1999 SESSION SUMMARY

Major Legislation Passed

Compiled and Edited by
Office of the Senate Secretary

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Senate Committee on Agriculture and Consumer Services

AGRICULTURE

CS/HB 1535 — Wildfires

by General Government Appropriations Committee; Agriculture Committee; and Rep. Putnam and others (CS/SB 780 by Agriculture & Consumer Services Committee)

This bill provides greater authority to the Division of Forestry within the Department of Agriculture and Consumer Services regarding wildfire management by making clear that the division is to have primary responsibility in this area.

Authority is provided for the division to:

- Appoint center managers, forest area supervisors, firefighter rotor craft pilots, and other employees;
- Develop a training curriculum for forestry firefighters which includes basic volunteer structural fire training and at least 250 hours of wildfire training;
- Provide fire management services and emergency response assistance and to charge reasonable fees for such services;
- Allow local agencies and other entities under contract or agreement with the division to assist in firefighting operations, such as setting counter fires, removing fences and cutting fire lines;
- Allow for the use of water from public and private sources;
- Reimburse public and private entities that it engages to assist in the suppression of wildfires including their personnel and equipment, including aircraft;
- Undertake privatization alternatives for fire prevention activities such as constructing fire lines and conducting prescribed burns and if appropriate, entering into agreements with the private sector to perform these activities;
- Operate a newly created Florida Center for Wildfire and Forest Resources Management Training. The center is to serve as a place where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory of their disciplines;
- Provide wildfire suppression training at the center to rural fire departments, volunteer fire departments, other local fire response units, and structural firefighters;

- Establish cooperative efforts with governmental entities, hire personnel and enter into contract arrangements with public and private bodies to assist in carrying out the training and operation of the center; and
- Create an advisory committee to review program curriculum, course content, and scheduling.

The bill also:

- Authorizes the Commissioner of Agriculture to declare a severe drought emergency to exist in a given area of the state and to require a written permit for all open burning in those areas to be obtained from the division or its designated agent.
- Requires the Commissioner of Agriculture to advise the Governor when a severe drought emergency continues such that wild lands have become so dry or parched as to create an extraordinary fire hazard that could endanger life or property on wild lands. The Governor may by proclamation declare an extraordinary fire hazard to exist and file the proclamation with the Department of State.
- Makes it unlawful to leave campfires or bonfires unattended or unextinguished.

Establishes the following conditions for certified prescribed burning:

- May only be accomplished by a certified prescribed burn manager who is present on site with a copy of the prescription from ignition to completion;
- Requires a written prescription be prepared prior to obtaining authorization from the division;
- Requires consent of the landowner or his or her designee prior to requesting authorization;
- Requires authorization to burn be obtained from the division prior to igniting the prescribed burn;
- Requires adequate firebreaks at the burn site and sufficient personnel and firefighting equipment to control the fire;
- Is considered in the public interest and does not constitute a public or private nuisance when conducted under applicable statutes and rules;
- Is considered to be a property right of the property owner.

Specifies that property owners or their agents are not liable for damage or injury caused by fire or smoke when conducting a lawful certified prescribe burn unless gross negligence is proven. Authorizes and empowers the division to prescribe burn any wild land area of the state that is in danger of having an uncontrolled fire and provides a process for landowners who object to having their property burned. Directs the Department of Education to include prescribed burning information in educational materials where appropriate.

Clarifies that an individual who intentionally sets a fire to wild land not owned by them or without consent of the owner is considered to have committed a third degree felony. Further clarification is made to provide that anyone carelessly setting fire to wild land not owned by them or without consent of the owner has committed a second degree misdemeanor.

Authorizes owners of nonconforming structures which were burned during June or July 1998 by wildfires to repair or rebuild in like-kind, unless prohibited by federal law or regulation. Authorizes the use of any equipment, including fire control equipment, purchased with Conservation and Recreation Lands (CARL) may be used for any CARL lands managed by a state agency and appropriates $140,000 to implement the provisions of the bill, such as upgrading facilities for the newly created Florida Center for Wildfire and Forest Resources Management Training.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 114-0

CS/HB 1143 — Aquaculture

by Agriculture Committee and Rep. Bronson and others (CS/SB 1118 by Natural Resources Committee and Senator Laurent)

This bill clarifies the responsibilities of the various agencies involved in the regulation of aquaculture production. It addresses the oversights that resulted in 1998, when the Florida Legislature transferred regulatory authority for aquaculture to the Department of Agriculture and Consumer Services (department), with the exception of those areas required by federal law, rule or cooperative agreement to be regulated by another agency.

The bill amends ch. 370, F.S., to require the Fish and Wildlife Conservation Commission (commission) to adopt rules by March 1, 2000, to regulate the sale of farmed red drum and spotted sea trout. These rules will specifically provide for the protection of the wild resource, without restricting a certified aquaculture producer from selling farmed fish. To that extent, these rules must only require that farmed fish be kept separate from wild fish, be fed commercial feed, that farmed fish be placed in sealed containers, that these sealed containers must have the name, address, telephone number, and aquaculture certificate number of the farmer clearly and indelibly placed on the container, and that this information must accompany the fish to the ultimate point of sale. The commission is required to develop procedures, by July 1, 2000, to allow persons possessing a valid aquaculture certificate of registration to sell and transport live snook produced in private ponds or private hatcheries as brood stock to stock private ponds, or for aquarium display. The commission is authorized to issue special activity licenses for the importation, possession, and aquaculture of native and nonnative anadromous sturgeon, until best-management practices are implemented for the cultivation of anadromous sturgeon.

The bill allows for reasonable quantities of saltwater species to be taken for brood stock for aquacultural purposes. It is unlawful for any person, firm, corporation, or association to possess, attempt to possess, interfere with or remove live bait from a live bait trap or cage. Such a violation is a misdemeanor of the first degree. The act redefines a marine aquaculture producer as a person holding a certificate pursuant to s. 597.004, F.S., to produce aquaculture products. It redefines the responsibilities of the Sturgeon Production Working Group and the sturgeon production management plan.

The bill amends ch. 372, F.S., to clarify that the responsibility of the commission's Division of Freshwater Fisheries does not supersede the responsibilities of the Department of Agriculture and Consumer Services under the Florida Food Safety Act (ch. 500, F.S.) or the Florida Aquaculture Policy Act (ch. 597, F.S.). Any individual or business issued an aquaculture certificate under s. 597.004, F.S., is exempt from the requirements of ch. 372, F.S., with respect to aquaculture products authorized under such certificates. The Game and Fresh Water Fish Commission's authority to require cultured game fish that are sold to be tagged and to assess a fee of not more than five cents for each tag is eliminated.

The bill amends ch. 581, F.S., to allow an aquaculture producer who has a permit from the department to export water hyacinths to countries other than the United States. Current law only allows water hyacinths to be shipped to Canada.

The bill amends ch. 597, F.S., to redefine aquaculture producers to mean those persons engaging in the production of aquaculture products and certified under s. 597.004, F.S. The department is authorized to adopt rules that require best-management practices to be implemented by holders of aquaculture certificates of registration. It may also establish schedules for implementation of best-management practices and interim measures that can be taken prior to adopting best management practices. Interim measures may include the continuation of regulatory requirements in effect on June 30, 1998. There is a presumption of compliance with state groundwater and surface water standards if the holder of the aquaculture certificate of registration implements best-management practices that have been verified by the Department of Environmental Protection. Nothing in ch. 597, F.S., supersedes the authority under ch. 372, ch. 373, or ch. 403, F.S., to regulate alligator farms and alligator farmers. Aquaculture products, except shellfish, snook, and any fish of the genus Micropterus, and prohibited and restricted freshwater and marine species identified by rules of the commission may be sold by an aquaculture producer. Any person whose certificate of registration has been revoked or suspended must reapply to the department for certification. The act provides for a 5-year revocation of an aquaculture certificate when a person has been convicted of taking aquaculture species raised at a certified facility. It establishes a cultured shellfish theft reward program to be administered by the department, for the purpose of granting rewards to persons who provide

information leading to the arrest and conviction of individuals illegally possessing, harvesting, or attempting to harvest cultured shellfish.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 111-0

HB 1639 — Ad Val Tax Assessment/Irrigation

by Rep. Alexander and others (SB 1582 by Senator Laurent)

This bill amends s. 193.461, F.S., by defining the income methodology approach that is to be used to assess agricultural property such as irrigation systems, including pumps and motors that are attached to the farm land. The income methodology approach must consider a part of the average yields per acre and is to have no separately assessable contributory value.

Section 193.461, F.S., provides requirements and directions to property appraisers for the assessment of agricultural lands. There are listed criteria for assessment, one of which is the income methodology approach which uses actual agricultural production on a parcel of property as a measure of the value of that particular property. Under this approach, productive agricultural property is assessed in a manner that reflects the rises and falls in the agriculture business by using a five-year moving average to establish the property's value.

The Florida Department of Revenue provides guidelines for property appraisers to utilize in calculation of property value; however, the guidelines do not specify which personal property is to be included in that calculation. As a result, there is no uniformity among the state's counties regarding treatment of certain personal property used to create agricultural revenue. Agriculture industry representatives believe this creates a form of "double taxation." Personal property, such as irrigation systems, is taxed as tangible personal property and also as a land improvement to increase production revenue.

If approved by the Governor, these provisions take effect upon becoming a law, and shall first apply to assessments effective January 1, 2000.
Vote: Senate 40-0; House 114-0

CS/HB 1855 — Agriculture and Consumer Services Department

by General Government Appropriations Committee; Agriculture Committee; and Rep. Putnam and others (CS/SB 2066 by Agriculture & Consumer Services Committee and Senator Thomas)

This bill makes many technical changes to the regulatory programs of the Department of Agriculture and Consumer Services (department). It more significantly modifies the regulations pertaining to the following programs:

Antifreeze Act

Chapter 501, F.S., is amended to clarify information required on antifreeze labels. The bill establishes the registrant of each brand of antifreeze as the party responsible for the quality and quantity of the product sold, offered, or exposed for sale in this state and allows the manufacturer, the packager, or the person whose name appears on the label to register with the department. It also redefines the penalties for violations of the Antifreeze Act.

Division of Fruit and Vegetables

Section 570.48, F.S., is amended to authorize the division to certify and license inspectors of fruit and vegetables where no federal law requires such inspectors to be licensed and certified by the federal government. This will allow the department to continue the practice of providing "certified" inspections at processing plants, as required by state law.

Pest Exclusion Advisory Committee

Section 570.235, F.S., is created to form a Pest Exclusion Advisory Committee within the department. The committee is required to review and evaluate the state's existing and future pest-exclusion, detection, and eradication programs and to issue a report to the Commissioner of Agriculture, the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2001.

Florida Agricultural Promotional Campaign

Chapter 571, F.S., is amended to authorize the department to ensure that only Florida agricultural or agricultural based products are marketed under the "Fresh from Florida" or "from Florida" logos. The bill provides penalties for the use, reproduction, or distribution of the logos without prior registration with the department.

Citrus Canker

Section 581.184, F.S., is amended to authorize the department to create a citrus canker host-free buffer area to retard the spread of citrus canker from known infected areas. In addition, the department is to develop a compensation plan for the trees that are removed. Compensation for the trees removed from the buffer area is subject to annual legislative appropriation.

Legal Fences

Section 588.011, F.S., expands the definition of a legal fence to include fences using battens, up to 60 feet apart for nonelectric and 150 feet apart for electric, if constructed of high tensile wire in accordance with the manufacturer's specifications.

Livestock at Large

Chapter 588, F.S., is amended to revise the procedures for handling livestock at large to allow sheriffs, or their designees, more flexibility in dealing with stray livestock. If the owner of the livestock cannot be located, the sheriff is authorized to sell the livestock at the nearest auction yard. The proceeds from the sale will be used to reimburse the expenses incurred in capturing, maintaining, and selling the livestock, and in attempting to locate the owner. Any money remaining after all expenses are paid will be given to the owner.

Withlacoochee and Goethe State Forest

Section 589.081, F.S., is amended to substitute generic language for individual county names to ensure that as the Withlacoochee and Goethe State Forests grow, each county will get its share of the gross receipts.

Public Fairs and Expositions; Amusement Ride

Chapter 616, F.S., is amended to provide that property held in trust by a fair association is exempt from special assessments and to clarify provisions authorizing a fair association to sell, mortgage, lease, or convey property. The bill revises certain restrictions on temporary amusement rides with respect to location of operation. It prohibits a business that has temporary amusement rides to locate within a five-mile radius of any public fair or exposition being operated by a fair association, except with the written consent of the affected fair association and deletes a license tax imposed on such rides. A fair association is required to send a copy of its permit application to each fair association located within 50 miles of the site of the proposed fair or exposition at the same time it sends an application to the department. The department is allowed to determine whether any proposed fair or exposition will compete with another for the same name, dates of operation, or market. Preference will be given to established fair associations when issuing permits.

The bill revises safety standards for amusement rides. It requires an owner to request inspection and permitting of an amusement ride within 60 days after an application is filed with the department. The department is required to inspect and permit the amusement ride within 60 days after the date the affidavit of compliance is executed. The bill deletes a

requirement that amusement ride owners submit the manufacturer's current recommended operating instructions and other documents with an application for an annual permit. It directs the owner to provide this information upon request of the department, at no cost to the department. It authorizes the department to establish fees by rule to cover the costs and expenditures associated with the Bureau of Fair Rides Inspection, including all direct costs and all indirect costs. If there is not sufficient general revenue appropriated by the Legislature, the industry must pay for the remaining cost of the program. Signs must be prominently displayed at the patron entrance of each amusement ride which advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, and any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer. Bungy catapulting or reverse bungy jumping is prohibited.

The bill exempts the Florida State Fair Authority from special assessments and voids any special assessments imposed upon a fair association or state fair before the effective date of this act if not paid by the effective date of this act.

Abuse of Horses or Cattle

Chapter 828, F.S., is amended to prohibit a person to intentionally trip, fell, rope, or lasso the legs of a horse by any means for the purpose of wagering for entertainment or sport. The bill also provides relief from prosecution for prohibited acts relating to killing or aggravated abuse of registered breed horses or cattle resulting from weather conditions or other acts of God, providing the person is otherwise in compliance.

These provisions became law upon approval by the Governor on July 1, 1999.
Vote: Senate 40-0; House 118-0

CONSUMER SERVICES

HB 1061 — Consumer Protection

by Business Regulations & Consumer Affairs Committee and Rep. Ogles and others
(CS/SB 1712 by Regulated Industries Committee and Senator Meek)

The Division of Consumer Services, within the Department of Agriculture and Consumer Services (department), acts as a clearinghouse for consumer complaints, consumer complaint referrals, and consumer complaint mediation. House Bill 1061 enhances and clarifies the laws relating to information disclosure and provides remedies for enforcement for the following consumer protection program areas:

Solicitation of Contributions

Chapter 496, F.S., is amended to exclude funds which are transferred between charitable organizations from the definition of "contribution" as it relates to the solicitation of contributions and fees of the department. Solicitors are required to disclose certain criminal histories, and anyone with felony and other specific convictions during the last ten years is prohibited from soliciting in Florida.

Commercial Telephone Solicitation

Chapter 501, F.S., is amended to prohibit a commercial telephone seller or salesperson to make a call before 8:00 a.m. or after 9:00 p.m. local time at the called person's location. In addition, it is unlawful for such person to take any action to block the telemarketer's name or telephone number from caller I.D.

Pawnbrokers

Chapter 539, F.S., is amended to clarify that a pawnbroker license expires after one year and must be renewed annually for a fee of $300. The act clarifies what criminal activities relating to pawnbroking would result in the denial of licensure, such as theft or dealing in stolen property, among others. The following documentation relating to an applicant's net worth must be submitted with an application for licensure:

- A current financial statement prepared by a certified public accountant; or
- A documented affidavit attesting the applicant's net worth to be at least $50,000; or
- If a corporation, the most recent tax return.

An applicant for a pawnbroker license must submit a complete set of fingerprints, $300 for the first year's license fee, and the actual cost to the department for fingerprint analysis. The Division of Consumer Services must submit the fingerprints to the Department of Law Enforcement for processing. The Department of Law Enforcement would then forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The act provides that a pawnbroker license may be suspended or revoked if a licensee no longer meets the eligibility requirements to hold a pawnbroker's license.

Business Opportunities

Chapter 559, F.S., is amended to require a seller of a business opportunity to disclose to a prospective purchaser any criminal background activity, regardless of adjudication, which has occurred within the last ten years rather than the current specification of seven years. The act adds theft and larceny to the list of offenses to be disclosed. A seller of a business opportunity is required to disclose, as a part of the required annual disclosure document,

identity information relating to officers and employees who are involved with the seller's business activities in Florida. This information would include name, home and business address, telephone number, driver's license number, the state in which the driver's license is issued, and birth date.

Motor Vehicle Repair

Chapter 559, F.S., is amended to revise the definition of "motor vehicle" to specify that it does not include off-road construction and earth moving type equipment. The department is required to post a prominent "closed by Order of the Department" sign on any motor vehicle repair shop that has had its registration suspended or revoked or that has been determined to be operating without a registration. The act provides a second-degree misdemeanor penalty for defacing or removing such a sign, for operating without a registration, or for operating with a revoked or suspended registration. The department is authorized to impose administrative sanctions for violations.

Annuity Agreements

Chapter 627, F.S., is amended to prescribe additional conditions under which a subunit of an organized domestic or foreign nonstock corporation or an unincorporated charitable trust may enter into annuity agreements.

Assistive Technology Devices

Chapter 427, F.S., is amended to expand the definition of assistive technology devices to include personal transfer systems and devices to enable individuals with severe speech disabilities to in effect speak. A definition is created for Assistive Technology Device Warranty Act rights period, which means the period ending one year after first delivery of the device to the consumer or the manufacturer's express written warranty, whichever is longer. The definition of assistive technology dealer is clarified to mean a business entity that is primarily engaged in the selling or leasing of assistive technology devices.

A manufacturer is required to conform a defective device to the warranty if the consumer reports the problem within the Assistive Technology Device Warranty Act rights period, even if the repairs are made after expiration. Such repairs must be made at no cost to the consumer. Each manufacturer or dealer must provide its consumers with an address and telephone number in the written warranty or owner's manual. The manufacturer is required to provide the dealer, and the dealer to provide the consumer with a written statement explaining the consumer's rights under this chapter.

The department is authorized to accept and investigate a consumer's dispute with an assistive technology dealer or lessee. Additionally, dealers are required to register, pay

fees and follow procedures of the department. The department is authorized to enter a business to ensure that it is in compliance. It may also deny, revoke or suspend a registration if the business is not in compliance and may impose penalties. The department, state attorney or a consumer is authorized to bring civil action against any violator. Guidelines are provided for the department to use in spending money generated from fees to assist investigators, conduct sensitivity training for department staff, and to increase consumer awareness. An appropriation of $450,000 is provided for six full-time positions to administer the act.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 117-1

CS/SB 672 — Deceptive Trade Practices/Print Ads

by Agriculture & Consumer Services Committee and Senator Holzendorf

This bill creates s. 501.97, F.S., prohibiting a person from using a fictitious name in any type of print advertisement with an intent to misrepresent the geographic origin or location of a business. Violators are guilty of a deceptive and unfair trade practice and subject to any and all penalties under ch. 501, part II, F.S. It also clarifies that this bill is not intended to abrogate or modify s. 865.09, F.S., relating to the Fictitious Name Act. Individuals who are in accordance with the Fictitious Name Act, are not in violation of this bill.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

PROPERTY INSURANCE

CS/CS/SB 1790 — Florida Hurricane Catastrophe Fund

by Fiscal Policy Committee; Banking & Insurance Committee; and Senator Holzendorf

This bill makes the following changes to the Florida Hurricane Catastrophe Fund (Cat Fund):

- Limits the total amount the Cat Fund may reimburse all insurers for hurricane losses to $11 billion for any one year, subject to increase in future years under certain conditions. Currently, there is no identified limit an insurer may receive to cover 45 percent, 75 percent, or 90 percent of its losses, as selected by the insurer, above its retention. The total recovery is limited only by the balance of the Cat Fund and the maximum amount the State Board of Administration (SBA) is able to raise through the issuance of revenue bonds financed by a 4 percent assessment on property and casualty policies, estimated to be $11 billion in 1998 and expected to be about $11.6 billion for 1999.

- Limits each insurer's payment from the Cat Fund for any one year to the current minimum payment, which generally equals each insurer's proportionate share of Cat Fund premiums; however, the two state-created residual market insurers, the Florida Windstorm Underwriting Association (FWUA) and the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) would *not* be subject to this limitation; and

- Increases the potential maximum assessments on property and casualty policies from 4 percent to 6 percent to fund Cat Fund bonds issued by the SBA, but limited to 4 percent for any one contract year. Any assessment authority not used for a contract year may be used for a subsequent contract year (subject to the 4 percent cap). For example, if hurricane losses in 1999 require the Cat Fund to use its $3 billion cash balance and issue bonds for $8 billion, to pay the $11 billion limit, funded by a 3.7 percent assessment (the estimated percentage needed), a new 2.3 percent assessment would be authorized to pay losses for future contract years, if necessary. There would be continuing authority to generate a new assessment of at least 2 percent and as great as 4 percent for any contract year following a year when some or all of the 4 percent

assessment authority is utilized, but limited by the 6 percent cap on aggregate assessments in any one year for all contract years.

The above changes are intended to preserve reinsurance capacity in the Cat Fund as a relatively stable and ongoing fund for the years following a major hurricane and to help minimize the rate increases and policy cancellations for residential property insurance policies that are likely to occur following a hurricane that significantly depletes the reinsurance capacity of the Cat Fund. This is due to the fact that insurers which depend on the Cat Fund for reinsurance capacity would be less likely to be forced to obtain more expensive private reinsurance to substitute for reduced Cat Fund claims-paying capacity.

Aggregate assessments in excess of 4 percent (up to 6 percent) would only be necessary to pay losses for a hurricane or hurricanes in subsequent years after Cat Fund bonds were first issued, until such bonds are satisfied. The effect of the bill is primarily to transfer existing assessment authority from the FWUA and RPCJUA to the SBA as administrator of the Cat Fund. However, the impact of the extra 2 percent assessment in the Cat Fund is transferred from all property insurance policyholders in the state (FWUA) and all residential property insurance policyholders in the state (RPCJUA) to all property and casualty policyholders in the state (Cat Fund), which includes motor vehicle insurance, commercial liability, medical malpractice, and other lines of liability insurance that are in the Cat Fund assessment base, but not the assessment base of the FWUA or RPCJUA.

The bill makes other changes to the operation of the Cat Fund, including: (1) specifying that the percentage growth in the insurers' retention is based on the percentage growth in the exposure to the fund, rather than the percentage growth in premiums for covered policies; (2) clarifying the types of policies covered by the fund; (3) adding definitions to clarify the distinction between the estimated and actual claims-paying capacity of the fund; (4) deleting the requirement that the fund charge an equalization charge for insurers increasing their coverage level; (5) requiring insurers to report losses on an interim basis as directed by the SBA; (6) authorizing the SBA to audit records of each insurer's covered policies; (7) authorizing the SBA to collect interest on late reimbursement payments; (8) various provisions intended to protect the interest of bondholders of Cat Fund bonds and, thereby, help assure their marketability; and (9) authorizing the SBA to take any action necessary to enforce its rules and contract requirements.

If approved by the Governor, these provisions take effect June 1, 1999.
Vote: Senate 37-0; House 116-0

SB 1464 — Depopulation/Florida Residential Property and Casualty Joint Underwriting Association

by Senator Dyer

This bill (Chapter 99-142, L.O.F.) repeals the provision under s. 627.3511, F.S., which specifies that an insurer or agent may not qualify for a bonus or exemption from payment of assessments to the Florida Residential Property and Casualty Joint Underwriting Association (JUA) after the number of risks insured by the JUA is less than 250,000. On January 1, 1999, the JUA policy count dropped below 250,000 policies. The effect of repealing this provision allows the JUA, which as of April 1 had approximately 199,808 policies with $32 billion in exposure, to continue to offer financial incentives to insurers to take over homeowner's policies and other risks insured by the JUA.

The JUA was created by the Legislature in 1992 in response to Hurricane Andrew to provide residential property insurance to homeowners. It has greatly reduced the number of policies in recent years after reaching a peak of 937,000 policies and $98 billion in insured value in September 1996.

These provisions were approved by the Governor and take effect April 29, 1999.
Vote: Senate 36-0; House 116-0

HEALTH INSURANCE

CS/SB 232 — Health Care (Health Maintenance Organizations; Continuation of Care; Rate Filings; etc.)

by Banking & Insurance Committee and Senators Latvala, Campbell, Gutman, Silver, Meek and Mitchell

This bill declares it to be an unfair or deceptive act if a health maintenance organization (HMO) takes any retaliatory action against a health care provider for communicating information to the provider's patient regarding medical care or treatment options. This supplements the current law which prohibits a contract between an HMO and a health care provider from containing any provision restricting the provider's ability to make such communications.

The bill prohibits an HMO or health care provider from terminating a contract with a health care provider or HMO without providing the terminated party with a written reason for the contract termination, which may include termination for business reasons of the terminating party. Such notice may not be used as substantive evidence in a subsequent action relating to the termination.

The bill revises the requirement that HMOs allow subscribers to continue care with a terminated treating provider under certain circumstances. As required by the bill, when a contract between an HMO and a treating provider is terminated by either party for any reason other than for cause, each party must allow subscribers for whom treatment was active to continue coverage when medically necessary, through completion of treatment, until the subscriber selects another treating provider, or during the next open enrollment period offered by the HMO, whichever is longer, but not to exceed 6 months after termination of the contract. A subscriber who has initiated prenatal care must be allowed to continue care until completion of postpartum care. However, these requirements do not prevent a provider from refusing to continue to provide care to a subscriber who is abusive, noncompliant, or in arrears in payments for services provided. These same provisions are also specifically applied to state-contracted HMO coverage of state employees under the state group insurance plan, as an amendment to s. 110.123, F.S.

The bill also applies to HMOs the same rate filing procedures that apply to health insurers. This requires HMOs to file rates at least *30 days in advance of use*. The department may approve or disapprove the rate during this 30-day period, or during an extended period of an additional 15 days if the department gives notice of the extension. If the department disapproves the rate during this period, the HMO may not use the rate but may pursue its administrative hearing rights if it challenges the department's findings. If, however, the department does not affirmatively approve or disapprove the rate during this 30 to 45 day time period, the rate is deemed approved.

If approved by the Governor, these provisions take effect upon becoming law and shall apply only to contracts entered into after the effective date.
Vote: Senate 39-0; House 118-0

CS/SB 2554 — Insurance Contracts

by Banking & Insurance Committee and Senator King

This bill amends several provisions relating to insurance contracts to: (1) provide an exception from certain insurance licensing requirements for certified public accountants (CPAs); (2) require certain information be provided to health care providers; (3) require a health maintenance organization (HMO) to provide notice to contract holders under specified circumstances under a group contract; (4) require HMOs to cover licensed massage therapists under certain circumstances; (5) provide that contracts between HMOs and providers not restrict either the HMO or provider under certain circumstances; and, (6) protect employees' health insurance when group coverage is retroactively canceled.

(1) Certified Public Accountants — This provision allows CPAs to provide limited insurance services while acting within the scope of the practice of accounting and would exclude CPAs from the licensing and regulatory provisions for insurance agents. A CPA

may advise clients as to the need for obtaining insurance, and the amount and type of insurance recommended to be purchased. It prohibits a CPA from receiving any insurance commission or fee.

(2) Information to Health Care Providers — This provision would require that payments by a fiscal intermediary to a health care provider, pursuant to contracts with health maintenance organizations (HMOs), include the following information:

- For a "*noncapitated*" health care provider, an explanation of services being reimbursed which includes the patient's name, date of service, procedure code, amount of reimbursement and plan identification.
- For a "*capitated*" health care provider, a statement of services which includes the number of patients covered by the contract, rate per patient, total amount of payment, and the identification of the plan on whose behalf the payment is made.

Neither this provision nor the current law defines the terms "capitated" or "noncapitated" health care provider. A "capitated" provider is one who performs services for a specified dollar amount on a per patient basis for a specific period of time, regardless of the services provided. A "noncapitated" provider is paid on a fee for service basis. A "fiscal intermediary" is a person or entity which performs various financial services to health care professionals who contract with HMOs.

(3) Health maintenance organization (HMO) notice requirements — This part allows HMOs to increase the copayment for any benefit, or amend, delete or limit benefits to which a subscriber is entitled under a group contract, subject to written notice to the contract holder at least 45 days in advance of the time of coverage renewal. Such notice must identify deletions, limitations, or amendments to any benefits provided in the group contract which will be included in the group contract upon renewal. This provision does not apply to any increases in benefits and the 45-day notice requirement does not apply if the benefits are amended, deleted, or limited at the request of the contract holder.

(4) Massage Coverage — This part requires that HMO contracts providing for massage must also cover the services of persons licensed to practice massage if the massage is prescribed by a contracted physician as medically necessary and the prescription specifies the number of treatments. Such massage services are subject to the same terms, conditions, and limitations as other covered services.

(5) Health maintenance contracts — This provision mandates that a contract between a HMO and a health care provider may not contain a provision which prohibits or restricts either the HMO or the provider from entering into a commercial contract with another provider or HMO, respectively. The term "commercial" is not defined, but would appear to exclude Medicare and Medicaid HMO contracts.

(6) Retroactive Cancellation of Group Coverage — This provision limits the right of an insurance company or health maintenance organization (HMO) to retroactively cancel a group health insurance policy due to nonpayment of premium by the employer and protects the employee's right to elect an individual conversion health insurance policy in this event. Specifically, it prohibits an insurer or HMO from retroactively canceling a group health insurance contract, due to nonpayment of premium by the employer, prior to the date the notice of cancellation is mailed to the employer *unless* the notice is mailed within 45 days after the date the premium was due. If a group policy is canceled for nonpayment of premium, the employee's 63-day time limit to apply for an individual conversion policy does not begin to run until notice of cancellation is mailed to the employee by either the insurer or the employer, whichever is earlier. Additionally, the premium for the conversion policy must be set at the previous group rate for the time period *prior* to the date the insurer or HMO mails the notice to the employee. (For the period of coverage after such date, the premium for the converted policy is subject to the requirements of current law which provides that such premium may not exceed 200 percent of the standard risk rate as established by the Department of Insurance.)

The provision also clarifies current law to allow group insurers to contract with another insurer to issue conversion contracts on its behalf, provided that the other insurer is authorized in Florida and the policy has been approved by the Department of Insurance.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 115-0

CS/HB 377 — Bone Marrow Transplants

by Insurance Committee, Rep. Bense and others (CS/SB 62 by Banking & Insurance Committee and Senators Thomas, Mitchell, Gutman, Geller, Dawson-White, Campbell, Casas, Childers, Forman, Clary and Dyer)

This bill requires health insurers and health maintenance organizations (HMOs) to cover the costs associated with the *donor patient* to the same extent that the current law requires the insurer or HMO to cover costs associated with the insured for covered bone marrow transplant procedures that are determined to be scientifically acceptable and non-experimental for certain types of cancer. Insurers may limit the reasonable costs of searching for the donor to immediate family members and the National Bone Donor Program.

The bill also expands the membership of the Organ Transplant Advisory Council from 8 to 12 members and increases the term of the council chair from 1 to 2 years under s. 381.0602, F.S. The current responsibilities of the Organ Transplant Advisory Council are to formulate guidelines and standards for organ transplants and to recommend

indications to the Agency for Health Care Administration for adult and pediatric organ transplants. The bill includes a legislative finding that it fulfills an important state interest.

If approved by the Governor, these provisions take effect January 1, 2000.
Vote: Senate 40-0; House 110-0

AUTOMOBILE INSURANCE

HB 295 — Personal Injury Protection

by Rep.Villalobos and others (CS/SB 1978 by Banking & Insurance Committee and Senator Diaz-Balart)

This bill addresses several provisions relating to motor vehicle insurance coverage. It allows policyholders to elect a deductible amount in combination with the exclusion of wage loss benefits under personal injury protection (PIP) coverage which is required by Florida law for motor vehicle owners. Policyholders will receive a premium reduction associated with each coverage limitation. The bill requires insurance companies to provide sufficient notice to insureds of these coverage deductibles and modifications and that such notice be made in clear and unambiguous language at the time of initial application and before each annual renewal. In lieu of the above referenced notice, the insurer may use notice forms approved by the Department of Insurance. The current law provision which makes Medicare and the coordination of military benefits primary to an insured's PIP coverage is deleted, due to conflict with federal law.

The bill also requires motor vehicle insurers to give policyholders at least 30 days' advance written notice of the renewal premium of the policy, to be sent to the policyholder's last address as shown by the insurer's records. Failure to provide the notice of a premium increase results in coverage remaining in effect at the existing rate until 30 days after the notice is given or until the effective date of replacement coverage obtained by the insured, whichever occurs first.

The bill further provides that to be exempt from the requirement of having to make a down payment equal to at least 2 months' premium on a motor vehicle insurance policy by paying through a payroll deduction plan or an automatic electronic funds transfer plan, an applicant must agree to pay all premiums in that manner, provided the *first* policy payment is made by cash, cashier's check, check, or a money order. This provision and the prohibition against the insurer canceling the policy during the first 60 days do not apply if all policy payments to an insurer are paid pursuant to an automatic electronic funds transfer plan from an agent and if the policy includes at least the minimum amounts of

personal injury protection insurance and property damage liability, in addition to bodily injury liability in the amount of $10,000/$20,000.

If approved by the Governor, these provisions take effect July 1, 1999, except that section 1 (relating to coverage election options) and section 2 (relating to the 30-day notice of renewal premium) shall apply to policies issued or renewed on or after July 1, 2000.
Vote: Senate 39-0; House 112-1

INSURANCE (MISCELLANEOUS)

HB 897 — Sale of Insurance by Financial Institutions

by Rep. Sublette (CS/CS/SB 2402 by Agriculture & Consumer Services Committee; Banking & Insurance Committee; and Senator Rossin)

This bill repeals Florida's "anti-affiliation statute" which generally limits affiliations between banks and insurance entities by prohibiting certain insurance activities by persons employed or associated with financial institutions such as banks, savings and loan associations or their subsidiaries under s. 626.988, F.S. It repeals the provision which limits insurance agents engaging in insurance activities through a bank located in a city with a population of less than 5,000. The effect of this repeal is to permit insurance agents associated with or employed by a financial institution to engage in insurance agency activities regardless of the population of the city in which the financial institution is located. These activities include the negotiation or sale of insurance products or the servicing of insurance policies. The bill makes no distinction between nationally-chartered (national banks), federally-chartered (savings and loans) and state-chartered financial institutions.

The bill further provides a broad range of consumer safeguards relating to disclosure and advertising provisions as well as establishing guidelines for the sale of insurance on the premises of financial institutions, such as requiring written disclosure to customers that choice of insurance will not affect credit decisions; requiring federally insured or state insured depository institutions and credit unions to provide in writing, prior to the sale of any insurance policy, that such a policy is not a deposit and not guaranteed by the bank, and where appropriate, involves investment risk, including loss of capital; and, prohibiting extensions of credit or the furnishing of services on the condition the customer obtain insurance from the financial institution.

The bill also requires that persons associated with financial institutions who solicit or sell insurance must be Florida-licensed agents representing Florida-authorized insurers or

eligible surplus lines insurers and must comply with all applicable state insurance regulations and licensing requirements.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 117-0

CS/SB 312 — Insurance

by Banking & Insurance Committee and Senator Lee

This bill address three different insurance issues including: (1) protection of employees' health insurance when group coverage is retroactively canceled, (2) insurance fraud, and (3) classification of "collateral protection insurance" for purposes of specified insurance statutes.

Retroactive Cancellation of Group Coverage — This bill limits the right of an insurance company or health maintenance organization (HMO) to retroactively cancel a group health insurance policy due to nonpayment of premium by the employer and protects the employee's right to elect an individual conversion health insurance policy in this event. Specifically, the bill prohibits an insurer or HMO from retroactively canceling a group health insurance contract, due to nonpayment of premium by the employer, prior to the date the notice of cancellation is mailed to the employer *unless* the notice is mailed within 45 days after the date the premium was due. If a group policy is canceled for nonpayment of premium, the employee's 63-day time limit to apply for an individual conversion policy does not begin to run until notice of cancellation is mailed to the employee by either the insurer or the employer, whichever is earlier. Additionally, the premium for the conversion policy must be set at the previous group rate for the time period *prior* to the date the insurer or HMO mails the notice to the employee. (For the period of coverage after such date, the premium for the converted policy is subject to the requirements of current law which provides that such premium may not exceed 200 percent of the standard risk rate as established by the Department of Insurance.)

The bill also clarifies current law to allow group insurers to contract with another insurer to issue conversion contracts on its behalf, provided that the other insurer is authorized in Florida and the policy has been approved by the Department of Insurance.

Insurance Fraud — The bill establishes the Anti-Fraud Reward Program within the Department of Insurance, funded from the Insurance Commissioner's Regulatory Trust Fund. The department is authorized to pay rewards of up to $25,000 to persons who provide information leading to the arrest and conviction of persons committing "complex or organized crimes" which are investigated by the Division of Insurance Fraud and which arise from violations of specified criminal workers' compensation violations, willful

violations of the Insurance Code, unfair methods of competition and unfair or deceptive acts, fraudulent insurance acts, or false and fraudulent insurance claims and applications.

The bill applies to HMOs the requirements that currently apply to insurance companies which require the establishment, of special investigative units or to submit anti-fraud plans to the Division of Insurance Fraud, depending on the amount of their direct premiums written. The bill also extends to HMOs the limited civil immunity contained in s. 626.989(4), F.S., which applies to persons who provide confidential information to the division relating to insurance fraud and to persons within special investigative units (SIUs) who share information with other persons relating to insurance fraud.

The bill amends s. 775.15, F.S., to extend the statute of limitations from 3 to 5 years for prosecutions of violations of s. 817.234, F.S., related to false and fraudulent insurance claims and applications.

The bill amends s. 817.234, F.S., relating to fraudulent insurance claims and applications, to clarify that the various criminal offenses contained in this section are "insurance fraud" and provides a sliding scale of penalties based on the value of the money or property involved in the offense. When the value of any property involved in a violation of this section is less than $20,000, the act remains a third-degree felony, as under current law. When the amount involved is $20,000 or more, but less than $100,000, the act would be a second-degree felony, and when the amount involved is $100,000 or more, the act would be a first-degree felony. A third-degree felony is punishable by up to 5 years in prison and a fine of $5,000, while a second-degree felony is punishable by up to 15 years in prison and a fine of up to $10,000. A first-degree felony is punishable by up to 30 years and a fine of up to $10,000. Health maintenance organization subscriber or provider contracts are included within the fraudulent insurance claims provisions and the term "insurer" would include a HMO.

The bill amends s. 817.505, F.S., relating to patient brokering. Under current law, it is unlawful for any person, including any health care provider or health care facility, to offer or pay any bonus or rebate to induce the referral of patients from a health care provider or health care facility, or to solicit or receive any bonus or rebate in return for referring patients. The current penalty for violations of this section are a first-degree misdemeanor for the first violation and a third-degree felony for subsequent violations. The bill revises the law so that all violations of this section, including first violations, are third-degree felonies.

The bill amends s. 626.321, F.S., relating to credit life or disability insurance licenses, to allow entities applying for licensure under this provision to submit only one application, obtain a license for each branch office, and apply for licensure using an abbreviated or simplified application form. Such entities are not required to pay any additional application

fees for a license issued to a branch office, but are required to pay certain appointment fees. It further requires posting of the license at the business location.

Collateral Protection Insurance — The bill creates s. 624.6085, F.S., to define "collateral protection insurance" as commercial property insurance and would expressly not be "residential coverage," for purposes of the laws that establish the Florida Hurricane Catastrophe Fund and the various joint underwriting associations (ss. 215.555, 627.311, and 627.351, F.S.). The bill further defines collateral protection insurance as commercial property insurance of which a creditor (such as a bank) is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document.

The effect of the bill is to exclude collateral protection insurance policies from participation in the Florida Hurricane Catastrophe Fund. Such policies are currently excluded by contract and rules of the State Board of Administration, but the bill's exemption is somewhat broader. The bill further excludes collateral protection insurance from the assessment base for the personal lines residential property insurance account of the Residential Property and Casualty Joint Underwriting Association (RPCJUA). However, as commercial property insurance, such coverage would, instead, be included in the assessment base for the commercial residential risk account. The bill has no effect on the assessment base for the Florida Windstorm Underwriting Association, since commercial property insurance is currently included.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 115-0

CS/HB 403 — Title Insurance

by Insurance Committee, Rep. Byrd and others (CS/SB 746 by Banking & Insurance Committee and Senator Grant)

This bill deletes the authority for the Department of Insurance to establish title insurance premiums during the 3-year period from July 1, 1999, through June 30, 2002, and the bill establishes the title insurance premiums in s. 627.7285, F.S., for this time period. The department is further prohibited from granting a rate deviation from such rates during this period. The bill specifies the percentage of the premium that must be retained by the insurer (rather than paid to the title agent), which ranges from 30 percent to 40 percent, depending on the value of the policy, which the current law states may not be less than 30 percent for all policies.

The premium rates for original title insurance policies (both owner and mortgage policies) specified by the bill for policies covering property values of $1 million or more represent a premium reduction ranging from 11 percent to 25 percent, compared to the current title insurance rates established by department rule. For policies below $1 million, the rates are the same as currently provided by department rule, except that the bill provides that the first purchaser of a new home receives a credit (discount) on the cost of the title policy equal to the cost of any prior loan policy that the builder obtained, subject to a minimum premium of $200. The lower, reissue title insurance rates in the bill are the same as the current reissue rates promulgated by the department, except that the reissue rates would apply if the prior policy was issued within the previous 3 years, rather than 1 year as provided in the current rule. The bill revises the reduced rates for a substitution loan as currently provided by rule in two ways: the reduced rates will apply only to policies of $250,000 or more, but such reduced rates will apply regardless of whether the lender is the original lender. All of these rate changes negate the department's proposed rule changes (which may have been subject to an administrative challenge) to reduce all title insurance rates by 9 percent across the board for all policy values.

The bill prohibits title insurers and their agents from paying a rebate of the agent's or insurer's share of the premium or any charge for related title services below the cost for providing such services, or provide any special favor or advantage, or any monetary consideration or inducement whatsoever to a person obtaining a title insurance policy. In the case of *Butler et al. v. State of Florida, et al.*, the Circuit Court of the Second Judicial Circuit for Leon County, held as unconstitutional the current statutes and Department of Insurance rule interpreted by the court as prohibiting title insurance agents from rebating commissions or fees. It is not clear if this bill will cure the constitutional defects as determined by the Circuit Court. The bill may add to the argument that such rebating may be constitutionally prohibited for title agents by making legislative findings and changes that emphasize the differences between the services rendered by title insurance agents and services rendered by agents for other lines of insurance, such as the new definition of "primary title services" that includes determining insurability in accordance with sound underwriting practices.

The bill adds a provision that prohibits any portion of the premium attributable to a primary title service from being paid to or retained by any person who does not actually perform or is not liable for the performance of such services, for any transaction subject to the Real Estate Settlement Procedures Act of 1974 (RESPA).

The bill also revises the schedule that title insurers must follow for releasing the unearned premium reserve required to be established for each policy, which may then be applied by the insurer to profit and surplus. The bill does not change the amount of the reserve which is equal to 30 cents for each $1,000 of net retained liability under each policy written. Under the current law, the insurer is allowed to release the amounts reserved in 12 equal

annual installments. The bill requires the unearned premium reserve to be released over a 20-year period, rather than over a 12-year period, but it is heavily "front-end loaded" to allow a greater percentage release in the early years.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 107-5

CS/CS/SB 1242 — Viatical Settlement Contracts

by Judiciary Committee; Banking & Insurance Committee; and Senator Geller

This bill revises current law regarding viatical settlement contracts under part XI of chapter 626, F.S. A viatical settlement contract is a written agreement under which the owner of a life insurance policy who has a terminal illness ("viator") sells the policy to another person in exchange for a bargained-for payment, which is generally less than the expected death benefit under the policy. In 1996, Florida established the framework for regulating the viatical industry (ch. 96-336, L.O.F., creating part XI of ch. 626, F.S.). The changes to current law are the following:

- Revises definitions of "viatical settlement broker," "viatical settlement contract," "viatical settlement provider," "viator," and, "related provider trust." Creates the following terms: "viatical settlement purchase agreement," "viatical settlement purchaser," and "viatical settlement sales agent."

- Provides that a viatical settlement broker must disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

- Provides for 30 days' advance notice to the Department of Insurance of a change in name or address of viatical settlement sales agent licensees. Also, requires such viatical settlement sales agents to be licensed as life insurance agents by the department.

- Authorizes the department to examine advertising and solicitation materials pertaining to viatical settlements. Provides that viatical settlement purchase agreements must be maintained for 3 years by the licensee after the death of the insured and be available to the department for inspection.

- Strengthens disclosure and advertising requirements relating to viatical settlement sales agents and viatical settlement purchasers. Authorizes the department to adopt rules regarding disclosure forms.

- Authorizes the department to promulgate rules establishing record keeping requirements for viatical settlement purchase agreements.

- Prohibits rate regulation by the department as to the consideration paid in connection with a viatical settlement purchase agreement. Provides such agreements are subject to the unfair trade practices law.

- Increases the powers of the Department of Insurance to issue cease and desist orders against persons violating viatical settlement provisions. Authorizes the department to impose an administrative fine of $10,000 for each nonwillful violation and $25,000 for each willful violation of any provision of this part.

- Provides that it is a prohibited practice for any person to employ any device, scheme, or artifice to defraud in the solicitation or sale of viatical settlement purchase agreements. Also, provides that it is unlawful for a person in the advertisement, offer, or sale of a viatical settlement purchase agreement to misrepresent such agreement as being guaranteed, recommended or approved by the state or any agency of the United States. Provides a grace period for viatical settlement sales agents that are transacting business on June 30, 1999, to continue to transact such business, in the absence of any orders to the contrary, until the department approves or disapproves the sales agent's application for licensure if the agent files no later than November 1, 1999.

- Florida-based viatical companies will not be subject to Florida law when they enter into agreements with purchasers or viators in a state that regulates viatical settlements. In a state where viatical settlements are not regulated, Florida law will apply.

- The current law provision which prohibits a viator with minor children from viaticating more than 50 percent of a policy is amended to provide that it does not apply to out-of-state viators (e.g., located in states that have not enacted viatical settlement laws) who enter into agreements with Florida-based viatical settlement providers. This entire provision is repealed on June 1, 2000.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 118-0

CS/HB 1749 — Service Warranties

by Insurance Committee and Rep. Farkas and others (CS/SB 1234 by Banking & Insurance Committee and Senator Latvala)

This bill makes the following changes regarding motor vehicle service agreements, home warranties, and service warranties:

- Clarifies that all funds or premiums remitted to a contractual liability insurer by a motor vehicle service agreement company must remain in the custody of the contractual liability insurer and be counted as an asset of that insurer. However, this requirement does *not apply* when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with the contractual liability provisions, but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

- Provisions of motor vehicle service agreements pertaining to limitations on benefits or rental car provisions will no longer be required to be set forth in conspicuous, boldfaced-type. However, the relevant section headings of the service agreements must be in conspicuous, boldfaced-type.

- Requires home warranty contracts to state in conspicuous, boldfaced type that the home warranty may not provide free coverage for the period that the home is listed for sale.

- Provides that a maintenance service contract that is longer than 1 year in length will be included in the definition of service warranty. A maintenance service contract for less than 1 year that also provides a combination of parts and labor discounted by more than 20 percent will also fall under the definition of a service warranty. As such, these types of maintenance service contracts will be subject to regulation by the Department of Insurance.

- Disallows a service warranty association from using a policy from a surplus lines insurer to meet its requirements for contractual liability insurance.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 114-0

HB 717 — Bail Bonds

by Rep. Crow and others (CS/CS/SB 1516 by Criminal Justice Committee; Banking & Insurance Committee; and Senator Clary)

The bill revises bail bond provisions relating to continuing education, discharge of forfeitures, judgments against sureties, remissions of forfeitures, and original appearance bonds.

This bill revises various provisions in ch. 903, F.S., relating to requirements for bail bonds including:

- extending the time frame within which the court can discharge a forfeiture of a bail bond (from 35 to 60 days) and reducing the time frame after a judgment within which a bail bond agent must pay the judgment (from 60 to 35 days);
- requiring (rather than allowing) the court to set aside the forfeiture and discharge the bond if the defendant is arrested and returned to the county of jurisdiction prior to judgment;
- providing that original appearance bonds expire 36 months after the date the bond is posted; and.
- inaccuracies or omissions in applications for bail provided by county, correctional, or court employees shall not be grounds for discharging a forfeiture and setting aside bond.

The bill also amends s. 648.386, F.S., relating to continuing education requirements for bail bond agents, to allow guest lecturers to teach continuing education courses in the presence of the supervising instructor.

The bill amends s. 648.44, F.S., to provide that a bail bond agent may not execute a bond if a judgment has been entered on a bond executed by the bail bond agent, which has remained unpaid for 35 days, unless the amount of the judgment is first deposited with the court.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 115-0

BANKING

CS/CS/SB 150 — State Financial Matters

by Governmental Oversight & Productivity Committee; Banking & Insurance Committee; and Senators Horne, Bronson, McKay, Klein and Dyer

This bill makes various changes that relate to state financial matters. The bill exempts the Department of Banking and Finance from the requirement of s. 20.04, F.S., to be organized along division, bureau, and section lines. The divisions within the Department of Banking and Finance, designated by statute, are eliminated, thereby providing greater flexibility to the department to revise its organizational structure. The Office of Financial Investigations is created, as a separate subunit within the department, to operate as a criminal justice agency within the meaning of s. 943.045(10)(d), F.S.

The bill generally requires new retirees participating in the Florida Retirement System to receive their retirement payments through direct deposit, effective July 1, 2000.

The dollar threshold for classifying state property as tangible personal property, or "Other Capital Outlay," is increased from $500 to $1,000, for which agencies are required to maintain property records and take physical inventory. The bill also authorizes the head of an agency to delegate approval of all travel expenses to his or her designee.

The Comptroller's authority to issue subpoenas, administer oaths, and examine witnesses is clarified. The statute of limitations for seeking recovery in all disputes over compensation for work performed by a state officer or employee is clarified and limited to 2 years from the date of the alleged error in payment. The Comptroller is authorized to provide financial statements and the Comprehensive Annual Financial Report through an electronic format.

Statutory references to the State Automated Management Accounting Subsystem are eliminated and replaced by the term, "Florida Accounting Information Resource Subsystem," since the state accounting system was renamed in 1997.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 37-0; House 116-0

CS/SB 1264 — Consumer Finance

by Banking & Insurance Committee and Senator Rossin

This bill makes changes to ch. 516, F.S. (consumer finance) and ch. 520, F.S. (retail installment loans). Chapter 516, F.S., provides for the regulation of consumer finance companies by the Department of Banking and Finance. Persons licensed under this chapter are allowed to make consumer finance loans up to $25,000. Ch. 520, F.S., provides for the regulation by the department of retail installment transactions, both sales and loans. The bill makes the following changes:

- Increases license application and renewal fees, eliminates the authority of the Department of Banking and Finance to set fees by rule, eliminates fees and expenses charged to a licensee for an examination at a Florida location, and limits charges to a licensee for travel and per diem expenses for department examinations in another state;

- Eases notification requirements for relocation of offices;

- Requires licensees to notify the department if the licensee is the subject of a bankruptcy action;

- Expands the grounds for disciplinary action by the department to include a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude;

- Requires motor vehicle installment contracts to disclose certain additional information and requires lenders to provide the borrower evidence of satisfaction and to ensure that the title or contract indicates that the lien has been satisfied or released;

- Authorizes lenders who make simple interest loans pursuant to the motor vehicle sales finance act to impose up to a $75 charge if the contract is prepaid within 6 months after the effective date of the contract, and to defer the scheduled due date of any installment payment, upon the request of the buyer, and to collect a $15 fee for such deferment; and

- Authorizes retail sellers to collect a $10 processing fee for retail installment contracts which would not be considered interest or finance charges.

If approved by the Governor, these provisions take effect October 1, 1999, except as otherwise provided.
Vote: Senate 38-0; House 117-0

CS/SB 1280 — Financial Institutions

by Banking & Insurance Committee and Senator Laurent

This bill (Chapter 99-138, L.O.F.) amends s. 655.0385, F.S., relating to disapproval of directors and executive officers of state financial institutions. A state financial institution which has been chartered for less than two years, has undergone a change in control or conversion within the preceding two years, is not in compliance with the minimum capital requirements applicable to such financial institutions, or is otherwise operating in an unsafe and unsound condition, must provide 60 days' advance notice, rather than 30 days required under current law, before the appointment of a proposed member to the board of directors or executive officer of a state financial institution. The bill also gives the department the discretionary authority to exempt a financial institution which has undergone a change in control or conversion within the preceding 2 years, and which is operating in a safe and sound manner, as set forth in departmental rules, from the requirement of notifying the department of the proposed appointment of board members or executive officers. The bill authorizes the department to adopt rules to implement this section.

The bill also amends s. 655.948, F.S., regarding disclosure by financial institutions of significant events, to allow the department to exempt a financial institution operating in a safe and sound manner, pursuant to departmental rules. Only newly chartered financial institutions are required to notify the department of certain specified "significant events" for 3 years.

The bill amends s. 658.26, F.S., exempting financial institutions operating in a safe and sound manner, as provided by departmental rules, from filing an application and application fee to open a branch office. Instead, the institution is directed to file a written notice with the department 30 days prior to opening the branch.

These provisions were approved by the Governor and take effect July 1, 1999.
Vote: Senate 36-0; House 116-0

CS/SB 1326 — Mortgage Brokers and Lenders

by Banking & Insurance Committee and Senator Lee

This bill revises the regulatory and operational provisions for mortgage brokers and lenders under the Department of Banking and Finance within ch. 494, F.S. It makes the following changes:

General Provisions (Ch. 494, F.S.)

- Authorizes the Department of Banking and Finance to conduct out-of-state examinations, consolidates examination, application, and renewal fees resulting in an increase in some application and renewal fees. Specifies that application, renewal and reactivation fees for mortgage brokers, mortgage broker business, mortgage lenders, and correspondent mortgage lenders are nonrefundable.
- Adds a definition of "mortgage loan" that has the effect of eliminating regulation of mortgage loans on commercial real property if the borrower is a business entity and the lender is an institutional investor (a business entity that invests in mortgage loans). The bill adds and revises other definitions for certain terms that are commonly used in statute and by the industry.
- Provides that a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude, as well as failure to timely pay any fee, charge, or fine, are grounds for disciplinary action.
- Prohibits certain false and misleading advertising.
- Prohibits licensees from paying a fee or commission to an unlicensed person.
- Authorizes independent contractors to contract directly with mortgage lenders and prohibits independent contractors from contracting with more than one mortgage lender at a time.
- Provides that employees of mortgage brokers and mortgage lenders whose activities are ministerial and clerical are not required to obtain a license as a mortgage broker or mortgage lender, respectively.
- Authorizes the department to adopt rules to allow electronic submission of application forms, documents, and fees by licensees.

Mortgage Brokerage Business and Mortgage Brokers (Part II of Ch. 494, F.S.)

- Clarifies procedures for reactivation of a mortgage brokerage business license. Requires prominent display of a license in offices.
- Eliminates the requirement to physically locate a principal place of business in Florida. Requires each mortgage brokerage business to file quarterly reports to the department listing information relating to associates of the mortgage business.
- Requires licensees to report pleas of nolo contendere to crimes involving fraud, dishonest dealing, or any other act of moral turpitude and report any felony conviction.

Mortgage Lenders and Correspondent Mortgage Lenders (Part III of Ch. 494, F.S.)

- Clarifies procedures for reactivation of a mortgage lender, correspondent mortgage lender, or branch office business license. Requires prominent display of mortgage lender and correspondent mortgage lender licenses in offices.

- Requires each mortgage lender or correspondent mortgage lender to file quarterly reports to the department listing information relating to associates or other specified employees.
- Corrects and conforms statutory language to state that a mortgage lender or correspondent mortgage lender is not prohibited from acting as a "mortgage brokerage business."
- Requires licensees to report pleas of nolo contendere to crimes involving fraud, dishonest dealing, or any other act of moral turpitude and report any felony conviction.

If approved by the Governor, these provisions take effect October 1, 1999, except as otherwise provided in this act. The exception refers to the filing of quarterly reports by mortgage brokerage businesses, mortgage lenders, and correspondent mortgage lenders to the department which is effective January 1, 2000.
Vote: Senate 39-0; House 116-0

CS/SB 990 — Banks; Trust Powers

by Banking & Insurance Committee and Senator Grant

This bill amends s. 660.41, F.S. to retain a provision scheduled for repeal on September 1, 1999, which exempts banks or associations and trust companies resulting from an interstate merger transaction with a Florida bank, pursuant to s. 658.2953, F.S., from a prohibition against corporations conducting trust business in Florida. The bill will continue the authority provided by section 18 of ch. 97-30, L.O.F., allowing non-Florida state-chartered banks to merge with Florida state-chartered banks without losing their local trust powers. The bill also technically revises the existing statutory language which exempts from the prohibition against conducting trust business, banks or associations and trust companies incorporated in Florida and national banking or federal associations authorized and qualified to exercise trust powers in Florida.

The bill also resolves a potential conflict with federal law, by providing that a national bank, based in another state with no branches in Florida, be authorized and qualified to exercise trust powers in Florida in order to perform fiduciary duties prescribed by s. 660.41, F.S.

If approved by the Governor, this provision takes effect September 1, 1999.
Vote: Senate 39-0; House 117-0

CS/HB 1659 — Banks; Trust Powers

by Real Property & Probate Committee and Rep. Bilirakis and others (CS/SB 2068 by Banking & Insurance Committee and Senator Grant)

This bill allows costs and attorney's fees incurred in trust proceedings to be paid out of a trust if the court determines that the attorney rendered services to the trust for services rendered by an attorney on or after July 1, 1999.

Specifically, if an attorney "has rendered services to a trust," the attorney may apply to the court for an order awarding attorney's fees, and after notice and service upon the trustee and all beneficiaries entitled to an accounting from the trustee, the court must enter an order on the attorney's application. If the court grants the attorney's application for fees, the court may direct the attorney's fees to be paid from a particular part of the trust.

When a trustee's interest may be adverse, the attorney shall give reasonable notice in writing to the trustee of the attorney's retention by an interested person and the attorney's claim to entitlement to fees under this section. A court may reduce any fee award for services rendered by the attorney prior to the date of actual notice to the trustee, if the actual notice date is later than a date of reasonable notice.

The language in the bill is closely modeled after the probate code, which allows recovery of costs and attorney's fees from an estate under certain circumstances. (s. 733.106, F.S.). Accordingly, case law construing that provision of the probate code may be persuasive to a court during its review of an application for attorney's fees incurred in a trust proceeding.

The bill also provides statutory limitations on the liability of successor trustees under certain circumstances. Specifically, a successor trustee will not have a duty to institute any action against any prior trustee, or file any claim against any prior trustee's estate, for any of the prior trustee's acts or omissions under specified circumstances. The bill does not affect the liability of a prior trustee or the right of a successor trustee, or any beneficiary, to pursue an action or claim against the prior trustee.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 113-0

Senate Committee on Budget

SB 2500 — General Appropriations
by Budget Committee

This bill is the General Appropriations Act which provides moneys for the annual period beginning July 1, 1999, and ending June 30, 2000, to pay salaries, and other expenses, capital outlay - buildings, and other improvements, and for other specified purposes of the various agencies of State government.

Total Funds Appropriated: $48.9 Billion

Education

Public Schools

- Provides $749.9 million (7.1 percent) increase in FEFP total potential funds; provides a $207.43 (5.6 percent) increase in total potential funds per weighted student.

- Provides FEFP funding only for enrollment in the 180-day regular school term; funding for summer school and supplemental services, and a new $527 million Class Size Reduction/Supplemental Instruction appropriation.

- Provides $40 million for schools that choose to extend the length of the school year from 180 to 210 days of instruction.

Community Colleges

- Provides $67 million in flexible funds for the community college system and $28.6 million for Challenge Grant Programs.

State University System

- Provides $68 million for enhancing graduate and undergraduate education in the State University System, and $60 million for Deferred Maintenance and Challenge Grant Programs.

- Provides for a tuition increase of 5 percent, to help fund the enhancement issues; in addition, allowing university presidents to increase tuition by another 5 percent, which could generate $17 million to be spent on their institutional priorities.

Other Education

- Provides a 30 percent increase in need-based financial aid. Students who are eligible for need-based financial aid in any of the state's three programs will receive $1,070 in the next year.

- Fully funds the number of additional students who have qualified for the Bright Futures Scholarship. Total funding has now grown to $130 million.

Statewide Drug Control Initiatives

- Education, Prevention and Intervention - $41.2 million

- Treatment - $6.0 million

- Enforcement - $4.8 million

Health and Human Services

- In the Health and Human Services area, significant investments were made to improve the health and social well-being of Floridians. The systems and infrastructure which deliver those services have been improved as well as the ability of the state to respond to the pressing needs in child welfare and developmental services programs. Funding has increased in excess of $1.0 billion over the 1998-99 General Appropriations Act including an increase of $93.5 million in General Revenue, $397 million in Tobacco Settlement Trust Funds, and an increase of $631 million in the drawdown of federal funds.

- Funding increases for the Health and Human Services Departments include:
  Children and Families - increased by $370.5 million
  Health - increased by $185.7 million
  Health Care Administration - increased by $535.9 million
  Elder Affairs - increased by $23.6 million
  Veterans' - increased by $3.5 million

General Government

- A total of $20.4 million from general revenue and trust funds is appropriated to help equip our Division of Forestry to fight future wildfires and to help prevent future wildfires through increased prescribed burning and urban wildfire mitigation strategies.

- Provides $422.7 million for land acquisition (including authorizing the tenth and final series of bonds for Preservation 2000).

- Provides $84.8 million for state and local park facility development and management.

- Provides $176.7 million for wastewater and drinking water facility construction grants and loans.

- Provides $17.5 million for surface water improvement and management (SWIM) activities.

Transportation and Economic Development

- Provides $159.2 million for Economic Development Programs:
  Economic Development Road Fund - $30 million
  Tourism Commission - $22 million
  Qualified Targeted Industry - $19.2 million
  High Impact Performance Incentive - $6.0 million
  Front Porch Florida - $5.9 million
  Spaceport Florida - $4.8 million
  Quick Action Closing Fund - $4 million

- Provides 3 positions and $1.1 million to fund the Florida Partnership for School Readiness, which will be assigned to the Executive Office of the Governor for administrative purposes. The partnership will establish a statewide measure for readiness that children will undergo upon entry to kindergarten. As local coalitions form, the partnership will approve their composition and school readiness.

Public Safety and Judiciary

- Provides 50 positions and over $3 million to the state attorneys and public defenders for sexual predator civil commitment workload and $18.1 million for treatment including 215 treatment beds for Jimmy Ryce cases.

- Provides $5.4 million in funding for additional judgeships, judicial assistants and law clerks as requested by the Supreme Court.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 119-0

Senate Committee on Children and Families

SUBSTANCE ABUSE AND MENTAL HEALTH

HB 2003 — Mental Health and Substance Abuse

by Children & Families Committee and Rep. Murman and others (CS/SB's 2388 & 1946 by Children & Families Committee and Senators Mitchell and Diaz-Balart; SB 242 by Children & Families Committee; and CS/SB 2546 by Children & Families Committee and Senator Holzendorf)

This bill includes the following major provisions:

Mental Health and Substance Abuse Unit Cost Contracting

- Authorizes the Department of Children and Family Services to use unit cost methods of payment in contracts for purchasing mental health and substance abuse services and allows them to reimburse actual expenditures for start-up contracts and fixed capital outlay contracts in accordance with contract specifications.

- Provides rule-making authority to the department for establishing standards for contracting, budgeting, methods of payment and the accounting of patient fees that are earned on behalf of a specific client.

Commission on Mental Health and Substance Abuse (CS/SB's 2388 & 1946)

- Creates the Commission on Mental Health and Substance Abuse to conduct a systematic review of the overall management of the state's mental health and substance abuse system in order to revise ch. 394, part IV, F.S, and submit a final report with proposed statutory modifications to the Governor and the Legislature no later than December 1, 2000. The review will address: the unique mental health and substance abuse needs of older persons; access to, financing of, and the scope of responsibility in the delivery of emergency behavioral health care services; quality and effectiveness of the current comprehensive mental health and substance abuse delivery systems including the professional staffing and clinical structure and the responsibilities of all public and private providers; priority population groups for publicly funded mental health and substance abuse services; district mental health and substance abuse needs assessment and planning activities; and local government responsibilities for funding mental health and substance abuse services.

- At least one advisory committee will be appointed of all state agencies involved in the delivery of mental health and substance abuse services, and consumers, family members of consumers, and current providers of public mental health and substance abuse services.

Diversion Strategies for Persons with Mental Health Problems Who Commit Misdemeanors (SB 242)

- Directs that strategies and community alternatives be defined in each service district of the Department of Children and Family Services for diverting from the criminal justice system to the civil Baker Act system persons with mental illness who are arrested for a misdemeanor. Each district's strategies are to be developed through written cooperative agreements among the department, the judicial and criminal justice systems, and the local mental health providers. The Louis de la Parte Florida Mental Health Institute is directed to review strategies in Florida and other states and to recommend to the Legislature those strategies that are most effective.

- Directs the Florida Department of Law Enforcement and the Department of Children and Family Services to jointly evaluate current training curricula and training efforts for law enforcement officers in identifying mental illness and submit a joint report by December 31, 1999, that includes findings and recommendations for improvements.

- Directs the Louis de la Parte Florida Mental Health Institute to study the concept of increasing court jurisdiction and supervision over persons with mental illness who are arrested for or convicted of a misdemeanor to assure compliance with an approved individualized treatment or service plan and prepare a report which includes recommendations for statutory changes or departmental policy changes by December 31, 1999.

- Directs the district forensic coordinators of the Department of Children and Family Services to assess the provision of in-jail mental health diagnostic and treatment services and report to the Legislature by December 31, 1999, its findings, conclusions, and recommendations including any proposed statutory revisions.

- Directs the Louis de la Parte Florida Mental Health Institute to evaluate the effectiveness of the specialized mental health court established in Broward County to determine client and system outcomes and cost efficiencies and report to the Legislature the findings of the evaluation, recommendations for establishing similar special courts in other judicial circuits, and any recommendations for statutory revisions.

- Specifies that $100,000 of general revenue be appropriated in the General Appropriations Act for Fiscal Year 1999-2000 to the Department of Children and Family Services for studying the concept of increasing court jurisdiction and supervision over persons with mental illness arrested for or convicted of a misdemeanor, evaluating the effectiveness of the specialized mental health court in Broward County, and providing consultation to the communities in the development of their diversion strategies.

Children's Substance Abuse Services

This bill modifies children's substance abuse treatment services in the following manner:

- Implements a quality assurance program as part of the department's contract management process.

- Specifies performance outcomes for the children's substance abuse system.

- Defines "children at risk of substance abuse problems" and "children with substance abuse problems."

- Establishes an information and referral network for children's substance abuse services that is incorporated into the district's child and adolescent mental health information and referral network.

- Specifies provisions for case management services for complex substance abuse cases that are contingent upon specific appropriations.

- Establishes demonstration models for children's substance abuse services and specifies goals and operational criteria.

- Defines a utilization management process (an integral part of the each Children's Network of Care Demonstration Model) that includes procedures for analyzing the allocation and use of resources by the purchasing agent.

- Establishes a school substance abuse prevention partnership grant program to encourage the development of effective substance abuse prevention and early intervention strategies with middle-school-age children.

- Establishes the drug-free communities support match grants to assist local community coalitions to secure federal drug-free communities support grants by providing needed match.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 116-0

DEVELOPMENTAL DISABILITIES

CS/SB 2214 — Persons with Developmental Disabilities

by Children & Families Committee and Senators Forman and Sullivan

The major provisions of this bill include the following:

- It is a finding of the Legislature that the eligibility criteria for Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) contained in Florida's Medicaid state plan that are in effect when the act becomes law are essential to the system of residential services for persons with developmental disabilities.

- The definition of "Intermediate Care Facility for the Developmentally Disabled Services" in s. 409.906, F.S., Optional Medicaid Services, is modified by deleting the provision that these facilities are owned and operated by the state and specifying that these facilities are licensed and certified as a "Medicaid Intermediate Care Facility for the Developmentally Disabled." The Governor may direct the Agency for Health Care Administration to amend the Medicaid State Plan by deleting the optional Medicaid ICD/DD service if it is necessary to safeguard the state's systems of providing services to elderly and disabled persons which must be done under the notice and review provisions of s. 216.177, F.S. Services to disabled persons are included in the preauthorization and concurrent utilization review process and the conflict of interest standards developed and enforced by the Agency for Health Care Administration.

- Statutory authority is established in ch. 400, F.S., for the licensure of Intermediate Care Facilities for the Developmentally Disabled. Provisions are included for elements such as background screening, a provisional license, proof of financial ability to operate a facility or program under ch. 400, F.S., specifications of the application, grounds for action against a licensee, receivership proceedings, rules and classification of deficiencies, right of entry into the premises for inspecting facilities, injunctive proceedings, imposing a moratorium, and penalty fines. Administrative fines are increased for facilities licensed under ch. 393, F.S., from $500 to $1,000 per violation per day and the aggregate amount of any fine may not exceed $10,000 rather than $5,000.

- The Department of Children and Family Services must assess the level of need and medical necessity for the admission of residents to ICF/DD facilities after

October 1, 1999. The department may enter into an agreement with the Department of Elderly Affairs for the Comprehensive Assessment and Review for Long-Term Care Services (CARES) program to conduct these assessments that will be funded under Title XIX of the Social Security Act to the extent that is permissible under federal law.

- The Department of Children and Family Services and the Agency for Health Care Administration must ensure that whenever a sufficient number of persons move from an institution serving persons with developmental disabilities allowing an entire residential unit to close, no less than 80 percent of the direct costs of providing services to those persons who had resided on that unit will be transferred to community services.

- The Department of Children and Family Services may use appropriations for developmental services to design a system of providing services for persons with developmental disabilities that is consumer-directed and choice-based. The department is directed to institute not more than three pilot programs to test this payment model. Each of these models must be structurally different. A progress report to the appropriate legislative committees must be submitted by the department by December 1, 2000, and by December 1, 2001. These pilot programs will be reviewed by the Legislature prior to July 1, 2001, and on that date, the section of the bill containing the pilot programs is repealed.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 117-0

CHILDREN/CHILD PROTECTION

CS/CS/SB 338 — Protection of Children

by Children & Families Committee; Fiscal Policy Committee; and Senator Cowin

This bill creates the Kayla McKean Child Protection Act which addresses gaps in the statutory framework of Florida's child protection system. The legislation includes provisions relating to the central abuse hotline of the Department of Children and Family Services; child protective investigations; child protection teams; community-based agencies under contract with the department; and criminal penalties relating to the abuse of a child. The bill creates the State and local Child Abuse Death Review Committees. The major provisions of the bill include the following:

Abuse Reports

- Adding judges to the list of occupational groups who must report child abuse, abandonment, or neglect.

- Requiring the department to accept for investigation any report alleging harm as defined in s. 39.01, F.S., from a judge, physician, teacher or other professional school official who is acting in his or her professional capacity.

- Requiring the department to simultaneously notify the appropriate law enforcement agency in the county in which the abuse, abandonment, or neglect is believed to have occurred so that law enforcement may determine if a criminal investigation of the case is warranted and, if so, coordinate their investigation whenever possible with the child protective investigation.

- Requiring the department to voice-record all incoming and outgoing calls that are received or placed by the central abuse hotline which becomes part of the record of the report and is subject to the same confidentiality as the identify of the caller under s. 39.202, F.S.

- Requiring the department to contract with an independent entity to evaluate the hotline to determine its effectiveness and efficiency and address the need to monitor the hotline on an ongoing basis and if an ongoing evaluation is recommended to propose the monitoring process.

- Appropriating to the Department of Children and Family Services for FY 1999-2000, eight full-time equivalent positions and $216,931 from recurring General Revenue Funds, $457,896 from nonrecurring General Revenue funds, and $155,764 from Federal Grants Trust Fund to implement modifications to the central abuse hotline including quality assurance enhancements and an evaluation of the abuse hotline by an independent entity.

Child Protective Investigations/Removing the Child from the Home

- Including in the definition of "harm" placing the child with another person/making the child unavailable in order to impede or avoid a protective investigation.

- Requiring the department to maintain a master file for each child whose report is accepted by the abuse hotline for investigation.

- Directing the department to develop an internal operating procedure that ensures that all required investigatory activities are completed and reviewed in a timely manner and signed and dated by the investigator and the supervisor.

- Requiring that the assessment of risk of the child include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child's residence.

- Requiring that onsite visits and face-to-face interviews with the child or family be unannounced unless it would threaten the safety of the child.

- Directing the department to adopt a rule that specifies factors requiring the department to take the child into custody or petition the court for removal of the child from the home or to conduct an administrative review if the child is not taken into custody or a petition is not filed with the court.

- Authorizing the court to continue a child in shelter care for up to 72 additional hours in order for the court to obtain and review critical documents.

- Requiring the department to provide to the court at the shelter hearing copies of any available law enforcement, medical, or other professional reports and pertinent abuse hotline reports pursuant to state and federal confidentiality requirements.

- Requiring the department to inform the court at the shelter hearing of specific information such as current or previous case plans and any problems with compliance, any delinquency adjudication of the parents or caregivers and all of the child's places of residence during the past 12 months.

- Requiring the Office of Program Policy Analysis and Government Accountability to analyze and report on all cases for which an administrative review is conducted under s. 39.301(12)(c), F.S., and the Department of Children and Family Services does not take the child into custody or file a petition under ch. 39, F.S. Data and data analyses are compiled quarterly and submitted to the Legislature by January 1, 2000 and January 1, 2001.

Child Protection Teams

- Including representatives of school districts in the group of professionals that may constitute child protection teams.

- Requiring rather than permitting that certain reports of child abuse, abandonment, and neglect be referred to the child protection teams for a medical evaluation.

- Specifying that a child of any age with bruises, burns, or fractures who is the subject of an abuse report be referred to the child protection team rather than only those children under 3 years or for whom no plausible explanation for an injury is given.

- Specifying that a child with injuries to the head who is the subject of a report be referred to the child protection team.

- Requiring that all cases of abuse and neglect transmitted for investigation to a district by the hotline be simultaneously transmitted to the Department of Health child protection team for review; all cases referred to the child protection team meeting the criteria in s. 39.303(2), F.S., must be timely reviewed by a board certified pediatrician or registered nurse practitioner who is under the supervision of the board certified pediatrician; a face to face medical evaluation is not necessary in these cases *only* if the examining physician and the child protection team pediatrician or nurse practitioner conclude that further medical evaluation is not necessary.

- Requiring that the Department of Health in consultation with the Department of Children and Family Services and the Florida Association of Counties to develop a plan, describing the resources necessary from both the county and the state, to provide adequate support for child protection teams in each county in Florida and providing that the Department of Health submit the plan to the Governor and Legislature by October 1, 1999.

- Appropriating to the Department of Health for FY 1999-2000 three full-time equivalent positions and $2,413,234 from recurring General Revenue Funds and $435,862 from nonrecurring General Revenue funds to implement provisions relating to the child protection teams and for staff, consultants, and expenses associated with the state and local Child Abuse Death Review Committees.

Provision of Child Protection Services By Private Providers

- Establishing a case transfer process between the community-based agency and the department that helps assure a seamless child protection system by clearly identifying the closure of the protective investigation and the initiation of service by the community-based agency.

- Requiring that each community-based agency under contract with the department furnish status reports of its cases to the department and notify the department in writing when services are discontinued.

- Requiring that the department provide the community-based agency with a complete summary of the findings of the investigation when the case is transferred to the agency and that the agency provide a written case summary to the department within 7 days after discontinuing services.

- Requiring that the annual contract between the department and community-based agencies include provisions specifying procedures for resolving their differences concerning interpretations of the contract or to resolve disputes as to the adequacy of their compliance with respective obligations under the contract.

Child Abuse Death Review

Establishing a State Child Abuse Death Review Committee within the Department of Health and local child abuse death review committees that will be responsible for:

- Reviewing the facts and circumstances of all deaths of children from birth through 18 years of age which occur as a result of child abuse or neglect and for whom at least one report of abuse or neglect was accepted by the central abuse hotline.

- Developing a better understanding of the causes and contributing factors of deaths resulting from child abuse and developing a communitywide approach to addressing these cases and contributing factors.

- Identifying gaps, deficiencies, or problems in the delivery of services to children and families by public and private agencies and making recommendations for improvement to laws, policies, and professional practices.

- Collecting data on child abuse deaths and preparing an annual report on the incidence and causes of death resulting from child abuse.

- Educating the public on the Kayla McKean Child Protection Act and ways by which child deaths from abuse or neglect may be prevented.

Criminal Penalties

- Increasing the penalty from a second degree misdemeanor to a first degree misdemeanor for persons who knowingly and willfully fail to report child abuse, abandonment, or neglect.

- Creating the penalty of third degree felony for persons who are 18 years of age or older who live in the same house or living unit as a child known or suspected to be a victim of abuse and who knowingly and willfully fail to report the abuse unless the

court finds that the person is a victim of domestic violence or that other mitigating circumstances exist.

- Providing that a person who assists the perpetrator of child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a child under 18 years of age is an accessory after the fact unless the court finds that the person is a victim of domestic violence.

- Changing the penalty for aggravated child abuse from second degree felony to first degree felony.

- Modifying the Offense Severity Ranking chart by moving "aggravated child abuse" from Level 8 to Level 9 and by moving "aggravated manslaughter of a child" from Level 9 to Level 10, which will serve to increase the lowest sentence a judge is authorized to impose upon an offender.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 116-0

CS/CS/SB 1666 — Child Protection

by Judiciary Committee; Children & Families Committee; and Senator Mitchell

This bill contains the following major provisions:

- Amends ch. 39, F.S., to make technical and necessary changes correcting errors and inconsistences resulting from the major reorganization of the chapter during the 1998 legislative session (ch. 98-403, L.O.F.). It clarifies the definitions, roles, obligations and rights of parents, legal custodians and caregivers depending on their involvement in proceedings under ch. 39, F.S.

- Amends s. 39.508(3)(a), F.S., 1998 Supp., to provide that the Department of Children and Family Services may place a child in a foster home which otherwise meets licensing requirements if state and local records checks do not disqualify the applicant and the Department of Children and Family Services has submitted fingerprints to Florida Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and are awaiting the results of the federal criminal records check.

- Amends s. 39.0134, F.S., 1998 Supp., to provide that a county may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs for court-appointed counsel, in accordance with the procedure in s. 984.08, F.S., relating to recovery of attorney's fees in indigency cases for children and families in need of services.

- Amends s. 39.506, F.S., 1998 Supp., to allow a default consent to dependency adjudication to be entered in the event a person who is ordered to appear at a subsequent adjudication hearing fails to appear. It clarifies time frames for filing dependency petitions, setting arraignment and adjudicatory hearings, and placing children in shelter care or out-of-home care.

- Amends s. 921.0024, F.S., 1998 Supp., to require, rather than allow, the court to apply the current sentencing enhancer under the Criminal Punishment Code (subtotal sentence points are multiplied by 1.5) when the primary offense is an act of domestic violence committed in the presence of a child under 16 years of age by a family member. (CS/SB 246)

- Amends s. 901.15, F.S., 1998 Supp., to provide a preferred arrest policy for domestic violence cases by providing that the decision to arrest does not require the consent of the victim or consideration of the relationship of the parties. (CS/SB 246)

- Amends s. 784.046, F.S., to provide that the parent or legal guardian of a minor child who is living at home has standing in circuit court to seek an injunction for protection against repeat violence on behalf of that child if the parent was an eye witness to, or has other direct physical evidence of the facts and circumstances, related to that incident.

- Amends s. 409.26731, F.S., by removing the provision that authorizes the Department of Children and Family Services to certify local funds as state match for children's mental health services funded by Medicaid. The Department of Children and Family Services is authorized to certify local funds as state match for eligible Title IV-E expenditures in excess of the amount of state general revenue matching funds appropriated in the General Appropriations Act for services to this population and is allowed to retain up to 5 percent of these earnings for administrative purposes. (CS/SB 2462)

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-1; House 118-0

CS/CS/SB 660 — Foster Care and Related Services

by Governmental Oversight & Productivity Committee; Children & Families Committee; and Senators Brown-Waite and McKay

This bill primarily addresses several issues associated with the privatization of foster care and related services. These issues include excess federal funds earned by the community-based providers and the Department of Children and Family Services, liability insurance of community-based providers under contract with the Department of Children and Family Services to provide these services, adversely affected employees of the Department of Children and Family Services who currently provide these services, the implementation date for privatizing these services in District 5 (Pinellas and Pasco Counties), and pilot projects for testing child-welfare targeted case-management.

This bill addresses documented federal funds earned for the current fiscal year by the department and community-based agencies that were under privatization contracts as of July 1, 1999. The bill specifies that earnings exceeding the amount appropriated by the Legislature must be distributed to all entities contributing to the excess earnings based on a schedule and methodology developed by the department and approved by the Executive Office of the Governor. These excess earnings may be used only in the district in which they were earned and contracts must be amended to permit the expenditure of funds. This program is authorized for a period of 3 years beginning July 1, 1999, and ending June 30, 2002, and the Office of Program Policy Analysis and Government Accountability must review the program and report to the Legislature by December 31, 2001.

Eligible lead community-based providers and their subcontractors must obtain a minimum of $1 million per claim, $3 million per incident in general liability insurance coverage. Limitations are specified for tort actions brought against an eligible lead community-based provider and subcontractor and a claims bill may be brought on behalf of a claimant pursuant to s. 768.28, F.S., for any amount exceeding the limits specified in s. 409.1671(1)(d), F.S. Lead community-based providers are not liable in tort for the acts or omissions of subcontractors or the officers, agents, or employees of its subcontractors. These immunities are not applicable to a provider or subcontractor who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression when these acts result in injury or death or these acts proximately cause injury or death. Culpable negligence is defined as reckless indifference or grossly careless disregard of human life. These immunities do not apply to employees when operating in furthering the provider's business but assigned primarily to unrelated works within private or public employment. Conditional limitations on damages will be increased at the rate of 5 percent each year and prorated from the effective date of the bill to the date at which damages subject to these limitations are awarded by final judgment or settlement.

This bill also includes provisions from CS/SB 2250. The duties of the child welfare estimating conference are modified by specifying that forecasts may be developed for the placements in which abused, neglected, or abandoned children may be placed such as emergency shelter, foster care, residential group care, adoptive services, or other appropriate care and specifies that factors other than the actual reports made to the abuse hotline may be considered in projecting the future number of initial and additional reports of abuse, abandonment, or neglect made to the abuse hotline.

The bill specifies that while it is the intent of the Legislature that communities and other stakeholders participate in assuring that children are safe and well nurtured, the Legislature does not intend that any county, municipality, or special district be required to assist in funding privatization of foster care and related services but may participate in voluntary funding of those programs.

Broward County is added to those designated counties that either the state attorney or the Office of the Attorney General shall provide child welfare legal services.

The bill changes the date for the department's implementation of privatized foster care and related services in District 5 (Pinellas and Pasco Counties). That date changes from December 31, 1999, to June 30, 2000, which provides 6 additional months for phasing in privatized services.

Employees of the Department of Children and Family Services who provide foster care and related services whose positions are being privatized must be given hiring preference by the private providers if those persons meet the provider's qualifications.

A licensed family foster home under contract with a lead agency may also be licensed as a family day care home if certain requirements are met. These homes would be able to receive the subsidized child care rate which would increase their monthly income from the state of Florida by approximately $260 per child.

The Agency for Health Care Administration, in consultation with the Department of Children and Family Services, is authorized to establish a targeted case management pilot project in those counties identified by the department, and for the community-based child welfare project in Sarasota and Manatee Counties as authorized under s. 409.1671, F.S., 1998 Supp. The group of persons eligible to receive targeted case management will be Medicaid eligible children, ages 0-21, who are under protective or post placement supervision, foster care supervision or who are in shelter or foster care. These children eligible under the Medicaid program to receive targeted case management services will be limited to the group for whom the department has available match to cover the costs. The general revenue required for match for services provided by the community-based child

welfare projects is limited to funds available for services described under s. 409.1671, F.S., 1998 Supp.

This bill also includes provisions contained in SB 1448 concerning goals for children in shelter or foster care. Legislative intent is specified that establishes goals for children in shelter or foster care. These goals include things such as: receiving a copy of these goals when placed in the custody of the department; enjoying individual dignity, liberty, pursuit of happiness, and protection of their civil and legal rights as persons in the custody of the state; having their privacy protected through uncensored communication; having personnel provide services to them who are qualified and experienced in delivering child protection services; remaining in the custody of their parents or legal custodians unless a determination is made by a qualified person that removal is necessary to protect physical, mental or emotional safety; referring to and receiving services for medical, emotional, psychological, psychiatric, and educational evaluations and treatment as soon as practical after identification of need; being placed in a home with no more than one other child, unless they are part of a sibling group; being the subject of a plan developed by the counselor and shelter or foster caregiver to address identified behaviors that may present a risk to the child or others; being involved and incorporated, where appropriate, in the development of a case plan that addresses specific needs and objecting to any of those provisions; receiving a free and appropriate education; and enjoying regular visitation with siblings on a weekly basis and parents on a monthly basis unless the court orders otherwise.

The bill specifies that nothing in s. 39.4085, F.S., may be interpreted as requiring the delivery of services or level of service in excess of existing appropriations. No person shall have a cause of action against the state or its subdivisions, agencies, contractors, subcontractors, or agents based upon the adoption of or failure to provide adequate funding for the achievement of goals for dependent children by the Legislature.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 113-0

SB 750 — Child Care

by Senators Forman and Klein

This bill creates the "Jeremy Fiedelholtz Safe Day Care Act," creates new criminal offenses and substantially modifies the existing criminal offense in s. 402.319, F.S. (relevant to penalties for violation of the child care statutes). This bill:

- Adds "family day care home" to the various current and new offenses,

- Creates a first-degree misdemeanor offense for making a misrepresentation, by act, regarding the licensure or operation of a child care facility or family day care home to a parent or guardian who places a child in the facility or a parent or guardian who is inquiring regarding placement of a child in the facility, and

- Creates a second-degree felony (15-year maximum prison sentence) when a child care personnel makes a misrepresentation to a parent or guardian who has placed a child in the child care facility or family day care home and the parent or guardian relied upon the misrepresentation and the child suffers great bodily harm, permanent disfigurement, permanent disability or death as a result of an intentional act or by negligence by the child care personnel. This felony is added to the offense severity ranking chart.

If approved by the Governor, these provisions take effect October 1, 1999.

This bill also gives the Department of Education more flexibility in negotiations and in establishing higher quality child care programs for those programs located in state owned office buildings.

If approved by the Governor, these provisions take effect October 1, 1999 except as otherwise provided.
Vote: Senate 40-0; House 115-1

HB 869 — Child Care

by Children & Families Committee and Rep. Murman and others (CS/SB 2092 by Children & Families Committee and Senator Sebesta)

This bill facilitates child care quality improvements and does the following:

- Provides for a tax exemption for a child care facility operating in an enterprise zone;

- Provides a sales tax exemption for educational materials purchased by child care facilities that qualify as Gold Seal Quality Care programs and provide health insurance to their employees;

- Provides that, for the purpose of ad valorem tax exemption, certain licensed child care facilities be considered an educational institution;

- Defines the term “large family child care home” as a residence in which has at least two full-time child care personnel and in which child care is provided for eight to 12 children;

- Provides a staff-child ratio for large family child care homes;

- Provides a maximum $1000 fine for large family child care home operators who fail to comply with licensing requirements;

- Requires that minimum staff training requirements (for licensure) of child care personnel and operators of family day care homes will include an approved 40 hour (increased from 30 hours) introductory course in child care;

- Requires that the minimum information a registered family day care home must provide will include proof of completion of a 30 hour training course (up from 3 hours);

- Specifies a 40 hour introductory training course in group child care for large family child care home operators;

- Allows licensed Gold Seal certified child care providers to be reimbursed at the market rate for child care services for children who are eligible to receive subsidized child care;

- Expands subsidized child care from 150 percent to 200 percent of the federal poverty level for participants in the Child Care Executive Partnership Program;

- Establishes a framework for the observational and developmental assessment of young children;

- Establishes an Early Head Start Collaboration Grants program to assist in securing Head Start grants;

- Allows for the Departments of Health and Children and Family Services to develop minimum standards for the establishment of specialized child care facilities to care for mildly ill children;

- Creates a statewide toll-free "Warm Line" to provide consultation to child care centers and family day care homes; and

- Directs the Department of Insurance to study and report on the feasibility of making affordable health insurance available to staff of child care providers.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 115-0

CHILD SUPPORT

HB 2149 — Child Support

by Family Law & Children Committee and Rep. Roberts and others (CS/CS/SB 808 by Children & Families Committee; Fiscal Policy Committee; and Senator Diaz-Balart)

The bill amends sections of ch. 61 and ch. 409, F.S., relating to child support enforcement. This bill:

- Provides a time frame (15 days) related to the suspension of an obligor's driver's license or motor vehicle registration as a result of a delinquency in child support payments;

- Requires that the full names, dates of birth, and social security numbers of any minor children be included as a separate attachment to the pleading for dissolution of marriage and to child support orders;

- Clarifies that, once the State Disbursement Unit becomes operational, all payments will be delivered and payable to the State Disbursement Unit and that non-Title IV-D cases will continue to pay a service charge for the administration, management, and maintenance of the State Disbursement Unit;

- Allows for 50 percent of the actual, documented net cost, or for specific funds set aside (whichever is greater), to be paid to recompense full participation in the State Disbursement Unit for Miami-Dade, Seminole, and Collier Counties and states that such funds will be reimbursed by the Court Child Support Enforcement Collection System Trust Fund;

- Redefines a family violence indicator as it relates to information provided to the State Case Registry;

- Amends language regarding penalties for failure to comply with the State Case Registry to clarify that the failure to comply will subject the county officer or officers responsible to sanctions as provided in the State Constitution and to clarify that an officer will not be subject to sanctions for a noncurable default resulting from conditions outside the control of the depository;

- States that in public assistance cases, as in non-public assistance cases, retroactive child support obligations are determined in accordance with the child support guidelines and clarifies that such amount will be deposited into the General Revenue Fund;

- Requires the inclusion of the "average daily account balance" in the information that financial institutions must provide to the Department of Revenue for an obligor who owes past due child support and includes an appropriation for this purpose;

- Removes the obsolete statutory requirement that the Department of Revenue and the Department of Insurance enter into cooperative agreements to share insurance information;

- Provides the Department of Revenue the statutory authority to impose a fine for failure to comply with a subpoena for information necessary to establish, modify, or enforce a child support order;

- Gives the Department of Revenue authority to establish rules with regard to overpayment;

- Authorizes the Department of Revenue to provide information from the parent locator service to any agency providing child support enforcement services to non-Title IV-D clients and includes an appropriation for this purpose;

- Redefines automated administrative enforcement to be consistent with federal law; and

- Provides that any non-citizen may provide either a social security number or an alien number for purposes of issuance of a marriage license but that a county court should still issue the license if said number is not available.

Effective October 1, 1999, this bill allows the Department of Revenue to redirect child support payments to a relative caretaker upon the filing of a verified motion. The court shall enter a temporary order, ex parte, within 5 days to redirect the payment pending a final hearing. Upon the filing of a verified motion by the department, the relative caretaker becomes a party to the proceedings. If the court later determines that the child support payment was improperly diverted, the Department of Revenue must pay the child support payments to the appropriate party and attempt to recoup any payments improperly paid.

If approved by the Governor, these provisions take effect July 1, 1999, except as otherwise provided.
Vote: Senate 40-0; House 113-0

HB 145 — Child Support Guidelines

by Rep. Effman and others (CS/SB 268 by Children & Families Committee and Senator Klein)

This bill requires a court to adjust the child support amount and order child support outside the guidelines, articulated at s. 61.30, F.S., when a court order or mediation agreement requires a child to spend a substantial amount of time with each parent. This requirement applies to any living arrangement, whether temporary or permanent. The adjustment factors include the amount of time each child will spend with each parent, the needs of the child, financial expenses for each child, the comparative income of each parent, the station of life of each parent and child, the standard of living experienced during the marriage, and the financial status and ability of each parent.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 116-1

DEPARTMENT OF CHILDREN AND FAMILIES — ORGANIZATION

CS/SB 1902 — Department of Children and Family Services

by Children & Families Committee and Senator Clary

This bill waives certain provisions in s. 20.19, F.S., 1998 Supp., until July 1, 2000, so that the Department of Children and Family Services may organize programs, districts, and functions to achieve a more effective and efficient service delivery system and to improve accountability. (The specified provisions of s. 20.04, F.S., will not apply in these areas during this reorganization activity.)

Provisions in s. 20.19 F.S., 1998 Supp., that are waived include the following:

- Appointment of a deputy secretary by the Secretary who performs duties as assigned by the Secretary
- Establishment of regional processing centers
- Office of Standards and Evaluation and specified responsibilities
- Program Offices with each office headed by an assistant secretary and specified responsibilities
- Appointment of an Assistant Secretary for Administration and specified responsibilities

- Annual evaluation by the Assistant Secretary for Administration on the methods used by each program to ensure fiscal accountability of each contracted provider of services with a report to the Legislature

- Evaluation by the Assistant Secretary for Administration on the administrative operations of the service districts

- Responsibilities of the district health and human services boards, all local family services plans submitted to the board, the annual operating agreement between the Secretary and the boards, dispute resolution provisions included in the annual agreement between the board and secretary, and the district nominee qualifications review committees

- Appointment of a district administrator for each service district by the Secretary

- Screening applicants for vacant district administrator positions by the health and human services boards, upon notification of the secretary, and submitting the names of 3 to 5 qualified candidates to the secretary

- Duties of the district administrators

- Consolidation of administrative functions in two or more districts by the district administrators in order to achieve more efficient and effective performance of service delivery and support functions

- Program consolidation at the district level

- Functions of the district manager for administrative services

- Establishment of an interdisciplinary contract evaluation team to by each district administrator to assess district contracts and contractor performance

- Development of the annual district budget request by the district administrator, in conjunction with the health and human services board

The bill requires that the Secretary of the department consult with the Executive Office of the Governor on the actions taken to implement the provisions waived under this bill. The Secretary must submit a monthly status report to the Governor and the Legislature through December 1999 (beginning 30 days after this bill becomes law) describing actions that have been taken and additional plans for implementing the provisions that are being waived under this bill.

This bill requires that the Secretary of the Department of Children and Family Services submit a comprehensive reorganization plan to the Governor, Speaker of the House of Representatives, and President of the Senate by January 1, 2000. The comprehensive reorganization plan must: 1) describe the organizational and program restructuring activities that have occurred since the act's effective date, including indications of the department's improved ability to carry out the statutory mission in s. 20.19, F.S., 1998 Supp., and any organizational efficiencies; 2) what strategies proved to be ineffective or inefficient; 3) any recommendations for reorganization, including program and organizational restructuring; and 4) any statutory revisions.

This bill specifies that the provisions of this bill do not impair the operation of any other statutory responsibility or the rules promulgated under their authority.

The Department of Children and Family Services is directed to consult with the Office of the State Courts Administrator and develop a proposed plan to realign the districts of the department so that the district boundaries are consistent with the boundaries of the judicial circuits. The plan may not propose more than 15 districts and at least one alternative must include fewer than 15 districts. The proposed plan must be submitted to the Governor and the Legislature by December 1, 1999.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 117-0

Senate Committee on Commerce and Economic Opportunities

COMMERCE AND ECONOMIC DEVELOPMENT

CS/CS/SB 1566 — Commerce

by Fiscal Policy Committee; Commerce & Economic Opportunities Committee; and Senators Kirkpatrick and Hargrett

Enterprise Florida Restructuring

The organizational structure of Enterprise Florida, Inc. (EFI), is substantially revised by the bill, through the elimination of the International Trade and Economic Development Board, the Capital Development Board, the Technology Development Board, and the Enterprise Florida Nominating Council. (The Workforce Development Board is revised based on the federal Workforce Investment Act of 1998. *See* ***Workforce Development*** section below.) Under the measure, EFI is authorized to create advisory committees or similar organizations to assist in carrying out its mission. At a minimum, EFI must, by August 1, 1999, establish advisory committees on international business and on small business, comprised of individuals with expertise in the respective fields.

This bill amends s. 288.9015, F.S., governing the mission of EFI, to specify that EFI shall aggressively market Florida's rural communities and distressed urban communities as locations for potential investment, assist in the retention and expansion of existing businesses in these areas, and assist these areas in the identification and development of new economic development opportunities for job creation. EFI is also charged with assessing, on an ongoing basis, Florida's competitiveness as compared to other states, and with incorporating the needs of minority and small businesses into its core functions of economic, international, and workforce development.

With respect to the management of EFI, the bill specifies that the organization's president shall serve at the pleasure of the Governor, although the board of directors shall establish and adjust the president's salary. The chairperson of EFI or the chairperson's designee is added to the membership of the authorized executive committee. In addition, the bill specifies that no employee of EFI may receive compensation exceeding the salary of the Governor, unless the board of directors and the employee have executed a contract under which the satisfaction of performance measures provides the basis for incentive payments that increase the employee's compensation above that earned by the Governor.

The bill amends EFI's responsibilities under s. 288.905, F.S., relating to development of a strategic plan, by revising required elements, eliminating required elements, and adding required elements. Among the revised or added elements is that the strategic plan must include strategies for the promotion of business formation, expansion, recruitment, and retention through aggressive marketing, international development and export assistance, and workforce development programs, and that the plan must include the promotion of the successful long-term economic development of the state with increased emphasis on market research and information to local economic development entities and generation of foreign direct investment in Florida.

EFI's statutory responsibilities for generating private-sector contributions to the organization are also amended by the bill. The measure substantially rewords s. 288.90151, F.S., to specify that the state's operating investment in EFI is the budget contracted by the Office of Tourism, Trade, and Economic Development to EFI, less amounts directed by the Legislature to be subcontracted to a specific recipient. Each fiscal year, the state's operating investment in EFI must be matched 100 percent by private-sector cash and in-kind support, including at least $1 million in cash given directly to EFI for its operating budget and an additional $400,000 in cash that may include funds jointly raised with local economic development organizations and funds generated by products or services of EFI.

Office of Tourism, Trade, and Economic Development

The bill authorizes the Office of Tourism, Trade, and Economic Development (OTTED) to contract out for the administration of programs under its jurisdiction, using interest earned from the investment of program funds deposited in the Economic Development Trust Fund, the Grants and Donations Trust Fund, the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund, and the Economic Development Transportation Trust Fund. A number of conforming revisions are made to the statute governing OTTED, s. 14.2015, F.S., to reflect other programmatic changes made by the bill, such as the creation of the Office of the Film Commissioner and the consolidation of Florida's professional and amateur sports promotion programs. (S*ee, e.g.,* ***Entertainment Industry Promotion*** and ***Amateur and Professional Sports Promotion*** sections below.) The bill also eliminates a requirement that OTTED report to the Legislature on the status of contracts with certain public-private partnerships or direct-support organizations, and reduces the required number of economic summit meetings to at least one per year.

Economic Development Initiatives

Certified Capital Company Act: The bill expands the definition of the term "transferee" for purposes of allocating unused premium tax credits under the Certified Capital Company (CAPCO) Act. The revised definition enables such credits to be utilized by a subsidiary of

the certified investor; by an entity 10 percent or more of whose outstanding voting shares are owned by the certified investor; or by a person who directly or indirectly controls, is controlled by, or is under the common control with the certified investor. The bill also specifies that the amount of tax credits vested under the CAPCO Act shall not be considered in rate-making proceedings involving a certified investor. The primary purpose of the CAPCO program, as stated in s. 288.99, F.S., is expanded to include increasing access to capital by minority-owned businesses and businesses located in Front Porch communities, enterprise zones, certain distressed urban and rural areas, and historic districts. In addition, the Black Business Investment Board is specifically identified in the bill as an "early stage technology business" and as a "qualified business" for the purpose of receiving investments by CAPCOs.

Black Business Investment Board: The mission underlying the board is expanded to include taking measures to increase access of black businesses to both debt and equity capital. In addition, the board's powers are expanded to include promoting black ownership of financial institutions and taking, holding, and improving real property.

Qualified Target Industry (QTI) Tax Refund Program: The bill revises the QTI Program to reduce certain requirements and restrictions applicable to the tax refunds, and to establish a statutory cap on the state share of payable refunds of $24 million for fiscal year 2000-2001 and $30 million for future fiscal years. The measure also authorizes OTTED to approve for tax refund an expansion of an existing business in a rural community or an enterprise zone that results in a net increase in employment of less than 10 percent. The term "rural community" is defined for purposes of the QTI program as a county with a population of 75,000 or less, a county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less, or a municipality within either of such counties.

Qualified Defense Contractors (QDC) Tax Refund Program: The bill abrogates the scheduled 1999 expiration of the QDC Program by extending the program until June 30, 2004. The measure also corrects agency references relating to administration of the program to reflect the dissolution of the Department of Commerce and the assumption of program administration by OTTED.

Capital Investment Tax Credit: Section 220.191, F.S., relating to the Capital Investment Tax Credit, is amended to provide that credits under the program may be granted against premium tax liability. The bill also specifies that an insurance company claiming premium tax credits under the program will not be subject to additional retaliatory tax under s. 624.5091, F.S.

Urban High-Crime Area and Rural Job Tax Credit Programs: The bill specifies that call centers and similar customer service operations are eligible businesses under the two

job tax credit programs under ss. 212.097 and 212.098, F.S., and authorizes specified retail businesses to be eligible under the urban high-crime program. In addition, OTTED is authorized to recommend to the Legislature additions to or deletions from the list of standard industrial classifications used to determine an eligible business for purposes of both programs.

Enterprise Zone Pilot Project: The bill creates s. 290.0069, F.S., to direct OTTED to designate a pilot project within one enterprise zone. Eligibility criteria are specified for the pilot project/enterprise zone, including, among others, that the pilot project area contains a diverse cluster or grouping of facilities or space for a mix of retail, restaurant, or service related industries. Beginning December 1, 1999, no more than four businesses in the project area may claim a credit for taxes due under chs. 212 and 220, F.S. Credits must be computed as $5,000 times the number of full-time employees of the business and $2,500 times the number of part-time employees of the business, and the total amount of credits that may be granted under this section annually is $1 million. This section further provides for prorated credit amounts in the event of excess demand. This section specifies eligibility requirements for businesses, including, among others, that the business has entered into a contract with a developer of a diverse cluster or grouping of facilities or space located in the pilot area, governing lease of commercial space in a facility. This section stands repealed on June 30, 2010.

Quick Action Closing Fund: This bill creates a Quick Action Closing Fund within OTTED for the stated purpose of helping Florida to compete for high-impact business facilities. Under the program, the Governor must consult with the President of the Senate and the Speaker of the House of Representatives prior to giving final approval for a project to receive funding. Once a project is approved, OTTED and the business must enter into a contract governing the conditions for payment of moneys from the fund. The bill further requires Enterprise Florida, Inc., to validate contractor performance.

Military Base Retention: This bill designates the Florida Defense Alliance within Enterprise Florida, Inc. (EFI), as responsible for ensuring the competitiveness of Florida's military bases and base communities and for advising EFI on defense-related activity. In addition, the measure appropriates $2 million for the purpose of assisting military installations with improvements to or upgrades of infrastructure as part of the state's effort to retain such facilities.

Economic Development Property Tax Exemptions: This bill amends ss. 196.012 and 196.1995, F.S., to allow a business sited on property that is annexed into a municipality to continue receiving the ad valorem tax exemption that had been provided by the county.

Rural Economic Development

The bill contains a number of provisions designed to encourage economic development in Florida's rural communities. Specifically, the bill:

- Provides that job creation and economic development shall be considered as factors in future land use plans and in designation of industrial use, notwithstanding existing population or low-density population.
- Provides that regional planning councils shall have a duty to assist local governments with economic development activities, and authorizes regional planning councils to use their personnel, consultants, or other assistants to help local governments with economic development activities.
- Codifies the Rural Economic Development Initiative (REDI) within OTTED and provides its duties and responsibilities -- including coordinating and focusing the efforts and resources of state and regional agencies on the problems which affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.
- Authorizes the Governor, based upon recommendations from REDI, to designate up to three rural areas of critical economic concern, and to waive economic development incentive criteria for such communities.
- Increases the maximum grant amount under the Regional Rural Development Grant Program to $35,000, or $100,000 in a rural area of critical economic concern.
- Authorizes OTTED to allow a rural area of critical economic concern to retain repayments of principal and interest under the Rural Community Development Revolving Loan Fund if certain conditions are met.
- Creates the Rural Infrastructure Fund within OTTED, under which grants are authorized for infrastructure in support of specific economic development projects, including certain storm water systems, electrical, telecommunications, natural gas, roads, and nature based tourism facilities.
- Authorizes the provision of grants to rural communities to develop and implement strategic economic development plans.
- Directs the Florida Fish and Wildlife Conservation Commission to provide assistance, including marketing and product development, related to nature-based recreation for rural communities.
- Allows a rural electric cooperative to provide any energy or nonenergy service to its membership.
- Authorizes the Governor to waive the eligibility criteria of any program or activity administered by OTTED or EFI, to provide economic relief to a small community that has been determined to be in an economic emergency.
- Amends s. 378.601, F.S., to expand the circumstances under which a heavy mineral mining operation that annually mines less than 500 acres and whose proposed consumption of water is 3 million gallons of water per day or less may not be required

to undergo a development of regional impact (DRI) review. The bill broadens the scope of this DRI exemption to include certain cases in which the operator has received a development order under s. 380.06(15), F.S.

Urban Economic Development

To assist in administration of the Front Porch Florida initiative, the Office of Urban Opportunity is created within the Office of Tourism, Trade, and Economic Development. The bill provides that the director of the urban office shall be appointed by and serve at the pleasure of the Governor. The measure also provides for the creation of an Institute on Urban Policy and Commerce as a Type I institute under the Board of Regents at Florida Agricultural and Mechanical University, the stated purpose of which is to improve the quality of life in urban communities through research, teaching, and outreach activities.

Entertainment Industry Promotion

The bill creates the Office of the Film Commissioner, a centralized, state level office established within the Office of Tourism, Trade, and Economic Development (OTTED) to develop and promote the state's entertainment industry. The term "entertainment industry" is broadly defined to include persons or entities engaged in the operation of motion picture or television studios, or recording studios, as well as members of the broadcast industry. The Office of the Film Commissioner is directed, among other things, to develop and implement a five-year strategic plan, develop a methodology for working with local entertainment industry promotion offices in providing service to the industry, serve as a liaison between government and the entertainment industry, and serve as a liaison between the entertainment industry and labor interests.

The bill creates the Florida Film Advisory Council (council), administratively housed within OTTED. The council will provide industry direction on promoting the growth of the entertainment industry in the state. The Governor, the President of the Senate, and the Speaker of the House of Representatives are to make appointments under criteria prescribed within the bill. The Film Commissioner, and representatives of the Florida Tourism Industry Marketing Corporation and Enterprise Florida, Inc., will serve as ex-officio, non-voting members of the council. The council's duties and powers are delineated, including, but not limited to, advising on development of a five-year strategic plan by the office to develop, promote, and serve the state's entertainment industry and reviewing and advising on the implementation of the plan. The bill repeals various provisions of ch. 288, F.S., relating to the Florida Film and Television Investment Act and the Florida Film and Television Investment Board.

Digital Broadcasting

The bill provides for the formation of a 12-member task force to be called the "21st Century Digital Television and Education Task Force." The task force, to be established within OTTED, is directed to: devise a plan to recruit digital industries to locate in Florida; recommend economic incentives to assist in the recruitment of certain digital industries to Florida; devise a plan to create and maintain higher education opportunities for students interested in the digital television field; recommend methods to hasten the conversion of existing commercial television studios and sound stages from analog to digital technology; investigate means of assisting public broadcast stations in their conversion from analog to digital technology; and issue a report to the Legislature prior to February 1, 2000.

Amateur and Professional Sports Promotion

The bill authorizes the direct-support organization, known as the "Florida Sports Foundation, Inc." (foundation), to absorb many of the duties currently assigned to the Governor's Council on Physical Fitness and Amateur Sports (council). These activities include the promotion of physical fitness and amateur sports for the citizens of Florida, the promotion of Florida as a host for national and international amateur sports competitions, and the administration of the Sunshine State Games. The bill repeals s. 14.22, F.S., which established the council. Additionally, the bill transfers from the council to the foundation the administration of the funds collected from the sale of Olympic license plates under s. 320.08058, F.S., 1998 Supp. The bill also provides for the transfer of all funds and property held by the council and the Sunshine State Games Foundation, Inc., to the foundation and requires that such resources will be used to promote amateur sports.

The promotion and development of Olympic development centers is dissolved and a broader charge is provided in the bill for programs to encourage participation of Florida's youth in Olympic sports and competitions. The 17-member Florida Olympics and Pan American Games Task Force is dissolved and replaced by provisions in the bill requiring the foundation to assist and support Florida bid-cities or communities seeking to host the Summer Olympics or Pan American Games and to annually report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the bid-city efforts.

Tourism Promotion

The bill provides technical and conforming changes as to the duties, responsibilities, and membership of the Florida Commission on Tourism and the Florida Tourism Industry Marketing Corporation (Visit Florida), including provisions regarding the staffing of the Commission on Tourism by Visit Florida, and authority for the executive director of the

Florida Commission on Tourism. The bill clarifies those contributions which are to be allowed in the required private portion of the one-to-one match of private to public contributions for tourism promotion, and corrects a technical error in the statutory definition of a tourist. The bill provides for the establishment of a standing, statewide advisory committee to assist the Florida Commission on Tourism with the implementation of a plan to protect and promote all of the natural, coastal, historical, and cultural tourism assets of this state. The bill requires the Florida Commission on Tourism to incorporate nature-based tourism and heritage tourism components into its comprehensive state marketing plan, and specifies that the plan must include provisions to specifically address the promotion and development of nature-based tourism and heritage tourism in rural communities.

The bill also transfers administrative and fiscal responsibilities for the Welcome Center Office's from the Department of Transportation to the Commission on Tourism and Visit Florida.

International Business & Related Provisions

International Volunteer Corps: The statutory authority under s. 288.0251, F.S., to contract for implementation of a volunteer corps to provide short-term training and technical assistance activities in Latin America and the Caribbean is transferred from the Office of Tourism, Trade, and Economic Development (OTTED) to the Department of State.

Florida Trade Data Center (FTDC): This bill amends s. 288.8155, F.S., substantially revising the existing statute governing the International Trade Data Resource and Research Center (Florida Trade Data Center). Under the measure, the FTDC is to be established as a private, non-profit corporation and not a unit or entity of state government. The bill also requires the FTDC to make information available to OTTED, Enterprise Florida, Inc., and state agencies pursuant to a policy by the center's board of directors. Finally, the bill authorizes certain activities, such as developing a state-wide trade information system and an Internet based electronic commerce system designed to facilitate international trade in the Americas.

Notaries: The bill revises s. 117.103, F.S., regarding the process for certification of a notary public's commission. The bill also amends ss. 15.16 and 118.10, F.S., clarifying the responsibilities and authority of civil law notaries and the Department of State's regulatory powers with regard to civil law notaries, including the processes for issuance of apostilles and notarial certificates.

Foreign Money Judgments: The bill amends s. 55.604, F.S., to include the Department of State with those entities where foreign judgments are required to be filed and amends

s. 55.605(2)(g), F.S., to require the Secretary of State to establish and maintain a list of foreign jurisdictions where judgments rendered in Florida would not be given similar recognition with judgments rendered in the other jurisdiction.

Florida State International Archive and Repository: The bill creates s. 257.34, F.S., establishing the Florida State International Archive and Repository within the Division of Library and Information Services (division) of the Department of State (department) for the purpose of preserving those public records, manuscripts, international judgments involving disputes between domestic and foreign businesses, and all other public matters the department or the Florida Council of International Relations deems relevant to international issues. The Florida Council of International Development may select materials for inclusion in the archive and must be consulted by the division in all matters relating to its establishment and maintenance.

International and Cultural Relations: The Secretary of State is directed under s. 15.18, F.S., to coordinate international activities with Enterprise Florida, Inc., and any other organization the Secretary deems appropriate.

Foreign Offices: The bill amends s. 288.012, F.S., to require each foreign office to submit to OTTED, by October 1 of each year, a complete and detailed report on its activities and accomplishments during the preceding fiscal year. The information provided in the report shall include, but not be limited to, the number of Florida companies assisted; the number of inquiries received about investment opportunities in Florida; the number of trade leads generated; the number of investment projects announced; and the estimated U.S. dollar value of sales confirmations. The bill mandates a legislative review of the foreign offices by December 31, 2001, to determine the effectiveness of Florida's foreign offices. The bill also specifies that this section governing foreign offices will not be repealed and is reenacted.

Foreign Direct Investment: The bill requires Enterprise Florida, Inc. (EFI), in conjunction with OTTED, to prepare a plan for promoting direct investment in Florida by foreign businesses. The plan must assess and inventory Florida's strengths as a location for foreign direct investment and must include a detailed strategy for capitalizing upon those strengths. In developing the plan, EFI must focus on businesses with site-selection criteria that are consistent with Florida's business climate, businesses likely to facilitate the transshipment of goods through Florida or to export Florida-produced goods from the state, and businesses that complement or correspond to those industries identified as part of the sector-strategy approach to economic development required under s. 288.905, F.S. Additionally, the plan must identify weaknesses in Florida's ability to attract foreign direct investment and must include a detailed strategy for addressing those weaknesses. The plan may include recommendations for legislative action designed to enhance Florida's ability to attract foreign direct investment. EFI must solicit the participation and input of entities

with expertise and experience in foreign direct investment in the development of the plan. The plan, which EFI may include within the annual update or modification to the strategic plan required under s. 288.905, F.S., must be submitted to the Governor and the Legislature prior to January 1, 2000.

International Trade and Reverse Investment Resources: The bill provides that EFI shall develop a master plan for integrating public-sector and private-sector international trade and reverse investment resources to provide businesses with comprehensive assistance and the most current information. The plan must include resources such as trade leads, reverse investment opportunities, trade counseling, and trade financing services. EFI is directed to consult with the appropriate experts and consumers while researching for this project. The master plan must be submitted to the Governor and the Legislature prior to January 1, 2000.

Cuba: The bill requires EFI to prepare a strategic plan designed to allow Florida to capitalize on the economic opportunities associated with a free Cuba. The plan should recognize the historical and cultural ties between this state and Cuba and should focus on building a long-term economic relationship between these communities. The plan may include recommendations for legislative action necessary to implement the strategic plan. The strategic plan must be submitted to the Governor and the Legislature prior to January 1, 2000.

Appropriations: The bill provides for $224,750 originally assigned to the Florida First Capital Finance Corporation to be reassigned to the Florida-Korea Economic Cooperation Committee and the San Carlos Institute of Key West.

Ports Infrastructure Development & Other Activities

The bill enacts a number of revisions to statutes affecting activities at seaports in the state. With respect to ports infrastructure development, the bill amends s. 163.3178, F.S., relating to coastal management, to provide that ports which are part of the Florida Seaport Transportation and Economic Development (FSTED) Council and which have spoil disposal responsibilities must identify disposal sites for dredged materials. For areas owned or controlled by these ports, compliance with this requirement shall be achieved through the ports' comprehensive master plans. Such plans must be integrated with local comprehensive plans through existing processes. The bill also amends s. 163.3187, F.S., to create an exception to the prohibition against amending comprehensive plans more than two times per calendar year in the case of amendments for port transportation facilities and projects eligible for funding by the FSTED Council.

When engaged in activities authorized by water resources or environmental control permits or exemptions, ports listed in s. 403.021(9)(b), F.S., as well as the Florida Inland

Navigation District and the West Coast Inland Navigation District, are not required to pay any fees for activities involving the use of sovereign lands. Ports covered by this provision include the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West. The bill also exempts specified expansion activities at these ports, as well as other port development, transportation, and intermodal transportation activities, from the development of regional impact (DRI) requirements, provided that such expansion or other activities are consistent with the required comprehensive master plans.

With respect to port planning, the bill creates s. 311.14, F.S., to direct the FSTED Council, in cooperation with the Office of the State Public Transportation Administrator, to develop freight-mobility and trade-corridor plans to assist in making freight-mobility investments that contribute to the state's economic growth. The bill directs the Office of the State Public Transportation Administrator to integrate freight-mobility and trade-corridor plans into the Florida Transportation Plan and into the plans of metropolitan planning organizations.

The bill also revises the definition of "port facilities," under s. 315.102, F.S., to include certain facilities used to warehouse, store, and distribute cargo transported or to be transported through an airport or port facility.

Workforce Development

This bill provides specifications for Florida's implementation of the federal Workforce Investment Act of 1998 (WIA), consolidates Florida statutes regarding workforce development in a distinct part of the statutes, and reauthorizes language from the Workforce Florida Act of 1996 inadvertently omitted from current law.

One-Stop Career Centers: One-Stop Career Centers are established in the bill as the state's customer service delivery mechanism. Required one-stop partners, in addition to those mandatory partners specified in the WIA, include food stamp and WAGES/TANF programs. The partners are prohibited from operating independently of the one-stops without approval of regional workforce development boards (RWDBs), and services provided by partners which are not physically located in a one-stop must be approved by the RWDB. Memorandums of understanding must be executed between the RWDB and one-stop partners, and one partner's failure to participate may not block the participation of others.

RWDBs are directed to provide oversight to local one-stops and designate one-stop operators. These boards may retain current one-stop operators without further

procurement action where the board has established a one-stop that complies with state and federal law.

Intensive services and training must be provided through Intensive Service Accounts and Individual Training Accounts (ITAs). The WDB must develop an implementation plan, including identification of initially eligible training providers, transition guidelines, and criteria for use of these accounts. ITAs must be performance-based, and expended on programs for high-wage, high-demand occupations. RWDBs, in consultation with training providers, must establish a fair market purchase price for each training program to be paid through an ITA. The WDB must review pricing schedules and recommend process improvement changes to the Legislature.

Workforce Development Board and Regional Workforce Development Boards: The bill designates the WDB as the state's Workforce Investment Board, and the RWDBs as the local workforce investment boards pursuant to the WIA. The membership composition of the boards must be in compliance with the WIA, and the WDB is directed to provide a transition plan to incorporate the membership composition changes required by the bill.

Implementation of the federal Workforce Investment Act of 1998: The WDB is required by the bill to prepare a five-year plan (to include secondary vocational education) for early implementation of the WIA. Mandatory and optional federal partners must be involved in development of the plan and optional partners choosing to be included in the plan will satisfy all state planning and reporting requirements as they relate to one-stops. The plan must detail a process that would fully integrate all federally mandated and optional partners in the second year of the plan.

The WDB must contract with an administrative entity for the dispersement of WIA funds, including Rapid Response funds, to the RWDBs. Unless a RWDB obtains a waiver, at least 50 percent of pass through Adult/Dislocated WIA Title I funds must be used for ITAs. Tuition, fees, performance-based incentive awards, as well as other programs, qualify as an ITA expenditure. Ten percent of the WIA youth funds allocated to RWDBs must be used as performance payments for public schools' dropout prevention programs.

The bill creates the Incumbent Worker Training Program, administered by a private entity, to provide grant funding for continuing education and training of incumbent employees. Five percent of the 15 percent of the WIA funds retained at the state level is dedicated to this program.

Department of Labor and Employment Security: The bill provides that the Department of Labor and Employment Security (department) may offer a one-time voluntary reduction-in-force payment to active employees of the department with 30 or more years

in a state-administered retirement fund or to persons at least age 62 and eligible for retirement, during 1999-2000 fiscal year.

Community Assistance Initiatives

Local Government Financial Technical Assistance Program: The program is created in s. 163.055, F.S., for the stated purpose of providing technical assistance to municipalities and special districts to enable them to implement workable solutions to financially related problems. Under the program, the Comptroller is directed to enter into contracts with providers who shall, among other requirements, assist municipalities and independent special districts in developing alternative revenue sources, and assist them in the areas of financial management, accounting, investing, budgeting, and debt issuance.

Florida Interlocal Cooperation Act: The bill amends s. 163.01, F.S., to specify that a local self-insurance fund established under this section may financially guarantee certain bonds or bond anticipation notes issued or loans made under the statute.

Small School District Stabilization Program: The program is created to provide technical and financial assistance to maintain the stability of the educational program in the school district in rural communities that document economic conditions or other significant influences that negatively impact the district. As part of the program, the Office of Tourism, Trade, and Economic Development may consult with Enterprise Florida, Inc., on development of a plan to assist the county with its economic transition. The bill authorizes grants to the school districts, effective July 1, 2000, which may be equivalent to the amount of the decline in projected revenues.

Discretionary Per-Vehicle Surcharge: Section 218.503, F.S., is amended to provide that the governing authority of any municipality with a resident population of 300,000 or more, and which has been declared to be in a state of emergency within a specified period, may impose a discretionary per-vehicle surcharge of up to 20 percent on the gross revenues of the sale, lease, or rental of space at public parking facilities within the municipality.

Professional Regulation

The bill contains several provisions relating to regulation of professions and occupations.

Continuing Education: The bill requires that by the year 2002, the Department of Business and Professional Regulation (DBPR) must monitor 100 percent of professional licensees for compliance with continuing education requirements. It authorizes administrative fines and provides that a license will not be renewed until all fines are paid and all conditions of a final order are met. The bill also authorizes use of distance learning

to satisfy continuing education requirements and provides that DBPR or a board may waive or prorate continuing education requirements.

Restrictions on Employment Opportunities: The bill requires the Legislature, as part of the "sunrise" process, to evaluate new proposals for regulation of professions or occupations to determine the impact on employment opportunities. It also prohibits DBPR and the Department of Health from creating regulations that unreasonably restrict ability to seek or find employment.

Legal Representation: The bill deletes requirements that the Department of Legal Affairs provide counsel to certain professional boards, providing instead that DBPR use its own attorneys, hire private attorneys, or contract with the Department of Legal Affairs.

Minor Violations: The bill provides that certain minor violations will be classified as inactive if 2 years have elapsed since the issuance of the final order imposing discipline and the licensee has not been disciplined for any subsequent minor violation of the same nature.

Cosmetology: The bill defines "skin care services" in the practice act for cosmetology distinctly from the definition of massage in s. 480.033(3), F.S. It also defines "body wrapping" to mean, for the purposes of the cosmetology practice act, treatments using herbal wraps for weight loss and for the purpose of cleansing and beautifying the skin, not including application of oils or lotions or manipulation of the body's superficial tissue. A person who conducts body wrapping must register with the department, pay a registration fee not to exceed $25, and participate in a two-day, 12-hour HIV/AIDS training course approved by DBPR.

State Athletic Commission/Boxing: The bill includes provisions designed to ensure greater accountability by the State Athletic Commission (commission). It provides that the Governor may have a commissioner investigated and may remove a commissioner for specified grounds. The commission's executive officer is to be employed by DBPR, with the approval of the commission. The Department of Business and Professional Regulation is to assist the commission in budget development and is to submit an annual balanced legislative budget based on anticipated revenue. Additionally, the bill requires that DBPR provide all necessary legal and investigative services to the commission, deletes authority for branch commission offices, increases the amount of the bond that a foreign co-promoter must file from $3,000 to $15,000, and deletes a $10 filing fee on the filing of each bond.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 119-0

CS/SB 2540 — Commercial Space Industry

by Commerce & Economic Opportunities Committee and Senators Bronson, Sebesta, Mitchell, and Kurth

This bill revises multiple provisions in ch. 288, F.S., governing economic development transportation ("Road Fund") projects, confidentiality of economic development leads, foreign trade zones, and international trade promotion grants, to include the Spaceport Florida Authority (SFA) within the scope of these provisions. Specifically, the bill amends s. 288.063, F.S., to provide that, under the "Road Fund" program, SFA may serve as the local government or as the contracting agency for transportation projects within spaceport territory. The bill also includes SFA within the definition of an "economic development agency" under s. 288.075, F.S., for the purposes of the statute authorizing such agencies to keep confidential, for a limited time, information relating to the plans or intentions of a business to locate or expand its activities in the state. The SFA is also authorized under s. 288.35, F.S., to apply to the proper U.S. authorities for permission to establish, operate, and maintain a foreign trade zone. In addition, the bill includes SFA among the list of organizations that are eligible to apply for international trade promotion grants under s. 288.9415, F.S.

The bill addresses a wide array of issues concerning planning, developing, improving, and expanding space transportation facilities. It directs the Department of Transportation (DOT) to promote the further development and improvement of aerospace transportation facilities as part of its responsibilities. It exempts spaceports licensed by the Federal Aviation Administration (FAA) from airport site approval and licensing requirements. It expands the boundaries of spaceport territory under the jurisdiction of the SFA. It requires SFA to develop a spaceport master plan containing recommended funding levels for projects to meet current and future commercial, national, and state space transportation requirements and to recommend appropriate sources of revenue that may be developed to contribute to the State Transportation Trust Fund. The authority is required to submit the master plan to DOT, which may include the plan in its 5-year work program.

This bill contains the following tax provisions applicable to the Spaceport Florida Authority (SFA) and space-related businesses: expands federal defense and space property tax exemptions to SFA; provides a sales tax exemption on leases from SFA of property used for spaceport activities; exempts cargo carriers from ad valorem taxes; and revises an existing sales tax exemption for industrial machinery and equipment used in connection with spaceport activities.

The bill creates the Commission on the Future of Aeronautics and Space in Florida for the purposes of: surveying current state and local laws, ordinances, and rules that affect the development and regulation of the aviation and aerospace industries in Florida and recommending ways in which these regulations can be streamlined and revised to operate

more efficiently; examining the ways in which aviation and aerospace industries can be attracted to locate permanently in the state; identifying the advances that can be expected in the future in aeronautics and aerospace operations and making recommendations regarding how the state can anticipate, encourage, and accommodate such advances; identifying federal aid useful for Florida's competitive position; and determining whether Florida's secondary and postsecondary schools are producing a highly qualified workforce sufficient to meet the needs of the aviation and aerospace industries. The commission shall submit a final report by January 15, 2001.

The bill creates part III of ch. 331, F.S., the "Florida Commercial Space Financing Corporation Act." The act establishes the Florida Commercial Space Financing Corporation for the purpose of receiving funds to promote the commercial space industry in the state and appropriates $1 million from the General Revenue Fund to the Florida Commercial Space Financing Corporation for project financing. This bill also appropriates $500,000 from the General Revenue Fund for the corporation's operations. All state, federal, private, and return on investment funds shall be deposited in an account established by s. 331.415 F.S., which is under the exclusive control of the board of directors of the corporation.

The bill creates the Spaceport Management Council within the Spaceport Florida Authority to provide coordination and recommendations on projects and activities that will increase the operability and capabilities of Florida's space launch facilities. The Spaceport Management Council shall work to develop integrated facility and programmatic development plans to address commercial, state, and federal requirements and to identify appropriate private, state, and federal resources to implement these plans.

The bill creates the Florida Space Research Institute as a public/private partnership, to serve as an industry-driven center for research, under the direction of a board to comprise representatives of SFA, Enterprise Florida, Inc., the Florida Aviation and Aerospace Alliance, and four additional space industry representatives selected by the core membership. The board sets the direction for the institute and will choose a lead university to serve as coordinator of research and as the administrative entity of the institute. Participation includes but is not limited to the University of Florida, Florida State University, the University of Central Florida, the Florida Institute of Technology, and the University of Miami.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-2; House 118-0

CS/CS/CS/SB 80 — Information Technology Resources

by Fiscal Policy Committee; Governmental Oversight & Productivity Committee; Commerce & Economic Opportunities Committee; and Senators Grant, Campbell, Klein, Brown-Waite and Bronson

This bill creates the "Commerce Protection Act," prescribing the liability of businesses and governmental agencies for damages resulting from the Year 2000 (Y2K) computer date problem. This bill specifies that the exclusive remedies for damages caused by the failure of a business's or governmental agency's information technology products to be Y2K compliant shall be those remedies available for breach of a written contract or tariff with the business or agency, or, in the absence of such a written contract or tariff, those remedies provided by the act. In addition to prescribing the liability of a business or an agency for failure to be Y2K compliant, this bill provides that the law of comparative fault applies to the award of damages, prohibits recovery for damages that could have been avoided or mitigated, enables certain businesses and agencies to avoid liability based upon assessment and disclosure of Y2K compliance, requires a plaintiff to offer to submit the claim to mediation as a precondition to bringing an action, places limitations on certain class-action lawsuits, and establishes a date sensitive limitation for commencement of actions under the act.

- ***Business Liability:*** A business whose information technology products are not Y2K compliant may be liable *only* for direct economic damages caused by its failure to be compliant.

- ***Agency Liability*****:** A governmental agency whose information technology products are not compliant may be liable for direct economic damages caused by its failure to be compliant; however, such liability is *only* within the limits on the waiver of sovereign immunity under s. 768.28, F.S.

- ***Damages Based on Comparative Fault*****:** This bill provides that any contributory fault charged to the claimant diminishes proportionally the amount of the award as economic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

- ***Damage Limitations Based on Disclosure*****:** This bill specifies that a plaintiff may not recover damages that could have been avoided or mitigated based on the exercise of reasonable care or based on disclosures communicated by the defendant -- before December 1, 1999 -- regarding Y2K compliance of its information technology products.

- ***Avoidance of Liability*****:** Businesses and agencies may avoid liability for direct economic damages given proof of an on-site assessment from a qualified individual

competent to determine Y2K compliance. The business or agency must, based on that assessment, hold before December 1, 1999, a reasonable good-faith belief that is products are in compliance. Alternatively, a business or governmental agency may avoid liability if, before
December 1, 1999, it has conducted a date-data test of its information technology products and, as a result, has a good faith belief that such products are Y2K compliant. In addition, if the business has five or fewer employees and a net worth of $100,000 or less, liability may be waived provided that the business has made reasonable efforts to assess whether the entities it relies upon, or is in privity with, are Y2K compliant, and that the business either has before December 1, 1999, a reasonable good-faith belief that such entities are compliant or has disclosed that the entities are not compliant.

- ***Pre-claim Mediation*:** Effective January 1, 2000, upon the filing of an action or the presentation of a claim for arbitration under the act, and prior to filing an answer, the court with jurisdiction shall refer the claim to mediation under s. 44.102, F.S.

- ***Class Actions*:** This bill prohibits class actions from being maintained in Florida against a governmental agency for failure of its information technology products to be Y2K compliant. In addition, the measure prohibits such class actions against a business, unless each member of the class has suffered direct economic damages exceeding $50,000.

- ***Statute of Limitations*:** An action for damages under the act must be commenced before March 1, 2002; however, an offer to submit the claim to mediation tolls the running of this time period until the conclusion of the mediation.

- ***Director and Officer Liability*:** This bill shields a director or an officer of a business from personal liability for damages resulting from the business's failure to become Y2K compliant if the director or officer has instructed the business to 1) assess its Y2K compliance, 2) implement a plan to take actions necessary to make the business compliant, and 3) inquire whether entities upon which the business relies are compliant.

- ***Antitrust Exemption*:** The exchange of information among businesses concerning measures taken or planned in order to make information technology products Y2K compliant does not constitute an activity in restraint of trade under the "Florida Antitrust Act of 1980."

- ***Voluntary Binding Arbitration*:** A party to a lawsuit brought under the "Commerce Protection Act" may offer to submit the matter to voluntary binding arbitration, with the offer prescribing the maximum amount of damages that may be imposed under the

arbitration. If the trial court finds that the defendant rejected the plaintiff's offer and the defendant is found liable in an amount equal to or exceeding the plaintiff's highest offer, the defendant must pay the plaintiff's costs and reasonable attorney's fees. If the plaintiff rejected the defendant's offer, and the plaintiff is not ultimately awarded damages exceeding the damages specified in the highest offer, the plaintiff must pay the defendant's costs and reasonable attorney's fees.

- ***Mediation*:** A court may submit a claim for damages to mediation pursuant to s. 44.102, F.S. A party may serve its last, best offer made in mediation upon another party as an offer of judgment under s. 678.79, F.S., and the court has the discretion to require that costs of mediation be shared equally by the parties.

Finally, this bill repeals s. 282.4045, F.S., 1998 Supp., which provides that the state, its agencies, and units of local government are immune from damages for Y2K computer date failures consistent with the statute providing for waiver of sovereign immunity in tort actions.

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 40-0; House 116-0

ECONOMIC DEVELOPMENT FINANCE AND TAXATION

HB 1951 — Unemployment Compensation

by Finance & Taxation Committee; Rep. Albright and others (CS/SB 108 by Commerce & Economic Opportunities Committee and Senator McKay)

This bill (Chapter 99-131, L.O.F.) reduces unemployment taxes for all Florida employers, except those employers that have paid at a rate of 5.4 percent for more than 36 months, by 0.5 percent for calendar year 2000. In addition, for new employers, those whose employment record has been chargeable with benefit payments for less than eight calendar quarters, the initial rate is reduced to 2 percent.

For claims with benefit years beginning January 1, 2000, through December 31, 2000, this bill provides for an additional 5 percent of the weekly benefit amount to be added to weekly benefits for the first eight compensable weeks of benefits paid, not to exceed $288. An increase in the maximum cap on total benefits is also provided, which may not exceed $7,254.

Additionally, this bill clarifies disqualification of benefits for voluntarily quitting full-time, part-time, or temporary work, and reauthorizes the Florida Training Investment Program until June 30, 2002.

These provisions were approved by the Governor and take effect July 1, 1999, except for the amendments to the Florida Training Investment Program, which take effect June 30, 1999.
Vote: Senate 37-0; House 117-1

WORK AND GAIN ECONOMIC SELF-SUFFICIENCY

CS/CS/SB 256 — Work and Gain Economic Self-sufficiency

by Fiscal Policy Committee; Commerce & Economic Opportunities Committee; and Senators Kirkpatrick and Hargrett

This bill makes various revisions to the Work and Gain Economic Self-sufficiency (WAGES) Program, including creating a matching grant program, a program for dependent care for families with children with special needs, and several diversion programs for WAGES Program participants. The bill further modifies WAGES administrative and service-delivery operations, creates work activity exemptions, creates Retention Incentive Training Accounts (RITAs), and codifies in law the youth About Face programs and adult Forward March programs of the Adjutant General.

Matching Grants and Diversion Programs

A program of matching grants is created by the bill to provide incentives for donations and expenditures that further the goals of the WAGES Program. The WAGES Program State Board of Directors must identify the funds allocated for matching; the process for submission, documentation, and approval of requests for program funds and matching funds; accountability for funds and proceeds of investments; allocations to programs and coalitions; restrictions on the use of the funds; and criteria used in determining the value of donations.

Numerous diversion programs are created by the bill. The WAGES early exit diversion program is created to offer a lump-sum payment in lieu of ongoing cash assistance; the diversion program for victims of domestic violence is created to assist domestic violence victims make the transition to independence; the diversion program to strengthen Florida's families, and the diversion program for families at risk of welfare dependency due to substance abuse or mental illnesses, are intended to provide services and one-time payments to assist families in avoiding welfare dependency and to strengthen families so

that children can be cared for in their own homes or in the homes of relatives and so that families can be self-sufficient; and the teen parent and pregnancy prevention diversion program is designed to provide services to reduce and avoid welfare dependency by reducing teen pregnancy, reducing the incidence of multiple pregnancies to teens, and by assisting teens in completing educational programs.

WAGES Program State Board of Directors

The bill requires the WAGES Program State Board of Directors to provide for an annual plan which must specify performance standards and objectives, measurement criteria, measures of performance, and contract guidelines for all local WAGES coalitions relating to various issues. The plan must include an evaluation of the performance of each local WAGES coalition and specifications for WAGES Program services delivered through the coalitions. The payment structure for all WAGES Program services is modified to provide payment of not more than 50 percent of the cost of services provided to a WAGES participant prior to placement, 25 percent upon employment placement, and 25 percent if employment is retained for at least six months.

WAGES Administrative and Service Delivery Operations

Effective October 1, 1999, the bill requires funds for the administrative and service delivery operations of the local WAGES coalitions to be provided to the coalitions by contract with the Department of Management Services. Each local WAGES coalition's implementation plan will be incorporated into the coalition's contract with the department so that the coalition is contractually committed to achieve its performance standards. If the local WAGES coalition does not meet its performance standards, analysis of problems and development of a plan to improve the coalition's performance must be submitted by the coalition to the WAGES Program State Board of Directors. The coalition's charter may be revoked for failing to meet performance standards, and the department may procure a portion of the coalition's duties and procure a new service provider.

No less than 25 percent of funds provided to local WAGES coalitions must be used to contract with local agencies that have elected or appointed boards of directors on which a majority of the members are residents of that local WAGES coalition's service area.

Local WAGES Coalitions

Upon approval of a plan by the WAGES Program State Board of Directors, local WAGES coalitions are authorized by the bill to assign, as work activities, educational activities that exceed or are not included in current law, and that do not comply with federal work participation requirement limitations. In order to qualify for this provision,

however, a local WAGES coalition must continue to exceed the overall federal work participation rate requirements.

WAGES Program Participants

The bill requires that prior to the imposition of a sanction, a WAGES participant must be notified orally or in writing that the participant is subject to sanction and that action will be taken to impose the sanction unless the participant complies with the work activity requirements. The participant must be counseled as to the consequences of noncompliance and, if appropriate, must be referred for services that could assist the participant to fully comply with program requirements. If the participant has good cause for noncompliance or demonstrates satisfactory compliance, the sanction will not be imposed.

Noncompliance penalty exceptions and work activity exemptions are created by the bill for certain applicants of Supplemental Security Income disability benefits, and for WAGES participants who require out-of-home residential treatment for alcoholism, drug addiction, alcohol abuse, or a mental health disorder while participating in treatment.

Retention Incentive Training Accounts

The bill creates Retention Incentive Training Accounts (RITAs) for employed WAGES participants to promote job retention and enable upward job advancement into higher skilled, higher paying employment. RITAs will enable WAGES participants to take courses which assist participants to retain and advance in employment. RITAs may pay for tuition, fees, educational materials, coaching and mentoring, performance incentives, transportation to and from courses, childcare costs during courses, and other such costs as the regional workforce development boards determine are necessary to affect successful job retention and advancement.

About Face and Forward March Programs

The bill requires the Adjutant General to establish youth About Face programs and adult Forward March programs. The About Face program must establish a summer and a year-round
after-school life-preparation program for economically disadvantaged and at-risk youths from 13 through 17 years of age. Both programs must provide schoolwork assistance, focusing on the skills needed to pass the high school competency test, and also focus on functional life skills. The after-school program must train students in academic study skills and basic business skills necessary for employment consideration. The Forward March program must train WAGES Program participants in skills directly related to real-world success and provide participants with opportunities to practice generic job skills in a supervised work setting.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

BUSINESS ENTITIES AND TRANSACTIONS

CS/HB 361 — Partnership Filings

by Judiciary Committee and Rep. Ritter and others (CS/SB 1430 by Judiciary Committee and Senator Silver)

This bill updates and modernizes ch. 620, part IV, F.S., Florida's Revised Uniform Partnership Act (RUPA), to include amendments adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) regarding limited liability partnerships (LLPs). This bill also repeals Florida's existing statutory provisions on LLPs, creates new provisions applicable to LLPs, and makes multiple technical and conforming revisions to RUPA. This bill will provide "full shield" protection for LLP partners from vicarious liability, effectively conferring on such partners the same shield that corporate shareholders currently have under law. In addition, this bill repeals s. 620.7851, F.S., eliminating the requirement that an LLP has to carry liability insurance as a condition for registration. This bill also exempts any corporation, partnership, or other commercial entity that is actively organized or registered with the Department of State from registering its name pursuant to the fictitious name statute, unless the name under which business is to be conducted differs from the name as licensed or registered.

This bill also provides that for the first six months after the effective date of this act, any LLP that became an LLP prior to the effective date of this act may waive its partners' protection from liability in certain limited circumstances. Under such waiver, LLP partners are jointly and severally liable for the partnership's contractual obligations which are the subject of the notice of waiver, but a partner under such waiver is not liable in excess of the amount for which the partner would have been liable under the laws of this state as they existed immediately prior to the effective date of this bill. This bill imposes a $25 fee on each of the following documents filed with the Department of State under RUPA: a statement of qualification, a statement of foreign qualification, and an LLP annual report. Under this bill, persons desiring to form an LLP would be required to pay an initial fee of $75 -- $50 for general filing under RUPA and $25 for a statement of qualification under the new LLP provisions. Thereafter, there would a $25 LLP annual report fee. A current RUPA partnership that desired to become an LLP would have to pay $25 for a statement of qualification and, thereafter, a $25 LLP annual reporting fee.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 114-0

CS/HB 1513 — Limited Liability Companies

by Judiciary Committee and Rep. Sanderson and others (CS/SB 1696 by Judiciary Committee and Senator Klein)

This bill revises ch. 608, F.S., relating to limited liability companies (LLCs), to incorporate modern language adapted from the National Conference of Commissioners on Uniform State Laws' Uniform Limited Liability Company Act (ULLCA) and the laws of certain model states such as Delaware. The bill modernizes Florida law in an attempt to promote the use of LLCs in Florida.

The bill changes the name of the agreement for the management of the LLC from "regulations" to "operating agreement." The bill specifies that unless otherwise provided in the articles or operating agreement, profits, losses, and distributions shall be allocated on the basis of the agreed value of each member's contributions in the LLC. In the absence of any provision for voting, the members shall vote in proportion to their then-current percentage or other interests in the profits of the LLC.

The bill provides that members may delegate the authority and power to manage the LLC to one or more other persons, and managers need not be members. The bill provides fiduciary standards similar to those provided by the ULLCA, imposing a duty of loyalty and a duty of care on managers and managing members, including a duty to refrain from dealing with the LLC or competing with the LLC, unless provided otherwise in the articles or operating agreement. The bill adds a conflict of interest section modeled after the section provided in the Florida Business Corporation Act.

The bill provides a new section addressing the initial admission of members. The bill eliminates the requirement of unanimous, written consent for the admission of new members to a LLC, and provides language specifically outlining the nature of a member's interest, including bifurcation of the economic interest and voting interest. The bill provides a default provision which includes procedures for the assignment of a member's interest. The bill removes provisions requiring the filing of a supplemental affidavit of capital contributions and lowers certain filing fees.

This bill also clarifies that a single-member LLC which is disregarded as an entity separate from its owner for federal income tax purposes, and organized pursuant to this chapter or qualified to do business in this state as a foreign limited liability company, is not an "artificial entity" within the purview of s. 220.02, F.S., and is not subject to the tax imposed under ch. 220, F.S. If a single-member LLC is disregarded as an entity separate from its owner for federal income tax purposes, its activities are, for purposes of taxation under ch. 220, F.S., treated in the same manner as a sole proprietorship, branch, or division of the owner.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 108-0

CS/HB 133 — Shareholder Voting and Internal Corporate Mergers

by Financial Services Committee and Rep. Goodlette and others (SB 826 by Senator Scott)

Proxy Voting

This bill (Chapter 99-135, L.O.F.) amends s. 607.0722, F.S., to expand the current options for executing a valid corporate shareholder proxy form. Current law permits a shareholder to appoint a proxy by means of a shareholder's personal signature or the shareholder's attorney-in-fact signature on the appointment form. This bill would allow a shareholder or the shareholder's authorized officer, director, employee, or agent to grant proxy by signing the appointment form utilizing "any reasonable means," including, but not limited to, facsimile signature.

Section 607.0722, F.S., is also amended to authorize "other means of electronic transmission" by which a shareholder may appoint an individual, a proxy solicitation firm, a support service, a registrar, or other similar agent to act as proxy for the shareholder. This bill provides for the use of any other electronic transmission (which would include contemporary means such as Internet proxy voting). New language states that electronic transmissions need to be accompanied by information that verifies that the transmission was authorized by the shareholder. Corporate representatives who verify the authenticity of the transmission shall be required to specify the information upon which they relied in that determination. This bill, by not specifically defining "other means of electronic transmission," appears to leave room for the future evolution of electronic transmissions.

Internal Corporate Mergers

Section 607.11045, F.S., is amended to clarify that a corporation may re-organize itself as a holding company through a merger with a wholly owned subsidiary without shareholder approval provided all other statutory conditions are met and that the valuation of shares that are outstanding (shares issued by the corporation and purchased by consumers) immediately prior to the effective date of the merger remains the same.

This bill amends s. 607.0631, F.S., to provide that a corporation that has shares of any class or series which are either registered on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., may acquire such shares and designate, either in the bylaws or in the resolutions of its board, that shares so acquired by the corporation shall constitute treasury shares.

These provisions became law upon approval by the Governor on April 20, 1999.
Vote: Senate 35-0; House 110-0

SB 1830 — Department of State Filings

by Senator Scott

This bill authorizes the Department of State to create a uniform business report. The business report would be used as a substitute for annual reports and renewals required by certain statutes and would be compiled into the master business index and directory of business activity. The master business index serves as the state's central index of business entities and lists all licenses and registrations held by a business with any participating agency. The bill removes statutory barriers to the use of technology and streamlines current practices of the Department of State allowing corporations to file required reports and renewals electronically (i.e., via the Internet). The bill repeals certain copying fee provisions as well as certain search fees for which there is no longer service provided.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 111-0

CS/CS/SB 740 — Uniform Commercial Code -- Letters of Credit

by Judiciary Committee; Commerce & Economic Opportunities Committee; and Senator Campbell

This bill (Chapter 99-137, L.O.F.) revises Article 5 (Letters of Credit) of Florida's Uniform Commercial Code, substantially rewording the existing sections provided in ch. 675, F.S. The revisions provided in this bill incorporate changes recommended by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. These recommended revisions to Florida's Article 5 are meant to address recent advances in technology and the move toward "paperless" transactions in commerce. Nearly $500 billion in standby letters of credit are issued annually worldwide, with over $250 million issued in the United States. In addition, a growing number of businesses engaged in international trade rely extensively on letters of credit to conduct certain transactions.

The revisions provided in this bill authorize the use of electronic technology, expressly permit deferred-payment letters of credit, expressly permit two-part letters of credit, provide standard expiration dates for letters of credit, provide for perpetual letters of credit, provide rules for non-documentary conditions, clarify and establish rules for successors by operation of law, and conform to existing practice for assignment of proceeds. This bill applies to amendments to a letter of credit made after the effective date of this bill, unless otherwise provided in the amendment. This bill amends s. 95.11(5)(c),

F.S., reiterating the one-year statute of limitations provided in this bill and deletes a reference to Uniform Commercial Code -- Bulk Transfers, which was repealed in 1993.

These provisions were approved by the Governor and take effect July 1, 1999.
Vote: Senate 38-0; House 113-0

Senate Committee on Comprehensive Planning, Local and Military Affairs

EXPEDITED PERMITTING

CS/CS/SB 662 — One-Stop Permitting System

by Fiscal Policy Committee; Comprehensive Planning, Local & Military Affairs Committee; and Senator Carlton

The bill authorizes the Department of Management Services to create, by January 1, 2000, a One-Stop Permitting Internet System to provide individuals and businesses with a central source of development permit information. Certain permit fees are waived for applicants who use the One-Stop Permitting System for the first six months a permit is available on-line, and complete applications submitted on the system must be processed within 60 days, rather than 90 days. The bill also creates a Quick Permitting County Program where counties who certify that they employ certain permitting "best management practices," must be designated as Quick Permitting Counties by the Department of Management Services and become eligible for grant money of up to $50,000 per county to connect to the One-Stop Permitting Internet System.

The bill amends s. 403.973, F.S., regarding the expedited permitting process, to provide counties and the Office of Tourism, Trade and Economic Development (OTTED) with additional flexibility to certify projects as eligible for expedited permitting in counties where the ratio between the number of jobs created and the number of Work and Gain Economic Self-Sufficiency Act (WAGES) clients are low. In such counties, the jobs created by the project need not be considered high wage jobs that diversify the state's economy. In addition, OTTED is authorized to delegate to a Quick Permitting County the responsibility for certifying certain projects as eligible for expedited review and the convening of regional permit teams.

The bill repeals the permit information clearinghouse responsibilities of OTTED within the Governor's Office and repeals the Jobs Siting Act, ss. 403.950-403.972, F.S.

The bill appropriates $100,000 to the Department of Management Services to fund the administrative costs of establishing the One-Stop Permitting System and $3 million from nonrecurring general revenue to offset revenue lost to agencies as a result of the 6 month permit fee waiver for users of the expedited One-Stop Permitting System. In addition, the Appropriations Act appropriates $550,000 to the Department of Management Services to fund the grant program for One-Stop Permitting Counties.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 114-0

TELECOMMUNICATIONS

HB 621 — Wireless 911 Telephone Services

by Rep. Logan and others (SB 178 by Comprehensive Planning, Local & Military Affairs Committee)

This bill creates the "Wireless Emergency Communications Act" in s. 365.172, F.S., to authorize the state to levy a monthly fee of 50 cents on wireless telephone subscribers. Fee proceeds will be used to fund the capital and operating costs incurred by wireless providers and county 911 systems in developing and maintaining an Enhanced 911 system for wireless phones. A Wireless 911 Board is created to administer the fee and oversee the Wireless Emergency Telephone System Trust Fund. The board is required to submit a report to the Governor and Legislature that outlines trust fund expenditures and recommends, if necessary, adjustments to the levy, distribution of the fee, or addressing any other issues related to providing wireless Enhanced 911 services.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-1; House 102-11

SB 180 — Wireless Telephone Proprietary Information/Confidentiality

by Comprehensive Planning, Local & Military Affairs Committee

This bill creates s. 365.174, F.S., to exempt specific proprietary information submitted to the Wireless Emergency Telephone Board by wireless communications providers from the public access provisions of the Public Records Law and s. 24(a), Art. I, State Constitution.

This exemption is repealed on October 1, 2004, unless reviewed and reenacted by the Legislature before that date.

If approved by the Governor, these provisions take effect on July 1, 1999.
Vote: Senate 40-0; House 108-0

SB 182 — Wireless Emergency Telephone System Fund
by Comprehensive Planning, Local & Military Affairs Committee

The bill creates s. 365.173, F.S., to establish the Wireless Emergency Telephone System Trust Fund within the Department of Management Services for the deposit of fees levied on subscribers of wireless telephone service. Trust fund revenues are divided as follows:

- 44 percent to counties, distributed monthly, for the costs of upgrading or operating 911 services;
- 54 percent to wireless providers, as reimbursement for actual costs incurred to provide Enhanced 911 service, upon approval of the Advisory Board; and
- 2 percent to rural counties for 911 facilities and service enhancements.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 107-1

LOCAL GOVERNMENT

SB 2350 — Eminent Domain (Public Records Exemption)
by Senator Carlton

Under s. 24, Art. I, State Constitution, and ch. 119, F.S., the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. This bill creates a public records exemption for business records provided to a governmental condemning authority by an owner of a business as part of the owner's offer of business damages to the condemning authority in an eminent domain proceeding pursuant to s. 73.015, F.S., (created by House Bill 591). The bill states that there is a public necessity to hold business records confidential in order to encourage prelitigation settlements and in order to protect the privacy interest in these sensitive business records.

This bill creates an unnumbered section of law.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 119-0

CS/SB 2380 — Comprehensive Planning

by Comprehensive Planning, Local & Military Affairs Committee and Senator Rossin

The bill provides a new exception to the twice a year limitation on the frequency of local comprehensive plan amendments adopted by the local government to establish public school concurrency.

Clarifies the requirement that local governments designate land use categories where public schools are an allowable use by October 1, 1999 and that the sanction for failing to comply with this requirement is that the local government will be unable to amend their comprehensive plan, except for development of regional impact amendments, until the school siting requirements are met.

Limits the scope of the Department of Community Affairs review of onsite sewage treatment and disposal systems (septic tanks) to prevent the department from requiring the use of standards, conditions or land-use restrictions on the use of onsite sewage treatment systems that are more stringent than the rules of the Department of Health and the Department of Environmental Protection. This restriction would not apply to the department's review of comprehensive plan amendments regarding areas of critical state concern.

Provides that where a local government comprehensive plan restricts the construction of new schools within the existing "primary urban service district," the construction of a new school outside of the "primary urban service district" is not inconsistent with the local government's comprehensive plan where the new school is designed to serve students residing in residential development located outside the primary urban service district which has been previously approved by the local government. The collocation of a proposed school with an existing school, or the expansion of an existing school is not inconsistent with a local government's comprehensive plan if the site is consistent with the local government's comprehensive plan and adopted level of service standards for facilities affected by the construction of the new school.

Amends s. 234.021, F.S., regarding hazardous walking conditions surrounding schools to provide that roadways of six lanes or more with a traffic volume of over 3,000 vehicles per hour through an intersection constitutes a hazardous walking condition for children walking to and from school. Local governments having jurisdiction over the roadways identified as posing a hazardous walking condition are requested to budget funds to correct the condition within a reasonable period of time after being notified by the local school district of the hazardous conditions.

Provides that county-owned courthouses constructed as part of a community redevelopment plan pursuant to s. 163. 362, F.S., are exempt from the office space requirements for state attorneys set forth in s. 27.34(2), F.S.

This bill amends ss. 163.3187, 163.3177, 163.362, 234.021, and 235.193, of the Florida Statutes.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 35-0; House 117-1

CS/CS/HB 17 — The Growth Policy Act (Urban Infill and Redevelopment and Front Porch Florida)

by Water & Resource Management Committee; Community Affairs Committee; and Rep. Constantine and others (CS/SB 1078 by Comprehensive Planning, Local & Military Affairs Committee and Senators Carlton, Klein and Jones)

The bill creates the Growth Policy Act, establishing a voluntary program for local governments to designate urban infill and redevelopment areas for the purpose of holistically approaching the revitalization of urban centers, and ensuring the adequate provision of infrastructure, human services, safe neighborhoods, educational facilities, job creation and economic opportunity. The act creates an incentive program for areas designated as urban infill and redevelopment areas and creates a matching grant program for local governments.

In addition, the bill:

- Provides exceptions from transportation concurrency requirements, Development of Regional Impact substantial deviation thresholds, and limitations on amendments to comprehensive plans, for certain types of development within urban infill and redevelopment areas. The bill also amends the State Comprehensive Plan, ch. 187, F.S., to establish the preservation and revitalization of urban centers as a goal.

- Adopts several recommendations of the Transportation and Land Use Study Commission: defining “projects that promote public transportation to include projects which are transit oriented; an exemption from the concurrency requirement for public transit facilities; allows local governments to establish level-of-service standards for general lanes in urbanized areas; allows certain multiuse developments or regional impact to satisfy transportation concurrency requirements by the payment of a proportionate share contribution.

- Exempts comprehensive plan amendments necessary to establish school concurrency from the twice-a-year amendment limitation and clarifies that local governments must comply with a requirement for identifying land use categories appropriate for school siting no later than October 1, 1999.

- Revises the Florida Local Government Development Agreement Act to provide certain assurances to the developer of a brownfield site.

- Authorizes the acquisition by eminent domain of property in an unincorporated enclave surrounded by a community development district.

- Revises the requirements for feasibility studies for proposed incorporations, and allows municipalities to annex unincorporated areas through a single referendum of the residents of the unincorporated area to be annexed.

- Provides procedures by which a county or a combination of counties and municipalities may develop and adopt plans to improve efficiency, accountability, and coordination of delivery of local government services. The bill provides new criteria for feasibility studies that are submitted in conjunction with proposals for incorporation of a municipality.

- Creates the State Housing Tax Credit Program authorizing tax credits to be issued against the state corporate income tax.

- Creates an Urban Homesteading Program within the Governor's Office to make single-family housing properties available to eligible low-income buyers for purchase.

- Amends ch. 190, F.S, regarding community development districts, and includes a number of changes to ch. 290, F.S., relating to Community Development Districts which were the content of CS/SB 2456 including: financial disclosure requirements; the imposition and collection of special assessments; revising bidding and contracting procedures; providing additional functions authorized for CDDs; offering training for new board members; and making it easier to alter district boundaries.

- Authorizes water management districts to advertise bids, RFPs or other solicitations in a newspaper of general circulation in the county where the principal office of the water management is located, at least 7 days before the meeting, instead of the Florida Administrative Weekly.

The bill includes appropriations of $2.5 million to the Department of Community Affairs for the Urban Infill and Redevelopment Program and $2.5 million for the State Housing Tax Credit Program.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 118-0

HB 289 — Local Government Infrastructure Sales Surtax

by Rep. K. Smith and others (SB 732 by Senators Horne and Kirkpatrick)

This bill amends s. 212.055, F.S., 1998 Supp., to authorize charter counties to use the proceeds of the local government infrastructure surtax, and interest earned thereon, to retire or service bonded indebtedness incurred prior to July 1, 1987, for infrastructure purposes, and to refund such bonds issued after July 1, 1987. The bill also ratifies the use of local government infrastructure surtax proceeds for these purposes prior to July 1, 1999.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 115-0.

EMERGENCY MANAGEMENT

HB 975 — Hurricane Loss Mitigation Program

by Rep. Feeney and others (SB 872 by Senators Latvala, Brown-Waite, Webster, Lee, Sebesta, Saunders, Kurth, Forman, Carlton, Dyer, Diaz-Balart, Cowin, Sullivan and Burt)

This bill creates s. 215.559, F.S., the "Bill Williams Residential Safety and Preparedness Act," to establish the Hurricane Loss Mitigation Program. The Legislature is directed to annually appropriate $7 million from the Florida Hurricane Catastrophe Fund to the Department of Community Affairs to fund programs to improve the wind resistance of residences and mobile homes, mobile home tie-down and inspection programs, and research and development related to hurricane loss reduction devices and techniques for residences and mobile homes.

If approved by the Governor, these provisions take effect July 1, 2000.
Vote: Senate 40-0; House 115-0

MILITARY AFFAIRS

CS/SB 714 — World War II Memorial Act

by Comprehensive Planning, Local & Military Affairs Committee and Senators Mitchell, Forman, Dyer, Clary, Jones and Klein

This bill creates the Florida World War II Veterans Memorial Act for the purpose of providing for the construction of a memorial to those Florida residents who served on active duty in the Armed Services of the United States during World War II.

If approved by the Governor, this provision will take effect July 1, 1999.
Vote: Senate 39-0; House 118-0

CS/SB 716 — World War II Memorial Trust Fund

by Comprehensive Planning, Local & Military Affairs Committee and Senators Mitchell, Forman, Clary, Dyer, Jones and Klein

This bill creates the Florida World War II Veterans Memorial Trust Fund to be administered by the Department of Veterans' Affairs for purpose of receiving private contributions and matching state funds to build a Florida World War II Veterans Memorial.

If approved by the Governor, this provision will take effect July 1, 1999.
Vote: Senate 38-0; House 117-0

Senate Committee on Criminal Justice

CONTROLLED SUBSTANCES AND DRUG CONTROL

SB 134 — Controlled Substances/Child Care

by Senator Klein

This bill amends s. 893.13, F.S., Florida's Controlled Substance Act, to correct the placement of a statutory provision relating to the unlawful sale or possession of a controlled substance within a specified area surrounding a licensed child care facility. This provision requires that the owner or operator of a child care facility post a sign identifying such facility as a licensed child care facility.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 36-0; House 115-0

CS/SB 152 — Controlled Substances

by Criminal Justice Committee and Senators Brown-Waite, Sullivan, Cowin, Klein, Bronson, Horne, Clary, McKay, Forman, Holzendorf, Latvala, Childers, Grant and Sebesta

This bill amends s. 893.03, F.S., which classifies certain substances as controlled substances for the purpose of penalizing certain acts involving controlled substances. The bill classifies ketamine as a Schedule III controlled substance. This scheduling of ketamine also includes any of its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

In Schedule II, reference to bulk dextropropoxyphene (nondosage forms) is deleted. In Schedule IV, reference to dextropropoxyphene (dosage forms) is deleted. Bulk propoxyphene (nondosage forms) is classified in Schedule II. Propoxyphene (dosage forms) is classified in Schedule IV.

In Schedule II, reference to gamma hydroxy butyrate (GHB) is deleted. Gamma-hydroxybutyric acid (GHB) is classified in Schedule II.

This bill also amends s. 893.035, F.S., which relates to the delegation of authority to the Attorney General to temporarily control substances by rule. The bill deletes obsolete

references to the Department of Business and Professional Regulation and substitutes references to the Department of Health. The Department of Health, the agency where pharmacy services are housed, is required to conduct a medical and scientific evaluation of any substance under consideration for temporary scheduling.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 117-0

CS/CS/SB 1056 — DUI

by Transportation Committee; and Criminal Justice Committee; and Senator Casas

The bill amends ss. 316.192 and 316.193, F.S., 1998 Supp., to require a person who is convicted of reckless driving involving alcohol or drugs or who is convicted of driving under the influence of alcohol or drugs (DUI) to be evaluated by a DUI program as to the need for substance abuse treatment. If treatment is recommended by the treatment provider and the person fails to report for or to complete treatment, the Department of Highway Safety and Motor Vehicles (department) is required to cancel the person's driving privilege. The bill also allows the department to temporarily reinstate the driving privilege if the person completes the substance abuse course and evaluation and, if referred, is currently participating in treatment.

The bill also amends s. 322.292, F.S., by adding criteria for the department to use to evaluate the need for licensing additional DUI programs serving the same geographic area. The department is authorized to assess a uniform application fee not exceeding $1,000 but sufficient to cover its administrative costs in processing and evaluating DUI programs. The department is also required to revoke the license of any DUI program that does not provide specified services within 45 days after licensure and to notify the chief judge of the revocation. In addition, the bill provides minimum standards for DUI programs that apply for licensure after the effective date of this legislation.

The bill also amends s. 318.1451, F.S., by prohibiting governmental entities from providing any information relating to driver improvement schools, except to refer inquiries to the local telephone directory or to the traffic school reference guide. The department is required to develop a traffic school reference guide under the legislation.

Finally, the bill amends s. 322.34, F.S., 1998 Supp., to provide that a motor vehicle is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act if driven by a person under the influence of alcohol or drugs while that person's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence. The court, during the forfeiture hearing, may take into consideration the extent that the family of the owner has other public or private means of transportation. The seizing agency is authorized to retain 30 percent of the proceeds from the sale of a forfeited motor vehicle,

while the remaining 70 percent of the proceeds is to be deposited into the General Revenue Fund to be used to provide transportation services for participants of the WAGES program.

If approved by the Governor, all of these provisions, except the prohibition against governmental entities providing information about driver improvement schools, take effect January 1, 2000. The prohibition against governmental entities providing information takes effect June 1, 2000.
Vote: Senate 40-0; House 116-0

CS/CS/SB 1468 — Statewide Drug Control

by Fiscal Policy Committee; Criminal Justice Committee; and Senator Brown-Waite

This bill creates the Office of Drug Control within the Executive Office of the Governor. The director of this office is appointed by the Governor, subject to Senate confirmation.

Terms that appear throughout the legislation are defined. "Substance abuse programs and services" or "drug control" "applies generally to the broad continuum of prevention, intervention, and treatment initiatives and efforts to limit substance abuse, and also includes initiatives and efforts by law enforcement agencies to limit substance abuse."

"Substance abuse" is defined as "the use of any substance if such use is unlawful, and use of any substance if such use is detrimental to the user or to others but is not unlawful."

This bill also provides that it is the intent of the Legislature to establish and institutionalize a rational process for long-range planning, information gathering, and strategic decision making and funding for the purpose of limiting substance abuse.

This bill also provides that the Legislature finds that the creation of a state drug control office and a statewide drug policy advisory council affords the best means for establishing and institutionalizing this new process.

This bill also provides that the Legislature finds that any rational and cost-effective governmental effort to address substance abuse must involve a comprehensive, integrated, and multidisciplinary approach to the problem of substance abuse. Further, five other legislative findings are provided. First, the Legislature finds that because state resources must be available to address an array of state needs, including the funding of drug control efforts, it is critical that a state drug control strategy be developed and implemented.

Second, the Legislature finds that decisions regarding the funding of substance abuse programs and services be based on the state drug control strategy.

Third, the Legislature finds that the drug control strategy be supported by the latest empirical research and data, require performance-based measurement and accountability, and require short-term and long-term objectives.

Fourth, the Legislature finds that the development and implementation of the drug control strategy afford a broad spectrum of the public and private sector the opportunity to comment and make recommendations.

Fifth, the Legislature finds that, because the nature and the scope of the substance abuse problem transcend the jurisdictional boundaries of any single government agency, the drug control strategy be a comprehensive, integrated, and multidisciplinary response to the substance abuse problem.

This bill also specifies that the Office of Drug Control is to work in collaboration with the Office of Planning and Budgeting to perform seven duties or functions. First, the office must coordinate drug control efforts and enlist the assistance of the public and private sectors in those efforts, including, but not limited to, federal, state and local agencies.

Second, the office must provide information to the public about the problem of substance abuse and substance abuse programs and services that are available.

Third, the office must act as the Governor's liaison with state agencies, other state governments, the federal Office of National Drug Control Policy, federal agencies, and the public and private sectors, on matters that relate to substance abuse.

Fourth, the office must work to secure funding and other support for the state's drug control efforts, including, but not limited to, establishing cooperative relationships among state and private agencies.

Fifth, the office must develop a strategic program and funding initiative that links the separate jurisdictional activities of state agencies with respect to drug control (the state drug control office is authorized to designate lead and contributing agencies to develop such initiatives).

Sixth, the office must advise the Governor and the Legislature on substance abuse trends in this state, the status of current substance abuse programs and services, funding of those programs and services, and the status of the state drug control office in developing and implementing the state drug control strategy. On or before December 1 of each year, the director of the state drug control office must report this information to the Governor and the Legislature.

Seventh, the office must make recommendations to the Governor on such measures as the director of the Office of Drug Control considers advisable for the effective implementation of the state drug control strategy. On or before December 1 of each year, the director must report this information to the Governor and the Legislature.

This bill also provides for the creation of a Statewide Drug Policy Advisory Council within the Executive Office of the Governor, chaired by the director of the Office of Drug Control, who serves, as does the director of the Office of Planning and Budgeting, as a nonvoting, ex officio member of the advisory council. Staff support for the advisory council must be provided by the Office of Drug Control and the Office of Planning and Budgeting.

This bill also directs that the following officials shall be appointed to serve on the advisory council: the Attorney General; the executive director of the Department of Law Enforcement; the Secretary of Children and Family Services; the Secretary of Health; the Secretary of Corrections; the Secretary of Juvenile Justice; the Commissioner of Education; the executive director of the Department of Highway Safety and Motor Vehicles; and the Adjutant General. In lieu of these agency heads, their designees may serve on the council.

This bill also provides that the Governor shall appoint 11 members of the public to serve on the advisory council. Of the 11 members, one member must have professional or occupational expertise in drug enforcement, one member must have professional or occupational expertise in substance-abuse prevention, and one member must have professional or occupational expertise in substance-abuse treatment. The remainder of the 11 members appointed should have professional or occupational expertise in, or be generally knowledgeable about issues that relate to drug enforcement and substance-abuse programs and services. The 11 appointments must, to the extent possible, equitably represent all geographic areas of the state.

This bill also provides that the President of the Senate shall appoint one senator to the council; the Speaker of the House shall appoint one representative to the council; and the Chief Justice of the Florida Supreme Court shall appoint one member of the judiciary to the council. These three appointees serve a term of four years each. However, for the purpose of staggered terms, of the Governor's initial appointments, five members are appointed to two-year terms and six members to four-year terms.

Vacancies on the council are filled in the same manner as the original appointments, and any member appointed to fill a vacancy because of death, resignation, or ineligibility for membership, serves only for the unexpired term of the member's predecessor. A member is subject to reappointment.

Members of the advisory council and workgroups serve without compensation but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.

The advisory committee meets at least quarterly or upon the call of the chairperson.

This bill also provides that the advisory council is to perform nine duties or functions. First, the council must conduct a comprehensive analysis of the substance abuse problem in this state and makes recommendations to the Governor and Legislature for developing and implementing the state drug control strategy. The council must determine the most effective means of establishing clear and meaningful lines of communication between the council and the public and private sectors, in order to ensure that the process of developing and implementing the state drug control strategy has afforded a broad spectrum of the public and private sectors with the opportunity to comment and make recommendations.

Second, the council must review and make recommendations to the Governor and the Legislature on the funding of substance abuse programs and services, consistent with the state drug control strategy, as developed. The council is authorized to recommend the creation of a separate appropriations category for funding services delivered or procured by state agencies and is also authorized to recommend the use of performance-based contracting as provided in s. 414.065, F.S.

Third, the council must review substance abuse programs and recommend, where needed, measures that are sufficient to determine program outcomes. The council also must review methodologies for evaluating programs and determine whether programs within different agencies have common outcomes. The methodologies must be consistent with those established in s. 216.0166, F.S., which relates to the submission by state agencies of performance-based budget requests, programs, and performance measures.

Fourth, the council must review the drug control strategies and programs of, and efforts by, other states and the federal government and compile the relevant research.

Fifth, the council must make recommendations to the Governor and the Legislature on applied research projects that would use research capabilities within the state, including, but not limited to, the resources of the State University System, for the purpose of achieving improved outcomes and making better-informed strategic budgetary decisions.

Sixth, the council must make recommendations to the Governor and the Legislature on changes in the law which would remove barriers to or enhance implementation of the state drug control strategy.

Seventh, the council must make recommendations to the Governor and the Legislature on the need for public information campaigns to be conducted in the state to limit substance abuse.

Eighth, the council must ensure that there is a coordinated, integrated, and multidisciplinary response to the problem of substance abuse in this state, with special attention to creating partnerships within and between the public and private sectors, and to the coordinated, supportive, and integrated delivery of multiple-system services to substance abusers, including multiagency team approaches to service delivery.

Ninth, the council must assist communities and families in pooling their knowledge and experiences regarding substance abuse. Forums for exchanging ideas, experiences, practical information, as well as instruction, should be considered. For communities, such instruction may involve issues of funding, staffing, training, neighborhood and parental involvement, and instruction on other issues. For families, such instruction may involve practical strategies for addressing family substance abuse; improving cognitive, communication, and decision making skills; providing parents with techniques for resolving conflicts, communicating, and cultivating meaningful relationships with their children, and for establishing guidelines for their children; educating families about drug-free programs and activities in which they can serve as both participants and planners; and other instruction. To maximize the effectiveness of such forums, there should be multiple agency participation.

This bill also provides that the chairperson of the advisory council shall appoint work groups that include members of state agencies that are not represented on the council and solicit input and recommendations from those agencies. The chairperson is authorized to appoint work groups, as necessary, from among the members of the advisory council in order to efficiently address specific issues. A representative of a state agency shall be the head of the agency or his or her designee. The chairperson may designate lead and contributing agencies within a work group.

This bill also provides that the advisory council must submit a report to the Governor, the President of Senate, and the Speaker of the House of Representatives by December 1 of each year which contains a summary of the work of the council and the recommendations required by this bill. Interim reports may be submitted at the discretion of the chairperson of the advisory council.

This bill also repeals ss. 397.801(1) and 397.811(2), F.S. This repeal eliminates language authorizing the creation of a Statewide Coordinator for Substance Abuse Impairment Prevention and Treatment, and the duties attached to that office. The planning and coordination duties are among the planning and coordination duties that would be performed by the director of the Office of Drug Control. Consistent with these changes,

references are also deleted to the Statewide Coordinator and the Coordinator's planning duties in s. 397.821, F.S., which provides for the establishment of councils on juvenile substance abuse impairment prevention and early intervention.

This bill also appropriates 3 FTE's and $270,333 from recurring General Revenue and $14,539 from non-recurring General Revenue to the Executive Office of the Governor to implement the provisions of this act.

If approved by the Governor, these provisions take effect upon becoming law, except that the appropriation is not effective until July 1, 1999.
Vote: Senate 36-0; House 116-0

CORRECTIONS

CS/HB 253 — County and Municipal Jails

by Corrections Committee and Rep. Trovillion and others (CS/SB 292 by Criminal Justice Committee and Senator Bronson)

The law regarding the award of gain-time to prisoners serving his or her criminal sentences in local jails is changed. Rather than requiring counties to give its inmates gain-time at certain statutorily mandated rates, county governing bodies have the option of whether to authorize the granting of gain-time to its jail inmates and may grant incentive gain-time within a range rather than at a set statutorily mandated rate.

If a board of county commissioners voted to grant incentive gain-time to its jail inmates, the gain-time must be given at the rate of up to 5 days per month off the first and second years of the sentence, up to 10 days per month off the third and fourth years of the sentence, and up to 15 days off the fifth and all succeeding years of the sentence. However, if the board of county commissioners did not want to give its jail inmates any "good time" gain-time, or time off sentences for good behavior, it is not required to maintain such a practice. In order to discontinue or revise its commutation of time for good conduct, the board of county commissioners must do so by a majority vote.

Language that authorizes extra good-time allowances for meritorious conduct or exceptional industry is amended to not be in excess of 5 days per month. Thus, counties are limited to a maximum of 5 days per month of meritorious gain-time in addition to good behavior, or incentive, gain-time, if the county voted to allow such gain-time to be granted.

Obsolete language is deleted pertaining to the giving of $5 or $3 to a prisoner at the time of discharge from jail after serving his or her sentence.

The bill also essentially recreates previously existing language that would deem it to be a second degree misdemeanor if a person knowingly and willfully violated any posted jail rule that governs the conduct of local jail prisoners on a second or subsequent occasion. Rather than generally referring to the Florida Model Jail Rules, the bill delineates the specific conduct, by providing a list, that must be encompassed in a posted jail rule to be susceptible to the second degree misdemeanor provision.

A person commits a second degree misdemeanor, punishable by up to 60 days in jail and a $500 fine, if he or she violated a jail rule that prohibits one of the listed acts *two or more times*. The bill requires that the sentence imposed run consecutively to any other sentence that may be imposed upon the offender.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 116-0

CS/SB 932 — Department of Corrections

by Criminal Justice Committee and Senator Brown-Waite

This bill deletes references to "planning" and "design" as authorized governmental activities for the Department of Corrections in providing services and inmate labor for various construction projects. The practical effect of this change in law is that it shifts the delivery of planning and design services from the public to the private sector. Therefore, the Department of Corrections will not be able to utilize its architects and other personnel to assist local, state, federal, or other governmental subdivisions with the planning of any project or the design of any project for which such governmental entities may seek the assistance from the department.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 117-0

CS/SB's 1604 & 1618 — Correctional Work Programs

by Criminal Justice Committee and Senators Silver, Klein and Grant

The Department of Corrections will no longer have the statutory authority to enter into contracts with private sector businesses to operate PIE programs. PRIDE Enterprises, which is the entity currently responsible for operating correctional industries in prisons, is given statutory authority to enter into contracts with the private sector to operate PIE programs. Therefore, PRIDE is authorized to seek federal certification to administer PIE programs in Florida, rather than the department.

Federal requirements are reiterated to be imposed upon PRIDE as a PIE Program certificate holder. For instance, any contract to operate a PIE program must not result in

the significant displacement of employed workers in the community. Private sector employers are required to provide workers' compensation coverage to inmates who participate in PIE programs. Inmates are expressly not to be entitled to unemployment compensation. Purposes and objectives for PRIDE in operating PIE programs are also provided.

PRIDE is authorized to enter into leases directly with the Board of Trustees of the Internal Improvement Trust Fund for a period of at least 20 years for lands that are currently under specific leases. PRIDE no longer has to submit such lease requests through the Department of Corrections. The lease numbers that are given the authority to enter into such long-term leases directly with the Board of Directors are expressly provided: 3513, 2946, 2675, 2937, 2673, and 2671.

PRIDE is authorized to seek tax-exempt financing for the construction of buildings or capital improvements for correctional work programs and PIE programs on state-owned lands. In such cases, the state retains a secured interest in such an investment by holding a lien against any structure or improvement that used tax-exempt financing or state funds. PRIDE has specific statutory authority to seek and obtain tax-exempt bonds, certificates or participation, lease-purchase agreements, or other tax-exempt financing methods to construct facilities or make capital improvements for PRIDE or PIE programs.

Obsolete language that authorizes PRIDE to contract with any governmental entity in Florida to operate a fish and seafood processing plant is deleted. As part of operating the fish processing plant, authorizing language for PRIDE to spawn and grow fish and seafood for sale is also deleted.

Statutory authority for the Department of Corrections to use the services of inmates in the adult correctional institutions to perform work as needed and used within the state institutions is maintained. Thus, the department will still be able to work inmates without pay for the maintenance and operation of the institutions. It is anticipated that the department would still be able to pay the current inmate workers who earn wages, such as canteen operators and paralegals.

The department maintains its ability to operate farming and gardening programs at major institutions that utilize inmate workers. The food grown by inmates is to be used in the state institutions. However, the department could sell to PRIDE any surplus food items cultivated by inmates. The department must deposit any proceeds received from such surplus food sales into the Correctional Work Program Trust Fund. PRIDE could, in turn, sell such items on the open market for profit if it chooses.

PRIDE is authorized to establish and operate work camps for jails pursuant to contracts. In such work camps, PRIDE is authorized to use jail inmates for labor in PRIDE's regular

correctional industries or PIE programs. The work camps could use jail inmates for labor in correctional work programs or PIE programs. To accomplish this, PRIDE would directly enter into contracts with local governments and the sheriffs or jail administrators to operate the work camps for the respective jurisdictions. PRIDE has the authority to designate appropriate land that is owned or leased by the corporation as the site of a proposed work camp facility. PRIDE can use state, county, or municipal land as the site of a proposed work camp facility. However, prior approval of the Board of Trustees of the Internal Improvement Trust Fund is required if any state lands are used for a jail work camp.

Section 320.06, F.S., pertaining to motor vehicle registration, license plates, and validation stickers is also amended in this law. In addition to obsolete language being deleted, PRIDE is given the express authority to manufacture temporary tags, disabled hang tags, vessel decals, and fuel use decals for the Department of Highway Safety and Motor Vehicles. This authority to manufacture such items is in addition to license plates and validation stickers.

The Department of Corrections is required to periodically reevaluate the vocational programs offered in prisons to maintain correlation between the skills learned in such programming and needed skills to work in PIE programs. The department must look to providing vocational programming to inmates who could be assigned to a PIE program.

Minors adjudicated as adults and in the custody of the department may receive educational services without the consent of the parents of the minor. This allows the department to provide educational services to persons who have been committed to the custody or are under the supervision of the Department of Corrections without delay in services. This will allow the department to continue its reported practice of providing special education services to eligible inmates without obtaining prior parental consent for those inmates who are 18 years of age or younger.

The department would be required to develop a plan to ensure that academic and vocational classes are being offered at more frequent and convenient times, to the extent that resources permit, to accommodate the increasing number of inmates who have work assignments.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 115-0

CS/SB 1742 — Department of Corrections

by Criminal Justice Committee and Senator Brown-Waite

Reorganizing the Administrative Structure of the Department of Corrections

The Department of Corrections will have the authority to reorganize its administrative structure. The secretary of the department will have increased flexibility in devising the middle- and upper-management structure of the department and the administration of state appropriations to the department to perform its duties.

There is no longer a mandate that there be six assistant secretaries. Instead, the secretary will have the flexibility to determine what is necessary to manage the department through assistant secretaries, directors, and other persons necessary to accomplish the mission and goals of the department.

The department's administrative structure will narrow at the regional level by deleting: the requirement that there be five regional offices in the state, the necessity that each region develop and submit budgets to be included in the department's comprehensive budget, the requirement that there be five regional directors, and the mandate that *each* region have six division directors. The secretary would have more flexibility to appoint persons that would oversee the regions that would be established by the secretary.

The secretary has the flexibility to establish "regions" as he or she decides. Therefore, the geographical boundaries of departmental regions will be solely determined by the secretary. Although there will remain a requirement that the provision of services for community corrections, security, and institutional operations be accomplished through regions, there is not a mandate or limit as to the number of regions.

Subsection (7) of s. 20.315, F.S., no longer enumerates four budget entities for the department's summary document for legislative appropriation. Rather, the department must revise its budget entity designations to conform to the budget entities that are designated by the Executive Office of the Governor under s. 216.0235, F.S. The department must remain consistent with ch. 216, F.S., in transferring funds and positions that are necessary to realign appropriations with the revised budget entity designations. The authorized revisions must still be consistent with the intent of the approved operating budget.

The department would assume a new goal of ensuring that victim's rights and needs are recognized and met.

The responsibility of overseeing the inmate grievance process would be shifted from the department's Office of the Inspector General to the Office of General Counsel.

Changing Some Career Service Positions to Select Exempt Positions

The law increases the positions of Assistant Superintendents I and II and Probation Deputy Circuit Administrators to Select Exempt Positions from Career Service. The change that Select Exempt will have on these positions is that they will serve at the will of the secretary. Although there is an increase in the benefits to the employees who become Select Exempt, an increase in the accountability level and providing the secretary with flexibility to shift and change personnel is the anticipated result of making these positions Select Exempt.

Inmate Escapes from Private Correctional Facilities

When an inmate escapes from a *privatized* correctional facility, the law is clarified that it is a second-degree felony, punishable by up to fifteen years in prison and up to a $10,000 fine. This change would put escapees from private facilities in the same posture as in situations when an inmate escapes from a correctional facility that is operated by a governmental entity. All escapes from a correctional facility, regardless of who or what type of entity operates the correctional facility, would be proscribed equally under the law.

Deleting the Department's Authority to "Plan or Design" Certain Construction Projects

Statutory references to "planning" and "design" are deleted as authorized governmental activities for the Department of Corrections in providing services and inmate labor for various construction projects. The practical effect is that it shifts the delivery of planning and design services from the public to the private sector. Therefore, the Department of Corrections is not able to utilize its architects and other personnel to assist local, state, federal, or other governmental subdivisions with the planning of any project or the design of any project for which such governmental entities may seek the assistance from the department.

Changing "Superintendents" to "Wardens"

The Division of Statutory Revision is requested to prepare a revisor's bill for the 2000 Regular Session to change the term "superintendent" to "warden" in specified statute sections.

Digitized Photographs of Inmates

The Department of Corrections is given the express authority to take digitized photographs of inmates and offenders on community supervision. It will assist with record-keeping and monitoring of inmates in the prison system and offenders who are

being supervised in the community on any type of community supervision by correctional probation officers. Therefore, the department could take such photos of persons who are on supervision that was imposed by the court, granted by the Parole Commission, or required by statute after serving a prison sentence.

Granting Rulemaking Authority to the Department

The Department of Corrections is given expanded rulemaking authority. The department is provided with the authority to adopt rules relating to the function and duties of employees working in community corrections and relating to the operation of probation field and administrative offices.

Study by the Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to conduct a performance review of DOC's reorganization to determine the immediate and long-term effects upon department personnel, and the operational effectiveness and accountability of the DOC's reorganization.

Minimizing the Impact of the Department's Reorganization on its Employees

Legislative intent is provided that the DOC reorganization, to the extent possible, must not result in any employees losing their jobs, not require employees to relocate against their will, and not reduce salaries of any employees.

Elevated Attention to Family Visitation

Inmate visitation is also addressed in this law by providing legislative intent and requiring the DOC to provide certain services and submit an annual legislative budget request to improve the frequency of family visits and the visitation program. It also extends the authorized use of the Inmate Welfare Trust Fund for visitation and family programs and services.

Transfer to Contract Management of the Gadsden Correctional Facility

The Gadsden C.I. facility, which is a privatized facility through the DOC, is transferred to the Correctional Privatization Commission. Upon the transfer of this privately operated prison, the Correctional Privatization Commission will be the sole contract manager and monitor for contract compliance.

Ban on Indoor Use of Tobacco in Prisons

Tobacco use would be prohibited in any inside area of any building, portable, or other enclosed structure of a state or private correctional facility. Although employees of the Department of Corrections or a privatized facility, visitors, and inmates would be prohibited from using tobacco products indoors, they would still be allowed to possess and use tobacco products on the premises of a state or private correctional facility as long as it is not in a prohibited area. The superintendents and wardens would be required to take reasonable steps to ensure that the prohibition of using tobacco products in a prohibited area is strictly enforced against all persons, including employees and visitors.

Any inmate in the state-level correctional system who uses any tobacco product in an indoor area would commit a disciplinary infraction and could be subject to forfeiture of gain-time or the right to earn gain-time as well as any other punishment deemed appropriate by the disciplinary authority. Other such punishments would include confinement.

The Department of Corrections can adopt rules to implement the provisions pertaining to the indoor smoking ban. The department may, by rule, not only designate all prohibited areas within an institution that would be specifically prohibited, but the department may also expand the definition of a prohibited area. Through this authority, the department could extend the tobacco-use ban to include vehicles. The department could promulgate rules that would impose penalties on inmates and employees for violations. By rule, the department could also prohibit a visitor from future visitation to prisons for violations. Privatized prisons would be authorized to adopt policies and procedures to implement the provisions of the ban on indoor tobacco use. These policies and procedures would have to be consistent with the rules of the Department of Corrections.

It is specifically provided that employee housing on the grounds of a state correctional facility and maximum security inmate housing areas would be specifically excepted from the inside tobacco-use prohibition. Therefore, employees could use tobacco products in the employee housing areas and maximum security inmates may smoke in their respective housing areas.

Pursuant to the statement of legislative intent, the Department of Corrections and the Correctional Privatization Commission would be required to make smoking cessation assistance *available* to inmates to implement the tobacco product prohibition. This requirement does not necessarily mean that the department or the commission are directly responsible for *providing* such assistance. Such assistance may be made available to inmates by outside sources.

Effective Dates

The department and the Correctional Privatization Commission would be required to implement the provisions of the prohibition on indoor tobacco-use as soon as possible, but all of the provisions related to tobacco use must be fully implemented by January 1, 2000.

Except for the full implementation of the indoor tobacco-use ban, all other provisions in this act will take effect upon becoming law.
Vote: Senate 37-0; House 117-0

COURT PROCEDURES

CS/HB 13 — Restitution

by Crime & Punishment Committee and Rep. Heyman and others (CS/SB 744 by Criminal Justice Committee and Senator Campbell)

This bill provides that a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution. The bill allows the court to retain jurisdiction for any period, not to exceed 5 years, that the court pronounced at the time restitution is ordered.

Currently, a court would lose jurisdiction over the restitution order in a misdemeanor case after one year, in a case where probation was imposed.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 39-0; House 116-0

CS/SB 60 — Pretrial Intervention Programs

by Criminal Justice Committee and Senators Brown-Waite and Laurent

The court or the state attorney may deny admission of a criminal defendant to a pretrial substance-abuse education and treatment intervention program, commonly known as a drug court, if the defendant previously rejected an offer to undertake such a program in lieu of traditional prosecution. In order for an original offer to be made to a defendant to go through a drug court program, the state attorney must make the initial determination as to the defendant's eligibility. This law would maintain prosecutors' control over which defendants may undergo a diversion program and participate in a drug court program. Ultimately, a court must also confirm that a defendant is "eligible" to participate in a drug court program. Therefore, the court would also maintain its control over a defendant's participation under this law as well.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 117-0

CS/HB 327 — Public Defenders - Conflicts of Interest

by Crime & Punishment Committee and Rep. Warner and others (CS/SB 1910 by Judiciary Committee and Senator Campbell)

This bill amends s. 27.53(3), F.S., by providing that the trial court shall review, may conduct a hearing at its discretion and may inquire into the adequacy of a public defender's representations regarding a conflict of interest but shall not require the disclosure of any confidential information. The bill also requires that the circuit conflict committees assess the conflict representation system in their circuit and report its findings and any recommendations to the Legislature by February 1, 2000.

This bill encompasses some of the recommendations contained in a 1998 interim report by the Senate Criminal Justice Committee and in a separate report by the Commission on Legislative Reform of Judicial Administration.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 113-0

SB 936 — Court costs

by Senator Gutman

This bill amends s. 938.30, F.S., the Comprehensive Court Enforcement Program Act, by allowing a judge to convert a person's obligation to pay court costs to an obligation to perform community service. The bill specifies that the court may convert costs to

community service after examining a person under oath and determining a person's inability to pay.

This bill also amends s. 938.30, F.S., which authorizes the assessment of administrative costs in enforcing compliance by specifying that the court may assess reimbursement for the costs of processing bench warrants and pickup orders.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 118-0

CS/CS/SB 2054 — Capital Collateral Representation -- Registry of Attorneys

by Judiciary Committee; Criminal Justice Committee; and Senator Burt

The Capital Collateral Regional Counsel (CCRC) represents all death-sentenced inmates on collateral actions challenging the legality of the judgement and sentence in the state and federal courts. The 1998 Legislature created a statewide registry of private criminal defense attorneys to supplement the CCRC system and serve as a "backup" by alleviating any case backlog. This bill makes various technical, clarifying, and substantive changes to the attorney registry statute. Among the highlights:

- Increases from $10,000 to $20,000 the cap on fees an attorney is entitled to receive after the trial court issues a final order granting or denying the capital defendant's motion for postconviction relief. This increase is designed to adequately compensate an attorney for work done in preparing for and conducting a postconviction hearing.

- Increases from $5,000 to $15,000 the cap on miscellaneous expenses, such as the cost of preparing transcripts, compensating expert witness, and copying documents.

- Provides that the court shall monitor the performance of registry attorneys to ensure that the capital defendant is receiving quality representation.

- Changes the name of the "Commission on the Administration of Justice in Capital Cases" to the "Commission on Capital Cases."

If approved by the Governor, these provisions take effect July 1, 1999
Vote: Senate 39-0; House 115-0

CRIMINAL PENALTIES/PROSECUTION

CS/HB 11 — Arrests

by Law Enforcement & Crime Prevention Committee and Rep. Trovillion and others (CS/SB 738 by Criminal Justice Committee and Senator Campbell)

The Act amends s. 901.02, F.S., to specify, unlike current law which does not address this topic, what the court may do when a misdemeanor summons is returned unserved. Under the Act, if a misdemeanor summons is returned unserved, and the court, after examining witnesses, reasonably believes that the defendant has committed a misdemeanor, the court may then issue an arrest warrant. Furthermore, the Act overrules current case law's interpretation that an arrest warrant is deemed issued only when it has been delivered to the Sheriff by providing that a warrant is issued when signed by the court.

The Act also creates s. 901.36, F.S., to provide that it is a first degree misdemeanor offense for a person arrested or lawfully detained to give a false name or otherwise falsely identify himself or herself to a law enforcement officer or county jail personnel. This provision has the effect of eliminating current law's requirement that the State, in order to obtain a conviction for this conduct, must prove that the giving of the false name or identification interfered with the officer's performance of his duties. Moreover, the Act provides that this offense is enhanced to a third degree felony if it results in adversely affecting another person, and that a person who is adversely affected may receive restitution and may obtain orders from the court which correct his or her public records.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 106-10

SB 72 — Homicide/Vehicular and Vessel

by Senators Campbell and Klein

This bill amends s. 782.71, F.S. (vehicular homicide), and 782.072, F.S. (vessel homicide), to provide that vehicular and vessel homicide are second degree felonies. Further, these offenses are first degree felonies if, in addition to such homicide, the offender fails to render aid or give information.

This bill also amends s. 921.0022, F.S., which contains the offense severity ranking chart for the sentencing of most offenses under the Criminal Punishment Code. The bill modifies the descriptions of vehicular and vessel homicide in the ranking chart.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 116-0

HB 79 — Airbag Theft

by Rep. Stafford and others (CS/SB 244 by Criminal Justice Committee and Senator Campbell)

The "Airbag Antitheft Act" creates a new statutory section which requires any person, who is engaged in the business of purchasing, selling, or installing salvaged airbags, to disclose to a consumer that an airbag is salvaged. The Act also provides that a record of the purchase, sale, or installation must be kept for thirty-six months following the transaction, that officers may inspect the records, and that the records must be provided, upon request, to an insurer or consumer.

Under the Act, any person, who fails to disclose that an airbag is salvaged, to maintain complete and accurate records, or to provide information within the record upon request, commits a first degree misdemeanor. Furthermore, any person who knowingly possesses, sells, or installs a stolen uninstalled airbag, an airbag with a missing or altered identification number, or an airbag taken from a stolen motor vehicle commits a third degree felony.

If approved by the Governor, this Act takes effect on October 1, 1999.
Vote: Senate 39-0; House 115-0

CS/SB 170 — Children's Protection Act of 1999

by Criminal Justice Committee and Senator Bronson

Lewd, lascivious, or indecent assault or act upon or in the presence of a child under s. 800.04, F.S., is amended to provide definitions and to "break down" the offense to clearly indicate the different types of criminal behavior that is prohibited under s. 800.04, F.S. Different criminal penalties are assessed, in many cases, depending on the age of the offender and, in some cases, on the age of the victim.

As used under s. 800.04, F.S., "sexual activity" is defined as the oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. However, the definition specifically excludes such acts that are done for a bona fide medical purpose. "Consent" is defined as intelligent, knowing, and voluntary consent, and would not include submission by coercion. "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance. "Victim" is defined as a person upon whom an offense described in s. 800.04, F.S., was committed or attempted or a person who has reported a violation of s. 800.04, F.S., to a law enforcement officer.

As to defenses that may be raised by a defendant, the victim's lack of chastity or the victim's consent to the acts proscribed in s. 800.04, F.S., cannot be raised as a defense to prosecution. Ignorance, misrepresentation, or a bona fide belief about the victim's age is also prohibited for purposes of raising a defense to the violation of s. 800.04, F.S.

The current offense of "lewd, lascivious, or indecent assault or act upon or in the presence of a child" will be grouped into four distinct categories: lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, and lewd or lascivious exhibition.

1. Lewd or lascivious *battery* is committed if any person either (a) engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or (b) encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

   Lewd or lascivious battery is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine, as well as habitualized sentencing under s. 775.084, F.S. Lewd and lascivious battery is ranked under the Offense Severity Ranking Chart as a level 8 offense under the Criminal Punishment Code.

2. Lewd or lascivious *molestation* is committed if any person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age.

   If the *offender is 18 years of age or older* and commits lewd and lascivious molestation against a *victim less than 12 years of age*, it is a first degree felony, punishable by up to 30 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Offense Severity Ranking Chart as a level 9 offense under the Criminal Punishment Code.

   For the offense of lewd or lascivious molestation, if the *offender is less than 18 years of age* and commits the offense against a *victim less than 12 years of age*, or if the offender is more than 18 years of age and commits the offense against a victim who is older than 12 years of age and less than 16 years of age, it is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Offense Severity Ranking Chart as a level 7 offense under the Criminal Punishment Code.

For the offense of lewd or lascivious molestation, if the *offender is less than 18 years of age* and commits the offense against a *victim that is older than 12 years of age and less than 16 years of age*, it is a third-degree felony, punishable by up to 5 years in prison and up to a $5,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Offense Severity Ranking Chart as a level 6 offense under the Criminal Punishment Code.

3. Lewd or lascivious *conduct* is committed if any person intentionally touches a person under 16 years of age in a lewd or lascivious manner or solicits a person under 16 years of age to commit a lewd or lascivious act.

   If an *offender is 18 years of age or older* and commits the offense of lewd or lascivious conduct it is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious conduct is ranked under the Code's Offense Severity Ranking Chart as a level 6 offense. If an *offender is less than 18 years of age* and commits the offense of lewd or lascivious conduct, it is a third-degree felony punishable by up to 5 years in prison and up to a $5,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious molestation is ranked under the Code's Offense Severity Ranking Chart as a level 5 offense.

4. Lewd and lascivious *exhibition* is committed if any person who, in the presence of a victim who is less than 16 years of age, either: (a) intentionally masturbates; (b) intentionally exposes the genitals in a lewd or lascivious manner; or (c) intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity. Under the proposed lewd or lascivious statutory scheme under s. 800.04, F.S., there is an express exception for mothers who are breast-feeding their babies for the application of that statute.

   If the *offender is 18 years of age or older*, it is a second-degree felony, punishable by up to 15 years in prison and up to a $10,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious exhibition is ranked under the Code's Offense Severity Ranking Chart as a level 5 offense. If an *offender is less than 18 years of age* and commits the offense of lewd or lascivious exhibition, it is a third-degree felony punishable by up to 5 years in prison and up to a $5,000 fine as well as habitualized sentencing under s. 775.084, F.S. Under these circumstances, lewd or lascivious exhibition is ranked under the Code's Offense Severity Ranking Chart as a level 4 offense.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 117-0

CS/HB 199 — Trespass on School Property

by Crime and Punishment Committee and Rep. Waters and others (CS/SB 154 by Criminal Justice Committee and Senator Sebesta)

The Act expands s. 810.97, F.S., which prohibits trespass at public schools, to also prohibit trespass at private schools. Furthermore, the Act deletes the section's current provisions, which except certain persons from school trespass liability, in reaction to Florida court's holding that the exceptions are confusing and can result in allowing a school student to trespass at any time, notwithstanding whether the student has any legitimate business at the school. Under the Act,
only persons who have legitimate business at the school are excepted from trespass liability.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 117-0

CS/HB 421 — Evidence

by Crime & Punishment Committee and Rep. Lacasa and others (CS/SB's 54 & 902 by Criminal Justice Committee and Senators Lee and Silver)

This bill creates a new section which provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances is not a defense to any criminal offense. This evidence is not admissible to show that the defendant lacked the specific intent to commit a criminal offense or that the defendant was insane at the time of the offense, except when the substance involved a controlled substance pursuant to a lawful prescription issued to the defendant by a licensed practitioner.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 39-0; House 118-0

CS/HB 425 — Robbery by Sudden Snatching

by Judiciary Committee and Rep. Sanderson and others (CS/SB 772 by Criminal Justice Committee and Senator Rossin)

This bill creates a new offense of "robbery by sudden snatching." The bill provides that robbery by sudden snatching is the taking of money or other property from the victim's person with intent to deprive the victim of the money or other property, "when, in the course of the taking, the victim was or becomes aware of the taking." The bill specifies that it is not necessary to show that the offender used any amount of force beyond that

necessary to obtain possession of the money or other property. The bill specifies that is not necessary to show that the victim resisted.

The bill responds to a Florida Supreme Court opinion which held that under the robbery statute, snatching or grabbing of property without resistance by the victim does not constitute robbery, but rather theft.

The bill provides that sudden snatching robbery will be punished as a third-degree felony (5-year maximum prison sentence) or as a second-degree felony (15-year maximum prison sentence) if the offender carried a firearm or other deadly weapon in the course of committing the sudden snatching robbery. The increase in punishment would depend on the value of the property stolen. Since the property value is not relevant under the robbery statute, the greatest increase will be in cases where the property value is under $300, currently a petit theft misdemeanor offense.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 119-0

CS/SB 748 — Pretrial Detention

by Criminal Justice Committee and Senators Diaz Balart, Horne, Silver and Meek

Currently, in a typical DUI manslaughter case, the court must set reasonable bail for the defendant. This bill amends s. 907.041(4), F.S., to authorize the court to order pretrial detention (deny bail) to a defendant who is charged with DUI manslaughter when it finds:

- a substantial probability that the defendant committed the crime, and
- the defendant poses a threat of harm to the community.

The bill allows a judge to deny bail if no condition of release can reasonably protect the community from risk of physical harm and the offender is charged with a dangerous crime as specified by s. 907.041, F.S. Current law requires additional proof of one of the following: a prior conviction of a crime punishable by death or life, *or* prior conviction for a dangerous crime within the past 10 years, *or* that a showing that at the time of the new crime, the defendant was on probation or a similar legal restraint. The bill deletes the requirement of finding one of these additional conditions.

The bill creates two new conditions, which will allow a court to deny bail prior to trial.

The bill eliminates a 90-day cap placed on pretrial detention for defendants who are found to pose a danger to the community.

The bill specifies that nothing in s. 907.041, F.S., shall be construed to require the filing of a pretrial detention motion before a court may deny bail. It further specifies that the state may move for pretrial detention any time a defendant is in court for a bail hearing without the necessity of filing a written motion.

The bill repeals Rules 3.131 and 3.132 of the Florida Rules of Criminal Procedure relating to pretrial release and pretrial detention to the extent they are inconsistent with the provisions in the bill.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 119-0

CS/SB 1606 — Unauthorized Cable Television Reception

by Criminal Justice Committee and Senator Silver

This bill provides an enhanced criminal penalty for an offender who has previously been convicted of certain violations of s. 812.15, F.S., relating to unauthorized reception of cable services. Currently, the penalty for most violations of s. 812.15, F.S., is a first-degree misdemeanor (maximum 1 year jail sentence) and repeat offenses are not enhanced. This bill provides that on a second or subsequent offense, the penalty is a third-degree felony (maximum 5 year prison sentence).

The bill creates a new third-degree felony offense, committed when:

- Any person intentionally possesses,
- *5* or more devices or pieces of equipment,
- knowing that the design of such devices or pieces of equipment renders them primarily useful for the unauthorized reception of any communications services offered over a cable system.

The bill enhances this new offense to a second-degree felony (maximum 15 year prison sentence) when a person intentionally possesses *50* or more devices or pieces of equipment.

The bill adds the term "electronic medium," to the existing prohibition against advertising in certain media by promoting the sale of equipment primarily designed for unauthorized reception of cable service. Finally, the bill clarifies that an aggrieved party (generally a cable television company), may recover damage awards "*for each violation*" of s. 812.13, F.S.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 115-1

CS/SB 1706 — Privacy in Merchant's Dressing Rooms

by Criminal Justice Committee and Senator Meek

This bill makes it a criminal offense for:

- any merchant,
- to directly observe or make use of video cameras or other visual surveillance devices,
- in order to observe or record customers who are using the merchant's dressing room, fitting room, changing room, or rest room.

Merchant is defined as "an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise."

Any merchant who commits this offense is guilty of a first degree misdemeanor. Thus, a person who is convicted of this offense would be subject to a maximum sentence of up to one year in jail and a fine of up to $1,000.

If approved by the Governor, these provisions take effect on July 1, 1999.
Vote: Senate 40-0; House 112-0

FIREARMS AND CONCEALED WEAPONS PERMITS

SB 954 — Concealed Weapons and Firearm Licenses - Nonresidents

by Senators Bronson and Brown-Waite

This bill (Chapter 132, L.O.F.) permits a U.S. resident who is a Florida nonresident to carry a concealed weapon or firearm in this state, provided the nonresident:

- Is at least 21 years of age; and
- Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

This bill provides that the nonresident's license shall remain in effect in Florida for 90 days following the date on which the license holder establishes legal state residence. A

nonresident establishes legal residence in Florida when he or she does one of the following acts:

- Registers to vote;
- Makes a statement of domicile pursuant to s. 222.12, F.S.; or
- Files for homestead tax exemption on Florida property.

This bill provides that a nonresident is subject to the same concealed weapon or firearm laws and restrictions as a Florida resident. This bill applies only to nonresident concealed weapon or firearm licenseholders from states that honor Florida concealed weapon or firearm licenses.

These provisions were approved by the Governor and take effect July 1, 1999.
Vote: Senate 29-10; House 84-27

IDENTITY THEFT

CS/HB 49 — Identity Theft

by Crime and Punishment Committee and Reps. Trovillion and others (CS/SB 286 by Criminal Justice Committee and Senators Campbell, Silver and Hargrett)

The Act creates s. 817.568, F.S., for the purpose of specifically criminalizing the use of another's personal identification information for fraudulent or harassment purposes. Personal identification information is broadly defined, and includes, but is not limited to, any person's name, social security number, date of birth, identification number, and fingerprint, voice print, retina or iris image.

Under the Act, a person who willfully and without authorization fraudulently uses or possess with the intent to fraudulently use an individual's personal identification information commits a third degree felony. If the intent is to harass, rather than defraud, the person commits a first degree misdemeanor. Harass is defined as conduct intended to cause substantial emotional distress.

This Act results in broadening the types of misconduct which constitute a criminal offense. Under existing law, only theft by fraudulent misrepresentation of a person's identity is proscribed; however, under the Act, mere possession of personal identification information with the intent to defraud, and possession or use for harassment purposes is now proscribed. For example, pursuant to the Act, Florida law will now criminalize conduct such as harassment by posting an individual's name, credit card account information, or

other personal identification information on the Internet or in other places accessible by the public.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 110-0

JUVENILE JUSTICE

SB 130 — Juveniles/Prosecution as Adults

by Senator Klein

Senate Bill 130 broadens current law pertaining to discretionary direct file informations on 14- and 15-year-old juveniles by including the offense of grand theft of a motor vehicle if a juvenile has at least one prior adjudication for that same offense. If a juvenile of 14 or 15 years of age is alleged to have committed the offense of grand theft auto for a second or subsequent occasion, the state attorney may, but is not required to, file a direct information to prosecute the juvenile in adult court. In order for a state attorney to file a direct information on a 14 or 15 year-old juvenile, it would have to be the judgement and discretion of the state attorney that the public interest requires that adult sanctions be considered or imposed when such juveniles are charged with grand theft auto.

If the state attorney uses his or her discretion and files a direct information on a 14- or 15-year-old juvenile for a second or subsequent grand theft auto, adult sanctions are not guaranteed to be imposed by the adult court judge. In fact, the adult court judge upon a finding of guilt could still adjudicate the juvenile delinquent and impose juvenile sanctions. The judge will use his or her discretion to make that determination. However, once a juvenile has adult sanctions imposed upon him or her, the juvenile must be subsequently prosecuted as an adult for future criminal offenses.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 107-7

HB 349 — Juvenile Justice

by Law Enforcement and Crime Prevention Committee and Reps. Futch and others (CS/SB 204 by Criminal Justice Committee and Senator Silver)

This act is a comprehensive juvenile justice package which consists of the substance of CS/SB 204 by Criminal Justice and Senator Silver, CS/CS/SB 1594 by Governmental Oversight & Productivity Committee; Criminal Justice Committee; and Senator Campbell,

CS/SB 1290 by Education Committee and Senator Horne, SB 1324 by Senator Lee, and CS/SB 1550 by Senator Dawson-White and others.

CS/SB 204

This bill addresses the topic of juvenile firearm and weapon offenses. For simple firearm possession by a minor, the bill enhances the offense level for a second or subsequent offense from a first degree misdemeanor to a third degree felony. Furthermore, the bill provides that a minor charged with a simple possession offense must be placed in secure detention before the adjudicatory hearing, and should thereafter be detained for specified periods if the minor is found to have committed the offense. Under the bill, a minor may be detained for up to 3 days for a first simple possession offense, and must be detained for up to 15 days for a subsequent simple possession offense.

The bill also requires that minors charged with any offense involving a firearm, other than simple possession, be placed in detention before the adjudicatory hearing, and thereafter in detention for specified periods if the minor is found to have committed the offense. Under the bill, a minor must be detained for 15 days for a first firearm offense, and for at least 21 days for a subsequent firearm offense.

Community service must be ordered for any minor who commits a firearm offense, and pursuant to the bill, the community service should be served, if possible, in a facility that treats gunshot wound victims.

Furthermore, the bill expands current law, which prohibits any person from possessing a firearm or weapon on school property, to also prohibit possession at a school-sponsored event. The bill adds that any minor charged with a violation of this section must receive medical, psychiatric or substance abuse exams during the pre-adjudication detention period, and adds that the trial court may continue the minor's pre-adjudication detention for up to 21 days without utilizing a risk assessment instrument.

CS/CS/SB 1594

This bill addresses numerous juvenile justice topics and each topic is addressed below under separate subject headings.

Juvenile Criminal History Records

The bill broadens current law to require the Criminal Justice Information Program to retain criminal history records of minors, who are committed to a maximum-risk residential program, for five years after the minor reaches 21 years of age.

Fingerprinting and Photographing of Juveniles

The bill amends current law to provide that the Florida Department of Law Enforcement may include a juvenile's record in its state criminal history database; thereby, enabling other criminal justice agencies which are entitled to these records under existing law, to readily access these records without having to use current law's cumbersome process of contacting the law enforcement agency which compiled the original record.

Juvenile Sexual History Disclosure

The bill amends current law, which provides that the Department of Juvenile Justice (DJJ) must disclose to a school superintendent that a student under the DJJ's supervision has a history of sexual behavior, in order to limit this disclosure requirement only to juveniles with a criminal history of sexual behavior.

Taking a Child into Custody

The bill adds that an officer, who has probable cause to believe that the juvenile is violating his home detention or has absconded from his commitment, may take the juvenile into custody without first obtaining a pickup order from the trial court.

Aftercare Placement

The bill eliminates current law's ambiguity concerning the meaning of aftercare. Under the bill, aftercare is clearly defined as programs, such as non-residential minimum risk, re-entry and postcommitment community control (PCCC), in which a juvenile may be placed after he or she has been released from a residential commitment.

The bill also provides that aftercare is no longer mandatorily required for all juveniles released from residential commitment; instead, either the trial court may order PCCC, or the department may require another aftercare program for the juvenile if the juvenile indicates during an assessment a need for aftercare services.

The bill finally provides that a juvenile's violation of any aftercare program, other than court ordered PCCC, no longer require a court hearing; instead, the DJJ may administratively transfer the juvenile to another commitment program.

Department of Juvenile Justice Hiring Standards

The bill adds new offenses to those currently enumerated in the statutes, which preclude the employment of persons, such as DJJ employees, who are subject to level two employment screening. The newly added offenses include: battery on a detention or

commitment facility staff; removing a child beyond state limits; possessing or exhibiting weapons on, or within 1,000 feet of, school property; resisting arrest with violence; depriving an officer of protection or communication; aiding in an escape; inflicting cruel treatment on an inmate resulting in great bodily harm; aiding an escaped prisoner; introducing contraband into a correctional or detention facility; and sexual misconduct in juvenile justice programs.

Furthermore, the bill amends current law to provide that the DJJ Standards and Training Commission must develop a certifiable, competency based employee training program, and that DJJ employees must pass an examination in order to successfully complete the program. The bill also provides that in order for a person to be eligible to be a DJJ employee, he or she must: be at least 19 years old; be a high school graduate or its equivalent; not have been convicted of a felony or perjury, or have been dishonorably discharged from the military; have abided by the fingerprinting and background investigations required in ch. 435, F.S.; have submitted an affidavit attesting to the person's compliance with this section; and have completed any commission-approved basic training program offered by the DJJ.

Department of Juvenile Justice Crime Prevention

The bill amends current law to require specified agencies involved in the justice system, including the DJJ, to implement crime-prevention measures. The bill limits expenditures to crime prevention, public awareness, public participation, and educational activities, and specifies that no expenditures may be made for lobbying purposes.

Direct-Support Organization

The bill creates a new section to provide the DJJ with the statutory authority to have a Direct Support Organization (DSO). The DSO is defined as a not for profit corporation approved by the Department of State, which is operated for the purpose of raising funds and making expenditures for the benefit of the DJJ, or a county or district board juvenile justice system.

CS/SB 1290

This bill amends sections concerning juvenile justice education programs. The bill defines the school year for juvenile justice programs as a 12 month period, consisting of 250 days of instruction, with authorization to decrease the minimum number of days of instruction by up to 10 days for teacher planning. The bill makes the following changes related to governance:

- requires the State Board of Education to adopt an administrative rule that includes specific components, including the interagency collaborative process; academic expectations; transition services; procedures for the transfer of education records; and contract requirements.

- designates the Department of Education (DOE) as the lead agency for juvenile justice education programs.

- requires the DOE and the DJJ to designate a coordinator for juvenile justice education programs to serve as a point of contact for resolving issues not addressed by local school boards.

The bill requires the development of model contracts for the delivery of education services to youth in DJJ programs, as well as model procedures for moving youth in and out of these programs. The bill revises the current quality assurance provisions in law.

Additionally, the bill provides for the following:

- a study by the Juvenile Justice Accountability Board (JJAB) of the nature and extent of education programs for juvenile offenders committed by the court to the DJJ and for juvenile offenders under court supervision in the community.

- provisions for funding juvenile justice education programs and alternative FTE surveys for Department of Juvenile Justice programs experiencing fluctuations in student enrollment.

- funding for DJJ programs beyond the 180 day school year and summer school must be specified in the General Appropriations Act.

- notice requirements related to the siting of new juvenile justice facilities, requests for proposals, and award of contracts for the construction or operation of commitment or detention facilities.

- subjects schools that provide educational services to youth in juvenile justice programs to requirements in current law, including the provisions for statewide programs of educational assessment and for school improvement plans.

SB 1324

This bill addresses numerous juvenile justice topics and each topic is addressed below under separate subject headings.

Firearm Possession by Adjudicated Delinquents

The bill adds that a juvenile, who has been adjudicated delinquent for a felony offense, is prohibited from possessing a firearm until he or she reaches the age of 24. In so providing, the bill eliminates a glitch in current law which can permit an adjudicated juvenile felon to possess a firearm at the age of 19 or 21, depending on the circumstances.

Direct Filing of Juvenile Offenders

Under current law, a state attorney is statutorily required or permitted to prosecute a juvenile in adult court if the juvenile has been charged with committing certain enumerated offenses. The bill adds burglary with assault or battery, possession or discharge of any weapon or firearm at school, home invasion robbery, and carjacking to the list of enumerated offenses, and further adds that the juvenile may be prosecuted as an adult if the juvenile is charged with attempting or conspiring to commit an enumerated offense.

Moreover, the bill provides that whenever a juvenile is transferred for prosecution as an adult all of the juvenile's other felony cases, which are then pending in juvenile court, must be transferred to adult court. If the juvenile is acquitted of the charge or charges in the original case, the juvenile may only be subject for his or her other felony cases to the sanctions that were available to the court before these cases were transferred.

DJJ Filing Recommendations to the State Attorney

Under current law, the DJJ is statutorily required in every case to provide a recommendation to the state attorney concerning whether charges against a juvenile should be brought in juvenile or adult court. This provision often results in requiring the DJJ to needlessly make ineffective recommendations in cases where the question of whether to direct file is resolved by the mandatory direct filing statutes. Consequently, the bill provides that the DJJ need not make a recommendation in every case. Instead, the bill allows the state attorney and the DJJ to enter an interagency agreement which specifies the types of cases which will warrant a DJJ recommendation.

Maximum-Risk Residential Programs

The bill renames DJJ "maximum-risk residential programs" to "juvenile correctional facilities or juvenile prison," in order to heighten the phrase's deterrence effect. Furthermore, the bill expands current law's list of enumerated offenses which make a juvenile, age 13 or older, eligible for placement in a juvenile correctional facility or prison. Under the bill, eligibility may also be predicated on the offenses of carjacking, home-invasion robbery, or burglary with assault or battery.

Juvenile Appeals

The bill provides that juvenile appeals must be taken in the manner prescribed by the Florida Rules of Appellate Procedure, and the Criminal Appeals Reform Act. The effect of this provision is to require counsel for juveniles, just like counsel for adults, to first raise sentencing error in the trial court, instead of raising it for the first-time on appeal. The purpose for this preservation requirement is to eliminate the unnecessary expense of allowing direct appeals to be filed in the district courts concerning issues which are better and more easily remedied by the trial court.

CS/SB 1550

This bill addresses the topic of vocational and educational programs provided by the school board and the DJJ to juveniles committed to the DJJ's custody. The bill amends current law concerning vocational work programs for delinquents, by changing the section's use of the phrase, "vocational work training programs" to "educational/technical and vocational work-related programs." This amendment should have the effect of broadening the types of programs which may be provided to delinquents.

The bill also specifies that the mission of the juvenile educational/technical and vocational work-related programs includes teaching job and trade skills to youth in juvenile justice programs, and that the DJJ should assist juveniles in obtaining postrelease employment, work in partnership with local businesses to develop the operation of educational/technical and vocational programs, and attempt to obtain training credits for juveniles in apprenticeship programs.

Furthermore, the bill provides that the DJJ is "strongly encouraged" to require juveniles placed in high or maximum risk commitments or classified as serious/habitual offenders to participate in an educational/technical or vocational work-related program for five hours per day, five days per week.

Finally, as requested in the JJAB's 1998 report concerning educational programming, the bill adds that the JJAB shall conduct a study of effective juvenile vocational and work programs across the United States, and shall report its findings by January 31, 2000. Similarly, the bill provides that the DJJ should gather the following information on Florida juvenile vocational and work training programs: the type of vocational or work program offered; the relevant job skills provided; and whether the program works with the trade industry to place youths in jobs upon release.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 114-0

SB 1178 — Juveniles/Diversion Program

by Senator Silver

This bill statutorily authorizes another juvenile diversion program in ch. 985, part III, F.S., 1998 Supp. The bill allows a law enforcement agency or a school district to establish a prearrest diversion program so that a juvenile alleged to have committed a delinquent act can have his or her driver's license taken away for up to 90 days.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 118-0

LAW ENFORCEMENT

HB 391 — Department of Law Enforcement

by Law Enforcement & Crime Prevention Committee and Rep. Futch and others (SB 730 by Senator Meek)

This bill makes various changes affecting the Florida Department of Law Enforcement (FDLE)
Specifically, the bill:

- gives the FDLE a role in implementing the "Foley Amendment," which is a federal law designed to facilitate background checks for volunteers and employees of entities dealing with children, the elderly, or those with disabilities;

- ratifies the National Crime Prevention and Privacy Compact and designates the FDLE as the criminal history record repository for purposes of the contract;

- defines the FDLE's role with regard to the CJNET and provides the FDLE with the authority to manage the network and enter into relationships with non-criminal justice entities;

- clarifies that criminal history records pertaining to any of the "dangerous crimes" set forth in s. 907.041, F.S., may not be sealed or expunged;

- more precisely defines the meaning of *previously* being adjudicated guilty of a criminal offense which precludes the sealing or expunging of criminal history records;

- extends the sunset date on the Firearm Purchase Program from October 1, 1999 to June 1, 2000. This program requires instant computerized checks of a potential firearm purchaser's criminal background for $8 per transaction. The bill also permits FDLE to charge less than $8 per transaction if federal funds are obtained; and

- requires FDLE to provide each public defender's office with on-line access to Florida criminal records. It specifies that the cost of establishing and maintaining on-line access shall be borne by the public defender's office.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 117-0

SB 1866 — Use of Force by Law Enforcement or Correctional Officers

by Senator Webster

This bill specifies that the statutory definition of "deadly force" shall not include the discharge of a firearm, loaded with a "less-lethal munition," by a law enforcement officer or correctional officer during and within the scope of his or her official duties. The effect is to make express what is not currently stated in the deadly force definition.

This bill defines "less-lethal munition" to mean "a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body."

Finally, the bill creates an affirmative defense for a law enforcement officer or correctional officer in civil or criminal actions arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 36-0; House: 111-0

REPORTING REQUIREMENTS

SB 1182 — Medical Treatment of Violent Wounds

by Senator Silver

Existing law requires health care providers to report to the sheriff's department, "a gunshot wound or other wound indicating an act of violence." Failure to report as required is punished as a first degree misdemeanor.

The phrase "other wound" is currently undefined, and as a result, health care providers have found it difficult to determine exactly which injuries must be reported. For example, bruises could be construed as wounds indicating an act of violence. In order to resolve this ambiguity, this Act amends the section to provide that the "other wound" which triggers the reporting requirement must be life-threatening.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 113-0

SENTENCING ENHANCEMENTS AND MINIMUM MANDATORY TERMS OF IMPRISONMENT

CS/CS/HB 113 — Felons/Increased Prison Terms

by Corrections Committee; Crime & Punishment Committee; Rep. Crist and others (CS/SB 194 by Criminal Justice Committee and Senators Webster, Brown-Waite, Campbell, and Bronson)

This bill (Chapter 12, L.O.F.) is commonly referred to as the 10-20-Life law. It changes s. 775.087, F.S., to increase the minimum mandatory sentences for enumerated serious felonies that are committed with a firearm. Minimum mandatory sentences are categorized in three separate groups depending on the possessor's use of the firearm. The minimum mandatory sentences for possession of a firearm while committing one of the delineated offenses are increased if an enumerated felony is committed with a more "dangerous" firearm, which is specified as a machine gun or a semiautomatic that is fitted with a high-capacity, detachable box magazine.

If a person commits one of the listed offenses while simply possessing a "regular" firearm, the person must serve a minimum mandatory sentence of 10 years. If a person commits one of the listed offenses while possessing a more dangerous firearm, the person must serve a minimum mandatory sentence of 15 years. If a person commits one of the listed offenses and during that offense discharges *any* firearm, the person must serve a minimum

mandatory sentence of 20 years. If a person commits one of the listed offenses, and during that offense the person discharges *any* firearm and actually shoots someone inflicting great bodily harm or death, the person must serve a minimum mandatory sentence of 25 years up to life.

The law expands the list of felonies whereupon, if convicted, a possessor of a firearm would receive a minimum mandatory sentence. It includes trafficking in or capital importation of cannabis, cocaine, illegal drugs, phencyclidine, methaqualone, amphetamine, flunitrazepam, or committing any other violation of s. 893.135 (1), F.S., with a firearm. It also includes the offense of possession of a firearm by a convicted felon for purposes of applying minimum mandatory sentences.

The offense of possession of a firearm will now have a minimum mandatory sentence of 3 years. The offenses of aggravated assault while possessing a firearm or destructive device and burglary of a conveyance while possessing a firearm or destructive device will also have a minimum mandatory sentence of 3 years.

The term "possession" is defined for purposes of imposing a minimum mandatory law under this law. The definition reiterates current law that "possession" means having the firearm on one's person. If a firearm is on your "person," the law infers that you intended to use the firearm. For possession to be proven, the state must still prove "knowledge" of the firearm possession by the possessor.

The definition of possession is modified to also include narrow cases of "constructive" possession. To be subject to minimum mandatory sentences under this section, the state must prove that the firearm was within immediate reach and with ready access to the accused. But, to prove constructive possession, the state would also have to prove beyond a reasonable doubt that the offender intended to use the firearm during the commission of the offense.

A state attorney must file a memorandum with the court in every case that a law enforcement agency based a criminal charge on facts demonstrating that the defendant met the criteria of the 10-20-Life law and the defendant did not receive the mandatory sentence. The memoranda must explain why the minimum mandatory sentence was not imposed. The state attorney must also prepare and maintain memoranda in the state's case file that explains any sentencing deviation where a person meets the "criteria" of the 10-20-Life law and does not receive the mandatory minimum prison sentence. Quarterly, each state attorney must submit copies of deviation memoranda to the President of the Florida Prosecuting Attorneys Association, Inc., which must be held for at least 10 years for public review upon a written request.

The bill also provides authority for the Department of Corrections to utilize current fiscal year appropriations, up to $500,000, to provide public service announcements advertising the penalties provided in this act.

This law takes effect on July 1, 1999. However, the provision requiring public service announcements became effective on March 31, 1999, when the Governor signed it into law.
Vote: Senate 39-0; House 106-11

CS/HB 121 — Sentencing/Three Strikes

by Corrections Committee and Rep. Crist and others (CS/SB 1746 by Criminal Justice Committee and Senators Lee, Brown-Waite, and Cowin)

This bill amends s. 775.084, F.S., relating to various repeat offender penalties, to create a new repeat offender classification called the "three-time violent felony offender." A defendant qualifies for classification and sentencing as a three-time violent felony offender if the defendant's current felony offense and at least two prior felony offenses are any of the violent felony offenses enumerated in this provision, including an offense which is a violation of any other jurisdiction, if the elements of such offense are substantially similar to any of the enumerated felony offenses. Qualifying felony offenses include the attempt to commit any of the enumerated felony offenses.

The current offense must have been committed or attempted while the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any of the enumerated felony offenses, or within 5 years after the date of conviction of the last prior, enumerated felony offense, or within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior, enumerated felony offense, whichever is later. This construction of the applicable time period relevant to qualifying offenses is also applied to the provisions in s. 775.084, F.S., relating to the habitual felony offender, habitual violent felony offender, and violent career criminal.

This bill also specifies that the three-time violent felony offender provisions do not apply to any crime for which a defendant has received a pardon on the ground of innocence or which has been set aside in any postconviction proceeding.

This bill also provides that, in a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure is patterned on the procedure for determining whether a defendant is a habitual felony offender or habitual violent felony offender. However, unlike disposition of cases involving these repeat offender classifications, the court has no discretion in whether to sentence a defendant as a

three-time violent felony offender, if the state attorney pursues such sanction and the defendant is determined to meet the criteria for imposing such sanction.

The penalty imposed is based upon the felony degree of the current offense: for a life felony, a sentence of life imprisonment; for a first degree felony, a 30-year term of imprisonment; for a second degree felony, a 15-year term of imprisonment; and for a third degree felony, a 5-year term of imprisonment. However, it is also provided that nothing in this penalty provision shall prevent a court from imposing a greater sentence of incarceration as authorized by law. The three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

Relevant to all repeat offender classifications in s. 775.084, F.S., this bill provides that the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.

This bill amends s. 775.082, F.S., to expand the type of offenders eligible for enhanced penalties under the prison releasee reoffender classification to include a defendant who commits or attempts to commit specified violent offenses while the defendant was serving a prison sentence or on escape status from a state correctional facility.

This bill also deletes most current reasons for not prosecuting a person as a prison releasee reoffender, except for extenuating circumstances which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be prosecuted as a prison releasee reoffender. It is also specified that the state attorney determines whether such extenuating circumstances exist.

This bill also amends s. 784.07, F.S., which reclassifies the felony degree of aggravated assault or aggravated battery, if such assault or battery was upon a law enforcement officer or other specified person. This bill provides that a defendant whose aggravated assault or aggravated battery offense is reclassified under this section shall also be sentenced to a 3-year mandatory minimum term of imprisonment.

This bill also amends s. 784.08, F.S., which reclassifies the felony degree of aggravated assault or aggravated battery, if such assault or battery was upon a person 65 years of age or older. This bill provides that a defendant whose aggravated assault or aggravated battery offense is reclassified under this section shall also be sentenced to a 3-year mandatory minimum term of imprisonment.

This bill also creates a new section which creates an additional repeat offender classification called a “repeat sexual batterer.” A defendant qualifies for classification and sentencing as a repeat sexual batterer if the defendant’s current felony offense and at least

one prior felony offense is any of the violent felony offenses enumerated in this provision, including an offense which is a violation of any other jurisdiction, if the elements of such offense are substantially similar to any of the enumerated felony offenses. Qualifying felony offenses include the attempt or conspiracy to commit any of the enumerated felony offenses.

There is provided a separate proceeding for determining whether a defendant is a repeat sexual batterer. This proceeding, and the procedures relevant thereto, are identical to those provided for determining whether a defendant is a three-time violent felony offender. Further, the court must impose a repeat sexual batterer sanction, which is a 10-year mandatory minimum term of imprisonment, if the state attorney pursues such sanction and the defendant is determined to meet the criteria for imposing such sanction.

The construction of the applicable time period relevant to qualifying felony offenses for the repeat sexual batterer sanction is similar to the construction applied to other repeat offender classifications, except that there is a 10-year time span rather than the 5-year time span applicable to other repeat offender classifications.

The repeat sexual batterer provisions are also similar to the three-time violent felony offender provisions in exempting from such sanction offenses pardoned on the ground of innocence and offenses set aside in a postconviction proceeding, and providing that the penalty provision does not prevent the court from imposing a greater sentence under any other law.

This bill also amends s. 893.135, F.S., relating to drug trafficking offenses, to provide for 3-year and 7-year mandatory terms for lower-weight trafficking in cannabis, cocaine, phencyclidine, amphetamines and methamphetamines, and flunitrazepam, and 3-year and 15-year mandatory terms for lower-weight trafficking in heroin and other drugs similarly scheduled.

This bill also removes current weight “caps” for highest-weight trafficking. These are first degree felonies requiring life imprisonment. The effect of the amendment is that the actual weight of the drugs trafficked in will be reflected in prosecution and sentencing.

This bill also lowers the threshold for trafficking in cannabis to 25 pounds. Further, this bill authorizes sentencing for cannabis trafficking based upon number of cannabis plants or their weight, and defines “cannabis plant.” This bill requires sentencing to the longest mandatory term for cannabis trafficking, based upon the weight or number of cannabis plants.

This bill also provides that a person sentenced under s. 893.135, F.S., is not eligible for any form of discretionary early release, except for pardon, executive clemency, or

conditional medical release, prior to serving the mandatory minimum term of imprisonment.

This bill also amends s. 943.0535, F.S., relating to criminal records of aliens, to require Clerks of the Court to notify Immigration and Naturalization Services whenever an alien is convicted of or enters a plea to a felony or misdemeanor offense.

This bill also requires that the Executive Office of the Governor place public service announcements in visible local media through the state explaining the penalties provided in this act.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 35-0; House 102-15

CS/HB 183 — Sentencing/Hate Crimes

by Crime & Punishment Committee and Rep. Fasano and others (CS/SB 912 by Criminal Justice Committee and Senator Latvala)

This bill amends s. 775.085, F.S., Florida's hate crimes section, to require the reclassification of the felony or misdemeanor degree of an offense if the commission of such offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 113-0

SEXUAL PREDATOR TREATMENT

CS/CS/CS/SB 2192 — Civil Commitment of Sexually Violent Predators

by Fiscal Policy Committee; Judiciary Committee; Children & Families Committee; and Senator Klein

The Jimmy Ryce Act of 1998 is transferred to the new ch. 394, part V, F.S., which is the Mental Health chapter of the Florida Statutes. In doing so, it clarifies that procedures and provisions of the Baker Act, which is in Part I of the Mental Health chapter of the statutes, are inapplicable to procedures and provisions of the Jimmy Ryce Act.

It is clarified that it is a statutory duty of public defenders to represent indigent persons who are subject to possible civil commitment under the Jimmy Ryce Act. Public defenders

are able to represent indigent persons as a respondent in these civil proceedings and appeals therefrom. However, they are not able to represent such persons as plaintiffs in any civil or administrative action. This is consistent with the role of public defenders up to the present date.

The definition of a "sexually violent offense" remains the same, except that the offense of "kidnapping of a child under the age of 16" is changed to "kidnapping of a child under the age of 13" to parallel the Florida statute that designates the criminal offense of "kidnapping of a child under the age of 13."

The definition of "total confinement" is clarified to expressly include persons who are serving an incarcerative sentence in the custody of the Department of Corrections or Department of Juvenile Justice and are, for a variety of reasons, in a jail or other secure facility for a temporary period of time and end up being released from one of these other facilities because they reach expiration of sentence at that time.

The law is clarified as to which state attorney would be the designated state attorney in cases where a person has never been convicted of a sexually violent offense in Florida. The bill also clarifies which state attorney has jurisdiction over cases where a person is being incarcerated in Florida pursuant to interstate compact, but was convicted for the qualifying sexually violent offense in a non-Florida jurisdiction.

The time frame in which the agency having jurisdiction over a person who has a conviction for a sexually violent offense must give notice to the Department of Children and Family Services (DCFS) or the multidisciplinary team and state attorney would be changed. Rather than 180 days before the anticipated release from total confinement or anticipated hearing regarding possible release of a qualifying person, notice must be given *at least 365 days prior* to the anticipated release or anticipated hearing for release. The practical effect of extending the time frame in which notice must be given is that the process begins must earlier. The need to detain persons in an "appropriate secure facility" is alleviated if there is still time remaining on a criminal sentence to be served subsequent to a final determination to civilly commit a sexually violent predator. The costs that would be otherwise expended to detain persons with expired criminal sentences are avoided.

The bill narrowly addresses the issue of adversarial probable cause hearings for persons who are subject to the provisions of the Jimmy Ryce Act. The bill has courts deciding, on a case-by-case basis, whether an adversarial probable cause hearing should be conducted under very limited circumstances. This provision does not give an unfettered right to a respondent to have a probable cause hearing. The court can *only* consider to have an adversarial probable cause hearing if: the respondent's criminal sentence has expired; the multidisciplinary team recommended that the respondent be committed; the respondent has not been released from secure custody; the state attorney has filed a petition for

commitment; and the non-commencement of the trial is not because of any delay caused by the respondent.

The bill requires that additional information be provided to the multidisciplinary team for its evaluation and assessment. It requires the following additional information be provided, if available: the person's criminal history, police reports, victim statements, presentence investigation reports, post-sentence investigation reports, any other documents containing facts of the person's criminal incidents, mental health records, mental status records, medical records, and all clinical records and notes concerning the person. All of this information should be accessible under current law, but this provides specificity of the information that is relevant.

The bill specifically authorizes multidisciplinary *teams*, rather than referencing only one team, that may be established by the secretary of the DCFS. This avoids confusion through a literal interpretation of the current law that two persons are sufficient to evaluate and assess the thousands of persons that qualify for such a review by the Department of Children and Family Services.

Clarity is provided on the issue of whether a face-to-face interview with the person subject to the civil commitment law is required. It clarifies that a personal interview will be offered to any person that meets the definition of a sexually violent predator and will be recommended to the state attorney to be the subject of a petition for civil commitment. If the person is willing to be personally interviewed, a team member who is a licensed psychiatrist or licensed psychologist will conduct the personal interview. Upon the refusal of an interview, the multidisciplinary team may still proceed with a recommendation to file a petition without a personal interview.

If a respondent refuses to cooperate with members of the multidisciplinary team, any expert testimony that is offered by a respondent will be limited or excluded. The bill inserts language regarding expert testimony on behalf of a respondent's expert to make it consistent with current Rule 3.202 (e) of the Florida Rules of Criminal Procedure. The person will either be compelled by the court to interview with a multidisciplinary team member or the defendant's expert's testimony will be excluded.

It clarifies that the multidisciplinary team must evaluate and prepare a *written* assessment as to whether the person meets the definition of a sexually violent predator and provide that written assessment along with the recommendation to the state attorney.

A new statutory section relating to immediate releases from total confinement is created. This section would help the DCFS and the state attorneys to expedite cases where, because of unforeseen circumstances, it is anticipated that a person's release from total confinement will become immediate.

Express language in the bill provides that the state attorney would not be charged a filing fee in circuit court for filing a petition seeking involuntary civil commitment of a sexually violent predator.

The bill clarifies that a judge is to order a person to be taken into custody and held in an appropriate secure facility if the person's incarcerative sentence has expired, otherwise the person is to remain in incarceration on his or her criminal sentence.

The bill expressly provides that the Florida Rules of Civil Procedure and the Florida Rules of Evidence apply unless the act specifies something differently.

Some evidentiary provisions are created giving the state attorney the authority to compel testimony or present evidence that would otherwise be excluded in a court proceeding. It allows admissibility of communications between the subject of the proceedings and his or her psychotherapist if the court determines that the communications are relevant to an issue in the proceedings to involuntarily commit a person. The bill also authorizes the admissibility of evidence of "prior bad acts" if the evidence is relevant to proving the person is a sexually violent predator. Hearsay evidence would also be admissible unless the court finds that such evidence is unreliable. The use of hearsay evidence is limited *in trials* in that it cannot be the sole basis for which a person is civilly committed.

In cases of a trial by jury, the bill clarifies that once a trial has been conducted and the jury deliberates, the jury would be required to return a unanimous *verdict*. The law also clarifies as to what would occur if the verdict was not unanimous. If the jury is unable to reach a unanimous verdict, the court will have to declare a mistrial and poll the jury. The law would remain the same if a majority of the jury would find the person is a sexually violent predator. The state attorney would be able to file a new petition within 90 days of the verdict.

Multidisciplinary teams have express authority to receive information and records that are otherwise confidential or privileged in order to determine whether a person is or continues to be a sexually violent predator. The bill provides that such information would not lose its confidential status simply because it is released to the multidisciplinary team.

The bill adds notice requirements in the act. It requires noticing victims in cases of escapes. It also requires noticing the Department of Corrections in cases of escapes and releases when a person is on an active term of community supervision. The Parole Commission is to be noticed in the same scenarios if the person is on an active term of post-prison community supervision that is administered by the Parole Commission.

The Department of Children and Family Services is given the legislative authority to develop and adopt rules for the operation, management, and procedures to be followed to administer the civil commitment of sexually violent predators program in the department.

The Office of Program Policy Analysis and Government Accountability is mandated to conduct a study and report its findings to the Legislature regarding the administration and operation of the Department of Children and Families' Sexually Violent Predator Program created through the Jimmy Ryce Act.

The Department of Corrections will be required to collect data and categorize that data on inmates in the state correctional system that have a "qualifying violent sex offense conviction" that makes them subject to civil commitment proceedings under the Jimmy Ryce Act.

The Criminal Justice Estimating Conference will be required to continually collect information to project the number of persons who will be discharged and be subject to possible civil commitment in order to determine the future need for detention beds and long-term, post-commitment treatment beds.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 116-0

VICTIM ASSISTANCE AND COMPENSATION

CS/HB 1779 — Victim Compensation

by Judiciary Committee and Rep. Pruitt and others (CS/SB 1484 by Criminal Justice Committee and Senators Saunders and Dyer)

The Act amends ch. 960, F.S., for the purpose of making the following changes to current law governing victim rights and compensation:

- The Act amends s. 960.001, F.S., to provide that both the victim of a crime and the state attorney, with the victim's consent, have standing to assert the victim's legal rights.

- The Act broadens s. 960.03(3)(b), F.S., to provide that a victim may be entitled to crimes compensation for injuries caused by boating or flying while under the influence offenses, in addition to current law's provision that compensation may be predicated upon injuries caused by driving under the influence offenses.

- The Act clarifies s. 960.065(1), F.S., which provides that persons eligible for awards include the parent of a deceased victim or intervenor, to also include the deceased's legal guardian.

- The Act broadens s. 960.03(12), F.S., which requires that a victim have been physically injured in order to receive crimes compensation, to also provide that a victim, who suffers only psychiatric or psychological injury as a direct result of a forcible felony, may receive compensation.

- The Act increases the limitations on crimes compensation award eligibility contained in s. 960.065(2), F.S., by providing that victims/intervenors and surviving representatives may not be eligible for crimes compensation if he or she was imprisoned at the time of the crime, has been adjudicated a habitual offender or violent career criminal, or has been adjudicated guilty of a forcible felony.

- The Act increases the Department of Legal Affair's ability to obtain records related to the crime from the victim/intervenor or his or her representative. Current law only enables the department, when determining a claim, to require a victim or intervenor to provide his or her "medical records." The Act deletes the modifier "medical," and thereby, affords the department the authority to obtain all records needed to determine a claim.

- The Act increases the maximum crime compensation award amount from $15,000 for all costs or losses to $25,000. The Act also adds that this maximum amount becomes $50,000 if the department makes a written finding that the victim has suffered a statutorily defined "catastrophic injury."

- The Act amends s. 960.13(6), F.S., to exempt loss of support benefits paid by collateral sources, such as insurance companies, from those benefits which must, under current law, reduce the amount of an award.

- The Act amends s. 960.14(3), F.S., to broaden the department's ability to reconsider a claim and to modify or rescind an order for compensation. Currently, the department may only reconsider, modify, or rescind based on a change in the victim's/intervenor's "medical circumstances." The Act deletes the term "medical," and thereby, enables the department to reconsider, modify, or rescind based upon any change in the victim's/intervenor's circumstances.

- The Act amends s. 960.12, F.S., to increase the maximum amount of an emergency award from $500 to $1,000.

- The Act amends s. 960.28, F.S., which requires the department to pay the cost of certain victims' forensic physical exams, by increasing the department's payment maximum from $150 to $250.

- The Act creates s. 960.198, F.S., to provide that the department can make a one-time relocation award to certain domestic violence crime victims, who need immediate assistance to escape from a domestic violence environment. The maximum award is $1,500 for any one claim and $3,000 for all claims during a person's lifetime.

If approved by the Governor and except as otherwise provided in the Act, this Act takes effect on January 1, 2000.
Vote: Senate 35-0; House 114-0

CS/SB 1870 — Presentence Investigation Reports

by Criminal Justice Committee and Senator Clary

Under current law, a trial court may order the Department of Corrections to prepare a presentence investigation (PSI) report, which includes an offender's criminal, social, education, and economic history, for the purpose of assisting the court in determining the offender's sentence. The PSI contains both confidential and non-confidential information, and is a non-public record available only to the court, counsel for the parties, and entities having a professional interest in the information. Victims cannot review the PSI.

This Act, which is entitled the "Blair Benson Act," amends ss. 945.10 and 960.001, F.S., to provide that the victim may, upon a request made to the state attorney, review a copy of the PSI, from which any confidential information has been redacted. The Act also requires that the victim maintain the PSI's confidentiality, and that the victim not disclose any of its contents, except to the court or state attorney.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 113-0

Senate Committee on Education

EDUCATION

CS/CS/SB's 366, 382 & 708 — School Readiness Program

by Fiscal Policy Committee; Education Committee; and Senators Holzendorf, Kirkpatrick, Meek, Hargrett and Forman

The bill creates the Florida Partnership for School Readiness, which is assigned to the Executive Office of the Governor for administrative purposes. The partnership will be responsible for adopting and coordinating programmatic, administrative, and fiscal policies and standards for all school readiness programs. The members of the partnership will be the Lieutenant Governor or his designee, the Commissioner of Education, Secretary of Children and Family Services, Secretary of Health, chair of the WAGES program board of directors, chair of the Child Care Executive Partnership board, and 10 private citizens who are business, civic, and community leaders. The Governor will appoint the ten member of the public; eight of the appointments must come from lists provided by the President of the Senate and the Speaker of the House of Representatives.

By July 1, 2000, the partnership must adopt a statewide system for measuring school readiness. Children will undergo this readiness screening upon entry to kindergarten. The partnership will also adopt performance standards and outcome measures for school readiness programs. The partnership must work with the Commissioner of Education, the postsecondary Education Planning Commission, and the Education Standards Commission to assess the extent and nature of instruction available for personnel in early childhood education and child care. The Articulation Coordinating Committee will establish a career path for school readiness-related professions.

Local governance of the school readiness system will be by coalitions of 18 to 25 individuals, representing both the public and the private sectors. As local coalitions form, the partnership will approve their composition and their school readiness plans. The bill establishes incentive grants for development of local coalition plans for school readiness. If a coalition's plan would serve fewer than 400 children ages birth to 5 years, the coalition must either join with another coalition to form a multi-county coalition, enter into an agreement with a fiscal agent to serve more than one coalition, or demonstrate to the partnership its ability to implement its plan and meet all performance standards and outcome measures.

A coalition's school readiness program will have available to it state, federal, local, and lottery funds including those for the Florida First Start Program, Even Start literacy programs, prekindergarten early intervention programs, Head Start programs, migrant prekindergarten programs, Title I programs, subsidized child care programs, and teen parent programs. A coalition that is not a legally established corporate entity must enter into a contract with a fiscal agent who will provide financial and administrative services according to the contract.

The partnership can award incentive grants of $50,000 to coalitions that are approved by the partnership by January 1, 2000, and grants of $25,000 to coalitions that are approved by March 1, 2000. The bill appropriates $330,000 for implementing the act in 1999-2000. These funds will pay for incentive grants, development of a screening instrument, and staff for the partnership.

The bill provides flexibility and a possible waiver of certain statutes but maintains programmatic and safety standards. The following statutes will not apply to local coalitions with approved plans: ss. 125.901(2)(a)3., 228.061(1) & (2), 230.2306, 411.204, 411.221, 411.222, and 411.232. A school readiness coalition may apply to the Governor and Cabinet for a waiver, and the Governor and Cabinet may waive, any of the provisions of ss. 230.2303, 230.2305, 230.23166, 402.3015, 411.223, and 411.232, if the waiver is necessary for implementation of the coalition's school readiness plan.

The State Coordinating Council for Early Childhood Services will be reconstituted as a 15-member advisory body to recommend to the partnership methods for coordinating programs and increasing public-private partnerships in school readiness programs. The council, which is established in s. 411.222(4), F.S., will be repealed in 2002.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 117-0

CS/HB 751 — High-Quality Education System

by Select Committee on Transforming Florida's Schools and Reps. Diaz de la Portilla and others (CS/CS/SB 1756, 1st Eng. by Fiscal Policy Committee; Education Committee; and Senators Cowin and McKay)

This bill expands the statewide assessment program, requires the use of test scores in the establishment of performance grades for schools, provides scholarships to enable students in failing schools to attend a different public school or a private school, requires performance-based pay for teachers and administrators, and requires new procedures for monitoring attendance. The bill prohibits the promotion of students based on age or other factors that constitute social promotion. The State Board of Education must

intervene in a school district when one or more schools in the district have failed to make adequate progress for 2 years in a 4-year period.

Student Assessment and School Performance (s. 229.57, F.S.)
The statewide assessment program will test students each year in grades 3 through 10 on reading, writing, and mathematics. Beginning in 2003, science will be added to the statewide assessment program. Public schools will receive performance grades in categories "A" through "F". The grades will be determined by student learning gains as measured by FCAT and other performance data such as attendance and dropout rates, discipline data, and readiness for college.

The Department of Education (DOE) must assign a community assessment team to each district with a school that has a performance grade of "D" or "F". The team of parents, business representatives, educators, and community activists will recommend an intervention plan to the school board, the DOE and the state board.

Beginning with the student and school performance data in 1999-2000, the DOE's annual report must indicate whether each school's performance has improved, remained the same, or declined. Schools with a performance grade of "A" and those that improve two grade categories and meet the criteria for the Florida School Recognition Program may be given deregulated status.

Funding (ss. 24.121, 230.23, 236.08104, 236.013, F.S.)
The bill creates the Supplemental Academic Instruction Categorical fund to provide supplemental instruction to students in kindergarten through grade 12. School boards are encouraged to prioritize expenditures of funds for class size reduction and supplemental instruction (from Specific Appropriation 110-A) to improve student performance in schools that are graded "D" or "F."

Performance-based funding is provided in two ways. The Legislature may factor in performance of schools in calculating performance-based funding in the General Appropriations Act. By June 30, 2002, the salary schedule adopted by a school board must base at least 5% of the annual salary of school administrators and instructional personnel on annual performance. Effective July 1, 2002, the Commissioner will be required to withhold lottery funds from any school district that dos not implement a performance based salary schedule.

Student Progress (s. 232.245, F.S.)
Student progress from grade to grade will be based on achievement. A student may not be promoted based on age or other factors that constitute social promotion. When a student is retained, he or she must receive an intensive program that is different from the previous year's program. A school district must consider an alternative placement for a

student who has been retained for 2 or more years. The State Board of Education must adopt rules to address the promotion of Limited English Proficient (LEP) and Exceptional Student Education (ESE). The DOE must study the effect of mobility on the performance of highly mobile students.

Accountability Commission (ss. 229.593 & 229.594, F.S.)
The Florida Commission on Education Reform and Accountability will be abolished.

School Board Powers (s. 230.23, F.S.)
A school board may declare a state of emergency if one or more schools in the district are failing or in danger of failing. The board may negotiate special provisions of its contract with the appropriate bargaining units to free the schools from contract restrictions that limit the schools's ability to implement strategies to improve student performance.

Pilot Scholarship Program for Students with Disabilities
A pilot program in Sarasota County will provide scholarships for students with disabilities who have failed to meet specific performance levels identified in the student's IEP. The parents may apply for a scholarship regardless of the grade of the school their child attends. Student participation is limited in the first year to 5% of students with disabilities, in the second year to 10% of students with disabilities, and in the third year and subsequent years to 20% of students with disabilities in the school district.

Opportunity Scholarships (s. 229.0537, F.S.)
A school district must offer the parents of a student assigned to a failing school the opportunity to attend a public school with a performance grade of "C" or higher. The ability to attend a higher performing public school will remain in effect until the student graduates from high school. School districts are responsible for transportation costs of students whose parents or guardians choose to enroll their child in a higher performing public school within the district. The district may use state categorical transportation funds for this purpose. If a parent or guardian of an eligible child chooses to enroll and transport the student to a higher performing public school that has available space in an adjacent school district, that adjacent district must accept and report the student for purposes of funding in the FEFP.

Opportunity Scholarships for attendance at a private school will be available to all students enrolled in failing schools, to students enrolled elsewhere in the public school system who are assigned to a failing school, and to those entering kindergarten or first grade who are assigned to a failing school. The scholarship will be available until the student leaves the private school or until the student reaches eighth grade in a school where the highest grade is grade eight; then, if the student's assigned public high school is grade "C" or higher, the scholarship is discontinued.

The Opportunity Scholarship program will be available in 1999-2000 for any of the four schools that have been failing for the previous 2 years, if 40 percent of their students score below level 2 on FCAT.

The maximum opportunity scholarship granted is equivalent to the cost of the program that would have been provided for the student in the public school to which he or she is assigned. Payment must be by individual warrant made payable to the student's parent or guardian and mailed by DOE to the private school of the parent's or guardian's choice, and the parent or guardian must restrictively endorse the warrant to the private school. The school must accept the opportunity scholarship amount provided by the state as full tuition and fees for each student.

A private school must accept Opportunity Scholarship students at random without regard to the student's past academic history. To expel a scholarship student, a private school must adhere to its published discipline procedures. The private school must furnish a school profile which includes student performance. Teachers at a participating private school must have a baccalaureate degree, or 3 years teaching experience, or special skills. The school must demonstrate fiscal soundness by being in operation for one school year or by providing evidence of fiscal soundness specified in the bill.

A private school participating in the scholarship program must comply with federal antidiscrimination laws and meet state and local health and safety laws and codes. The school must be subject to the instruction, curriculum, and attendance criteria adopted by an appropriate nonpublic school accrediting body and be academically accountable to the parent or guardian as meeting the educational needs of the student. The private school must agree not to compel a scholarship student to profess an ideological belief, to worship, or to pray.

The student must remain in attendance throughout the school year, unless excused by the school for illness or good cause and must comply fully with the school's code of conduct. The student's parent or guardian must comply fully with the private school's parental involvement requirements and must ensure that the student takes all required statewide assessments. The student may take the statewide assessments at a location and time provided by the school district.

Performance of Teachers and Administrators (ch. 231, F.S., & s. 240.529, F.S.)
Colleges of Education in the State University System must have the same core curriculum beginning in 2003. Instructional personnel must be proficient with technology-based instruction and must demonstrate pedagogical knowledge of technology for certification. Students in teacher preparation programs will not be able to exempt the College Level Academic Skills Test (CLAST) under any condition, and an alternative to CLAST is deleted from the requirements for professional certification.

The State Board of Education must approve criteria for selection of assistant principals and principals, and authorize school districts to contract with private entities for assessment, evaluation, and training. Principals will be responsible for performance of school personnel and must apply a personnel assessment system approved by the school board.

The state board rules must allow professional educators to add areas of certification to a professional certificate without completing associated course requirements if the certificate holder attains a passing score on an examination of competency in the subject area to be added and provides evidence of at least 2 years of satisfactory evaluations that considered performance. Teachers who have specific subject area expertise but who have not completed a standard teacher preparation program may participate in an alternative certification program for a professional certificate.

School administrators are added to personnel subject to the assessment procedure. Performance of students will be a required assessment indicator for teachers and administrators. The ability to communicate with parents is emphasized. A statewide system of professional development is established to provide inservice training to teachers and administrators, designed to upgrade skills and knowledge needed to increase standards in education.

The State Board of Education must adopt rules so that not-for-profit teachers' associations, under certain conditions, enjoy equal access to voluntary teacher meetings and teacher mailboxes, and may collect membership fees through payroll deduction.

Safety and Discipline (ss. 230.2316, 232.001, 232.17, 232.19, 232.271, 236.081, & 984.151, F.S.)

School improvement plans must include specific school safety and discipline strategies. Superintendents are responsible for enforcing attendance, including making recommendations to the school board. School board policies must require that absences have parental justification, and provide for tracking of absences. The bill revises court procedures and penalties for habitual truancy cases. The superintendent may file a truancy or children-in-need-of-services petition for a habitual truant.

Beginning in the 1999-2000 school year, an average daily attendance factor will be computed by dividing the total daily attendance for all students by the total student membership; this figure is then divided by the number of days in the regular school year (180 days). Beginning in the 2001-2002 school year, the district's FTE membership will be adjusted by multiplying by the average daily attendance factor.

Parents must be notified prior to a student's placement in a dropout prevention or academic intervention program. A school district may not identify a student for the

dropout prevention or academic intervention programs based solely on the student's being from a single parent family.

Beginning July 1, 1999, Manatee County must implement a pilot project to raise the compulsory age of attendance from 16 to 18. The bill requires a study of the district's policy on school attendance, the dropout rate, and cost.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 25-15; House 70-48

HB 765 — Postsecondary Education

by Rep. Lynn and others (SB 664 by Senators Sullivan and Jones)

This bill creates the site-determined baccalaureate degree access program. The program encourages community colleges to bring 4-year institutions to their campuses to deliver baccalaureate programs that meet locally-identified academic and economic development needs. Each participating community college will receive state funds to initiate a baccalaureate degree access program approved by the Postsecondary Education Planning Commission (PEPC). A community college may select any regionally accredited, Florida-based public or private postsecondary institution as its partner, but must first ask at least 3 regionally accredited institutions, including at least one member of the State University System, to participate. The community college will distribute funds to the participating 4-year institution, but may not use the funds to build, renovate, or remodel facilities. The participating 4-year institution must not charge in-state students more than the State University System's (SUS) matriculation fee, unless the approved agreement permits differentiated tuition and fees to encourage attendance and participation. Since tuition is limited to the SUS matriculation fee, students may not receive Florida Resident Access Grants to attend the program. Out-of-state students will pay full costs. PEPC will establish procedures for submitting and approving agreements. The procedures must allow site-based baccalaureate degree programs to be initiated at least three times each fiscal year. Before approving a community college's proposal, PEPC must solicit input from the Board of Regents and the State Board of Community Colleges. PEPC will recommend funding distributions; monitor progress; submit progress reports to the Legislature after the second and fourth year; and evaluate each program after four years. This is a voluntary program; non-participating colleges may continue making independent arrangements for the delivery of baccalaureate degree programs on their campuses. The General Appropriations Act for FY 1999-2000 provides $2 million for this program.

The bill does not allow a community college to offer baccalaureate degrees. A community college board of trustees may ask PEPC to evaluate the college's ability to offer an approved degree program if no 4-year institution will offer it at the community college.

PEPC may recommend that the Legislature enact statutory authority for the college to offer specific baccalaureate degree programs.

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 40-0; House 115-0.

SB 1288 — Postsecondary Education

by Senator Horne

This bill contains some of the provisions of three measures that had been moving independently: the authority of the community college system to market products related to distance learning, fees for continuing workforce education, and student fees for postsecondary education students at school districts and community colleges.

Marketing Distance Learning Products
Amends s. 240.311, F.S.
The bill authorizes the State Board of Community Colleges to develop, own, and market distance learning products through a not-for-profit corporation. The board may trademark, copyright, or patent these products but must make them "readily available for appropriate use in the state system of education." The board may assess a fee for the products to be used by the state education system, but no more than the cost of producing and disseminating them. It may sell copies of the products to nonpublic schools and the public. The proceeds of sales to nonpublic entities will not be limited to cost.

Student Fees
(Amends ss. 239.117, 240.319, and 240.35, F.S.)
The bill includes the following provisions:

- Provides specific authority for community colleges and school districts to assess student fees currently established in rule.

- Authorizes but does not require community colleges to charge a fee of up to 5 percent of tuition[1] for improvements in safety and security. The college must justify the fee with safety statistics and must spend it on improvements in campus security.

- Authorizes but does not require a technology fee of up to $1.80 per credit hour for resident students and $5.40 per credit hour for nonresident students. The technology fee may be assessed only for associate degree programs and courses.

[1]The word "tuition" is used with its plain meaning, the basic charge for enrollment, rather than its statutory meaning.

- Authorizes community colleges to pledge 50 percent of revenues from the technology fee as a dedicated revenue source for the repayment of debt, including lease-purchase, and to combine the technology fee revenue with others currently allowed to be dedicated. Technology fee revenue may not be bonded.

- Prohibits a community college from raising 1999-2000 fees more than 5 percent above the fees charged for tuition and safety in the previous year. The only case in which a college may assess the maximum allowed for both the technology fee and the safety fee is if it already charged a safety and security fee of at least 5 percent of tuition in 1998-1999.

- Authorizes school districts and community colleges to determine what fees will be charged for continuing workforce education, so long as at least 50 percent of the cost of the program is derived from fees.

If approved by the Governor, these provisions take effect July 1, 1999
Vote: Senate 34-0; House 115-0

CS/SB 1664 — Criminal Justice Training School Transfer

by Education Committee and Senator Horne

This bill creates a new law to transfer two programs from school districts to community colleges. The programs are for criminal justice training in Leon and St. Johns counties: the Pat Thomas Center at Tallahassee Community College and the Criminal Justice Academy at St. Johns River Community College.

The bill transfers real property owned by the school district to the community college. The transfer will be by lease if any part of the property is paid for by local tax dollars and by multi-use agreement if any part of the facility is used for other purposes in addition to public criminal justice training. The Department of Education is directed to analyze the value of property paid for by local taxes and to use the analysis to establish a purchase price. In 2000, each community college may request state funds to purchase the property paid for by local funds.

For the 1999-2000 school year, the school district will receive 15 percent of the funding generated by the program in 1996-1997 and the community college will receive 90 percent of the funding generated in that year.

The bill takes effect upon becoming a law.
Vote: Senate 39-0; House 58-56.

SB 1794 — Student Fees - Postsecondary Remediation

by Senators Kirkpatrick, Mitchell and Meek

This bill amends ss. 239.117, 239.301, and 240.117, F.S., to increase from once to twice the number of times state funding will support a student who repeats a remedial college-preparatory course. On the third attempt, a student will be required to pay the full cost, unless the university or community college has adopted a policy to reduce the fee penalty for a student with financial hardship.

If approved by the Governor, this act takes effect July 1, 1999, with first application in Fall of 1999.
Vote: Senate 38-0; House 103-11

CS/HB 1837 — Child Passenger Restraints

by Judiciary Committee and Reps. Bilirakis, Cantens and others (CS/SB 334 by Judiciary Committee and Senators Sebesta and Lee)

This bill amends s. 316.614, F.S., the Florida Safety Belt Law, to allow law enforcement to stop and detain a driver for a violation of the child restraint laws in s. 316.613, F.S.

The bill requires all school buses purchased after December 31, 2000, and used to transport students in grades pre-K through 12 to be equipped with safety belts or any other federally approved restraint system. A school bus purchased prior to December 31, 2000, is not required to be equipped with safety belts. The bill provides an exemption for certain other vehicles. The bill also provides the circumstances under which certain parties are not liable for personal injuries to school bus passengers. Neither the state, the county, a school district, a school bus operator under contract with a school district, nor an agent or employee of a school district or operator (including a teacher or volunteer serving as a chaperone) is liable for: an injury solely caused by a passenger's failure to wear a safety belt; or an injury caused solely by another passenger's use or non-use of a safety belt or restraint system in a dangerous or unsafe manner.

Passengers on certain school buses must properly wear safety equipment at all times the bus is in operation. Elementary schools are to receive first priority in the allocation of school buses equipped with seat belts or restraint systems.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 112-4

CS/SB 1848 — Educational Facilities

by Committee on Governmental Oversight & Productivity and Senator Clary

This bill re-allocates funds appropriated by section 46 of chapter 97-384, Laws of Florida, contingent upon the sale of School Capital Outlay Bonds, by designating $300 million for Effort Index Grants; thereby increasing the amount available for School Infrastructure Thrift (SIT) awards by $100 million. The bill allocates Effort Index Grants to the four school districts previously deemed eligible by the SMART Schools Clearinghouse ($7,442,890 to Clay; $62,755,920 to Dade; $1,628,590 to Hendry; and $414,950 to Madison). The same formula applied to the Classrooms First Program will be used to distribute the remainder of the $300 million among school districts that have exercised certain local efforts to meet capital outlay needs. A district will receive an Effort Index Grant if the district: (1) Received proceeds from either the one-half cent sales surtax for public school capital outlay or the local government infrastructure sales surtax between July 1, 1995 and June 30, 1999; or, (2) Met two of the following: (a) levied the full 2 mills nonvoted, discretionary capital outlay each year during fiscal years 1995-1996 through 1998-1999; (b) levied a cumulative voted millage for capital outlay equal to 2.5 mills for fiscal years 1995-1996 through 1998-1999; (c) received proceeds from school impact fees greater than $500.00 per dwelling unit which were in effect on July 1, 1998; or (d) received proceeds from the one-half cent sales surtax for public school capital outlay or the local government infrastructure sales surtax. A district must pledge its Effort Index allocations to pay debt service on School Capital Outlay Bonds unless the school board certifies to the Commissioner of Education that it has no unmet needs for permanent classrooms. A district school board may not pledge its Effort Index Grant allocation until the district has encumbered any bond proceeds from the Classrooms First Program. Bond proceeds generated by the pledge of Effort Index Grants must be spent first to provide permanent classrooms and related auxiliary facilities. However, if more than 9 percent of a district's total square footage is over 50 years old, the district must spend 25 percent of its Effort Index Grant for the renovation, major repair, or remodeling of existing schools. That expenditure requirement does not apply to districts with fewer than 10,000 full-time equivalent students.

The bill phases out the SIT award for savings realized through the operation of charter schools in non-district facilities. That SIT award may be earned only for savings realized during the 1996-1997 through 1999-2000 school years. After that, districts may earn SIT awards only for frugally and functionally constructed schools. The Department of Education (DOE), rather than the SMART Schools Clearinghouse, must assist districts in building functional, frugal schools. The DOE must review and validate each school district's and community college's educational plant survey, rather than doing so only when required by the Constitution. An appropriate licensed design professional, rather than a structural engineer, may review plans of rented, leased, or lease-purchased facilities for compliance with building and life-safety codes. The bill gives school districts and

community colleges more flexibility in the use of operable glazing (i.e., windows) and requires radon testing only in geographic areas where radon is an environmental issue. When planning and constructing educational, auxiliary, or ancillary facilities, district school boards must use construction materials and systems that meet standards adopted by DOE. If the board plans to deviate from the adopted standards, the board must, at a public meeting, explain the proposed deviation and compare total construction and projected life-cycle costs if the proposed deviation is applied rather than meeting adopted standards. The bill repeals the 1998-99 SMART Schools Small County Assistance Program, a one-time funding program which has been allocated among eligible districts.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

CS/CS/SB 1924 — Postsecondary Education

by the Governmental Oversight & Productivity Committee; Education Committee; and Senators Grant, Dyer, Laurent, Holzendorf and Horne

This bill is an omnibus higher education act, meaning that it amends a number of sections of the Florida Statutes related only because they deal with higher education policy. It includes the following provisions:

Section 1.
Authorizes participation in the optional retirement program for all employees of the State University System who are classified as Administrative and Professional. *Amends s. 121.3, F.S.*

Sections 2, 5, and 6.
Makes retroactive to May 5, 1997, postsecondary education fee exemptions for the 429 children who were adopted from the Department of Children and Families between that date and December 31, 1997. *Amends ss. 239.117, 240.235, and 240.35, F.S.*

Section 3.
Authorizes a state university to use up to 25 percent of the funds in the Concurrency Trust Fund to update the campus master plan, but no more than once every 5 years. *Amends s. 240.156, F.S.*

Section 4.
Requires the Board of Regents to approve naming a school, college, or center for a living person. *Amends s. 240.209, F.S.*

Section 5.
Requires students enrolled in Programs in Medical Sciences (PIMS) to pay graduate-level fees. *Amends s. 240.35, F.S.*

Section 7.
Defines the term "continuing contract" to increase a university president's contracting authority under the Consultants' Competitive Negotiation Act. A president may contract for $1 million in construction and for $100,000 for studies, compared to the current limits of $500,000 and $25,000. *Amends s. 240.227, F.S.*

Section 8.
Requires an appeals process for undergraduate applicants to a university who are denied admission because of high school grades. *Amends s. 240.233, F.S.*

Section 9.
Adds to the membership of the Council of Student Financial Aid Advisors the Chancellor of the Board of Regents, the Executive Director of the Division of Community Colleges, the Executive Director of the Independent Colleges and Universities of Florida, and the Executive Director of the Florida Association of Postsecondary Schools and Colleges. These ex officio members may have designees. *Amends s. 240.421, F.S.*

Section 10.
Requires the Board of Regents to conduct a program administration process rather than a program review process for the expenditure of funds received from the Brain and Spinal Cord Injury Rehabilitation Trust Fund by the University of Miami and the University of Florida. Deletes authority to expend $10,000 on the process. *Amends s. 413.613, F.S.*

Section 11.
Provides that a person is not required to register as an engineer "for the sole purpose of teaching the principles and methods of engineering design." Teachers of engineering courses that include any other topics must still be registered engineers. *Creates a new section of law.*

Section 12.
Repeals the Women's Athletics Trust Fund, which is inactive. *Repeals s. 240.5335, F.S.*

Section 13.
Reinstates the terms of office of members of the Board of Regents to 6 years. *Amends s. 240.207, F.S.*

Section 14.
Appropriates $200,000 from the General Revenue Fund for the University of Miami, School of Medicine, Office of Minority Affairs. These funds have been provided annually in the General Appropriations Act for 15 years to provide recruitment and retention assistance for minority students in medical school. The students are predominately African-American. *Creates a new section of law.*

Section 15.
Requires the Florida Department of Environmental Protection and the Florida State University to conduct a study of the feasibility of creating the Florida Geoscience Center in Tallahassee and to present findings and recommendations to the Legislature and Governor. *Creates a new section of law.*

Sections 16, 17, 18.
Authorizes nonpublic institutions for higher education to take out loans and to issue bonds based on loans in anticipation of tuition revenues. Revenues from the Florida Resident Access Grant are not considered tuition revenues for this purpose. *Amends ss. 243.19, 243.20, 243.22., F.S.*

Section 19.
Provides an effective date upon becoming a law.
Vote: Senate 39-0; House 113-5

SB 1984 — Florida College Savings Program

by Senators Dyer, Horne, Lee and Clary

This bill establishes the Florida College Savings Program to be operated by the Florida Prepaid College Board. The program is designed to meet the requirements of 26 USCS sec. 529 of the Internal Revenue Code, established by the 1996 Congress (P.L. 104-188). By establishing this qualified state tuition program, Florida will authorize tax deductible investments to pay for the cost of higher education for a designated beneficiary. When they are used, the contributions will be taxed at the beneficiary's income tax rate. Unlike the Prepaid College Program, no guarantee of tuition is provided, and each account is maintained separately so that its actual earnings or losses are reflected in the amount available to pay the expenses of higher education. The bill differs from the Prepaid College Program in the following ways:

- The state guarantees to cover the increase in fees if the funds in the Prepaid Program are not sufficient, but the College Savings Program does not include any guarantees.

- A qualified beneficiary in the Prepaid College Program must be a Florida resident, must be less than 21 years of age, and must not complete the eleventh grade prior to

the purchase of the advance payment contract. None of these requirements applies to a beneficiary of the College Savings Program.

- A qualified beneficiary of the Prepaid College Program may pursue only an undergraduate education, while a qualified beneficiary of the College Savings Program may use the funds for graduate school if they are sufficient.

- A qualified beneficiary of the Prepaid College Program must attend a state postsecondary education institution except under limited conditions, while a qualified beneficiary of the proposed College Savings Program may attend any institution.

- The balance of an account that is terminated under the existing Prepaid Program is reverted to the Florida Prepaid College Board, while the balance of an account that is terminated under the proposed College Savings Program is declared unclaimed and abandoned property as defined in ch. 717, F.S.

All transactions of the program will be open to the public. A separate bill, SB 1980, contained an exemption from public records laws for the identities of donors and beneficiaries and their contribution records, but that provision was not included in the bill that was substituted for SB 1980 and passed (HB 2121).

This bill creates s. 240.553, F.S. and amends ss. 222.22 and 732.402, F.S. It takes effect upon becoming a law.
Vote: Senate 38-0; House 116-0.

CS/HB 2147 — Charter Schools

by Education Innovation Committee and Reps. Tullis, Melvin and others (CS/SB 2434 by Education Committee and Senators Kirkpatrick, Horne, and King; CS/SB 1066 by Education Committee and Senator Sullivan; and CS/SB 1880 by Education Committee and Senator Jones)

This bill revises the charter school law (s. 228.056, F.S.). It requires each school board to accept charter school applications until at least November 15, rather than February 1, of the year before a proposed charter school would open. Each school board must permit students to transfer between districts to attend charter schools and must report the number of students applying for and attending the district's public schools of choice. The bill requires each application and charter to more specifically document the competencies of the individuals or organizations who will operate the charter school and to specify how students' baseline and annual academic achievement will be measured and compared with similar student populations. Before a charter is approved, members of a charter school's governing board must be fingerprinted and undergo a background check. The bill permits long-term charters in three instances. Charter schools operated by municipalities or other

public entities may be chartered for up to 15 years; those operated by private, not-for-profit corporations may be chartered for up to 10 years; and those demonstrating exemplary academic performance and fiscal management may be granted a 15-year charter upon renewal. Each charter remains subject to current provisions which require annual reviews and permit non-renewal or immediate termination for certain violations or non-performance. A district school board may grant a single charter for a municipality to operate a feeder pattern of charter elementary, middle and high schools. The municipality must submit separate applications for each proposed charter school. The bill prohibits charter schools from knowingly employing individuals who were dismissed for just cause by any school district or who resigned from a school district to avoid disciplinary action if the dismissal or disciplinary action was related to child welfare or safety. To codify a recently enacted federal law, the bill requires each school district to distribute federal funds to its charter schools within five months after the schools open or experience enrollment increases. The Department of Education must regularly convene a 9-member Charter School Review Panel. The Senate President, the Speaker of the House, and the Commissioner of Education will appoint two panel members each. The Governor will appoint three members and designate the chair from the panel's membership. The panel must review charter school issues and recommend improvements to the Legislature, the Commissioner of Education, school districts and charter schools.

The bill revises s. 228.0561 and 235.432, F.S., to delete authority to use Public Education Capital Outlay (PECO) funds for charter school capital outlay purposes. Bonded PECO funds could not be legally used for charter schools' primary capital needs (e.g., renting, leasing, or maintaining facilities or buying vehicles to transport students). To conform with this change, the bill deletes district school boards' authority to share PECO funds with charter schools; deletes the mandatory reduction in a charter school's PECO allocation when such sharing occurs; requires deposits in the General Revenue Fund rather than the PECO Trust Fund when state funds are recovered from a lien against properties improved with state funds prior to the termination of a charter school; and deletes an obsolete reference to the FY 1998-1999 PECO appropriation for charter school capital outlay. The bill retains the same allocation formula that applied to PECO distributions. If state funds are appropriated for charter school capital outlay, each eligible charter school will receive an amount equal to one-thirtieth of the maximum cost per student station for each student or a prorated share if the appropriation does not fully fund this formula. Charter schools will no longer have to operate for a least two years before receiving capital outlay funds. They must still have final approval to operate during the fiscal year and serve students in non-district facilities. The bill deletes provisions which required a lien on property improved with charter school capital outlay funds. Before releasing charter school capital outlay funds, the Department of Education must ensure that the district school board and charter school have agreed in writing that unencumbered funds and all equipment and property purchased with charter school capital outlay funds will revert to district ownership if the charter school stops operating. The bill also specifies

that any loans, bonds or other financial agreements involving charter schools are not obligations of the state or the school district. These financial arrangements must indemnify the state or school district from any and all liability. The credit or taxing power of the state or the school district must not be pledged and no debts of a charter school may be paid out of any funds except those belonging to the legal entity chartered to operate the charter school.

The bill also creates a pilot program for charter school districts. The State Board of Education may authorize charter school districts by entering into 3-year, renewable performance contracts with up to six school districts. Participation is voluntary and must be requested by the district school board. The state board must accept applications until October 30, 1999, and may approve pre-charter agreements with potential charter school districts. When approving charter school districts, the state board must give priority consideration to the Hillsborough and Volusia county school districts. Charter school districts, like charter schools, are exempt from the statutes of the Florida School Code and related administrative rules, except those relating to civil rights and student health, safety, and welfare. This exemption does not extend to statutes governing the election of school board members, public meetings, public records, financial disclosure, conflicts of interest, or other statutes outside the Florida School Code. The school board of a charter school district may charter each of its existing schools, request deregulation of its public schools under s. 228.0565, or establish performance-based contracts with its public schools. The state board must submit annual progress reports and, after the first 3-year term, provide the Legislature a full evaluation of the effectiveness of this pilot program.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 86-28.

CS/SB 2186 — Public Schools/Deregulated

by Education Committee and Senator Sullivan

The bill amends s. 228.0565, F.S., to extend the pilot program for deregulated public schools through the 2003-2004 school year. In addition to the six school boards that are conducting programs--Palm Beach, Pinellas, Seminole, Leon, Walton, and Citrus-- the bill authorizes Lee County Public Schools to conduct a pilot program as well. A district school board will be able to receive and review proposals for deregulated schools at any time, not just during July and August.

A deregulated public school is authorized to request a waiver from, and the commissioner is authorized to waive, the certification requirements of chapter 231, F.S. The purpose of the waiver is to facilitate innovative practices and to allow local school selection of educational methods.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 115-1

Senate Committee on Ethics and Elections

ELECTIONS

SB 754 — Ballot Access

by Ethics & Elections Committee; and Senators Carlton, Meek, Hargrett, Sebesta, Kirkpatrick and Rossin

This bill implements the amendment to s. 1, Art. VI, State Constitution, which provides that the ballot access requirements for minor party candidates and candidates with no party affiliation can be no greater than the requirements for a candidate of the political party having the largest number of registered voters.

The bill provides that minor party candidates nominated by their political party and candidates with no party affiliation may *either* pay the qualifying fee or petition to obtain general election ballot position. The qualifying fee for candidates with no party affiliation is equal to four percent of the annual salary of the office sought. The qualifying fee for a minor party candidate is equal to four percent of the annual salary, plus a two percent party assessment, if one has been levied by the minor party.

The petition requirements for all candidates, including major party candidates, have been modified to require petitions equal to one percent of the registered voters in the jurisdiction of the office sought. Any registered voter within the jurisdiction of the office will be allowed to sign the petition, regardless of party affiliation. The provision allowing a minor political party to obtain ballot position for all of its statewide candidates with one petition has been eliminated.

A minor political party affiliated with a national party holding a national convention may have the names of its candidates for the office of President and Vice President printed on the general election ballot upon notification to the Department of State of the names of its nominees and the names of the presidential electors.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 114-0

SB 756 — Nonpartisan School Boards

by Ethics & Elections Committee; and Senators Saunders, Carlton, Meek, Hargrett, Sebesta, Kirkpatrick and Rossin

Senate Bill 756 implements the amendment to s. 4(a), Art. IX, State Constitution, which requires all school board members to be elected in a nonpartisan election.

Chapter 105, Florida Statutes, is amended to apply to both judicial candidates and candidates for school board. Under these provisions, school board candidates will qualify by paying a qualifying fee or by petition. Candidates who use the petition method of qualifying will not be required to state that the filing fee imposes an undue burden on their personal resources or on resources otherwise available to them.

The names of qualified candidates for the office of school board will appear on the first primary election ballot. If no candidate receives a majority of the votes in the first primary election, the two candidates with the highest number of votes will have their names printed on the general election ballot.

The filing fees for candidates for judicial office and candidates for school board member will be deposited in the Elections Commission Trust Fund.

The bill requires each candidate for judicial office to file a statement indicating that the candidate has read and understands the requirements of the Code of Judicial Conduct. In addition, the penalty for a judicial candidate who violates the limitations on political activity as set forth in s. 105.071, F.S., is reduced from a first degree misdemeanor to a civil fine up to $1,000, to be determined by the Florida Elections Commission.

If approved by the Governor, these provisions take effect January 1, 2000.
Vote: Senate 39-0; House 117-1

CS/SB 752 — Lieutenant Governor Designation

by Ethics & Elections Committee; and Senators Saunders, Carlton, Meek, Hargrett, Sebesta, Kirkpatrick, Rossin and Klein

This bill (Chapter 99-140, L.O.F.) implements the amendment to s. 5(a), Art. IV, State Constitution, which allows a candidate for the office of Governor to run without a Lieutenant Governor running mate during the primary elections.

The bill allows a candidate for Governor to wait until after the second primary election to designate a Lieutenant Governor running mate. This will allow a gubernatorial candidate to consider as a running mate, candidates who have been eliminated in the primary elections. The bill requires the gubernatorial candidate to designate a Lieutenant

Governor running mate no later than the sixth day following the second primary election. Failure of the Lieutenant Governor candidate to be designated and qualified by this time will result in the forfeiture of ballot position by the gubernatorial candidate.

If the Lieutenant Governor candidate is designated and has qualified during the regular qualifying period in July, both the name of the candidate for Governor and the name of the candidate for Lieutenant Governor will appear on the primary election ballots. However, if the Lieutenant Governor candidate is not designated and qualified by the end of the regular qualifying period in July, the phrase "Not Yet Designated" will appear in lieu of the Lieutenant Governor candidate's name on the primary and advance general election ballots. Candidates for Lieutenant Governor will not be required to pay a separate qualifying fee or obtain signatures on petitions.

These provisions were approved by the Governor and take effect January 1, 2000.
Vote: Senate 39-0; House 114-1

HB 281 — Election Protests and Contests

by Rep. Detert and others (CS/SB 822 by Ethics & Elections Committee; and Senator Carlton)

This bill streamlines the procedures for protesting and contesting the results of an election. The bill revises the time frames for filing an election protest, a request for a manual recount, and an election contest, to make the tolling of the time contingent upon when the results of the election are certified rather than when the canvassing board adjourns.

The bill eliminates the procedure by which protests of election returns are brought in circuit court and merges the broader provisions of this form of action into the provision providing for election contests. To that end, the bill specifies that a contestant is entitled to an immediate hearing and it authorizes the circuit judge to fashion any orders necessary to investigate, examine, or check each allegation and to prevent or correct any wrong. The bill specifies the grounds for contesting an election and specifies conditions under which a statement of the grounds of a contest may not be rejected or dismissed for want of form.

The bill codifies that jurisdiction to hear a contest of the election of a member to either house of the Legislature is vested in the applicable house in accordance with its rules.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 117-0

Senate Committee on Fiscal Policy

SB 2502 — Appropriations Implementing

by Fiscal Policy Committee

This bill provides additional and more detailed instructions to agencies of government for which funds have been appropriated so that those agencies will be better able to carry out and to implement the intentions of the legislature which have been manifested in the General Appropriations Act.

This bill amends the following sections of the Florida Statutes: 394.908, 409.9115, 409.9116, 216.181, 402.3015, 39.3065, 409.912, 287.084, 212.20, 403.7095, 110.1239, 373.59, 259.032, 110.205, 287.161, 403.1826, 110.12315, 15.09, 253.034, 334.0445, 240.3341, 240.2605, and 235.014.

Section 1. Legislative intent.

Section 2. Administers funds to the Department of Children and Family Services, which are to be used to increase the adult mental health equity funding in districts 4, 7, and 11. (Implements Specific Appropriation 345 through 356 of the 1999-2000 General Appropriations Act.)

Section 3. Continue the current mental health disproportionate share formula. (Implements Specific Appropriation 268 of the 1999-2000 General Appropriations Act, and amends s. 409.9115(3), F.S., 1998 Supp.)

Section 4. Requires the Agency for Health Care Administration to use the 1992-1993 disproportionate share formula, 1989 audited financial data, and the Medicaid per diem rate as of January 1, 1992, for those hospitals that qualify for the hospital disproportionate share program. (Implements Specific Appropriation 243 of the 1999-2000 General Appropriations Act.)

Section 5. Continues the current formula for rural hospital disproportionate share payments. (Implements Specific Appropriation 236 of the 1999-2000 General Appropriations Act, s. 409.9116 (6), F.S., 1998 Supp.)

Section 6. Authorizes the Department of Children and Family Services and the Department of Health to advance money to contract providers. (Implements Specific Appropriations 292 through 425, and 445 through 540 of the 1999-2000 General Appropriations Act, and amends s. 216.181 (15)(c), F.S., 1998 Supp.)

Section 7. Requires the Agency for Health Care Administration to include health maintenance organization recipients in the county billing for inpatient hospital stays. (Implements Specific Appropriation 243 of the 1999-2000 General Appropriations Act.)

Section 8. Allows the Departments of Children and Family Services, Revenue, Labor and Employment Security, Health and the Agency for Health Care Administration to transfer positions and general revenue funds as necessary to comply with any provision of the 1999-2000 General Appropriations Act or WAGES Act which requires or specifically authorizes the transfer of positions and general revenue funds between these agencies.

Section 9. Expands eligibility for subsidized child care to children up to 200 percent of poverty who are enrolled in the Child Care Executive Partnership Program. (Implements Specific Appropriation 372 of the 1999-2000 General Appropriations Act, and amends s. 402.3015, F.S.)

Section 10. Authorizes the Department of Children and Family Services to use operating funds from developmental services institutions for fixed capital improvements necessary to bring unlicensed beds up to federal ICF/DD standards. (Implements Specific Appropriations 420 through 425 of the 1999-2000 General Appropriations Act, and amends s. 216.181(16), F.S., 1998 Supp.)

Section 11. Requires the Agency for Health Care Administration to take any necessary lawfully authorized action to ensure that total expenditures for Medicaid transportation remain within the amount budgeted in the 1999-2000 General Appropriations Act. (Implements Specific Appropriation 255 of the 1999-2000 General Appropriations Act.)

Section 12. Amends s. 39.3065, F.S., to require the Broward, Pasco, Manatee, and Pinellas County Sheriffs to conduct all child protective investigations in those counties. (Implements Specific Appropriations 359E of the 1999-2000 General Appropriations Act, and amends s. 39.3065, F.S., 1998 Supp.)

Section 13. Establishes guidelines for all contracted Healthy Family Florida service providers. (Implements Specific Appropriations 363B of the 1999-2000 General Appropriations Act.)

Section 14. Until March 1, 2000, exempts from HMO licensure requirements, federally qualified health center or owned by one or more federally qualified health centers or an entity owned by other migrant and community health centers receiving non-Medicaid financial support from the federal government. (Implements Specific Appropriations 260, of the 1999-2000 General Appropriations Act, and amends s. 409.912(3)(c), F.S.)

Section 15. Amends s. 409.912, F.S. to require Agency for Health Care Administration to develop prescription practice pattern guidelines, sanction abusers, educate patients and providers, and detect fraud. (Implements Specific Appropriations 261 of the 1999-2000 General Appropriations Act, and amends s. 409.912(13), F.S.)

Section 16. Gives consideration to in-state vendors for RFP for telemedicine pilot in Glades School District. (Implements Specific Appropriation 490 of the 1999-2000 General Appropriations Act and amends s. 287.084(3), F.S.)

Section 17. Requires a study for removal of outpatient reimbursement and individual provider reimbursement caps for teaching and specialty hospitals. A report, considering all direct ancillary costs associated with out-patient services, is to be submitted to the President of the Senate and Speaker of the House of Representatives no later than September 1, 1999. (Implements Specific Appropriation 243 of the 1999-2000 General Appropriations Act.)

Section 18. Clarifies definition of billing agent services; requires Agency for Health Care Administration to develop a cost-based reimbursement schedule for school-based Medicaid services . (Implements Specific Appropriation 276 of the 1999-2000 General Appropriations Act and amends s. 409.971, F.S.)

Section 19. Allows for implementation of specific appropriations for the Florida Department of Law Enforcement for the 1999-2000 General Appropriations Act. (Implements Specific Appropriation 973, 982, 987, and 993 of the 1999-2000 General Appropriations Act, s. 216.181, (17), F.S., 1998 Supp.)

Section 20. Allows the Department of Law Enforcement to transfer up to 0.5 percent of certain appropriations to provide meritorious performance bonuses for employees, subject to approval. (Implements Specific Appropriations 973, 982, 987, and 993 of the 1999-2000 General Appropriations Act.)

Section 21. Authorizes the Correctional Privatization Commission and the Department of Juvenile Justice to make expenditures to defray costs incurred by a municipality or county for privatized facilities. (Implements Specific Appropriation 573, of the 1999-2000 General Appropriations Act.)

Section 22. Allows for the transfer of $15.5 million for surface water improvement and management projects and $10 million for aquatic weed control. (Implements Specific Appropriation 1185 and 1189 of the 1999-2000 General Appropriations Act and amends s. 212.20 (7), F.S.,)

Section 23. Authorizes counties receiving funds for aquatic weed control as provided by s. 212.20 (7), F.S., to use these funds for recycling purposes. (Implements Specific Appropriation 1274 and 1276, of the 1999-2000 General Appropriations Act.)

Section 24. Provide solid waste and recycling grants (Implements Specific Appropriation 1274 and 1276, of the 1999-2000 General Appropriations Act and amends s. 403.7095(8) & (9), F.S., 1998 Supp.)

Section 25. Requires the Division of State Group Insurance to determine premium level to fully fund the program for 1999-2000. The Governor must include rates in his budget. Increased appropriations are state contribution, i.e. an increase in state premiums. (Implements Specific Appropriation 1535A of the 1999-2000 General Appropriations Act and amends s. 110.1239, F.S., Florida Supp.)

Section 26. Allows the Department of Environmental Protection to release funds to water management district for Surface Water Improvement (SWIM) and water resource planning purposes. Limits such releases until after debt service obligations and payments in lieu of taxes are met. (Implements Specific Appropriation 1205 of the 1999-2000 General Appropriations Act and amends s. 373.59, (17) F.S.)

Section 27. Allows the Administration Commission to approve exemptions from specified personnel, payroll, and benefit rules and laws in order to implement the Florida Financial Management and Information System pilot.

Section 28. Authorizes the appropriation of funds from the Conservation and Recreations Lands (CARL) Trust Fund for outdoor-recreation grants. (Implements Specific Appropriation 1326 of the 1999-2000 General Appropriations Act and amends s. 259.032 (15) F.S.)

Section 29. Repeals the requirement for repayment of a loan from the Pollution Recovery Trust Fund by the Department of Environmental Protection. (Implements Specific Appropriations 1210, 1212, 1222, 1223B and amends s. 86 of Chapter 93-213, Laws of Florida.)

Section 30. Grants select supervisors in the governor's office senior management service retirement benefits and grants all governor office employees benefits comparable to legislative staff. (Implements Specific Appropriation 1656 of the 1999-2000 General Appropriations Act and amends s. 110.205(2), F.S.)

Section 31. Provides parimutuel lab employees with the job protections they would have had if they had not been transferred from Department of Business and Professional

Regulation to the University of Florida. (Implements Specific Appropriation 1617 of the 1999-2000 General Appropriations Act.)

Section 32. Amends s. 287.161, F.S., relating to charges for the executive aircraft pool. Specifies the intent that the pool be operated on a full cost recovery basis, less available funds. (Implements Specific Appropriation 1928 of the 1999-2000 General Appropriations Act and amends s. 287.161 (4) F.S., 1998 Supp.)

Section 33. Allows CARL funds to manage additional state conservation and recreation lands. (Implements Specific Appropriation 1038D, 1038E, 1038F, 1038K, 1038L, 1368A, 1368D, 1370, 1368A, 1379, 1382B, 1382C, 1382D, 1382E, 1383, 1384, and 1379D of the 1999-2000 General Appropriations Act and amends s. 259.032 (11)(b) F.S., 1998 Supp.)

Section 34. Allows the Department of Environmental Protection to waive requirements for local government to accumulate funds needed in the future as a requirement for water pollution control and sewage treatment grants. (Implements Specific Appropriation 1243 of the 1999-2000 General Appropriations Act and amends s. 403.1826 (6) F.S.)

Section 35. Allows the Department of Agriculture and Consumer Services General Inspection Trust Fund to be used for any legal duty of the department. (Implements Specific Appropriation 1038A of the 1999-2000 General Appropriations Act.)
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Section 36. Deeds to the Department of Agriculture and Consumer Services property in Orange County to be sold. Proceeds may be appropriated for Agriculture Regional Office Center in Polk County. (Implements Specific Appropriation 1038A of the 1999-2000 General Appropriations Act.)

Section 37. Increase in state employee health insurance prescription copayment levels. (Implements Specific Appropriation 1535A of the 1999-2000 General Appropriations Act and amends s. 110.12315(4), F.S.)

Section 38. Increase in state employee health insurance premium and copayment levels. (Implements Specific Appropriation 1535A of the 1999-2000 General Appropriations Act.)

Section 39. Authorizes the use of funds in the Public Access Data Systems Trust Fund for Department of State Operations. (Implements Specific Appropriation 1326 of the 1999-2000 General Appropriations Act and amends s. 15.09 (5) F.S.)

Section 40. Allows property owned by Department of Transportation, and used by Highway Safety & Motor Vehicles, to be sold with the proceeds to be deposited in the

State Transportation Trust Fund. (Implements Specific Appropriation 1412-1529 of the 1999-2000 General Appropriations Act and amends s. 253.034 (9) F.S., 1998 Supp.)

Section 41. Extends the Department of Transportation pilot on model career service classification and compensation system. (Implements Specific Appropriation 1412-1529 of the 1999-2000 General Appropriations Act and amends s. 334.0445, F.S.)

Section 42. Relieves the City of Milton of its obligation to repay the Department of Transportation for the relocation of water, gas, and sewer utilities under the agreements between the city and the department. (Implements Specific Appropriation 1509 of the 1999-2000 General Appropriations Act.)

Section 43. Amends s. 216.181, F.S., to allow transfer of salary rate to implement transfer of personnel to the new turnpike headquarters in Orange County. Requires report to Executive Office of the Governor and Legislature. (Implements Specific Appropriation 1412-1529 of the 1999-2000 General Appropriations Act and amends s. 216.181 (17) F.S.)

Section 44. Requires the funds provided in the General Appropriations Act for workforce development be allocated to the school district or community college as designated. (Implements Specific Appropriation 1326 of the 1999-2000 General Appropriations Act.)

Section 45. Military base job retention; limited transportation funding flexibility for the Governor. (Implements Specific Appropriation 1673 of the 1999-2000 General Appropriations Act and amends s. 288.063, F.S.)

Section 46. Allows community colleges to have leased (rather than owned) incubator facilities. (Implements Specific Appropriation 154 of the 1999-2000 General Appropriations Act and amends s. 240.3341, F.S.)

Section 47. Requires the Board of Regents to rank donations for challenge grants, new donations, major gifts and eminent scholars, that qualify for match, limiting match. (Implements Specific Appropriation 8E, 193A, and 195 of the 1999-2000 General Appropriations Act and amends s. 240.2605 (8) F.S.)

Section 48. Requires the Board of Regents to rank facility enhancement challenge grant donations that qualify for match, limiting match. (Implements Specific Appropriation 209A of the 1999-2000 General Appropriations Act.)

Section 49. Allows University of South Florida to use funds for the University of South Florida Engineering III project and the USF Psychology/CSD/Lab Building as match for private funds or USF Foundation funds previously expended for planning/design costs

related to the projects. (Implements Specific Appropriation 1326 of the 1999-2000 General Appropriations Act and amends s. 259.032 (15) F.S.)

Section 50. Permits up to $3,000,000 to be used for updates to 5-year campus master plans.

Section 51. Estimates required for 3-year FCO plan from Board of Regents and Board of Community Colleges. (Implements Specific Appropriation 35, 36, 37, 38, 39, 42, 42A, and 43 of the 1999-2000 General Appropriations Act and amends s. 235.014, F.S., 1998 Supp.)

Section 52. Specifies that no Section shall take effect if the appropriations and proviso to which it relates are vetoed.

Section 53. Provides for a related act to take precedence.

Section 54. Identifies Performance-Base Program Budgeting outcome and output measures and associated standards for education: (Public Schools, Community Colleges, State University System, Workforce Development.)

For the Community College System, performance measures and standards will be used in 1999-2000 for two programs: the Associate of Arts (AA) degree program and the College Preparatory program. The AA degree program provides freshman and sophomore classes that enable transfers to a university primarily, and secondarily, improve job skills. The College Preparatory program provides underprepared students with communication and computation skills so they are prepared to enter college level courses.

For the State University System, performance measures and standards will be used for three programs in 1999-2000: Instruction, Research, and Public Service. The Instruction program transmits knowledge, skills, and competencies that allow eligible individuals to become practicing professionals or to pursue further academic endeavors. The Research program directs research toward solving technical, social, and economic problems facing the state and the nation. The Public Service program applies the expertise of university personnel in solving public problems.

For the Public School System, performance measures and standards will be used for the Pre-Kindergarten program and for Kindergarten through Twelfth Grade programs in 1999-2000. The purpose of the Pre-Kindergarten program is to prepare children for success in school. The purpose of the K-12 program is to provide children and youth with the sound education needed to grow to a satisfying and productive adulthood.

Both community colleges and public schools will be using performance measures and standards in 1999-00 for Workforce Development programs and Adult General Education programs. The purpose of the Workforce Development program is to respond to emerging local and statewide economic development needs. The purpose of the Adult General Education program is to provide the basic skills necessary to attain basic and functional literacy.

Section 55. Identifies performance-Base Program Budgeting outcome and output measures for programs in Health and Human Services: (Agency for Health Care Administration, Department of Children and Family Services, Department of Elderly Affairs).

The Agency for Health Care Administration began performance-based program budgeting in FY 1997-98 and has two programs with performance measures and standards. The Medicaid Health Services Program seeks to ensure that health services are provided to Medicaid eligible pregnant women, children, disabled adults and the elderly. The Health Services Quality Assurance Program seeks to ensure that all Floridians have access to quality health care and services through the licensure and certification of facilities, and in responding to consumer complaints about facilities, services, and practitioners.

The Department of Children and Family Services (formerly the Department of Health and Rehabilitative Services) began performance-based program budgeting in FY 1996-97 with the Alcohol, Drug Abuse and Mental Health Program. The department subsequently brought the majority of their remaining programs on line in FY 1998-99. Their last program, Economic Self-Sufficiency, will come on line in FY 1999-00. The approved programs are: Florida Abuse Hotline Program; Aging and Adult Services Program; People with Mental Health and Substance Abuse Problems Program; Families in Need of Child Care Program; People in Need of Family Safety and Preservation Services Program; People with Developmental Disabilities; Economic Self-Sufficiency Program; Mental Health Institutions Program; and Developmental Services Institutions Program.

The Department of Elder Affairs begins performance-based program budgeting in FY 1999-00. This agency has one program, Service to Elders Program, whose purpose is to assist elders to live in the least restrictive and most appropriate community settings and maintain independence.

Section 56. Identifies Performance-Base Budgeting outcome and output measures and associated standards for programs in Public Safety and Judiciary: (Department of Corrections, Department of Juvenile Justice, Florida Department of Law Enforcement, and the Department of Legal Affairs.)

The Department of Corrections began performance-based program budgeting in FY 1998-99 and has four programs with approved performance measures and standards. The Custody & Control Program seeks to protect the public and provide a safe secure environment for incarcerated offenders and the staff maintaining custody of them. The Community Corrections Program seeks to assist sentenced felony offenders to become productive law-abiding citizens by applying supervision in the community. The Offender Work & Training Program seeks to use the labor of incarcerated offenders to benefit the state, local communities, and victims of crime and provide educational, vocational and life management opportunities to inmates. The Health Services Program seeks to protect the public and maintain a humane environment in correctional institutions for incarcerated offenders.

The Department of Juvenile Justice began performance-based program budgeting in FY 1998-99 and has two programs operational for FY 1999-2000. The Juvenile Detention Program seeks to maintain, develop, and implement a comprehensive range of detention services to protect the community, hold youths accountable, and ensure the appearance of youths for court proceedings. The Juvenile Offender Program seeks to protect the public from juvenile crime by reducing juvenile delinquency through the development and implementation of an effective continuum of services and commitment programs including secure residential programs.

The Department of Law Enforcement began performance-based program budgeting in FY 1996-97. The Criminal Justice Investigations and Forensic Science Program seeks to manage, coordinate and provide investigative, forensic, prevention and protection services and to improve the state's capacity to prevent crime and detect, capture and prosecute criminal suspects. The Criminal Justice Information Program seeks to provide criminal justice information needed to prevent crime, solve cases, recover property and identify and apprehend criminals and to provide statistical analysis information about crime to policy makers and the public. The Criminal Justice Professionalism Program seeks to promote and facilitate the competency and professional conduct of criminal justice officers by providing entry-level and in-service officer training and maintain disciplinary procedures.

The Department of Legal Affairs began performance-based program budgeting in FY 1998-99. This agency has two programs with approved performance measures and standards. The Office of the Attorney General Program seeks to provide civil representation and legal services on behalf of the State of Florida, and to assist crime victims and law enforcement agencies through associated support services. The Statewide Prosecution Program seeks to investigate and prosecute criminal offenses when they have been part of an organized crime conspiracy affecting two or more judicial circuits, including assistance to federal state attorneys and local law enforcement offices in their efforts against organized crime.

Section 57. Identifies Performance-Base program Budgeting outcome and output measures and associated standards for programs in Natural Resources, etc. (Department of Agriculture and Consumer Services, Department of Environmental Protection, and the Department of Transportation.)

Department of Agriculture and Consumer Services - The Legislature adopted four programs for the department to implement performance-based program budgeting beginning in 1999-00. The Food Safety and Quality Program seeks to ensure the safety, wholesomeness, quality and accurate labeling of food products. The Consumer Protection Program aims to protect consumers from deceptive and unfair business and trade practices and services. The Agricultural Economic Development Program is to maintain and enhance Florida agriculture in the national and international marketplace. The Forest and Resource Protection seeks to promote and use sound management practices for forestry and other agricultural activities.

Department of Environmental Protection - The Legislature adopted the first four programs in the department in 1998-99. These programs included the State Lands, Marine Resources, Recreation and Parks, and Law Enforcement. The Legislature implemented the agency's remaining three programs for 1999-00. The Water Resources Management Program is to regulate, manage, conserve, and protect drinking water, surface and groundwater, wetlands, beaches, and reclaimed lands. The Waste Management Program seeks to protect the public and environment through sound waste management practices. The Air Resources Management Program aims to maintain and improve the air quality through air-pollution mitigation and prevention.

Game and Fresh Water Fish Commission - The Legislature adopted three programs for the commission beginning in 1997-98. These programs continue and include the Law Enforcement Program, whose purpose is to provide patrol and protection activities to safeguard boating, camping, fishing, hunting, wildlife viewing, and other natural resource related activities. The Wildlife Management Program aims to maintain or enhance the diverse wildlife and provide for the responsible use of these resources. The Fisheries Management Program seeks to maintain, enhance, and provide for the responsible use of freshwater fisheries.

The Department of Transportation began performance-based program budgeting in FY 1997-98 and has three approved programs with performance measures and standards. The purpose of the District Operations Program is to develop and implement the State Highway System, to acquire rights of way necessary to support the DOT's work program, to promote all forms of public transportation including transit, aviation, intermodal/rail, and seaport development, and to provide routine and uniform maintenance of the State Highway System. The purpose of the Planning and Engineering Program is to reduce occurrences of overweight commercial motor vehicles on the State Highway System and

eliminate hazards caused by defective or unsafe commercial motor vehicles. The purpose of the Finance and Administration Program is to efficiently operate and maintain state toll facilities.

Section 58. Performance-Base Program Budgeting measures for programs in General Government Agencies. (Department of Banking and Finance, Executive Office of the Governor, Department of Highway Safety and Motor Vehicles, Department of Insurance, Department of Labor and Employment Security, Lottery Department of Management Services, Department of Military Affairs, Department of Revenue, and the Department of State.)

Department of Banking and Finance - The Legislature implemented the Financial Accountability for Public Funds program in this department in 1998-99 and the remaining three programs were adopted this year. The Financial Institutions Regulatory Program seeks to ensure the safety and soundness of the state financial institutions. The Unclaimed Property Program aims to find, locate, collect and return unclaimed property to the owners. The Consumer Protection and Industry Authorization Program protects consumers of the securities and finance industry.

The Executive Office of the Governor began performance-based program budgeting in FY 1998-99 and has one program with performance measures and standards. The purpose of the Economic Improvement Program is to maintain and improve the economic health of Florida by increasing jobs, income and investments through promoting targeted businesses, tourism, professional and amateur sports and entertainment, and by assisting communities, residents, and businesses.

The Department of Highway Safety and Motor Vehicles began performance-based program budgeting in FY 1997-98 and has three programs with performance measures and standards. The Highway Patrol Program's purpose is to increase highway safety in Florida through law enforcement, preventive patrol and public education. The Driver Licenses Program seeks to maintain an efficient and effective driver licensing program assuring that only drivers demonstrating the necessary knowledge, skills and abilities are licensed to operate motor vehicles on Florida roads. The purpose of the Motor Vehicles Program is to increase consumer protection, health, and public safety through efficient license systems that register and title motor vehicles, vessels, and mobile homes, regulate vehicle and motor home dealers, manufacturers, and central emission inspection stations.

Department of Insurance - The Legislature previously adopted the Fire Marshal program, whose purpose is to enhance public safety, increase the solvability of criminal cases, and maintain the safest possible environment. The Legislature implemented two new programs for 1999-00. The State Property and Casualty Claims program intends to ensure that state agencies are provided quality workers' compensation, liability, federal civil rights, auto

liability, and the property insurance coverage at reasonable rates. Functions relating to the regulation of insurance companies are still to be implemented under performance-based program budgeting.

The Department of Labor and Employment Security began performance-based program budgeting in FY 1996-97. The eight approved programs are: Disability Determination Program; Rehabilitation Program; Safety/Workers' Compensation Program; Employment Security Program; Public Employees Relations Commission Program; Workers' Compensation Hearings Program; Unemployment Appeals Commission Program; and the Information Management Center Program.

Department of Lottery - The Legislature adopted one program to encompass the activities of the department entitled the Sale of Lottery Products. The purpose of the program is to maximize revenues for public education in a manner consistent with the dignity of the state and the welfare of its citizens.

Department of Management Services - The Legislature began implementing department programs under performance-based program budgeting in 1995-96. These programs include the State Group Insurance, Facilities, Support, Workforce, Retirement benefits, and Information Technology.

The Department of Military Affairs will begin performance-based program budgeting in FY 1999-2000. The purpose of the Readiness and Response Program is to provide military units and personnel (at the Governor's request) that are ready to protect life and property, preserve peace, order and public safety, and to contribute to such state and local programs that add value to the State of Florida.

Department of Revenue - The department went under performance-based program budgeting beginning in 1995-96. The Property Tax Administration Program aims to enhance the equity in property assessments and taxation and facilitate the distribution of the required local effort millage. The Child Support Program seeks to establish paternity and child support orders to collect and distribute child support in a timely manner. The General Tax Administration Program is intended to administer the revenue laws of the state in a fair and equitable manner and collect all the money owed.

The Department of State began performance-based program budgeting in FY 1997-98 and has four approved programs with performance measures and standards. The purpose of the Historical, Archaeological, and Folklife Appreciation Program is to encourage identification, evaluation, protection, preservation, collection, conservation, interpretation, and public access to information about Florida's historic sites, properties, and objects. The purpose of the Libraries, Archives, and Information Services Program, is to ensure access to information of past, present, and future value for the educational and cultural

benefit of the people of Florida. The Cultural Grants Program seeks to foster development of a receptive climate for cultural programs to enrich culturally and benefit the citizens of this state in their daily lives. The purpose of the Licensing Program is to protect the public's health, safety, and welfare through the licensing, regulation, and enforcement of the private security, private investigative, and recovery industries, the regulation of game promotions conducted in Florida, and the issuance of licenses to citizens wishing to carry concealed weapons.

Section 59. Adopts Performance- Base Program Budgeting measures for agencies scheduled for 2000-2001.

The Department of Health will begin performance-based program budgeting in FY 2000-2001 and will be working on the standards for the outcome and output measures adopted by the 1999 Legislature. The following programs have been approved: Children's Medical Services Program; Health Care Practitioner and Access Program; and the Community Public Health Program.

The Florida Parole Commission will begin performance-based program budgeting in FY 2000-2001. There is one approved program whose purpose is to provide public safety and protect the rights of victims by administering effective post-incarceration services including offender releases, offender revocation, clemency, and victim assistance.

Department of Business and Professional Regulation - The Legislature adopted programs and measures for the department to use in developing its budget request for the 2000-2001 year. The programs include: Professional Regulation; Pari-mutuel Wagering Program; Hotels and Restaurants Program; Alcoholic Beverages and Tobacco; Florida Land Sales, and Condominiums, and Mobile Homes.

Department of Management Services - The Legislature approved the Administrative Hearing Program, with associated performance measures, for implementation in the 2000-2001 year.

Section 60. Provides a severability clause.

Section 61. Provides an effective date.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 119-0

TRUST FUNDS

Executive Office of the Governor

The following trust funds are recreated within the Executive Office of the Governor to fund administrative functions and transportation projects, and to support economic development, capitol investments, and major support events:

H 1149	Black Contractors Bond Trust Fund	Ch. 99-14
H 1151	Professional Sports Development Trust Fund	Ch. 99-15
H 1153	Economic Development Trust Fund	Ch. 99-16
H 1155	Florida Investment Incentive Trust Fund	Ch. 99-17
H 1157	Grants and Donations Trust Fund	Ch. 99-18
H 1159	Planning & Budgeting System Trust Fund	Ch. 99-19
H 1161	Florida International Trade & Promotion Trust Fund	Ch. 99-20
H 1163	Economic Development Transportation Trust Fund	Ch. 99-21
H 1165	Tourism Promotion Trust Fund	Ch. 99-22

These provisions were approved by the Governor and take effect November 4, 2000.
Vote: Senate 36-0; House 116-0

Department of Education

The following trust funds are recreated within the Department of Education for the deposit of certain fees, to provide matching funds, to account for revenue for particular services, to support research and to provide for the segregation of funds generated by specified activities:

H 1167	Displaced Homemaker Trust Fund	Ch. 99-23
H 1171	Educational Media & Technology Trust Fund	Ch. 99-25
H 1173	Sophomore Level Test Trust Fund	Ch. 99-26
H 1175	Educational Aids Trust Fund	Ch. 99-27
H 1177	Teacher Certification Exam Trust Fund	Ch. 99-28
H 1179	Knott Data Center Working Capital Trust	Ch. 99-29
H 1181	Projects, Contracts & Grants Trust Fund	Ch. 99-30
H 1183	Education Certification & Service Trust Funds	Ch. 99-31
H 1185	Institutional Assessment Trust Fund	Ch. 99-32
H 1187	Facility Construction Admin. Trust Fund	Ch. 99-33
H 1189	Nursing Student Loan Forgiveness Program Trust Fund	Ch. 99-34
H 1191	Student Loan Guaranty Reserve	Ch. 99-35
H 1193	Textbook Bid Trust Fund	Ch. 99-36
H 1195	Food & Nutrition Trust Fund	Ch. 99-37
H 1197	Deaf & Blind School Grants Trust Fund	Ch. 99-38
H 1199	Capital Facilities Matching Trust Fund	Ch. 99-39
H 1201	SUS Concurrency Trust Fund	Ch. 99-40
H 1203	SUS Replacement Trust Fund	Ch. 99-41

H 1205 UF Health Center Incidental Trust Fund . . . . . Ch. 99-42
H 1207 UF Agric. Extension Service Trust Fund . . . . . Ch. 99-43
H 1209 UF Agric. Experiment Station Trust Fund . . . . . Ch. 99-44
H 1211 Phosphate Research Trust Fund . . . . . Ch. 99-45
H 1215 UF Institute of Food & Agric. Trust Fund . . . . . Ch. 99-47
H 1219 UF Agric. Experiment Station Trust Fund . . . . . Ch. 99-49
H 1221 UF Agric. Experiment Station Trust Fund . . . . . Ch. 99-50
H 1223 Trust Fund for Major Gifts/DOE . . . . . Ch. 99-51
H 1225 BOR Operations & Maintenance Trust Fund . . . . . Ch. 99-52
H 1227 Facility Construction Admin. Trust Fund . . . . . Ch. 99-53
H 1229 USF Medical Center Student Fee/DOE . . . . . Ch. 99-54

These provisions were approved by the Governor and take effect November 4, 2000.
Vote: Senate 36-0; House 116-0

H 1169 State Student Financial Assistance Trust Fund . . . . . Ch. 99-24
H 1213 UF Health Center Operations Trust Fund . . . . . Ch. 99-46
H 1217 Education & General Student Trust Fund . . . . . Ch. 99-48

These provisions were approved by the Governor and take effect July 1, 1999.
Vote: Senate 36-0; House 116-0

H 1231 Student Financial Assistance Trust Fund
H 1233 UF Health Center Operation Trust Fund
H 1235 Education & Student Trust Fund

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 40-0; House 116-0

Department of Agriculture and Consumer Services

The following trust funds are recreated within the Department of Agriculture and Consumer Services to fund and support administrative functions and to control and account for proceeds from the sale of land or property, donations, federal funds or inspection fees and all other related enforcement funds.

H 1239 Relocation & Construction Trust Fund . . . . . Ch. 99-55
H 1241 Plant Industry Trust Fund . . . . . Ch. 99-56
H 1243 Market Trade Show Trust Fund . . . . . Ch. 99-57
H 1245 Incidental Trust Fund . . . . . Ch. 99-58
H 1247 General Inspection Trust Fund . . . . . Ch. 99-59
H 1249 Contracts and Grants Trust Fund . . . . . Ch. 99-60
H 1251 Citrus Inspection Trust Fund . . . . . Ch. 99-61
H 1253 Agricultural Law Enforcement Trust Fund . . . . . Ch. 99-62
H 1255 Administrative Trust Fund . . . . . Ch. 99-63
H 1257 Working Capital Trust Fund . . . . . Ch. 99-64

H 1259 Saltwater Products Promotion Trust Fund . . . . . Ch. 99-65
H 1261 Florida Agricultural Promotion Campaign Trust Fund . . . . . Ch. 99-66
H 1263 Viticulture Trust Fund . . . . . Ch. 99-67
H 1265 Florida Quarter Horse Racing Promotion Trust Fund . . . . . Ch. 99-68
H 1267 Pest Control Trust Fund . . . . . Ch. 99-69
H 1269 Market Improvements Working Capital Trust Fund . . . . . Ch. 99-70
H 1271 Agricultural Emergency Eradication Trust Fund . . . . . Ch. 99-71
H 1273 Federal Law Enforcement Trust Fund . . . . . Ch. 99-72

These provisions were approved by the Governor and take effect November 4, 2000.
Vote: Senate 36-0; House 116-0

Department of Banking and Finance

The following trust funds are recreated within the Department of Banking and Finance to support administrative functions of the department, to provide for the deposit of revenues, and to account for contracts and services:

H 1275 Trust Funds/No title . . . . . Ch. 99-73
H 1277 Anti-Fraud Trust Fund . . . . . Ch. 99-74
H 1281 Consolidated Payment Trust Fund . . . . . Ch. 99-75
H 1283 Working Capital Trust Fund . . . . . Ch. 99-76
H 1285 Financial Institutions' Regulatory Trust Fund . . . . . Ch. 99-77
H 1287 Regulatory Trust Fund . . . . . Ch. 99-78
H 1289 Administrative Trust Fund . . . . . Ch. 99-79
H 1291 Funeral Contract Consumer Trust Fund . . . . . Ch. 99-80
H 1293 Securities Guaranty Fund . . . . . Ch. 99-81
H 1295 Mortgage Brokerage Guaranty Trust Fund . . . . . Ch. 99-82
H 1297 Miscellaneous Deduction Restoration Trust Fund . . . . . Ch. 99-83
H 1299 Comptroller's Federal Equitable Trust Fund . . . . . Ch. 99-84

These provisions were approved by the Governor and take effect November 4, 2000.
Vote: Senate 36-0; House 116-0

H 1279 National Forest Trust Fund
H 1301 Abandoned Property Trust Fund

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 36-0; House 117-0

Department of Business and Professional Regulation

The following trust funds are recreated within the Department of Business and Professional Regulation for the collection of fees and taxes and to support administrative functions provided to the department:

H 1303 Pari-mutuel Wagering Trust Fund . . . . . Ch. 99-85
H 1305 Professional Regulation Trust Fund . . . . . Ch. 99-86
H 1307 Cigarette Tax Collection Trust Fund . . . . . Ch. 99-87
H 1309 Alcoholic Beverage & Tobacco Trust Fund . . . . . Ch. 99-88
H 1311 Fla. Land Sales, Condominiums & Mobile Homes Trust Fund . . . . . Ch. 99-89
H 1313 Administrative Trust Fund . . . . . Ch. 99-90
H 1315 Hotel and Restaurant Trust Fund . . . . . Ch. 99-91

These provisions were approved by the Governor and take effect November 4, 2000. *Vote: Senate 36-0; House 116-0*

Department of Citrus

The following trust fund is recreated within the Department of Citrus:

H 1319 Citrus Advertising Trust Fund . . . . . Ch. 99-92

These provisions were approved by the Governor and take effect November 4, 2000. *Vote: Senate 36-0; House 116-0*

Department of Environmental Protection

The following trust funds are recreated within the Department of Environmental Protection to support administrative functions of the department, to fund various regulatory, research and law enforcement activities of the department, relating to solid waste and contaminations:

H 1321 Florida Permit Fee Trust Fund . . . . . Ch. 99-93
H 1323 Water Management Lands Trust Fund . . . . . Ch. 99-94
H 1325 Inland Protection Trust Fund . . . . . Ch. 99-95
H 1327 Air Pollution Control Trust Fund . . . . . Ch. 99-96
H 1329 Administrative Trust Fund . . . . . Ch. 99-97
H 1331 Internal Improvement Trust Fund . . . . . Ch. 99-98
H 1333 Nonmandatory Land Reclamation Trust Fund . . . . . Ch. 99-99
H 1335 Marine Resources Conservation Trust Fund . . . . . Ch. 99-100
H 1337 Solid Waste Management Trust Fund . . . . . Ch. 99-101
H 1339 Water Quality Assurance Trust Fund . . . . . Ch. 99-102
H 1341 Working Capital Trust Fund . . . . . Ch. 99-103
H 1343 Save the Manatee Trust Fund . . . . . Ch. 99-104
H 1345 Environmental Laboratory Trust Fund . . . . . Ch. 99-105
H 1347 Ecosystem Management & Restoration Trust . . . . . Ch. 99-106
H 1349 Florida Coastal Protection Trust Fund . . . . . Ch. 99-107
H 1351 Drinking Water Revolving Loan Trust Fund . . . . . Ch. 99-108
H 1355 Federal Law Enforcement Trust Fund . . . . . Ch. 99-109
H 1357 Forfeited Property Trust Fund . . . . . Ch. 99-110
H 1359 Grants & Donations Trust Fund . . . . . Ch. 99-111

H 1361 State Park Trust Fund . . . . . Ch. 99-112
H 1363 Minerals Trust Fund . . . . . Ch. 99-113
H 1367 Conservation & Recreation Lands Trust Fund . . . . . Ch. 99-114

These provisions were approved by the Governor and take effect November 4, 2000.
Vote: Senate 36-0; House 116-0

H 1353 Sewage Treatment Revolving Loan Trust Fund
H 1365 Aquatic Plant Control Trust Fund

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 36-0; House 117-0

Department of Insurance

The following trust funds are recreated within the Department of Insurance for administrative and operational functions and to fund the self-insurance pool:

H 1369 State Property Insurance Trust Fund . . . . . Ch. 99-115
H 1371 Rehabilitation Administrative Expense Fund . . . . . Ch. 99-116
H 1373 Treasurer's Administrative and Investment Fund . . . . . Ch. 99-117
H 1375 Insurance Commissioner's Regulatory Trust Fund . . . . . Ch. 99-118
H 1377 Florida Casualty Insurance Risk Management Trust Fund . . . . . Ch. 99-119
H 1379 Public Deposits Trust Fund . . . . . Ch. 99-120

These provisions were approved by the Governor and take effect November 4, 2000.
Vote: Senate 36-0; House 116-0

Department of Revenue

The following trust funds are recreated within the Department of Revenue for administrative functions, drug and child support enforcement services, and to account for intangible tax proceeds and taxes levied upon corporations:

H 1381 Clerk of Court Child Support Trust Fund . . . . . Ch. 99-121
H 1385 Working Capital Trust Fund . . . . . Ch. 99-123
H 1387 Intangible Tax Trust Fund . . . . . Ch. 99-124
H 1389 Drug Enforcement Trust Fund . . . . . Ch. 99-125
H 1391 Corporation Tax Administration Trust Fund . . . . . Ch. 99-126
H 1393 Child Support Enforcement Trust Fund . . . . . Ch. 99-127
H 1395 Firefighters' Supplemental Compensation Trust Fund . . . . . Ch. 99-128
H 1397 Certification Program Trust Fund . . . . . Ch. 99-129
H 1399 Grants and Donations Trust Fund . . . . . Ch. 99-130

These provisions were approved by the Governor and take effect November 4, 2000.
Vote: Senate 36-0; House 116-0

H 1383 Child Support Incentive Trust Fund . . . . . Ch. 99-122

These provisions were approved by the Governor and take effect July 1, 1999.
Vote: Senate 36-0; House 116-0

H 1401 Revenue Audit Division Administrative Trust Fund

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 36-0; House 114-0

H 1403 Child Support Incentive Trust Fund

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 40-0; House 116-0

Other Trust Fund Bills

Senate Bill 602 terminates five trust funds within the Department of Education and eight trust funds within the State University System, and transfers current balances to the General Revenue Fund, unless otherwise specified. In addition, this bill identifies five trust funds within the Department of Education and twelve trust funds within the State University System that have been determined to be exempt from the automatic termination provisions of s. 19(f), Art. III, State Constitution.

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 39-0; House 118-0

Senate Bill 656 addresses trust funds that are administered by the Department of Revenue, Department of Insurance, Department of Agriculture and Consumer Services, Department of Banking and Finance, and the Department of Environmental Protection. This bill amends or repeals numerous statutes in order to conform with the provisions of the bill. It terminates ten trust funds that have been identified as no longer necessary, lists 47 trust funds that have been determined exempt and renames four trust funds that are recreated in separate bills.

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 39-0; House 117-0

Education

The following trust fund was created in the Department of Education for the purpose of separating the operating funds of the department from the federal funds used as a reserve for defaulted student loans:

S 1670 Student Loan Operating Trust Fund

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 118-0

Juvenile Justice

The following two trust funds were created in the Department of Juvenile Justice for the benefit of juvenile offenders.

S 1648 Juvenile Welfare Trust Fund

If approved by the Governor, these provisions take effect July 1, 2000, except as otherwise provided.
Vote: Senate 40-0; House 118-0

S 1650 Juvenile Care and Maintenance Trust Fund

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 40-0; House 116-0

Tobacco Settlement

The following trust funds were created in several state agencies to separately account for tobacco settlement funds:

S 1734 Department of Veterans' Affairs Tobacco Settlement Trust Fund
S 1960 Department of Health Tobacco Settlement Trust Fund
S 1962 Department of Banking and Finance Tobacco Settlement Clearing Trust Fund
S 1964 Department of Business and Professional Reg Tobacco Settlement Trust Fund
S 1966 Department of Children and Family Services Tobacco Settlement Trust Fund
S 1968 Department of Elderly Affairs Tobacco Settlement Trust Fund

If approved by the Governor, these provisions take effect July 1, 1999 or upon becoming a law.
Vote: Senate 39-0; House 117-0

CS/HB 1885 — Lawton Chiles Endowment Fund

by Rep. Maygarden and others (CS/SB's 2422 & 1952 by Fiscal Policy Committee, Senators Latvala, Casas and Hargrett)

This bill establishes the Lawton Chiles Endowment Fund, through which the state will use funds received as a result of its settlement with the tobacco industry to enhance or support expansions in children's health care programs, child welfare programs, community-based health and human service initiatives, and biomedical research.

As stated in the bill, it is the intent of the Legislature that endowment funds are to be used to:

(1) Provide a perpetual source of funding for the future of children's health programs, child welfare, community-based health and human service initiatives and biomedical research.

(2) Ensure that enhancement revenues will be available to finance these important initiatives.

(3) Use tobacco settlement moneys to ensure the financial security of vital health and human services programs.

(4) Encourage the development of community-based solutions to strengthen and improve the quality of life for Florida's most vulnerable citizens.

(5) Provide funds for cancer research and public health research for diseases linked to tobacco use.

Over four years beginning with fiscal year 1999-2000, a total of $1.7 billion will be deposited into the endowment. In fiscal year 1999-2000, the amount deposited will be $1.1 billion, with $200 million being deposited in each of the next three years.

Endowment funds will be invested by the State Board of Administration (SBA), 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. SBA will provide a report on financial status of the Endowment to Governor, Senate President, House Speaker, other appropriate legislative entities, and the Revenue Estimating Conference on February 15 and August 15 of each year.

The only funds available for distribution will be the earnings received on the endowment. No funds will be available for distribution until July 1, 2000. For FY 2000-2001, no more than a level of spending representing earnings of 3 percent; for FY 2001-2002, no more

than a level of spending representing earnings of 4 percent; for FY 2002-2003, no more than a level of spending representing earnings of 5 percent; for FY 2003-2004 and thereafter, no more than a level of spending representing earnings of 6 percent.

The Secretaries of Health, Children and Family Services, Elderly Affairs and the Director of the Agency for Health Care Administration will coordinate funding requests related to endowment revenue.

The bill also creates the Florida Biomedical Research Program within the endowment and provides that funds appropriated to the program will be devoted to competitive grants and fellowships in research relating to diagnosis and treatment of tobacco-related illnesses including cancer, cardiovascular disease, stroke and pulmonary disease.

The Biomedical Research Advisory Council is established in the Department of Health to assist the Secretary in establishing criteria and guidelines for the competitive grant program. Grants and fellowships are to be awarded on the basis of scientific merit, as determined by an open, objective peer-review process. The council is required to submit an annual progress report to the Governor, Secretary of the Department of Health, President of the Senate and Speaker of the House by February 1 of each year.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 117-0

Senate Committee on Fiscal Resource

MAJOR TAX REDUCTION PACKAGE

CS/SB 140 — Sales Tax Holiday

by Conference Committee on Tax Reduction; Fiscal Resource Committee; and Senators Cowin and Webster

This bill establishes the "Florida Residents Tax Relief Act of 1999," providing that no sales and use tax shall be collected on sales of clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a selling price of $100 or less during the period from 12:01 a.m., July 31, 1999, through midnight, August 8, 1999.

Clothing is defined to mean any article of wearing apparel, including all footwear, except for skis, swim fins, roller blades, and skates, intended to be worn on or about the human body and does not include watches, watchbands, jewelry, umbrellas, or handkerchiefs.

The exemption does not apply to sales within a theme park or entertainment complex, within a public lodging establishment, or within an airport.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 34-2; House 118-0

CS/SB 172 — Taxpayer Fairness, Tax Reductions

by Conference Committee on Tax Reduction; Fiscal Resource Committee; and Senators Horne, Grant and Lee

This bill addresses several issues related to taxpayer fairness, tax collection, reduction in certain taxes, school impact fees, and revenue sharing. This bill amends s. 95.091, F.S., reducing the statute of limitations for actions to collect taxes from five years to three years. It amends s. 196.063, F.S., requiring the property appraiser to grant a 30 day extension for the filing of personal property tax returns, and allowing an additional 15 day extension. Sections 212.07 and 212.18, F.S., are amended to require sales tax resale certificates to be issued annually to active dealers, and providing a mechanism by which sellers can verify the validity of resale certificates. Section 212.11, F.S., is amended to raise the threshold for which sales tax dealers must make estimated payments, and decreasing the percentage of the previous year's taxes which must be paid as estimated

taxes. This bill creates s. 213.235, F.S., which provides for interest on deficient taxes to be based on the market interest rate, and it creates s. 213.255, F.S., which provides for payment of interest on tax refunds after 90 days.

This bill also amends ss. 561.501 and 561.121, F.S., reducing the surcharge on on-premises consumption of alcoholic beverages, and changing the disposition of surcharge revenue to hold harmless the Children and Adolescents Substance Abuse Trust Fund.

This bill prohibits the imposition of a new school impact fee or the increase of an existing fee from May 1, 1999 to July 1, 2000, and creates the Florida School Construction Finance Commission to study alternative methods of funding school construction.

This bill amends s. 218.251, F.S., to provide additional revenue sharing to be distributed to Duval County. This bill also provides appropriations to the Department of Revenue and to the Legislative Committee on Intergovernmental Relations.

If approved by the Governor, these provisions take effect July 1, 1999, except as otherwise provided.
Vote: Senate 37-1; House 119-0

CS/SB 318 — Intangible Property Taxes
by Conference Committee on Tax Reduction; Fiscal Resource Committee and Senator Lee

This bill reduces the rate of the annual tax on intangible personal property from 2 mills to 1.5 mills. It also allows an affiliated group of limited liability companies to file a consolidated intangibles tax return.

If approved by the Governor, these provisions take effect January 1, 2000.
Vote: Senate 36-1; House 117-0

MISCELLANEOUS TAX REDUCTIONS

HB 47 — Sales Tax Exemption for Travel Centers/Truck Stop Facilities
by Rep. Fuller and others (SB 142 by Senators Holzendorf and Thomas)

This bill provides an exemption from sales tax on the renting or leasing of travel center/truck stop facilities. A “travel center/truck stop facility” is any facility that has declared its primary business activity as the sale of diesel fuel at retail and which operates a minimum of 6 diesel fuel dispensers.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 110-2

HB 105 — Sales Tax Exemption for Phosphate Mining Equipment

by Rep. Putnam and others (CS/SB 110 by Fiscal Resource Committee and Senator McKay)

This bill expands the sales tax exemption for the purchase of industrial machinery and equipment used by new and expanding businesses to include those purchases made by phosphate or other solid mineral severance, mining, or processing operations. The exemption is granted by way of a prospective credit against severance tax. In order to qualify for the exemption and credit, a phosphate or other solid mineral severance, mining, or processing operation must create "new Florida jobs" as defined in this bill.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 112-2

CS/HB 221 — Sales Tax Exemption for Coins, Currency and Bullion

by Financial Services Committee and Rep. Trovillion and others (SB 132 by Senators Klein, Laurent and Bronson)

This bill provides a sales and use tax exemption for coins or currency transactions over $500 when the coins or currency are sold for amounts in excess of their face value. This bill also provides for a sales tax exemption for gold, silver, and/or platinum bullion transactions over $500. This bill also provides an exemption for all U.S. coins.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-1; House 112-4

HB 269 — Lead-acid Battery Fee

by Rep. Albright (SB 1122 by Senator Silver)

This bill limits the $1.50 lead-acid battery fee currently assessed on every retail sale of these batteries to new or remanufactured batteries so that it will only be imposed one time on any battery. The Water Quality Assurance Trust Fund is held harmless.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 112-2

SB 290 — Community Contribution Tax Credit

by Senators Horne and Webster

This bill amends ss. 220.183 and 624.5105, F.S., increasing the Community Contribution Tax Credit from $5 million to $10 million.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-1; House 118-0

CS/CS/HB 291 — Additional Homestead Exemption

by General Government Appropriations Committee; Real Property & Probate Committee and Rep. Villalobos and others (CS/SB 184 by Fiscal Resource Committee; and Senator Diaz-Balart and others)

This bill authorizes counties and municipalities to enact, by ordinance, an additional homestead exemption of up to $25,000 for homeowners 65 and over whose household incomes do not exceed $20,000. It provides for the household income threshold to be indexed to the cost of living.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 118-0

HB 317 — Sales Tax Exemption for Franchised Cable Television Companies; Prepaid Calling Cards - Point of Sale

by Rep. Gay (CS/SB 1200 by Regulated Industries Committee and Senator Sullivan)

This bill creates a statutory exemption for franchised cable television companies from the taxation on leases, rentals and licenses for use of public and private rights-of-way. In addition, it extends the exemption to cover attachments related to providing wireless services. This bill also provides that the sales tax on prepaid calling cards will be assessed at the point of sale of the card instead of at the time of usage.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 114-0

CS/HB 397 — Sales Tax Exemption for Labor and Repair on Certain Machinery and Equipment

by Business Development & International Trade Committee and Rep. Feeney and others (CS/SB 992 by Fiscal Resource Committee and Senator Horne)

This bill provides a sales and use tax exemption for labor charges for the repair of industrial machinery and equipment which is used for manufacturing items of tangible personal property at a fixed location in Florida. The exemption would apply only to certain SIC codes that are the same codes as for the electricity exemption. The exemption is phased in over a four year period. Additionally, the exemption for electricity used in manufacturing is expanded to include the cigar industry.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 113-2

HB 537 — Sales Tax Rate Reduction for Food and Beverage Vending Machines

by Rep. Hart and others (CS/SB 818 by Fiscal Resource Committee and Senator Sullivan)

This bill creates a unified sales tax rate for food and beverages sold through a vending machine by setting the divisor for both food and beverages at the current rate for food.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 109-4

HB 561 — Sales Tax Exemption for Nonprofit Organizations

by Rep. Fasano and others (SB 120 by Senator Grant; CS/SB 682 by Fiscal Resource Committee and Senator Webster; SB 700 by Senator Forman; SB 1388 by Senators Cowin and others; CS/SB 1818 by Fiscal Resource Committee and Senator Campbell; SB 2374 by Senator Cowin)

This bill provides a sales and use tax exemption for the following nonprofit organizations: all qualified veterans' organizations and their auxiliaries; nonprofit consumer credit counseling organizations that provides free services to disadvantaged clients; nonprofit sports authorities that are funded primarily by county or municipal governments; nonprofit organizations whose sole or primary function is to raise funds for another organization or organizations currently holding a consumer's certificate of exemption issued by the Department of Revenue; nonprofit water systems; nonprofit library cooperatives; rental or lease of skyboxes for college or high school football games when the charge for such rental is imposed by a nonprofit sponsoring organization; and works of art donated to educational institutions.

If approved by the Governor, these provisions take effect July 1, 1999, except as otherwise provided.
Vote: Senate 34-0; House 116-0

HB 643 — Sales Tax Exemption for Printing Supplies

by Rep. Dockery and others (CS/SB 952 by Fiscal Resource Committee and Senators Bronson, Forman, Latvala, Meek and Scott)

This bill creates a sales and use tax exemption for film, photographic paper, dyes used for embossing and engraving, artwork, typography, lithographic plates, and negatives when used by printers. The printing industry is defined by reference to SIC codes.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 117-0

CS/CS/SB 888 — Tax Administration

by Commerce & Economic Opportunities Committee; Fiscal Resource Committee; and Senator Horne

This bill is the Department of Revenue's annual proposal for making administrative changes to the tax laws. The proposals remove administrative burdens from taxpayers while increasing the efficiency of tax administration.

This bill creates s. 166.235, F.S., providing procedures and requirements for obtaining a refund for municipal service taxes collected in error. It amends s. 196.1975, F.S., allowing certain nonprofit homes for the aged to receive a property tax exemption. It makes several amendments to chapter 198, F.S., simplifying estate taxes for small estates. It amends ss. 199.106 and 201.165, F.S., intangible tax and documentary stamp tax, providing a credit for like taxes paid in another state. This bill amends s. 212.02, F.S., clarifying the conditions under which the sales tax does not apply to materials used in repairing a motor vehicle, airplane, or boat, and it makes several revisions in sections of chapter 212. F.S., relating to penalties for failure to file tax returns, false or fraudulent returns, or willful destruction of records with intent to evade payment of tax. Sections 212.07 and 212.18, F.S., are amended to require sales tax resale certificates to be issued annually to active dealers, and provide a mechanism by which sellers can verify the validity of resale certificates. Section 212.08, F.S., is amended, revising the sales tax exemption for electricity or steam used to operate machinery or equipment, and making changes in the law concerning motor vehicle purchases by out-of-state buyers. Tax collection and enforcement provisions in chapter 213, F.S. are amended.

Section 220.03, F.S., is amended to update the corporate income tax statute, and s. 220.151, F.S., is amended to allow citrus processing corporations to apportion their

income on the basis of their sales. Sections 220.21, 220.221, and 220.222, F.S., are amended to authorize filing corporate returns electronically. Sections 193.052 and 199.052, F.S., are amended to authorize filing tangible and intangible personal property taxes electronically. Section 443.163, F.S., is created to authorize electronic filing of unemployment compensation reports.

This bill provides procedures for certain downtown development districts to amend their boundaries.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 39-0; House 116-1

HB 1119 — Sales Tax Exemption for Certain Private Equity Clubs

by Rep. Sembler (CS/SB 970 by Fiscal Resource Committee and Senator Myers)

This bill creates a sales tax exemption for the membership interest in a private equity club.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 23-12; House 76-32

SB 1296 — Sales Tax Exemption on Manufactured Asphalt

by Senators Sullivan and Meek

This bill provides a 20 percent sales and use tax exemption on manufactured asphalt used in any state or local public works project.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 119-0

SB 1330 — Sales Tax Exemption for Advertising

by Senators Latvala, Clary, Casas, Childers, Saunders, Bronson and Dyer

This bill provides a sales and use tax exemption for certain items of tangible personal property when they are either: sold to an advertising agency acting as an agent for its client; produced or created by the advertising agency for its client and used in the performance of advertising services for its client; or sold by the advertising agency to its client in the performance of advertising services for its client.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 119-0

CS/SB 1502 — Sales Tax Exemption for Certain Food and Drink Concessions

by Fiscal Resource Committee and Senators Gutman, Hargrett, Childers, Grant, Cowin and Diaz-Balart

This bill revises the application of the sales and use tax exemption for property leased, subleased, licensed, or rented to a person providing food and drink concessionaire services to include both publicly and privately owned convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, and recreational facilities.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-1; House 118-0

CS/SB 1846 — Diesel Fuel Tax Refund for Certain Motor Coaches

by Fiscal Resource Committee and Senator Sebesta

This bill provides certain motor coach owners with a diesel fuel tax refund on fuel purchased and consumed in Florida by a "qualified motor coach" when the engine is idling to run climate control and electrical systems. In order to qualify, a motor coach must have the capacity to measure diesel fuel consumed in Florida during idling, separate from diesel fuel consumed to propel the vehicle in Florida, by way of an on-board computer. This bill limits the refund to once a year and provides that the refund must be offset by sales tax due under chapter 212 on the price of the diesel fuel, net of the diesel fuel tax paid.

If approved by the Governor, these provisions take effect January 1, 2000.
Vote: Senate 38-1; House 116-3

CS/SB 2028 — Sales Tax Exemption on NASA/DOD Contracts

by Fiscal Resource Committee and Senators Webster, Bronson, Kurth and Sullivan

This bill creates a sales tax exemption for tangible personal property that is used or consumed in NASA or defense contracts where title to the property vests in the government under the contract. The exemption is phased in over a five year period.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 35-0; House 118-0

Senate Committee on Governmental Oversight and Productivity

RETIREMENT AND PENSION MANAGEMENT

CS/HB 261 — Firefighters and Police Pension Trust Fund

by Governmental Operations Committee and Rep. Pruitt and others (SB 380 by Senator Webster)

This bill (Chapter 99-1, L.O.F.) revises existing provisions of law in chs. 175 and 185, F.S., governing the operation of the more than 400 local government firefighter and police pension plans. The bill prescribes uniform criteria for the application of minimum standards for the operation of such defined benefit plans. These criteria are extended to all municipal, special district, chapter, and local law plans. Chief among these standards are the establishment of a minimum accrual rate, or value of each year of service toward a pension benefit, and a uniform definition of compensation. The bill also gives specific enforcement authority to the state Division of Retirement for the promulgation of rules on the operation of these fire and police plans. That nominal authority under prior law had been in a suspense state due to prior litigation invalidating the enforcement of its rules. Local law plans must come into compliance with more specific triennial auditing and asset reporting requirements for their continued participation in receiving proceeds from the insurance premium tax. The bill also provides that additional premium tax monies received after calendar year 1997 shall be used to pay extra benefits for police and firefighter personnel.

These provisions were approved by the Governor and take effect upon becoming law. *Vote: Senate 36-2; House 113-2*

HB 1883 — State-Administered Retirement Systems

by Governmental Operations Committee and Rep. Posey (SB 2530 by Senator Webster)

This bill provides technical and clarifying changes to retirement laws in ch. 121, F.S., affecting state and local government employers. Local government plan sponsors are required to submit specified reports on their retirement systems to the state Division of Retirement. Additional provisions delineate that actuarial review information shall be provided at least every three years.

The bill creates a legislatively-based retirement benefit assumption review process through which future impact assessments of benefit changes to the multi-employer Florida

Retirement System (FRS) may be made. House Bill 1883 also retroactively adjusts eligibility for membership in the FRS for certain vendors sponsored by the Division of Blind Services. This provision stems from settlement of a law suit challenging a prior legislative removal of these employees from the state pension plan.

The most significant feature of the bill, however, is the implementation of the findings of the 1998 actuarial review of the FRS. That review indicated that the FRS has achieved a full-funding status for the first time in its nearly thirty year history. With the FRS pension liability paid off, the bill now lowers the public employer-paid payroll contribution rates across all membership classes by nearly $1.1 billion. This change permits each public employer-member to decide how to recognize these recurring, workforce savings.

HB 1883 also enrolls local government emergency medical technicians/paramedics in the special risk class of the FRS. This class provides for normal retirement at the completion of 25, rather than 30, years of service or upon the attainment of age 55 rather than age 62. State law enforcement officers are extended to same presumptions of in-line-of-duty disability afforded firefighters on the contracting of heart disease, tuberculosis, and hypertension. Lastly, a bicameral working group of legislative committees will examine optional pension plan choices, including defined contribution plans, and report its findings prior to the next Regular Session of the Legislature. Annual actuarial reports on the FRS are to be reviewed by the plan's Board of Trustees (Governor, Treasurer, and Comptroller) who may provide their own comments and recommendations.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-1; House 114-0

CS/HB 1013 — FRS Preservation of Benefit Plan

by Governmental Operations Committee and Rep. Bloom and others (CS/SB 1858 by Governmental Oversight & Productivity Committee and Senator Silver)

The bill amends s. 121.091, F.S., 1998 Supp., and creates s. 121.1001, F.S., creating an excess benefit plan referred to as the "Florida Retirement System Preservation of Benefit Plan." Currently, member benefits are limited by s. 121.091(1), F.S., and s. 60S-4.002(3), F.A.C., and prohibits a member's initial retirement benefit from exceeding 100 percent of his or her average final compensation. This plan allows the Division of Retirement to pay any future retirement benefits that exceed Federal limits through a second qualified benefit plan pursuant to s. 415.(m), Internal Revenue Code.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 107-0

CS/HB 1489 — FRS/Trust Fund

by Governmental Operations Committee and Rep. Bloom (CS/SB 1856 by Governmental Oversight & Productivity Committee and Senator Silver)

The bill creates s. 121.095, F.S., and establishes a separate trust fund needed to implement the "Florida Retirement System Preservation of Benefit Plan" under the provisions of CS/HB 1013.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 107-0

HB 885 — FRS/Judges of Compensation Claims

by Rep. Boyd and others (CS/SB 724 by Governmental Oversight & Productivity Committee and Senator Silver)

The bill amends s. 121.055, F.S., and will expand the Senior Management Service Class (SMSC) to include all judges of compensation claims who are now Regular Class members of the Florida Retirement System (FRS). Regular Class members must have 10 years of service to vest retirement benefits and accrue retirement credit at a rate of 1.6 percent per year of service. Senior Management Class membership requires a shorter vesting period (7 years) and accrues retirement credit at a rate of 2 percent per year of service.

The bill further provides that judges of compensation claims may participate in the Senior Management Service Optional Annuity Program in lieu of the Senior Management Service Class, and that certain local government senior managers may make an irrevocable withdrawal from the FRS.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 36-0; House 115-0

GOVERNMENTAL EFFICIENCY AND EFFECTIVENESS

CS/HB 1707 — Department of Management Services

by General Government Appropriations Committee; Governmental Operations Committee; and Rep. Posey and others (CS/CS/SB 2410 by Fiscal Policy Committee; Governmental Oversight & Productivity Committee; and Senator Webster)

CS/HB 1707 makes a number of technical revisions to statutes affecting the Department of Management Services (DMS). Among the principal changes are state agency cost

recovery methods for the recoupment of training expenses in excess of $1,000 for employees who terminate employment within four years. Recruiting agencies may pay these expenses if incidental to an offer of employment by an affected individual. DMS has a number of its separate reports on human resource matters consolidated into one annual Workforce Report. Each agency is given higher individual dollar amounts for the conferral of meritorious service awards.

Specified managerial and policy coordinator positions in the Executive Office of the Governor are designated for inclusion in the Senior Management Service. Other employees will have their non-leave benefits made comparable to legislative staff. Each state department may designate one additional position for inclusion in the Senior Management Service provided the position reports to the agency head and is funded from existing budgeted funds. Specific authority conferred by s. 110.207, F.S., to the Department of Transportation for continuation of its personnel broadbanding classification system, is repealed.

The DMS is directed to implement through the collective bargaining process a uniform performance appraisal system. An agency may implement customized pay additives for terms greater than three months only with prior approval of the Executive Office of the Governor.

Dollar thresholds for the definition of tangible personal property categorized as operating capital outlay requiring inventory and record-keeping is raised to $1,000 from $500 and to $250 from $100 for bound, hard-cover books.

Prior approval of agency leases by the DMS is raised to 5,000 from 3,000 square feet. The Secretary of Management Services is the nominal responsible agency authority for the Grove and the Governor’s Mansion historic capital properties. DMS is also designated as the responsible agency for the 800 Megahertz law enforcement radio system, the emergency “911" response system, and the emergency medical telecommunications system.

State agency purchasing thresholds are increased from approximately 60 percent at the low end to 150 percent at the upper end. Notification provisions for the releasing of state purchasing information is extended to include the Internet, surface mail, and publication in the Florida Administrative Weekly.

State attorneys, public defenders, and the State Fire Marshal are given latitude in the acquisition of motor vehicles. Prosecution and defense agencies are not required to use subcompact class vehicles and the fire Marshall staff may retain its own fleet inventory outside of DMS management. These sections of the bill also implement recommendations of a legislative performance review report directing agencies to calculate break-even

points for utilization of motor vehicles to determine whether personal assignment of vehicles to high use travelers is warranted.

The standard for the award of pending and future appellate attorney's fees in public employee labor dispute cases is changed to include only the actual time spent on the appeal and the reasonable hourly rate charged in the same geographic area.

Section 55 of the bill repeals ch. 98-310, L.O.F., which created an alternative procurement of capital and state area airline fares for state employee travelers. Under the new language the DMS may negotiate in the best interest of the state employee traveler and does not have to comply with ordinary purchasing procedures.

The DMS is directed to continue to weatherize and protect the assets for which public funds have been appropriated and expended for a juvenile justice facility in Hillsborough County that remains incomplete and unoccupied. The DMS is directed to continue to seek a suitable occupant compatible with community needs and concerns.

Legislative members leaving office after July 1, 1999 who are otherwise vested in the state retirement system may continue to purchase the same health and life insurance coverage at group rates at the same premium cost as current members.

The final section of the bill repeals performance measures for the Florida Public Service Commission enacted in the General Appropriations Act implementing legislation (SB 2502) for the 1999-2000 fiscal year.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 117-0

CS/SB 2280 — DMS/Reorganization

by Governmental Oversight & Productivity Committee and Senator Campbell

The bill reorganizes the Department of Management Services (DMS) transferring functions assigned to the autonomous Division of State Group Insurance and the Division of Retirement to the department. The bill abolishes the Florida State Group Insurance Council, repeals the provisions of s. 20.37, F.S., regarding the designated location of the headquarters of the Department of Veteran's Affairs, and substantially revises the state employees' prescription drug program.

Statutory responsibilities for the Florida Retirement System (FRS), the State and County Officers Retirement System, and the Retirement System for School Teachers, are transferred from the Division of Retirement to DMS. These responsibilities include: administration and rulemaking authority; membership eligibility, classification and

classification criteria, past and prior service credit; contribution rate setting and collection; annual reports to the Legislature; auditing of personnel and payroll records of participating agencies; disability benefits, retirement benefits, and survivor benefit determinations; the State Retirement Commission and all related issues; and the adoption of rules necessary to qualify under the Internal Revenue Code of the United States.

Other responsibilities relating to the State Community College System Optional Retirement Program, the Florida National Guard, the Highway Patrol Pension Trust Fund, blind licensee FRS membership, and the redistribution of accrued or accruing funds in the Firefighters' Supplemental Compensation Trust Fund, are transferred from the Division of Retirement to DMS.

The bill creates s. 110.1082, F.S., prohibiting state employees from utilizing a voice mail system whenever working at a regularly assigned work station. However, if the caller cannot reach his or her called party under certain circumstances, the system must provide the caller with access to a nonelectronic attendant.

A complete revision of s. 110.12315, F.S., is undertaken to change the policy and procedures on the state employee prescription drug program. Future copayments for approved pharmaceuticals will be established in the General Appropriations Act or implementing legislation. This year's appropriations act did, in fact, raise these levels from $5 to $7 for generic drugs and from $15 to $20 for brand name pharmaceutical products. The DMS shall not implement a prior authorization program for drugs or a restricted formulary and the existing formulary authorized by last year's implementing bill is terminated on the effective date of the bill, July 1, 1999.

The bill limits the collection of refunds to state group health plan participants who have been overcharged by plan providers. The limitation is changed from a maximum of $1,000 per admission to a flat $1,000. The amendment language was acquired from CS/SB 2224.

The bill increases the size of the Florida Employee Long-Term-Care Plan Board of Directors from seven to nine members to include legislative members. The bill requires the DMS, in conjunction with the Department of Elderly Affairs, to review plans for establishing long-term-care coverage for public employees, their families and retirees. Counties and municipalities will not automatically participate in state long-term-care coverage but must do so by election. The bill also provides that entities providing consulting services regarding preparation of requests for proposals (RFPs) or the review and evaluation of RFPs, may not also contract as a provider for long-term-care services.

The bill extends the authority of DMS to allow terminated employees or individuals with continuation health coverage (COBRA) to participate in the state group plan for the required term. The bill provides that a state agency must pay the entire cost of the health

insurance premium for those state law enforcement, correctional, correctional probation officers, and firefighters, catastrophically injured in the line of duty and in accordance with ss. 112.19 and 112.191, F.S. The bill also provides for expanded enrollment in the state group health insurance plan for state employee retirees. Legislative members leaving office after July 1, 1999, who are vested in the state retirement system, may continue to participate in health and life insurance programs under the same premium and coverage terms as current employees.

The bill will allow any member of the FRS serving as an elected mayor of a consolidated local government which administers its own retirement system to elect membership into the Elected State and County Officers' Class. Former mayors are also eligible provided the local government employer agrees to make the necessary contributions plus accrued interest.

Each executive branch department shall survey its own embedded and subordinate commissions, boards, and other entities and report to the Governor and Legislature by December 1, 1999, as to the future continuation of such entities.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 116-0

CS/HB 107 — Administrative Procedure Act

by Governmental Rules & Regulations Committee and Reps. Pruitt and Wallace (CS/CS/SB 206 by Fiscal Policy Committee; Governmental Oversight & Productivity Committee; and Senator Laurent)

The bill amends ss. 120.52 and 120.536, F.S., both of which contain the required standard for the adoption of rules by agencies. Under the amendment to these sections, an agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. Further, the amendment to these sections provides that no agency has authority to adopt a rule only because it is within the agency's class of powers and duties. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency can be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

The bill also requires agencies to provide to the Joint Administrative Procedures Committee (JAPC) by October 1, 1999, a listing of each rule, or portion of a rule, that was adopted before the effective date of the bill, which exceeds the rulemaking standard. The JAPC is required to provide a cumulative listing to the President of the Senate and the Speaker of the House of Representatives. During the 2000 Regular Session, the Legislature will consider whether specific legislation authorizing the identified rules should be enacted. The bill requires agencies to initiate proceedings to repeal rules that were

identified as exceeding the rulemaking authority permitted and for which authorizing legislation does not exist. The JAPC must submit to the Legislature by February 1, 2001, a report identifying those rules previously identified as exceeding the rulemaking standard if rule repeal proceedings have not been initiated. Any rule may be challenged as of July 1, 2001, on the basis that it exceeds the rulemaking authority permitted by the section.

The bill also modifies requirements related to the preparation of final orders by an agency. An agency may reject or modify the conclusions of law established by the administrative law judge in his or her recommended order if the agency has substantive jurisdiction over the area. Further, when rejecting or modifying the conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying the conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as reasonable or more reasonable than that which was rejected or modified.

The bill also clarifies some other portions of the Administrative Procedure Act. For example, the bill provides that the petitioner has the burden of going forward in a proposed rule challenge proceeding, but the agency has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the expressed objections.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-1; House 113-5

CS/CS/SB 230 — Reorganization of the Department of Labor and Employment Security

by Commerce & Economic Opportunity Committee; Governmental Oversight & Productivity Committee; and Senator Webster

This bill reorganizes the Department of Labor and Employment Security (DLES) to operate in a more decentralized fashion. Two assistant secretaries must be appointed by the secretary: (1) Assistant Secretary for Finance and Administration; and (2) Assistant Secretary for Programs and Operations. The Office of General Counsel and the Office of Inspector General are established as special offices and are headed by managers. The bill provides for six divisions, headed by division directors, which will be under the Assistant Secretary for Programs and Operations: (1) Division of Workforce and Employment Opportunities; (2) Division of Unemployment Compensation; (3) Division of Workers' Compensation; (4) Division of Blind Services; (5) Division of Safety, which is repealed July 1, 2000; and (6) the Division of Vocational Rehabilitation.

The bill provides for five field offices to administer and manage the DLES's programs. The field offices are to be located in: (1) Panama City; (2) Lake City; (3) Orlando; (4)

Tampa; and (5) Miami. These field offices are responsible for the administration and management of any local offices within their jurisdiction. The functions and programs of these divisions are to be coordinated and integrated to the maximum extent practicably feasible. The DLES is granted flexibility to minimize costs in managing its contractual obligations with respect to existing leases. Key programs are to be co-located in the five field offices by July 1, 2001, though the department is authorized to phase in the offices where longer-term leases exist.

The bill also limits the authority of the Division of Safety to public-sector places of employment and requires the DLES to report on a proposed reauthorization of the division based upon specific criteria.

The bill requires the Division of Vocational Rehabilitation to enter into local public-private partnerships to the extent that it is beneficial to increasing employment outcomes for persons with disabilities and to ensuring their full involvement in the comprehensive workforce investment system. The bill also establishes the Occupational Access and Opportunity Commission in the Department of Education. Appointments to the commission are made by the Governor, the President of the Senate, and the Speaker of the House of Representatives. At least 50 percent of the members must be from the private sector.

The commission is required, no later than July 1, 2000, to develop and implement a 5-year plan to promote occupational access and opportunities for Floridians with disabilities, and to fulfill the federal plan requirements. The plan must explore the use of Individual Training Accounts for eligible clients. If developed, these accounts must be distributed under a written memorandum of understanding with One-Stop Career Center Operators. Additionally, the Occupational Access and Opportunity Corporation, a not-for-profit entity, is created to act as the administrative arm of the commission. The plan must be submitted to the Governor, the Senate President, and the House Speaker.

Effective January 1, 2000, the brain and spinal cord injury program and the Office of Disability Determinations, administered by the DLES, are transferred to the Department of Health. Additionally, the Division of Blind Services is transferred from the department to the Department of Education (DOE). The bill also requires the Commissioner of Education to appoint a Deputy Commissioner for Technology and Administration and creates a Division of Technology in the DOE.

Additionally, it requires the department to contract with one or more consumer-reporting agencies to provide creditors with secured electronic access to employer-provided information relating to the quarterly wages report submitted in accordance with the state's unemployment compensation law. Creditors must obtain written consent from the credit applicant prior to gaining access to the information and such written consent is good for a

single transaction. The consumer-reporting agency or agencies under contract with the department are to pay all development and other startup costs incurred by the state in connection with the design, installation, and administration of technological systems and procedures for the electronic-access program.

All other actions related to the reorganization of the DLES required by the act must be accomplished within available appropriations of the department.

If approved by the Governor, these provisions take effect October 1, 1999, except as otherwise provided in the bill.
Vote: Senate 28-10; House 84-34

CS/HB 223 — Governmental Conflict Resolution

by Governmental Affairs Committee and Rep. Constantine and others (SB 1076 by Senator Webster)

The bill modifies governmental conflict resolution procedures. The purpose and intent of the Florida Governmental Conflict Resolution Act is to promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination by a conflict resolution procedure that is equitable, expeditious, effective, and inexpensive. The bill provides that it is the intent of the Legislature that conflicts between governmental entities be resolved to the greatest extent possible without litigation.

The bill contains definitions of "local governmental entities" and "regional governmental entities." Additionally, it places a duty on governmental entities to negotiate with other governmental entities to resolve disputes. The act encourages use of the procedures at any time there is conflict. If a governmental entity files suit against another governmental entity, however, court proceedings on the suit must be abated until the procedural options of the act have been exhausted. The act specifies types of actions which do not fall under the procedural requirements of the act, such as some eminent domain actions, administrative proceedings, and where the governing body of the governmental entity finds by a three-fourths vote that the immediate health, safety, and welfare of the public is threatened. Issues such as municipal annexation, service provision areas, siting of hazardous waste facilities, and others, are covered by the act.

The bill provides a conflict resolution procedure that includes adoption of a resolution by the governing body of one governmental entity specifying the issues of conflict. The receiving governmental entity is provided a period of time to respond to this resolution. Public notice of the conflict assessment meeting that is thereafter scheduled is required. If no tentative resolution to the conflict can be agreed upon at this meeting, additional meetings may be scheduled, including a joint public meeting. Additionally, mediation may

be requested. If the conflict is not resolved, the entities participating in the dispute resolution process may avail themselves of any otherwise available legal remedies.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 112-0

SB 326 — Treasurer/Deferred Compensation Plan

by Senator Thomas

This bill amends ss. 18.125 and 112.215, F.S., to earmark administrative fees paid by participants of the state's Deferred Compensation Plan for purposes of benefiting only plan participants. It eliminates reversion of any surplus fees to the General Revenue Fund. The bill also provides technical clarification regarding moneys held in the State Treasury's Deferred Compensation Trust Fund.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

GOVERNMENTAL ORGANIZATION

CS/CS/SB 2426 — Legislative Oversight

by Fiscal Policy Committee; Governmental Oversight & Productivity Committee; and Senator Rossin

This bill revises the conditions under which the Joint Legislative Auditing Committee, the Legislature's supervising entity for the Office of the Auditor General, will conduct audits of local governments. CS/CS/SB 2426 implements recommendations made in the October 1998 report *Joint Committee Review and Rightsizing Project, Review Report* issued by the Office of the Senate President and the Office of the Speaker of the House of Representatives.

Under the revisions included in the legislation only school boards with county populations of less than 125,000 will be eligible for scheduled audit services performed by the Auditor General. Remaining school boards will have to contract out these services every two years with the legislative auditor providing triennial services only. New compliance requirements for these contracted school board audits will be developed in concert with the Department of Education. Charter schools are specifically included by name in the audit requirements. Local governments will be assessed costs for audit services based upon their ability to pay and whether the audit was done at their request. Sanctions, including the withholding of

local revenues derived from the operation of state law, are provided for entities which do not pay for these requested services.

The bill makes other nomenclature changes to effect its objectives by aligning state agency names with revised statutory duties. Water Management Districts will be governed by a nondiscretionary annual audit requirement. Property tax assessment rolls will be reviewed triennially rather than biennially by the Auditor General. Nonprofit interscholastic associations and the state's prison industry management corporation are required to provide annual financial audits of their accounts paid from their funds.

The bill also transfers intact the entire Division of Public Assistance Fraud and its employees from the Auditor General to the Florida Department of Law Enforcement effective October 1, 1999. CS/CS/SB 2426 also centralizes the day-to-day management of the legislative Office of Program Policy Analysis and Governmental Accountability under its director who reports directly to the President of the Senate and Speaker of the House of Representatives. The director may adjust completion of program evaluation and justification reviews to accommodate items deemed to be more urgent. Jurisdiction for actions affecting employees in the "Whistle-Blower's Act" is transferred from the Public Service Commission to the Commission on Human Relations. The legislative Juvenile Justice Accountability Board is transferred to the Department of Juvenile Justice, has its appointed membership reduced, and is subject to repeal in the year 2001.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 112-1

Senate Committee on Health, Aging and Long-Term Care

DEPARTMENT OF HEALTH

HB 811 — Child Protection Team Services

by Rep. Brown and others (CS/SB 2118 by Health, Aging & Long-Term Care Committee and Senator Dawson-White)

This bill revises the law providing for the confidentiality of and exemption from public disclosure, under the Public Records Law, of records and reports of child protection teams relating to child abuse or neglect. The bill authorizes the Department of Health to release to HMOs and other health plan payors, upon request, limited information needed for insurance reimbursement purposes.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 114-0

CS/CS/SB 890 — Rural Hospital Capital Improvement

by Fiscal Policy Committee; Health, Aging & Long-Term Care Committee; and Senators Mitchell, Geller, Childers, Cowin, Thomas, Kirkpatrick, Jones and Rossin

The bill creates the rural hospital capital improvement grant program and provides a mechanism for a rural hospital to apply for a grant from the Department of Health. Each rural hospital as defined in s. 395.602, F.S., must receive a minimum of $100,000 annually, subject to legislative appropriation, upon application to the Department of Health, for projects to acquire, repair, improve, or upgrade systems, facilities, or equipment. The Department of Health must establish, by rule, criteria for awarding grants for any remaining funds, which must be used exclusively for the support and assistance of rural hospitals, including criteria relating to the level of uncompensated care rendered by the hospital, the participation of the hospital in a rural health network, and the proposed use of the grant by the rural hospital to resolve a specific problem. The department must consider any information that rural hospitals submit in a grant application, and in determination of the hospital's eligibility for and the amount of the grant. The Department of Health must ensure that the funds are used solely for the purpose specified in the bill.

The bill amends s. 395.602, F.S., to revise the definition of "rural hospital" to include a hospital in a constitutional charter county with a population of over 1 million persons that has imposed a local option health service tax pursuant to law and in an area that was

directly impacted by a catastrophic event on August 24, 1992, for which the Governor of Florida declared a state of emergency pursuant to ch. 125, F.S., and has 120 beds or less that serves an agricultural community with an emergency room utilization of no less than 20,000 visits and a Medicaid in-patient utilization rate greater than 15 percent.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate: 40-0; House 111-0

HB 931 — Public Swimming Pools

by Rep. Miller and others (SB 1212 by Senator Bronson)

The bill amends s. 514.0115, F.S., 1998 Supp., to state that a pool serving a residential child care facility which is exempt from licensure pursuant to s. 409.176, F.S., is exempt from supervision or regulation of construction standards as a public pool. The exemption applies only if the pool is for the exclusive use of the facility's residents and is not open to the public.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 117-0

CS/SB 1356 — School Health Services

by Education Committee and Senators Klein, Clary, Silver, Brown-Waite, Kurth and Myers

The bill revises the School Health Services Act to provide sovereign immunity to any health care entity or entity that provides school health services under contract with the Department of Health pursuant to a school health services plan and as part of a school nurse services public-private partnership. The limitations on tort actions contained in s. 768.28(5), F.S., apply to any action against the health care entity or entity with respect to the provision of school health services, if the entity is acting within the scope of and pursuant to guidelines established in the contract or by rule of the Department of Health. The bill provides that the contract must require the entity to obtain general liability insurance coverage. The bill provides legislative intent that the insurance purchased by the health care entity or entity cover all liability claims, and under no circumstances shall the State of Florida or the Department of Health be responsible for payment of any claims or defense costs for claims brought against the entity or its subcontractor for services performed under the contract with the department.

The bill requires schools to make *adequate* physical facilities available for school health services. The bill requires every person who provides services under a school health services plan to complete a Level 2 screening under ch. 435, F.S. Persons who provide services under a school health services plan shall be on probationary status pending the

results of the background screening. The individual being screened, or his or her employer, must pay the cost of the background screening to the Department of Health. The Department of Health must establish a schedule of fees to cover the costs of the Level 2 screening and the abuse registry check.

The Department of Health is directed to work with the federal Department of Health and Human Services to determine a means through which local units of government, other than county health departments, could be designated as Title V (Maternal and Child Health Block Grant) agencies. Any money earned from Medicaid by such a designated entity would have to be reinvested in school health services.

The Secretary of the Department of Health is required to appoint a study group relating to the training requirements for nurses providing school health services. Two representatives must be appointed to represent each of the following: the Department of Health, the Department of Education, the Florida Nurses Association, the State University System, and the Board of Nursing. The Department of Health must report the group's findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2000.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate: 39-0; House 116-0

HB 2125 — Health Care

by Health Care Services Committee and Rep. Peaden and others (CS/SB 2220 by Health, Aging and Long-Term Care Committee and Senator Clary)

General Public Health Provisions

The bill makes numerous changes in the statutes relating to the administration of the Department of Health (DOH) and its programs. The bill gives DOH specific authority for certain existing administrative rules, updates statutory references to DOH and makes changes to comply with changes in federal law.

Significant provisions of the bill: modify DOH's authority to use incentives and promotional items in disease prevention and health education; revise and rename divisions within the department; authorize DOH to adopt rules for certain group-care facilities and to impose fines for violation of its rules; revise the requirements and the membership of the Diabetes Advisory Council; update career service exemptions; impose additional requirements on co-payments made pursuant to primary care challenge grants; revise requirements for DOH to hold formal hearings for disqualification reviews of certified nurse assistants; allow nursing homes to administer medical oxygen to their residents without getting a pharmacy license; authorize DOH to contract with the Department of

Children and Family Services to conduct administrative hearings for matters relating to the Special Supplemental Nutrition Program for Women, Infants and Children, the Child Care Food Program, and the Children's Medical Services Program; permit DOH to purchase automobiles for use by county health departments; eliminate DOH's responsibility for monitoring the transportation of radioactive materials; revise requirements for the performance of an HIV test on persons who die during treatment; authorize DOH to adopt rules for family planning; revise the membership and responsibilities of the Health Information Systems Council; define multi-family water system; revise DOH procedures for birth records in the Office of Vital Statistics and authorize the department to retain fees paid to that office for birth certificates in lieu of being transferred into the General Revenue Fund; eliminate requirements for DOH to reimburse hospitals for costs of furnishing data for the cancer registry; revise penalties for certain violations of the Florida Drug and Cosmetic Act, and authorize federal, state, and local government employees to possess prescription drug samples when acting within the scope of their employment; prohibit the distribution of a legend device to a patient without a prescription or order from a licensed practitioner; authorize DOH to use earned dollars to improve the A.G. Holley Hospital through a legislative budget request and to establish an advisory body for the facility; name buildings; authorize DOH to apply for and become a National Environmental Laboratory Accreditation program accrediting authority; and develop and implement a statewide HIV and AIDS prevention campaign that is directed towards minorities who are at risk of HIV infection, including a statewide Black Leadership Conference on HIV and AIDS by January 2000.

Emergency Medical Services

The bill grants DOH specific statutory authority to approve training programs for emergency medical technicians and paramedics, to impose minimum requirements on permitted emergency medical vehicles, to require licensees to provide receiving hospitals with a copy of an individual patient care record for each patient transported to the hospital, and to establish requirements for recertification training for emergency medical technicians and paramedics. The bill requires documents to be submitted by emergency medical licensees and emergency medical certification applicants to the department under oath.

Recreational Sport Diving

Beginning January 1, 2000, DOH must adopt standards for contaminants in compressed air that is used for recreational sport diving. The department must consider the levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association. The bill requires persons providing compressed air for compensation to ensure that samples of air to be sold are tested quarterly by a laboratory certified by the American Industrial Hygiene Association or the American Association for Laboratory

Accreditation. The results of these tests must be provided to the department, which will issue a certificate to the vendor stating that the submitted test samples of compressed air meet standards, or issue a notification that test samples failed to meet the standards. The certificate must be posted in a location where it may be readily seen by any person purchasing the compressed air.

Autism/Secretin

The bill requires the Division of Children's Medical Services of DOH to contract with a private nonprofit provider that is affiliated with a teaching hospital to conduct clinical trials on the use of the drug Secretin to treat autism. The bill requires the private nonprofit provider conducting the clinical trials to report its findings and provides an appropriation of $50,000 to the Division of Children Medical Services from the General Revenue Fund for implementing the bill.

Blood-Borne Infections

The bill provides that any person licensed by DOH and any other person employed by a health care facility who contracts a blood-borne infection shall have a rebuttable presumption that the illness was contracted in the course and scope of his or her employment when the person reports one or more specific significant exposures to the infection as defined in s. 381.004, F.S. The employer may rebut the presumption by the preponderance of evidence. Except as expressly provided in this bill, there shall be no presumption that such infection is a job-related illness.

Trauma

The bill makes provisions for the coordination of activities of DOH, the Boards of Medicine and Nursing, the Agency for Health Care Administration and other providers who have resources to assist a trauma victim in establishing and regulating an inclusive trauma system in Florida. The bill amends the law pertaining to trauma to incorporate the concept of an inclusive trauma system; rename, from patients to trauma victims, persons who suffer trauma and who do not have a provider/patient relationship yet established; establish a five-year time frame for updates of trauma agency plans; clarify that Level I and II trauma centers should each be capable of treating 1,000 and 500 patients, respectively, with an injury severity score of 9 or greater; clarify that transportation requirements apply to trauma alert victims; and require DOH to periodically review the assignment of counties to trauma service areas as currently specified in s. 395.402, F.S.

Medicaid

The bill requires the Department of Children and Family Services and the Agency for Health Care Administration to develop a system to issue a Medicaid number to unborn children. The number is to be used for billing purposes and for monitoring care provided to the child starting at birth. The bill delays and revises the implementation of a plan to reimburse providers on a capitated basis through the Children's Medical Services network for services provided to Medicaid eligible children with special health care needs.

The bill amends the section of statute relating to the Healthy Start waiver, to enable the Agency for Health Care Administration to pursue a certified match program to use local and state Healthy Start funding to draw down federal matching funds in the event that the federal government does not approve the pending Healthy Start waiver request.

The bill requires that, in the instance that health insurers and health maintenance organizations who are liable for Medicaid costs and require tape or electronic billing, the entities must, at their own expense, develop the means to use the standard tape or electronic format of the Medicare program. Entities which cannot use the tape or electronic billing format are required to accept paper claims in the Medicare format.

The bill creates the "Medicaid Estate Recovery Act," which codifies into statute Medicaid's estate recovery process. The provisions are applicable only to estates of those deceased Medicaid recipients who received Medicaid-reimbursed services after reaching the age of 55, and the agency is expressly prohibited from enforcing a claim against any homestead of a deceased Medicaid recipient. The bill requires notification of the Medicaid program of the administration of an estate by the personal representative of a deceased Medicaid recipient and creates a claim and interest in the estate on the part of the state in the amount of Medicaid assistance received by a recipient after the age of 55. The bill creates exemptions from the estate recovery process for homestead property, as well as, in the instance of a surviving spouse, a child under the age of 21 or a disabled child living in the home, a waiver provision if enforcement of the estate recovery process would create a hardship. The bill provides for a Medicaid claim against a settlement due from a third party and provides for the disposal of real property which has value exceeding the cost of its sale, and makes the agency a reasonably ascertainable creditor where a deceased recipient has received Medicaid assistance after the age of 55.

The bill amends the section of statute relating to Medicaid provider service network demonstration projects as a cost-effective means of purchasing, to delete the requirement that one of the four demonstration projects be conducted in Orange County. The bill requires the Agency for Health Care Administration to enter into agreements with not-for-profit organizations based in Florida to provide vision screening.

The bill modifies the agency's program integrity authority to allow Medicaid to withhold payments based on reliable evidence that a provider is engaged in fraud or abuse of the Medicaid program or a crime is being committed while rendering goods or services to Medicaid recipients.

The bill requires the agency, when preforming reviews of medical necessity for physician services, to use physicians of the same specialty as the physician under review to the extent possible. The agency is required to give advance notice to a physician when it wants to conduct onsite record reviews, use valid and accepted statistical models, and refer claims it believes are overpayments for peer review. The bill requires the agency to study its current statistical model used to calculate overpayments and advise the Legislature of any needed changes.

Professional Regulation

The bill makes numerous revisions to the professional regulatory provisions for health care professions within DOH. Significant provisions in the bill include the following:

- DOH, or the appropriate regulatory board having jurisdiction over the health care professional, is authorized to impose an administrative fine when the health care provider fails to make available to patients a summary of their rights. Initial nonwillful violations shall be subject to corrective action and shall not be subject to an administrative fine.

- The definition of "health care practitioner" in pt. II of ch. 455, F.S., relating to the general regulatory provisions for health care professions under DOH, is revised to include certified nursing assistants, midwives, nursing home administrators, athletic trainers, orthotists, prosthetists, pedorthists, electrologists, clinical laboratory personnel, and medical physicists.

- The Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine are authorized to require by rule that up to 1 hour of the 40 or more hours of continuing education be in the area of risk management or cost containment for licensure renewal. The bill provides that this rulemaking authority may not be interpreted to limit the number of hours that a licensee may obtain in risk management or cost containment which may be used to satisfy the continuing education requirements or be construed to require the boards to impose any requirement on licensees except for the completion of at least 40 hours of continuing education every 2 years.

- Other boards within the Division of Medical Quality Assurance, or DOH, if there is no board, are authorized to adopt rules granting continuing education hours in risk management for attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member's term. The bill authorizes the department to adopt rules for the professions under its jurisdiction: to provide for the use of approved videocassette courses and the criteria for and content of such courses; and to establish criteria for continuing education courses.

- DOH is prohibited from releasing hospital disciplinary action in physician profiles and the practitioner profiling requirements are revised to exempt resident physicians who must register with the department from submitting information that will be compiled into the practitioner profiles.

- Examination fees for radiological certification are revised to require applicants to pay the actual per-applicant cost to DOH for the purchase of the national examination.

- An alternate licensing path for foreign-licensed physicians under s. 458.3115, F.S., to become licensed to practice in Florida, is revised to change the period of time that the applicants may sit for and pass the required combination of medical licensure examinations from the year 2000 to 2002. The requirements are revised to allow the applicants to document no less than 2 years of the active practice of medicine in any jurisdiction rather than another jurisdiction. Effective upon becoming a law, revises the fee that DOH may charge the examinees under this alternate licensure path for foreign-licensed physicians from the actual cost of the examination to a fee that does not exceed 25 percent of the actual costs of the first examination administered pursuant to s. 458.3115, F.S., 1998 Supp., and a fee not to exceed 75 percent of the actual costs for any subsequent examination.

- The application period is extended from December 31, 1998, to December 31, 2000, for an alternate licensing path for foreign-licensed physicians under s. 458.3124, F.S.

- DOH's responsibilities for implementing a standardized credentialing program are revised so that it will no longer serve as a credentials verification organization for all health care practitioners in Florida. The department will maintain a depository for core credentials data for those health care entities authorized by the health care practitioner to receive the data. The bill requires DOH to establish by rule, procedures, guidelines, and fees for credentialing in consultation with the Credentials Advisory Council. Beginning July 1, 2002, the bill prohibits state

agencies that credential health care practitioners from collecting duplicate core credentials data from individual health care practitioners. Any credentials verification organization that does business in Florida must be fully accredited or certified as a credentials verification organization by a national accrediting organization, rather than having to meet national standards for its credentialing procedures. The bill provides that the core credentials data maintained by DOH that is otherwise confidential or exempt from the Public Records Law will be released to any person authorized by the health care practitioner to receive the data.

- Sexual misconduct in the practice of a health care profession is defined to mean violation of the professional relationship through which the health care practitioner uses the relationship to engage or attempt to engage the patient or client, or an immediate family member of the patient or client in, or induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. The bill prohibits sexual misconduct in the practice of a health care profession.

- DOH's requirement to provide procedures for applicants who fail an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades, and grading key is limited to only the applicant's examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, to only the parts of the examination the applicant failed.

- Health care professionals are made subject to discipline for: failing to comply with requirements to provide patients with information about their patient rights and how to file a patient complaint; engaging or attempting to engage a patient or client in verbal or physical sexual activity; failing to comply with profiling and credentialing requirements; failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction; or using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents, or using information published in a newspaper or other news publication or broadcast that has used such reports, for the purposes of commercial or any other solicitation of people involved in such accidents. The amount of the administrative fine is increased from $5,000 to $10,000 that the department may impose on health care professionals for disciplinary violations.

- DOH, or appropriate board, is authorized to consider sanctions necessary to protect the public or to compensate the patient. The department or boards may consider and include requirements to rehabilitate the practitioner only after those sanctions have been imposed. Any costs associated with compliance with disciplinary orders are the obligation of the practitioner. The bill authorizes the department and the boards to assess attorney's fees in addition to costs for prosecution and investigation of disciplinary cases. If the ground for disciplinary action is the first-time failure of the licensee to satisfy continuing education requirements, the disciplinary sanction is limited to a citation for minor violations and assessment of a fine, as determined by the board or department rule. For each hour of continuing education not completed or completed late, the board or department may require the licensee to take an additional hour of continuing education.

- A civil cause of action and recovery of reasonable attorney fees and costs is provided to any person who has been injured by a disclosure of confidential information maintained by an officer, employee, or person under contract with the Department of Health or regulatory board therein, for the enforcement of regulation of health care professionals under the department's jurisdiction, if the disclosure is willfully made.

- The required disclosure by health care providers of free or discounted health services is extended to pharmacists, midwives, electrologists, medical physicists, clinical laboratory personnel, opticians, hearing aid specialists, psychologists, school psychologists, clinical social workers, mental health counselors, and marriage and family therapists.

- DOH's authority to obtain patient records and insurance information based on the investigation of a disciplinary complaint alleging inadequate medical care based on termination of insurance is revised to authorize DOH to obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to subpoena without written authorization from the patient, if the department and probable cause panel of the appropriate board find reasonable cause to believe that a health care practitioner has submitted fraudulent insurance claims, used information from a written automobile report to solicit or obtain patients personally or through an agent regardless of whether the information is from another person, solicited patients fraudulently, received a kickback, violated the patient brokering laws, or presented a false or fraudulent insurance claim, and also find that patient authorization cannot be obtained. The bill deletes the exemption to the Public Records Law making confidential patient records and insurance information obtained by DOH for the purpose of disciplinary proceedings. Requirements for a health care practitioner or records owner

furnishing copies of reports or records of a patient examination are revised to include the making of such reports or records available for digital scanning.

- DOH is authorized to suspend or restrict the license of any health care practitioner who tests positive for any drug on any government or private-sector preemployment or employer ordered confirmed drug test when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug. The practitioner must be given 48 hours, after being notified of the confirmed drug test result, to produce a lawful prescription for the drug before an emergency order is issued.

- Midwives are required to maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by DOH by rule.

- Business establishments regulated by the Division of Medical Quality Assurance are required to obtain an active status license before providing regulated services and the business establishments are made subject to the disciplinary violations that may imposed on licensed health care professionals.

- Definitions under the acupuncture practice act are revised to define "prescriptive rights" to mean the prescription, administration, and use of needles and devices, restricted devices, and prescription devices that are used in the practice of acupuncture and oriental medicine.

- The Board of Medicine and the Board of Osteopathic Medicine's authority to adopt rules is revised, to require physicians who perform level 2 procedures lasting more than 5 minutes and all level 3 surgical procedures in an office setting to register the office with DOH unless that office is licensed as a hospital or ambulatory surgical center. The department shall inspect the physician's office annually unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the board. The actual costs for registration and inspection or accreditation must be paid by the person seeking to register and operate the office setting in which office surgery is performed.

- Any medical physician, osteopathic physician, or physician assistant is required to notify DOH of any adverse incident that involved the physician or physician assistant which occurred on or after January 1, 2000, in any office maintained by the physician for the practice of medicine that is not licensed under chapter 395, F.S., relating to licensure for hospitals and ambulatory surgical centers. Any medical physician, osteopathic physician, or physician assistant must also notify the

department in writing and by certified mail of any adverse incident within 15 days after the adverse incident occurred. The bill requires DOH to review each adverse incident and determine whether the incident potentially involved conduct by a health care professional who is subject to disciplinary action.

- The medical licensure by examination requirements are revised to limit acceptance of an applicant's passing score on a combination of the examination of the Federation of State Medical Boards of the United States, the United States Medical Licensing Examination (USMLE), or the examination of the National Board of Medical Examiners to the period up to the year 2000.

- An applicant who has graduated from an approved program and who expects to take the first national licensure examination to become a physician assistant may be granted a temporary license that expires 30 days after receipt of scores from that examination.

- Chiropractic students enrolled in a accredited chiropractic college and participating in a community-based internship under the direct supervision of the faculty of that college are exempted from chiropractic licensing requirements and the administrative fines are increased from $2,000 to $10,000 that the Board of Chiropractic may impose on chiropractic physicians.

- Chiropractic physician's assistants are authorized to perform services under the indirect supervision of a chiropractic physician as defined by rule of the Board of Chiropractic and on calls outside of the office of the chiropractic physician to whom she or he is assigned. The duties of certified chiropractic physician's assistants are expanded to include supervision of registered chiropractic assistants.

- The podiatric licensure by examination requirements are revised to require applicants who have not completed a residency in 4 or more years from the filing of their application and who have not practiced for ten continuous years to meet specified requirements. The administrative fines are increased from $5,000 to $10,000 that the Board of Podiatric Medicine may impose on physicians and certified podiatric X-ray assistants are exempted from the regulatory provisions for radiologic technicians.

- The number of times an applicant is permitted to take the nursing licensure examination is limited to 3 consecutive times and remedial training approved by the Board of Nursing is required before any subsequent examination. The bill prohibits the use of the title "nurse" unless the person is duly licensed or certified as a nurse.

- The definition of the practice of the profession of pharmacy is revised to include other pharmaceutical services. A ground for which a pharmacist is subject to discipline, for placing in the stock of any pharmacy any part of any prescription compounded or dispensed which is returned by a patient, is revised to exclude prescription drugs returned for reuse in a correctional facility in which unit-dose medication is dispensed to inpatients. The administrative fines are increased from $1,000 to $5,000 that the Board of Pharmacy may impose on pharmacists.

- The Board of Dentistry is authorized to prescribe by rule the form of written work orders dentists are required to use when they use the services of any unlicensed person for certain services.

- DOH is authorized to grant a provisional license to practice speech-language pathology and audiology to applicants who hold either a master's or a doctoral degree with a major emphasis in the appropriate field.

- The nine-member Board of Athletic Training is created, in lieu of the existing Council of Athletic Training. The bill adds a consumer member and an additional athletic trainer member to the newly-created board. The bill staggers the terms of appointment for the initial members of the board and provides that all parts of part II of chapter 455, F.S., relating to activities of the board shall apply. The bill provides that rules relating to the regulation of athletic trainers in force before October 1, 1999, shall remain in effect until the newly-created board adopts administrative rules which supersede the earlier rules. The bill provides that the Council of Athletic Training and the terms of all council members are terminated on October 1, 1999.

- Any applicant who successfully completed prior to March 1, 1998, at least one-half of the examination required for national certification and successfully completed the remaining portion of the examination and became certified before July 1, 1998, for purposes of the practice of orthotics and prosthetics licensure requirements shall be considered as nationally certified by March 1, 1998.

- The definition of "electrolysis or electrology" is revised to mean the permanent removal of hair by destroying the hair-producing cells using equipment and devices approved by the Board of Medicine and cleared by and registered with the United States Food and Drug Administration.

- The Board of Clinical Laboratory Personnel is authorized to by rule designate a national certification examination that may be accepted in lieu of the state examination for clinical laboratory personnel or public health scientists. The definition of "clinical laboratory" is revised. Clinical laboratories in Florida are

authorized to accept work from a duly licensed practitioner from another state licensed under similar statutes who orders examinations on materials or specimens for non residents of Florida, but who reside in the same state as the requesting practitioner. DOH is authorized to license applicants at the director level in the category of public health to qualify for clinical laboratory director licensure.

- The Board of Clinical Laboratory Personnel is authorized to adopt rules to provide for continuing education or retraining requirements for candidates failing an examination two or more times. The bill provides additional disciplinary violations for clinical laboratory personnel which include: violating a previous order of the Board of Clinical Laboratory Personnel; failing to report violations under the regulations; making or filing a false report; paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split fee arrangement with a physician, organization, agency, or person, for patients referred to providers of health care goods and services; exercising influence on a patient or client for exploitation of the patient or client or for financial gain; practicing or offering to practice beyond the scope permitted by law or rule, or accepting or performing professional services or responsibilities which the licensee knows that he or she is not competent to perform; improperly interfering with an investigation or any disciplinary proceeding; or engaging or attempting to engage in sexual misconduct, causing undue embarrassment or using disparaging language of a sexual nature towards a patient, exploiting superior/subordinate, professional/patient, instructor/student relationships for personal gain, sexual gratification, or advantage.

- DOH's authority to issue a temporary license to medical physicists applicants pending completion of the application process for board certification is eliminated.

- The requirements for the supervision of an apprentice are revised to require the optician who supervises an apprentice to be a Florida-licensed optician who has been licensed for at least one year.

- Hearing aid specialists are required to provide a refund to consumers within 30 days of the return or attempted return of a hearing aid and the penalty for certain prohibited acts is increased from a second-degree misdemeanor punishable by jail time up to 60 days and a $500 fine to a third-degree felony punishable by up to 5 years in prison and a fine of $5,000.

- DOH's authority to issue a temporary permit to practice physical therapy for licensure applicants pending the results of their licensure examination is eliminated.

- An alternate path to become a licensed psychologist that limited the pathway to persons who were enrolled in a program that the board determined was comparable to standards of education and training comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the U.S. Department of Education before October 1, 1995, is revised. Under the revision, the time that the applicant must submit the certification of the doctoral-level training to the board has been extended from July 1, 2001 to August 31, 2001. The applicant must also meet training requirements that are certified as comparable by the program director of a doctoral-level psychology program accredited by a programmatic agency recognized and approved by the U.S. Department of Education rather than have the comparability of the training be determined by the Board of Psychological Examiners before 1995.

- DOH is required to license a psychologist who otherwise meets licensure requirements and holds a doctoral degree in psychology and who has at least 20 years of experience as a licensee in any jurisdiction of the United States within 25 years preceding the date of application.

- Any clinical social work, marriage and family therapy, and mental health counseling applicant who registers as an intern on or before December 31, 2001, and who otherwise meets the education requirements in effect on December 31, 2000, is deemed to have met the educational requirements for licensure for the profession for which he or she has applied.

- Applicants applying for licensure by examination or endorsement who have met minimum education requirements by holding an earned graduate degree in social work, marriage and family therapy, mental health counseling, or a closely related field are authorized to practice with a provisional license while satisfying additional coursework or examination requirements for licensure.

- Effective January 1, 2001, the bill amends s. 491.005, F.S., as amended by s. 13 of ch. 97-198, L.O.F., and s. 205 of ch. 97-264, L.O.F., relating to clinical social work, marriage and family therapy, and mental health counseling licensure by examination requirements, to provide that the additional educational requirements will change graduate coursework hours for mental health counseling requirements from 36 semester hours to 33 semester hours and from 48 quarter hours to 44 quarter hours.

- The laws and rules courses for licensure and continuing education, and their providers must be approved by DOH or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, to conform to the

department's objective to allow such providers to test the applicants for the courses offered.

- The definition of "wholesale distribution" of prescription drugs for purposes of ch. 499, F.S., the Florida Drug and Cosmetic Act, is revised to exempt the sale, purchase, trade, or other transfer of a prescription drug from or for a federal, state, or local government agency or any entity eligible to purchase prescription drugs at public health services prices under the Veteran's Health Care Act, to a contract provider or its subcontractor for eligible patients of the entity under specified conditions. The agency or entity must obtain written authorization for the sale, purchase, trade, or other transfer of a prescription drug from the Secretary of the Department of Health.

- The Board of Respiratory Care is created. The bill staggers the terms of appointment for the initial members of the board and provides that all parts of part II of ch. 455, F.S., relating to activities of the board shall apply.

- DOH is required to regulate the practice of certified nursing assistants in Florida under a newly created part XV of ch. 468, F.S. The bill also requires DOH to maintain a certified nursing assistant registry.

Studies/Task Forces

The bill creates a Task Force for the Study of Collaborative Drug Therapy Management within DOH to determine the states in which collaborative drug therapy management has been enacted, receive testimony of interested parties, and determine the efficacy of collaborative drug therapy management in improving health care outcomes of patients. The task force must hold its first meeting no later than August 1, 1999, and submit its report to the Legislature no later than December 31, 1999.

The bill creates the Task Force on Telehealth to be appointed by the Secretary of DOH. The task force must submit a report of its findings and recommendations to the Governor, and the Legislature by January 1, 2000.

The Agency for Health Care Administration is required to conduct a detailed study and analysis of clinical laboratory services for kidney dialysis patients in Florida. The study, must among other things, include an analysis of utilization rates of clinical laboratory services for dialysis patients, and financial arrangements among kidney dialysis centers, their medical directors, and any business relationships and affiliations with clinical laboratories. The agency must report its findings to the Legislature no later than February 1, 2000.

The bill creates a seven-member task force to review sources of funds deposited into the Public Medical Assistance Trust Fund. The task force must consider: whether the law needs revision; whether the annual assessments imposed on the various health care entities are imposed equitably; whether additional exemptions from the annual assessments are justified and any other changes that could result in increased revenue for the trust fund. The Agency for Health Care Administration must provide the necessary staff support and technical assistance to the task force. The task force must convene by August 1, 1999 and must submit its finding to the Legislature and the Governor by December 1, 1999.

The bill creates the Minority HIV and AIDS Task Force within DOH to provide recommendations on ways to strengthen HIV and AIDS prevention programs and early intervention and treatment efforts in the state's black, Hispanic, and other minority communities, as well as ways to address the many needs of the state's minorities infected with AIDS and their families. The task force must submit a report by February 1, 2001, and is abolished on July 1, 2001.

Area Agencies on Aging

Area agencies on aging are made subject to the requirements of Public Records Law under ch. 119, F.S., and when considering any contracts requiring expenditures of funds, are made subject to the Public Meetings Law requirements under ss. 286.011- 286.012, F.S.

If approved by the Governor, these provisions take effect July 1, 1999 except as otherwise expressly provided in the bill.
Vote: Senate 36-0; House 114-0

REGULATION OF HEALTH CARE PRACTITIONERS

SB 248 — Orthotics/Prosthetics/Pedorthics

by Senator Kurth

The bill extends the deadline for licensure application established in s. 468.805 (1), F.S., from March 1, 1998, to July 1, 1999, to allow a person who has met the experience requirements to practice orthotics, prosthetics, or pedorthics before March 1, 1998, to apply for licensure, based on the person's experience and educational preparation, without meeting the statutory educational requirements for licensure.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 115-0

HB 699 — Athletic Trainers

by Health Care Licensing & Regulation Committee and Rep. Fasano (SB 1020 by Senator Latvala)

The bill creates the nine-member Board of Athletic Training in lieu of the existing Council of Athletic Training. The bill adds a consumer member and an additional athletic trainer member to the newly-created board. The bill staggers the terms of appointment for the initial members of the board and provides that all parts of part II of ch. 455, F.S., relating to activities of the board shall apply. The bill provides that rules relating to the regulation of athletic trainers in force before October 1, 1999, shall remain in effect until the newly-created board adopts administrative rules which supersede the earlier rules. The bill provides that the Council of Athletic Training and the terms of all council members are terminated on October 1, 1999. The bill makes other minor and conforming changes relating to the creation of the Board of Athletic Training.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 39-0; House 114-0

HB 981 — Dentistry

by Rep. Morroni (SB 1378 by Senators Saunders, Bronson, Carlton, Jones, Forman, Sebesta, Dawson-White and Brown-Waite)

The bill revises the conditions of appointment to the Board of Dentistry to require each member of the board who is a licensed dentist in Florida to be actively engaged in the clinical practice of dentistry in Florida, to obtain his or her primary source of income from direct patient care, and to have been actively engaged in the practice of dentistry primarily as a clinical practitioner for at least five years immediately preceding the date of her or his appointment to the board. The bill provides that any person who is connected in any way with a dental college or community college may be appointed to the board so long as that connection does not result in a relationship wherein such college provides more than five percent of the person's income. The bill's revisions to the conditions of appointment to the Board of Dentistry apply to appointments to that board made on or after July 1, 1999.

The bill authorizes the Board of Dentistry to prescribe by rule the form of written work orders dentists are required to use when they use the services of any unlicensed person for certain services. The bill deletes the requirement that the work order forms be provided to dentists, at cost, by the Department of Health.

The bill revises the requirements for dentists to hold themselves out as specialists or advertise as specialists. The bill requires any dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the Florida Board of

Dentistry or whose area of practice is officially recognized by an organization that the dentist wants to acknowledge or otherwise reference in an announcement, solicitation, or advertisement that is not approved as bona fide by either the American Dental Association or the Florida Board of Dentistry to provide a disclaimer. The bill revises legislative intent and provides legislative findings with respect to dental specialty advertising.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 114-0

HB 989 — Physician Assistants Licensure

by Rep. C. Green (SB 1500 by Senator Saunders)

The bill allows any person who has completed all the course requirements of the Master of Medical Science Physician Assistant Program offered through the Florida College of Physician's Assistants prior to its closure in August of 1996, to be eligible for licensure as a physician assistant in Florida under the alternate licensing requirements for certain foreign medical graduates in s. 458.347, F.S., 1998 Supp.

Before taking the required examination, such applicant must successfully complete any clinical rotations that were not completed under the Master of Medical Science Physician Assistant Program offered through the Florida College of Physician's Assistants Program and any additional clinical rotations with an appropriate physician assistant preceptor, not to exceed 6 months, that are determined necessary by the Council on Physician Assistants. The Board of Medicine and the Board of Osteopathic Medicine will determine, based on recommendations from the Council of Physician Assistants, the facilities where such clinical rotations may be completed by the applicant, and determine what constitutes successful completion. The requirements for clinical rotations must be comparable to those established by an accredited physician assistant program.

The alternate licensing requirements for persons who have completed all the course requirements of the Master of Medical Science Physician Assistant Program offered through the Florida College of Physician's Assistants prior to its closure in August of 1996, is repealed on July 1, 2001.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 114-0

HB 1031 — Physician Assistants

by Rep. Goode and others (CS/SB 1068 by Health, Aging & Long-Term Care Committee and Senator Sullivan)

The bill authorizes a physician assistant licensed under ch. 458, F.S., or ch. 459, F.S., to perform a medical examination of a child who is the subject of reported child abuse, abandonment, or neglect and who has been referred for diagnosis to a licensed physician or an emergency department in a hospital by the person required to investigate suspected child abuse, abandonment or neglect, without the consent of the child's parents, caregiver, or legal custodian. The bill adds physician assistants to the list of licensed health care professionals who may authorize a radiological examination to be performed on a child without the consent of the child's parent, caregiver, or legal custodian, if the health care professional has reasonable cause to suspect that an injury was the result of child abuse, abandonment, or neglect.

The bill requires the appointment of all members of the formulary committee for an initial term beginning July 1, 1999. The bill requires formulary committee members to be appointed for terms of four years, but staggers the initial terms of members. The formulary committee must meet at least quarterly to establish a formulary of medicinal drugs that a fully licensed physician assistant may prescribe. The Board of Medicine and the Board of Osteopathic Medicine must adopt the formulary and each subsequent change at the next regular board meeting following receipt of the formulary from the formulary committee.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 35-0; House 116-0

REGULATION OF HEALTH CARE FACILITIES/SERVICES/BUSINESSES

CS/SB 276 — Home Medical Equipment Provider Regulation

by Health, Aging & Long-Term Care Committee and Senator Brown-Waite

The bill creates ch. 400, part X, F.S., to regulate home medical equipment (HME) providers. The Agency for Health Care Administration (agency or AHCA) must license HME providers and establish basic standards to ensure the provision of quality equipment, products, and services by such providers. Home medical equipment providers are persons or entities, except for certain exempted entities, that provide incidental services for and sell or rent the following to consumers: (1) oxygen and related respiratory equipment, (2) customized wheelchairs and related seating and positioning equipment, or (3) any products reimbursed under Medicare Part B Durable Medical Equipment benefits or the

Florida Medicaid durable medical equipment program. Home medical equipment services include equipment management and consumer instruction. Prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner are explicitly excluded from HME provider regulation.

Licensure as an HME provider is required of any person or entity that holds itself out to the public as providing such equipment and related services or that accepts physician orders for such equipment and services. A separate license is required for each premise at which a provider operates even if all locations operate under the same management. The bill exempts several entities from licensure, *unless* such an otherwise exempted entity has a *separate* company, corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence. The exempted entities are: (1) providers operated by the federal government; (2) state-licensed nursing homes; (3) state-licensed assisted living facilities when they are providing services to their residents; (4) state-licensed home health agencies; (5) state-licensed hospices; (6) state-licensed intermediate care facilities; (7) homes for special services; (8) transitional living facilities; (9) state-licensed hospitals and ambulatory surgical centers; (10) manufacturers and wholesale distributors, when not selling directly to consumers; (11) licensed health care practitioners who utilize HME in the course of their practice, but who do not sell or rent HME to their patients; and (12) state-licensed pharmacies.

The bill requires HME providers in existence when the law takes effect to submit an application and fees for licensure by December 31, 1999. The agency, until it acts to deny or grant the initial licensure application, must deem as meeting licensure requirements an existing HME provider that submits an application and the appropriate fees prior to December 31, 1999. However, an existing provider that submits an application for licensure *after* December 31, 1999, must discontinue operations until AHCA approves its application and the applicant obtains its license.

To obtain licensure, an HME provider must: (1) provide at least one category of equipment directly, filling orders from its own inventory; (2) maintain and repair directly, or through a service contract with another company, items rented to consumers; (3) at the time of the initial delivery, set up an appropriate follow-up HME service schedule as needed for such times as, but not limited to, periodic maintenance, supply delivery, and other related activities; (4) accept returns of substandard or unsuitable items from consumers; and (5) upon request by the consumer or as otherwise required by state or federal laws, rules, and regulations, assist consumers with meeting the necessary filing requirements to obtain third-party payment to which a consumer may be entitled. An HME provider must comply with state and federal laws relating to prohibited patient referrals and rebates.

To become licensed, the general manager and financial officer of each applicant requesting licensure as an HME provider must submit to level two background screening pursuant to ch. 435, F.S. Additionally, AHCA is authorized to require background screening for a member of an applicant's or licensee's board of directors or an officer or an individual owning five percent or more of the licensee *if AHCA has probable cause to believe that such individual has been convicted of an offense prohibited under level 2 standards for screening* under ch. 435, F.S. However, an applicant or licensee is exempted from the screening requirement upon submitting proof of compliance with level two background screening requirements under any other state health care licensure requirements within the previous five years. If an applicant has been excluded, permanently suspended, or terminated from the Medicare or Medicaid program, the applicant must submit a description and explanation of such actions along with its application, except that submission of proof of compliance with ownership disclosure and control interest requirements of the Medicare or Medicaid program exempts an applicant from the need to submit such documentation. A similar requirement is made relating to the conviction of an offense prohibited under level two standards of ch. 435, F.S., by a member of the applicant's board of directors, its officers, or any individual owning five percent or more of the applicant, except for certain persons associated with not-for-profit organizations. An applicant for licensure renewal is required to submit to AHCA, under penalty of perjury, an affidavit of compliance with background screening requirements. The agency may not grant a license to an applicant who fails to meet the level two screening standards, unless an exemption from disqualification has been granted by the agency under ch. 435, F.S. The agency is also authorized to deny a license to, or revoke the license of, any potential licensee if the applicant has falsely represented a material fact or has omitted a material fact from its application or has previously been excluded, permanently suspended, or terminated from the Medicaid or Medicare program.

All HME provider *personnel* are required to undergo level 1 employment screening in accordance with ch. 435, F.S. An exemption from employment disqualification may be granted by AHCA. The general manager of each HME provider must annually sign an affidavit, under penalty of perjury, attesting that all personnel hired on or after July 1, 1999, who enter the home of a patient in the capacity of their employment have been screened and all other personnel have worked for the HME provider continuously since before July 1, 1999. However, AHCA is required to accept proof of compliance with the screening requirements relating to state employment, licensure as a nurse, or employment in certain specified health care or social services facilities or for the provision of certain specified services in lieu of employment screening under this section, if the person has been continuously employed in the same type of occupation for which he or she is seeking employment without a breach in service of no more than 180 days, the proof of compliance is not more than two years old, and the person has been screened by FDLE and through the central abuse registry and tracking system maintained by the Department of Children and Family Services. Home medical equipment personnel hired

subsequent to July 1, 1999, must be placed on probationary status pending determination of compliance with minimum standards for good moral character. Home medical equipment providers must automatically terminate the employment of personnel found in noncompliance with the minimum standards for good moral character, unless such employees have been exempted from disqualification.

Employers and contractors are required to *directly* provide proof of compliance with screening requirements to other employers and contractors. A potential employer or contractor may not accept proof of compliance from the person who is subject to screening. A licensed HME provider who terminates an employee's employment due to receipt of notice of a confirmed report of adult abuse, neglect, or exploitation is immunized from liability. The cost of screening is the responsibility of the HME provider or the screened person, at the provider's discretion. Certain misuse of information obtained through the screening process or operating or attempting to operate a licensed HME provider with personnel who do not meet the minimum standards for good moral character, as required under this section, are designated a first degree misdemeanor and misuse of information obtained from juvenile records is designated a third degree felony.

An approved licensure applicant must be issued a provisional license by AHCA that remains in effect for 90 days pending receipt of the FBI's background screening and during which period AHCA must conduct an inspection survey to further determine that the applicant is in substantial compliance with licensure requirements. If substantial compliance is demonstrated, AHCA is required to issue a standard license that expires two years after the effective date of the provisional license. The bill also provides other requirements and standards pertaining to licensure renewal, change of ownership, and change of general managers. A provisional license may be issued to an HME provider against whom a proceeding for revocation or suspension, or for denial of a renewal application is pending at the time of licensure renewal. Such a provisional license is to remain in effect until final disposition of such proceedings by AHCA. If judicial relief from AHCA's final disposition is sought, the court may issue a temporary permit for the duration of the judicial proceeding.

The agency is required to make or cause to be made, as it considers necessary, licensure inspections, inspections directed by the federal Health Care Financing Administration, and licensure complaint investigations. In lieu of its own periodic inspections for licensure, AHCA is required to accept the survey or inspection of an accrediting organization if the accreditation is not provisional and the HME provider authorizes release of, and AHCA receives the report of, the accrediting organization or a copy of a valid medical oxygen retail establishment permit issued by the Department of Health under ch. 499, F.S.

The bill makes it is unlawful for any person to advertise or offer HME and HME services to the public, unless the person has a valid license or is exempted from licensure and it is

unlawful for a licensee to advertise or indicate to the public that it holds an HME provider license other than the one it has been issued. To do so, subjects the person or licensee to injunctive proceedings that AHCA is authorized to initiate and such conduct is designated a violation of the Florida Deceptive and Unfair Trade Practices Act. Additionally, a first occurrence of such conduct is designated as a second degree misdemeanor while a second, and any subsequent, violation is designated a first degree misdemeanor.

Home medical equipment providers are required to maintain, for each patient, a patient record that includes HME and HME services the HME provider has provided. Specifically, the records must contain: any physician's order or certificate of medical necessity, if the equipment was ordered by a physician; signed and dated delivery slips verifying delivery; notes reflecting all services and maintenance performed, and any equipment exchanges; the date on which rental equipment was retrieved; and such other information as is appropriate to specific patients in light of the particular equipment provided to them. Home medical equipment providers are required to retain and maintain patient records for five years following termination of services. If a patient transfers to another HME provider, a copy of his or her record must be provided to the other HME provider, upon request.

A consumer and the consumer's immediate family, if appropriate, must be informed of the right to report abusive, neglectful, or exploitative practices on or before the first day HME is delivered by a state licensed HME provider. Home medical equipment providers are required to establish appropriate policies and procedures for notifying consumers of this right. Additionally, consumers must be provided, in a clearly legible manner, the statewide toll-free telephone number for the central abuse registry with language that states: *"To report abuse, neglect, or exploitation, please call toll-free 1-800-962-2873."*

Operation of an unlicensed HME provider is sanctionable as follows: 1) a third degree felony; 2) AHCA fraud referral to the appropriate government reimbursement program that has paid for services; and 3) if concurrently operating licensed and unlicensed premises, an AHCA-imposed moratorium on accepting new patients or revocation of existing licenses until the unlicensed premises are licensed. A provider that is found to be operating without a license may apply for licensure, but must cease operations until a license *is awarded by AHCA.* Furthermore, AHCA is authorized to institute injunctive proceedings when it determines that an HME provider has violated a provision under ch. 400, part IX, F.S., as created in this bill, or applicable administrative rules. The violation must constitute an emergency affecting the immediate health and safety of a patient or consumer.

A licensure fee of up to $300 and an inspection fee of up to $400 is required of all applicants. Initial licensure applicants must demonstrate financial ability to operate, which may be accomplished by submission of a $50,000 surety bond to AHCA. Applicants for licensure renewal that have demonstrated financial *inability* to operate must, also, demonstrate financial ability to operate. Also, an HME provider must obtain and maintain professional and commercial liability insurance of a minimum of $250,000 per claim, and must submit proof of such coverage with the licensure application. Subcontractors of an HME provider are required to have a minimum of $250,000 per claim liability insurance coverage as well. Additionally, HME providers are made subject to administrative fines of up to $5,000 per violation, per day for violating licensure requirements. An appropriation of $701,370 and 13 full-time-equivalent positions are provided for in the bill.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 116-0

HB 357 — Hospital Meetings and Records; Exemptions from Disclosure

by Rep. Fasano (CS/SB 1012 by Health, Aging & Long-Term Care Committee and Senator Carlton)

This bill amends the law that provides for the confidentiality and exemption of hospital records and meetings from the Public Records Law and the Public Meetings Law, respectively, as these laws apply to hospital strategic plans. The term "strategic plan" is defined to mean any *record* which describes actions or activities to produce any of the following nine results: (1) initiate or acquire a new health service; (2) materially expand an existing health service; (3) acquire additional facilities by purchase or by lease; (4) materially expand existing facilities; (5) change all or a material part of the use of an existing facility or a newly acquired facility; (6) acquire another health care facility or health care provider; (7) merge or consolidate with another health care facility when the surviving entity is an entity that is subject to the State constitutional Public Records Law and Public Meetings Law provisions; (8) enter into a shared service arrangement with another health care provider; or (9) any combination of (1) through (8). Additionally, the bill states that certain records are expressly excluded from the meaning of the term "strategic plan." Records excluded from classification as a strategic plan are those that describe the existing operations of a hospital or other health care facility which implement or execute the provisions of a strategic plan, unless disclosure of any such document would divulge any part of a strategic plan which has not been fully implemented or is a record that is otherwise exempt from the Public Records Law. Such existing operations include, without limitation, hiring of employees, the purchase of equipment, the placement

of advertisements, and the entering into contracts with physicians to perform medical services. Records that describe operations are not exempt from the Public Records or Public Meetings Laws, except as specifically provided.

Confidentiality and a public records exemption are applied to the records and information comprising strategic plans of *any* hospital that is subject to the Public Records Law as provided in the *State Constitution* and as codified in law under ch. 119, F.S. The confidential status and the public records exemption are applied to such a plan when the plan is *not otherwise known or otherwise legally obtainable by a competitor*, and if disclosure of such plan would be *reasonably likely to be used by the competitor* to gain a competitive advantage. Specific reference to marketing of services is deleted. Also, an exemption from the Public Meetings Law, as codified in law under ch. 286, F.S., and provided in the *State Constitution*, is provided for that portion of a hospital governing board meeting during which one or more *written* strategic plans are *discussed, reported on, modified, or approved by the governing board*. This exemption is scheduled for repeal October 2, 2004, unless reenacted by the Legislature following Sunset review prior to the repeal date.

The bill revises the confidential status and the public meetings exemption that prohibits disclosure of a transcript of a closed hospital governing board meeting. Closed meetings are explicitly restricted to discussion, reports, modification, or approval of a written strategic plan. Such a plan is subject to an earlier expiration of confidentiality and public meetings exemption than the otherwise applicable three-year time limit based on the governing board's determination that the strategic plan discussed, reported on, modified, or approved at the meeting has been implemented, to the extent that confidentiality of the strategic plan is no longer necessary. When a discrete part of a strategic plan has been publicly disclosed by the hospital or has been implemented to the extent that confidentiality of that portion of the plan is no longer necessary, the hospital must redact the transcript and release only that part which records discussion of nonconfidential parts of the strategic plan, unless such disclosure would divulge confidential parts of the plan. Clarifying language contained in the bill expressly states that provisions of the bill do not allow the boards of two separate public entities to meet together in a closed meeting to discuss, report on, modify, or approve the implementation of a strategic plan that affects both entities.

If a governing board of a hospital closes a portion of a governing board meeting to discuss a written strategic plan before placing the strategic plan or any portion of such a plan into operation, as authorized by the bill, it is required to give notice of an open meeting in accordance with the Public Meetings Law and conduct the meeting to inform the public, generally, of the business activity to be implemented. Furthermore, if a strategic plan involves a *substantial reduction in the level of medical services provided to the public*,

30-days prior notice must be given of an open meeting at which the governing board considers the decision to implement the strategic plan. A hospital governing board is prohibited from approving a binding agreement to implement a strategic plan at *any* closed meeting of the board. An public meeting that has been noticed as required under the Public Meetings Law is the only authorized forum for approval a binding agreement. The bill also contains a statement of public necessity relating to the Public Records Law and Public Meetings Law exemptions created and modified in the bill.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 114-0

HB 489 — Body-piercing Salons

by Rep. Valdes and others (CS/CS/SB 980 by Governmental Oversight & Productivity Committee; Health Aging & Long-Term Care Committee; and Senator Lee)

The bill creates s. 381.0075, F. S., requiring the Department of Health to license permanent and temporary body-piercing salons, and to adopt rules to regulate such facilities. The bill establishes licensing procedures, fees, rulemaking authority, and enforcement mechanisms. The bill provides requirements for sterilization of body-piercing equipment, the use of infection control procedures, standards for jewelry to be inserted, aftercare, and staff training. Written, notarized parental consent for body piercing of minors is required. Additionally, minors under the age of 16 must be accompanied by their parents during body piercing. The department is required to conduct an annual inspection of salons.

The bill provides exemptions for the practice of any health care practitioner under the regulatory jurisdiction of the department as long as the person does not hold himself out as a body-piercing establishment. Felony penalties are provided for owning, operating or soliciting business as a body-piercing salon without the required license or obtaining or attempting to obtain a license by means of fraud, misrepresentation or concealment. Misdemeanor penalties are provided for failing to keep required records, falsifying records or failure to adhere to the requirements regarding minors. The department is authorized to issue citations and levy administrative fines not to exceed $1,000 per violation per day.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 113-2

CS/HB 645 — Assisted Living Facilities/Unlicensed Facilities

by Elder Affairs & Long-Term Care Committee and Rep. Prieguez and others (CS/SB 2354 by Children & Families Committee and Senator Forman)

This bill revises penalty provisions applicable to the operation of an unlicensed assisted living facility to provide, in part, that each day of continued operation of an unlicensed facility, whether a first or subsequent offense, constitutes a separate felony offense. Application for licensure within 10 working days, which under current law is an affirmative defense to a first offense, is no longer provided. Any unlicensed facility continuing to operate after agency notification is subject to a $1,000 fine. Each day beyond five working days (reduced from 20 days) after agency notification constitutes a separate violation and the facility is subject to a fine of $500 per day. The language which allowed continuing operation, if an unlicensed facility had applied for a license within ten days of agency notification, is deleted.

This bill also provides for the establishment, by the State Fire Marshal, of uniform fire safety standards in adult family-care homes and authorizes the organization of a work group to identify and report on additional steps that may be taken to discourage the operation of unlicensed assisted living facilities.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 114-1

HB 735 — Health Facilities Authorities Law

by Rep. Farkas and others (SB 1108 by Senator Silver)

The bill revises provisions that empower health facilities authorities established under ch. 154, F.S., to issue bonds and incur other forms of indebtedness on behalf of a health facility (private, not-for-profit corporations organized as hospitals, nursing homes, developmental disabilities facilities, mental health facilities, or providers of life care services under continuing care contracts) or a group of health facilities to use in financing the purchase of accounts receivables. The bill authorizes the purchase of accounts receivables acquired from other not-for-profit health care corporations rather than other not-for-profit health facilities, whether or not the corporations are affiliated with the health facility and regardless of whether or not the corporations are located inside or outside this state.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 118-0

HB 1081 — Hospitals, Ambulatory Surgical Centers, and Mobile Surgical Facilities; Public Records

by Rep. Goodlette (CS/SB 1498 by Health, Aging & Long-Term Care Committee and Senator Saunders)

The bill creates and provides for confidentiality and a narrow Public Records Law exemption relating to personal information about employees of any hospital, ambulatory surgical center, or mobile surgical facility, collectively referred to in the bill as *licensed facilities*. The exemption is limited to the home addresses, telephone numbers, social security numbers, and photographs of employees of such licensed facilities who provide direct patient care or security services; their spouses, additionally exempting the place of employment of spouses; and their children, additionally exempting the names and locations of schools and day care facilities attended by the children. The exemption is subject to availability of the otherwise exempted information to state and federal agencies in the furtherance of their statutory responsibilities. The exemption is repealed effective October 2, 2004, unless saved from repeal through reenactment by the Legislature following Sunset review.

Additionally, the bill provides for confidentiality and a more limited public records exemption to employees of licensed facilities who have a *reasonable belief* that release of their home addresses, telephone numbers, social security numbers, and photographs may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family, subject to the employee submitting a written request for confidentiality and subject to availability of the otherwise exempted information to state and federal agencies in the furtherance of their statutory responsibilities. The exemption is repealed effective October 2, 2004, unless saved from repeal through reenactment by the Legislature following Sunset review.

The bill provides a statement of public necessity for the public records exemptions. Among other salient points, this statement asserts that the exemptions created in the bill are consistent with the long-standing policy of the State relating to exempting the same type of personal information about certain active and former employees of state and local government, and judges in the judicial branch of government.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 118-0

CS/HB's 1927 & 961 — Managed Health Care

by Health Care Services Committee and Rep. Eggelletion and others (CS/SB's 2472 & 1892 by Health, Aging & Long-Term Care Committee and Senators Clary and Saunders)

The bill clarifies that the Statewide Provider and Subscriber Assistance Panel may not hear a grievance that is part of an internal grievance in a Medicare managed care entity or a grievance that is limited to the incidental expenses of accrued interest on unpaid balances, court costs, and transportation costs associated with a grievance procedure. The bill increases the number of participants on the Panel to include a consumer and a physician, appointed by the Governor, and physicians with relevant expertise to review subscriber cases on a rotating basis.

Existing law relating to preferred provider organizations (PPO) is modified to provide that a policy issued by a PPO that does not provide direct patient access to a dermatologist must conform to the requirements imposed on exclusive provider organizations. It is expressly stated, however, that such a requirement is not to be construed to affect the amount the insured or patient must pay as a deductible or coinsurance amount.

The bill amends the law governing health maintenance organization (HMO) contracts to authorize an HMO to offer a point-of-service benefit through a point-of-service rider to its contract providing comprehensive health care services, if it meets three conditions: (1) is licensed to do business in Florida, (2) has been licensed to do business in Florida for a minimum of 3 years, and (3) maintains a minimum surplus of $5 million, inclusive of current surplus requirements, at all times that it has riders in effect. This benefit will enable an HMO subscriber, or other covered person, to choose to receive services from, at the time of covered service, a health care provider with whom the HMO does not contract for services. The rider may not require a referral from the HMO for point-of-service benefits. In addition to the surplus requirement, HMOs are restricted in the volume of business that they may generate through point-of-service riders to 15 percent of total premiums for all health plan products sold by the HMO offering the rider. If rider premium volume exceeds the 15 percent ceiling, the HMO must notify the Department of Insurance (DOI) and immediately cease, once it is known, offering the point-of-service rider until it returns to a state of compliance.

Despite restrictions on deductibles and copayments in the HMO regulatory law, an HMO that offers a point-of-service rider is authorized to require a subscriber to pay a reasonable copayment per visit for services provided by a noncontracted provider chosen at the time of the service by the subscriber. The copayment may either be a specific dollar amount or a percentage of the reimbursable provider charges covered by the contract and must be paid by the subscriber to the noncontracted provider at the time that the subscriber receives the services. Additionally, the point-of-service rider may require a reasonable

annual deductible for the expenses associated with the rider and may include a lifetime maximum benefit amount.

A point-of-service rider must disclose any specific methodology, such as usual and customary charges, reasonable and customary charges, or charges based upon the prevailing rate in the community, used in the payment of claims. Also, such riders must comply with copayment and deductible limits provided under the state insurance code and be filed with and approved by DOI. Riders authorized under this section are explicitly exempted from: (1) the protection of HMO subscribers from liability for payment to providers of health care services for services covered by the HMO and (2) the prohibition against a provider collecting, attempting to collect, or suing a subscriber to collect money owed for services covered by the subscriber's HMO. Clarifying language provides that an HMO may not use the term "point of service" except with riders permitted under the provisions of this bill or with forms approved by DOI pertaining to a point-of-service product that the HMO offers with an indemnity insurer.

The bill amends the law relating to HMO provider contracts and payment of provider claims, to require that an HMO must reconcile to specific claims any retroactive reductions on payments or demands for refund of overpayments resulting from retroactive review of coverage decisions or payment levels, unless the parties to the contract agree to other reconciliation methods and terms. Also, a provider must reconcile to specific claims any retroactive demands for payment resulting from underpayment or nonpayment for covered services, unless the parties agree to other reconciliation methods and terms. The look-back period for such retroactive reconciliations may be specified by the terms of the contract.

The AHCA Director is required to establish an 8-member advisory group charged with studying and making recommendations relating to:

- trends and issues pertaining to timely and accurate submission and payment of health claims regulated under the HMO law, including legislative, regulatory, or private-sector solutions for submission and payment of such health claims;

- development of electronic billing and claims processing for providers and health care facilities that provide for electronic processing of eligibility requests; benefit verifications; authorizations; pre-certifications; business expensing of assets, including software, used for electronic billing and claims processing; and electronic monitoring of claims status, including use of models such as those compatible with federal billing systems;

- the form and content of claims; and

- measures to reduce fraud and abuse relating to submission and payment of claims.

The advisory group must be appointed and convened by July 1, 1999, and must present its recommendations by January 1, 2000. All meetings of the advisory group must be held in Tallahassee. Neither *per diem* nor travel expenses may be reimbursed.

The list of access and quality-of-care indicators for which HMOs must submit data to AHCA is expanded to require measures of management of chronic disease, preventive health care for adults and children, prenatal care measures, and child health checkup measures. The requirement that HMOs, individually, conduct standardized consumer satisfaction surveys of their membership is repealed. The bill authorizes AHCA's use of revenues collected through annual regulatory assessments on health maintenance organizations and deposited into the Health Care Trust Fund to conduct annual subscriber satisfaction surveys and payment of OPS contracted physician consultants for the Statewide Provider and Subscriber Assistance Program.

Additionally, the bill: (1) requires AHCA to publish HMO report cards; (2) contains clarifying and remedial language, effective retroactive to October 1, 1990, pertaining to the State's Medicaid tobacco litigation that applies to all causes of action arising after October 1, 1990, under the Medicaid third-party liability law, to *exempt from the guidelines for distribution of funds remaining* from a recovery or other collection of monies from a responsible liable party on behalf of a Medicaid-eligible person, after all expenses are paid to reimburse the state and the federal government, the requirement that the remainder of such funds be distributed to the Medicaid recipient; (3) limits the right of an insurance company or HMO to retroactively cancel a group health insurance policy due to nonpayment of premium by the employer or group contract holder and protects the employee's right to elect a conversion health insurance policy if cancellation occurs under such circumstances; (4) subjects Area Agencies on Aging to the Public Records Law and, when considering any contracts requiring the expenditure of funds, the Open Meetings Laws adopted in the *State Constitution* and codified in ch. 119 of the *Florida Statutes*; (5) modifies budget implementing language related to reductions taken in the 1999-2000 General Appropriations Act in the Medicaid pharmacy program to achieve the budget reductions reflected in the Act, requires the President of the Senate, the Speaker of the House of Representatives, and the Governor to each make three appointments to a panel of health care professionals to advise AHCA on this issue, and AHCA is authorized to determine which practitioners who are prescribing inappropriately or inefficiently must have their prescribing of certain drugs subject to prior authorization; and (6) appropriates $1,439,000 from the Health Care Trust Fund to AHCA for FY 1999-2000.

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 37-1; House 118-0

SB 1396 — Registration of Drugs, Devices, and Cosmetics

by Senator Burt

The bill exempts any manufacturer of medical devices that is registered with the federal Food and Drug Administration from Florida's device registration requirements and fees if: the manufacturer's devices are approved for marketing by, or listed with the federal Food and Drug Administration for commercial distribution in accordance with federal law; or the manufacturer acts as a subcontractor for another medical devices manufacturer to manufacture components. The bill requires manufacturers permitted in Florida to update any information previously submitted for the exemption to the medical device registration requirements at the renewal of their permit.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 118-0

SB 1514 — Hospices

by Senator Clary

The bill (Chapter 99-139, L.O.F.) amends ss. 400.605, 400.6085, and 400.609, F.S., expanding the Department of Elderly Affairs' rulemaking authority regarding hospice standards and procedures. The bill authorizes the department to address, by rule, hospice standards and procedures relating to: license requirements; administrative management of a hospice; components of a patient plan of care; advanced directives and do-not-resuscitate orders; the provision of hospice care in alternative residential settings; physical plant standards for hospice residential units; disaster preparedness plans; quality assurance and utilization review committees; and the collection of hospice data.

The bill allows hospices to provide physician services directly or through contract. Home health aide services may be provided directly or the hospice may arrange for the provision of such services. Hospices are allowed to use contracted staff if necessary to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances.

The bill adds adult family care homes as a venue in which hospice care can be provided in addition to a person's own home. The bill expressly establishes that hospice patients residing in other regulated environments are hospice patients, and that the hospice is responsible for the provision of hospice services.

These provisions were approved by the Governor and will take effect July 1, 1999.
Vote: Senate 39-0; House 116-0

HB 1971 — Nursing Home Facility Regulation

by Elder Affairs & Long-Term Care Committee and Rep. Argenziano and Crist (CS/CS/SB's 834, 1140, & 1612 by Fiscal Policy Committee; Health, Aging & Long-Term Care Committee; and Senators Brown-Waite, Meek and Campbell)

Consumer Satisfaction and Information

This bill requires the Office of the State Long-Term Care Ombudsman to establish a statewide toll-free telephone number to enable nursing home residents, their families or friends, nursing home employees, or any member of the public to submit complaints concerning nursing home facilities. The Agency for Health Care Administration (agency or AHCA), or its contractor, is required, in consultation with the nursing home industry and consumer representatives, to: (1) develop an easy-to-use consumer satisfaction survey for nursing home residents to express their reaction to the services and the care they receive in the facility in which they reside, (2) ensure that all licensed nursing homes participate in assessing consumer satisfaction, and (3) establish procedures to ensure that, at least annually, a representative sample of residents of each facility is selected to participate in the survey. The agency is required to report survey results in the consumer information materials it prepares and distributes. It must provide additional consumer information and distribute this information in electronic and printed formats and at certain specified sites to assist consumers and their families in comparing and evaluating nursing home facilities. Examples of the consumer information that AHCA is expressly required to provide and distribute include: (1) a list by name and address of all nursing home facilities in Florida; (2) whether the listed nursing home facilities are proprietary or nonproprietary; (3) each facility's licensure status and rating history for the past 5 years; (4) the name of the owner or owners of each facility and whether the facility is a part of a corporation owning or operating more than one nursing facility in Florida; (5) performance, regulatory, and enforcement information about the corporation, as well as the facility; (6) the total number of beds in each facility; (7) the number of private and semiprivate rooms in each facility; (8) the religious affiliation, if any, of each facility; (9) the language spoken by the administrator and staff of each facility; (9) certain information obtained from the federal Minimum Data Set or maintained on the federal Online Survey Certification and Reporting (OSCAR) system relating to Medicare or Medicaid-certified facilities, and for noncertified facilities certain comparable state regulatory information; and (10) the Internet address for the site where more detailed information can be seen.

Transfer and Discharge of Residents

Section 400.0255, F.S., relating to transfer and discharge of nursing home residents, is amended to define the terms "discharge" and "transfer." The law is also amended to require nursing homes to permit the district ombudsman council to review a notice of discharge or transfer given to a nursing home resident, when requested by the resident,

and to comply with the residents' rights requirements relating to discharge or transfer when deciding to discharge or transfer a resident.

When requested by a nursing home resident, the district ombudsman council must review a notice of discharge or transfer within seven days after receipt of such request. The nursing home administrator, or the administrator's designee, must forward a request for review contained in the notice within 24 hours after such requested is submitted. Failure to forward such a request within 24 hours after its receipt delays the running of the 30-day advance notice period until the request has been forwarded. A district ombudsman, when requested, must review an emergency discharge or transfer within 24 hours after receipt of the request.

Following receipt of a notice of discharge or transfer by a district ombudsman council, the council may request a private informal conversation with a resident to whom the notice is directed, and a family member, if known, or the resident's legal guardian or designee to ensure the nursing home is lawfully proceeding with the discharge or transfer. If requested, the district ombudsman council must assist a resident with filing an appeal of the proposed discharge or transfer.

A licensed nursing home administrator, or an individual employed by the nursing home who is designated by the nursing home administrator, must sign the notice of discharge or transfer, unless the facility is citing a medical reason for the transfer or discharge. When a medical reason is the basis of a discharge or transfer, the resident's personal physician or the facility's medical director must sign the notice. The bill makes it grounds for disciplinary action against a nursing home administrator to discharge or transfer a resident for a reason other than a reason specifically authorized under the residents' rights law or the law governing discharges and transfers of nursing home residents.

Each nursing facility must notify AHCA of any proposed discharge or transfer that results from changes in the facility's physical plant that make the facility unsafe for residents. The agency, must then conduct an onsite inspection of the facility to verify the necessity of the discharge or transfer. A facility that has been reimbursed for reserving a bed and, for reasons other than those permitted under the law relating to discharge or transfer, refuses to readmit a resident within the prescribed time frame must refund the bed reservation payment.

The agency is required to develop a standard document for use by all nursing home facilities for notifying residents of a discharge or transfer. The form must include pertinent information regarding the discharge or transfer process, information necessary for the resident to contact the district long-term care ombudsman, and must clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the district ombudsman council to review the notice of discharge or transfer.

Regulatory Changes

An "early warning system" is established to detect conditions in nursing facilities that could be detrimental to the health, safety, and welfare of residents. The agency must employ quality-of-care monitors in each AHCA area to make regular, unannounced, and periodic visits to all nursing homes in the area. Monitoring visits must be prioritized based on a facility's history of patient care deficiencies. The monitors must be registered nurses who are trained and experienced in nursing home facility regulation, standards of practice in long-term care, and evaluation of patient care. They must observe the care and services provided residents at the facility and must include as a part of assessment visits formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a long-term care ombudsman council or human rights advocacy committee. The monitors may not be deployed by the agency as a part of an inspection survey team that conducts routine, scheduled facility surveys.

A monitor's findings, both positive and negative, must be provided orally and in writing to the facility administrator, the administrator on duty, or the director of nursing. Monitors may collaborate with the facility administrator about procedural and policy changes or staff training, as needed. Conditions observed during a monitoring visit by a monitor which threaten the health or safety of residents must be reported immediately to the local AHCA area office supervisor for appropriate regulatory action and to law enforcement, adult protective services, or other responsible agencies, as appropriate or required by law. The written or oral records and communications generated from a monitoring visit are expressly excluded from discovery or introduction into evidence in a civil or administrative action, and a person present at a monitoring visit or evaluation may not be permitted or required to testify in a civil or administrative action, except that such exclusion is inapplicable when a quality-of-care monitor makes a report to the appropriate authorities regarding a threat to the health or safety of a resident. Information, documents, or records otherwise available from original sources remain accessible for purposes of civil or administrative actions.

Additionally, AHCA is directed to create *rapid response teams* to visit facilities identified through the early warning system. These teams may visit facilities that request AHCA's assistance, but the teams may not be deployed to help a facility prepare for an inspection.

The bill creates the "Gold Seal" Program for recognition of nursing home facilities demonstrating excellence in long-term care. It establishes a Panel on Excellence in Long-Term Care under the Executive Office of the Governor that is empowered to, applying criteria established in the bill, designate a nursing home facility as a Gold Seal facility. Once recognized as a Gold Seal facility, a nursing home facility qualifies for biennial

relicensure, instead of annual relicensure, and AHCA may give a certificate-of-need (CON) application for additional beds in an existing Gold Seal facility preferential review using new CON criteria created in the bill for that purpose.

The nursing home rating system is repealed and the Nursing Home Advisory Committee is abolished. Nursing home facilities are made subject to the following: (1) mandatory staffing increases, beyond the minimum required by law, when AHCA administratively sanctions the facility for care-related deficiencies that are directly attributable to insufficient staff, in which case, the facility may request an interim rate increase from Medicaid to cover costs of the additional staff, and it is subject to a $500 per day fine for each day staffing remains below the level required by AHCA; (2) applications for nursing home facility licensure must be accompanied by copies of any civil verdict or judgment relating to medical negligence, violation of residents' rights, or wrongful death involving the applicant that was rendered within the preceding 10 years and copies of any new verdict or judgment involving the applicant relating to such matters within 30 days after filing with the clerk of the court and such information must be maintained in the facility's licensure file and an AHCA database that is available to the public; (3) as a condition of licensure, applicants must agree to participate in the consumer satisfaction measurement process; (4) appointment of a Florida-licensed physician as medical director; (5) provide for residents to use a community pharmacy, as provided for under the residents' rights law; (6) allow residents to have their bulk prescription medications repackaged and relabeled by a Florida-licensed registered pharmacist into a unit dose system compatible with the nursing home facility's system for residents having such a benefit under a certain specified pension plan or retirement plan, subject to a reasonable fee by participating pharmacists for costs of providing such services; (7) public display of a poster provided by AHCA containing information for contacting the state's abuse hotline, the State Long-Term Care Ombudsman, AHCA's consumer hotline, the Advocacy Center for Persons with Disabilities, the Statewide Human Rights Advocacy Committee, and the Medicaid Fraud Control Unit, with a clear description of the assistance to be expected from each, (8) at the request of a resident, mark the resident's personal property with the resident's name or another type of identification; (9) employment of an applicant for employment on a probationary basis upon the applicant's attestation to certain facts about his or her background; and (10) changes in the regulatory system that reflect repeal of the nursing home rating system licensure classifications, including increased administrative penalty caps relating to regulatory deficiencies.

The agency is required to: (1) within 60 days after receipt of a complaint made by a nursing home resident or the resident's representative, complete its investigation and

provide to the complainant its findings and resolution; (2) provide, within 45 days of this provision becoming law, direct-access electronic screening capability to all nursing home facilities that enroll or agencies required by law to restrict employment to only an applicant who does not have a disqualifying report in the central abuse registry and tracking system; (3) adopt rules providing for minimum staffing requirements for nursing homes; and (4) allow properly trained staff of a nursing home facility, in addition to certified nursing assistants and licensed nurses, to assist residents with eating.

Additionally, the bill: (1) makes it unlawful for any person, long-term care facility, or other entity to willfully interfere with an unannounced licensure inspection by alerting or advising a facility of the actual or approximate date of such inspection and making such an act a *per se* violation of this prohibition; (2) authorizes AHCA to implement a teaching nursing home pilot project providing for a comprehensive multidisciplinary program of geriatric education and research; (3) creates a panel on Medicaid reimbursement to study the state's Medicaid reimbursement plan for nursing home facilities and to recommend changes to accomplish certain specified objectives; (4) directs the Department of Elderly Affairs to study the major factors affecting the recruitment, training, employment, and retention of qualified certified nursing assistants within the nursing home industry; (5) appropriates funding from the General Revenue Fund and the Medical Care Trust Fund to AHCA for recruitment and retention of qualified nursing home staff and to provide appropriate care and appropriates funding from the General Revenue Fund to the Department of Elderly Affairs for expenses of the Office of State Long-Term Care Ombudsman, including the statewide toll-free telephone number; (6) authorizes a memory disorder clinic at Sarasota Memorial Hospital in Sarasota County; and (7) authorizes the Department of Elderly Affairs and the Department of Children and Family Services to initiate demonstration projects on the effectiveness of comprehensive day treatment services to seniors and the developmentally disabled as a diversion from nursing home care enabling them to remain in their homes or communities.

If approved by the Governor, these provisions take effect July 1, 1999, except for section 16, relating to personnel screening, which will take effect upon the bill becoming a law. *Vote: Senate 39-0; House 118-0*

HB 2231 — Patient Self-Referral Act of 1992; Referrals for Diagnostic Imaging Services

by Health Care Services Committee and Rep. Peaden and others (CS/SB 2438 by Health, Aging & Long-Term Care Committee and Senator Latvala)

The bill amends the Patient Self-Referral Act of 1992 and addresses issues raised in the court opinion, *Agency for Health Care Administration v. Wingo*, 697 So.2d 1231 (1st DCA June 1997). Specifically, the bill amends the "Patient Self-Referral Act of 1992" to:

- Add definitions for: "diagnostic imaging services," "direct supervision," "outside referral for diagnostic imaging services," "patient of a group practice" or "patient of a sole provider," "present in the office suite," and "sole provider," and substantially modifies the definition of the term "referral."

- Authorize referrals to sole providers and group practices for diagnostic imaging services, excluding radiation therapy services, under certain circumstances, effective July 1, 1999. In order to accept such referrals, the sole provider or group practice must bill both the technical and the professional fee for or on behalf of the patient, if the referring physician has no investment interest in the practice. The diagnostic imaging service referred must be a diagnostic imaging service normally provided within the scope of practice of the sole provider or group practice. Such sole providers and group practices may accept no more than 15 percent of their patients receiving diagnostic imaging services from outside referrals, excluding radiation therapy services.

- Establish conditions for sole providers and group practices to accept outside referrals for diagnostic imaging services relating to practice employment, equity ownership, practice management, billing, Medicaid service delivery, and annual report requirements.

- Impose penalties for those sole providers and group practices that violate the conditions placed on accepting referrals for diagnostic imaging services or the percentage requirements set above, consistent with existing penalty provisions under the Act.

- Require the submission of an annual attestation by each managing physician member of a group practice and each sole provider to the Agency for Health Care Administration (AHCA) confirming compliance with referral limitations.

The bill requires group practices providing diagnostic imaging services to register with AHCA, specifies registration information to be included, and requires registration to be completed by December 31, 1999.

The bill modifies the contingent effective date enacted in 1998, for the removal of the Public Medical Assistance Trust Fund assessment on outpatient radiation therapy services and freestanding radiation therapy centers. If the Health Care Financing Administration notifies AHCA, in writing, between April 15, 1999, and November 15, 1999, that the removal of the assessment violates Federal regulations, then the removal of the assessment is repealed. The repeal will take effect upon the date that the Secretary of State receives notification from AHCA of the Federal determination.

The bill requires AHCA, in conjunction with other agencies as appropriate, to conduct a detailed study and analysis of clinical laboratory services for kidney dialysis patients in Florida; certain issues are specified for study; and AHCA must report its findings to the Legislature by February 1, 2000.

Certificate-of-need rules and AHCA rules are applied to all providers of adult inpatient diagnostic cardiac catheterization programs, including certain national professional guidelines relating to such services.

The law relating to the sale or lease of a public hospital to a private entity is clarified to specify that the transaction, unless otherwise expressly stated in the lease documents, does not subject the private entity to the Public Records Law or the Public Meetings Law. Also, a private lessee operating under a lease may not be construed to be *acting on behalf of* the public lessor.

The bill allows a person to sue for treble damages, reasonable attorney's fees, and costs for *willful* disclosure of certain confidential information protected under s. 455.651, F.S.

The bill contains clarifying and remedial language, effective retroactively to October 1, 1990, pertaining to the State's Medicaid tobacco litigation that applies to all causes of action arising after October 1, 1990, under the Medicaid third-party liability law, to *exempt from the guidelines for distribution of funds remaining* from a recovery or other collection of monies from a responsible liable party on behalf of a Medicaid-eligible person, after all expenses are paid to reimburse the state and the federal government, the requirement that the remainder of such funds be distributed to the Medicaid recipient.

The bill creates the Florida Community Health Protection Act to establish community health pilot projects in certain specified low-income rural and urban communities in Pinellas, Escambia, Hillsborough, Pasco, Manatee, Palm Beach, and Broward Counties, and the City of St. Petersburg; under the Act, certain duties are delegated to the Department of Health, including preparation of a report to be submitted, by January 1, 2001, to the President of the Senate, the Speaker of the House of Representatives, and the Governor presenting findings, accomplishments, and recommendations of the pilot projects.

The bill requires exclusive provider organizations (EPO) and health maintenance organizations (HMO) 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, but authorizes EPOs and HMOs to require an obstetrician/gynecologist treating a covered patient to coordinate the medical care provided through the patient's primary care physician, if applicable.

If approved by the Governor, these provisions take effect July 1, 1999, except that sections 10 and 11, relating to establishment of the community health pilot projects, are effective October 1, 1999, and this effective date applies to contracts issued or renewed on or after that date.
Vote: Senate 40-0; House 117-0

CS/SB 2360 — Home Health Agency Regulation

by Health, Aging & Long-Term Care Committee and Senator Thomas

The bill substantially revises provisions relating to licensure of home health agencies and nurse registries, and registration requirements for homemaker, companion, and sitter service providers. Generally, the bill amends ch. 400, part IV, F.S., to: (1) create several new definitions, many containing substantive language, and revise several existing definitions; (2) authorize continuing care facilities or certain residential facilities serving retired military personnel to request one home health agency license for provision of services to their residents and for provision of non-Medicare reimbursed home health services to persons in one or more counties within the Agency for Health Care Administration (AHCA) service district in which the facility has been licensed to provide home health services to its residents; (3) revise the list of entities and professionals exempted from home health agency licensure; (4) revise licensure application requirements relating to documentation; (5) delineate regulatory deficiencies within a classification structure with a class I deficiency designated the most egregious and a class IV the least egregious; (6) revise requirements relating to patient care plans, distinguishing between patients receiving skilled care and those who are not receiving that level of care; (7) add authority for an unlicensed person to assist patients with self-administration of certain medications under specified circumstances; (8) provide supervision requirements for all home health agency personnel and authorize AHCA to establish the curriculum and instructor qualifications for home health aide training and permit home health agencies to provide such training; (9) require nurse registries to license each operational site, unless there is more than one such site within a county, and authorize nurse registries to refer home health aides who meet certain training requirements under the same circumstances and limitations that nurse registries refer certified nursing assistants; (10) exempt domestic maid services and sitter services from registration requirements while retaining the registration requirement for homemaker and companion services providers; (11) delete sitters from employment screening requirements, require contractor screening, and establish alternative proofs of compliance with employment screening requirements; and (12) create a task force on home health agency licensure that is to submit its report to the Legislature by December 31, 1999.

Additionally, the bill: (1) authorizes AHCA to adopt rules providing for cooling standards in nursing homes and the Department of Elderly Affairs to adopt rules providing for cooling standards in assisted living facilities, and (2) provides for physician licensure of

certain persons who received their medical education in a country other than the United States and limits the amount that the Department of Health is authorized to charge foreign-licensed physicians as a fee to cover the cost of administering the licensure examination.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 119-0

AUTHORIZATION FOR MEDICAL TREATMENT AND CARE

CS/HB 213 — Guardianship

by Real Property & Probate Committee and Rep. Crow (CS/SB 702 by Health, Aging & Long-Term Care Committee and Senator Forman)

The bill modifies several provisions of the state's guardianship law. It extends from 15 to 30 days the time within which a circuit court must review the annual guardianship report and authorizes the circuit courts, in their review of guardianship reports, to require an appointed general or special master to conduct random field audits. Guidelines providing reasons for removing a guardian are modified to allow for removal of the guardian upon a showing that the guardian is not related to the ward or that removal is in the best interest of the ward *by a person who is related to the ward, as specified in law*, and who has not previously been rejected by the court as a guardian irrespective of whether or not that person can show that he or she did not receive notice of the petition for adjudication of incapacity of the ward, as is currently required.

The circuit court in the circuit in which a guardian serves may require a nonprofessional guardian and must require a professional or public guardian to submit, at the guardian's own expense, to a credit history and criminal background check. The clerk of the circuit court in which the guardian serves is required to obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians who are required to submit their fingerprints. The guardian must forward the completed card to the Florida Department of Law Enforcement for processing; professional guardians are required to accompany their card with a $5 fee for handling and processing. The clerk of the circuit court in the circuit in which the guardian will serve is designated to receive the results of the federal and state fingerprint background checks on affected guardians and must maintain the results in a guardian file and make the results available to the circuit court. When a guardian is required to submit to a credit or criminal background investigation, the court must consider the results of such investigations in appointing the guardian.

The bill creates the Statewide Public Guardianship Office (Office) within the Department of Elderly Affairs (department or DOEA), and transfers all powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds relating to the public guardianship program from the circuit court budget entity within the judicial branch in the General Appropriations Act to DOEA. The Office is headed by an executive director who is appointed by the Governor, and serves at the pleasure of and reports to the Governor. The department is required to provide administrative support and service to the Office to the extent requested by the executive director within the available resources of the department, however, the Office is *not* subject to the control, supervision, or direction by DOEA in the performance of its duties. The Office may request the assistance of the department's Inspector General in providing auditing services, and the department's Office of General Counsel is authorized to assist in rulemaking and other matters as needed to assist the Office.

The Statewide Public Guardianship Office is delegated oversight responsibilities for all public guardians within available resources as well as rulemaking authority. In meeting its responsibilities, the Office: (1) must review the current public guardian program in Florida and other states; (2) in consultation with local guardianship offices, must develop statewide performance measures and standards; (3) must review the various methods of funding guardianship programs, the kinds of services being provided by such programs, and the demographics of the wards; (4) must review and make recommendations regarding the feasibility of recovering a portion or all of the costs of providing public guardianship services from the assets or income of the wards; (5) no later than October 1, 2000, must submit an interim report describing the progress of the Office in meeting its statutorily specified goals; (6) no later than October 1, 2001, and annually afterward provide a status report containing further recommendations relating to the need for public guardianship services and related issues, and submit a proposed public guardianship plan that includes alternatives for meeting the state's guardianship needs and must provide cost estimates for each alternative; (7) may assist local governments and entities in pursuing grant opportunities, must review and make recommendations in the annual report on the availability and efficacy of seeking Medicaid matching funds, and must diligently seek ways to use existing programs and services to meet the needs of public wards; (8) must develop a guardianship training program that may be offered to public or private guardians. Additionally, the Office is authorized to conduct or contract for demonstration projects to determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of persons of marginal or diminished capacity using funds appropriated or through gifts, grants, or contributions for such purposes any of which, if received, must be deposited into the department's Administrative Trust Fund.

The executive director may, after consultation with the chief judge of the affected judicial circuit and other circuit judges within that circuit and other specified groups, individuals,

and organizations, establish an office of public guardian within a judicial circuit and if established, create a list of persons best qualified to serve as the public guardian, and appoint or contract with a person from that list to serve as the public guardian for the affected circuit, subject to the person submitting to credit and criminal background review. Following appointment or contracting with the person selected to serve as the public guardian of the affected judicial circuit, the executive director must notify, in writing, the chief judge of the judicial circuit and the Chief Justice of the Supreme Court of the appointment. Provision is made for "grandfathering in" public guardians currently serving, but transferring oversight of all public guardians to the Office at the time the bill becomes law, with clarification that the executive director is responsible for all future appointments of public guardians.

The term of office for a public guardian is four years, after which the executive director must review the appointment and may reappointment the public guardian for another term of up to four years. The executive director is delegated authority to suspend a public guardian with or without the request of the chief judge of the judicial circuit, and, under such circumstances, must appoint an acting public guardian as soon as possible to serve until such time as a permanent replacement is selected. Only the executive director is given authority to remove a public guardian from office. In removing a public guardian during the term of office, however, the executive director is required to consult with and consider a recommendation for removal of the chief judge of the judicial circuit before the removal.

Each local public guardian is required to prepare a budget for operation of the local office to be submitted to the Office, whether funding comes, in whole or in part, from local sources, grants, any other source, or whether funded, in whole or in part, by the state. Such information will be submitted by the Office, as appropriate, and included in DOEA's legislative budget request. Additionally, the judicial circuits may increase the $10 civil court filing fee cap to $15 and increase the $200 cap on the sum of all service charges and fees permitted on civil trial and appellate cases initiated in the judicial circuits to $210 to be used in establishing, maintaining, or supplementing local public guardian offices.

If approved by the Governor, these provisions take effect October 1, 1999, except that section two of the bill relating to removal of guardians takes effect upon the bill becoming a law.
Vote: Senate 39-0; House 117-0

CS/SB 1598 — Parental Notice of Abortion

by Judiciary Committee and Senators Bronson, Cowin, Brown-Waite, Sullivan, Grant, Lee and Webster

The bill creates s. 390.01115, F.S., the "Parental Notice of Abortion Act". The act requires a physician who refers a minor for termination of her pregnancy or who plans to perform such a procedure on a minor to first give 48 hours actual notice to one parent or her legal guardian prior to the procedure. If actual notice is not possible after reasonable effort has been made, 48 hours constructive notice must be given. The bill provides for waiver of the notice requirement: (1) in instances of a medical emergency; (2) when notice is waived in writing by the person who is entitled to notice; (3) if the minor is or has been married or has had the disability of nonage removed under s. 743.015, F.S., or a similar law of other states; (4) if the minor has a minor child dependent on her; or (5) when a circuit court judicially waives the notice requirement. The bill specifies the procedure for the judicial waiver of notice. The bill makes violations of the notice requirements subject to the disciplinary provisions of the medical and osteopathic medical practice acts.

If approved by the Governor, the act takes effect July 1, 1999.
Vote: Senate 27-12; House 91-27

CS/CS/SB 2228 — End-of-Life Care

by Judiciary Committee; Health, Aging & Long-Term Care Committee; and Senator Klein

The bill provides legislative findings related to end-of-life care, including pain management and palliative care. Laws governing advance directives and anatomical gifts are revised to incorporate findings and recommendations of the Panel for the Study of End-of-Life Care. The bill also provides for demonstration projects and studies.

Living Wills, Other Advance Directives, and Documents

The law relating to advance directives is modified to more equally emphasize the mental and the physical condition of a person in determining whether an advance directive may be acted upon or, in the absence of an advance directive or a health care surrogate, under what circumstances a proxy or a health care facility may authorize the withholding or withdrawing of life-prolonging procedures. The requisite underlying physical conditions on which a decision to honor an advance directive or authorize the withholding or withdrawing of life-prolonging procedures may be based, when there is no advance directive or health care surrogate, are expanded in the bill to include, in addition to a terminal condition: (1) an end-stage condition or (2) a persistent vegetative state.

Health care providers and health care facilities are explicitly prohibited from requiring a patient to execute an advance directive, or to use the facility's or provider's forms. The

bill requires a patient's advance directive to be made a part of the patient's medical record. Additionally, the bill modifies existing law to require a health care provider or facility that refuses to comply with *a patient's advance directive* to make reasonable efforts to transfer the patient to another health care provider or facility that will comply with the directive or treatment decision ***and***, if refusal to comply with the directive *or the treatment decision of the patient's surrogate* is based on moral or ethical beliefs, to transfer the patient or comply with the directive or surrogate's treatment decision within seven days, as currently required by law. The bill clarifies that the law relating to advance directives is inapplicable to a person who *never had capacity* to designate a health care surrogate or to execute a living will.

The bill revises the procedure for making a living will to authorize any competent adult to make a living will or written declaration to direct the provision, withholding, or withdrawal of life-prolonging procedures when the person has either a terminal condition, an end-stage condition, or is in a persistent vegetative state. The *suggested* statutory living will form is modified to add, as the triple triggers for acting on an executed living will, determination that the executor is *both mentally and physically incapacitated*, has either a terminal condition, an end-stage condition, *or* is in a persistent vegetative state, ***and*** the determination by the person's attending or treating physician and another consulting physician that there is no *reasonable* medical probability of the person's recovery. The bill explicitly authorizes a person to amend his or her advance directive or designation of a health care surrogate, in addition to already existing authority to revoke such documents, and subjects any person who falsifies, forges, or who willfully conceals, cancels, or destroys another's advance directive or amendment of such a document to criminal penalties.

The Department of Health (DOH), in consultation with the Department of Elderly Affairs, and the Agency for Health Care Administration, is directed to develop a standardized do-not-resuscitate-order (DNRO) identification system with devices that indicate that a patient has a DNRO. The Department of Health may charge a fee to cover the cost of producing and distributing such devices.

The bill amends numerous provisions of existing law to immunize health care professionals, staff working in various health care facilities, and health care providers operating health care facilities from liability relating to honoring do-not-resuscitate orders. The bill explicitly authorizes health care professionals and health care providers to withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate that has been executed in accordance with Florida law and protects such professionals and providers when working in the following settings or operating as follows: (1) hospitals, (2) nursing homes, (3) assisted living facilities, (4) home health agencies, (5) hospices, and (6) adult family-care homes.

Consent

The law governing authority for a health care surrogate, a health care professional, or proxy to act according to instructions contained in an advance directive requires that the principal *does not have the capacity* to make necessary decisions about health care needs or to give informed consent for necessary medical care *contemporaneously* with needing therapeutic medical care for treatment of a health need that is not considered to be life ending or with having a terminal condition, end-stage condition, or being in a persistent vegetative state as well as, in the case of a proxy, no designation of a surrogate. The bill adds a requirement to law that the physician, after concluding that the principal lacks the capacity to make health care decisions or to give informed consent, must enter such an evaluation in the principal's medical record, in addition to the current requirement that such an evaluation be entered into the principal's clinical record. Additionally, before a health care surrogate or a health care professional may act on instructions contained in a living will, two conditions must be satisfied: (1) there is no reasonable *medical* probability that the principal will recover *capacity* to make medical decisions or provide informed consent for himself or herself and (2) the principal has a terminal condition, an end-stage condition, or is in a persistent vegetative state.

Health care surrogates are empowered to act on behalf of their principals under terms of an advance directive, which may be only the designation of the surrogate. A surrogate's authority to act on behalf of his or her principal is expanded to allow surrogates to authorize the discharge of the principal to or from a health care facility or other facility or program licensed under the state's law regulating long-term care providers (i.e., nursing homes, assisted living facilities, home health, adult family-care homes, adult day care centers, hospice, and transitional living facilities). When there is no living will, the standard that a surrogate must apply to forego medical treatment on behalf of his or her principal is revised to require that the surrogate be *satisfied* that: (1) there is no *medical* probability that the principal will recover *capacity* to make medical decisions or to provide informed consent ***and*** (2) that the principal is both *mentally and physically incapacitated with no reasonable medical probability of recovery, the patient has an end-stage condition, the patient is in a persistent vegetative state,* or that the patient's physical condition is terminal.

The bill amends the law governing health care proxies, to require a proxy's decision to withhold or withdraw life-prolonging procedures *be supported by a written declaration* or, *if there is no written declaration, the patient must have a terminal condition, an end-stage condition, or be in a persistent vegetative state*. A new provision of law is created for situations in which a decision is under consideration to withhold or withdraw life-prolonging procedures for a person in a persistent vegetative state and when the person has no advance directive, has provided no evidence indicating what the person would have wanted under the circumstances, and for whom, after reasonably diligent inquiry, no

family or friends are available or willing to serve as the person's proxy to make health care decisions for him or her. Decisions to withhold or withdraw life-prolonging procedures may be made under the following conditions: (1) a judicially appointed guardian, with authority to consent to medical treatment, is appointed to represent such person's best interest; and (2) the guardian and the person's attending physician, in consultation with the medical ethics committee of the facility, or the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bio-ethics Network, where the person is located, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and the withholding or withdrawing of life-prolonging procedures is in the best interest of the patient. Individual ethics committee members and the facility associated with the ethics committee may not be held liable in any civil action related to the performance of any duties required in making such a decision as provided in law.

Anatomical Gifts

The bill revises the law relating to regulation of anatomical gifts to provide that a person's surrogate, designated under state law, *may* donate all or any part of the deceased person's body as an anatomical gift when the person who has not signed an organ and tissue donor card, expressed his or her wish to donate in a living will or advance directive, or signified his or her intent to donate on his or her driver's license, or in some other written form has indicated his or her wish to make an anatomical gift. The procedure for obtaining an anatomical gift from a deceased person who has not executed a written agreement or designated a surrogate that provides for a list of classes of persons to consent to such a gift is modified to add a precondition that such classes of persons may authorize a gift of all or any part of the deceased person's body in the priority that they are listed *in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class*. Existing law is also revised to require hospital administrators to request consent for an organ or tissue donation from the deceased person's health care surrogate or, if the decedent has not designated a health care surrogate or the surrogate is not reasonably available, a person listed in the priority list of persons who may consent to an anatomical gift under state law, when the decedent has not executed a donor card or document.

Studies and Projects

The bill provides for several studies and for on-going educational enhancements relating to end-of-life care for the public and health care professionals. These include:

- The Secretary of DOH is authorized to develop and implement up to two demonstration projects to evaluate strategies recommended by the Panel. The department is authorized to apply for grants, and accept donations. The Secretary

will report the results of the demonstration projects to the Legislature no later than January 30 of each year.

- The Chancellor of the State University System is requested to convene a working group to review available curricula for end-of-life care and make recommendations through the respective boards for content and materials to be included in the curriculum of each medical, social work, and allied health discipline's school.

- The Department of Elderly Affairs is directed to convene a workgroup to develop model advance directive forms and to make the forms available to the public, and authorizes the department to reconvene the workgroup as necessary.

If approved by the Governor, these provisions take effect October 1, 1999, except that advance directives made prior to October 1, 1999, must be given effect *as executed*, provided such directive was legally effective when written.
Vote: Senate 37-0; House 116-0

CIVIL LITIGATION

HB 775 — Civil Litigation Reform

by Conference Committee on Civil Litigation Reform (CS/SB 236 by Judiciary Committee and Senator Latvala; CS/SB 374 by Judiciary Committee and Senators Laurent and Webster; CS/SB 376 by Judiciary Committee and Senator Lee; and CS/SB 378 by Judiciary Committee and Senator Webster)

This bill is the product of the Senate and House of Representatives Conference Committee on Civil Litigation Reform. The bill makes wide-ranging and substantial modifications to procedural and substantive components of the civil litigation system in Florida. The bill is summarized below by topics with reference to the corresponding bill sections.

Jury Duty and Instructions

Section 1 creates s. 40.50, F.S., which provides a series of jury reform measures to be implemented by the courts including, but not limited to, providing detailed preliminary and final instructions to the jurors, permitting jurors to take notes in trials likely to exceed 5 days, and allowing jurors to submit written questions directed to witnesses (subject to approval by the court).

Mediation

Section 2 amends s. 44.102, F.S., to mandate that all civil actions for monetary damages be referred to mediation upon the request of a party, provided the requesting party is willing to pay the costs of mediation or the costs can be equitably divided between the parties. The following actions are exempt: a) Landlord and tenant disputes not involving a claim for personal injury; b) Debt collections; c) Medical malpractice; d) Claims governed by the Florida Small Claims Rules; e) Claims the court determines are proper for non-binding arbitration; f) Claims the parties have agreed to submit to binding arbitration, and; g) Claims the parties have agreed to submit to voluntary trial resolution under s. 44.104, F.S. The court may refer to mediation all or any part of an action for which mediation is not required under this section.

Voluntary Trial Resolution

Section 3 amends s. 44.104, F.S., relating to voluntary binding arbitration, to include new voluntary trial resolution provisions. Two or more parties involved in a civil action may agree to a voluntary trial resolution where no constitutional issue is involved. The parties are responsible for selecting and compensating the trial resolution judge. The trial resolution judge must be a member in good standing of the Florida Bar for the preceding 5 years, which is the same qualification for a circuit court or county court judge.

The trial resolution judge shall have the authority to administer oaths and conduct the proceedings in accordance with the Florida Rules of Civil Procedure, as well as issue enforceable subpoenas. A party may enforce a decision obtained in a voluntary trial resolution by filing a petition for final judgment in circuit court. An appeal may be made to the appropriate appellate court but review of factual findings is not allowed. The "harmless error doctrine" applies in all appeals, which is generally applied in all appellate cases under current law. The language does not clarify what the standard of review will be other than to state that no further review will be allowed of a judgment unless a constitutional issue is raised. The presence of competent substantial evidence to support the findings is a standard of review for most appellate cases.

Voluntary trial resolution is not available to parties in actions involving child custody, visitation or child support. It is also not available when an indispensable third party notifies the trial resolution judge that the third party would be a proper party if the dispute were resolved in court, the third party intends to intervene in the action in court, and the third party does not agree to proceed with the voluntary trial resolution.

Frivolous Lawsuits

Section 4 amends s. 57.105, F.S., relating to an award of attorney's fees in frivolous or unfounded lawsuits. This section replaces the existing standard for an award of attorney's fees, which is based on a complete absence of a justiciable issue of law or fact. The new standard for an award of attorney's fees, which may occur upon the court's initiative or motion of a party, will be based on whether the losing party or the losing party's attorney knew or should have known that the claim or defense at the time it was initially presented, or at any time before trial, was not supported by material facts or by the application of then-existing law to the material facts. This section retains the good faith exception, with a slight modification, for the losing party's attorney if the attorney acted in good faith based on the client's representations as to material facts. Additionally, sanctions for attorney's fees will not apply if the claim or defense is determined to have been made as a good faith attempt with a reasonable expectation of changing then-existing law.

This section expands the court's authority to impose sanctions for protracted litigation if the moving party proves by a preponderance of the evidence that any litigation activities were taken for the primary purpose of unreasonable delay. This section also authorizes the court to impose additional sanctions as are just and warranted for either unsupported claims or defenses, or protracted litigation, including contempt of court, taxable costs, striking of a claim, or dismissal of a pleading.

Expert Witness Costs

Section 5 amends s. 57.071, F.S., relating to taxable costs in civil proceedings, to condition the recovery of expert witness fees as taxable costs to a prevailing party. The prevailing party must furnish each opposing party with a written report signed by the expert witness which summarizes the expert's opinions and the factual basis of each opinion, including documentary evidence and the authorities relied upon in reaching each opinion. The report must be filed at least 5 days prior to the deposition of the expert or 20 days prior to the discovery cutoff, whichever is sooner, or as otherwise determined by the court. This section does not apply to any action proceeding under the Florida Family Law Rules of Procedure.

Expedited Civil Trials

Section 6 creates an optional speedy civil trial procedure called an expedited trial. Upon joint motion of the parties, with approval of the court, the court is authorized to conduct an expedited civil trial. For purposes of the expedited trial, where two or more plaintiffs or defendants have a unity of interest, such as husband and wife, the parties shall be considered one party. Unless otherwise ordered by the court or agreed to by the parties, discovery must be completed within 60 days after the court enters the order adopting the joint expedited trial stipulation. The court must determine the number of depositions to be taken. The trial, whether jury or non-jury, must be conducted within 30 days after discovery ends. Jury selection is limited to 1 hour. Case presentation is limited to 3 hours each. The trial is limited to 1 day. Verified expert witness reports, with an accompanying affidavit of the expert's curriculum vitae, may be introduced in lieu of live testimony. Excerpts from depositions, including video depositions, may be used in lieu of live testimony regardless of where the deponent lives or the deponent's availability to testify at trial. The jury may be given "plain language" jury instructions and a verdict form, both of which must be agreed upon by the parties.

Itemized Jury Verdicts

Section 7 amends s. 768.77, F.S., relating to itemized verdicts, to repeal the requirements that the trier of fact itemize and calculate on the verdict form economic damages before and after reduction to present value and to specify the period of time for which future

damages are intended to provide compensation. This section may have the effect of simplifying the verdict form and reducing some of the confusion for jurors. The trier of fact would still be required to itemize damages as to economic and non-economic losses, as well as itemize punitive damages when awarded.

Alternative Methods of Payment

Section 8 amends s. 768.78, F.S., relating to alternative methods of payment of damage awards, to conform the provisions of the alternative payment statute with the elimination of the itemization of future economic losses by the trier of fact as amended in s. 768.77, F.S. The term "trier of fact" is replaced with the term "the court" as the specific trier of fact to make the determination of whether an award includes future economic losses exceeding $250,000, for purposes of alternative payment of damage awards.

Venue

Section 9 creates s. 47.025, F.S., providing that contract provisions which require legal action involving resident contractors, subcontractors, sub-subcontractors, and materialmen to be brought outside this state are void as a matter of public policy. In that event, such legal actions arising out of the contract may be brought only in Florida in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located, unless the parties agree to another venue after the dispute arises.

Case Reporting

Section 10 requires the clerk of the court, through the uniform case reporting system, to report to the Office of the State Court Administrator, beginning in 2003, certain information from each settlement or jury verdict and final judgment in a negligence case as defined in s. 768.81(4), F.S. This reporting requirement need be made only as deemed necessary from time to time by the President of the Senate and the Speaker of the House of Representatives.

Statute of Repose

Section 11 amends s. 95.031, F.S., to create varying statutes of repose applicable to product liability actions. The new statute of repose requires that an action based on products liability be brought within a certain time from the date of delivery of the completed product to the original purchaser or lessee, regardless of the date on which the defect in the product was or should have been discovered. Otherwise, the action is forever barred. This provision would operate in conjunction with s. 95.11(3), F.S., relating to a 4-year statute of limitations, to bar product liability actions.

All products except certain aircraft, vessels, railroad equipment, improvements to real property and expressly warranted products, are presumed to have a useful life of 10 years or less and the repose period for these products is 12 years. Aircraft and railroad equipment used in commercial or contract carrying of passengers or freight, as well as vessels weighing more than 100 gross tons, have a statute of repose of 20 years. Any product that the manufacturer specifically warrants as having a useful life greater than the applicable 12 or 20 year repose period shall have a repose period equal to that of the warranted period. Improvements to real property, including elevators and escalators, are not subject to this section's statute of repose.

The repose periods do no apply if the claimant used or was exposed to the product within the repose period but the injury caused by such use or exposure did not manifest itself until after the repose period. Also, the repose periods are tolled for any period during which the manufacturer had actual knowledge the product was defective and took affirmative steps to conceal the defect.

Section 12 creates a grandfather clause to allow products liability actions that would not have otherwise been barred, but for the new statute of repose provisions, to be brought before July 1, 2003, or otherwise be subject to the new repose periods.

Subsequent Remedial Measures

Section 13 amends s. 90.407, F.S., relating to the subsequent remedial measures evidentiary rule, to expressly extend its application to products liability cases. Evidence of measures taken after an injury, which measures if taken before the event would have made the injury less likely to occur, is not admissible to prove the existence of a product defect. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as impeachment, or proving ownership, control, or the feasibility of precautionary measures, if controverted.

State of the Art Defense

Section 14 creates s. 768.1257, F.S., to provide for a "state of the art defense" in products liability actions. In an action based upon defective design, brought against the product manufacturer, the finder of fact shall consider the state of the art of scientific and technical knowledge and other circumstances that existed at the time of manufacture, not at the time of loss or injury.

Government Rules Defense

Section 15 creates s. 768.1256, F.S., to provide for a government rules defense in products liability actions. This section provides that a manufacturer or seller could raise a rebuttable presumption that a product is not defective or unreasonably dangerous and thus, he or she would not be liable, if at the time the product was sold or delivered to the initial purchaser the aspect of the product that allegedly caused the harm was: a) In compliance with applicable federal or state codes, statutes, regulations or standards relevant to the event causing the injury; b) The codes, statutes, rules, regulations or standards are designed to prevent the type of harm that occurred, and; c) Compliance with the codes, statutes, rules, regulations or standards is required as a condition for selling the product. This section also provides a reverse presumption that the product is defective or unreasonably dangerous and the manufacturer is liable when the manufacturer did not comply with applicable codes, statutes, rules, regulations or standards. This defense does not apply to drugs ordered off the market or seized by the Federal Food and Drug Administration.

Negligent Hiring

Section 16 creates s. 768.096, F.S., to provide for a rebuttable presumption that an employer was not negligent in hiring an employee if, before hiring such employee, the employer conducted a pre-employment background investigation and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the individual for the particular work to be performed or for employment in general. The background investigation must consist of one of the following: a) A criminal background investigation; b) Reasonable efforts to contact references and former employers; c) Completion of an employment application that elicits information on criminal convictions and civil actions involving intentional torts; d) A check of the prospective employee's driver's license record, if such a check is relevant to the type of work the employee will be performing and the record can be reasonably obtained; or e) An interview of the prospective employee. The election of an employer not to conduct the background investigation does not raise a presumption that the employer failed to use reasonable care in hiring an employee.

Disclosure of Employee Information

Section 17 amends s. 768.095, F.S., to broaden the immunity from liability for information disclosed by an employer about a former employee to a prospective employer, to apply also to information disclosed about current employees. This section also expands the immunity from liability to apply to information disclosed beyond information about an employee's job performance. Further, this section narrows the grounds for subjecting the employer to liability by requiring a showing of clear and convincing evidence that the information disclosed by the employer was knowingly false or violated the person's civil

rights. Under current law, the employer may also be subject to liability if the information was intentionally misleading or was disclosed with a malicious purpose. This section eliminates those two grounds.

Premises Liability

Section 18 creates s. 768.0705, F.S., providing that the owner or operator of a convenience business that substantially implements the applicable security measures listed in ss. 812.173 and 812.174, F.S., shall gain a presumption against liability for criminal attacks that occur on the premises and that are committed by third parties who are not employees or agents of the owner or operator of the convenience business.

Trespass

Section 19 amends s. 768.075, F.S., to expand the immunity from liability to trespassers on real property, to preclude all trespassers under the influence of drugs or alcohol from recovery of damages. This section also lowers the blood-alcohol threshold from 0.10 percent to 0.08 percent or higher. The immunity does not apply if the property owner engaged in gross negligence or intentional misconduct.

This section also defines the terms "invitation," "discovered trespasser" and "undiscovered trespasser." This section also delineates the duties owed by the property owner to different categories of trespassers. Under this section, a property owner is not liable to an undiscovered trespasser as long as the owner refrains from intentional misconduct. There is no duty to warn of dangerous conditions. A property owner is not liable to discovered trespassers as long as the property owner refrains from intentional misconduct or gross negligence, and warns the discovered trespasser of dangerous conditions known to the owner but not readily observable by others. This section modifies the common law as it relates to constructive notice of the presence of trespassers and dangerous conditions.

This section expressly provides that it does not alter the common law doctrine of attractive nuisance, which applies to children who are lured onto property by the dangerous condition that injures them and who, because of their age, are unable to appreciate the risks involved. Therefore, a property owner has a duty to protect trespassing children from dangerous conditions when the owner knows that children frequent the area and the expense of eliminating the danger is slight compared to the risk of injury.

This section also provides that a property owner is not liable for civil damages for negligent conduct resulting in death, injury or damage to a person attempting to commit, or committing, a felony on the property.

Alcohol Defense

Section 20 creates s. 768.36, F.S., to prohibit recovery of any damages for injury or loss to person or property in any civil action by a plaintiff whose blood or breath alcohol level was at least 0.08 percent, or whose faculties were impaired due to the influence of alcohol or drugs, at the time of injury and, as a result, was more than 50 percent at fault for his or her own harm. The section also defines the terms "alcoholic beverage" and "drug."

Punitive Damages

Section 21 creates s. 768.725, F.S., to raise the common law burden of proof necessary to recover punitive damages from "preponderance of evidence" to "clear and convincing evidence." The "greater weight of the evidence" burden of proof applies to the amount of punitive damages.

Section 22 amends s. 768.72, F.S., by adding subsection (2) which stiffens the common law standard of conduct necessary to hold a defendant liable for punitive damages. A defendant may only be liable for punitive damages if shown by clear and convincing evidence that the defendant was guilty of intentional misconduct or gross negligence. The term "intentional misconduct" is defined as conduct which the defendant had actual knowledge of its wrongfulness and of its high probability that it would result in injury to the claimant but intentionally pursued it anyway. The term "gross negligence" is defined as conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

This section also adds subsection (3) to revise substantially the common law threshold for holding an employer vicariously liable. This subsection specifies the criteria necessary to hold an employer, principal, corporation, or other legal entity liable for punitive damages based on the conduct of an employee or agent. The employee's conduct must rise to the level of gross negligence or intentional misconduct, and either: a) The employer, principal, corporation or other legal entity actively and knowingly participated in such conduct; b) The officers, directors, or managers thereof knowingly condoned, ratified, or consented to such conduct; or c) The employer, principal, corporation or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damage, or injury suffered by the claimant.

Section 23 amends s. 768.73, F.S., relating to caps on punitive damages, to revise the current cap which is set at three times the amount of compensatory damages. This section imposes a three-tiered system for determining the amounts and extent of punitive damages caps. The first tier provides that punitive damages may not exceed the **greater** of three times the amount of compensatory damages or the sum of $500,000. The second tier applies to cases where the fact finder determines the wrongful conduct was motivated

solely by financial gain and the fact finder determines the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, were actually known by the defendant's managing agent, officer, director or other policy making person. In this scenario, the amount of punitive damages may not exceed the **greater** of four times the amount of compensatory damages or the sum of $2,000,000. The third tier provides that there are **no caps** on punitive damages when the fact finder determines the defendant had a specific intent to harm the claimant and the defendant's conduct did in fact harm the claimant.

This section also adds a limitation to multiple awards of punitive damages against the same defendant in any civil action if that defendant can establish, before trial, that punitive damages have previously been awarded against that defendant in any state or federal court alleging harm from the same act or single course of conduct for which the claimant seeks damages. A subsequent award may be made if the court determines by clear and convincing evidence, and makes specific findings of fact, that the amount of prior awards was insufficient to punish the defendant's behavior. The court may consider whether the defendant's act or course of conduct has ceased. Any subsequent award of punitive damages must be reduced by the amount of the earlier award or awards.

This section also provides that the claimant's attorney's fees, if payable from the judgment, are, to the extent the fees are based on punitive damages, calculated based on the final judgment for punitive damages.

The amendments in this section apply to all causes of action arising after the effective date, which is October 1, 1999.

Section 24 creates s. 768.735, F.S., to exempt certain abuse actions or actions arising under ch. 400, F.S., relating to nursing homes and other health related facilities, from a number of the new punitive damages provisions. Any civil action based upon child abuse, abuse of an elderly person, or abuse of a developmentally disabled person, or any civil action arising under ch. 400, F.S., are exempt from the new provisions in s. 768.72(2)-(4), F.S. (relating to types of conduct necessary for an award of punitive damages and vicarious liability of employers), s. 768.73, F.S., (relating to caps on punitive damages), and s. 768.725, F.S., (relating to the burden of proof required for recovery of punitive damages.)

Section 25 creates s. 768.736, F.S., to prohibit application of ss. 768.725 and 768.73, F.S., to the recovery of punitive damages against any defendant who, at the time of the act or omission was under the influence of any alcoholic beverage or drug to the extent that the defendant's normal faculties were impaired, or who had a blood or breath alcohol level of 0.08 percent or higher. This would mean that the provisions on burden of proof and limitation of damages would not apply.

Section 26 creates s. 768.737, F.S., to specify that the provisions of ss. 768.72, 768.725, and 768.73, F.S., apply to arbitration proceedings where punitive damages are available as a remedy in such proceedings.

Joint and Several Liability

Section 27 amends s. 768.81, F.S., relating to comparative fault and apportionment of damages by eliminating automatic application of joint and several liability for actions with total damages of $25,000 or less. This repeal has the effect of eliminating joint and several liability for all non-economic damages. Subsection (3) is amended to provide a multi-tiered limitation on joint and severable liability for economic damages dependent upon whether the plaintiff has any fault.

When a plaintiff is found to be at fault, the following shall apply:

- Any defendant found 10 percent or less at fault shall not be subject to joint and several liability;
- For any defendant found more than 10 percent but less than 25 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of $200,000;
- For any defendant found at least 25 percent at fault but not more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of $500,000; and
- For any defendant found more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of $1,000,000.

Where a plaintiff is found to be without fault, the following shall apply:

- Any defendant found less than 10 percent at fault shall not be subject to joint and several liability;
- For any defendant found at least 10 percent but less than 25 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of $500,000;
- For any defendant found at least 25 percent at fault but not more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of $1,000,000; and
- For any defendant found more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of $2,000,000.

This section further provides that the amount of economic damages calculated under joint and several liability shall be in addition to the amount of economic and non-economic damages already apportioned to that defendant based on that defendant's percentage of fault.

This section also codifies the *Fabre* and *Nash* decisions, in part, to require a defendant who alleges a non-party to be at fault to affirmatively plead that defense and, absent a showing of good cause, identify that non-party or describe that non-party as specifically as practicable, in a motion or in an initial pleading, subject to amendment any time before trial in accordance with the rules of court. Additionally, in order to allocate any fault to the non-party on the verdict form, the defendant must prove by a preponderance of the evidence at trial the non-party's fault in causing the claimant's injury.

Vicarious Liability

Section 28 amends s. 324.021, F.S., relating to the financial responsibility of an operator or owner of a motor vehicle. This section limits the vicarious liability of a motor vehicle owner or a rental company that rents or leases motor vehicles. Subsection (9)(b)2. is added to provide that unless there is a showing of negligence or intentional misconduct on the part of a motor vehicle owner or rental car company that rents or leases motor vehicles for a period less than one year, the vicarious liability of the lessor to a third party for injury or damage to a third party due to the operation of the vehicle by an operator or lessee is limited to $100,000 per person and $300,000 per occurrence for bodily injury and $50,000 for property damage. If the lessee or operator of the motor vehicle has less than $500,000 combined property and bodily injury liability insurance, then the lessor is liable for an additional cap of $500,000 in economic damages which shall be reduced by any amount actually recovered from the lessee, the operator or insurer of the lessee or operator.

Subsection (9)(b)3. is added to apply the same vicarious liability limitations to owners who are natural persons and who lend their vehicles to permissive users, including relatives who live in their household. Subsection (9)(c) is added to exclude owners of motor vehicles that are used in commercial activity, other than rental companies that rent or lease motor vehicles to the general public, from the limits on vicarious liability in subsections (9)(b)2. and (9)(b)3. The term "rental company" includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days.

Subsection (9)(c)2. is added to exclude certain motor vehicles carrying hazardous materials from the vicarious liability limitations in subsections (9)(b)2. and (9)(b)3. Commercial motor vehicles as defined in s. 627.732, F.S., carrying hazardous materials as defined in the Hazardous Materials Transportation Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., are excluded from the vicarious liability limitations in this section unless, at

the time of rental or lease, the lessee indicates in writing that the vehicle will not be used to transport hazardous materials or the lessee or other operator has insurance with limits of at least $5,000,000 combined property damage and bodily injury liability.

This section has the effect of limiting the amount of damages that may be awarded under Florida's common law dangerous instrumentality doctrine, which currently allows a motor vehicle owner to be held liable for injuries caused by the negligence of someone entrusted to use the motor vehicle.

Joint Employer Liability

Section 29 creates s. 768.098, F.S., to provide a limitation of liability for employers in a joint employment relationship. An employer in a joint employment relationship pursuant to s. 468.520, F.S., shall not be liable for the tortious actions of another employer in that relationship, or for the tortious actions of any jointly employed employee under that relationship, provided:

- The employer seeking to avoid liability did not authorize or direct the tortious action;
- The employer seeking to avoid liability did not have actual knowledge of the tortious conduct and fail to take appropriate action;
- The employer seeking to avoid liability did not have actual control over the day-to-day job duties of the jointly employed tortfeasor, nor actual control over the job site where the tortious conduct arose or where the jointly employed tortfeasor worked, and that said control was assigned to the other employer under the contract;
- The employer seeking to avoid liability is expressly absolved in the written contract forming the joint employment relationship of control over the day-to-day job duties of the jointly employed tortfeasor, and actual control over the job site where the tortious conduct arose or where the tortfeasor worked, and that said control was assigned to the other employer under the contract; and
- Complaints, allegations, or incidents of any tortious misconduct or workplace safety violations, regardless of the source, are required to be reported to the employer seeking to avoid liability by all other joint employers under the written contract forming the joint employment relationship, and that the employer seeking to avoid liability did not fail to take appropriate action as a result of receiving any such report related to a jointly employed employee who has committed a tortious act.

This section shall not alter any responsibilities of the joint employer who has actual control over the day-to-day job duties of the jointly employed employee and who has actual control over the job site at which or from which the employee is employed, which arises from s. 768.096, F.S. (relating to presumptions against negligent hiring.)

Civil Enforcement - Residents of Chapter 400 Facilities

Sections 30-32 amend ss. 400.023, 400.429, and 400.629, F.S., relating to civil enforcement of rights for residents of nursing homes, assisted living care facilities, and adult family-care homes. Subsection (6) is added to s. 400.023, F.S., and subsection (2) is added to ss. 400.429 and 400.629, F.S. These sections are all identical.

These sections require mediation by the parties in actions based upon these sections as a prerequisite to the plaintiff's recovery of attorney's fees from the defendant. Mediation must be held within 120 days of the filing of a responsive pleading or defensive motion in response to a complaint. These sections provide the details of the procedure for setting and conducting the mediation. If no settlement is reached, then the last offer made by the defendant at the mediation is reduced to writing to include the amount of the offer, the date of the written offer and the date the offer was rejected. If the amount of damages awarded at trial, exclusive of attorney's fees, is equal to or less than the last written offer, then the plaintiff is not entitled to recover any attorney's fees. The mediation provisions apply to all causes of action that accrue on or after October 1, 1999.

Subsection (7) is added to s. 400.023, F.S., and an identical subsection (3) is added to ss. 400.429 and 400.629, F.S. These sections prohibit the discovery of financial information for purposes of determining the value of punitive damages in any civil action under these sections unless the plaintiff first proffers or shows evidence in the record that a reasonable basis exists to support a punitive damages claim.

Subsection (8) is added to s. 400.023, F.S., and an identical subsection (4) is added to ss. 400.429 and 400.629, F.S. These sections require that, in addition to any other standards for punitive damages, any award of punitive damages must be reasonable in light of the actual harm suffered by the resident and the egregiousness of the conduct that caused the actual harm to the resident.

Actuarial Analysis

Section 33 requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to contract with a national independent actuarial firm to conduct an actuarial analysis of the expected reduction in liability judgments, settlements, and related costs resulting from the civil litigation reform provisions in this act. The

analysis must be based on credible loss cost data derived from settlement or adjudication of liability claims accruing after October 1, 1999. The analysis shall include an estimate of the percentage decrease in such judgments, settlements, and costs by the type of coverage affected by this act, including the time period when such savings or reductions are expected. The report must be completed and submitted to OPPAGA by March 1, 2007.

Judicial Rulemaking Request

Section 34 provides that it is the intent of the Legislature not to infringe upon the constitutional prerogatives of the judiciary. If any court of competent jurisdiction declares any provision of this act to be an improper encroachment upon the Florida Supreme Court's authority to determine the rules of practice and procedure in Florida courts, then the Legislature declares its intent that any such provision be construed as a request for rule change pursuant to s. 2, Art. V, State Constitution.

Section 35 provides a severability clause.

If approved by the Governor, the statute of repose and the motor vehicle vicarious liability provisions take effect July 1, 1999, and the remaining provisions take effect October 1, 1999.
Vote: Senate 26-14; House 84-33

ESTATE LAW

CS/CS/HB 301 — Probate/Elective Share

by Real Property & Probate Committee and Reps. Goodlette and others (CS/SB 298 by Judiciary Committee and Senator Geller)

The bill revises a substantial portion of the Elective Share Law in Part II of chapter 732, F.S. (ss. 732.201-.215, F.S.), i.e., the law providing for a surviving spouse's optional right to claim a percentage share of a decedent's property. The bill establishes a comprehensive mechanism for exercising the right to an elective share. Specifically, the bill provides the following:

- Identifies the probatable and nonprobatable property assets, including any inter vivos trust, that will constitute a part of the elective estate for purposes of determining the elective share;
- Excludes certain property assets from the elective estate, such as assets in a qualifying special needs trust for an incapacitated spouse;

- Revises existing fair market valuation of elective share property to provide for different valuation of specific categories of elective estate property, and for fair market valuation of all other unspecified property;
- Introduces valuation dates on which different elective share properties are to be valued;
- Retains the elective share percentage at a flat 30% of the elective estate;
- Revises the priority scheme of recipients and beneficiaries of the elective estate into a 3-tiered priority scheme and expands the sources from which to satisfy the elective share;
- Imposes liability on direct recipients and beneficiaries for the value of the estate or property, or for the actual estate or probate property sold or otherwise transferred prior to the distribution or contribution toward satisfying the elective share;
- Revises the mechanism for extension of time to file and withdraw an election to an elective share, including extending the statute of limitations period for filing notice to exercise an elective share from the existing 4 months to the earlier of either within 6 months of the first publication of the notice of administration or within 2 years of the date of the decedent's death;
- Imposes a statutory duty on the personal representative of the decedent to collect contributions from the recipients to satisfy the elective share; and
- Excludes the application of the law to irrevocable contracts entered into before October 1, 1999.

The bill also repeals s. 732.205, F.S., relating to the application of the elective share solely by a spouse of a Florida resident decedent; s. 732.211, F.S., relating to the effect of the exercise of the right of election; s. 732.213, F.S., relating to the pre-existing right to dower; s. 732.214, F.S., relating to proceedings on election of an elective share; and s. 732.215, F.S., relating to the effect of elective share on taxes.

If approved by the Governor, these provisions take effect October 1, 1999.
Senate: 40-0; House 117-0

TRIAL PROCEEDINGS

CS/SB 198 — Trial Testimony/Sexual Offenses

by Judiciary Committee and Senator Klein

This bill amends s. 918.16, F.S., to expand the court's authority to clear the courtroom of persons during testimony about a sexual offense by a victim in a civil or criminal trial. Specifically, such victim, irrespective of age or mental capability, can request that the court clear the courtroom of all persons with the exception of parties to the cause and their immediate families, guardians, attorneys and their secretaries, court officers, jurors, news reporters or broadcasters, court reporters, victim advocates, and witness advocates.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 37-0; House 113-0

LIENS

CS/HB 681 — Construction

by Real Property & Probate Committee and Rep. Merchant (CS/CS/SB 1206 by Commerce & Economic Opportunities Committee; Judiciary Committee; and Senator Webster)

This bill creates s. 47.025, F.S., providing that contract provisions which require legal action involving resident contractors, subcontractors, sub-subcontractors, and materialmen to be brought outside this state are void as a matter of public policy. In that event, such legal actions arising out of the contract may be brought only in Florida in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located, unless the parties agree to another venue after the dispute arises.

This bill also amends the laws governing the legal remedy for unpaid persons who provide labor, services or materials during the construction of a home or building. Specifically, the bill amends s. 255.05, F.S., relating to contractor bonds for public construction, and chapter 713, F.S., relating to the Construction Lien Law, as follows:

- Specifies that the time period for providing notice of nonpayment, recording a claim of lien or bringing an action against a contractor or surety bond begins to run on the last day the lienor furnishes labor, services or materials;
- Requires the Notice of Commencement to contain the names and addresses of the owner and the contractor, and the location or address of the construction property;

- Requires the issuing authority to confirm the information in the Notice of Commencement against the information in the building permit application;
- Defines "information" as applied to information required in a statement of accounts to mean the nature and quantity of the labor, services furnished or to be furnished, the amount paid, the amount due or the amount to become due, and provides that the omission of such information does not eliminate the requirement that the statement of account be made under oath;
- Provides that a waiver and release of a right to a lien will also constitute a waiver and release of a right to make a claim against a payment bond; and
- Exempts persons from filing a Notice of Commencement on direct contracts of less than $5,000 for the repair or replacement of heating or air-conditioning systems.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 38-0; House 118-0

COURTS

HB 2163 — Local Decision for Election or Merit Selection and Retention of Circuit and County Court Judges

by Election Reform Committee and Rep. Flanagan (CS/SB 1210 by Judiciary Committee and Senator Grant)

This bill amends those sections in chapters 34, 101, 105, and 106, F.S., relating to the election of circuit or county court judges or the retention of only justices of the Supreme Court and judges of the District Court of Appeal, to allow for election or retention votes for circuit and county court judges. It implements the provisions of a constitutional amendment to Article V of the Florida Constitution, passed in November 1998, which provide that the voters of each judicial circuit or county must be provided the opportunity to determine if judges within the circuit or county will be elected or appointed through judicial selection and retention.

The bill also establishes the process by which the method of selection of circuit and county court judges will be placed on the ballot and provides the ballot language. The Secretary of State is directed to place on the ballot for the 2000 general election the questions regarding the selection of circuit and county court judges, whether election or merit selection and retention. Subsequent to the 2000 general election the bill establishes the process by which political committees may be created for the collection of petitions to place the question regarding the method for selection of circuit and county court judges on the ballot in any general election. This process provides for registration as a political

committee, the petition form to be developed by the Secretary of State, and the process by which the Secretary of State and the supervisors of elections will verify the signatures and certify the ballot position of the question. The Secretary of State is to notify the Supreme Court after each general election of those counties and circuits where the method of judicial selection has changed.

Circuit and county court judges holding office at the time of a change in the selection process will not be affected by the change until the end of their term. At the election prior to the end of a judge's term of office, the judge will be required to either stand for election or a retention vote depending on what process is to be used for selection of judges in that county or circuit at that election.

If approved by the Governor, these provisions take effect January 1, 2000.
Vote: Senate 38-0; House 117-0

CS/SB 1282 — Clerk of Court

by Judiciary Committee and Senator Laurent

The bill amends various statutory provisions relating to the duties and responsibilities of the clerk of the circuit court, as follows:

- Sections 28.001, 28.07, and 28.222, F.S., to implement the recent constitutional amendment to lift the restriction against recording at branch offices, to remove the unnecessary reference to the "books" which constitute the "Official Records", and to require the "register" of Official Records to be available at each branch office;

- Section 40.32, F.S., to extend the time from 10 days to 20 days in which clerks of court are to compensate witnesses or jurors for their services;

- Section 45.031, F.S., to eliminate a person's or entity's option to pay a $1,000 deposit at the time of a judicial sale rather than a deposit in the amount of 5% of the final bid;

- Section 177.091, F.S., 1998 Supp., to eliminate the requirement that a plat for recording be submitted on a specific type of linen or film;

- Section 177.111, F.S., to eliminate the obsolete requirement that the clerk or the recording officer retain a photographic cloth copy of the plat for public inspection;

- Section 215.425, F.S., 1998 Supp., to allow employees of clerks of courts to receive extra compensation from public funds;

- Section 569.11, F.S., to impose a 30-day time period in which a minor must pay a fine assessed for noncriminal violations of tobacco possession or misrepresentation of age or military service for purposes of securing a tobacco product, to begin to run from the date of the citation, or if a court appearance is mandatory, from the date of the hearing; and

- Section 741.09, F.S., to delete obsolete provisions requiring the clerk to keep records of marriage licenses and certificates in books.

The bill also repeals s. 142.17, F.S., relating to duties no longer performed by the state Comptroller regarding the preparation of forms for audit claims against the county paid out of the County Fine and Forfeiture Fund. It also repeals ss. 938.09, and 938.11, F.S., relating to provisions for the assessment of court costs fees on fines for crimes against handicapped or disabled persons; these provisions were rendered unnecessary after the repeal of the Handicapped and Elderly Security Assistance Act in chapter 426, F.S., in 1998.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

HB 1877 — Judicial Certification

by Rep. Warner and others (CS/SB 1334 by Fiscal Policy Committee and Senator Grant)

This bill amends s. 35.06, F.S., to create a position for a new district court of appeals judge in the fifth judicial circuit effective October 1, 1999. Section 26.031, F.S., creates positions for 14 new circuit court judges on August 1, 1999 and 12 new circuit court judges on October 1, 1999. Section 34.022, F.S., is amended to create positions for 1 new county court judge on August 1, 1999 and 4 new county court judges on October 1, 1999. The judicial nominating commissions may solicit applications for the positions created August 1 beginning on that date and may seek applications for the second group of positions beginning October 1, 1999. The budget contains funding for the commission of the first group of positions beginning on November 1, 1999 and for commission of the second group of positions created in October beginning on January 1, 2000. The creation of the positions was staggered to allow time for the Governor to interview and make appointments within the constitutional time frames. Additionally, the time between creation of the positions and the funding should provide the constitutionally required time for the judicial nominating commissions to make recommendations to the Governor and for the Governor to make appointments.

If approved by the Governor, these provisions take effect August 1, 1999.
Vote: Senate 38-0; House 114-0

Senate Committee on Natural Resources

CONSERVATION LANDS

CS/CS/SB 908 — Florida Forever Program

by Fiscal Policy Committee; Natural Resources Committee; and Senators Latvala, Laurent, Carlton, Saunders, Kirkpatrick and Cowin

This bill authorizes the issuance of up to $300 million in bonds in FY 2000-2001 and thereafter with debt service paid from documentary stamp tax revenues; total debt service may not exceed $300 million for all bonds issued. The amount of debt service for the first fiscal year in which bonds are issued may not exceed $30 million. The amount of debt service is limited to an additional $30 million in each fiscal year in which bonds are issued. Funds will be distributed as follows:

- 35 percent ($105 million) for water management district (WMD) projects. Over the life of the program, at least 50 percent of the funds must be used for land acquisition. Projects will be selected and approved by WMD governing boards from a 5-year work plan.

- 35 percent ($105 million) for Conservation and Recreation Lands (CARL)-type projects. Up to 10 percent of the funds may be used for capital project expenditures. Projects will be prioritized and recommended by the Acquisition and Restoration Council but must be approved by the Board of Trustees of the Internal Improvement Trust Fund (Trustees).

- 24 percent ($72 million) for the Florida Communities Trust (FCT). 8 percent ($5.76 million) of the FCT funding will be used for the Florida Recreation Development Assistance Program (FRDAP). 30 percent of the FCT funding ($21.6 million) will be used in SMSAs with one-half of that amount being used in built-up areas, while at least 5 percent ($3.6 million) must be used for recreational trails.

- 1.5 percent ($4.5 million) each for the Division of Recreation and Parks, Fish and Wildlife Conservation Commission (FWCC), and Division of Forestry for the acquisition of additions and inholdings.

- 1.5 percent ($4.5 million) for the Greenways and Trails Program.

The distribution of documentary stamp tax proceeds has been revised, effective July 1, 2001, in order to address other needs. The revised distributions will provide increased management capability for the FWCC; approximately $5.4 million annually for lake restoration by the FWCC; approximately $30 million to the Aquatic Plant Control Trust Fund with 20 percent of that amount to be used for upland nonnative plant control; and approximately $5.4 million to address water quality impacts of nonpoint sources of pollution.

Beginning July 1, 2001, documentary stamp tax proceeds may not be used by the WMDs and the DEP for land acquisition, as the Florida Forever Program is to become the state's primary source of acquisition funding.

The bill creates the Acquisition and Restoration Council (ARC) composed of 5 members of the Land Acquisition and Management Advisory Council and 4 members appointed by the Governor. The ARC will review management plans and recommend CARL-type projects to the trustees for the trustees' approval.

Also created is the Florida Forever Advisory Council comprised of 7 members appointed by the Governor and two non-voting legislators, which will advise the trustees and the Legislature and develop recommended specific goals, performance measures, and selection processes. The recommendations will be presented to the 2001 Legislature for approval or modification. Other reports are required every two years that will provide recommendations for adjusting goals and funding distribution. An appropriation of $300,000 is provided.

Other major features include:

- Provisions governing the disposition of conservation and other lands are revised to incorporate recent constitutional changes for an extraordinary vote, open the process to requests from the public, and expedite the process.

- Payments-in-lieu of taxes provisions are simplified, include more local governments, and include all counties with populations of 150,000 or less in which the total tax losses exceed 0.01 percent of the county's total taxable value.

- Water resource and water supply development projects are permitted only if minimum flows and levels have been established for those waters, if any, which may reasonably be expected to experience significant harm to water resources as a result of the project, and the project is consistent with the regional water supply plan and with specified strategies pursuant to s. 373.0421, F.S., and permitting requirements are met.

- Alternate uses of lands for water resource development and supply development projects, stormwater management projects, linear facilities, and sustainable agricultural and forestry are authorized if the trustees determine that specified criteria are met.

- Provisions are included authorizing the management of lands slated for acquisition by private parties through contractual arrangements funded by documentary stamp tax proceeds.

- Provisions from the Preservation 2000 Act encouraging less than fee acquisitions are continued in the new program.

- The Florida Greenways and Trails program is revised to include waterways, the Florida Greenways and Trails Council is created, and the Florida Greenways Coordinating Council and Florida Recreational Trails Council are abolished.

- Several Provisions relating to the FCT are revised and its governing board is expanded to include a former elected official of a metropolitan municipal government.

- A process is provided whereby the owners of certain stilt-houses may continue their existing leases or be granted 20-year leases.

If approved by the Governor, except as otherwise provided in the bill, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 118-1

SB 906 — Florida Forever Trust Fund

by Senators Latvala, Laurent, Carlton, Saunders and Kirkpatrick

This bill creates the Florida Forever Trust Fund to carry out the provisions of ss. 259.032, 259.105, and 375.031, F.S. The Department of Environmental Protection will administer the fund. Proceeds from the sale of bonds, except proceeds of refunding bonds, issued under s. 215.618, F.S., and payable from moneys transferred to the Land Acquisition Trust Fund under s. 201.15(1)(a), F.S., shall be deposited into the fund. The fund shall not exceed $3 billion and is to be distributed according to the provisions of s. 259.105(3), F.S., and recipients shall spend the funds within 90 days after the department initiates the transfer. The bond resolution adopted by the governing board of the Division of Bond Finance of the State Board of Administration may contain additional provisions governing disbursement of the bond proceeds.

The Department of Environmental Protection is required to administer and expend the fund in a manner that ensures compliance with the applicable provisions of the United States Internal Revenue Code for proceeds from bonds issued under s. 215.618, F.S., and payable from moneys transferred to the Land Acquisition Trust Fund under s. 201.15(1)(a), F.S., issued on the basis that the interest thereon will be excluded from gross income for federal income tax purposes. The department must also administer the use of the fund in a manner that implements strategies to maximize any available benefits, that are not inconsistent with the purposes of s. 259.105(3), F.S., under the applicable provisions of the United States Internal Revenue Code or its regulations.

If approved by the Governor, these provisions take effect when SB 908 becomes law.
Vote: Senate 39-0; House 119-0

HB 325 — Lake Belt Mitigation Trust Fund

by Reps. Villalobos and others (SB 2240 by Senator Diaz-Balart)

This bill reenacts and amends s. 373.41495, F.S., which created the Lake Belt Mitigation Trust Fund. Proceeds of the mitigation fee imposed by s. 373.41492, F.S., less the Department of Revenue's administrative costs not exceeding three percent, will be deposited into the Lake Belt Mitigation Trust Fund. The South Florida Water Management District will administer the trust fund for the purpose of implementing the Lake Belt Mitigation Plan pursuant to s. 373.41492, F.S.

If approved by the Governor, these provisions take effect July 1, 1999, if HB 329 or similar legislation becomes law.
Vote: Senate 40-0; House 112-0

HB 329 — Limerock Mining; Miami-Dade County Lake Belt Plan

by Reps. Villalobos and others (CS/CS/SB 2238 by Fiscal Resources Committee; Comprehensive Planning, Local & Military Affairs Committee; and Senators Diaz-Balart, Kirkpatrick, Horne and Dyer)

Section 373.4149, F.S., is amended to provide that the Dade County Lake Belt Plan is redesignated as the Miami-Dade County Lake Belt Plan. The Miami-Dade County Lake Belt Area is redefined as that area bounded by the Florida Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west, and the Tamiami Trail to the south. Also, certain other specified areas are included and certain specified areas are excluded.

The identification of the Miami-Dade County Lake Belt Area shall not preempt local land use jurisdiction or the use of land for other purposes by private land owners. When amending local comprehensive plans, or implementing zoning regulations, development

regulations, or other local regulations, Miami-Dade County shall strongly consider limestone mining activities and ancillary operations, such as lake excavation, including use of explosives, rock processing, cement, concrete and asphalt products manufacturing, and ancillary activities, within the rock mining supported and allowable areas of the Miami-Dade County Lake Plan; provided, however, that limerock mining activities are consistent with wellfield protection. Rezonings or amendments to local comprehensive plans concerning properties within 1 mile of the Miami-Dade lake Belt Area are to be compatible with limestone mining activities. Certain rezonings, variances, or local comprehensive plan amendments are not allowed until there is no active mining within 2 miles of the property. Residential development that complies with current regulations is not precluded.

Beginning October 1, 1999, before the sale, lease, or the issuance of a development order, including the approval of a change in land use designation or zoning, for any real property located inside the Miami-Dade Lake Belt Area or within 2 miles of the boundary of the Miami-Dade Lake Belt Area, the entity holding title to the real property is required to submit a written affidavit of disclosure to Miami-Dade County in a form suitable for recording that contains certain specified information.

The membership of the Miami-Dade County Lake Belt Plan Implementation Committee is increased by adding four representatives of the nonmining private landowners instead of one.

Currently, the Implementation Committee must develop Phase II of the Lake Belt Plan which must include certain specified information. This bill adds the requirement that the committee must consider the feasibility of a common mitigation plan for nonrock mining uses, including a nonrock mining mitigation fee. Any mitigation fee shall be for the limited purpose of offsetting the loss of wetland functions and values and not as a revenue source for other purposes. The committee must also analyze the hydrological impacts resulting from the future mining included in the Lake Belt Plan and recommend appropriate mitigation measures, if needed, to be incorporated into the Lake Belt Mitigation Plan.

Section 373.41492, F.S., is created to provide for implementation of the Miami-Dade County Lake Belt Mitigation Plan. The committee substitute provides a legislative finding that wetlands impacts resulting from rock mining within the Lake Belt Area can best be offset by the Lake Belt Mitigation Plan. The bill provides for a mitigation fee of 5 cents per ton of limerock or sand sold from within the Lake Belt Area. Beginning October 1, 1999, the fee would be applied to limerock or sand in raw, processed, and manufactured form including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. Proceeds of the fee, less administrative costs, are to be used exclusively for the purpose of conducting mitigation activities that offset the loss of the value and functions of wetlands as a result of mining in the Lake Belt Area.

The Department of Revenue (DOR) would be responsible for administering, enforcing, and collecting the fee. Mitigation fees must be reported to the DOR in a manner it prescribes. Proceeds of the fee, less administrative costs retained by the DOR, must be transferred to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. The DOR may retain up to 3 percent of the total revenues collected for administrative costs that are reasonably attributable to the mitigation fee. The bill also provides for an annual increase in the mitigation fee beginning January 1, 2001. The annual increase will be 2 percent plus a cost growth index derived from several U.S. Department of Labor price indices.

The proceeds of the fee are to be used for mitigation activities that are consistent with the Lake Belt Mitigation Plan and may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credits from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Lake Belt Area. Expenditures must be approved by an interagency committee consisting of representatives of the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Game and Fresh Water Fish Commission. The limerock industry is allowed to select a representative to serve as a nonvoting member of the committee. At its discretion, the committee may add additional members representing federal regulatory, environmental, and fish and wildlife agencies. No sooner than January 31, 2010, and no more frequently than every 10 years thereafter, the interagency committee is required to submit to the Legislature a report recommending any necessary adjustments to the mitigation fee to ensure that the revenue generated reflects the actual costs of the mitigation.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 115-0

MARINE RESOURCE PROTECTION

CS/CS/SB 864 — Fish and Wildlife Conservation Commission

by Fiscal Policy Committee and Natural Resources Committee

This legislation was developed in response to an amendment to the State Constitution known as Revision 5 which was approved by voters in November 1998. This legislation was necessary to provide the details for implementation of the new Fish and Wildlife Conservation Commission. This bill creates s. 20.331, F.S., to establish the Fish and Wildlife Conservation Commission (FWCC). The commission shall appoint an executive director subject to Senate confirmation. The Game and Fresh Water Fish Commission and the Marine Fisheries Commission are transferred to the FWCC using a type two transfer. The Bureau of Environmental Law Enforcement, the Bureau of Administrative Support, and the Office of Enforcement Planning and Policy Coordination within the Division of Law Enforcement at the Department of Environmental Protection (DEP) are transferred to the FWCC. However, the Bureau of Emergency Response, the Office of Environmental Investigations, the Florida Park Patrol, and any sworn positions classified as Investigator I or Investigator II positions shall remain within a Division of Law Enforcement at DEP. No boating safety related matters shall remain with DEP.

This bill also transfers the Office of Fisheries Management and Assistance Services within the Division of Marine Resources at DEP to the FWCC. A Division of Marine Fisheries is established in the FWCC. The Florida Marine Research Institute is transferred to the Office of the Executive Director at the FWCC and established as a separate budget entity. The Bureau of Protected Species Management is assigned as a bureau to the Office of Environmental Services at the FWCC. The Bureau of Marine Resource Regulation and Development is transferred from DEP to the newly created Division of Aquaculture within the Department of Agriculture and Consumer Services (DACS).

Section 20.255, F.S., is amended to revise the administrative makeup of DEP. The bill also places a limitation on the total recurring budget of the FWCC for FY 2000-2001, not to exceed 95 percent of the budget appropriated for FY 1999-2000. A transition advisory working group, containing members from the FWCC, DEP, and DACS, will resolve issues relating to the use of facilities and equipment and determine appropriate general administrative personnel to be moved from the DEP to the FWCC.

Further, this bill requires the FWCC to provide a report to the President of the Senate and the Speaker of the House of Representatives by December 1, 1999, on the implementation of adequate due process procedures related to the FWCC's performance of its constitutional and statutory duties. It also enumerates specific statutory duties of the FWCC that must have rules adopted pursuant to ch. 120, F.S. It provides a specified time for comments submitted by the FWCC to a permitting agency. The FWCC and DEP are

required to develop a memorandum of agreement detailing certain shared responsibilities such as law enforcement, emergency response, and marine research.

This bill contains statutory provisions for the FWCC to have full constitutional rulemaking authority over marine life and listed species as defined in s. 372.072(3), F.S., except for the following:

(a) Endangered or threatened marine species for which rulemaking shall be done pursuant to ch. 120, F.S..

(b) The authority to regulate fishing gear in residential, manmade saltwater canals which is retained by the Legislature and specifically not delegated to the FWCC.

(c) Marine aquaculture products produced by an individual certified under s. 597.004, F.S. This exception does not apply to snook, prohibited and restricted marine species identified by rule of the FWCC, and rulemaking authority granted pursuant to s. 370.027(4).

This bill also provides that employees transferred between agencies as a result of organizational changes in this bill will retain accrued annual leave, sick leave, and compensatory leave. Finally, this bill makes numerous technical and conforming changes to various statutes, amending references to the Game and Fresh Water Fish Commission and the Marine Fisheries Commission which are abolished on July 1, 1999.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 118-0

SB 934 — Coastal Zone Protection Act

by Senator Brown-Waite

This bill eliminates the 5-year cumulative total provision from the definition of "substantial improvement" in the Coastal Zone Protection Act of 1985 (ss. 161.52 - 161.58, F.S.). The effect of this bill is to impose less restrictive requirements to determine when "substantial improvements" have been made to existing coastal structures which do not meet elevation and other building code requirements. Stricter building code requirements are not imposed unless a single improvement or repair equals or exceeds 50 percent of a structure's market value.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 118-0

CS/SB 2038 — Red Tide Research and Mitigation

by Natural Resources Committee and Senator Carlton

The bill establishes a Harmful-Algal-Bloom Task Force for determining research, monitoring, control and mitigation strategies for red tide and other harmful algal blooms in Florida waters. The Florida Marine Research Institute shall appoint scientists, engineers, economists, citizen-group members, and members of government to the task force. The task force is to determine research and monitoring priorities and control and mitigation strategies and make recommendations to the Fish and Wildlife Conservation Commission by October 1, 1999, for using funds as provided in this act.

Once it has issued the report, the task force may be continued at the pleasure of the Florida Marine Research Institute.

The Florida Marine Research Institute shall implement a program designed to increase the knowledge of factors that control harmful algal blooms, including red tide, and to gain knowledge to be used for the early detection of factors precipitating harmful algal blooms for accurate prediction of the extent and seriousness of harmful algal blooms and for undertaking successful efforts to control and mitigate the effects of harmful algal blooms.

It is the intent of the Legislature that this program enhance and address areas that are not adequately covered in the cooperative federal-state program known as Ecology and Oceanography of Harmful Algal Blooms (ECOHAB-Florida), which includes the University of South Florida, Mote Marine Laboratory, and the Florida Marine Research Institute.

The bill also creates a financial disbursement program within the Florida Marine Research Institute to implement the provisions of this act. Under the program, the institute shall provide funding and technical assistance to government agencies, research universities, coastal local governments, and organizations with scientific and technical expertise for the purposes of harmful-algal-bloom research, economic impact study, monitoring, detection, control, and mitigation. The program may be funded from state, federal, and private contributions.

The bill appropriates $3 million from the Coastal Protection Trust Fund to the Florida Marine Research Institute for FY 1999-2000 to carry out the purposes of this act.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 114-0

WATER RESOURCE PROTECTION

CS/SB 2282 — Water Quality Standards

by Natural Resources Committee and Senator Laurent

The bill provides a process for restoring Florida's waters through the establishment of total maximum daily loads (TMDLs) for pollutants of impaired water bodies as required by the federal Clean Water Act.

Section 403.067, F.S., is created to provide for the establishment and implementation of total maximum daily loads. The Department of Environmental Protection (DEP) is to be the lead agency in administering and coordinating the implementation of this program and shall coordinate with local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies and affected pollution sources in developing and executing the TMDL program. The DEP shall establish a priority ranking and schedule for analyzing such waters. The list, priority ranking, and schedule cannot be used in the administration or implementation of any regulatory program. The list, priority ranking, and schedule must be made available for public comment, but they are not subject to challenge under ch. 120, F.S., nor are they to be adopted by rule. The DEP must adopt by rule a methodology for determining those waters which are impaired. Such rules shall also set forth water quality analysis requirements, approved methodologies, data modeling, and other appropriate water quality assessment measures.

By February 1, 2000, the DEP is required to submit a report to the Governor, president of the Senate, and the Speaker of the House of Representative containing recommendations, including draft legislation, for any modifications to the process for allocating TMDLs. The recommendations must be developed by the DEP in cooperation with a technical advisory committee.

The TMDL calculations and allocations for each water body or segment on the list are to be adopted by rule. The DEP is required to hold at least one public workshop. The bill specifies the notice that is required for the workshop.

The DEP, in cooperation with the water management district and other interested parties, as appropriate, is to develop suitable interim measures, best management practices, or other measures necessary to achieve the pollution reduction target established by the DEP for nonagricultural nonpoint pollutant sources in allocations developed pursuant to the provisions of this bill.

For agricultural pollutant sources in allocations developed pursuant to this bill, the Department of Agriculture and Consumer Services shall develop and adopt suitable interim measures and best management practices by rule.

The DEP is authorized to adopt rules relating to delisting water bodies or segments from the list; administration of funds to implement the TMDL program; and procedures for pollutant trading among the pollutant sources to a water body or segment.

The Secretary of the DEP shall have the responsibility for final agency action regarding TMDL calculations and allocations.

The DEP, in coordination with the water management districts, soil and water conservation districts, and the Department of Agriculture and Consumer Services, is required to evaluate the effectiveness of the implementation of TMDLs for a period of 5 years from the effective date of this act. The DEP must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2005. The bill specifies what the report must contain.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 116-0.

HB 1515 — National Pollutant Discharge Elimination System

by Reps. Constantine and others (CS/SB 1180 by Natural Resources Committee and Senators Bronson and Forman)

This bill (Chapter 99-11, L.O.F.) amends s. 403.088, F.S., to conform Florida law to federal requirements to allow the South Florida Water Management District to issue a National Pollutant Discharge Elimination System (NPDES) permit to operate a stormwater treatment area (STA) as part of the Everglades Construction Project to restore the Everglades. The bill allows a NPDES permit accompanied by an order establishing a compliance schedule to be issued without requiring compliance with the order. It also allows the interim construction, operation, and maintenance of an STA associated with the Everglades Construction Project during the pendency of an administrative challenge to its permit issuance, if it complies with all uncontested conditions of the proposed permit and all other conditions recommended by the administrative law judge. The bill also provides an expedited process for resolving administrative challenges to the issuance of such a permit.

These provisions became law upon approval by the Governor on March 25, 1999.
Vote: Senate 37-0; House 116-0

CS/CS/SB 1672 — Water Resources

by Fiscal Policy Committee; Natural Resources Committee; and Senator Laurent

This bill (Chapter 99-143, L.O.F.) provides a finding that the Comprehensive Review Study of the Central and Southern Florida Project (Restudy) is important for restoring the Everglades ecosystem and sustaining the environment, economy, and social well-being of South Florida. It is also the intent of the Legislature to facilitate and support the restudy through a process concurrent with Federal Government review and Congressional authorization. It is further the intent of the Legislature that all project components be implemented through the appropriate processes of ch. 373, F.S., and be consistent with the balanced policies and purposes of that chapter, specifically s. 373.016, F.S. Clarification is provided that the bill is not intended in any way to limit federal agencies or Congress in the exercise of their duties and responsibilities.

The bill authorizes the acquisition through state condemnation law, if necessary, of the Kissimmee River Project, Ten Mile Creek Project, Water Preserve Areas, and the C-111 Project and authorizes the South Florida Water Management District (district) to act as local sponsor of the Central and Southern Florida Project (project).

The district is also authorized to act as local sponsor for project components, which are defined as any structural or operational change, resulting from the restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999. In the development of project components, the district must:

- Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs.

- Determine with reasonable certainty that all project components are feasible based upon standard engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project.

- Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed.

- Consistent with ch. 373, F.S., as provided in the Water Resources Development Act of 1996, and federal law, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of

project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment.

- Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to and relocation of existing utility or public infrastructure are minimized.

The Department of Environmental Protection (DEP) and the district are directed to expeditiously pursue implementation of project modifications previously authorized by Congress or the Legislature, including the Everglades Construction Project. Project components should complement and should not delay project modifications previously authorized.

The bill provides that final agency action with respect to any project component subject to department approval shall be taken by the DEP. Actions taken by the district as local sponsor for the project are not final agency actions. The bill also provides an expedited process for resolving administrative challenges.

The bill amends s. 373.06, F.S., to require the DEP to collaborate with the district in the restudy. Before any project component is submitted to Congress for authorization or receives an additional appropriation of state funds, the DEP must approve, or approve with amendments, each project component within 60 days following formal submittal of the project component to the DEP. Such approval must be based upon a determination of the district's compliance with s. 373.1501(5), F.S. Once a project component is approved, all requests for an additional appropriation of state funds needed to implement the project component shall be submitted to the DEP and such requests must be included in the DEP's annual request to the Governor. The Executive Office of the Governor must review all proposed expenditures for project components.

These provisions became law upon approval by the Governor on April 30, 1999.
Vote: Senate 39-0; House 116-0

HB 1993 — Onsite Sewage Treatment and Disposal Systems

by Rep. Alexander and others (CS/SB 2288 by Natural Resources Committee and Senator Laurent)

The bill defines the following terms: "mean annual flood line," "permanent nontidal surface water body," and "tidally influenced surface water body."

The bill deletes the requirement that an onsite sewage treatment and disposal system may not be within 75 feet of a surface water. However, the bill provides the following additional setback requirements:

- 75 feet from the mean high-water line of a tidally influenced surface water body.
- 75 feet from the mean annual flood line of a permanent nontidal surface water body.

Unless otherwise stated in the bill, no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

Section 381.0066, F.S., currently allows an additional $5 fee to be added to each new system construction permit issued during fiscal years 1996-2002 to be used for onsite sewage treatment and disposal system research, demonstration, and training projects. This bill provides that $5 from any repair permits collected under this section must be used for funding the hands-on training center described in s. 381.0065(3)(I), F.S.

By February 1, 2000, the Department of Health is to report to the Legislature its findings from a scientific research project, applicable to Florida soils, on the appropriate setback of an onsite sewage treatment and disposal system to a seasonally inundated area so as to assure the system does not adversely affect public health or significantly degrade the groundwater or surface waters of the state.

This bill allows a local government within the Florida Keys Area of Critical State Concern to enact an ordinance requiring connection to a central sewage system within 30 days of notice of availability of services. It further provides the following more stringent sewage requirements in Monroe County.

- No new or expanded discharges shall be allowed into surface waters.
- Existing surface water discharges shall be eliminated before July 1, 2006.
- Existing sewage facilities that discharge to other than surface waters and existing onsite sewage treatment and disposal systems shall cease discharge or shall comply with advanced treatment requirements by July 1, 2010.
- All new or expanded discharges into other than surface waters and all onsite sewage treatment and disposal systems permitted after the effective date of the act must comply with advanced treatment requirements.

By January 1, 2003, the DEP and the Department of Health shall report to the Governor and the Legislature on the current state of sewage treatment technology and the status of research on the fate and transport of nutrients after injection. The report is also to provide an overall assessment of water quality in Monroe County and recommendations for change to the sewage collection, treatment, and disposal requirements in Monroe County.

By January 1, 2003, Monroe County and the Florida Keys Aqueduct Authority must report to the Governor and the Legislature on the implementation of charges, fees, and assessments related to sewage collection, treatment, and disposal in Monroe County, and on implementation of the Monroe County Wastewater Master Plan.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 116-0

CS/HB 2067 — Environmental Protection

by General Government Appropriations Committee; Water & Resource Management Committee; and Rep. Alexander and others (CS/SB 1250 by Natural Resources Committee)

The committee substitute provides that the interim permitting program in the NWFWMD pursuant to s. 373.4145, F.S., is extended until 2003. The Department of Environmental Protection and the Northwest Florida Water Management District are directed to begin developing a plan to fully comply with the Environmental Resource Permitting (ERP) provisions contained in part IV of ch. 373, F.S., beginning 2003. The plan is to also address the division of environmental resource permitting responsibilities between the department and the Northwest Florida Water Management District; the methodology of delineating wetlands in the Northwest Florida Water Management District; authority of the Northwest Florida Water Management District to implement federal permitting programs related to activities in surface waters and wetlands; and the ch. 70, F.S., implications of implementing the provisions of part IV of ch. 373, F.S., within the jurisdiction of the Northwest Florida Water Management District.

The department and the Northwest Florida Water Management District are to jointly prepare an interim report on their progress to the Governor and the Legislature by March 1, 2001.

Certain jurisdictional declaratory statements issued within the Northwest Florida Water Management District and valid on July 1, 1999, shall not expire until January 1, 2002.

If the Department of Environmental Protection or a water management district has made a payment in lieu of taxes to a governmental entity and subsequently suspended such payment, the department or the water management district shall reinstitute appropriate

payment and continue the payments in consecutive years until the governmental entity has received a total of 10 payments for each tax loss.

The prevailing party in actions at law and all appellate proceedings resulting therefrom under the provisions of ch. 373, F.S., may be awarded reasonable attorney's fees for services rendered.

This bill further provides a process for restoring Florida's waters through the establishment of total maximum daily loads (TMDLs) for pollutants of impaired water bodies as required by the federal Clean Water Act.

Section 403.067, F.S., is created to provide for the establishment and implementation of total maximum daily loads. The Department of Environmental Protection (DEP) is to be the lead agency in administering and coordinating the implementation of this program and shall coordinate with local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies and affected pollution sources in developing and executing the TMDL program. The DEP shall establish a priority ranking and schedule for analyzing such waters. The list, priority ranking, and schedule cannot be used in the administration or implementation of any regulatory program. The list, priority ranking, and schedule must be made available for public comment, but they are not subject to challenge under ch. 120, F.S., nor are they to be adopted by rule. The DEP must adopt by rule a methodology for determining those waters which are impaired. Such rules shall also set forth water quality analysis requirements, approved methodologies, data modeling, and other appropriate water quality assessment measures.

By February 1, 2000, the DEP is required to submit a report to the Governor, President of the Senate, and the Speaker of the House of Representative containing recommendations, including draft legislation, for any modifications to the process for allocating TMDLs. The recommendations must be developed by the DEP in cooperation with a technical advisory committee.

The TMDL calculations and allocations for each water body or segment on the list are to be adopted by rule. The DEP is required to hold at least one public workshop. The bill specifies the notice that is required for the workshop.

The DEP, in cooperation with the water management district and other interested parties, as appropriate, is to develop suitable interim measures, best management practices, or other measures necessary to achieve the pollution reduction target established by the DEP for nonagricultural nonpoint pollutant sources in allocations developed pursuant to the provisions of this bill.

For agricultural pollutant sources in allocations developed pursuant to this bill, the Department of Agriculture and Consumer Services shall develop and adopt suitable interim measures and best management practices by rule.

The DEP is authorized to adopt rules relating to delisting water bodies or segments from the list; administration of funds to implement the TMDL program; and procedures for pollutant trading among the pollutant sources to a water body or segment.

The Secretary of the DEP shall have the responsibility for final agency action regarding TMDL calculations and allocations.

The DEP, in coordination with the water management districts, soil and water conservation districts, and the Department of Agriculture and Consumer Services, is required to evaluate the effectiveness of the implementation of TMDLs for a period of 5 years from the effective date of this act. The DEP must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2005. The bill specifies what the report must contain.

Authorization is given for the Secretary of DEP to reorganize the department within current statutory prescribed divisions and in compliance with s. 216.292, F.S., 1998 Supp.

The committee substitute deletes the 3-day nonresident freshwater fishing license. The license and permit fees established under ch. 372, F.S., must be reviewed by the Legislature during its regular session every 5 years beginning in 2000.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 112-1

HB 2151 — Petroleum Contamination Site Rehabilitation

by Environmental Protection Committee and Rep. Dockery (CS/SB 2536 by Natural Resources Committee and Senator Diaz-Balart)

This bill addresses certain glitches and other problems that have arisen since the passage of ch. 96-277, L.O.F. This bill allows the Department of Environmental Protection to provide funding for source removal activities. Funding for free product recovery may be provided in advance of the order established by the priority ranking system for site cleanup activities; however, a separate prioritization for free product recovery must be established consistent with the priority ranking system. No more than $5 million may be encumbered from the Inland Protection Trust Fund in any fiscal year for source removal activities conducted in advance of the priority order.

Under the Petroleum Cleanup Participation Program, sites for which a discharge occurred before January 1, 1995, are eligible for rehabilitation funding assistance on a 25-percent cost-sharing basis. This bill provides that if the DEP and the owner, operator, or person otherwise responsible for site rehabilitation are unable to complete negotiations of the cost-sharing agreement within 120 days after commencing negotiations, the DEP shall terminate the negotiation; the site becomes ineligible for state funding under this program; and all liability protections provided under this program are revoked.

Under the Petroleum Cleanup Participation Program, certain sites are excluded from participation in the program. This bill deletes the language that excludes any person who knowingly acquires title to contaminated property from participating in this program.

The DEP is required to select five sites eligible for state restoration funding assistance, each having a low priority ranking score, for an innovative technology pilot program.

Section 376.30714, F.S., is created to provide a mechanism for the DEP to distinguish between discharges that are eligible for state funding from those discharges reported after December 31, 1998, which are ineligible for state funding on the same site. Beginning January 1, 1999, the DEP may negotiate and enter into site-rehabilitation agreements with applicants at sites at which there is existing contamination and at which a new discharge occurs.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 113-0.

Senate Committee on Regulated Industries

ALCOHOLIC BEVERAGE AND TOBACCO REGULATION

CS/SB 156 — Alcohol & Tobacco Products/Minors

by Comprehensive Planning, Local & Military Affairs Committee; and Senators Hargrett and Carlton

The bill prohibits location of a business licensed to sell alcoholic beverages for on-premises consumption within 500 feet of an elementary school, middle school, or secondary school, unless approved by local government as promoting the public health, safety and general welfare of the community under formal proceedings, as provided in s. 125.66(4) or s. 166.041(3), F.S. There are three classes of exceptions: premises licensed on or before July 1, 1999, restaurants that derive at least 51 percent of their gross revenues from the sale of food or nonalcoholic beverages, and locations operated by nonprofit civic organizations with temporary permits.

The bill also creates penalties for a minor who purchases or attempts to purchase alcoholic beverages or tobacco products. It makes the purchase or attempted purchase of alcoholic beverages by any person under the age of 21 a second degree misdemeanor, and it makes the attempted purchase of a tobacco product by any person under the age of 18 a noncriminal violation.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 34-0; House 106-4

HB 209 — Alcohol Sales/By the Drink

by Rep. Bitner and others (CS/SB 340 by Regulated Industries Committee; and Senator Gutman)

Current law provides for an election to determine both the question of whether a county will allow sales of intoxicating liquors, wines, and beers, and the question of whether such sales, if allowed, will be restricted to package only. If the electors of a county vote to allow sales of intoxicating beverages, but to restrict these sales to package only, there is no statutory authority for a subsequent election addressing only the question of package versus “by the drink” sales. This bill provides a mechanism for a subsequent election on only this issue. The bill also provides for the form of the ballot and the results of the election.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-1; House 113-3

HB 315 — Alcoholic Beverages

by Rep. Gay and others (CS/SB 1070 by Regulated Industries Committee; and Senator Sullivan)

The bill allows distributors of wine and spirits to offer discounts on the basis of license series and license type. It authorizes distributors to give different discounts to on-premises licensees than to off-premises licensees or to give different discounts to different types of businesses (for example a restaurant, a bar, a bowling center, or a hotel).

The bill also codifies current agency practice and allows distributors of malt beverages to charge different malt beverage prices according to county, the branch of the distributor's parent place of business, quantity sold, or whether a vendor sells malt beverages on-premises or off-premises. The distributor must file all price differentials in advance with the Department of Business and Professional Regulation, as provided by rule.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

CS/SB 1444 — Beverage License/Historic Structures

by Regulated Industries Committee; and Senator Jones

The bill creates a new category of "specialty center," consisting of an enclosed development having at least 170,000 square feet of leasable area and containing restaurants, entertainment facilities, specialty shops, and a movie theater with not less than 18 operating screens. The bill allows consumption of alcoholic beverages sold for consumption on the premises by a vendor in this type of specialty center only within areas of the specialty center that are designated as a part of a vendor's licensed premises. The official designation of such areas is made in the sketch of the licensed premises, which is attached to the vendor's application for a beverage license.

The bill provides that any license issued under a local or special act is subject to all requirements and restrictions of the Beverage Law, and it creates a new special liquor license for an historic hotel or motel that meets certain requirements.

Finally, the bill authorizes the Division of Historical Resources of the Department of State to hold any money received from the sale of publications in the operating trust fund or in a separate account in the name of a citizen-support organization.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 105-13

CONDOMINIUMS AND RESIDENTIAL ASSOCIATIONS

CS/HB 383 — Residential Property Associations

by Business Regulation & Consumer Affairs Committee; Rep. Goodlette and others (CS/SB 814 by Regulated Industries Committee and Senators Saunders, Latvala, Webster, McKay, Carlton, Cowin, Kurth, Brown-Waite, Bronson and Sebesta)

The bill provides that either a grantor or a beneficiary of an inter vivos trust that owns a unit, parcel, or mobile home may serve on the board of directors of the condominium association, cooperative association, homeowners' association, or mobile homeowners' association. It provides that where membership in a corporation is limited to certain property owners and the corporation has been formed for the benefit of those property owners, no such property owner can be excluded from corporate membership.

The bill includes mobile home subdivisions in the definition of "homeowners' association," thereby allowing application of the homeowners' association statutes to mobile home subdivisions. It also provides that a mobile home subdivision may create a homeowners' association pursuant to the mobile home park homeowners' association statutes, under certain circumstances.

The bill amends sections in the cooperative statutes to better conform to corresponding sections in the condominium statutes.

The bill authorizes cooperative associations and homeowners' associations to conduct penny-ante games and bingo games, subject to the same restrictions as condominium associations and other associations currently authorized to conduct these games.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate38-0; House 114-0

CS/HB 1063 — Condominiums and Residential Associations/Taxes

by Real Property & Probate Committee and Rep. Bronson (CS/SB 1168 by Regulated Industries Committee; and Senator Bronson)

The bill requires that when a declaration of condominium is recorded, a certificate or receipted bill must be filed with the clerk of the circuit court in the county where the

property is located showing that all taxes due and owing on the property have been paid in full as of the date of recordation.

The bill also provides the Regulatory Council of Community Association Managers the authority to adopt rules regarding continuing education providers.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 116-0

REGULATION OF PROFESSIONS

CS/HB 417 — Real Estate Brokers & Salespersons

by Real Property & Probate Committee and Reps. J. Miller, Constantine and others (CS/SB 1072 by Regulated Industries Committee and Senator Sullivan)

The bill eliminates the requirement that real estate brokers and salespersons provide a Notice of Nonrepresentation upon "first contact" with a potential buyer or seller. However, disclosures must be made before, or at the time of, entering into a listing agreement or any agreement for representation or before showing of property, whichever comes first. The disclosure language that previously was required in the Notice of Nonrepresentation is placed instead in the "Transaction Broker Notice" and "Single Agent Notice."

The bill exempts certain registered brokers and financial institutions from the registration requirements for real estate brokers if their services are in connection with negotiating the purchase, sale or rental of a business enterprise to or by a person who is an accredited investor.

The bill provides that a recovery from the Real Estate Recovery Fund cannot be made if the final judgment is on appeal, and it clarifies eligibility of a consumer to make a claim in cases involving limited liability companies or limited liability partnerships.

The bill also makes technical revisions to clarify existing law.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 39-0; House 117-0

CS/SB 2268 — Contracting

by Regulated Industries Committee and Senator Clary

Contractors can be licensed either by the state or by local authorities. This bill directs the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board to establish the job scope for any licensure category registered under ch. 489, parts I and II, F.S., to achieve uniformity among the job scopes currently in use by local jurisdictions. The bill also provides a special procedure for state licensure of locally registered contractors who meet certain minimum requirements.

The bill provides that local building code administrators and inspectors may be disciplined for issuing a building permit without obtaining the contractor's certificate or registration number. It clarifies that a locally registered contractor operating outside the locality is guilty of unlicensed contracting. It provides that a local building department will not issue a building permit to a contractor who does not hold a state issued certificate or registration.

The bill provides that a contractor who has been subjected to an unlawful levy of an occupational license tax may initiate a court challenge. The prevailing party in such a challenge is entitled to recover reasonable attorneys' fees.

The bill provides that, absent a finding of fraud, deceit, or negligence, a contractor will not be subject to discipline based on the contractor's reliance on a building code interpretation made by a person authorized to enforce the building code.

The bill clarifies the exemption from local permitting for telecommunications company employees installing low-voltage wiring. It requires continuing education for asbestos contractors and clarifies that an asbestos contractor may qualify multiple business organizations only if the licensee can adequately supervise each organization. It provides that licenses for fire extinguisher contractors will be issued for two years instead of one year and modifies the fee schedule accordingly.

The bill directs the Joint Legislative Committee on Intergovernmental Relations, in consultation with the Office of Program Policy Analysis and Government Accountability, to conduct a study to determine the fiscal impact on local governments of instituting a single-tier regulatory system for construction, electrical and alarm system contractors in Florida. This provision takes effect upon the act becoming a law.

If approved by the Governor, these provisions take effect October 1, 1999, except as otherwise provided.
Vote: Senate 35-0; House 117-0

TELECOMMUNICATIONS AND THE INTERNET

HB 433 — Telecommunications Frequencies

by Rep. Ball (SB 874 by Senator Bronson)

The bill extends the current law regarding interference with fire or police radio frequencies to prohibit unauthorized interference with radio frequencies assigned by the Federal Communications Commission to any state, county, or municipal governmental agency or water management district. The bill also prohibits knowingly interfering with radio transmissions made by volunteer communications personnel who are providing communications support upon request of a governmental agency during tests, drills, field operations, or emergency events. A violation is a first degree misdemeanor.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 116-0

HB 2123 — Telecommunications Services

by Utilities & Communications Committee and Rep. Rojas (CS/SB 1008 by Regulated Industries Committee)

The bill extends until January 1, 2001, a local exchange telecommunications company's responsibility to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service area. Likewise, the interim universal service mechanism and the deadline for establishing a permanent universal service fund is extended until January 1, 2001.

The bill restores the authority of local governments to control placement of pay phones and negotiate fees or solicit in-kind contributions in consideration for permitting pay phones on public rights-of-way within their jurisdictions.

The bill requires the Public Service Commission to undertake a comprehensive effort to inform consumers about how to protect themselves in a competitive telecommunications market. Specifically, the commission is directed to educate consumers about the Lifeline and Link-up programs and how to avoid "slamming" and "cramming" by telecommunications companies.

The bill authorizes the State Board of Community Colleges to develop, own, and market distance learning products through a not-for-profit corporation. The board may trademark, copyright, or patent these products but must make them readily available for appropriate use in the state system of education. The board may assess a fee for the

products to be used by the state education system, but no more that the cost of producing and disseminating them. It may sell copies of the products to nonpublic schools and the public. The proceeds of sales to nonpublic entities will not be limited to cost.

The bill transfers to the Department of Education responsibility for coordinating the use of existing advanced telecommunication's resources, including the state's satellite transponders, the SUNCOM Network, the Florida Information Resource Network, and the satellite communication facilities of the Department of Management Services, the Department of Corrections, and the Department of Children and Family Services.

The bill creates the Florida Distance Learning Network Advisory Council in place of the Florida Distance Learning Network. The Council is created in the Department of Education to advise and assist the Department of Education in carrying out its duties relating to distance learning. The Council consists of 13 members to be appointed by the Commissioner of Education and must include the Chancellor of State University System and the Executive Director of the Florida Community College System, or their designees.

The bill establishes the Information Service Technology Development Task Force for the purpose of developing policy recommendations that will foster the development and beneficial use of advanced communications networks and information technologies in Florida. The task force will identify key factors and develop policy recommendations for promoting Internet-related technologies in Florida. The task force will report to the Governor, the President of the Senate and the Speaker of the House by February 14, 2000, and by February 14, 2001, outlining principles, policy recommendations, and any suggested legislation. Staff support for the task force will be provided by the State Technology Office in the Department of Management Services.

If approved by the Governor, these provisions take effect upon becoming law except as otherwise provided.
Vote: Senate 35-0; House 116-2

WATER AND WASTEWATER UTILITIES REGULATION

CS/SB 1352 — Public Service Commission

by Regulated Industries Committee and Senators Bronson, Dyer, Horne, Casas, Holzendorf, Childers, Geller and Sullivan

This bill requires the Public Service Commission (PSC) to consider utility property to be used and useful in public service if it is needed to serve current customers, if it will be needed to serve customers within five years (capped at a growth rate in connections no

greater than 5 percent per year), or if it will be needed to serve customers in more than five years and the utility can establish a clear and convincing justification for such consideration. It also prohibits the PSC from deducting future contributions-in-aid-of-construction from this investment in margin reserve. Additionally, the PSC must approve rates which allow recovery of the full amount of environmental compliance costs. These provisions of the bill do not apply to rate cases pending on March 11, 1999.

The bill also provides that when a water or wastewater utility files for a rate change with the PSC, it must provide notice to the governing body of all counties in its service area affected by the requested rate change. The governing body may petition to intervene in the rate proceeding and the PSC is required to grant any such petition. Other changes include authorization for the PSC to grant interim rates in staff assisted rate cases to allow the utility to recover operations and maintenance expenses while the case is being processed and a clarification that when a county takes back jurisdiction under the county option during a pending rate case, the PSC is to complete the case.

The bill exempts from PSC regulation systems owned, operated, managed, or controlled by a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision. The bill also allows sales, assignments, or transfers of facilities that are subject to approval by the commission to occur prior to such approval, if the contract for sale, assignment or transfer is made contingent upon commission approval. It also eliminates requirements that reseller utilities file annual reports with the PSC and conduct meter testing.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 25-11; House 95-21

CLAIM BILLS

During the 1999 session, 23 claim bills were filed in the Senate. In addition, there were four House bills that were not timely filed under Senate Rule 4.81 and were not taken up by the Senate. The four House bills died in committee.

Of the 23 bills filed in the Senate, 12 passed both houses and if they all become law, they will authorize or direct payment of $12,610,000, of which $6,718,000 would be state funds and $5,892,000 would be local funds paid by local government.

One claim bill was reported unfavorably by committee; two claim bills died on the Senate Calendar; one claim bill died in a Senate Committee; and seven claim bills were withdrawn from further consideration by their sponsors, several of those because they were settled and paid within the limits of coverage, without need for legislation.

S 4	by Senator Forman	Relief / Joseph B. Farver/CFS Dept
S 6	by Senator Forman	Relief / Ana Quintana-Marquez/Metro-Dade Police
S 14	by Senator Holzendorf	Relief / Trey Anthony Alls/DOT
S 20	by Senator Grant	Relief / Patricia D. Baker/DOT
S 22	by Senator Silver	Relief / Children of Elionne Joseph/Metro-Dade Police
S 24	by Senator Campbell	Relief / Estate of Charlie Brown, Jr./City of Delray Beach
S 26	by Senator Rossin	Relief / Robert Rosado/Palm Beach County
S 32	by Senator Myers	Relief / Eubanks & Black/Palm Beach County
S 34	by Senator Dyer	Relief / Nelida & Jose Cruz & Jose Alberto Cruz, Jr./West Volusia Hospital
S 40	by Senators Campbell, Forman and Grant	Relief / Warren Weathington/City of Tallahassee
S 46	by Senator Jones	Relief / Martha Sosa/Metro-Dade County
S 48	by Senator Sullivan	Relief / Paul W. Gilfoyle/City of Clearwater

TRANSPORTATION

HB 591 — The Department of Transportation

by Transportation Committee and Rep. K. Smith (CS/CS/SB 972 by Transportation Committee; Fiscal Policy Committee; and Senator Casas; CS/SB 1314 by Transportation Committee and Senator Webster)

FDOT Financing

The bill increases from 6 percent (capped at $115 million) to 7 percent (capped at $135 million) the revenues that may be annually transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund from State Transportation Trust Fund funds.

The bill authorizes the Florida Department of Transportation (FDOT) to pledge future federal aid for the payment of debt service on bonds issued, allowing FDOT to raise up to $800 million in bonds.

The bill further: provides FDOT must guarantee loans for certain businesses affected by major construction projects; authorizes FDOT and local governments to enter into an interlocal agreement to provide financing for fixed-guideway projects; expedites funding for ports; allows FDOT the option to secure and administer federal loans for existing rail projects; raises the amount FDOT is authorized to enter into contracts for innovative highway projects from $60 million to $120 million; provides FDOT must allocate 50 percent of discretionary highway capacity funds to the FIHS; provides for the Small County Road Assistance Program; and, provides funds repaid by the Tampa-Hillsborough County Expressway Authority to the Toll Facilities Revolving Trust Fund are to be loaned back to the authority for specified purposes.

FDOT Internal Operations

The bill: changes the name of The Office of Construction to the Office of Highway Operations; provides for Transportation Commission review of highway, transit, rail, seaport, intermodal and aviation systems, and major FDOT policy initiatives; clarifies the jurisdiction and responsibility for operation and maintenance of roads; authorizes FDOT to designate public roads as scenic highways; authorizes FDOT to enter into contracts for construction or maintenance of roadway and bridge elements without competitive bidding

for category 4 ($60,000 or less) projects; deletes the provision for the owner-controlled insurance plan; eliminates intermediate delinquency as grounds for suspension or revocation of a contractor's certificate of qualification to bid on construction contracts in excess of $250,000; and provides a pledge to turnpike bondholders to restrict the sale or lease of portions of the turnpike.

The bill further: provides FDOT appraisers are not obligated to report violations of state professional licensing laws to the Department of Business and Professional Regulation; removes the schedule of contract amount categories used by FDOT to calculate liquidated damages to be paid by a contractor and allows FDOT to adjust the categories; requires surety bonds posted by successful bidders on FDOT construction contracts be payable to the FDOT; revises provisions concerning the State Arbitration Board by increasing the amount of a contractual claim that goes before the board; amends the arbitration fee schedule; authorizes FDOT to purchase options to purchase land; authorizes the purchase and sale of replacement housing on state funded projects.

The bill: authorizes a fixed-guideway system operating within the FDOT's right-of-way to operate at any safe speed; allows FDOT to contract directly with the utility company for clearing and grubbing work necessary for utility relocation; adds 7 new planning factors as per TEA-21; clarifies the roles of the short and long range plans; authorizes FDOT to create a common self-retention insurance fund; authorizes FDOT to conduct hazardous materials inspections at manufacturers' and shippers' facilities on Florida rail lines; adds economic development as one of the purposes of the transportation code; extends the current authorization for the FDOT's model classification plan; updates FDOT program objectives; and, redefines the mission of FDOT with more emphasis on intermodal travel choices

Commercial Trucks

The bill updates references to the current federal safety regulations, and provides a penalty cap of $1,000 for a commercial vehicle which has not been expired for more than 90 days. The bill further provides an exemption from the International Registration Plan for unloaded trucks entering state for repairs or for picking up newly purchased truck.

Planning/Metropolitan Planning Organizations

The bill requires the Department of Community Affairs and the FDOT to submit to the Legislature, on or before December 1, 1999, proposed legislative language implementing the revenue neutral recommendations of the Transportation and Land Use Study Committee.

The bill adds 7 new planning factors as per TEA-21 for MPOs, and keeps some of the current planning factors; clarifies MPO boundaries; provides for MPO reapportionment for Dade and Broward counties.

Outdoor Advertising

The bill clarifies the definition of a commercial or industrial zone for the purposes of outdoor advertising and corrects a glitch in sign size. The bill provides FDOT flexibility to lower the reinstatement fee for outdoor advertising permits if the owner demonstrates a good faith error prior to FDOT removing the sign, and provides competing applications for the same site will not be approved until the sign with the expired permit has been removed.

Eminent Domain

The bill creates s. 73.015, F.S., establishing a presuit negotiation process in eminent domain proceedings which requires that all condemning authorities provide notice, a written offer of compensation, and, if requested, a copy of the appraisal report upon which the offer is based, to the property owner before instituting condemnation litigation. It requires notification of the proposed condemnation action to business owners located on the land to be taken, and requires business owners seeking business damages to provide the condemning authority with a written offer of business damages along with copies of business records which substantiate the business damage claim. The bill defines "business records." A business owner must follow this procedure of submitting a written offer of business damages or the court must strike a business damage defense during a subsequent condemnation trial, unless the business owner demonstrates a good faith justification for failing to provide a written offer.

The bill provides that the condemning authorities shall pay all reasonable costs and attorney's fees incurred on behalf of a fee or business owner during the presuit negotiation process, including fees and costs incurred during mediation. This requirement only applies to governmental condemning authorities seeking to take property for road right of way. Attorney's fees for presuit negotiation for business damage claims are based on factors set forth in s. 73.092(2), F.S.; for example, the rate customarily charged for comparable services, the time spent on the case and the expertise of the attorney, rather than a calculation of the benefit the attorney achieves for the client. In addition, the floor for calculating benefits for business damage claims if the case is ultimately litigated is defined as the rejection or the making of a counter offer by the condemning authority to the written offer made by the business owner. The bill amends s. 73.092(1)(a), F.S., to clarify provisions relating to the calculation of attorney's fees for business damage claims. Finally, no prejudgment interest shall be paid on costs and attorney's fees under the requirements of the bill.

The bill reduces the number of years in which a business must be established in order to qualify for business damages in right-of-way condemnation proceedings from 5 years to 4 years. This provision "sunsets" January 1, 2003.

The bill repeals ss. 337.27(2), 348.008(2), 348.759(2), and 348.957(2), F.S. These sections authorize the Department of Transportation (DOT), and several other condemning authorities to take an entire parcel of land, even if the entire parcel is not needed for the government project, where the acquisition costs would be less or equal to acquiring a portion of the property. The bill also amends s. 127.01(1)(b), F.S., regarding county condemnation authority, and s. 166.401(2), F.S., regarding municipal condemnation authority, to eliminate a cross reference to s. 337.72(2), F.S. In addition, the bill repeals s. 337.271, F.S., which sets forth an acquisition negotiation process for the DOT.

Other Issues

The bill: deregulates electric bicycles; provides the duty to yield to public transit vehicles reentering the flow of traffic; provides for an audit of ports; provides for a mitigation study by OPPAGA; defines the terms "hardship purchase" and "protective purchase"; provides for the mitigation of impacts to wetlands and other sensitive habitats; provides flexibility in the appropriation of the charter county transit system surtax; authorizes Miami-Dade County to abolish tolls if a local source of funding is provided; allows reapportionment by the Miami-Dade County MPO.

The bill further: authorizes local governments to request the Department of Transportation to install and maintain speed zones for federally funded Headstart programs located on roads maintained by the department; and, modifies St. Lucie Expressway Authority provisions to include bridges and bonding flexibility; and, provides technical statutory revisions.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 116-0

CS/HB 311 — DOT & Public Authorities/Law Suits

by Judiciary Committee and Rep. Fuller (CS/SB 240 by Fiscal Policy Committee and Senators Sebesta, Lee, Casas, Latvala and Clary)

The committee substitute specifies conditions under which suits may be brought by and against the Department of Transportation on contract claims and on any public works project for which the public authority requires a performance and payment bond.

The committee substitute: limits the application of the committee substitute to contract claims arising from breach of an express provision or an implied covenant of a written agreement or directive; provides the governmental entity and the contractor with similar private person rights and obligations under a contract, but provides that no liability may be based upon oral modifications to written contracts or written directives; and, specifically provides sovereign immunity of the state and its political subdivisions is not waived from equitable claims and equitable remedies.

The committee substitute further: deletes the owner controlled insurance program; revises provisions concerning the State Arbitration Board by increasing the amount of a contractual claim that goes before the board and amends the arbitration fee schedule.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 39-0; House 117-0

HIGHWAY SAFETY AND MOTOR VEHICLES

CS/CS/SB 1270 — Highway Safety and Motor Vehicles

by Transportation Committee; Fiscal Policy Committee; and Senators Casas and Forman

This committee substitute implements numerous changes to laws relating to programs administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Substantive issues included in the committee substitute relate to traffic control, highway safety, motor vehicles, drivers' licenses, motor vehicle emissions inspection, and vessels. Major provisions of the committee substitute are summarized below.

Uniform Traffic Control

This committee substitute amends s. 316.1958, F.S., to provide a law enforcement officer or a parking enforcement specialist may not issue a ticket for parking in a disabled parking space until first determining if the vehicle is transporting a resident of another state who is the owner of the out-of-state disabled parking permit.

In addition, the committee substitute amends s. 316.640(1)(d), F.S., to authorize airport authorities to employ parking enforcement specialists. The committee substitute provides such parking enforcement specialists are not authorized to carry a weapon or make arrest.

Disposition of Traffic Infractions

This committee substitute amends s. 318.1451, F.S., to direct DHSMV to develop and distribute a traffic school reference guide. The committee substitute also establishes certain restrictions on the distribution of information and materials relating to driver improvement schools to the public.

Section 318.15, F.S., is amended to authorize tax collectors to retain the $25 service fee when reinstating a driver's license. This will allow tax collectors to receive the same service fee as DHSMV and court clerks for reinstating a suspended driver's license. Section 318.15, F.S., is also amended to extend the time from 5 days to 10 days, the Clerk of the Court has to report to the DHSMV a failure to comply with civil penalties.

The committee substitute amends s. 318.36, F.S., to provide civil traffic infractions hearing officers are vested with the same judicial immunity as a judge.

Motor Vehicle Titles and Registration

This committee substitute amends s. 319.14, F.S., to provide the title certificate for long-term lease vehicles (a vehicle leased under written agreement to one person for a period of 12 months or longer) will not be stamped with the lease vehicle brand. Short-term lease vehicles (a vehicle leased under written agreement to one or more persons from time to time for a period of less than 12 months) will continue to receive the lease vehicle brand on the title certificate.

The committee substitute amends s. 320.0657, F.S., to revise the requirements relating to the fleet registration program.

The committee substitute amends s. 320.08058, F.S., to repeal the provision of law providing for the expiration of the Challenger license plate in July of 2001. In addition, the committee substitute authorizes the Department of Veterans' Affairs to redesign the veterans' license plate and adds promotion and marketing as allowable expenses.

Section 320.086, F.S., is amended to make ancient/horseless carriage license plates available to vehicles manufactured prior to 1946. In addition, the committee substitute repeals the collectible designation and redefines antique vehicles as those vehicles manufactured after 1945 and over 30 years old. The committee substitute also creates a category for antique fire fighting and military equipment. Finally, the committee substitute provides motor vehicles manufactured prior to 1975 may use historical plates.

The committee substitute amends s. 320.13, F.S., to restrict the use of dealer plates by disallowing them on tow trucks or wreckers unless the tow truck or wrecker is being

demonstrated for sale. Similarly, the committee substitute restricts the dealer plate from being used to transport another vehicle for the dealership. The committee substitute creates a manufacturer license plate which is to be used by manufacturers in the same manner as dealer plates.

The committee substitute amends s. 320.131, F.S., to provide DHSMV has the discretion to authorize agents or Florida licensed dealers to issue temporary tags in cases where the temporary tag is not specifically authorized, but the applicant demonstrates a need for temporary use of such a tag. This section is also amended to provide criminal penalties for the deliberate misuse of temporary tags to avoid registration requirements (first degree misdemeanor), to avoid the disclosure of the vehicle's true owner (third degree misdemeanor), and the failure to maintain records as required by law and agency rules (second degree misdemeanor.)

Section 320.27, F.S., is amended to provide a dealer license is subject to denial, suspension, or revocation where the dealer sells a vehicle offered in trade by a customer prior to consummation of the sale, exchange, or transfer of a newly acquired vehicle to the customer. In addition, the committee substitute provides a motor vehicle dealer license is subject to denial, suspension, or revocation where the dealer fails to properly post the federally-mandated consumer sales window form.

The committee substitute amends s. 320.30, F.S., to authorize the confiscation and forfeiture of certain vehicles offered for sale in accordance with the Florida Contraband Forfeiture Act. This section also provides guidance regarding ownership and management of the forfeited property by the enforcing law enforcement agency and DHSMV.

The committee substitute repeals s. 320.8249(11), F.S. This subsection exempts licensed mobile home dealers and licensed mobile home manufacturers from the requirement to obtain a license as a mobile home installer. Similarly, the committee substitute amends s. 320.8325, F.S., to provide DHSMV must establish uniform, rather than minimum, standards for the manufacture or installation of anchors, tie-downs, over-the-roof-ties, or other reliable methods for securing mobile homes or park trailers. The committee substitute further adds no entity, other than DHSMV, has the authority to amend these uniform standards.

Driver's Licenses

This committee substitute amends ss. 322.051, and 322.08, F.S., to specify the documents an applicant must provide DHSMV to prove their identity when applying for a driver's license and identification card. The applicant must provide one of the following documents: a valid U.S. passport, a U.S. birth certificate, an alien registration receipt card

(green card), an employment authorization card issued by the U.S. Department of Justice, or proof of nonimmigrant classification provided by the U.S. Department of Justice.

Section 322.1615, F.S., is amended to authorize persons with a learner's driver's license to drive from dark until 10 p.m., instead of from 7:00 p.m. to 10:00 p.m. This provision eliminates the restriction that a person holding a learner's license may not operate a vehicle from dark until 7:00 p.m.

The committee substitute amends s. 322.2615, F.S., to repeal the requirement a person automatically be given an informal review if he or she fails to appear at the formal hearing. If the hearing officer finds the failure to appear is without just cause, then the driver's license suspension is sustained. The committee substitute also provides a person is to be without a business or employment purpose license for the full 30 or 90 day (depending on the violation) period of suspension following the expiration of the temporary permit.

The committee substitute amends s. 322.28, F.S., to clarify no court may stay the administrative suspension of a driving privilege during judicial review of the DHSMV order resulting in such suspension. This section also clarifies judicial stays are not permitted in .02 DUI cases.

Seizure of Motor Vehicle Plates

This committee substitute amends s. 324.201, F.S., to authorize expansion of the current pilot program to a statewide program once the DHSMV database conversion is completed and the error rate in pilot counties is no more than 2 percent. The program may be expanded to additional counties where a majority of the governing body of the county has requested the program. The committee substitute provides for the repeal of the program effective July 1, 2002.

Motor Vehicle Emissions Inspection

This committee substitute amends ss. 325.2135 and 325.214, F.S., to provide DHSMV may extend the current emissions inspection contracts for a period of time sufficient to implement new contracts resulting from competitive proposals. DHSMV must enter into one or more contracts by June 30, 2000. The contracts must provide for an inspection program in which vehicles 4 model years and older would be inspected every 2 years for hydrocarbon and carbon monoxide emissions (current testing procedures.) The inspection fee is capped at $19.

The committee substitute provides contracts may not exceed 7 years. In addition, contracts must provide that, after 4 years, DHSMV reserves the right to cancel a contract at any time before the conclusion of the contract term upon 6 months notice to the

contractor. The committee substitute also authorizes DHSMV to amend the contracts if the Legislature enacts legislation changing the number of vehicle model years subject to inspection. Finally, the committee substitute also authorizes DHSMV to amend or cancel the contracts upon statewide implementation of clean fuel requirements promulgated by the United States Environmental Protection Agency.

Vessel Registration and Titling

This committee substitute implements numerous revisions to ch. 327, F.S., and ch. 328, F.S., to make vessel registration and titling requirements and procedures consistent with comparable motor vehicle registration and titling laws. These changes are intended to facilitate procedural conformity, enable the consolidation of various DHSMV databases, and improve overall customer service.

Miscellaneous Provisions

This committee substitute amends s. 715.05, F.S., to require a person in charge of the towing service, garage, repair shop, automotive service, storage, or parking place to notify the insurer of certain unclaimed or impounded motor vehicles.

The committee substitute amends s. 812.014, F.S., to add an additional penalty for petit theft in cases where a person drives off without paying for gasoline offered for retail sale. The additional penalty will be the suspension of the person's driver's license for up to 6 months for a first conviction and one year for subsequent convictions. In addition, the committee substitute provides stealing a stop sign constitutes grand theft of the third degree and a felony of the third degree.

Section 832.06, F.S., is amended to provide the tax collectors recourse for collecting on worthless checks issued in connection with driver's license and identification card transactions.

The committee substitute repeals the section of law (section 14 of ch. 98-223, L.O.F.) passed by the 1998 Legislature which removed the driver's license suspension sanction from the penalty provisions for failure to maintain the required insurance coverage.

The committee substitute enacts numerous technical changes to correct obsolete and incorrect references.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise indicated.
Vote: Senate 30-7; House 113-4

HB 1015 — Driver License/Task Force on Privacy and Technology

by Rep. Feeney and others (CS/SB 1898 by Transportation Committee and Senator Brown-Waite)

This bill repeals subsections (5) and (6) of s. 322.142, F.S., 1998 Supp., thereby repealing the Department of Highway Safety and Motor Vehicles' (DHSMV) authority to sell copies of photographs, electronically stored photographs, and other driver's license and state identification card information when such information is used for the prevention of fraud. As a result, DHSMV is prohibited from releasing driver license photographs and digital images, except for law enforcement purposes.

In addition, this bill amends s. 282.3091, F.S., 1998 Supp., to direct the State Technology Council within the Department of Management Services to create a Task Force on Privacy and Technology. The task force is directed to study and make recommendations to the Governor and the Legislature on the following: privacy issues under the United States and Florida Constitution and laws, the Public Records Act, and the advent of the use of advanced technology; technology fraud, including the illegal use of citizens' identity, credit and other uses; balancing the traditional openness of public records in Florida with the need to protect individuals' privacy and identities; and the sale of public records to private individuals and companies. The task force must present its findings and recommendations to the Governor and the Legislature by February 1, 2000.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 115-0

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