

## **ECONOMIC DEVELOPMENT**

### **CS/CS/SB 1358 — Enterprise Zones**

by Finance and Taxation Committee; Commerce, Economic Opportunities, and Consumer Services Committee; and Senators Garcia, Wilson, Bullard, and Clary

The bill authorizes the following communities to apply to the Office of Tourism, Trade, and Economic Development for the designation of new enterprise zones: Osceola County or the county jointly with the City of Kissimmee; City of South Daytona; City of Lake Wales; Walton County; Miami-Dade County jointly with the City of Hialeah; and Miami-Dade County or the county jointly with the City of West Miami.

The bill also authorizes the following communities to apply to the Office of Tourism, Trade, and Economic Development to amend the boundaries of existing enterprise zones: Leon County; Miami-Dade County; Jacksonville/Duval County; Orange County; Brooksville/Hernando County; and Sarasota County/City of Sarasota.

If approved by the Governor, these provisions take effect July 1, 2004.

*Vote: Senate 38-0; House 114-0*

### **CS/SB 262 — Tourism**

by Military and Veterans' Affairs, Base Protection, and Spaceports Committee and Senator Fasano

The committee substitute makes the following changes to existing law governing the Florida Commission on Tourism and the Florida Tourism Industry Marketing Corporation (Visit Florida):

- The membership of the Florida Commission on Tourism is increased by three by adding representatives, appointed by the Governor, from the space tourism industry, the youth travel industry, and an automobile and travel services membership organization that has at least 2.8 million members in Florida.
- Reduces to two, from three, the number of appointees to the Florida Commission on Tourism representing county destination marketing organizations, but increases to four, from three, the number of appointees to the commission from tourist-related statewide associations to include an association representing county destination marketing organizations.

- The membership of the board of directors for the Florida Tourism Marketing Corporation (Visit Florida) is increased from 28 to 31 directors to conform to the increase in membership of the Florida Commission on Tourism. Under current law, the board of directors of Visit Florida is composed of the tourism-industry-related appointees to the commission.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 39-0; House 114-0*

## **BUSINESS/CONSUMER REGULATION**

### **HB 679 — Sales Representatives/Commissions**

by Rep. Henriquez and others (CS/SB 1842 by Commerce, Economic Opportunities, and Consumer Services Committee and Senator Miller)

This bill corrects a constitutionality problem identified in s. 686.201, F.S., which governs sales representative contracts involving commissions. In 1992, a Florida court found that this statute was unconstitutional because it treated out-of-state businesses differently than in-state businesses, which is a violation of the U.S. Constitution's Commerce Clause (*D.G.D., Inc. v Berkowitz*, 605 So. 2d 496 (3<sup>rd</sup> DCA 1992)). The bill corrects the problem by removing the language that applied the provisions of the statute only to out-of-state businesses. The bill also revises the definitions of "principal" and "sales representative" to remove the word "wholesale" from those definitions and removes the word "wholesale" from the written contract requirement subsection to make clear that the provisions of the statute, as revised by this bill, apply to the solicitation of wholesale *and* retail orders by a sales representative.

The bill further revises the definition of "principal" to mean a person or business which: manufactures, produces, imports, or distributes a product or service; contracts with a sales representative to solicit orders for the product or service; and compensates the sales representative, in whole or in part, by commission. The bill further revises the definition of "sales representative" to mean a person or business which contracts with a principal to solicit orders and is compensated, in whole or in part, by commission, but does not include a person or business which places orders for his or her own account for resale or a person who is an employee of the business. Additionally, the provisions of the bill do not apply to real estate brokers or sales associates licensed under ch. 475, F.S., who are performing services within the scope of their license.

When no written contract exists between a principal and a sales representative, the bill provides a cause of action for triple the amount of the commission found to be owed if the principal fails to pay the sales representative within 30 days after the termination of the sales representative's

services. Current law provides for an action for double the amount of the commission found to be owed.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 40-0; House 115-0*

## **CS/SB 1928 — Unlawful Use of a Recording Device in a Motion Picture Theater**

by Commerce, Economic Opportunities, and Consumer Services Committee and Senator Atwater

The committee substitute prohibits a person from knowingly operating the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited, with the intent of recording the motion picture, if the person knows or should have known that he or she was recording the motion picture without the consent of the theater owner. The committee substitute specifies that a first violation is a misdemeanor of the first degree, punishable by up to 1 year in jail or up to a \$1,000 fine. A second or subsequent violation is a felony of the third degree, punishable by up to 5 years in prison or by a fine of up to \$25,000, or both. The committee substitute also provides an exemption from these criminal violations for certain law enforcement officials under specified conditions.

The committee substitute requires a theater owner prohibiting motion pictures from being recorded in a motion picture theater to display a sign giving notice that recording a motion picture without the consent of the theater owner is a criminal violation. The sign must be displayed in a manner that is clearly legible and conspicuous from the entrance of the motion picture theater.

The committee substitute authorizes the theater owner to detain a person who the theater owner has probable cause to believe has recorded or is recording a motion picture in violation of the committee substitute. The committee substitute requires a law enforcement officer to be called to the scene immediately after the person is detained. The committee substitute grants the theater owner immunity from civil and criminal actions arising out of measures taken to detain a violator while awaiting the arrival of a law enforcement officer, if the violator is detained in a reasonable manner for a reasonable time.

If approved by the Governor, these provisions take effect July 1, 2004.

*Vote: Senate 36-2; House 114-0*

## **CS/CS/CS/SB 2480 — Agricultural Equipment**

by Transportation Committee; Agriculture Committee; Commerce, Economic Opportunities, and Consumer Services Committee; and Senators Alexander, Lynn, and Bullard

### ***Farm Equipment Manufacturers and Dealers Act***

This committee substitute revises the provisions of the Farm Equipment Manufacturers and Dealers Act, ss. 686.40-686.418, F.S., and renames the act as the Agricultural Equipment Manufacturers and Dealers Act. Currently, the act regulates the contractual relationships between a tractor or farm equipment dealer who sells tractors and farm equipment and its manufacturer, distributor, or wholesale suppliers. The committee substitute revises definitions and legislative findings under the act to clarify that the act applies to those tractors or farm implements primarily designed for, or used in, agriculture. The provisions of the committee substitute exclude from the definition of a dealer a mass-market retailer. In addition, the measure provides that the act does not apply to equipment primarily designed for, or used in, off-road construction, mining, utility, and industrial purposes.

New provisions of the act as amended by the committee substitute:

- Make it unlawful for a manufacturer, distributor, or wholesaler to withhold payment of funds owed to a dealer, unless the withholding of payment is the direct result of a material defect in the claim by the dealer.
- Prohibit a manufacturer, distributor, or wholesaler from conducting audits of warranty claims by a dealer more than 1 year after the claims are paid.
- Require audits of incentives and rebates paid to a dealer to take place within 12 months after the end of an incentive program, except in the case of fraudulent claims by the dealer.
- Require a dealer's suppliers to provide 180-days notice to the dealer when a competing dealer will be located in the existing dealer's relevant market area.
- Require a commission of at least 7 percent of the sale or lease price to be paid to the dealer by the manufacturer, distributor, or wholesaler when equipment is sold or leased by the manufacturer, distributor, or wholesaler directly to a consumer located within the dealer's relevant market area.
- Increase to 180 days, from 90 days, the advance notice that must be provided to a dealer before a franchise or selling agreement may be terminated.
- Prohibit the termination of a franchise or selling agreement if a dealer cures the deficiency for which the agreement is to be terminated during the 180-day notice period.
- Provide that, in the case of failure to meet marketing or market-penetration criteria, franchise agreements may only be terminated with advance notice to the dealer of at least 1 year and 90 days.
- Prohibit a manufacturer, distributor, or wholesaler from imposing unreasonable restrictions on a dealer relating to transfer, renewal, termination, location, or site control.

- Make it unlawful for a manufacturer, distributor, or wholesaler to prohibit a dealer from selling competing product lines or makes of equipment or to require a dealer to provide separate facilities for the competing product lines or makes of equipment.

The revisions to the act apply to all contracts entered into, renewed, or amended after July 1, 2004.

### ***State Uniform Traffic Control***

Section 316.515, F.S., which is part of the state uniform traffic control law, establishes maximum width, height, and length standards for vehicles. The committee substitute revises this section to permit certain agricultural equipment to exceed the maximum width and length standards. The committee substitute allows for agricultural tractors not exceeding 50 feet in length; agricultural implements attached to a towing power unit not exceeding 130 inches in width; or self-propelled agricultural implements or agricultural tractors not exceeding 130 inches in width, for the purpose of transporting certain farm products or for the purpose of moving the equipment from one point of agricultural production to another.

If approved by the Governor, these provisions take effect July 1, 2004.

*Vote: Senate 40-0; House 118-0*

## **BUSINESS ENTITIES AND TRANSACTIONS**

### **SB 2056 — Corporations Not for Profit**

by Senators Aronberg, Smith, and Bullard

This bill amends s. 617.0505, F.S., to authorize corporations not for profit to make distributions to:

- Corporations not for profit that are organized and operated for the same or substantially similar purposes as the distributing corporation;
- Entities that are organized and operated exclusively for charitable, benevolent, educational, or similar purposes, or are otherwise exempt from federal income tax under s. 501(c), Internal Revenue Code; or
- The United States, a state or possession of the United States, or any political subdivision thereof.

A distribution made under this authority may not inure to the benefit of any individual or for-profit entity.

The bill addresses a 1999 opinion in which the Attorney General responded to a question that asked whether Bonita Community Health Center, Inc., a corporation not for profit, was permitted

by law to distribute its excess profits to Lee Memorial Health System, a member of Bonita and also a corporation not for profit. The Attorney General replied that the Legislature had not chosen to extend the authority to corporations not for profit to distribute funds to other nonprofit entities engaged in similar activities. The Attorney General further stated that “[u]ntil the Legislature makes it clear that a viable nonprofit corporation may dispense its revenues to like-minded nonprofit entities, [the Office of the Attorney General] may not read such authority into the existing statutes.” (See Op. Att’y Gen. Fla. 99-23 (1999).) Currently s. 617.0505, F.S., prohibits distributions of income or profit to the members, directors, or officers of a not-for-profit corporation.

If approved by the Governor, these provisions take effect July 1, 2004.

*Vote: Senate 36-0; House 117-0*

## **OPEN GOVERNMENT SUNSET REVIEW**

### **CS/CS/SB 712 — Business Records/Eminent Domain Negotiations**

by Governmental Oversight and Productivity Committee and Commerce, Economic Opportunities, and Consumer Services Committee

The committee substitute for committee substitute saves from repeal and revises an existing public records exemption, codified in s. 73.0155, F.S., for business records that are submitted to a governmental condemning authority as part of an offer to settle a claim of business damages resulting from the acquisition of a parcel for right-of-way purposes under the eminent domain law. The committee substitute is based upon the findings and recommendations of Interim Project Report 2004-201 by the Committee on Commerce, Economic Opportunities, and Consumer Services, which is an Open Government Sunset Review of the public records exemption.

Rather than apply the exemption to “business records,” as the statute currently does, the committee substitute amends s. 73.0155, F.S., to prescribe the information covered by the public records exemption, which includes:

- Federal and state tax returns and tax information that is provided confidentiality under specific federal or state laws.
- Balance sheets, profit-and-loss statements, cash-flow statements, inventory records, or customer lists or number of customers for the business operating on the parcel to be acquired.
- Franchise, distributorship, or lease agreements relating to the business operating on the parcel to be acquired.
- Information in the nature of trade secrets, using the definition of trade secrets provided under the Uniform Trade Secrets Act (ss. 688.001-688.009, F.S.).

- Other sensitive or proprietary information that the business owner attests in writing is being relied upon to substantiate a business-damage claim, has not otherwise been disclosed, cannot be readily obtained through other means, is used to protect a competitive position in the marketplace, and would injure the business in the marketplace if it were disclosed.

The committee substitute provides that the information is confidential as well as exempt and removes a general requirement that disclosure would be likely to cause substantial harm to the competitive position of the person providing the records. A comparable qualifier, however, is specifically incorporated into the final category of information (“other sensitive or proprietary information”) covered by the public records exemption, as revised by this committee substitute. The committee substitute also adds a requirement that the business must request *in writing* that the information be held exempt.

In addition to specifying that the confidentiality and exemption are lifted if the covered information is otherwise made available to the public, the committee substitute provides that the protected information may be shared with an agency, as defined under the public records law, for the transaction of official business. The committee substitute provides, however, that an employee or agent who willfully and knowingly fails to maintain the confidentiality commits a first-degree misdemeanor, punishable by no more than a year in prison or a \$1,000 fine.

The committee substitute extends the scheduled expiration of the public records exemption until October 2, 2009, (from October 2, 2004) and provides for future review of the exemption under the Open Government Sunset Review Act. In addition, the committee substitute includes a legislative statement of public necessity for the public records exemption, which cites the need to prevent potential injury to the competitive position of a business due to the release of sensitive business records and the need for condemning authorities to obtain accurate financial information to use in evaluating business-damage claims in eminent domain actions.

The committee substitute also clarifies that the confidential and exempt status accorded to the information in no way prevents use of that information in a legal proceeding or prevents a court from determining whether to close a portion of a court record from subsequent public disclosure after trial in order to maintain the confidentiality of that information.

If approved by the Governor, these provisions take effect October 1, 2004.  
*Vote: Senate 39-0; House 118-0*