that are expected to experience hurricane winds of less than 120 mph must be designed to withstand external wind pressures identified for their location. Buildings constructed in regions that are expected to see hurricane winds of 120 mph or greater must not only be able to withstand external wind pressures, but also internal pressures that may result inside a building when a window or door is broken or a hole is created in its walls or roof by large debris. Areas within 1 mile of the coast that experience at least 110 mph winds are also required to meet the 120 mph standards for external and internal pressures. Alternatively, approved window and door protections such as hurricane shutters can be installed in lieu of designing to withstand internal pressures.

Summary of 2000 Legislation

Chapter 2000-141, Laws of Florida, provides for the adoption of the Florida Building Code, a unified building code for the State of Florida, effective July 1, 2001. The act directs the Florida Building Commission to continue the process to adopt the Florida Building Code as an administrative rule, subject to specific legislative direction. The Commission is directed to adopt

the hurricane wind protection requirements of ASCE, Standard 7, 1998 edition, with the exception of the eastern border of Franklin County to the Florida-Alabama line, where the wind born debris region is limited to 1 mile of the coast. The act directs the Commission to modify the code to address issues relating to water treatment units, permitting, and special inspectors. The act also directs the Commission to recommend a statewide product approval system to the Legislature prior to the 2001 Legislative Session.

The act delegates to local governments the enforcement of state agency construction regulations, which are to be included in the code (with limited exceptions), and clarifies the Commission's authority to interpret the code, hear appeals of local interpretations, and amend the code on a yearly basis. The act transfers the threshold inspector certification program to the Board of Architecture and the Board of Professional Engineers and revises the program. The act revises the Manufactured Buildings statute and creates a factory-built school building program.

The act also requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials for the installation or implementation of fixtures or construction techniques to mitigate windstorm damage. In addition, the act requires the Department of Community Affairs to initiate a project to demonstrate the cost and risk reduction of the Florida Building Code and requires the department to issue a report of its findings to the Legislature and the Governor.

Implementation, Results, and Impact

As noted above, the 2000 legislation provides for the Florida Building Commission to continue the process to adopt the Florida Building Code as an administrative rule. Currently, the Commission is proceeding with the rule making process. The Florida Building Code will take effect July 1, 2001.

EMERGENCY SHELTER AND SPECIAL NEEDS LEGISLATION

Summary of Legislative Action Taken

In 1998, the Department of Community Affairs surveyed existing schools, community colleges, universities and other public buildings to measure sufficiency and adequacy of shelter space in Florida. The department's 1999 Shelter Retrofit Report (Shelter Report) recognizes a considerable deficit, in both the amount of shelter space and the adequacy of existing space. The 2000 Florida Legislature passed legislation, which contains both sheltering and special needs components. Chapter 2000-140, Laws of Florida, provides the following provisions:

Sheltering

The legislation appropriated \$10 million from the Florida Hurricane Catastrophe Fund for shelters, including retrofitting of shelter space (\$3 million) and programs to improve wind resistance (\$7 million). The legislation exempted school districts that are not located in a regional planning council area with a hurricane shelter deficit from having to incorporate public shelter criteria. Language was included that clarified that a person or organization that provides

shelter for profit is an instrumentality of the state, which enables the provider to enjoy the same tort caps currently provided to the state.

Special Needs

The legislation amended registration procedures for those persons with special needs during an emergency and provides for recruitment of health care practitioners to staff special needs shelters. This legislation granted both the Agency for Health Care Administration and the Department of Health certain powers and obligations, and appropriated \$600,000 to the Department of Health.

Implementation

According to the Shelter Report, only 2 percent of existing structures comply with American Red Cross guidelines. This percentage is expected to increase to 36 percent with minor retrofitting.

Results and Impact

Retrofitting existing structures enables the state to maximize resources. This legislation abolished the 3-mile rule, which previously required new construction to be built to shelter quality only when another school of shelter quality was not within a 3-mile radius. Alternatively, this legislation replaced the 3-mile rule with regional planning council criteria, which better funnels resources to the most vulnerable areas. In treating private, for-profit providers of space as instrumentalities of the state, both sovereign immunity and tort caps, when sovereign immunity is waived, are available to the provider. This provision should encourage more private property owners to offer space during an emergency.

Finally, the special needs language identified the Department of Health as the lead agency, authorized certain powers, and directed compliance with specific duties. In addition to the \$600,000 appropriation, this bill provided two positions to the Department for special needs program implementation. This bill also named the Departments of Children and Families, Elder Affairs, and the Agency for Health Care Administration as partnering entities.