

2010 Florida Legislature Post-Session Report

**What You Should Know About Significant Bills
Passed in the Regular Legislative Session, and
2010 Proposed Constitutional Amendments**

CARLTON FIELDS

ATTORNEYS AT LAW

2010 Florida Legislature Post-Session Report

Attorneys at Law with offices at:

■ **Atlanta**

One Atlantic Center
1201 W. Peachtree Street,
Suite 3000
Atlanta, GA 30309-3455
866.755.9191

■ **Miami**

Miami Tower
100 SE Second Street, Suite 4200
Miami, FL 33131-2114
800.486.0140

■ **Orlando**

CNL Center at City Commons
450 S. Orange Avenue, Suite 500
Orlando, FL 32801-3336
888.849.9191

■ **St. Petersburg**

One Progress Plaza
200 Central Avenue, Suite 2300
St. Petersburg, FL 33701-4352
888.821.9191

■ **Tallahassee**

215 S. Monroe Street, Suite 500
Tallahassee, FL 32301-1866
888.224.9191

■ **Tampa**

4221 W. Boy Scout Boulevard,
Suite 1000
Tampa, FL 33607-5780
888.223.9191

■ **West Palm Beach**

CityPlace Tower
525 Okeechobee Boulevard,
Suite 1200
West Palm Beach, FL 33401-6350
888.659.9191

■ **Website**

www.CarltonFields.com

HOW TO USE THIS REPORT

This is a summary of significant legislation that passed during the 2010 Regular Session of the Florida Legislature.

Please note that this report does not summarize every piece of legislation enacted, nor is it meant to be an exhaustive section-by-section analysis of those bills included. The goal of this report is to provide a general overview of legislative actions that are likely to be of interest to our clients, attorneys, and consultants.

Unlike previous sessions, the 2010 Legislature transmitted the majority of passed legislation to the Governor immediately following adjournment for review, approval or veto. Bills that have been vetoed by the Governor at the time of this publication's deadline are noted. However, some bills were still awaiting a review by the Governor at deadline. The reader is therefore encouraged to check the ultimate status of any bill by contacting our Tallahassee Office or by visiting the Legislature's website (www.leg.state.fl.us). Please select the "Enrolled" (ER) version of the bill. Chapter Law citations and final legislative staff analyses of bills are also available on the Legislature's website.

This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives.

CARLTON FIELDS FLORIDA LEGISLATIVE TEAM

Martha (Marti) Chumbler
Shareholder
Tallahassee – 850.513.3612
mchumbler@carltonfields.com

Rheb H. Harbison, Jr.
Senior Government Consultant
Tallahassee – 850.513.3615
rharbison@carltonfields.com

Beth A. Vecchioli
Senior Government Consultant
Tallahassee – 850.513.3609
bvecchioli@carltonfields.com

Nancy G. Linnan
Tallahassee Office Managing Shareholder
Chair, Government Law & Consulting
Practice Group
Tallahassee – 850.513.3611
nlinnan@carltonfields.com

J. Katie Kelly
Government Law and Consulting Assistant
Tallahassee – 850.425.3383
kkelly@carltonfields.com

GOVERNMENT LAW AND CONSULTING PRACTICE GROUP

Every individual or business entity is touched by, regulated, or otherwise shaped to some degree by government. The right to petition government and participate in the process of law making is as old and vital to democracy as is the U.S. Bill of Rights that guarantees it.

The lawyers and government consultants of Carlton Fields' Government Law and Consulting Practice Group are highly experienced in dealing with all levels of state and local governments on behalf of our clients. We have a thorough understanding of government's inner workings – and an extensive network of personal and professional relationships – within government to effectively address a wide variety of legislative, administrative, procedural, and political issues.

We offer our clients access to a comprehensive and skilled team for strategic planning and counseling, governmental affairs, lobbying, regulatory and administrative law, growth management and land use, education and elections law.

■ Looking Forward to the 2011 Legislative Session

We are now actively engaged in the political activities leading up to the 2010 General Election. During this period, we will interview new legislative candidates in sessions throughout Florida, so we will have first-hand knowledge of the legislators that will comprise the 160-member 2011-12 Legislature.

We also know and understand the specific agenda priorities and goals of the incoming Speaker of the House Dean Cannon, and incoming Senate President Mike Haridopolis.



■ Business Planning for Government Services

We help our clients develop new strategies and positions. We can assist in investigating opportunities, or planning and advocating legislative, permitting or regulatory solutions. We consult on all possible approaches to accomplishing a client's goals relating to governmental privatization, public/private partnerships, appropriations, financing, and economic development programs.

■ Legislative Lobbying, Cabinet & State Agencies Representation

We identify, track, analyze, and summarize legislative and Cabinet proposals and political and policy considerations in the legislative and executive branches, assessing their impact on client operations. We also assist in drafting legislation, amendments, help pass or defeat legislative proposals, and use our extensive political relationships to advocate a client's position efficiently. We counsel clients regarding political contributions and the regulatory reporting requirements of political contributions.

We represent our clients before state agencies and the Cabinet on issues such as

rule and policy-making, permitting, professional and business licensure.

■ **Government Contracts Consulting**

We provide guidance and technical assistance in responding to government procurement documents, or when challenging recommendations for an award through a bid protest. We have extensive experience in government contracting, and can help our clients understand and address the risks of negotiating, contracting, and performing under agreements for goods or services.

■ **Legal and Planning Resources**

We assist in comprehensive planning and land use regulations; developments of regional impact; local zoning; government contracting; public construction projects; representation of government entities and special districts; local taxing districts; government operations, financing and management; water resources; utilities; and transportation, including seaports, airports, and others.

■ **Administrative**

In addition to our legislative activities, we work closely with agencies and commissions of Florida's executive branch and of local governments throughout the state. We represent regulated industries and others in administrative proceedings, parliamentary, regulatory, or other procedural areas. We also assist in obtaining proper permits and licenses, and advise clients on the range of options available for addressing concerns raised by agency rulemaking and rule challenges.

■ **Local Government Representation**

We also represent our clients before local governments in areas including, but not limited to, policy-making, procurement of goods or services, permitting, licensure, land use, compliance with local regulations.

■ **Government Law and Consulting Practice Group Members**

Biographical information on our practice group members are located at www.CarltonFields.com.

Nancy G. Linnan, Chair^	Tallahassee
Jason R. Alderman	Miami
H. Ray Allen	Tampa
Lorraine Speciale-Baxter	Tampa
Matthew R. Bernier	Tallahassee
Steven J. Brodie	Miami
David E. Cannella	Orlando
Martha Harrell Chumberl^	Tallahassee
Kelly A. Cruz-Brown	Tallahassee
Michael P. Donaldson	Tallahassee
Lawrence M. Gold	Atlanta
Christine Davis Graves	Tallahassee
W. Douglas Hall^	Tallahassee
Rheb H. Harbison, Jr.*^	Tallahassee
Lynda J. Harris^	West Palm Beach
Donald E. Hemke	Tampa
Daniel Hernandez	Tallahassee
Daniel C. Johnson	Orlando
Gary W. Johnson	Orlando
Christine C. Keane	Tampa
Nicole C. Kibert	Tampa
Laurel E. Lockett	Tampa
A. Joshua Markus	Miami
Andrew Manko	Tallahassee
Mark H. Mirkin	West Palm Beach
Kim Pullen*	Tallahassee
R. Terry Rigsby	Tallahassee
Gregory G. Schlich	Atlanta
Roger D. Schwenke	Tampa
Jay A. Steinman	Miami
Stacey K. Sutton	West Palm Beach
Darrin F. Taylor*^	Tallahassee
Kenneth A. Tinkler^	Tampa
Beth A. Vecchioli*^	Tallahassee
Joseph J. Verdone*^	West Palm Beach
Michael J. Walls	Tampa
Thomas E. Warner	West Palm Beach

**Non-lawyer; ^Lobbyist*

TABLE OF CONTENTS

**CORPORATE, BUSINESS REGULATION
& PROFESSIONAL REGULATION**

CS/CS/CS/HB 303..... 3
 Real Estate Appraisers and Appraisal Management Companies

CS/HB 729..... 3
 Tattoo Licensing

CS/HB 1035..... 3
 Elevator Safety

CS/CS/SB1050..... 4
 Ephedrine or Related Compounds; Sale

SB 1150..... 5
 Registration; Farm Labor Contractors and Employees

CS/CS/SB 1152..... 5
 Funeral, Cemetery, and Consumer Services Act

HB 1377..... 5
 Telecommunication Companies

CS/CS/SB 1736..... 6
 Unemployment Compensation

CS/SB 2046..... 7
 Employee Leasing Companies

EDUCATION & WORKFORCE

CS/CS/SB 4..... 11
 High School Graduation Requirements

0

CS/CS/SB 6..... 12
 Education Personnel

CS/CS/HB 31..... 15
 Protection of School Speech

CS/HB 105..... 15
 Middle School Civics Requirements

SB 150..... 16
 Sports Coaches; Criminal History Records Checks

CS/CS/SB 434..... 16
 Suicide Prevention Education

CS/HB 467..... 16
 Teen Dating Violence Prevention

2010 LEGISLATIVE REPORT

CS/CS/HB 723..... 17
Postsecondary Education Fee Waiver

CS/CS/HB 747..... 17
Treatment of Diabetes

CS/CS/SB 1058..... 17
Cooperation between Schools and Juvenile Authorities

CS/HB 1363..... 18
Postsecondary Student Fees

CS/HB 1505..... 18
McKay Scholarship; Students with Disabilities

CS/CS/CS/SB 2014..... 19
Early Learning

CS/SB 2126..... 19
Florida Tax Credit Scholarship Program

CS/HB 5101..... 20
Prekindergarten through Grade 12 Education Funding; Budget Conforming Bill

HB 5201..... 22
Postsecondary Education Funding; Budget Conforming Bill

HB 7037..... 22
Vocational Rehabilitation Program and Other Statutory Revisions

HB 7237..... 23
State University System; Governance

GENERAL GOVERNMENT

SCR 10..... 27
Constitutional Convention on Balanced Federal Budget

CS/CS/HB 131..... 27
Elections

CS/HB 295..... 29
Food Services; Domestic Violence Centers; Group Care Homes

CS/SB 318..... 30
Wildlife Regulation

CS/CS/SB 350..... 30
Tomato Food Safety

CS/HB 451..... 30
Space Florida

CS/SB 464..... 31
 Military Affairs; Leave of Absence

CS/HB 523..... 31
 Florida Civil Rights Hall of Fame

CS/SB 622 31
 Ratification of Seminole Gaming Compact

CS/CS/CS/HB 631 34
 Motor Vehicles

CS/CS/SB 644..... 35
 Direct Support Organization; Department of Military Affairs

CS/CS/CS/CS/HB 663..... 36
 Building Safety; Elevator Safety; Fire Prevention

CS/CS/CS/HB 713..... 37
 Department of Business and Professional Regulation

CS/CS/CS/SB 742..... 38
 Public Safety Telecommunications; E911

CS/HB 751 39
 Automatic Renewal of Service Contracts Notice

CS/SB 814..... 39
 Lifeline Telecommunications Service

CS/HB 951 40
 Public Safety; Gun Purchases

CS/CS/CS/HB 963..... 40
 Seaports

CS/CS/HB 971..... 40
 Highway Safety and Motor Vehicles

CS/CS/CS/HB 981 44
 Agriculture

CS/HB 1003..... 45
 Veterans

CS/CS/SB 1004..... 45
 Local Government; Lease; Roadways

CS/SB 1012..... 45
 Department of Juvenile Justice Facilities and Programs

HB 1013..... 45
 Citrus Canker Eradication

2010 LEGISLATIVE REPORT

SB 1136.....	45
Relating to Fire Safety Inspections	
CS/HB 1157.....	46
Local Government Prompt Payment Act	
CS/SB 1178.....	46
Cost-Benefit; Return-on-investment; Dynamic Scoring	
CS/CS/HB 1207.....	47
Campaign Financing	
SB 1264.....	48
International Banking Corporations	
CS/CS/CS/HB 1271.....	48
Transportation	
CS/CS/HB 1307.....	49
State Financial Matters	
CS/CS/HB 1389.....	50
Space and Aerospace Infrastructure	
HB 1401.....	50
Export of Goods of Value to Foreign Countries	
CS/CS/SB 1516.....	50
State-owned Lands	
CS/HB 1551.....	51
Black Business Investment Board, Inc.	
CS/CS/HB 1565.....	52
Rulemaking	
CS/SB 1612.....	53
Office of Supplier Diversity; DMS	
CS/SB 1752.....	54
Economic Development	
CS/SB 2374.....	58
State Group Insurance Program	
CS/SB 2386.....	58
State Financial Matters	
CS/SB 2742.....	59
Nonbinding Statewide Advisory Referendum; Balanced Federal Budget	
HB 5001.....	59
General Appropriations Act; Budget Bill	

HB 5003..... 59
 Implementing 2010-2011 General Appropriations Act; Budget Bill

HB 5309..... 61
 Statewide Tobacco Education and Use Prevention Program; Budget Conforming Bill

HB5501..... 61
 Department of Highway Safety and Motor Vehicles; Budget Conforming Bill

HB 5505..... 62
 Supplemental Corporate Fee; Budget Conforming Bill

HB 5603..... 62
 Department of Financial Services; Budget Conforming Bill

CS/HB 5611..... 62
 Department of Management Services DMS; Budget Conforming Bill

CS/HB 7033..... 63
 Unemployment Compensation

CS/HB 7109..... 64
 Qualified Target Industry Tax Refund Program

CS/HB 7205..... 65
 Professional Sports Franchises

**GROWTH MANAGEMENT, ENVIRONMENT, NATURAL RESOURCES,
 REAL PROPERTY & TRANSPORTATION**

CS/HB 143..... 69
 An Exemption for Aircraft Assembly and Manufacturing Hangars from
 Comprehensive Plan Transportation Concurrency Requirements

CS/CS/HB 435..... 69
 Marketable Record Title

CS/CS/CS/SB 550..... 69
 Environmental Protection

CS/HB 569..... 70
 Solid Waste Disposal

CS/HB 843..... 71
 Rural Enterprise Zones

CS/CS/CS/SB 846..... 71
 Residential Fire Sprinkler Requirements

CS/CS/HB 927..... 71
 Real Property

CS/CS/ HB 965..... 72
 Real Property Assessment

2010 LEGISLATIVE REPORT

CS/CS/HB 982.....	72
Underground Facility Damage Prevention & Safety	
CS/SB 1118.....	73
Docks	
SB 1166.....	73
Community Residential Homes	
CS/CS/CS/SB 1196.....	73
Community Associations	
CS/CS/HB 1385.....	75
Petroleum Contamination Site Cleanup	
CS/CS/HB 1411.....	76
Foreclosures and Transactions	
CS/CS/SB 1842.....	77
Transportation Projects on Public Roadways	
CS/HB 7103.....	77
Agriculture	
CS/HB 7129.....	78
Military Support	
HB 7243.....	78
Environmental Control	
HEALTH CARE & HEALTH INSURANCE	
CS/HB 341.....	83
H. Lee Moffitt Cancer Center and Research Institute	
CS/HB 491.....	83
Teaching Nursing Homes	
CS/HB 573.....	83
Physician Assistants	
CS/CS/HB 945.....	83
Automated External Defibrillators; Assisted Living	
CS/CS/HB 1073.....	83
Persons with Disabilities	
CS/CS/CS/HB 1143.....	84
Health Care	
CS/HB 1253.....	86
Continuing Care Facilities	
CS/CS/HB 1337.....	87
Nursing Education Programs	

CS/CS/SB 1484.....	88
Medicaid	
CS/CS/SB 2272.....	89
Pain Management	
HB 5301.....	90
Medicaid Services; Budget Conforming Bill	
HB 5303.....	90
Agency for Persons with Disabilities; Budget Conforming Bill	
HB 5311.....	91
Department of Health; Budget Conforming Bill	
INSURANCE & FINANCIAL SERVICES	
CS/CS/CS/HB 159.....	95
Guaranty Associations	
HB 545.....	95
Residential Property Sales	
HB 661.....	96
Surplus Requirements; Mortgage Guaranty Insurers	
CS/CS/HB 885.....	96
Life Insurance	
CS/HB 1281.....	96
Loan Origination	
CS/SB 1460.....	97
Florida Hurricane Catastrophe Fund; Contract Year	
CS/CS/SB 2044.....	97
Insurance	
CS/CS/CS/SB 2086.....	101
Consumer Debt Collection	
CS/CS/SB 2176.....	102
Insurance	
HB 7217.....	104
Hurricane Catastrophe Fund Emergency Assessments	
LEGAL, CRIMINAL JUSTICE & THE JUDICIARY	
HB 1.....	107
Statute of Limitations	
HB 11.....	107
Crimes against Homeless Persons	

2010 LEGISLATIVE REPORT

CS/CS/HB 25.....	107
Temporary and Concurrent Custody of a Child	
CS/HB 33.....	107
Alcoholic Beverages; Persons Under 21 Years of Age	
CS/HB 91.....	108
Adult Protective Services	
CS/CS/HB 119.....	108
Sexual Offenders and Predators	
CS/HB 315.....	110
Adoption	
CS/HB 317.....	110
Threats	
CS/CS/HB 325.....	110
Uniform Traffic Control; Red Light Cameras	
CS/CS/SB 366.....	111
Sale of Smoking Pipes and Smoking Devices	
CS/HB 437.....	111
Contingency Fee Agreements; Department of Legal Affairs	
CS/HB 449.....	112
Sanctions for Court Pleadings	
CS/SB 492.....	112
Garnishment	
HB 525.....	112
Statutes of Limitation for Sexual Battery	
CS/HB 615.....	114
Substantial Assistance	
HB 689.....	114
Negligence; Slip on Foreign Substance	
CS/CS/CS/SB 694.....	115
Child Support	
CS/SB 704.....	115
Capital Felonies	
CS/HB 731.....	115
Uniform Commercial Code	
CS/ HB 765.....	116
Animal Protection; Horses	

CS/CS/HB 787.....	117
Child Abduction Prevention	
CS/HB 795.....	117
Penalties for Violation of Traffic Laws	
SB 808.....	117
Murder; Unlawful Distribution of Methadone	
CS/HB 821.....	117
International Commercial Arbitration	
CS/HB 907.....	117
Child Support Guidelines	
CS/CS/SB 926.....	118
Relating to Trusts	
CS/CS/SB 998.....	118
Trust Administration	
CS/CS/HB 1005.....	119
Corrections	
CS/CS/HB 1237.....	120
Probate Procedures	
CS/HB 1291.....	122
Domestic Violence Fatality Review Teams	
CS/HB 1493.....	122
Career Offenders	
CS/CS/SB 1964.....	123
Design Professionals	
CS/SB 2060.....	123
Sovereign Immunity	
CS/SB 2440.....	123
Liability Releases	
HB 5305.....	124
Child Welfare; Budget Conforming Bill	
CS/HB 5401.....	125
Clerks of the Court; Budget Conforming Bill	
HB 7035.....	126
Criminal Justice	
CS/HB 7069.....	127
Screening	

2010 LEGISLATIVE REPORT

HB 7131.....	127
Criminal Justice	
PUBLIC RECORDS	
CS/SB 312.....	131
Public Records; Public Defenders; Regional Counsel	
CS/HB 393.....	132
Public Records	
CS/HB 551.....	132
Public Records	
CS/HB 1059.....	132
Public Records; Examination Techniques and Procedures; DFS	
SB 1678.....	132
Moffitt Cancer Center and Research Institute Public Records Exemption	
HB 7017.....	133
Public Records; Credit History; Credit Scores; OFR	
HB 7079.....	133
Open Government Sunset Review; Voter Information	
HB 7085.....	133
Open Government Sunset Review; Commission on Ethics; Ethics and Public Trust	
HB 7087.....	133
Open Government Sunset Review; Guardians ad Litem	
HB 7089.....	134
Open Government Sunset Review; Florida Self-Insurers Guaranty Association	
HB 7091.....	134
Open Government Sunset Review; Insurance Claim Data Exchange Information; DOR	
HB 7093.....	134
Open Government Sunset Review; Domestic Security Oversight Council	
HB 7111.....	135
Open Government Sunset Review; Information Held by Guardians Ad Litem	
HB 7113.....	135
Open Government Sunset Review; Child Abuse Death Review Committee	
HB 7115.....	135
Open Government Sunset Review; Parental Notice of Abortion Act	
HB 7117.....	135
Open Government Sunset Review; Funeral, Cemetery and Consumer Services Board	

HB 7119.....	136
Open Government Sunset Review; Hurricane Loss Projection Methodology	
HB 7121.....	136
Open Government Sunset Review; Hurricane Loss; Associated Exposure Data	
HB 7123.....	137
Open Government Sunset Review; Address Confidentiality; Domestic Violence	
CS/HB 7165.....	137
Open Government Sunset Review; Domestic Violence Fatality Review Teams	
HB 7167.....	137
Commission for Independent Education Public Records Exemption	
HB 7193.....	137
Public Records; Voluntary Prekindergarten Education Program	
TAXATION	
CS/HB 109.....	141
Excise Tax on Documents; Short Sale	
CS/CS/HB 163.....	141
Prepaid Wireless Telecommunications	
CS/HB 173.....	141
Tax on Sales, Use and Other Transactions	
HB 281.....	142
Communications Services Taxes	
CS/HB 483.....	142
Sales Tax Holiday	
HB 1279.....	142
Assessment of Property for Back Ad Valorem Taxes	
CS/SB 1514.....	142
Recreational Licenses	
CS/SB 1730.....	142
Biodiesel Fuel	
CS/SB 2024.....	143
Tax on Communications and Utility Services	
CS/SB 5801.....	143
Taxation; Budget Conforming Bill	
CS/HB 7157.....	144
Taxation	
CS/HB 7179.....	145
Qualifying Improvement on Real Property	

2010 LEGISLATIVE REPORT

CS/HB 7203..... 146
Community Development Districts

HB 7129..... 146
Corporate Income Tax

2010 PROPOSED CONSTITUTIONAL AMENDMENTS

Ballot Number 1:
Repeal of Public Campaign Financing Requirement..... 149

Ballot Number 2:
Homestead Ad Valorem Tax Credit for Deployed Military Personnel..... 147

Ballot Number 3:
Property Tax Limit for Non-homestead Property;
Additional Exemption for New Homestead Owners..... 149

Ballot Number 4:
Referenda Required for Adoption and Amendment
Of Local Government Comprehensive Land Use Plans..... 150

Ballot Number 5:
Standards for Legislature to Follow in Legislative Redistricting..... 150

Ballot Number 6:
Standards for Legislature to Follow in Congressional Redistricting..... 150

Ballot Number 7:
Standards for Legislature to Follow in Legislative
And Congressional Redistricting..... 150

Ballot Number 8:
Revision of the Class Size Requirements for Public Schools..... 151

Ballot Number 9:
Health Care Services..... 151

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

**CORPORATE, BUSINESS &
PROFESSIONAL REGULATION**

CORPORATE & BUSINESS REGULATION PROFESSIONAL REGULATION

▪ **CS/CS/CS/HB 303
Real Estate Appraisers and
Appraisal Management
Companies**

The bill provides for the regulation of appraisal management companies (AMCs) and provides additional requirements for the regulation of appraisers. Appraisal management companies are business entities that administer independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. Appraisal management companies are not currently regulated by state law.

The bill increases the membership of the Board of Florida Real Estate Appraisers from 7 members to 9 members, and provides that two members of the board must represent the appraisal management industry. The bill requires that AMCs register with the Board, requires certain information and provides for the denial of registration.

The bill also requires the board to adopt rules for the protection and authentication of an appraiser’s signature, and requires that appraisal records be maintained for five years or the time limits provided by the Uniform Standards of Professional Appraisal Practice, whichever is greater.

▪ **CS/HB 729
Tattoo Licensing**

This bill requires tattoo artists and tattoo establishments to be licensed and guest tattoo artists to be registered with the Department of Health (DOH). The bill provides grounds for discipline, administrative and criminal penalties, licensure fees, and rulemaking authority to the DOH to implement tattoo artist and tattoo establishment regulation.

The bill repeals the requirement for “general supervision” of tattoo establishments and tattoo artists by a physician or dentist. This bill also prohibits the tattooing of a minor child

younger than 16 years of age, unless the tattooing is performed for medical or dental purposes by a person licensed to practice medicine or dentistry in Florida.

Tattooing a minor child older than 16 years of age, but younger than 18 years of age, may not be performed unless:

- The minor is accompanied by his or her parent or legal guardian;
- The minor and parent or legal guardian each submit proof of identification;
- The parent or legal guardian submits written notarized consent;
- The parent or legal guardian submits proof of being the parent or legal guardian to the minor; and
- The tattooing is done by a licensed tattoo artist or guest tattoo artist, or a person licensed to practice medicine or dentistry in Florida.

▪ **CS/HB 1035
Elevator Safety**

The bill revises the provisions of ch. 399, F.S., relating to the regulation of elevators by the Bureau of Elevator Safety of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation. The bill creates a 5-year exemption for updates to the safety code that relate to Phase II Firefighters’ Service for existing elevators in condominiums or multi-family dwellings, including those that are a part of a licensed continuing care facility or retirement community with apartments. The Phase II Firefighters’ Service is a building code and elevator safety code requirement that permits firefighters to operate and control an elevator for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment. The exemption is limited to buildings issued a certificate of occupancy as of July 1, 2008. The exemption does not apply if the elevator is replaced or requires major

2010 LEGISLATIVE REPORT

modification before the end of the 5-year exemption. The bill also:

- Corrects citations to the most current edition of the elevator installation and maintenance standards;
- Grants the division additional rulemaking authority and the right of access to regulated equipment;
- Provides standards for the approval of requests for variances from the rules of the division;
- Provides additional violations that may result in the suspension or revocation of an elevator inspector certification;
- Requires that certified elevator inspectors and certified elevator companies respond to written requests by the division for an explanation of their inspection procedures and applications;
- Increases from 30 days to 90 days the period of time that elevator owners have to correct violations after the issuance of an order to correct by the division; and
- Authorizes the division to issue citations for unlicensed activity and gives the division the authority to enforce the citation as a stop work order.

▪ **CS/CS/SB 1050 Ephedrine or Related Compounds; Sale**

The bill amends s. 893.1495, F.S., relating to retail sale of ephedrine and related compounds, to do the following:

- Define "ephedrine or related compounds" as ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers;
- Revise requirements relating to retail over-the-counter sales of any non-prescription compound, mixture or preparation containing ephedrine or related compounds;

- Require a person purchasing, receiving, or acquiring any nonprescription compound, mixture, or preparation to meet certain requirements;
- Require the Florida Department of Law Enforcement (FDLE) to approve an electronic recordkeeping system for the purpose of recording and monitoring the real-time purchase of products containing ephedrine or related compounds and for the purpose of monitoring this information in order to prevent or investigate illegal purchases of these products;
- Require this system to be provided to a pharmacy or retailer at no additional cost or expense;
- Authorize a pharmacy or retailer to request an exemption from the electronic reporting if certain criteria are met;
- Specify what information must be recorded in the system and the capabilities of the system;
- Require a pharmacy or retailer distributing a product containing ephedrine or related compounds to Florida consumers to submit required information to the system (as specified in the bill) before completing the transaction;
- Require data that is submitted to the system to be retained for no less than two years from the date of entry;
- Specify entities that are exempt from the requirements of the section;
- Require information that is contained in the system to be disclosed in a manner authorized by state or federal law;
- Redistrict the use of information collected by a retailer or entity on behalf of a retailer to law enforcement purposes pursuant to state or federal law or to facilitate a product recall;

- Provide that a person who sells any product containing ephedrine or related compounds who in good faith releases information under this section to federal, state, or local law enforcement officers, or any person acting on behalf of such an officer, is immune from civil liability for the release of the information unless the release constitutes gross negligence or intentional, wanton, or willful misconduct;
- Require the FDLE to contract or enter into a memorandum of understanding with a private third-party administrator to implement the electronic recordkeeping system; and
- Require the FDLE to adopt rules necessary to implement the section.

▪ **SB 1150**
Registration; Farm Labor Contractors and Employees

The bill provides that the Department of Business and Professional Regulation can renew a farm labor contractor's certificate of registration after the applicant's federal certificate of registration has expired, if the applicant has timely filed for a renewal of the federal certificate. A renewal is timely filed if it has been filed with the U.S. Department of Labor at least 30 days before it expires.

The bill also provides that the Department of Business and Professional Regulation shall suspend, revoke, or refuse to issue or renew a certificate of registration if the federal certificate is suspended, revoked, or is not issued or renewed.

▪ **CS/CS/SB 1152**
Funeral, Cemetery, and Consumer Services Act

Current law requires a state license to provide services as a funeral director or embalmer. This bill allows persons wishing to obtain a funeral director license to take courses in funeral service arts in substitution of the currently required courses in mortuary science.

Mortuary science courses are required for learning the process of embalming, which funeral director licensees are not permitted to practice without an additional license.

This bill gives applicants for a funeral director license an option to take either mortuary science or funeral service arts courses in order to obtain a license.

This bill also requires that the director in charge of a funeral establishment must be licensed as an embalmer or licensed with a combination embalmer and funeral director license.

However, the bill provides a grandfather provision to allow funeral directors currently serving as the full time funeral director in charge of a funeral facility to continue to do so, provided they meet certain requirements. To prepare the state for a catastrophe that may leave an overwhelming number of deceased persons, this bill provides for certain waivers and modifications to the funeral services licensure requirements of ch. 497, F.S., in the event of a declared state of emergency. It modifies health and safety education requirements for licensees and requirements for pre-need contracts.

The bill also requires monument establishments to provide proof of liability insurance as required by law. Finally, the bill amends the priority list for persons who are authorized to direct the disposition of human remains when a family member dies. For members of the U.S. military, the bill adds to the priority list a person, who the deceased service person identified on a Department of Defense form as the designee, to direct the disposition of their remains if they die while serving.

▪ **HB 1377**
Telecommunications Companies

This bill repeals sections relating to the election of small local exchange telecommunications companies to transition from rate base, rate-of-return regulation to competitive price

2010 LEGISLATIVE REPORT

regulation. These sections no longer apply to any local exchange telecommunications company since, as of November 2008, the last rate-of-return regulated company elected to make the transition to price regulation.

The bill also repeals specific provisions that are related to the election of price regulation. The bill amends s. 364.051(1), F.S., to reflect that all local exchange telecommunications companies have elected and are subject to price regulation.

▪ **CS/CS/SB 1736** **Unemployment Compensation**

The bill makes several changes to laws related to unemployment compensation.

❖ *Temporary State Extended Unemployment Compensation Benefits*

The bill provides for an extension of the temporary state extended benefits program, effective February 27, 2010, through June 2, 2010. The extension will cover up to 14 additional weeks of temporary state extended benefits for claimants. The temporary state extended benefits for former private sector employees are 100 percent federally funded (approximately \$128.1 million). About 107,000 Floridians will be eligible to receive additional weeks through this extension.

Extended benefits for former state and local government employees do not qualify for federal funding and must be paid by the governmental entity. The cost is estimated to total \$3.6 million; approximately \$1.1 million from state funds and \$2.6 million from local government funds.

❖ *Reemployment of Unemployment Compensation Claimants*

The bill amends Unemployment Compensation (UC) law to require that registration with the workforce information system (Employ Florida Marketplace) be incorporated into the process for filing a claim. Also, claimants are required to report to their local one-

stop center. The purpose is to better link claimants with the state's job bank system and available job opportunities.

❖ *Employer Response to Notice of Claim*

When a claim is first filed, employers receive a notice of claim and monetary determination. If the Agency for Workforce Innovation receives information that may result in a denial of benefits, the agency is required to investigate the claim and provide employers with a nonmonetary determination, as applicable. A notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits under a monetary determination.

The bill requires employers to timely respond to the notice of claim within 20 days. Failure to do so will result in those benefits being charged to the employer's account. Such efforts will reduce overpayments to unemployed individuals, and in turn, this will reduce the burden of socialized costs on all employers' UC tax rates; however, a claimant would not be required to repay any overpayments due to the employer's failure to respond, so long as there is no fraud involved.

❖ *Unemployment Compensation Trust Fund Trigger*

The bill changes the trust fund balance date for trigger calculation from June 30 to September 30, which is closer to the beginning of the year to which the tax calculation applies.

❖ *Unemployment Compensation Tax Administration*

This bill includes several statutory changes that will reduce the burden of socialized costs on Florida employers, improve tax administration by increasing efficiency and reducing related costs, and improve enforcement of UC tax laws by the Department of Revenue. The bill:

- Specifies the duration for tax liens for unemployment compensation taxes as 10 years;
- Authorizes the department to reduce a tax refund or credit owing to a taxpayer to the extent of liability for unemployment compensation taxes;
- Conforms cross-references in unemployment compensation statutes;
- Provides for the treatment of a single-member limited liability company as the employer for purposes of unemployment compensation law, consistent with Internal Revenue Service regulations; and
- Increases penalties for erroneous, incomplete, or insufficient reports submitted by employers to the Department of Revenue for unemployment compensation tax purposes.

▪ **CS/SB 2046
Employee Leasing Companies**

In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer ("client company") under which all or most of its client workforce is employed by the leasing

company and then leased to the client company.

The bill provides the following changes related to the regulation of employee leasing companies (ELC) in Florida:

- Streamlines approval process for a change of ownership by providing that a purchase or acquisition of a licensed ELC does not require prior board approval if the controlling person of the ELC maintains a controlling person license under part XI, ch. 468, F.S.
- Currently, the Board of Employee Leasing Companies (board) within the Department of Business and Professional Regulation (department) must give prior approval for all purchases and acquisitions.
- Revises disciplinary actions associated with delinquent licenses (licenses not timely renewed). It eliminates the requirement that delinquent licenses automatically become void 30 days after the renewal date when the renewal fees are not paid and provides that the delinquent license would be subject to disciplinary action by the board instead of becoming automatically void.▪

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

EDUCATION AND WORKFORCE

EDUCATION AND WORKFORCE

▪ **CS/CS/SB 4
High School Graduation
Requirements**

❖ *High School Course Requirements*

To better prepare students for the global economy, the bill increases the high school graduation requirements, beginning with students entering grade 9 in the following years, to include:

- Geometry for the 2010-2011 school year;
- Biology I for the 2011-2012 school year;
- Algebra II for the 2012-2013 school year;
- Chemistry or physics for the 2013-2014 school year; and
- An additional equally rigorous science course for the 2013-2014 school year

❖ *Assessment Requirements*

The bill requires student passage of statewide, standardized end-of-course (EOC) assessments in the following courses for students entering grade 9 in specified school years:

- Algebra I, 2011-2012; and
- Biology I and geometry, 2012-2013

If additional statewide, standardized end-of-course assessments are developed for other courses, the assessments would count for 30 percent of the student's grade. The bill also provides for the discontinuation of the Florida Comprehensive Assessment Test (FCAT) for mathematics (Grades 9 and 10) and science (Grade 11), as end-of-course assessments are implemented. If a student does not pass a statewide, standardized end-of-course assessment, the bill authorizes the use of equivalent scores through other nationally recognized high school achievement tests

and industry certification tests in order to meet the requirement.

❖ *Acceleration Provisions*

The Credit Acceleration Program is created to allow middle school or high school students to earn credit in a high school course, provided that the student attains satisfactory performance on a statewide, standardized end-of-course assessment. Students who have mastered the course material without enrolling in or completing the course may also take the statewide, standardized end-of-course assessment for the purpose of earning credit.

By the 2011-2012 school year, each public high school must offer an International Baccalaureate Program, an Advanced International Certificate of Education Program, or a combination of at least four courses in dual enrollment or Advanced Placement, including one each in English, mathematics, science, and social studies. Schools may use virtual courses to meet the requirement, provided that the student can earn college credit through the course, and a standardized end-of-course assessment, approved by the Department of Education, is administered.

❖ *Major Areas of Interest*

The bill repeals the requirement for high school students to earn four of eight elective credits in a student-selected area of interest.

❖ *Office of Program Policy and Government Accountability Study*

The bill directs the Office of Program Policy and Government Accountability to conduct a study of differentiated high school diploma options and endorsements that other states offer, including criteria for awarding the diplomas or endorsements; the differences in courses required for college and career pathways; the advantages and disadvantages of

2010 LEGISLATIVE REPORT

offering a range of diploma options; and any barriers others states have encountered when implementing differentiated diploma options. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31, 2011.

▪ **CS/CS/SB 6** **Education Personnel**

❖ *Contracts with Classroom Teachers*

The bill prohibits professional service contracts for classroom teachers hired in a Florida school district on or after July 1, 2010.

PROBATIONARY CONTRACTS

Beginning with new classroom teachers hired on or after July 1, 2010, the probationary contract is lengthened from 97 days to one school year, under which the classroom teacher may resign or be dismissed by the school district without cause.

ANNUAL CONTRACTS

Upon successful completion of the probationary contract, a classroom teacher is eligible to receive an annual contract. The contract may not exceed one year in duration and the school board can choose to renew or not renew without cause. A classroom teacher may receive four annual contracts if the teacher: Holds a professional certificate as prescribed by s. 1012.56, F.S., and State Board of Education rules; and is recommended by the superintendent for the contract and approved by the district school board.

An annual contract may only be granted for the sixth year of teaching and thereafter to a state-certified classroom teacher who was approved by the school board for a contract, and whose performance is rated effective or highly effective in at least two of the preceding three years by the performance appraisal, based on objective student

learning gains and Florida's Educator Accomplished Practices.

A classroom teacher with an annual contract may be suspended or dismissed at any time for just cause, which includes poor performance, as demonstrated by a lack of student learning gains. If charges against a teacher are not sustained, he or she would be immediately reinstated with back pay.

❖ *Performance and Differentiated-Pay*

Beginning in 2014-2015, the bill prohibits a school district from using time served or degrees held as a factor in establishing the salary schedule. The bill does not cut salaries for existing or new instructional personnel or school-based administrators. Instead, salary increases, under the performance fund, would be awarded based on the individual's performance, as measured under his or her appraisal. As part of the appraisal, school districts may consider advanced degrees as part of the individual's performance.

Beginning teachers, teachers with valid professional certificates from another state, and teachers with a Florida professional certificate, who have been out of the classroom in the last five years are subject to a district-created salary schedule for the first year that they provide instruction in a Florida K-12 classroom. However, these teachers would be subject to the same salary schedule as other teachers after the first year.

School district must also provide differentiated pay based on the individual's assignment to a high-priority location, teaching in a critical teacher shortage area, or the assignment of additional academic responsibilities. Continued differentiated pay, however, is contingent upon performance documented under the individual's performance appraisal.

❖ *Performance Appraisal System*

The Department of Education would approve the district's appraisal

instruments and appraisal system for instructional personnel and school-based administrators. The bill also adds components to monitor the use of the system and evaluate the system's effectiveness in improving instruction and student learning. Beginning teachers, teachers with valid professional certificates from another state, and teachers with a Florida professional certificate who have been out of the classroom in the last five years would be evaluated at least twice in the first year of teaching. Appraisals of instructional personnel and school-based administrators would include parent and teacher input. Components of the appraisal systems described in the bill are divided into two parts: performance of students and instructional practice or leadership (for instructional or administrative personnel, respectively).

The revision of instructional practice components and instructional leadership components in the bill refers specifically to the Florida Educator Accomplished Practices and the Florida Principal Leadership Standards. The appraisal system must differentiate among four levels: highly effective, effective, needs improvement, and unsatisfactory. The Commissioner of Education is required to consult with classroom teachers and performance pay experts on developing the performance levels for the appraisal systems.

Beginning in 2014-2015, more than 50 percent of a classroom teacher's performance evaluation would be based on the learning gains of students assigned to the teacher. For other instructional personnel and school-based administrators, more than 50 percent of their performance evaluation must be based on the learning gains of students assigned to the school. Student learning gain thresholds would be set in State Board of Education rule.

Personnel may not be rated as effective or highly effective if students fail to demonstrate learning gains. If an individual receives a poor performance

rating, he or she may request a review by the superintendent.

❖ *Professional Certification and Recruitment*

The bill adds requirements related to subject area mastery and an option for satisfying mastery of professional preparation and education competency for instructional personnel. The bill also revises the requirements for the renewal of a professional certificate and restricts the assignment of beginning teachers who are not certified in certain subject areas. Specifically, the bill:

- Requires temporary certificate holders to pass the subject area exam within the first year of employment under the temporary certificate, with some extenuating exceptions;
- Requires the State Board of Education to review the subject area exam and the rigor of reading instruction required for certification; and
- Prohibits the assignment of a beginning teacher to teach reading, science, or mathematics if the teacher is not certified in reading, science, or mathematics.

Beginning with the 2014-2015 school year, an individual must meet new requirements for renewal of a professional certificate. An applicant must provide evidence that he or she received a performance appraisal rating of effective or highly effective in four of the last five years of certification. After July 1, 2014, an individual with certification from the National Board for Professional Teaching Standards would no longer have his or her state professional certificate automatically renewed.

The applicant would be required to meet all renewal requirements. The bill allows bonuses to be provided to individuals, if funding is available, who hold board certification on July 1, 2010, and who remain continuously employed in a Florida public school or the Florida

2010 LEGISLATIVE REPORT

School for the Deaf and the Blind.

❖ *State-Approved Teacher Preparation Programs*

As a condition of continued approval, traditional teacher preparation programs, the Educator Preparation (EPI) programs, and alternative certification programs must provide evidence that the students of their graduates made learning gains, as measured by state assessments.

TRADITIONAL TEACHER PREPARATION PROGRAMS

The bill eliminates the admissions waiver for up to 10 percent of students admitted to a traditional teacher program. Pre-service field experiences for student teachers must be based on the skills of instructors or supervisors who have documented evidence of sustained student learning gains. Pre-service programs are required to provide students with continuous participation in supervised classroom settings. For a graduate who fails to demonstrate student learning gains two years immediately following graduation, or initial certification, his or her teacher preparation program must provide additional training by the program at no expense to the educator or employer.

EPI ALTERNATIVE CERTIFICATION PROGRAMS

The bill requires alternative certification participants to provide evidence of eligibility for a temporary certificate, complete field experiences, and demonstrate mastery of general knowledge, and subject area testing prior to completion of the program.

REVIEW OF TEACHER PREPARATION PROGRAMS

The Department of Education must issue a report by December 1, 2011, on the effectiveness of state-approved teacher preparation programs. In a separate report, the Office of Program Policy Analysis and Government Accountability must review the current standards for the continued approval of teacher preparation programs and make

recommendations to the Legislature by January 1, 2012.

❖ *End-of-Course Assessments*

The bill requires districts to develop or acquire valid and reliable end-of-course assessments, for subject areas and grade levels that are not assessed by the Florida Comprehensive Assessment Test, or exams for a College Board Advanced Placement (AP) course, International Baccalaureate (IB) program, Advanced International Certificate of Education (AICE) program, or national industry certification exams. Under the bill, district-wide implementation of the assessments would occur in 2013-2014. Each district school superintendent is responsible for the security of the assessments and would certify the integrity of the exam process. Under the bill, the Commissioner of Education must identify methods to support school districts in the development or acquisition of assessments, including item banks.

❖ *School District and Charter School Accountability*

The bill requires the commissioner to review a sample of assessments from multiple districts, beginning with the 2013-2014 fiscal year and to review salary schedules, beginning with the 2014-2015 fiscal year. All school districts must provide the commissioner with their adopted salary schedules and supporting evidence. Compliance with classroom teacher contract requirements is determined by the Auditor General or an independent certified public accountant, based on a sample of contracts reviewed during a district's financial audit. The bill designates a performance fund for each district and charter school.

Funds may be used to implement the development and acquisition of end-of-course exams, the development of an appraisal system, salary increases based on performance appraisals, and differentiated pay. Any funds remaining after a district or charter school has met its requirements may be used for current

operations, but unexpended funds revert at the end of the state fiscal year. Funds may not be used to increase the salary of a person rated on a performance appraisal as unsatisfactory or in need of improvement.

Districts and charter schools that fail to comply with the requirements would have funds withheld from the state Florida Education Finance Program distribution. The bill requires charter schools to comply with the requirements for salary schedules, assessments and appraisals, and with the prohibition for professional service contracts. The Commissioner of Education must monitor a sample of charter schools for compliance.

❖ *Other*

For school districts that receive a grant of \$75 million or more from a private foundation to improve teacher effectiveness, the bill provides an exception to the requirements for end-of-course assessments, the performance fund, and performance pay and appraisals. The bill requires the State Board of Education to annually review the district's progress before granting the exemption.

❖ *Repealed Provisions*

The bill repeals the following:

- The deregulated public schools pilot programs; academic performance-based charter school districts;
- The Pre-teacher and Teacher Education Pilot Programs;
- The Teacher Education Pilot Programs for High-Achieving Students;
- The Merit Award Program; the Critical Teacher Shortage Program; the Florida Teacher Scholarship and Forgivable Loan Program;
- The Critical Teacher Shortage Tuition Reimbursement Program; and
- The Critical Teacher Shortage Student Loan Forgiveness Program.

▪ **CS/CS/HB 31**
Protection of School Speech

This bill prohibits district school boards, administrative personnel, and instructional personnel from taking action, such as participation in agreements, that interferes with the First Amendment rights of school staff and students, without their written consent.

▪ **CS/HB 105**
Middle School Civics Education

❖ *Civics Curriculum Requirements*

The bill requires middle school students to complete a one semester civics education course for promotion from middle school, beginning with students entering grade 6 in the 2012-2013 school year. The course must include the roles and responsibilities of:

- Federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and
- The meaning and significance of historic documents, such as the Articles of Confederation, the Declaration of Independence, and the Constitution of the United States.

In order to integrate civics education throughout the curriculum, the bill requires that the reading portion of the language arts curriculum must include integration of civics education concepts at all grade levels, beginning with the 2011-2012 school year.

❖ *End of Course Assessment*

The bill requires the Commissioner of Education to develop and administer a statewide end-of-course assessment in civics education at the middle school level. The recently revised grade seven content standards emphasize a thorough understanding of civics concepts and would serve as the basis for the end-of-course assessment.

The civics assessment would be administered as a field test during the

2010 LEGISLATIVE REPORT

2012-2013 school year and, during the 2013-2014 school year, would constitute 30 percent of a student's final course grade. Beginning with the 2014-2015 school year, a student must earn a passing score on the civics assessment in order to pass the course and receive course credit.

❖ *School Grades*

Student results on the end-of-course civics examination would be used in calculating school grades, beginning with the 2013-14 school year.

❖ *Short Title*

The act may be cited as the "Justice Sandra Day O'Connor Civics Education Act."

▪ **SB 150** **Sports Coaches; Criminal History Records Checks**

The bill requires an independent sanctioning authority to conduct a background screening of each current and prospective athletic coach. No person shall be authorized by the authority to act as an athletic coach after July 1, 2010, unless a background screening has been conducted and did not result in disqualification of the coach. Background screenings shall be conducted annually for each athletic coach, and consist of a search of the coach's name and other identifying information against state and federal sex offender registries.

The bill further provides that in a civil action for the death of, or injury or damage to, a third person caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct by the athletic coach, there is a rebuttable presumption that the independent sanctioning authority was not negligent in authorizing the athletic coach if the authority complied with the background screening and disqualification requirements prior to such authorization.

▪ **CS/CS/SB 434** **Suicide Prevention Education**

The bill requires, beginning with the 2010-2011 school year, each school district to provide access to suicide prevention educational resources for all instructional and administrative personnel using resources approved by the Statewide Office of Suicide Prevention. Appropriate training of school staff, who work most closely with students to increase their awareness of student behaviors associated with thoughts of harming themselves, may help reduce the number of youth suicides.

▪ **CS/HB 467** **Teen Dating Violence Prevention**

The bill requires district school boards to provide instruction to students in grades 7-12 regarding dating violence and abuse, warning signs of such behavior, characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims. School boards would be required to adopt a policy on teen dating violence and abusive behavior to:

- Prohibit dating violence and abuse by any student on school property, during a school-sponsored activity, or during school-sponsored transportation;
- Provide procedures for responding to such incidents of dating violence or abuse, including accommodations for students experiencing dating violence or abuse;
- Define dating violence and abuse and provide for a teen dating violence and abuse component in the health education curriculum with an emphasis on prevention education;
- Implement the dating violence and abuse policy in a manner that is integrated with their school district's discipline policies; and
- Provide dating violence and abuse prevention training to teachers, staff,

and school administrators to facilitate implementation of this act.

The bill requires the Department to develop a model policy by January 1, 2011, to serve as a guide for district school boards in developing policies that prohibit dating violence and abuse.

▪ **CS/CS/HB 723**
Postsecondary Education
Fee Waiver

This bill provides a tuition and fee waiver for up to six credit hours of public post-secondary undergraduate courses a term taken by full-time public school classroom teachers. The ability to take courses is subject to the following:

- Participants must comply with academic requirements;
- Courses are subject to space-availability;
- Courses are limited to special education, mathematics and science courses that are approved for this purpose by the Department of Education; and
- Courses must be taken outside of the school district's regular school day.

This bill specifies that a state university is not liable for the actions of its student government unless the action is finalized by the state university and violates state or federal law. To recoup the cost charged by a credit card company to an institution, postsecondary institutions whose students are eligible for the Florida Resident Access Grant are authorized to charge a convenience fee for tuition, fees, and other student charges paid by credit card. A convenience fee is also authorized for community colleges, but is subject to approval by the community college board of trustees and is limited to tuition and fees paid by credit card.

▪ **CS/CS/HB 747**
Treatment of Diabetes; Students

The bill provides guidelines for school district management of diabetes care for students by:

- Prohibiting school districts from restricting the assignment of a student who has diabetes to a particular school on the basis that the student has diabetes, that the school does not have a full-time nurse, or that the school does not have trained diabetes personnel;
- Permitting diabetic students, with appropriate written authorization, to carry diabetic supplies and equipment on their person and attend to the management and care of their diabetes while in school, participating in school-sponsored activities, or in transit to or from school or school-sponsored activities;
- Requiring parents of students who are authorized to carry diabetic supplies or equipment to indemnify the school district, county health department, and public-private partner, and the employees and volunteers of those entities, from liability with respect to the student's use of such supplies and equipment; and
- Requiring the State Board of Education, in cooperation with the Department of Health, to adopt rules for the management and care of diabetes by students in schools to encourage every school in which a student with diabetes is enrolled to have personnel trained in routine and emergency diabetes care.

▪ **CS/CS/SB 1058**
Cooperation between Schools
and Juvenile Authorities

The bill adds the director of transportation to the list of individuals required to be notified by the school superintendent when a youth is arrested and formally charged with an alleged felony or violent crime. In addition, the

2010 LEGISLATIVE REPORT

principal is required to immediately notify the youth's assigned bus driver and any other school personnel whose duties include directly supervising the youth.

The bill also requires that the superintendent notify the other school personnel whose duties include direct supervision of the youth of the disposition of the charges against the youth.

The bill authorizes educational agencies, public K-12 schools, centers, or institutions to disclose education records, without prior consent, to parties to an interagency agreement that include the Department of Juvenile Justice, the school, law enforcement authorities, and other agencies.

The bill provides the circumstances under which disclosure is permitted and the limitations on the further disclosure of the information.

▪ **CS/HB 1363** **Postsecondary Student Fees**

The bill clarifies time limitations for public post-secondary fee exemptions available to specified students who are or have been in the custody of the Department of Children and Family Services (DCF). Specifically, the bill provides that the following students are eligible for postsecondary fee exemptions until the students reach 28 years of age:

- A student who is or was, at the time he or she reached 18 years of age, in the custody of DCF;
- A student who was placed in a guardianship by the court after spending a specified period of time in DCF custody;
- A student who is or was, at the time he or she reached 18 years of age, in the custody of a relative under the Relative Caregiver Program; and
- A student who was adopted from DCF after May 5, 1997.

▪ **CS/HB 1505** **McKay Scholarship;** **Students with Disabilities**

For the John M. McKay Scholarships for Students with Disabilities Program, the bill allows the parent of a student with a disability to receive a scholarship, if the student received specialized instructional services under the Voluntary Prekindergarten (VPK) Education Program during the previous school year and has an Individual Education Plan (IEP) developed by the school district. The bill also authorizes a student to receive a McKay Scholarship if the student:

- Has been enrolled in a public school in any of the five years before the 2010-2011 fiscal year;
- Has a current IEP developed by the district school board in accordance with State Board of Education rule before June 30, 2011; and
- Has not received a McKay scholarship before the 2011-2012 school year.

A school district, at the request of the parent, must complete a matrix of services to ensure that the student's IEP reflects the level of services required.

The bill also authorizes the Commissioner of Education to deny, suspend, or revoke the participation of any private school determined to be operating, or have operated an educational institution in Florida or another state, that jeopardizes the health, safety, or welfare of the public. For the Voluntary Prekindergarten Education program, the bill creates a pre-kindergarten program option for children with disabilities, which:

- Allows parents of eligible children to select one or more services that are consistent with the child's individual education plan;
- Requires specialized instructional services to be provided according to professionally accepted standards and those adopted by the Department of Education;

- Provides for payment to specialized instructional service providers by early learning coalitions;
- Allows parents who have not expended more than 70 percent of the funds for services to withdraw their children from the specialized instructional services program option for good cause and reenroll in the VPK school-year or summer program; and
- Provides that the Agency for Workforce Innovation, in collaboration with the Department of Education and subject to the department's approval, must develop procedures governing the determination of eligibility, enrollment of children, and payment of specialized instructional services providers.

▪ **CS/CS/CS/SB 2014
Early Learning**

This bill amends Florida's school readiness provisions by:

- Clarifying the role of the Agency for Workforce Innovation (AWI) and its responsibilities to implement a comprehensive system of support services;
- Requiring early learning coalitions to implement direct enhancement services and ensure access to such services in all of Florida's counties;
- Granting AWI greater rulemaking authority for the administration of the school readiness program in certain areas, including standards, outcome measures, and system support services;
- Altering eligibility requirements for the school readiness programs; and
- Consolidating provisions that are in disparate sections of the statutes.

The bill amends the Gold Seal Quality Care Program for child care facilities to specify the process by which the Department of Children and Family

Services (DCF) is to establish accreditation standards.

The bill permits the State Board of Education to grant a good cause exemption for a VPK provider who has been on probation for 2 consecutive years or more and serves twice the statewide population of children with disabilities or limited English proficient students. The provider is required to show certain documentation and meet certain criteria.

This will provide an exemption to those providers serving these special classes of students and encourages the continued service of these students. The bill requires that a county, in a general election, must submit to the electors of a children's services district the question whether to retain or dissolve the district.

▪ **CS/SB 2126
Florida Tax Credit Scholarship Program**

The Florida Tax Credit Scholarship Program (FTC Program) provides a credit against corporate income and insurance premium taxes to taxpayers who make eligible contributions to nonprofit Scholarship Funding Organizations (SFOs). SFOs award scholarships to students from families that meet specified income limitations, and the students use the scholarship to attend private school or to pay for transportation to public schools located outside of the students' districts of residence.

The maximum tax credits that may be approved in a fiscal year are capped at \$118 million, and the maximum scholarship award per student is capped at \$3,950 per year. The bill revises numerous aspects of the FTC program, most significantly:

- Tax credit cap: The bill changes the current \$118 million fiscal year cap on tax credits authorized under the FTC program to \$140 million for fiscal year 2010-11. In fiscal year 2011-12 and thereafter, the cap will increase by 25% whenever tax

2010 LEGISLATIVE REPORT

- credits approved in the prior fiscal year are equal to or greater than 90% of the tax credit cap amount for that year.
- Tax credits: The bill adds three new revenue sources for the FTC Program by allowing taxpayers to receive credits for eligible contributions against:
 - Severance taxes on oil and gas production;
 - Self-accrued sales tax liabilities of direct pay permit holders; and
 - Alcoholic beverage taxes on beer, wine, and spirits.
Scholarship amount: For fiscal year 2010-11, the bill replaces the current limit on the private school scholarship amount of \$3,950 with a variable amount stated as a percentage of the Florida Education Finance Program (FEFP) un-weighted full-time equivalent (FTE) amount for that fiscal year. For fiscal year 2010-2011, the maximum scholarship amount will be 60% of the per FTE funding for that year. Beginning in fiscal year 2011-12, the percentage used to determine the maximum scholarship award will increase by 4% in any fiscal year when the tax credit cap also increases, until it reaches a maximum of 80%. In that fiscal year and thereafter, the scholarship limit will be equal to 80% of the per FTE funding amount.
 - Eligibility for certain students: The bill increases the maximum household income threshold for renewing scholarship recipients and their siblings from 200% of the federal poverty level to 230% of that level, but reduces the maximum scholarship award available to the newly eligible scholarship recipients.
 - Private school accountability: The bill adds new accountability measures that:
 - Require each private school receiving more than \$250,000 in scholarship payments in one year to submit a financial report, referred to as an agreed-upon procedures report. The report must be completed by an independent certified public accountant and must address the adequacy of the school's accounting system and financial controls.
 - Require student learning gains to be published for each private school that has at least 30 scholarship students with norm-referenced test scores for two consecutive years.
 - Authorize the Commissioner of Education to deny, suspend, or revoke a private school's participation in the program if an owner or operator has operated an educational institution in a manner contrary to the public's health, safety, or welfare.
- The Revenue Estimating Conference's estimated impact on General Revenue receipts of the additional tax credits authorized by the bill is -\$31.0 million in fiscal year 2010-11 with a recurring impact on General Revenue of -\$228.8 million.
- The bill is also expected to result in increased savings to the state as fewer students will require funding within the FEFP as the FTC program is expanded. The increased FEFP savings are expected to exceed the revenue impacts in each of the first four years under the legislation.
- **CS/HB 5101
Pre-Kindergarten through Grade 12 Education Funding; Budget Conforming Bill**
- Among other things, this bill:
- Provides implementing language for 2010-2011 Class Size Reduction constitutional amendment including:

- Implementation if the proposed amendment is or is not approved by the voters;
- Compliance determination based on the October student enrollment survey;
- A reduction calculation to class size funding for noncompliant districts which may be adjusted for good cause;
- A reallocation bonus of up to 5% of the base student allocation for compliant districts;
- An add-back of all or some of the reduced funds if districts submit a plan to meet the requirements by October of the subsequent year;
- A requirement that school boards hold public hearings on strategies to meet class size requirements before the district budget is adopted; and
- Authorization of virtual instruction programs as an option to meet class size requirements.
- Revises the tax roll collection rate for calculation of the local effort for school districts from 95 to 96 percent; this provision also affects state funding for lab schools and the Florida Virtual School.
- Clarifies that in order for school districts to continue the school board-super majority-approved .25 critical needs millage after the 2010-2011 fiscal year, voters must approve the millage by referendum during the 2010 general election. If the measure fails, it cannot be put before the voters again for a full year and the voted millage will have to be reauthorized by the voters every two years.
- Expands eligibility for the school district virtual instruction program to include siblings of a currently enrolled student of a virtual instruction program.
- Appropriates \$21,244,177 for the Excellent Teaching Program to award bonuses for national board certified teachers (teacher merit pay).
- Establishes procedures, requirements, and definitions for districts and publishers for the purchase of instructional materials in electronic format.
- Provides guidelines and instructions for implementation of school district electronic learning management systems.
- Requires secondary students enrolled in acceleration courses or programs to be provided access to electronic library resources provided by the Florida colleges and state universities.
- Requires charter schools to be in compliance with class size requirements at the school level average.
- Reduces the school district administrative fee for charter schools and charter school systems.
- Provides that capital outlay funds shared by school districts with a charter school in the workplace prior to July 1, 2010, have met the expenditure requirements for capital outlay funding.
- Provides that charter schools in the workplace are eligible for charter school capital outlay funding.
- Requires school board member salaries for 2010-2011 to be no greater than beginning teacher salaries.
- Reduces the school district budget summary advertisement requirements.
- Requires instructional materials to include the contributions of African Americans to American society.
- Establishes procedures and timelines for the DOE and school districts to ensure industry certification of

2010 LEGISLATIVE REPORT

- automotive service technology training programs.
- Clarifies that a student is not eligible for a quarterly payment for the McKay Scholarship Program if the private school misses the 30 day deadline for verification of student participation.
- Authorizes an off-site instructor for a traditional classroom providing instruction through a virtual environment to be the instructor of record for purposes of enrollment reporting.

▪ **HB 5201** **Post-Secondary Education Funding; Budget Conforming Bill**

The bill:

- Modifies Bright Futures by:
 - Increasing test score eligibility requirements;
 - Allowing the restoration of a Bright Futures scholarship for first year students;
 - Reducing the number of credits covered by Bright Futures from 110% of program requirements to 100%;
 - Reducing the time to utilize the award to 5 years from 7 years;
 - Encouraging use of acceleration credit, by allowing students who graduate in less than 4 years to utilize up to 15 hours of any remaining award towards 1 semester of graduate study; and
 - Authorizing flat award amounts to be established in the General Appropriation Act.
- Requires state residency confirmation for Workforce Education Programs.
- Appropriates \$25 million for the Bright Futures program contingent upon the receipt of Federal Medical Assistance Percentage (FMAP) funds.
- Modifies university fee limits by:

- Authorizing all universities, for FY 2010-11 only, to increase the sum of the activity and service, health, and athletic fees up to 15% or the amount to reach the 2009-10 statewide average for the total of these fees, whichever is greater; and
- Authorizing the sum of these fees to increase each year by 5% or the same percentage increase in tuition authorized by the legislature, whichever is greater.

- Authorizes state universities to utilize funds from the 30% tuition differential set-aside for need-based financial aid for students utilizing a prepaid post-secondary tuition scholarship.
- Prohibits a college in the Florida College System from using its resources, including staff, faculty, land, and facilities to support the establishment of a new independent nonpublic educational institution.
- Encourages each Florida college and state university to reduce its campus-wide energy consumption by 10 percent and requires a report by January 1, 2011.
- Limits community college president salaries to \$225,000 from appropriated state funds.
- Authorizes the Doctor of Pharmacy degree at the University of South Florida (USF) and physically locates the program at the new campus of the USF Polytechnic.

▪ **HB 7037** **Vocational Rehabilitation Program and Other Statutory Revisions**

The bill is a revision of a variety of education-related topics to reflect changes in federal law, to remove obsolete programs and provisions, and to provide consistent terminology.

❖ Vocational Rehabilitation

The bill revises current law on vocational rehabilitation to remove inconsistencies with federal law governing vocational rehabilitation services.

TRIAL WORK EXPERIENCES

The bill conforms to federal law by requiring the Division of Vocational Rehabilitation (Division) to use trial work experiences before denying eligibility for vocational rehabilitation services. The bill also authorizes the Division to conduct an extended evaluation, under the following limited circumstances, before denying eligibility for vocational rehabilitation services:

- The individual cannot take advantage of trial work experiences; or
- Options for trial work experiences have been exhausted.

REQUIRED REFERRALS

The bill conforms to federal law by requiring the Division to refer individuals who have been determined ineligible for vocational rehabilitation services to services that are part of the one-stop delivery system under s. 445.009, F.S., or local extended employment providers.

CLIENT RECORDS

The bill conforms to federal law by authorizing the disclosure of records that contain personally identifying information for the purposes of audits, program evaluations, and research. Entities or individuals receiving the records must maintain the confidential and exempt status of the records.

INDEPENDENT LIVING PROGRAM

The bill repeals provisions authorizing the Division to directly provide specified services and facilities for independent living, as the Division is not a direct provider. Instead, the Division contracts with the independent living centers to provide services and facilities to individuals in an independent living program.

FLORIDA REHABILITATION COUNCIL

The bill revises the membership of the Florida Rehabilitation Council to conform to federal law.

Specifically, the bill requires that:

- At least one member must be the director of the client assistance program;
- One or more members must be representatives of individuals with disabilities who have difficulty representing themselves due to their disabilities; and
- At least one member must be the director of a Vocational Rehabilitation Services Project for American Indians with Disabilities, if the state participates in such projects.

The bill also specifies, in conformity with federal law, that:

- Department of Education employees may only serve as nonvoting members;
- Only the representatives of the client assistance program and Vocational Rehabilitation Services Project for American Indians with Disabilities may serve more than two full terms; a
- An additional duty of the council is to review and analyze consumer satisfaction with employment outcomes of individuals receiving vocational rehabilitation services.

OTHER VOC-REHABILITATION PROVISIONS

The bill repeals the obsolete state vocational rehabilitation plan; repeals the Limiting Disabilities Program, as the program was never implemented; and conforms state vocational rehabilitation terminology to federal law.

▪ **HB 7237**
State University System
Governance

❖ *Governance*

This bill statutorily establishes the Board of Governors' (BOG) authority over the

2010 LEGISLATIVE REPORT

university boards of trustees and the university personnel system, except for state group insurance and retirement which are administered by the Department of Management Services. The Board of Governors must confirm the presidential selection by the university board of trustees. The BOG approves new degree programs and must report annually to the Legislature requests for new programs and the BOG's decision regarding the proposals.

❖ *Planning and Coordination*

The bill creates a 7-member Higher Education Coordinating Council to identify university system needs; facilitate solutions to disputes regarding the creation of new degree programs, institutes, campuses, or centers; and make recommendations to the Board of Governors, State Board of Education and the Legislature regarding articulation and access to higher education. The council is comprised of the Chancellor of the State University System of Florida, the Chancellor of the Florida College System; the Commissioner of Education; the President of the Independent Colleges and Universities of Florida; the Executive Director of the Commission for Independent Education; and two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives. The BOG staff will support the work of the council.

❖ *Tuition and Fees*

The bill maintains current law under which the Legislature establishes university tuition and delegates legislative authority to the BOG to establish the tuition differential. The bill authorizes the BOG to approve university boards of trustees proposals for flexible policies for tuition and fees as long as the policies are in alignment with the university's mission and do not increase the state's

liability or obligation for the Florida Bright Futures Scholarship program or the Stanley G. Tate Florida Prepaid College Program. The aggregate sum of new fees authorized by the BOG may not exceed 10 percent of tuition.

The BOG may approve a university board of trustees' proposal to increase the current cap for certain existing user fees. The BOG may approve a university board of trustees' proposal to implement undergraduate or graduate block tuition, block tuition differential, or market-rate tuition for graduate-level online courses or graduate-level continuing education courses.

The BOG must submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Governor summarizing the tuition and fee proposals received by the board during the preceding year and the actions taken by the board in response to such proposals.

❖ *Rules and Regulations*

The BOG is subject to the Administrative Procedures Act when it is acting pursuant to statutory authority, and the bill authorizes the BOG to adopt regulations instead of rules when it is expressly authorized or required by law to do so. The BOG's procedure for adopting regulations that are authorized or required by law must provide for notice to the public, opportunity for public comment, a process for challenge, and publication of the regulation development procedure on the BOG's and the universities' websites. If the BOG delegates a statutory power or duty to a university board of trustees, the authority to adopt rules or regulations is included in the delegation. The bill directs the Department of State to remove from the Florida Administrative Code the BOG rules that have been superseded by BOG regulations. ■

CARLTON FIELDS

ATTORNEYS AT LAW

2010 Florida Legislature Post-Session Report

GENERAL GOVERNMENT

THIS SECTION INCLUDES LEGISLATION RELATING TO:

- *AGRICULTURE*
- *DISASTERS AND EMERGENCIES*
- *CONSUMER SERVICES AND PROTECTIONS*
- *ECONOMIC DEVELOPMENT*
- *ETHICS*
- *ELECTIONS*
- *GOVERNMENT OPERATIONS, POWERS AND BUDGET*
- *HUMAN SERVICES*
- *PROCUREMENT*
- *SECURITY*

GENERAL GOVERNMENT

▪ **SCR 10
Constitutional Convention on
Balanced Federal Budget**

Through this concurrent resolution, the Legislature calls upon the Congress to convene a constitutional convention under Article V of the U.S. Constitution for the sole purpose of proposing amendments to the Constitution to:

- Achieve and maintain a balanced federal budget; and
- Control the ability of Congress and federal executive agencies to require states to expend funds.

The concurrent resolution does not contain specific constitutional language; however, it proposes achieving and maintaining a balanced federal budget by:

- Requiring the balanced budget to account for all obligations of the federal government;
- Providing exceptions to the requirement for a balanced budget in cases of national emergencies or threats to national security;
- Imposing spending limits on the federal government;
- Establishing extraordinary vote requirements for new or increased federal taxes and other revenues; and
- Prohibiting federal mandates on states to impose taxes or fees.

With respect to controlling the ability of the federal government to require states to expend funds, the concurrent resolution proposes:

- Limiting the ability of Congress and federal executive agencies to pass legislation requiring states to spend money or take actions that require expenditure of money unless sufficient federal funds are provided on an

ongoing basis to offset the full costs; and

- Limiting Congress' ability to dictate to the states requirements for the expenditure of federal funds, other than requirements that may be necessary to measure the outcomes underlying the expenditure of federal monies.

The concurrent resolution specifies that it supersedes all previous memorials applying to Congress for a constitutional convention for the purpose of proposing an amendment to the U.S. Constitution, including memorials adopted in 1976 and 1988. In addition, the concurrent resolution specifies that it is revoked if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for a purpose other than requiring a balanced federal budget or limiting the ability of the federal government to require states to spend money.

Upon signature of the Legislature's presiding officers, a copy of the concurrent resolution will be dispatched to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, and to the presiding officers of each house of the several state legislatures.

▪ **CS/CS/HB 131
Elections**

The bill amends provisions of Florida's elections laws to conform provisions relating to military and overseas voters to changes made by the federal Military and Overseas Voter Enhancement Act, to modernize the requirements for political disclaimers in new technologies, to delay a mandate for statewide use of certain voter interface devices, to reenact and amend provisions related to electioneering communications and electioneering communications

2010 LEGISLATIVE REPORT

organizations, and to revise non-campaign finance provisions of Florida's elections laws based upon recommendations made by the Division of Elections of the Department of State.

The bill adds a definition of "absent uniformed services voter" and amends the current definition of "overseas voter" to conform to changes in federal law. This definitional change makes clear that uniformed services voters who are stateside, but away from their place of residence, are governed the same under the Florida Election Code as those voters who are overseas.

Upon receiving a request for an absentee ballot from an absent uniformed services voter or overseas voter, the supervisor of elections must notify such voter of the free access system designated by the department for determining absentee ballot status which is a new federal requirement. The use of the free access system is expanded in the bill to include all absentee voters.

Timeframes for sending an absentee ballot and methods of transmission of the ballot to the absent uniformed voter and the overseas voter are amended to conform to recent changes in federal law. It amends provisions relating to the federal postcard application to conform to the use of means other than mail to send an absentee ballot and to remove language regarding its two-year effectiveness as registration, which was recently removed by changes to federal law.

The bill

- Requires the supervisor of elections to record an overseas voter's e-mail address, if provided, in the voter's request for an absentee ballot, in the absentee ballot record.
- Expands the information that a supervisor of elections must provide an overseas voter via e-mail to include confirmation of the ballot request, notification of the estimated date the ballot will be sent to the

voter, and confirmation of the receipt of the voted ballot.

- Provides a shorter disclaimer for candidate political advertisements that are paid for by the candidate, similar to that which is used by candidates for federal office.

The bill provides that certain disclaimers are not required for a campaign message or political advertisement if the message or advertisement is designed to be worn by a person. It also provides for exceptions to the disclaimer requirements for messages or political advertising via Internet websites, text messages, or other technologies if certain requirements are met. The bill extends the deadline for the paper ballot requirement for the voter interface device from 2012 to 2016.

Only four counties have a system for disabled voters that meets the 2012 requirements. The bill reenacts and amends provisions related to electioneering communications and electioneering communications organizations (ECOs) to redefine:

- "Electioneering communication" to remove reference to issues, remove reference to a specific number of persons who must be targeted in a geographic area to only refer to targeting to relevant electorate in the geographic area the candidate would represent if elected, specify the allowable communication formats, regulate advocacy that is the functional equivalent of express advocacy, and provide timeframes for the communications;
- "Electioneering communications organization" to clarify that it includes only those organizations with election-related activities that are limited to electioneering communications and that its activities would not require the group to register as a political party, political committee, or committee of continuous existence; and
- "Political committee" to remove the requirement that an ECO conform to

specified requirements of a "political committee" when it is specifically exempt from the definition. The bill provides separate registration and reporting requirements for ECOs. It requires an organization to register as an ECO upon receipt or expenditure of an aggregate amount exceeding \$5,000, rather than when it anticipates receipt or expenditure of money.

The bill also increases the amount an individual can expend before being subject to regulation from \$100 to \$5,000. It removes provisions identified as an impermissible burden on speech. The bill also makes changes to the Florida Election Code, most of which were recommended by the Division of Elections of the Department of State, including:

- Providing that chs. 97 through 105, F.S., preempt any other election law within the state unless specified otherwise in federal or state law;
- Providing an opportunity for a challenged voter, who is challenged on the basis of address, to update his or her address information in order to vote a regular ballot in the precinct;
- Requiring supervisors of elections to use actual ballots when testing tabulating equipment prior to an election;
- Requiring supervisors of elections to post notice of the testing of tabulating equipment on their website;
- Revising absentee ballot procedures to include that absentee ballot requests are only good for one year versus two years, thereby making the timeframe uniform with that required for absent uniformed services voters and overseas voters;
- Revising the procedures and requirements for co-locating polling place precincts; requiring the supervisor to post notice of a change in polling place on his or her website;

- Providing that Election Canvassing Commission members serve ex officio and providing a time certain for the commission to meet after elections;
- Requiring supervisors of elections to post notice on their website where and when the county canvassing board will meet to canvass absentee and provisional ballots;
- Providing that the Secretary of State must order recounts in federal, state, and multicounty races, while recounts in all other races must be ordered by the local board responsible for certifying the election in those races;
- Providing that the Secretary of State must order manual recounts of the overvotes and undervotes in federal, state, and multi-county races, while such recounts in other races must be ordered by the local board responsible for certifying the election in those races except, under specified circumstances.

Finally, the bill authorizes the Florida Elections Commission to determine whether a person's conduct was willful in an informal hearing following a finding of probable cause.

▪ **CS/HB 295
Food Service; Domestic Violence
Centers; Group Care Homes**

The bill requires the Dept. of Health to annually inspect certified domestic violence centers and group care homes for compliance with food safety rules that apply to community-based residential facilities with five or fewer residents, regardless of the number of actual residents. The bill excludes a certified domestic violence center that does not prepare and serve food to residents or advertise food or drink for public consumption from standards and requirements applicable to food service establishments.

2010 LEGISLATIVE REPORT

▪ **CS/SB 318** **Wildlife Regulation**

The bill combines two bills related to reptiles of concern and captive wildlife. The bill prohibits any person from possessing, importing, selling, trading, or breeding certain reptile species, including species designated as a reptile of concern by the Florida Fish and Wildlife Conservation Commission (FWC). The bill bans internet sales of wildlife, adds civil penalties to persons who are convicted of violations related to nonnative and captive wildlife, clarifies that bonds are required for the possession of certain wildlife, clarifies terms and specific penalty language for captive wildlife, and provides a date certain for the evaluation of a potential ban on reptiles of concern.

The bill provides that persons licensed to possess a reptile of concern as of July 1, 2010, or by October 1, 2010, for anacondas other than green anacondas, may continue to possess the individual reptile for the remainder of that reptile's life. The FWC is required to submit annual reports listing each species on its list of reptiles of concern, conditional species, and prohibited species. The FWC is also directed to evaluate adding species, including iguanas, to its reptile of concern list. Finally, the bill provides consistency in nomenclature related to native and nonnative wildlife.

▪ **CS/CS/SB 350** **Tomato Food Safety**

This bill delineates requirements for a tomato farmer, packer, re-packer, or handler to be considered in compliance with state food safety microbial standards and guidelines. The bill authorizes the Department of Agriculture and Consumer Services to inspect tomato farms, tomato greenhouses, tomato packinghouses, repacking locations, or any vehicle being used to transport or hold tomatoes to ensure compliance with food safety standards. The department is also authorized to impose administrative

finances or to issue a written notice or warning for violations.

▪ **CS/HB 451** **Space Florida**

Space Florida is responsible for promoting the development of a sustainable aerospace industry, space infrastructure, and educational opportunities for people interested in working in the space and aerospace industry. This bill terminates the existing board of directors of Space Florida 90 days after the law takes effect. The initial appointments of new members and Senate confirmations of the appointments must occur within 91 days of the law taking effect. New appointees will have interim status pending the next called meeting of the Senate.

The bill reduces the number of ex-officio voting members from 5 to 4 by removing the State Commissioner of Education, and requires the Lieutenant Governor to serve as the designee of the Governor. Designees of ex-officio members are given the authority to vote. Further, the bill reduces the number of members appointed by the Governor from 12 to 9. The bill also makes a number of changes to the composition of the board. Briefly, the board's composition will be:

❖ *As voting members:*

- The Governor or the Lieutenant Governor, who will serve as chair;
- The Secretary of the Department of Transportation, or designee;
- The President of Workforce Florida, Inc., or designee;
- The President of Enterprise Florida, Inc., or designee;
- Nine private sector members, representing the following sectors, and appointed by the Governor:
 - One person representing organized labor with experience in the aerospace industry;

- Two persons from the state's aerospace companies;
- Two persons from two separate commercial aerospace companies involved in human space flight programs or commercial to space;
- Two persons representing two separate commercial companies working under federal contracts to conduct space-related business;
- One person representing an alternative energy enterprise with potential for aerospace application; and
- One person representing the aerospace industry whose primary client is the U.S. Department of Defense.

As non-voting members, a state senator appointed by the President of the Senate and a state representative appointed by the Speaker of the House of Representatives. The nine appointees must have "demonstrated knowledge and experience in the field of aerospace or have experience which is directly applicable to the state's aerospace endeavors."

In making these appointments, the Governor is directed to consider whether the membership reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of Florida's population.

Additionally, all voting members must be residents of the state or have a business enterprise in Florida. Designees of the appointed members representing the private-sector do not have voting authority, while the Lieutenant Governor and designees of agency members may vote.

The bill does not alter the powers and duties of the board, nor does it impact the scope of Space Florida's rule-making authority.

▪ **CS/SB 464**
Military Affairs; Leave of Absence

This bill increases the number of allowable annual leave of absence hours a member of the National Guard or military reserve forces may be granted by his or her state, county, or municipal government employer. The new maximum annual leave of absence limit is 240 hours which recognizes increased requirements placed upon National Guard and reserve force members for training. In addition, the bill authorizes the Adjutant General to appoint a second Assistant Adjutant General for Army subject to Senate confirmation. This change reflects force structure revisions that have been adopted by the National Guard Bureau.

▪ **CS/HB 523**
Florida Civil Rights Hall of Fame

This bill provides for the establishment and location of the Florida Civil Rights Hall of Fame. The Florida Civil Rights Hall of Fame will be located in the Capitol Building and maintained by the Department of Management Services. The Florida Commission on Human Relations will be consulted regarding the design and theme of the hall of fame. The commission will be in charge of the nomination process for the hall of fame.

▪ **CS/SB 622**
Ratification of Seminole Gaming Compact

The bill (Chapter 2010-29, L.O.F.) provides definitions for terms to be used in the compact authorization section. It provides that the prior tribal-state compacts executed by the Governor and the Seminole Tribe of Florida are not ratified or approved by the Legislature and are void. Its purpose is to ratify the gaming compact between the Seminole Tribe of Florida (Tribe) and the State of Florida that was executed by the Tribe and the Governor on April 7, 2010. The ratified compact:

- Has a 20 year term;

2010 LEGISLATIVE REPORT

- Permits the Tribe to offer, at all 7 of its tribal casinos, slot machines, raffles and drawings, and any other new game authorized for any person for any purpose;
- Permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, only at the tribal casinos in Broward County, Collier County, and Hillsborough County (until such new games are authorized for any other person for any other purpose);
- However, if banked card games authorized by a compact with the Miccosukee Indians, the Tribe is authorized to offer banked cards at all 7 Tribal facilities; and
- Provides that the authority for banked card games terminates at the end of 5 years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

This compact provides for revenue sharing payments by the Tribe to the State as follows:

- During the first 24 months, the Tribe is required to pay \$12.5 million per month (\$150 million per year); After the initial period, the Tribe's guaranteed minimum revenue-sharing payment is \$233 million for year 3, \$233 million for year 4, and \$234 million for year 5;
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win that range from 12 percent of net win up to \$2 billion to 25 percent of the amount of any net win greater than \$4.5 billion;
- After the first 5 years, the Tribe continues to make payments to the state based on the percentage revenue share above without a guaranteed minimum payment; and
- If the Legislature does not extend the authorization for banked card games

after the first 5 years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

The compact provides substantial exclusivity to the Tribe. The exclusivity provision provides that, if the state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location that was not authorized for such games before February 1, 2010, the Tribe would stop all payments to the state.

The Tribe's payments stop when the new gaming is offered for private or public use; however, if the expansion of gaming occurs by the result of a court decision or agency decision, the Tribe's payments would be placed in escrow and the Legislature would have until the end of the next session or 12 months (whichever is shorter) to reverse such a decision. If the Legislature fails to act, the money is released back to the Tribe and the Tribe's payments would stop. The exclusivity provision of the compact sets forth multiple exceptions, including:

- Compacts with other Tribes;
- Slot machine gaming at the 8 existing pari-mutuel facilities in Broward and Dade Counties;
- Games authorized under ch. 849, F.S., as of February 1, 2010;
- Specified games of historic racing or electronic bingo at pari-mutuels facilities licensed as of February 1, 2010, and located outside of Broward and Dade Counties;
- Pari-mutuel wagering activities at facilities licensed by the State;
- The operation of poker and no-limit poker at card rooms licensed by the State;
- The compact provides a limited exception for the Lottery. The exception includes the types of lottery

games authorized under ch. 24, F.S., on February 1, 2010.

The state may also authorize specified types of Lottery Vending Machines (LVM) that dispense lottery tickets but that do not reveal the winner or use slot machine-type spinning reels. The lottery may dispense electronic instant lottery tickets by an LVM that displays an image of the ticket on a video screen that the player must touch to reveal outcome of the ticket.

The bill limits the number of LVM's that may be installed at any location to 10 machines and provides that no LVM that dispense electronic instant tickets may be installed at any licensed pari-mutuel facility; if new forms of Class III gaming and casino-style gaming are authorized for the 8 licensed pari-mutuels located in Dade and Broward Counties; and if the net win from those facilities drops after the new gaming begins, then the Tribe may reduce the payments from its Broward Tribal facilities by 50 percent; if new forms of Class III gaming and other casino-style gaming are authorized for other locations in Dade and Broward Counties, then the Tribe may exclude the net win from their Broward Facilities from their net win calculations when the new games begin to be played; if new games are given to any location in Dade and Broward Counties within the first five years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the one billion dollar guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win as described above; and if the state authorizes Internet gaming and the Tribe's net win falls 5 percent, the Tribe is entitled to operate solely off of the revenue sharing percentages above and is no longer required to make the guaranteed payments to the state. This provision is not applicable if the reduction is due to an act of God or if the Tribe offers Internet gaming.

The compact also:

- Requires the Tribe to waive sovereign immunity for tort claims by patrons up to the same limits provided under law which is currently \$100,000 per person and \$200,000 per incident;
- Permits the state to inspect public and non-public areas of the Tribe's gaming facilities with at least concurrent notice and with a maximum of one inspection per month, which may last no longer than 10 consecutive hours over 2 days, unless noncompliance justifies a longer inspection;
- Requires annual slot machine compliance audits;
- Prohibits persons under 21 years of age to play the covered games;
- Requires a \$250,000 per facility annual donation to the Florida Council on Compulsive Gambling; and
- Provides a process for resolving compact disputes between the state and the Tribe through specified pre-suit nonbinding arbitration.

The bill also provides that the Governor is authorized to enter into agreement to apply state sales taxes on Indian lands. The money received by the state from the compact is to be deposited into the General Revenue Fund. It also provides for the distribution of 3 percent local government share. Any money remitted by the Tribe before the effective date of the compact is required to be deposited into the General Revenue Fund.

The bill provides that the games authorized by the tribal-state compact may be conducted by the Tribe and are not illegal under Florida law. It provides procedures for the negotiation, execution, and Legislative ratification of tribal-state compacts. It also provides that ss. 4 through 25 of ch. 2009-170, L.O.F., (CS/CS/SB 788) are effective on July 1, 2010. These pari-mutuel provisions:

- Provide a gradual increase in the number of performances that

2010 LEGISLATIVE REPORT

- comprise a full schedule of live racing for quarter horses;
- Streamline regulatory procedures for the pari-mutuel industry;
- Provide for greater flexibility of breeders' and stallion awards;
- Allow quarter horse permit-holders to run thoroughbred races up to 50% of the time;
- Authorize a quarter horse permit to convert to a limited thoroughbred permit;
- Restrict quarter horse permit holders to a 35-mile lease restriction;
- Authorize a jai alai permit to convert to a greyhound permit if certain requirements are satisfied;
- Provide for a reduction of the tax rate on slot machine revenue from 50% to 35% with a guarantee of tax revenue to be that which was collected in 2008-2009;
- Provide for a gradual reduction of the slot machine annual license fee from \$3 million to \$2 million;
- Allow for slot machines to be linked using a progressive system;
- Provide that the payout percentage of a slot machine facility shall be no less than 85%;
- Authorize Class III slot machines in a charter county or in a county that has a referendum approving slots that was authorized by law or the Florida Constitution, provided that such facility has conducted 2 years of racing and complies with other requirements for slot licensure;
- Provide that an initial cardroom license shall not be issued unless the permitholder has a facility and has begun racing;
- Allow for the conduct of no limit poker in cardrooms; and
- Extend the hours of cardroom operation from 12 hours per day to 18 hours per day Monday through

Friday and 24 hours per day
Saturday and Sunday.

▪ **CS/CS/CS/HB 631** **Motor Vehicles**

The bill amends s. 316.1951, F.S., to revise provisions relating to parking vehicles on public property for the purpose of displaying the vehicles for sale, hire, or rental (a process known as "curbstoning"). The bill authorizes local governments to adopt ordinances allowing code enforcement officers to issue citations for curbstoning, and allowing law enforcement officers and code enforcement officers to have certain "curbstoned" vehicles towed immediately.

The bill provides a mandatory fine of \$100 for violations of these provisions and requires a release form prescribed by the Department of Highway Safety and Motor Vehicles (DHSMV) to be completed before the motor vehicle can be returned. The bill modifies motor vehicle dealer requirements relating to the sale of motor vehicles by:

- Removing notarization requirements by requiring a perjury statement to appear on certain forms;
- Providing that motor vehicle dealers selling vehicles to persons that reside in other states need not apply for a title certificate;
- Directing the DHSMV to place the name of the owner of a motor vehicle on the list of persons who may not be issued a license plate, revalidation sticker, or replacement plate if the name of the owner appears on a list submitted to DHSMV by a licensed motor vehicle dealer for failure to pay for a previous registration of the vehicle;
- Removing "pilot program" language regarding privatized dealer training education;
- Authorizing motor vehicle dealers to keep certain required records in electronic form if desired; and

- Authorizing DHSMV to suspend, deny, or revoke the license of any licensee based on issues related to non-payment of required fees to DHSMV or a dealer training school.

The bill increases the width and weight requirements in the definition of recreational off-highway vehicles in chs. 261 and 317, F.S. In addition, the bill exempts persons purchasing auto insurance from the requirement of paying two months premium to a premium finance company when payment is made by electronic funds transfer.

The bill limits the number of times a habitual offender may elect school in lieu of a court appearance to five times in a lifetime, and the bill provides an exemption from a requirement to attend a driver improvement course for drivers if adjudication is withheld under certain violations by the court.

The bill also amends s. 319.30, F.S., regarding derelict vehicles and mobile homes, to clarify the process owners, transporters, salvage motor vehicle dealers, and secondary metals recyclers must follow prior to destroying or dismantling derelict vehicles and mobile homes. The bill:

- Clarifies the definition of “derelict vehicle” by specifying that the 10-year old model is based on the model year of the vehicle being year one;
- Redefines derelict motor vehicle certificate to clarify that once a certificate is issued, the vehicle can only be dismantled or converted to scrap metal;
- Adds lien-holder notification by the DHSMV; if a lien exists on the derelict vehicle with less than 3 years with the ability of the department to cancel the lien; if the lien-holder does not notify DHSMV within 10 days;
- Extends the buyer hold period until the procedure is complete;
- Clarifies an application is required to obtain the certificate;

- Allows for and defines “seller” in cases where the owner is not able to make application;
- References proper endorsement requirements for titles; and
- Requires additional personal identification criteria for transactions involving derelict vehicles and mobile homes.

▪ **CS/CS/SB 644**
Direct Support Organization;
Department of Military Affairs

The bill establishes the Soldiers and Airmen Assistance Program to provide need-based financial assistance to eligible Florida National Guard members and their dependents and families. In addition, the bill authorizes the Department of Military Affairs’ existing direct support organization to support the program. The Soldiers and Airmen Assistance Program is funded by the department’s direct support organization. Assistance available under the program may include:

- Housing assistance;
- Living expenses;
- Repairs of the service-member’s primary vehicle;
- Health care; and
- Other reasonable expenses.

Members of the Florida National Guard who are serving in the Global War on Terrorism, Overseas Contingency Operations, or deployed by the federal government for homeland defense are eligible for program participation. Eligibility is extended to Guard members’ families and dependents. The direct support organization is required to conduct a quarterly review of financial transactions and submit this review to the department.

2010 LEGISLATIVE REPORT

▪ **CS/CS/CS/CS/HB 663** **Building Safety; Elevator Safety;** **Fire Prevention**

The bill revises various laws related to building safety, including provisions related to the Florida Building Code, the Elevator Safety Code, and the Fire Prevention Code. The bill provides that the expiration, lapse, non-renewal, or revocation of a building permit issued to the property owner after a 3 year period provided to commence repair or rebuilding constitutes abandonment of the property as homestead.

The bill delays applicability of home inspector and mold assessor licensure and regulation until July 1, 2011, provides home inspector and mold assessor licensing programs under ch. 20, F.S., amends licensure requirements, and provides guidelines for practicing home inspectors and mold assessors to be licensed under a grandfather provision. Regarding elevator safety, the bill:

- States that the Division of Hotels and Restaurants (division) may enter and have reasonable access to all buildings and rooms or spaces in which an existing or newly installed conveyance or equipment are located, authorizing the division to grant variances for undue hardship;
- Exempts elevators issued certificates of operation before July 1, 2008, from any updates to the Elevator Safety Code concerning modifications for Phase II Firefighter Services until July 1, 2015, or until it is replaced or modified, whichever comes first; and
- Provides that a lock box containing all elevator keys and accessible by the master key of the relevant emergency response region may be an alternative method to elevator emergency public access requirements.

Regarding the Florida Building Code, the bill:

- Authorizes distance learning courses as an alternative to continuing education requirements for certain licenses;
- Requires that mold assessors or mold re-mediators must maintain general liability and errors and omissions for both preliminary and post-remediation mold assessment insurance coverage of at least \$1 million as a requirement for licensure;
- Revises the surcharge on building permit fee for the Building Code Administrators and Inspectors Fund by setting the surcharge rate at 1.5 percent of all permit fees associated with enforcement of the Florida Building Code and provides that the minimum amount collected on any issued permit shall be \$2;
- Authorizes the Department of Community Affairs to contract for administration of the inspection and certification of manufactured buildings and reinstates local jurisdiction over prototype buildings;
- Requires state agencies to contract for inspection services under the alternative plans review and inspection process or with a local governmental entity;
- Permits the Florida Building Commission to charge a fee of no more than \$125 for filing requests for declaratory statements and for nonbinding interpretations of the Florida Building Code;
- Exempts certain mausoleums and prisoner housing from the Florida Building Code; and
- Revises requirements related to:
 - Carbon monoxide alarms, residential pool filtration pumps and motors, energy-saving devices, air conditioner installation, ground and roof-mounted mechanical equipment, windstorm mitigation, and classroom and public building illumination.

Relating to fire prevention and safety, the bill:

- Prohibits a property owner from being required to install fire sprinklers in any residential property based on the use, change in use, or reclassification of that property as a rental property;
- Provides guidelines for the State Fire Marshal to follow when issuing expedited declaratory statements;
- Establishes a process for the Division of the State Fire Marshal and the Fire Code Interpretation Committee to issue nonbinding interpretations of the Florida Fire Prevention Code;
- Requires continuing education reciprocity between the Division of the State Fire Marshal and the Building Code Administrators and Inspectors Board;
- Amends certification requirements for fire protection service contractors, fire equipment dealers, and certain firefighters;
- Revises continuing education licensure requirements; and
- Prohibits agencies from requiring the removal of any fire sprinkler systems system that is not required by such codes/standards.

The bill also directs that public fire hydrants owned by a governmental entity be inspected following standards adopted by the State Fire Marshal or equivalent standards.

Additionally, the bill provides that county, municipal, and special district utilities may perform fire hydrant inspections with employees that have not been certified by the State Fire Marshal; however, the utilities are responsible for ensuring that the designated employees are qualified to perform such inspections.

The bill repeals the 5-year inspection requirement concerning the maintenance, useful life, and replacement cost of common elements for certain condominiums.

▪ **CS/CS/CS/HB 713**
Department of Business and Professional Regulation

The bill amends numerous provisions relating to regulatory activities of the Department of Business and Professional Regulation. The bill:

- Amends the department's service of process procedures to provide that the department shall call the licensee's last telephone number of record, and publish in a newspaper if service via mail is unsuccessful;
- Provides that general regulatory provisions concerning the department in ch. 455, F.S., only apply to the regulation of the Division of Professions;
- Authorizes the department to enter into an interagency agreement with the Department of Highway Safety and Motor Vehicles for access to photographic records for inclusion on department licenses;
- Creates a temporary professional license for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida;
- Requires that upon a determination by the department that it erroneously issued a license, or upon the revocation of a license, the licensee must surrender his or her license to the department;
- Prohibits an examinee whose examination materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another examination until the criminal investigation is concluded;
- Amends various provisions of the home inspection licensing program (previously scheduled to become effective July 1, 2010), which include amendments to the definition of home inspection services, eliminating the certificate of authorization for companies, authorizing applicants to

2010 LEGISLATIVE REPORT

- take the licensure examination without having to obtain department approval, requiring a criminal history check for applicants, delaying the effective date for enforcement provisions to July 1, 2011, changing the grandfather provision, and providing additional rulemaking authority to the department;
- Amends various provisions of the mold-related services licensure program (previously scheduled to become effective July 1, 2010), which include amendments eliminating the certificate of authorization for companies, authorizing applicants to take the licensure examination without having to obtain department approval, clarifying that the two-year degree requirement must be an associate of arts degree or equivalent with 30 semester hours in specified courses, delaying the effective date for enforcement provisions to July 1, 2011, changing the grandfather provision, and providing additional rulemaking authority to the department;
- Expands the exemption from licensure requirements to allow veterinary interns or residents who are graduates-in-training, to be a graduate of a school recognized by the Educational Commission for Foreign Veterinary Graduates;
- Transfers carbon monoxide regulation in public lodging establishments from the Division of Hotels and Restaurants to the State Fire Marshal;
- Revises the qualifications of members of the Florida Real Estate Appraisal Board;
- Allows the Florida State Boxing Commission to issue a notice to cease and desist for unlicensed activity;
- Removes the requirement that cosmetology applicants must take the examination within 6 months after approval to take the examination; and
- Repeals HIV/AIDS educational requirements for funeral directors and embalmers from ch. 455, F.S. The regulation of funeral directors and embalmers is provided in ch. 497, F.S.

▪ **CS/CS/CS/SB 742** **Public Safety Telecommunicators;** **E911**

The bill renames "911 emergency dispatchers" to "911 public safety telecommunicators" and expands the functions they perform related to 911 calls. By October 1, 2012, any person employed as a 911 public safety telecommunicator at a public safety answering point must be certified by the Department of Health (DOH). A public safety agency may employ a 911 public safety telecommunicator trainee for a period not to exceed 12 months under certain conditions.

Certification and recertification requirements for a 911 public safety telecommunicator are outlined in the bill, including fees, training, and requirements for applicants to sit for a competency / proficiency examination administered by the DOH for initial certification after October 1, 2012.

The bill revises an existing grandfather clause for emergency dispatchers to include 911 public safety telecommunicators. Under the grandfather clause, the DOH must establish by rule a procedure for the initial certification of 911 public safety telecommunicators who document 3 years of supervised full-time employment as a 911 public safety telecommunicator or an emergency dispatcher since January 1, 2002. This grandfather clause expires on October 1, 2012.

In addition, if a person was employed as a 911 public safety telecommunicator, a sworn state-certified law enforcement officer, or a state-certified firefighter before April 1, 2012, upon passage of

the examination, the public safety telecommunication training program requirement is waived for initial certification. The DOH is required to establish procedures for approval of public safety telecommunication training programs.

The bill revises provisions for disciplinary action and penalties against emergency medical personnel to include public safety telecommunicators. The bill adds dispatching to the list of E911 services and revises the authorized expenditures of the E911 fee, to include the fees collected by the DOH for certification and recertification of 911 public safety telecommunicators.

▪ **CS/HB 751**
Automatic Renewal of Service Contracts Notice

This bill requires clear and conspicuous disclosure of automatic renewal provisions in service contracts, if the provision renews a contract for more than one month, and if the provision causes the contract to be in effect more than 6 months after the contract was initiated. If the length of the service contract is 12 months or more, and if the contract automatically renews for a period of more than 1 month, the provider must notify the consumer, in a clear and conspicuous manner, of the renewal and how to cancel the renewal "no less than 30 days and no more than 60 days before" the deadline provided in the service contract. The contract renewal is effective until the consumer terminates the service contract. The consumer must give the seller notice of his or her intent to terminate the contract.

This bill makes automatic renewal provisions void and unenforceable if any requirements of the bill are violated, except under certain circumstances. This bill provides exemptions from the disclosure and notice requirements for financial institutions, health studios, licensed insurance providers, warranty associations, health care service organizations and programs, electric

utilities, and private companies providing certain municipal services. This bill creates an undesignated section of the Florida Statutes.

▪ **CS/SB 814**
Lifeline Telecommunications Service

The bill revises provisions in s. 364.10(3), F.S., related to the development of procedures to promote participation and automatic enrollment in Lifeline services. The bill authorizes commercial mobile radio service providers designated as eligible telecommunications carriers (ETCs) pursuant to 47 U.S.C. s. 214(e) to use the federal poverty guidelines as eligibility criteria to offer Lifeline services after notifying the Public Service Commission (PSC) of this election.

The bill authorizes the Department of Children and Families, the Department of Education, the PSC, and the Office of Public Counsel to share certain information with authorized ETCs, such as a person's name, date of birth, service address, and telephone number, so that the carriers can identify and enroll an eligible person in the Lifeline and Link-Up programs. This information would remain confidential pursuant to s. 364.107, F.S., and is only to be used for determining eligibility and enrollment in the Lifeline program.

The bill provides that a Lifeline Workgroup will convene by December 31, 2010, to discuss how eligible subscriber information will be shared, the obligations of each party with respect to that information, and the procedures to be implemented to verify eligibility in these programs. The bill changes the date to December 31, 2010, by which both procedures to promote Lifeline participation and procedures for automatic enrollment in Lifeline must be developed.

2010 LEGISLATIVE REPORT

▪ **CS/HB 951** **Public Safety; Gun Purchases**

The bill revises the process for removing mental health records from the Florida Department of Law Enforcement's (FDLE's) mental competency database for purposes of firearms purchases. These revisions align the statutes with federal law requirements. The bill requires FDLE to retain fingerprints submitted as part of the job application process upon official written request and subject to the department having sufficient funding to do so. The bill also requires FDLE to store the additional fingerprints that it retains in the Automated Fingerprint Identification System (AFIS)/Applicant Fingerprint Retention and Notification Program (AFRNP) and to search all incoming Florida arrest fingerprint cards against the fingerprints retained in AFIS/AFRNP.

The bill requires the Criminal Justice Standards and Training Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.

This bill also updates the Basic Recruit Training Program exemption statutes to require employing agencies and criminal justice selection centers to verify that a person has completed the appropriate basic recruit training program and has served as an officer for the required amount of time without breaks in service. It provides for removing correctional probation officers from the list of persons who must pass a basic skills exam in order to be admitted to a basic recruit training program.

▪ **CS/CS/CS/HB 963** **Seaports**

Florida has 14 public seaports: Port of Fernandina, Port of Fort Pierce, Port of Jacksonville, Port of Key West, Port of Miami, Port of Palm Beach, Port Panama

City, Port of Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, Port of St. Petersburg, and Port of Tampa. Each has different infrastructure needs to maintain their competitiveness and improve their capabilities to handle and move cargo. This bill includes several inter-related proposals related to seaports – it creates a port conceptual permit system that will allow the Department of Environmental Protection (DEP) to issue an umbrella permit that ties together a series of individual environmental permits and authorizations normally needed for port construction projects or dredging operations.

It specifies that seaport projects to rehabilitate wharves, docks, berths, bulkheads, and similar structures only require a 25-percent match, rather than a 50-percent match, for state funding available under the existing Florida Seaport Transportation and Economic Development (FSTED) funding program. It requires the Florida Department of Transportation (FDOT) to include specific FSTED approved seaport projects to be funded during the ensuing fiscal year in its tentative transportation work program.

The total amount of funding to be allocated to seaport projects in the next successive 4 fiscal years also must be included, but no specific projects will be tied to those outer-year funds.

▪ **CS/CS/HB 971** **Highway Safety and Motor Vehicles**

The bill contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (department).

- Amends several sections of law to provide for legal operation of tri-vehicles in Florida. Defines "tri-vehicle" in both Chapters 316 and 322, and exempts such vehicles from the definition of "motorcycle", for clarity. The definition of "tri-vehicle" requires such vehicles to meet several

- Federal safety standards for seat-belts, windshield wipers, and "roof crush" resistance;
- Provides that a tri-vehicle, being an inherently low-emission vehicle, is included in the definition of "hybrid vehicle" for the purposes of s. 316.0741, F.S., and may be driven in a High-Occupancy Vehicle lane;
 - Provides that a law enforcement officer's crash report submission as part of a DUI administrative suspension is permissive, not mandatory. Also adds local law enforcement agencies and county traffic operation centers to the list of entities authorized to receive crash reports before the 60-day period expires;
 - Requires the driver of a commercial motor vehicle to slow down and check that the tracks are clear of an approaching train before crossing at grade tracks of a railroad. In addition, a violation of this provision is punishable as a noncriminal moving violation;
 - Increases the minimum disqualifications for commercial drivers operating while under an out-of-service order from 90 days to 180 days for a first violation, and from 1 year to 2 years for a second violation;
 - Shortens the advance renewal of registration period for vehicles covered by the International Registration Plan from 5 months to 3 months prior to the date registration expires; and
 - Deletes the provisions requiring all companies providing towing and impounding services for the court system, as it relates to drivers convicted of offenses requiring impoundment or immobilization, to hold a Class R license. However, any immobilization agency engaged in the business of immobilizing vehicles

must provide to the clerk of the court an affidavit attesting that the agency:

- Has verifiable experience in immobilizing vehicles;
- Maintains, for at least three years, accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court's order of impoundment or immobilization, and any other documents relevant to each immobilization; and
- Employs and assigns persons to immobilize vehicles that meet certain statutory requirements.

The immobilization agency must conduct a state criminal history check through the Florida Department of Law Enforcement to ensure the person hired to immobilize vehicles meets the statutory requirements. Also amends the definition of "immobilization agency" to include and mean any person who meets all of the conditions of s. 316.193(13), F.S.

- Provides that, if the roadway is marked for bicycle use, bicyclists must ride in the marked bicycle lane, although current exceptions are still applicable;
- Allows the license tag of a motorcycle or moped to be affixed and displayed parallel to the ground in a manner that the numbers and letters read from left to right. However, a license tag for a motorcycle or moped may be affixed and displayed perpendicularly to the ground in a manner that the numbers and letters read from top to bottom, if the registered owner of the motorcycle or moped maintains a prepaid toll account in good standing and an affixed transponder;
- Adds an additional category of devices that may lawfully be attached to a windshield, including a global positioning system (GPS) device or

2010 LEGISLATIVE REPORT

similar satellite receiver device using the GPS system for the purpose of obtaining navigation or routing information while the motor vehicle is being operated;

- Expands the medical exception from sun screening requirements and directs the department to consult with its Medical Advisory Board, to establish exceptions for persons with certain auto-immune disorders. Vehicles owned or leased by private investigators and private investigative agencies, F.S., are also exempted from sun screening requirements;
- Removes the court's discretionary power by providing that, upon a traffic conviction, the court "shall notify" the department of the conviction. If the court does not independently suspend the driver's license and registration, the department will do so administratively; and
- Eliminates the signature requirement on some non-criminal traffic infractions. Violations requiring a mandatory hearing and criminal violations will continue to require a signature from the offender. When the infraction does not require a signature, the officer must certify by electronic, electronic facsimile, or written signature the citation was delivered to the person cited.

This certification is prima facie evidence the person cited was served with the citation.

- Provides any person who refuses to accept and sign a summons to appear commits a misdemeanor of the second degree; and
- Provides for additional categories of drivers to be added to a list of offenses for which a driver may provide "proof of compliance" to a clerk of court's office, have adjudication withheld for the offense,

and have his or her license reinstated.

This option is not available to holders of commercial driver's licenses, and drivers may only take advantage of this opportunity three times in a lifetime.

- Provides a person exceeding the speed limit in a designated school crossing must pay a fine double the amounts established for unlawful speed ranging from \$50 to \$500;
- Clarifies lien-holders repossessing motor vehicle in this state must apply to a tax collector in this state, in order to receive a new title or certificate of destruction for the motor vehicle; and
- Defines "independent entity" as a business or entity that may temporarily store damaged or dismantled motor vehicles pursuant to an agreement with an insurance company and is engaged in the sale or resale of damaged or dismantled motor vehicles. The term does not include a wrecker operator, towing company, or a repair facility. Section 319.30(9), F.S., is created to establish notice requirements for vehicles in the possession of an independent entity that have been released to the owner by the insurance company. The insurance company is required to provide a release statement on a form prescribed by the department authorizing the independent entity to release the vehicle to the owner.

The independent entity in possession of a motor vehicle is required to send notice via certified mail to the owner of the vehicle that the vehicle has been released. The notice must inform the owner that he or she has 30 days to pick up the vehicle from the independent entity. Thereafter, the independent entity may apply for a certificate of destruction or certificate of title for unclaimed vehicles after 30 days.

- Extends the moratorium on new specialty license plates until 2014, and creates a new pre-sales process for the issuance of specialty license plates in the future.
- Removes the existing “scientific sample survey” approach to measuring applicants’ interest in purchasing a new specialty license plate.

The bill provides organizations must still submit a request for a plate, submit the \$60,000 application fee, and provide long- and short-term marketing plans.

Once a new plate is approved by law, the department must develop a pre-sales system whereby drivers indicate their preference for the plate by pre-ordering the plate, paying all required costs but receiving a voucher. Only after 1,000 vouchers have been issued, shall the department begin to manufacture the plate. If 1,000 pre-sales are not recorded in the first 24 months, the plate is de-authorized.

Holders of vouchers for such plates may use the voucher as a credit towards another specialty plate, or may apply for a refund. The bill clarifies specialty license plates that are currently exempt from the moratorium must comply with the existing license plate process. Notwithstanding the requirements of s. 320.08053, F.S., the department is required to develop the “Hispanic Achievers” license plate. Drivers can purchase this specialty plate upon payment of the appropriate license taxes and fees and a \$25 annual use fee.

The proceeds from this plate are directed to the National Hispanic Corporate Achievers, Inc., to fund grants and provide scholarships through the Hispanic Achievers Grant Council. Up to 10 percent of the annual use fees may be used for administration of the program, 25 percent may be used by the Hispanic Corporate Achievers, Inc., in Seminole County, for grants, and the

remaining proceeds may be used by the Grant Council throughout the state.

- Creates unique license plate numbers for legislative plates. Specifically, a Member of Congress license plate will be stamped with the letters “MC,” a State Legislator license plate for a House of Representatives member will be stamped with the letters “HR,” and the State Senator license plate will be stamped with the letters “SN.” Any of these designations may have any other configuration chosen by the member, which is not already in use;
- Extends the registration expiration date from a maximum of 15 months to a maximum of 27 months and allow for a biennial registration renewal or annual renewal;
- Clarifies s. 321.05, F.S., regarding the powers and duties of the Florida Highway Patrol (FHP). The bill provides FHP members are sworn state law enforcement officers entitled to the same privileges as other law enforcement officers, including authority to obtain search warrants pursuant to ch. 933, F.S., and make arrests pursuant to ch. 901, F.S. The bill also clarifies, in s. 321.03, F.S., it is unlawful to operate a motor vehicle colored in the same or similar manner as a FHP motor vehicle, unless specifically authorized;
- Eliminates the requirement in s. 322.121, F.S., that “problem drivers” re-take the road-sign test at the time of license renewal. All drivers will continue to require eyesight and hearing tests; and
- Allows a person whose driver’s license has been revoked because of four or more DUI convictions to become eligible to petition the department for reinstatement of his or her driving privilege after waiting 10 years from the conviction or

2010 LEGISLATIVE REPORT

completion of incarceration, whichever occurs later.

The petitioner must meet the following criteria:

- Has not been arrested for a drug-related offense for at least five years prior to the hearing;
- Has not driven with a suspended or revoked license for at least five years prior to the hearing;
- Has been drug-free for at least five years prior to the hearing; and
- Has completed a licensed DUI program.

If the DHSMV reinstates the petitioner's license, the following conditions apply:

- Petitioner's license must be restricted for employment purposes for at least one year;
- Petitioner must be supervised by a DUI program for the revocation time period;
- Petitioner must assume all reasonable costs of supervision;
- Petitioner must forfeit the license if he or she is subsequently convicted of an offense requiring mandatory revocation; and
- Petitioner must have an ignition interlock device installed on his or her vehicle for no less than five years.
- Provides additional restrictions on instructors, agents, and employees of commercial driving schools.

The bill provides the department may suspend or revoke the license or certificate of any instructor, agent, or employee of a driving school who:

- Has ever been convicted of, pled no contest to, or had adjudication withheld on any felony or misdemeanor (as proven by a criminal background check the cost of which has been borne by the instructor, agent, or employee);

- Has committed any fraud or willful misrepresentation in applying for a license under the chapter; or
- Has solicited business on any premises used by department or a tax collector for the purpose of licensing drivers; and
- Amends several sections of ch. 316, F.S., for the purpose of authorizing the use of various motorized devices on bicycle paths, sidewalks, and sidewalk areas.

Essentially, the bill:

- Authorizes local governments to enact ordinances allowing vehicles, golf carts, mopeds, and motorized scooters to be operated on sidewalks and sidewalk areas.
- Allows the use of motorized wheelchairs on sidewalks and bicycle paths.

▪ **CS/CS/CS/HB 981** **Agriculture**

The bill prohibits a change in the assessment of land classified as agricultural land if the only changed circumstance is that the land is being offered for sale.

It specifies how structures or improvements are to be assessed if they are used for frost and freeze protection in horticulture production. It provides the authority for the Department of Agriculture and Consumer Services (DACS), in conjunction with other interested agencies, to develop a permitting process that will allow the Department of Environmental Protection to regulate pesticides applied to waters of the state in conformity with the federal Clean Water Act.

▪ **CS/HB 1003** **Veterans**

The bill amends:

- Section 496.406, F.S., to exempt veterans' service organizations which are federally chartered under Title

36, U.S.C., from the registration requirements for charitable organizations conducting fund raising found in s. 496.405, F.S.;

- Section 295.187, F.S., to align the state definition of a "service-disabled veteran," for purposes of the Florida Service-Disabled Veteran Business Enterprise Opportunity Act with the federal definition found in Title 38 U.S.C. § 101 (16);
- Section 296.06, F.S., regarding a veteran's eligibility for residency in the state's veterans' domiciliary home to require that a veteran must have been approved for care and treatment by the United States Department of Veterans Affairs; and
- Section 296.36, F.S., to allow veterans with eligible peacetime military service as well as those with wartime service to be admitted to one of the state's veterans' nursing homes.

The bill further requires that a veteran must have been approved for care and treatment by the United States Department of Veterans Affairs in order to be admitted to one of the state's veterans' nursing homes.

▪ **CS/CS/SB 1004**
Local Government; Lease; Roadways

The bill authorizes the board of county commissioners to negotiate the lease of real property for a term not to exceed five years, rather than having to go through the competitive bidding process.

The bill also allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located.

▪ **CS/SB 1012**
Department of Juvenile Justice Facilities and Programs

The bill creates a definition of "ordinary medical care in department facilities and programs" to include routine medical

procedures such as "inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventive services, medication management, chronic disease detection and treatment, and other routine medical procedures that . . . do not involve hospitalization, surgery, or use of general anesthesia." Section 985.03(39), F.S.

The bill also amends s. 985.64, F.S., the department's rulemaking statute, to require the Department of Juvenile Justice (DJJ) to adopt rules for ordinary medical care, mental health services, substance abuse treatment services, and developmental disabilities services.

Additionally, the bill requires the DJJ to coordinate its rulemaking effort with the Department of Children and Family Services and the Agency for Persons with Disabilities to ensure there is no encroachment on either agency's substantive jurisdiction. As appropriate, the DJJ must include the above agencies in its rulemaking process.

▪ **HB 1013**
Citrus Canker Eradication

This bill repeals s. 581.1845, F.S., relating to citrus canker eradication, and removes all references to the Citrus Canker Eradication Program from the Florida Statutes. In January 2006, based on scientific analyses, the United States Department of Agriculture took the position that the current citrus canker eradication plan in Florida was inadequate to contain the disease and that a new management plan should be developed.

▪ **SB 1136**
Relating to Fire Safety Inspections

The bill provides that county, municipal, and special district utilities may designate employees to perform fire hydrant inspections, regardless of whether those employees are certified by the State Fire Marshal. Although a certification is no longer required, the county, municipal, and special district

2010 LEGISLATIVE REPORT

utilities are responsible for ensuring that the designated employees are qualified to perform fire hydrant inspections.

Additionally, the bill provides that public fire hydrants owned by a governmental entity shall be inspected following standards adopted by the State Fire Marshal or equivalent standards, such as those contained in the latest edition of the American Water Works Association Manual.

▪ **CS/HB 1157** **Local Government Prompt Payment Act**

The bill revises provisions relating to the timely payment for purchases of construction services for public construction projects. The bill requires that the requirements for a proper invoice, the dispute resolution procedure, and the agent acting on behalf of the local governmental entity be identified in the contract for the project. The bill provides that the local governmental entity must reject a payment request or invoice that does not meet the contract requirements.

The bill provides that each contract for construction services between a local governmental entity and a contractor must provide for the development of a single list of items required to be completed. The bill provides that the final contract completion date must be at least 30 days after the delivery of the list of items. Items not included in the list may not affect the final payment of retainage.

The bill further provides that if the local governmental entity fails to comply with its responsibilities to develop the list, the contractor may request payment of any remaining undisputed contract amount and that amount must be paid within 20 business days.

The bill requires that the local governmental entity notify vendors in writing within 10 days that the request or invoice for payment is improper. If the local governmental entity does not commence the dispute resolution

procedure within 45 days, the contractor may give written notice to the local governmental entity of the failure to timely commence the dispute resolution procedure.

If the local governmental entity does not commence the dispute resolution procedure within 4 business days after receiving the notice, the objection to payment shall be deemed to have been waived and any amounts resolved in the contractor's favor are subject to at least 1 percent interest per month. The bill also expands the attorney fee provision to permit courts to award attorney fees to the prevailing party.

▪ **CS/SB 1178** **Analysis of Legislation; Cost-benefit; Return on Investment**

The bill creates s. 216.138, F.S., providing authority for the President of the Senate or the Speaker of the House of Representatives to request special impact sessions of consensus estimating conferences to evaluate proposed legislation based on tools and models not generally employed by the conferences, including cost-benefit, return-on-investment, or dynamic scoring techniques, when suitable and appropriate for the legislation being evaluated.

The bill also provides that the Office of Economic and Demographic Research, acting in consultation with the principals of the consensus estimating conferences and after receiving public input, shall develop protocols and procedures necessary to implement the provisions of s. 216.138, F.S.

At a minimum, the protocols and procedures to be used for evaluating specific proposed legislation shall include cost benefit, return-on-investment, and dynamic scoring techniques and may include additional, appropriate economic techniques.

Additionally, the protocols and procedures must address the format for reporting results and provide proposed

linkages to the appropriations and revenue forecasting processes, including any statutory changes that may be needed. The linkages must be consistent with the constitutional requirement for a balanced budget.

The office is required to submit a report of its findings and recommendations to the President of the Senate and the Speaker of the House of Representatives by December 1, 2010. Subject to approval by the President of the Senate and the Speaker of the House of Representatives following the submission of the report, the protocols and procedures shall be used to the extent feasible for the analysis of specific proposed legislation by consensus estimating conferences as provided in s. 216.138, F.S., unless and until such approval is subsequently affirmatively revoked.

▪ **CS/CS/HB 1207
Campaign Financing**

This bill reenacts and amends provisions related to electioneering communications and electioneering communication organizations ("ECOs") to do the following:

- Redefine "electioneering communication" by removing references to issue elections and the number of persons in a geographic area who must be "targeted," specifying the distribution media subject to regulation, regulating advocacy that is the functional equivalent of express advocacy, and providing limited timeframes for when communications can be regulated;
- Redefine "electioneering communications organization" to clarify that it includes only those organizations with "election-related activities" that are limited to electioneering communications and that its activities would not require the group to register as a political party, political committee, or committee of continuous existence;

- Require an organization to register as an ECO upon receipt or expenditure of an aggregate amount exceeding \$5,000;
- Increase the amount an *individual* can expend before being subject to electioneering (and independent expenditure) disclosure requirements from \$100 to \$5,000, to conform;
- Remove prohibitions against an ECO accepting contributions from certain 527 and 501(c)(4) organizations, and restrictions against ECOs using contributions received proximate to an election; and
- Move the registration and reporting requirements for ECOs from a definitional section to the substantive provisions of Chapter 106.

Also, the bill authorizes the "leader" of each political party conference of the state Senate and House of Representatives to establish a separate, affiliated party committee ("APC") to support the election of candidates of the leader's political party. "Leader" means the President of the Senate, Speaker of the House of Representatives, and the minority leader of either house of the Legislature, until a person is designated by a political party conference of members of either house to succeed to the position – at which time the designee becomes the leader for purposes of the APC.

The appropriate APC receives the two-percent party assessment for its State Senate and House candidates who pay a qualifying fee to run for office, provided the APC agrees to abide by contribution limits and not make certain independent expenditures.

The bill provides that specified requirements and exemptions for political parties and state executive committees also apply to an APC. Finally, the bill removes the 28-day time limitation prior to a general election for contributions

2010 LEGISLATIVE REPORT

from political parties and APCs to candidates.

▪ **SB 1264** **International Banking Corporations**

This bill grants the Office of Financial Regulation (OFR) regulatory authority over International Trust Company Representative Offices (ITCROs), an entity that the OFR does not currently have the authority to regulate. The bill requires ITCROs to meet minimum licensure requirements, submit to ongoing safety and soundness requirements, and be subject to the examination and enforcement authority of the OFR.

Further, this bill will allow the OFR to consider the solvency of international banks in their home countries when granting or revoking licenses. The impetus for providing this additional regulatory authority is to prevent future Ponzi schemes resembling the one allegedly executed in recent years by Allen Stanford.

▪ **CS/CS/CS/HB 1271** **Transportation**

This bill makes a number of statutory changes related to transportation. The bill:

- Allows counties served by a regional transportation or transit authority to levy up to a 1% discretionary sales surtax for transportation systems by referendum;
- Reorganizes the membership of the Board of Pilot Commissioners and creates the Pilotage Rate Review Committee as part of the board;
- Removes obsolete language related to legislative review of the Seaport Loan Program;
- Clarifies the notification requirements to be used when a citation is issued for toll violations;
- Updates a reference to ensure the most recent federal motor carrier safety regulations are implemented;

- Allows points to only be imposed against a toll violator's driver's license if ordered by a judge;
- Declares provisions in motor carrier transport contracts indemnifying a shipper or trucking terminal for its own negligent acts, to be contrary to public policy, void, and unenforceable;
- Grants a weight allowance to compensate for anti-idling devices on commercial motor vehicles and allows FDOT and local authorities to issue permits authorizing a vehicle weighing 10% above the maximum allowable gross weight to use routes off the Interstate Highway System;
- Revises vehicle registration requirements for wreckers;
- Repeals the non-functioning SAFE Council and transfers existing and future revenues from its funding source, the United We Stand specialty license plate, to FDOT to be used in airport safety training and security projects;
- Clarifies the application process used by contractors seeking qualification to bid on transportation construction jobs;
- Clarifies authorization to allow placement of certain electric transmission lines applies only to limited access highways;
- Requires new rail transit systems to implement fare collection systems that are interoperable with multiple public transportation systems throughout the state;
- Authorizes LYNX to borrow up to \$10 million annually for refinancing purposes;
- Revises bonding provisions available to the Tampa Hillsborough County Expressway Authority to allow the authority to issue bonds without going through the State Board of Administration's Division of Bond Finance;

- Authorizes the creation of the Osceola County Expressway Authority;
- Allows the use of certain mitigation credits from other projects within the Wekiva Parkway study area;
- Increases the Lake Belt Area Wetland Mitigation fee from 24 cents per ton to 45 cents per ton of limerock or sand mined in the area;
- Deletes reporting provisions related to the progress and cost-savings of the “adopt-a-highway” program;
- Clarifies land uses in relation to outdoor advertising and provides for sign owners, advertisers, or property owners to be held liable for the removal of improperly permitted signs;
- Reduces the maximum fee FDOT may charge for logo signs on Interstates and removes authorization to implement a 3-year rotation for signs in areas where demand exceeds availability; and
- Provides explicit authority for public-use airports to dispose of or remove personal property, derelict or abandoned aircraft and derelict or abandoned motor vehicles from the airport’s premises.

▪ **CS/CS/HB 1307
State Financial Matters**

This legislation requires increased reporting and accountability by the State of Florida’s financial investment agency, the Board of Administration. It provides technical changes to the proper nomenclature of the separate defined benefit and defined contribution pension plans under the sponsorship of the Florida Retirement System. Employees with excess account balances after their transfer from one of the alternative optional annuity plans to the defined benefit pension plan may not access those balances until retirement. They may, however, use those balances to

purchase service credit or to upgrade service to which they may be entitled.

The Board is required to maintain participant complaint records for a specified period of time. Participants in the defined contribution plan will have benefit amounts forfeited due to early termination in a separate trust account, subject to federal compliance regulation, which amounts must be reduced expeditiously to reduce overall plan costs for the remaining participants.

Administrative expense charges for the defined contribution plan declines from five to three basis points (.05% to .03% or .0005 to .0003) from July 1, 2010, to June 30, 2014. The expense charges reset to four basis points on July 1, 2014. Market losses experienced by participants in the defined contribution program due to delayed employer contribution will not be restored if the delay is attributable to acts beyond the employer’s control. The Board is given the authority to invest monies of designated universities, state colleges, or direct-support organizations in the local government Investment Poll in the surplus trust fund created in s. 218.405, F.S.

The bill requires a statutory audit committee to direct the Board’s external auditors. Annual financial statements shall be produced and submitted to the Legislature. Minimum experience, knowledge, and expertise requirements will be required of future executive directors of the Board as well as of the members of the Investment Advisory Council, who will undergo regular fiduciary training. That council expands its membership from six to nine, effective February 1, 2011.

The Board receives expanded investment authorization to purchase additional public obligations pursuant to federal law or from securities issued through the Hurricane Catastrophe Fund.

Concentration limits in assets of foreign corporations are increased from 25 to 35 percent. Investment advisers and managers retained by the Board must adhere to strict ethics and disclosure

2010 LEGISLATIVE REPORT

requirements including a two-year hiatus from doing business with the Board by any member of the Investment Advisory Council. Investment managers and advisers to the Board shall annually certify that their decisions have been made in the best interest of the trust funds and that they refrain from personal business activity that could jeopardize their independence of judgment.

The Board is given the authority to engage in rule promulgation to affect the new standards. When events present a material adverse impact to the Board's funds requiring a forty-eight hour moratorium on contributions and withdrawals, the executive director may extend the moratorium until the Board can convene and address the material adverse events. Lastly, the Board may copyright and trademark and otherwise protect the products it develops as well as license or sell them to others for consideration.

▪ **CS/CS/HB 1389** **Space and Aerospace** **Infrastructure**

This bill, known as the "Space Transition and Revitalization Act," modifies the Quick Action Closing Fund (QAC) statute to emphasize the importance of the transition from the end of the space shuttle program, and caps at 20 percent the amount of QAC funds appropriated by the Legislature that may be awarded to projects that retain or create high-technology jobs directly associated with development of a diverse aerospace economy in Florida.

The bill also allows for the waiver of QAC eligibility criteria, such as the wage requirement or the required minimum \$5 to \$1 return on investment, for projects that help mitigate the adverse economic impacts associated with the 2010 retirement of the Space Shuttle Program. Finally, the bill provides flexibility for Space Florida to spend the remainder of a 2008 appropriation for improvements at Space Launch Complex 36, at

Kennedy Space Center, for the following additional purposes:

- Improving other launch complexes and space transportation facilities to attract new space vehicle testing and launch businesses to Florida;
- Addressing intermodal requirements and impacts of the launch ranges, spaceports, and other space transportation facilities to meet current and future needs of the U.S. commercial space transportation industry;
- Advancing aerospace technology to meet the current and future needs of the U.S. commercial space transportation industry; and
- Assisting in the development of joint-use facilities and technology that support aviation and aerospace operations, including high-altitude and suborbital flights and range technology development.

Nearly identical language also passed in section 72 of the 2010-2011 General Appropriations Act, in CS/SB 1752, and CS/HB 969.

▪ **HB 1401** **Export of Goods of Value to** **Foreign Countries**

This bill prohibits any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government from issuing a certificate of free sale, export certification report, certificate of good manufacturing practices, permit, registration, license, or certification of any kind for any good, commodity, or thing of value to be exported to a foreign country that has been designated by the U.S. Secretary of State as a state sponsor of terrorism.

▪ **CS/CS/SB 1516** **State-owned Lands**

This bill provides for the following:

- Authorizes the Department of Environmental Protection (DEP) to

- create and maintain a comprehensive state-owned real property database that includes an accurate inventory of all real property leased, owned, rented, and otherwise occupied or managed by the state, the judicial branch, and water management districts;
- Requires an inventory of state-owned facilities and directs all state agencies to report certain data annually to the Department of Management Services (DMS);
 - By September 30 of each year, the Department of Revenue (DOR) is directed to electronically furnish to the Board of Trustees of the Internal Improvement Trust Fund (BOT) the approved preliminary tax roll data for public lands for use in compiling inventory data;
 - Provides for the implementation of the comprehensive state-owned real property system. The bill directs the DEP to submit an updated feasibility study for the Lands Inventory Tracking System, to include in its scope the comprehensive state-owned system, by November 1, 2010;
 - Requires the DEP to implement a project governance structure with an executive steering committee comprised of the secretary of the DEP; the executive directors of the DMS, DOR, and Agency for Enterprise Information; the state Chief Financial Officer; and property appraiser representatives;
 - Directs the executive steering committee to complete a business process analysis and documentation of both the detailed system requirements and the overall system architecture. The business process analysis is due to the Governor and the Legislature by February 1, 2011;
 - By October 1 of each year, the bill directs the DEP to submit a report that lists state-owned real property recommended for disposition to the Governor, the President of the

Senate, and the Speaker of the House of Representatives. Prior to disposition, a state-owned building or parcel of land shall first be offered for lease to state agencies, state universities, and community colleges; and

- Directs the BOT to transfer the lease interests relating to G. Pierce Wood Hospital to the University of South Florida Polytechnic and requires the university to honor all current leases and subleases. Provides an appropriation of \$320,000 to the DEP for the comprehensive state-owned real property system.

▪ **CS/HB 1551**
Black Business Investment Board, Inc.

In 1985, the Legislature created the Florida Black Business Investment Board (FBBIB) as a non-profit corporation to support the creation and expansion of black-owned enterprises in Florida. In 2007, the Black Business Loan Program was established in the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to disburse annually appropriated funds to eligible recipients who would provide loans and loan guarantees to, and invest in, qualified businesses. The FBBIB was assigned specific responsibilities in the administration of the program, to include receiving the grant applications and making recommendations for certification of grant recipients.

The bill transfers most of the FBBIB's responsibilities relating to the administration of the Black Business Loan Program to OTTED and reduces the time-frame for certifying and distributing the annual grants. The bill also reduces the eligibility requirements of the "existing recipients" (who are the eight regional Black Business Investment Corporations, or BBICs, and the Florida Black Business Support Corporation, doing business as Access Florida) for annual grants from the Black Business Loan Program.

Current law requires recipients:

2010 LEGISLATIVE REPORT

- Be a corporation registered in the state;
- Demonstrate that its board of directors includes citizens of the state experienced in the development of black business enterprises;
- Demonstrate that the recipient has a business plan that allows the recipient to operate in a manner consistent with the Florida Black Business Investment Act [ss. 288.707-288.714, F.S.] and the rules of the OTTED;
- Demonstrate that the recipient has the technical skills to analyze and evaluate applications by black business enterprises for loans, loan guarantees, or investments;
- Demonstrate that the recipient has established viable partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks;
- Demonstrate that the recipient can provide a private match equal to 20 percent of the amount of funds provided by OTTED; and
- Agree to maintain the recipient's books and records relating to funds received by OTTED according to generally accepted accounting principles and in accordance with the requirements of the Florida Single Audit Act [s. 215.97(7), F.S.] and to make those books and records available to OTTED for inspection upon reasonable notice.

All of these conditions will be required of a "new recipient" of the Black Business Investment Loan Program. In lieu of these eligibility requirements, "existing recipients" will be required to comply with the first and last of these conditions, and: "Annually submit to the office a financial audit performed by an independent certified public account for the most recently completed fiscal year, which audit does not reveal any material weaknesses or instances of material

noncompliance." Subsection (8)(c) is also amended to increase the portion of Black Business Loan Program grants which may be used for technical support from 9 to 12 percent, and administration from 7 to 10 percent.

The bill also authorizes the FBBIB to elect a chair and vice-chair, and authorizes the board to remove the chair by two-thirds vote of the board. Current law authorizes the Governor to appoint the chair, who serves at the pleasure of the Governor. In addition, the number of board appointments by the Governor is reduced from five to four, and the designation of the chair of the Florida Development Finance Corporation as a board member is deleted. Instead, the FBBIB is authorized to select two at-large members. The vice-chair of Enterprise Florida, Inc., is retained, but as an ex-officio, nonvoting member.

▪ **CS/CS/HB 1565** **Rulemaking**

Currently under the Administrative Procedure Act in ch. 120, F.S., each agency, before the adoption, amendment, or repeal of a rule, must consider that rule's impact on small businesses, small counties, and small cities as defined by current law, and prepare a statement of estimated regulatory costs (SERC). An agency is required to provide the Small Business Advisory Council (SBRAC) and the Governor's Office of Tourism, Trade, and Economic Development with notice of a proposed rule that affects small businesses 28 days prior to its adoption. SBRAC or a substantially affected person then has 21 days after receiving notice of a rule in which to review the impact of that rule on small businesses and to offer alternatives to lessen the identified impact.

If a lower cost alternative is offered by SBRAC or a substantially affected person, rule adoption is delayed an additional 21 days (on top of the basic 90 days) to give the agency time for analysis and response. If an agency does

not adopt an alternative offered by SBRAC, it must, prior to rule adoption or amendment, file a detailed written statement with the Joint Administrative Procedures Committee (JAPC) and SBRAC explaining the reasons for failure to adopt the alternatives. Similarly, the agency must make available to the substantially affected person that suggested a lower cost alternative a copy of the revised SERC. Florida law does not specifically require an agency to provide a substantially affected person a copy of its statement of reasons for rejecting the alternative, but most agencies do, as a matter of practice.

This bill requires an agency to prepare a SERC prior to the adoption, amendment, or repeal of any rule that has an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate. When a lower regulatory cost alternative to a proposed rule is submitted to an agency, the agency is required to revise its earlier SERC and either adopt the alternative or give a statement of the reasons for rejecting the alternative in favor of the proposed rule. The agency must provide a copy of its revised SERC to the substantially affected person that submitted the alternative and to JAPC within 45 days of filing the proposed rule for adoption. The bill also:

- Provides certain exceptions to the 90-day limitation for and the renewability of emergency rules;
- Rewords the statute to clarify the grounds for challenging the validity of a SERC, and the grounds by which a rule may be declared invalid by an administrative law judge; and
- Expands the requirements for a SERC to include an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact in excess of \$1 million in the aggregate within 5 years after the rule's implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, private-sector investment, productivity, innovation, or the ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets; or
- Increases in regulatory costs, including any transactional costs.

If the economic analysis portions of the SERC indicate the proposal will do any of the things reviewed in the economic analysis, the rule must be submitted to the President of the Senate and the Speaker of the House of Representatives 30 days before the next regular legislative session. The rule may not take effect until ratified by the Legislature. Gives any substantially affected person 44 days, instead of 20, after the SERC or revised SERC has been prepared and made available to the public to seek a determination from an administrative law judge that the proposed rule is invalid.

Finally, the bill gives agencies the ability to establish by rule the time period for requiring additional information from an applicant for a license, and may offer an extension to a license applicant for good cause. However, if the applicant believes the agency's request for additional information is not authorized by rule or law, then the agency, at the applicant's request, must proceed with processing the application.

▪ **CS/SB 1612**
Office of Supplier Diversity; DMS

This bill amends the certification and recertification process for minority business enterprises. The bill eliminates the requirement that an affidavit accompany the certification, and provides that the certification may include an electronic signature.

2010 LEGISLATIVE REPORT

▪ **CS/SB 1752** **Economic Development**

This bill is the omnibus Jobs For Florida economic development package that includes a wide variety of business incentives ranging from direct appropriations to tax credits and grants to reductions in state regulations. The bill:

❖ *Sales and Use Tax (SUT) Exemptions*

Revives and amends an exemption to the tax on admissions for events sponsored by a governmental entity, sports authority, or sports commission under certain conditions. This exemption expired on July 1, 2009.

The bill reenacts this exemption permanently:

- Creates additional exemptions from the tax on admissions for certain sporting events: the National Basketball Association All-Star Game, Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Contest; the National Hockey League All-Star Game; the Major League Baseball Home Run Derby; and the National Football League Pro-Bowl;
- Creates an exemption from the use tax for aircraft that are sold in Florida free of sales tax to a non-resident when the plane returns to Florida for fewer than 21 total days within 6 months after the date of purchase. The aircraft owner may demonstrate to the Florida Department of Revenue (DOR) that it has met the requirements of the exemption by producing specified documentation;
- Creates an exemption from the use tax for aircraft owned by a non-resident when it is used in Florida exclusively for the purpose of flight training, repairs, alterations, refitting, or modification. The non-resident owner must be able to prove entitlement to the exemption by producing written documentation issued by in-state vendors or suppliers that identifies the aircraft. There are

no time limitations associated with this exemption; and

- Creates an exemption from the state sales and use tax for aircraft that primarily will be used in a fractional aircraft ownership program, and for parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft for primary use in a fractional aircraft ownership program.

The bill exempts from the SUT the rental/leasing of space at a convention hall, civic hall, or meeting space at public lodgings to a person providing telecommunications, data systems management, or Internet services. This exemption is remedial and retroactive in nature. Modifies the definition of "productive output" to allow a manufacturer to be eligible for an SUT exemption based on a factory's individual product "lines," rather than its total product output.

❖ *Sales tax caps*

- Creates an \$18,000 cap on the amount of SUT that may be levied against each sale of a boat in Florida; and
- Creates a new section (s. 212.0597, F.S.) to cap the amount of state and local taxes levied under ch. 212, F.S., including any discretionary sales surtaxes, at \$300 on the sale or use of a fractional aircraft ownership interest.

The maximum tax applies to the total purchase price of the fractional ownership interest, including monthly management or maintenance fees, when sold by or to the program manager or transferred upon the manager's approval. A definition of "fractional aircraft ownership program" is added to s. 212.02, F.S., which requires a program to include a minimum of 25 aircraft to qualify for the exemptions created by the bill.

❖ *Tax Credits*

- Replaces the current film and entertainment industry cash refund incentive with a transferable tax credit program, for FY 10-11 through FY 14-15. The credits can be taken against SUT and corporate income tax. OTTED may award the following amount of credits over the life of the program: \$53.5 million the first year; \$74.5 million the second year; and \$38 million in each of the final 3 years. The tax credits may be claimed by the certified production company against its Florida tax liabilities; transferred by the certified production company to a Florida taxpayer; or relinquished by the certified production company to the state for 90 percent of the face value.
- Creates s. 220.1896, F.S., the Jobs for the Unemployed Tax Credit. This section creates, for FY 10-11 and FY 11-12, a \$1,000-per-employee CIT credit for businesses representing the state's target industry sectors that hire persons who have been unemployed at least 30 days prior to being hired by the eligible businesses and that meet other criteria.
- ❖ *Grants/Refunds*
 - Creates s. 288.0659, F.S., the "Local Government Distressed Area Matching Grant Program," to provide a matching grant to a local government's contribution or \$50,000, whichever is less, to a business that will create at least 15 jobs and meet other criteria. The business must locate in a community that is suffering from pervasive poverty, unemployment and general distress. This program also received \$3 million in state appropriations for use as grants.
 - Creates the 2-year "Manufacturing and Spaceport Investment Program," to provide grants of up to \$50,000 to eligible manufacturers, based on the difference in sales taxes paid on eligible equipment purchases made in the base year of 2008, compared to that on eligible equipment purchases in FY 10-11 and FY 11-12. The total "sales tax refund" is \$50,000 per business. For FY 10-11, \$19 million is available for refunds and \$24 million is available for refunds in FY 11-12, to be awarded on a first-come, first-served basis.
- Creates three new bonus categories for businesses that are certified as "qualified target industries," pursuant to s. 288,106, F.S. Eligible businesses may obtain additional refunds of eight taxes paid, in the following categories:
 - A \$2,000 per employee bonus for businesses that increase either the tonnage or value of exports by 10 percent a year.
 - A \$2,000 per employee bonus if the business is in one of the "high-impact industry sectors" of clean energy, corporate headquarters, financial services, biomedical technology, information technology, or transportation equipment manufacturing.
 - A \$1,000 per employee bonus for a business locating in a county which is matching the state's incentive on a dollar for dollar basis.
- Creates s. 288.9552, F.S., the Florida Research Commercialization Matching Grant Program, to be managed by the Institute for the Commercialization of Public Research. State funding in the amount of \$3 million total is appropriated for Phase I and Phase II grants for small, entrepreneurial companies trying to commercialize their discoveries.
- Appropriates \$2 million to the state university system for its State University Research Commercialization Assistance Grant program, which provides small grants to young companies trying to commercialize their institutional research into marketable products.

2010 LEGISLATIVE REPORT

❖ *Economic Development Provisions*

- Appropriates \$19.8 million to Space Florida for infrastructure improvements, aerospace-business recruitment; and retraining of aerospace workers, as a way to keep Florida's space industry viable through the transition from the Space Shuttle to the next NASA spaceflight program. Makes a number of accountability and structural changes to the spring-training baseball certification process for receiving state funds to build facilities. OTTED is able to decertify local governments that no longer have teams and have not encumbered the state funds, in order to recruit new teams from Arizona;
- It creates an opportunity for currently certified local governments that have lost their teams to recruit new franchises, before they are decertified by OTTED and must return state funds;
- It also requires all certified local governments with spring training teams to annually report on how the state funds are being used and the economic impacts of the teams, and directs OTTED and its partners to develop a strategic plan to help guide the future of spring training baseball in Florida. Recreates, with some changes, the Qualified Target Industry (QTI) Tax Refund Program, the state's most popular general economic incentive program, until June 30, 2020;
- Makes technical revisions to Florida's New Markets Development Tax Credit program to make the state law more compatible with federal law, and by doing so attract more private investors to Florida economic development projects in low-income communities;
- Appropriates \$15 million for the state's Quick Action Closing (QAC) Fund, contingent on Florida receiving an enhanced Federal Medical

Assistance Percentage (FMAP). QAC is the incentive program designed to "close the deal" with relocating businesses that are deciding whether to choose Florida over other states;

- Appropriates \$2.9 million to the Florida Export Finance Corporation to capitalize a collateralized, self-sustaining loan fund to help small exporters get loans. This new fund must complement the corporation's current programs in Part V, of ch. 288, F.S. (An additional \$2 million is appropriated contingent on FMAP enhancements.);
- Appropriates \$1 million in FY 10-11 to DEP for beach re-nourishment;
- Appropriates \$1 million in FY 10-11 for the Economic Gardening Technical Assistance program, created last year by the Legislature and housed at the University of Central Florida's business incubator. (An additional \$1 million is appropriated contingent on Florida receiving FMAP funding.);
- Appropriates \$2 million to the Defense Infrastructure Grant Program to assist communities located near military installations with economic development opportunities. (An additional \$2 million is appropriated contingent on FMAP enhancements.)
- Modifies the state's High Impact Business Incentive Program to create a new category of eligible projects – businesses that create 50 jobs and make a capital investment of \$50 million – and makes them eligible for a \$500,000 to \$1 million grant; and
- Amends s. 288.018, F.S., to allow rural infrastructure dollars to be spent for technical assistance to small rural communities. Extends Florida's "Homebuyer Opportunity Program" an additional year, to July 1, 2011, to take advantage of the federal first-time homebuyer program.

❖ *Government Transparency/Accountability*

- Requires counties and municipalities to report data on their economic development incentives in excess of \$25,000;
- Requires any economic development entity that receives funds from a county or municipality for economic development activities to submit an annual report, beginning January 15, 2011, to report back to the county detailing how the public funds were spent and the results of the expenditures on economic development within the county;
- Directs OTTED and its partners to review the state's Targeted Industry List and the High Impact Industry List every 3 years to determine if they should be modified, and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives with their findings. The first reports are due in 2011;
- Amends s. 288.1258, F.S., to modify a currently required Office of Film and Entertainment report related to film-related SUT exemptions to include return on investment calculations about the new film and entertainment tax credits. Requires the Office of Film and Entertainment to update its Statewide Master Plan every 5 years;
- Amends s. 373.441, F.S., to create a process for the Governor and Cabinet to review local government permitting delegation decisions by the Florida Department of Environmental Protection (DEP).
- Directs the Office of Program Policy and Government Accountability to review the Florida Enterprise Zone Program and the new Florida Research Commercialization Grant Program, with reports due next year.
- Community Renewal Act of 2009 Safeguards (Permit Extension):
 - Provides protections to persons or local governments that took

action under SB 360 from the 2009 session, including provisions relating to permit extensions, DRI exemptions, and comprehensive plan amendments relating to transportation concurrency exception areas.

- Adds an additional permit extension.

❖ *Miscellaneous Provisions*

PREFERENCE FOR HIRING FLORIDIANS IN STATE CONSTRUCTION CONTRACTS

The bill:

- Requires all contracts for construction funded by the state to contain a provision requiring the contractor to give preference to the employment of Florida residents in the performance of the work on the project if the residents have "substantially equal qualification" to those of non-residents (*substantially equal qualifications* is defined). Local construction contracts funded with local funds have the option to require such provisions. However, for work involving federal aid funds, the contract provision may not be enforceable to the extent it conflicts with federal law. Contractors required to hire Floridians must contact the Agency for Workforce Innovation to post the jobs on the state's job bank system (www.employflorida.com);
- Repeals the eligibility of condominium projects to receive an SUT exemption for building materials used in an enterprise zone. Amends s. 403.061, F.S., to allow DEP to expand the use of online self-certification for certain types of permits, to reduce unnecessary delays and paperwork;
- Extends to September 30, 2011, a deadline to upgrade underground fuel tank containment systems for those persons who have entered into consent agreements with DEP before July 1, 2010. Revisits the permit-

2010 LEGISLATIVE REPORT

- extension provisions in ch. 2009-96, L.O.F., to allow, under certain conditions, an additional 2-year extension. Also, new permit applicants may be able to get a 2-year extension of their permits, under certain conditions;
- Modifies the definition of “jobs” in the state’s economic development incentive programs to include leased employees, which reflects the changing employment market and is consistent with the federal definition. Grants OTTED the flexibility to renegotiate QAC contracts for FY 10-11 for projects that materially met the conditions of their agreement but fell short in some requirements because of adverse economic conditions;
 - Potentially accelerates the QAC approval process by allowing QAC project awards of less than \$2 million to be approved by the Legislature’s Presiding Officers, rather than the full Legislative Budget Commission (LBC), which typically meets quarterly. However, if either the Chair or Vice-chair of the LBC, the Senate President, or the Speaker of the House of Representatives objects to the QAC project, no funds will be released to that project until the LBC or the Legislature meets to review the project; and
 - Assigns OTTED one new FTE position to assist in the implementation of this act. The total appropriation associated with this position is \$98,127.
- **CS/SB 2374**
State Group Insurance Program
- The bill, relating to the state employees group insurance program:
- Directs the Department of Management Services to competitively procure post payment claims review services and dependent eligibility verification services for the state group insurance program,
- Places requirements on the department regarding contract renewals with health maintenance organizations for the 2011 calendar year, and
 - Requires the department to submit specified health plan information to the Legislature as well as recommendations for contracting with health maintenance organizations.
- **CS/SB 2386**
State Financial Matters
- The bill, relating to State Financial Matters does the following:
- Directs all agencies and the judicial branch to use electronic payment disbursements and receipts for all state payments where possible.
 - Requires state purchasing agreements and state term contracts to include provisions which:
 - Define the scope of work that a contractor must perform.
 - Identify quantifiable, measurable and verifiable units of deliverables and require those deliverables to be accepted in writing prior to payment.
 - Specify the financial consequences for contractor noncompliance.
 - Specify the ownership rights to any intellectual property related to the contract.
 - Requires state agencies to provide specific information to the Department of Financial Services (DFS) when an agency elects not to use the competitive procurement process to award a contract for commodities or services.
 - Requires state agencies to review and renegotiate contract renewals and reprocurments with savings to be placed in reserve in OPB.

- Directs agencies to improve enforcement of the Preferred Pricing Clause (PPC) in state contracts and introduce penalties for misrepresentation.
- Repeals sections related to products and materials with recycled content.
- Sets out new processes for competitive solicitation.
- Declares that each agency is responsible for exercising due diligence to secure full payment of all accounts receivable and other claims due to the state. Requires each agency to submit an annual report to the President of the Senate, the Speaker of the House of Representatives.
- Provides Florida preference language to promote through state contracting the employment of state residents and to maximize use of products made in Florida.

▪ **CS/SB 2742**
Nonbinding Statewide Advisory Referendum; Balanced Federal Budget

This bill provides for a nonbinding statewide advisory referendum, at the 2010 general election, on the question of whether the U.S. Constitution should be amended to require a balanced federal budget without raising taxes.

The bill requires the following question to be printed on the ballot, followed by the word "yes" and the word "no": In order to stop the uncontrolled growth of our national debt and prevent excessive borrowing by the Federal Government, which threatens our economy and national security, should the United States Constitution be amended to require a balanced federal budget without raising taxes.

▪ **HB 5001**
General Appropriations Act; Budget Bill

- \$70.4 billion budget
- Budget is a combination of:
 - Spending cuts
 - Federal Stimulus Money
 - \$400 million from Seminole Gaming Compact
 - \$600 million in trust fund sweeps, including \$160 from the transportation trust fund
- Pre K-12 Education funding is relatively flat
- Reimbursement cuts to hospitals, nursing homes and county health departments
- Eight percent tuition hike
- \$15 million for Florida Forever
- \$50 million for Everglades restoration
- \$270 million in spending contingent on Congress extending a higher Medicaid rate beyond 2010.

▪ **HB 5003**
Implementing 2010-2011 General Appropriations Act; Budget Bill

The bill, relating to implementing appropriations provides the following substantive modifications for the 2010-2011 fiscal year:

- Authorizes the Department of Corrections and the Department of Juvenile Justice to make expenditures to defray costs incurred by a municipality or county for facilities operated under the authority of each department. The payment may not exceed one percent of the construction costs, less any building impact fees paid to the local government;

2010 LEGISLATIVE REPORT

- Requires the Office of the State Courts Administrator to report to the legislature by February 15, 2011, the number of assigned new and reopened cases and the number of cases closed by each judge and each division and circuit for the period of January - December 31, 2010;
- Exempts counties from the statutory requirement to increase expenditures for county funding responsibilities for the state courts, state attorneys, and public defenders by 1.5 percent each year;
- Provides a limitation on Department of Juvenile Justice reimbursements for health care services to 110 percent of Medicare allowable rates;
- Allows the Department of Health to implement phase 2 of the Florida Onsite Sewage Nitrogen Reduction Strategies Study; provides direction to work with the Department of Environmental Protection;
- Prohibits a state agency from adopting or implementing a rule or policy that mandates or establishes new nitrogen-reduction limits to existing or new onsite sewage treatment systems, and prohibits any rule or policy that has the effect of requiring the use of, for nitrogen reduction, performance-based treatment systems;
- Prohibits any rule or policy that increases the cost of treatment for nitrogen reduction from onsite systems before the study and report required in other language is completed;
- Extends the repeal of ch. 2007-174, L.O.F. requires to the Department of Children and Family Services to July 1, 2011;
- Provides for a study of the factors affecting costs and potential assessments on consumers, and availability, of personal lines property and casualty insurance in Florida to be conducted by the Florida Catastrophic Storm Risk Management Center at Florida State University;
- Clarify the method for calculating impacts on ad valorem tax revenue for fiscally constrained counties resulting from revisions of Article VII of the State Constitution;
- Remove the prohibition of funding reserve payments for debt service from bond proceeds;
- Requires the Department of Management Services to submit an analysis of the disposition of all state-owned facilities and the effect of disposal;
- Requires the Department of Management Services to issue by January 1, 2011, a solicitation for office supplies, and subsequently award a multiple-supplier contract with at least three awarded vendors;
- Allows funds in the State Transportation Trust Fund to be used for administrative expenses of a multicounty transportation or expressway authority created under chapter 343 or chapter 348, Florida Statutes, when jurisdiction for the authority includes a portion of the state highway system;
- Authorizes funds from the State Transportation Trust Fund to be used to pay for county and school district transportation infrastructure improvements;
- Allows a participant in an adult or youth work experience activity administered by the Agency for Workforce Innovation to be provided workers' compensation insurance coverage through the state's risk management pool;

- Remove authorization for members of the Century Commission to receive per diem and travel expenses while in performance of duties;
- Amend s. 201.15, F.S., to remove distribution of certain taxes to the Century Commission;
- Creates the Florida Major Performing Arts Center Task Force to define and evaluate the economic impact of large performing arts centers;
- Prohibits regional workforce boards from entering into certain contracts;
- Reduces the salaries of members of the Legislature by 7 percent – adjusting the members’ June 30, 2010 salaries. This has the effect of keeping a legislator’s salary the same as it is in the 2009-2010 fiscal year;
- Prohibits the Department of Environmental Protection from denying any permit application related to rigid coastal armoring structures authorized and constructed between July 1, 2005, and April 30, 2006, as a result of Hurricane Dennis in Walton County;
- It also prohibits the department from taking enforcement action against property owners for failure to apply for a permit to allow such structures to remain permanently, and provides that property owners who have previously filed an application do not have to reapply;
- Implements the Florida International University/Miami-Dade County Health Department/Florida Department of Health facility in Section 40 of the General Appropriations Act. This section allows the facility to be included in the Facilities Pool and provides that an appropriation for planning and first year debt service is not needed in advance of the project; and
- Promotes, through state contracting, the employment of state residents, to

encourage economic development, and maximize use of products made in Florida.

▪ **HB 5309**
Statewide Tobacco Education and Use Prevention Program; Budget Conforming Bill

This bill makes statutory changes to conform to the funding decisions included in the General Appropriations Act for Fiscal Year 2010-2011. Among other things, the bill:

- Revises the comprehensive, statewide tobacco education and use prevention program counter-marketing and advertising campaign to include innovative communication strategies, such as targeting specific audiences who use personal communication devices and frequent social networking websites.
- Limits the administration and management costs to administer the program to no more than 5 percent.

▪ **HB 5501**
Department of Highway Safety and Motor Vehicles; Budget Conforming Bill

The bill revises laws relating to the Department of Highway Safety and Motor Vehicles.

Among other things, the bill:

- Provides for the use of short form crash reports under certain circumstances and for those reports to be maintained by local law enforcement agencies;
- Provides legislative intent relating to the transition of all driver’s license services from the Department of Highway Safety and Motor Vehicles to tax collectors and directs the department in conjunction with the Florida Tax Collectors Association and the Florida Association of Counties to develop a transition plan to be submitted to the Legislature;

2010 LEGISLATIVE REPORT

- Provides that a fee be assessed for electronic access to registration data provided through a tax collector's office and provides for the distribution of revenues;
- Provides authorization for the department to charge a fee for searching an individual driver history record that is not on file or that meets requested criteria; and
- Provides authorization for county tax collectors to sell driver history records.

The bill also includes a provision to allow a county or municipality to use traffic infraction detectors on state roads when permitted by the Department of Transportation, contingent upon the red light cameras, becoming law.

▪ **HB 5505** **Supplemental Corporate Fee;** **Budget Conforming Bill**

The bill amends section 607.193, F.S., to remove a provision that requires the Department of State (DOS) to waive a \$400 late fee that would be assessed a business entity (corporations, limited liability companies, and limited partnerships) for filing its annual report and paying its annual fees after the May 1 deadline. The waiver is currently granted if the business entity claims that it did not receive a filing notice from DOS.

The bill clarifies that the late fee is waived if a business entity is administratively dissolved, or has its authority revoked because of a failure to file and subsequently files for reinstatement and pays the reinstatement fee.

▪ **HB 5603** **Department of Financial Services;** **Worker's Compensation Budget** **Conforming Bill**

This bill amends statutes related to risk management and workers' compensation to achieve a number of efficiencies and

cost savings measures. Among other things, the bill provides for the following:

- Requires all state agencies and state universities with more than 6,000 employees that are provided insurance coverage from the Division of Risk Management to establish and maintain a return-to-work program for injured state workers. Currently, each of the impacted agencies and state universities has some form of a return-to-work program;
- Requires the Division of Risk Management to evaluate each agency's risk management programs at least once every five years and to produce reports recommending improvements. In addition, the bill outlines a process for each agency's response to the division's evaluation and recommendations; and
- Revises requirements for determining the amount of reimbursement for repackaged or relabeled prescription medications for workers' compensation claimants regardless of the location or provider.

▪ **CS/HB 5611** **Department of Management** **Services (DMS); Budget** **Conforming Bill**

This bill provides for the following.

- Reorganizes the governance structure of the DMS under the Governor and the Cabinet and authorizes the appointment of an executive director, subject to confirmation by the Senate;
- Eliminates the Council on Efficient Government. Agency outsourcing proposals will continue to be submitted to the Governor and Legislature for review and approval;
- Requires electronic filing of information by parties represented by attorneys in hearings held under the Division of Administrative Hearings (DOAH) Adjudication of Disputes Program and in the Worker's Compensation Appeals Program.

Parties not represented by attorneys are encouraged to file documents electronically when possible;

- Establishes statewide policy for agencies to use in determining the assignment of employee wireless communication devices and requires agencies to utilize the SUNCOM Network Service Program in order to reduce costs. The bill requires state agencies to submit, as part of their legislative budget requests, an inventory of all wireless devices and expenditures;
- Directs the DMS to prepare a plan by November 1, 2010, to create, administer, and maintain a centralized fleet of all state-owned motor vehicles. In preparing the plan, the DMS is directed to evaluate the costs and benefits of operating a centralized and outsourced motor vehicle fleet program;
- Requires the DMS to coordinate with all state agencies, prior to submitting a plan to the Governor and Legislature by September 1, 2010, to centralize all real estate leasing and facilities operations and maintenance;
- Requires agencies to include, in their legislative budget request for the 2011-2012 fiscal year, a transfer of all real estate resources to the DMS;
- Authorizes the DMS to transfer funds from the Supervision Trust Fund to the Department of Environmental Protection for the creation of a comprehensive database of state-owned real property; and
- Extends the collection of a \$3 traffic and criminal traffic violation fee from July 1, 2012, to July 1, 2017, to continue to support the Statewide Law Enforcement Radio System.

▪ **CS/HB 7033
Unemployment Compensation**

Unemployment Compensation (UC) benefits are financed by a tax on

employers' payrolls. Tax rates are set by a formula that considers the balance of the trust fund in the previous year, the "experience rate" of individual employers, and the "socialized" costs distributed among all employers. In short, the state's sustained high level of unemployment has depleted the trust fund, requiring tax rates to be increased to meet the current and projected obligations to Florida's unemployed. In addition, the "costs" of borrowing from the federal government to meet current obligations also impact the tax rate (state and federal).

Chapter 2010-1, L.O.F., provides short-term relief to businesses by reducing the UC tax in 2010 and 2011 below current law requirements. The unemployment compensation statutes related to calculation of the employer's tax rates and Unemployment Compensation Trust Fund solvency are amended to:

- Reduce the taxable wage base from \$8,500 to \$7,000 for 2 years and return it to \$8,500 in 2012. The wage base sunsets back to \$7,000 in 2015 (consistent with current law), unless federal advances are still due for repayment to the federal government. Until all federal advances are repaid, the wage base remains at \$8,500;
- Suspend the positive adjustment factor for the next 2 years. Regardless of the balance in the Unemployment Compensation Trust Fund, no rate increase will be "triggered" since the positive adjustment factor will not be applied. The positive adjustment factor is effective again beginning January 1, 2012, with a 3-year recoupment period and then returns to a 4-year recoupment period under current law provisions on January 1, 2015;
- Allow employers, for an administrative fee of up to \$5, to spread payments for quarterly UC taxes due in 2010 and 2011 across the remaining quarters in the respective year without interest or

2010 LEGISLATIVE REPORT

- penalties as long as the employer makes the quarterly filing and payment according to the new schedule ("installment payments"); and
- Provide for payment of interest on federal advances through an additional employer assessment.

The law also provides for an extension of the temporary state extended benefits program, effective January 2, 2010, through February 27, 2010. The extension will cover up to 8 additional weeks of temporary state extended benefits for claimants. The temporary state extended benefits for former private sector employees are 100 percent federally funded (approximately \$28 million). About 20,000 Floridians will be eligible to receive additional weeks through this extension. Extended benefits for former state and local government employees do not qualify for federal funding, and must be paid by the governmental entity. The cost is estimated to total \$612,633; approximately \$180,000 from state funds and \$433,000 from local government funds.

Businesses are provided with short-term tax relief in 2010 and 2011 due to the provisions in this law that reduce tax rates. However, assuming the current economic and revenue forecasts are correct, the unemployment compensation tax will revert back to the projected high rates in 2012 through 2014, and higher than projected rates in 2015 and beyond (compared to current law).

▪ **CS/HB 7109** **Qualified Target Industry Tax Refund Program**

This bill reenacts the Qualified Target Industry (QTI) Tax Refund Program, which was scheduled to sunset on June 30, 2010. It also modifies the program in the following ways:

- Extends the QTI program until June 30, 2020;

- Directs the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to begin doing post-award evaluations of QTI recipients, for agreements signed after July 1, 2010;
- Directs OTTED and Enterprise Florida, Inc., (EFI) to review and revise the targeted industry list, with assistance from academics and stakeholders, every 3 years to make sure it remains relevant to Florida's economic recruitment needs, and submit the revised list to the Governor, the President of the Senate, and the Speaker of the House of Representatives;
- Creates a definition of return on investment (ROI) for QTI projects, which means "the gain in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives.";
- Directs the Legislature's Office of Economic and Demographic Research (EDR) to evaluate EFI's computer model, which is used to calculate a proposed QTI project's ROI, to make sure that it is accurate and incorporates Florida-centric information. This evaluation must occur every 3 years;
- Specifically makes renewable-energy economic development projects eligible for the QTI incentive;
- Gives OTTED the discretion to lower the minimum wage threshold from 115 percent to 100 percent of the local or statewide average wage for manufacturing companies;
- Allows leased employees to be included in the calculation for the number of jobs created by a QTI business; and
- Renames the "economic stimulus exemption" to the more accurate "economic recovery extension," because it allows OTTED to suspend

tax refunds to a QTI business that is unable to uphold its commitments under the QTI agreement because of economic reasons.

▪ **CS/HB 7205
Professional Sports Franchises**

Currently, s. 288.1062, F.S., specifies a process by which the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) has certified 10 local governments to receive up to \$15 million each in state sales tax revenues to help pay for spring-training facilities. The statute has no process allowing OTTED to decertify local governments without: This bill:

- Requires OTTED and local governments certified after the date of this act to enter into contracts before receiving the state funds;
- Includes provisions for OTTED to decertify and recover state funds from local governments whose spring training franchises have relocated;
- Creates an opportunity for currently certified local governments that have lost their teams to recruit new franchises, before they are decertified by OTTED and return state funds;
- Expands the scope of the incentive – currently restricted to “retained” spring training franchises that were based in Florida prior to 2000 – to include any spring training franchise. This allows the incentive to be used by local communities to attract Arizona-based teams to Florida, should additional state funding become available;
- Requires all certified local governments with spring training teams to annually report on how the state funds are being used and the economic impacts of the teams;
- Directs OTTED and its partners to develop a strategic plan to help guide the future of spring training baseball in Florida.

- Specifies that previously certified local governments that have
- Encumbered their state funds for spring training facilities will not be required to reimburse the state, nor be decertified;
- Updates s. 288.1162, F.S., related to state certification for professional sports franchises, and removes all references to spring training baseball facilities, and creates s. 288.11621, F.S., specifically for the certification of local governments for the purposes of receiving state funding for spring training baseball;
- Amends s. 288.1229, F.S., to allow the Florida Sports Foundation to provide assistance to OTTED in the retention of spring-training baseball and other professional sports franchises;
- Provides that an agreement to relocate a spring training baseball team from one local governmental entity to another shall be recognized as a valid agreement so long as OTTED approves the continuing release of funds to the local government that the franchise is relocated to before the effective date of this act; and
- Establishes legislative recognition of the validity of these agreements that were in effect before the effective date of this act.▪

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

**GROWTH MANAGEMENT,
ENVIRONMENT, NATURAL
RESOURCES, REAL PROPERTY, &
TRANSPORTATION**

GROWTH MANAGEMENT, ENVIRONMENTAL, NATURAL RESOURCES, REAL PROPERTY AND TRANSPORTATION

▪ **CS/HB 143**
An Exemption for Aircraft Assembly and Manufacturing Hangars from Comprehensive Plan Transportation Concurrency Requirements

This bill amends s. 163.3180(4)(b), which exempts public transit facilities from transportation concurrency. The bill expands the definition of public transit facility to include hangars for the assembly or manufacture of aircraft, thereby exempting such hangars from transportation concurrency requirements.

▪ **CS/CS/HB 435**
Marketable Record Title

This bill creates an exception to Marketable Record Title Act (MRTA), by providing that a property interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district, or the United States government is not extinguished. Generally under MRTA, one who holds title to land, based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title which are not referenced in the root of title.

As a result of this bill, a property interest held by the board, a water management district, or the United States government will not be automatically extinguished by operation of MRTA. The bill adds the newly created exception to the list of existing exceptions to MRTA prescribed in s. 712.03, F.S. The bill also provides an alternative method for notifying the purported owner of the property that a person has filed a notice with the clerk of court preserving an interest in land under MRTA.

As an alternative to the current process in which the clerk mails a copy of the notice

to the owner, the bill authorizes the person attempting to preserve a property interest to publish the notice in a newspaper in the county in which the property is located once a week for two consecutive weeks. The newspaper publication must include the book and page number where the notice is recorded in the clerk's official records.

▪ **CS/CS/CS/SB 550**
Environmental Protection

This is a comprehensive water resources bill that addresses multiple water issues.

Specifically, the bill:

- Reorganizes various water resources provisions of ch. 373, F.S., into a new ch. 373, F.S., part VII;
- Provides funding eligibility for alternative water supply projects through the State Board of Administration;
- Provides that conservation projects may be eligible for alternative water supply funding;
- Adds a high-water recharge protection tax assessment program criterion to the alternative water supply ranking criteria;
- Extends an existing state program to provide that limestone mining operations may be issued life-of-the-mine permits;
- Modifies mitigation fee provisions for Lake Belt mining operations in order to allow them to meet the requirements of new federal permitting conditions;
- Directs that up to \$200 million in bonds may be issued for sewage collection, treatment and disposal in the Florida Keys Area of Critical State Concern;

2010 LEGISLATIVE REPORT

- Provides specific standards that central wastewater facilities and onsite sewage treatment and disposal systems (septic tanks) in the Florida Keys Area of Critical State Concern must meet;
- Extends the deadline of compliance for central wastewater facilities and septic tank upgrades to December 31, 2015 from July 1, 2010 in the Florida Keys Area of Critical State Concern;
- Provides procedures for removal of the designation of the Florida Keys Area of Critical State Concern once all requirements of the Administration Commission are met;
- Establishes a statewide septic tank evaluation program;
- Requires the Department of Health and the Department Environmental Protection (DEP) to report to the Governor and Legislature by February 1, 2011, on how to achieve a ban on the land application of septage after January 1, 2016;
- Establishes a grant program for low-income owners of septic tanks to assist with the costs associated with inspections, pumpouts, repairs and replacements;
- Directs the DEP to submit a report to the Governor and Legislature on the effects of reclaimed water use by February 1, 2012;
- Clarifies calculations used for determining the quantity of reuse a wastewater facility must produce;
- Increases the state's ability to leverage wastewater and drinking water funds by combining existing financing mechanisms;
- Provides clarification for the use of mitigation banking credits in the Wekiva basin;
- Reinforces the water management districts (WMDs) duty to negotiate disputes in good faith before proceeding to litigation against other governmental entities;
- Requires the lining of all new and expanded landfills that will begin accepting construction and demolition debris after July 1, 2010, unless the owners can prove that their unlined landfills will not violate water quality standards;
- Clarifies requirements for consumptive use permits by WMDs;
- Encourages public/private partnerships and procurement procedures in order to promote water resource development, flood control and land conservation;
- Allows 10-year reviews for consumptive use permits rather than the current 5-year reviews;
- Directs that wastewater utilities, reuse utilities and the DEP are to be included in reuse planning;
- Provides legislative findings regarding numeric nutrient criteria and the potential economic impacts of the U.S. Environmental Protection Agency's proposed rule;
- Expands eligibility and corrects reporting dates for the Brownfield cleanup program;
- Transfers certain responsibilities for the expedited permitting of economic development projects from the Office of Tourism, Trade and Economic Development to the DEP; and
- Expands expedited permitting to the production of renewable energy production and biofuels production.

▪ **CS/HB 569** **Solid Waste Disposal**

The bill amends section 403.708, F.S., to allow Class I landfills that are designed to utilize an active gas collection system, provide or arrange for beneficial use of the landfill gas collected at such facilities, and obtain a permit modification to their operating permit, to accept yard trash. A Class I landfill must

obtain a minor permit modification to its operating permit which describes the beneficial use being made of the landfill gas and modifies the facility's operation plan before receiving yard trash.

The permittee must certify that gas collection and beneficial use will continue after the facility closes. Further, if the landfill is located in a county that owns and operates a compost facility, a waste-to-energy facility, or a biomass facility that sells renewable energy to a public utility and that is authorized to accept yard trash, the DEP must notify, and provide the county the opportunity to comment on, the application for permit modification.

This exception does not apply to a county that operates under a constitutional home rule charter. Finally, this exception to the ban on disposing yard trash in a Class I landfill is not intended to have a material impact on current operations at existing waste-to-energy or biomass facilities.

▪ **CS/HB 843**
Rural Enterprise Zones

This bill specifies that any rural economic development catalyst site created prior to January 1, 2010, that is not located currently in a rural enterprise zone (EZ) must be designated as a rural EZ by the Governor's Office of Tourism, Trade, and Economic Development, upon request from the site's host county. That request must include the catalyst site's legal description and the contact information for the development authority that oversees the site's activities.

These new rural EZs will offer the same business incentives as those designated pursuant to ch. 290, F.S., and must adhere to the same state reporting requirements.

A host county's development authority, which is a public body, will be responsible for serving as the catalyst site/EZ's reporting entity, and may enter into memoranda of agreement, if necessary, to implement this act.

The major difference between traditional EZs and the rural EZs created pursuant to this legislation is that the catalyst sites/rural EZs are not required to meet the eligibility determination that the site suffers from pervasive poverty, unemployment, and general distress. This legislation affects the two catalyst sites located in Columbia and Suwannee counties.

▪ **CS/CS/CS/SB 846**
Residential Fire Sprinkler Requirements

Section R313 of the 2009 Residential International Code requires the installation of automatic fire sprinkler systems in newly constructed one- and two-family residential dwellings and townhouses effective January 1, 2011. The bill provides that the mandate may not be incorporated into the Florida Building Code. The prohibition does not apply to local governments which have adopted ordinances related to fire sprinklers which have been in effect since January 1, 2010.

The bill provides that a property owner shall not be required to install automatic fire sprinklers based upon the use of the residential dwelling as a rental property or reclassification to a rental property.

▪ **CS/CS/HB 927**
Real Property

This bill provides additional criteria under which a transfer of homestead property is not considered a change of ownership that would require the property to be reassessed at just value. Specifically the bill provides that no change in ownership occurs when:

- A transfer of property is between equitable title and equitable title, and no additional person applies for a homestead exemption on the property;
- Legal or equitable title is changed or transferred between a husband and wife, including a change to a

2010 LEGISLATIVE REPORT

surviving spouse or a transfer due to a dissolution of marriage.

- The transfer of property occurs by operation of law to the surviving spouse or minor child or children under s. 732.401, F.S.

The bill clarifies that a leasehold interest which qualifies for a homestead exemption under ss. 196.031 or 196.041, F.S., shall be treated as an equitable purpose. The bill provides that a change of ownership that is recorded by a deed or other instrument in the public records of the applicable county where the property is located shall serve as notice to the property appraiser; therefore not requiring the owners to notify the appraiser of the transfer.

The bill also states that the trading of shares in publicly traded companies on a public exchange cannot create a change of ownership or control for the purposes of the assessment cap on non-homestead property, with the exception of mergers or acquisitions. The Department of Revenue is responsible for generating a form to be used by property owners to provide notice to all property appraisers of a change in ownership or control; stating that such a form of notice shall constitute as compliance under this section.

The provided form must allow a property owner to list all property in this state that is owned or controlled by him or her for which the transfer of ownership or control has occurred, but has not been previously noted

▪ **CS/CS/HB 965** **Real Property Assessment**

This bill requires property appraisers to adjust the assessed value of single-family residential properties that have been affected by imported or domestic drywall if the purchaser was unaware of the presence of the imported or domestic drywall at the time of purchase.

The bill states that a building shall be valued at \$0 if it cannot be used for its intended purpose without remediation or

repair. Homestead property that is affected by imported or domestic drywall will not be considered to be abandoned if the owner vacates the property during remediation and does not establish a new homestead. Upon the substantial completion of remediation of the property, it shall be assessed as if the imported or domestic drywall had not been present. Homestead properties that apply under this section are considered damaged by misfortune or calamity under s. 193.155(4)(b), F.S., with the exception that the 3-year deadline does not apply.

▪ **CS/CS/SB 982** **Underground Facility Damage Prevention & Safety**

This bill revises provisions of the Underground Facility Damage Prevention and Safety Act in chapter 556, Florida Statutes. The revisions prohibit local governments from enacting ordinances or rules, that conflict with the act. It:

- Establishes a program through the Division of Administrative Hearings for evaluating allegations of damage caused to high-priority subsurface installations;
- Requires clerk of court to report annually on infractions under the act;
- Increases the amount of the civil penalties that may be imposed for noncriminal infraction to \$500 from the current level of \$250.
- Requires low-impact marking of underground facilities;
- Require Sunshine State One-Call Florida, Inc., to establish an educational program for the purpose of informing excavators and member operators about low-impact marking practices;
- Require One-Call to establish a voluntary alternative dispute resolution program to resolve disputes arising from excavation activities; and

- Provide for excavations near high-priority subsurface installations and the process for resolving incidents involving these installations.

▪ **CS/SB 1118**

Docks

The bill allows private residential single-family dock owners in aquatic preserves to build roofs over their docks, boat lifts and davits. It authorizes the Department of Environmental Protection (DEP) to conduct rulemaking for building small docking facilities in shellfish harvesting and recreational waters.

The bill provides that minor changes and upgrades to docks and piers do not require a permit when repairing or replacing them. Further, the bill directs the DEP to maintain a list of projects or activities that satisfy mitigation or public interest requirements. The DEP is also directed to develop a project management plan for expanding online self-certification.

▪ **SB 1166**

Community Residential Homes

The bill exempts community residential homes (and homes that would be community residential homes but they have six or less residents), homes for people with certain disabilities, within planned residential communities from the requirement that these homes may not be located within 1,000 feet of each other. Planned residential communities may not be within 10 miles of each other. The bill defines a planned residential community as a planned unit development designed to serve people with developmental disabilities that:

- Is under unified control;
- Is 8 acres or more in size;
- Provides housing options for individuals without disabilities; and
- Is designed to provide choices for residents and allow for freedom of movement of residents within and outside of the community.

The bill authorizes the licensure of a facility that:

- Provides residential services for up to 15 children with developmental disabilities with intensive behavioral problems as defined by the Agency for Persons with Disabilities and
- As of July 1, 2010, served children in the welfare system who have an open case with the Department of Children and Family Services. The amendment specifies that the facility must: not have more than fifteen children; be in compliance with all program criteria; and comply with local zoning requirements.

▪ **CS/CS/CS/SB 1196**

Community Associations

The bill revises laws related to community associations, including condominium, homeowners', and cooperative associations. The bill permits condominium, cooperative, and homeowners' associations to demand payment of any future regular assessments from the tenant of a unit or parcel owner.

The bill revises and clarifies the property insurance requirements of condominium associations and condominium unit owners under ch. 718, F.S. The bill repeals the requirement that condominium unit owners must maintain property insurance coverage and the requirement that the condominium association must be an additional named insured and loss payee on policies issued to unit owners. It repeals the provision that a condominium association may purchase property insurance at the expense of the owner when the unit owner does not provide proof of insurance. It requires that residential condominium unit owner policies issued or renewed on or after July 1, 2010, include loss assessment coverage of \$2,000, for certain assessments with a deductible of no more than \$250 per direct property loss.

2010 LEGISLATIVE REPORT

The bill creates the “Distressed Condominium Relief Act” to define the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties. Regarding a mortgage lender’s liability for unpaid condominium assessments after a foreclosure, the bill increases the mortgage lender’s liability for unpaid assessments to the 12 months, instead of the current 6 months, immediately preceding the lender’s acquisition of title or 1 percent of the original mortgage debt, whichever is less.

It also permits condominium, cooperative, and homeowners’ associations to demand payment from the tenant of any unit or parcel owner who owes unpaid monetary obligations to the association. The amount of a tenant’s rent owed to a unit or parcel owner would be credited for the amount he or she paid the association. The association may evict the tenant if he or she fails to make the required payment.

Regarding fire and elevator safety, the bill:

- Delays the requirement to update existing elevators in condominiums, cooperatives, or multifamily residential buildings with modifications for Phase II Firefighters’ Service, which permits firefighters to operate and control an elevator for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment, until July 1, 2013, or until the elevator is replaced or requires major modifications, whichever occurs first;
- Permits a condominium association to opt to forego the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height upon an affirmative vote of a majority of the voting interests of the condominium;

- Exempts condominiums and other multifamily buildings that are less than four stories in height from the requirement to install a manual fire alarm system required by section 9.6 of the Life Safety Code provided that the building has an exterior means of egress; and
- Delays the retrofit deadline for fire sprinklers in condominium and cooperative association common areas from December 31, 2014 to until December 31, 2019. It permits the condominium association to completely exempt the building from the retrofit requirement upon an affirmative vote of a majority of the voting interests in the community. If a condominium or cooperative association does not vote to exempt the building from the requirement, the association must apply for a building permit for the retrofit before December 31, 2016.

Regarding condominium associations, the bill also:

- Requires intent to cause harm to the association or one or more of its members in order for a person to knowingly or intentionally fail to create or maintain accounting records;
- Expands the forms of information in the association’s records that are not accessible to unit owners to include disciplinary, health, insurance, personnel records, and passwords;
- Revises the requirements related to financial reporting by the association;
- Includes communication services, information services, and Internet services within the scope of the type of bulk contracts that may be considered common expenses;
- Revises requirements related to the election of board members, the terms of board offices, vacancies on the board, and the qualifications of board members. It provides for a

- post-election certification by each newly elected or appointed director, and permits completion of the educational curriculum as an alternative to a written certification; and
- Authorizes the suspension of a unit owner's rights to use certain association facilities if he or she is more than 90 days delinquent for a regular or special assessment.

Regarding homeowners' associations, the bill also:

- Permits closure of certain board meetings at which proposed or pending litigation is discussed with the association's attorney;
- Revises the notice requirements for financial reports regarding reserve accounts;
- Prohibits directors, officers, or committee members from receiving any salary or compensation from the association for the performance of their duties;
- Permits the association to charge reasonable costs for copying records, including personnel fees and charges at an hourly rate for employee time to cover the administrative costs;
- Authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a regular or special assessment;
- Permits fines of \$1,000 or more to become a lien on a parcel;
- Revises proxy voting and elections requirements;
- Provides additional disclosure to prospective purchasers;
- Revises requirements for special assessments in homeowners' associations before the turnover of the association by the developer;
- Provides that flagpoles that homeowners are entitled to erect are subject to all building codes, zoning

setbacks, noise and lighting ordinances, and other government regulations; and

- Permits homeowners' associations to acquire leaseholds, memberships, or other possessory interests in recreational facilities, including country clubs, golf courses, and marinas.

▪ **CS/CS/HB 1385
Petroleum Contamination Site Cleanup**

The bill requires that the Inland Protection Trust Fund be included in the list of funds from which the Legislature may not transfer unappropriated cash balances. The bill allows the Department of Environmental Protection (DEP) to establish a long-term natural attenuation monitoring category for sites in the Petroleum Cleanup Program. When cost-effective, DEP is directed to reprioritize sites previously eligible for restoration funding assistance to long-term natural attenuation status if the sites meet certain criteria.

The bill clarifies that a local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor.

The bill requires DEP to evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and will adequately protect public health and the environment. DEP must evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels. Unless institutional controls have been imposed by the responsible party or property owner to restrict the uses of the site, the bill precludes local

2010 LEGISLATIVE REPORT

governments from denying development orders or permits on the grounds that petroleum contamination exists onsite.

The bill establishes a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation. If these conditions are met, DEP must issue a No Further Action (NFA) order, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, DEP may issue a site rehabilitation completion order. However, the bill clarifies that active remediation will be resumed within the 42 month period if the plume migrates beyond the property boundaries. Sites that are eligible will be initiated by the source property owner or responsible party for the contamination and are strictly voluntary.

DEP may pre-approve the cost of the assessment pursuant to s. 376.30711, F.S., including 6 months of groundwater monitoring, not to exceed \$30,000 for each site. DEP may not pay the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than 6 months after DEP issues its approval.

Also, the bill authorizes DEP to spend no more than \$10 million per fiscal year from the funds currently authorized from the Inland Protection Trust Fund to assess low scored sites. Funds will be made available on a first-come, first-served basis and will be limited to 10 sites in each fiscal year for each responsible party or property owner. The bill deletes the provisions relating to funding for limited interim soil-source removals, which sunsets June 30, 2010. The bill deletes obsolete provisions relating to funding soil-source removals for sites that would become inaccessible due to road construction projects that were pending at the time the statute was written. The existing provisions will sunset June 30,

2010. Finally, for fuel service station facilities that have orders issued by the DEP before July 1, 2010, granting an extension, the deadline shall be extended to September 30, 2011. The facilities must be in compliance with all other state and federal regulations pertaining to petroleum storage systems.

▪ **CS/CS/HB 1411** **Foreclosures and Transactions**

The bill provides a non-judicial process for the foreclosure of liens on timeshare interests, which the bill refers to as a trustee foreclosure process. The bill creates a separate but similar trustee procedure for the foreclosure of liens based on unpaid assessments and for mortgage liens. Each procedure gives the timeshare interest owner (obligor) an opportunity to object to the trustee foreclosure process and to contest the foreclosure through a judicial process. If the owner does not object to the use of the trustee foreclosure procedure, he or she will not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

The trustee foreclosure process for assessment liens applies to any default that gives rise to an assessment lien after the effective date of the bill. If a timeshare instrument contains a provision that prevents the use of a trustee foreclosure procedure, or if the managing entity determines that the timeshare instrument should be amended to specifically provide for the trustee foreclosure procedure, an amendment to the timeshare instrument must be adopted and recorded prior to using the trustee foreclosure procedure.

The trustee foreclosure process for mortgage liens can only be used if the mortgage, or an amendment to a mortgage executed by the obligor before the effective date of the bill, contains a notice that informs the obligor that the mortgagee (the mortgage lender) has the right to elect to use the non-judicial or the

judicial foreclosure procedure. It also provides that, if the mortgagee elects the non-judicial procedure, the obligor would have the option to object and proceed with a judicial foreclosure action.

The bill requires the payment of a \$50 administrative fee per trustee deed for each deed recorded pursuant to the trustee foreclosure procedures. The revenues from the administrative fee are to be remitted to the Department of Revenue in the same manner as documentary stamp taxes and deposited in the State Courts Revenue Trust Fund.

▪ **CS/CS/SB 1842**
Transportation Projects on Public Roadways

This bill requires the Florida Department of Transportation (FDOT) to notify affected local governments of proposed changes to state highways when the project:

- Divides a state highway;
- Erects a barrier median which would modify vehicle turning movements; or
- Has the effect of closing or modifying existing access to adjacent property.

The notification must occur at least 180 days before the design of the project is finalized.

The bill also allows the local government to present alternatives which would relieve the impacts to the business properties. The bill also requires FDOT to hold at least one public hearing in the jurisdiction where the project is located and receive public input.

▪ **CS/HB 7103**
Agriculture

This bill prohibits counties from enforcing any regulation on land classified as agricultural if the activity is regulated by best management practices, interim measures, or regulations adopted as rules under chapter 120, Florida Statutes. It also prohibits counties from imposing an assessment or fee for stormwater management on land

classified as agricultural if the operation has a National Pollutant Discharge Elimination System permit, an environmental resource permit, a works-of-the-district permit, or implements best management practices. The bill provides an exception under specified circumstances for counties that adopted a stormwater ordinance before March 1, 2009, provided credits are given. It allows a county to enforce its wetland protection acts adopted before July 1, 2003.

The bill creates the Agricultural Land Acknowledgement Act to ensure that agricultural practices will not be subject to interference by residential use of land contiguous to agricultural land. It requires an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous agricultural lands as a condition of the political subdivision issuing the permits. Eligibility for exemption from a local business tax is expanded for persons who sell farm, aquacultural, grove, horticultural, floricultural, or tropical fish farm products. The definition of "farm tractor" is expanded to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

The bill reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law. It exempts farm fences from the Florida Building Code and expands the definition of nonresidential farm buildings that are exempt from county or municipal codes and fees. It allows additional fiscally sound multi-peril crop insurers to sell crop insurance in Florida. The bill also revises the agricultural materials that are allowed to be openly burned.

2010 LEGISLATIVE REPORT

▪ **CS/HB 7129** **Military Support**

The bill specifies which local governments are associated with and affected by Florida's military bases and authorizes commanding officers to request copies of variances and waivers from local governments that may affect the military installation. The bill requires local governments that fail to meet the future land use element requirements by June 30, 2012, to enter into mediation and creates the potential for sanctions from the Administration Commission.

The bill protects the homestead exemption of active duty military and their spouses and allows spouses to receive a temporary professional license if they are accompanying their active duty service member to a Florida military installation. The bill authorizes the Adjutant General to establish a second Assistant Adjutant General position and changes the body that accredits educational institutions authorized under the National Guard's education program.

▪ **HB 7243** **Environmental Control**

The bill revises s. 288.9015, F.S., and directs Enterprise Florida in conjunction with the Department of Environmental Protection (DEP) to create the Recycling Business Assistance Center (RBAC) to coordinate between state agencies and the private sector for developing new markets for recyclable materials. The RBAC will also develop proposals and connect companies that use recyclable materials with Florida's workforce. The bill deletes a provision in current law concerning an air registry, which is now unnecessary because federal regulations specify reporting requirements. The bill requires all cities, counties, state entities, and public schools to report their recycling rates on all recyclable materials.

The bill outlines the state's incremental recycling goals and specific benchmarks that must be reached by 2020. The bill

provides exemptions from reporting for cities that are fiscally constrained. Businesses are encouraged to report their recycling rates. The bill amends s. 403.706, F.S. and asks DEP to adopt rules establishing the method and criteria to be used by a county in calculating the recycling rates.

The bill amends s. 403.705, F.S., to require DEP to report to the Legislature the state's recycling rates every two years. The bill provides that counties must implement a program for recycling construction and demolition (C&D) debris. If the state does not reach its recycling benchmarks by specified dates, the bill asks DEP to report to the Legislature programmatic changes that could assist in achieving the recycling goal. The bill directs the Department of Management Services (DMS) to modify their procurement system to track the state's purchases of green and recycled materials.

The bill deletes an obsolete requirement that DEP appoint a technical advisory committee to assist in developing rules governing the regulation of recovered materials. The bill allows renewable energy facilities to count a certain amount of the megawatts they produce towards the state recycling goals and incentivizes renewable energy producing counties that maintain a program to recycle at least 50 percent of municipal solid waste by means other than creating renewable energy. The bill requires the reporting of processed C&D debris, and, if economically feasible, all C&D debris is to be processed prior to disposal. The bill also requires DEP to adopt rules creating a voluntary certification program for materials recovery facilities. Further, DEP will appoint a technical advisory committee to develop this certification program. The bill also deletes the solid waste management grant program in DEP.

The bill specifies that local governments may enact ordinances to require multi-family dwellings and apartment complexes to allot space and receptacles

for the separation of recyclable materials. The bill revises s. 403.7145, F.S., to replace the terms "aluminum" and "cans" with "beverage containers." The Capitol building must report its recycling rates to Leon County and those rates will be posted on DEP's website. Also, DMS will post the recycling rates of the buildings included in their state pool.

The bill repeals s. 288.1185, F.S., the Recycling Markets Advisory Committee in the Office of Tourism, Trade, and Economic Development. Finally, the bill asks the Florida Building Commission to encourage recycling, composting and the use of recyclable materials. ■

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

HEALTH CARE & HEALTH INSURANCE

HEALTH CARE AND HEALTH INSURANCE

▪ **CS/HB 341**
H. Lee Moffitt Cancer Center and Research Institute

This bill expressly provides for an extension of sovereign immunity from the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Center) to its not-for-profit corporations and subsidiaries. Technical and professional income from practice activities may be shared between the not-for-profit corporation and its subsidiaries as determined by the chief executive officer. However, where the professional income is generated by state university employees, it must be shared between the university and the not-for-profit corporation and its subsidiaries, as determined by the chief executive officer and the university dean or vice president. This bill expands the authority for the Moffitt Center to enter into joint teaching and research programs beyond the University of South Florida to other state universities.

▪ **CS/HB 491**
Teaching Nursing Homes

This bill expands the criteria for a nursing home to qualify as a teaching nursing home in order to increase the number of teaching nursing homes in this state. It reduces the minimum number of licensed beds a nursing home must have from 400 to 170 and eliminates the requirement for a formalized contractual relationship with an accredited teaching hospital.

The bill provides an alternative to the requirement for a contractual relationship with a federally funded accredited geriatric research center if the nursing home operates in its own right a geriatric research center. Finally, the nursing home may possess a Gold Seal Award at the time of initial designation as a teaching nursing home in lieu of holding a valid accreditation by the Joint

Commission on Accreditation of Healthcare Organizations.

▪ **CS/HB 573**
Physician Assistants

This bill deletes the requirement that a physician assistant have a minimum of three months of clinical experience in the specialty area of the supervising physician before commencing to prescribe or dispense medications. The bill also authorizes the electronic submission of physician assistant license applications and other required documentation.

▪ **CS/CS/HB 945**
Automated External Defibrillators; Assisted Living

The bill requires an assisted living facility (ALF) that has 17 or more licensed beds to have an automated external defibrillator (AED) at the facility by July 1, 2011. Immunity from civil liability is extended to the facility and facility staff for the use of the AED under the provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act. Facility staff are authorized to withhold or withdraw the use of an AED if presented with an order not to resuscitate. The Department of Elderly Affairs is authorized to adopt rules relating to the use of an AED.

▪ **CS/CS/HB 1073**
Persons with Disabilities

This bill makes changes to the law related to persons with developmental disabilities.

The bill provides that all persons with developmental disabilities have a right to be free from all abuse, neglect, and exploitation, regardless of the setting.

The bill requires staff training in facilities licensed by the Agency for Persons with Disabilities to include the reporting of

2010 LEGISLATIVE REPORT

abuse, neglect, exploitation, and abandonment.

The bill also provides for:

❖ *Child Care Personnel Training*

- Requires the 40-clock-hour child course to include the identification and support of children with developmental disabilities

❖ *Seclusion and Restraint*

- Provides for incident reports involving the use of restraints for students with disabilities, monitoring the incidence of restraint use, and reporting requirements;
- Requires school districts to develop policies and procedures for incident reporting and data collection, and monitoring;
- Prohibits school personnel from using a mechanical restraint or a manual physical restraint on a student that restricts a student's breathing;
- Prohibits school personnel from closing, locking, or physically blocking a student in a room that is unlit and does not meet the rules of the State Fire Marshal for seclusion time-out rooms;

❖ *Regional Autism Centers*

- Requires regional autism centers to disseminate information about the resources for services to persons with developmental disabilities and to provide support to state agencies in the development of training for early child care providers and educators;

❖ *Instructional Personnel*

- Directs the Commissioner of Education to develop recommendations to incorporate autism spectrum disorder and other developmental disabilities awareness instruction into continuing education or in-service training for instructional personnel.

▪ **CS/CS/CS/HB 1143** **Health Care**

This bill repeals obsolete and redundant provisions, defines and corrects references to the Joint Commission, updates references to a variety of organizations and state agencies to reflect current titles or responsibilities related to facilities regulated by the Agency for Health Care Administration (AHCA), and streamlines reporting by licensed facilities and state agencies. With respect to these regulatory modifications, the bill makes the following substantive changes:

- Authorizes the Department of Health (DOH) to accept funds from local governments and spend those funds for licensable products approved by the U.S. Department of Health and Human Services in response to a public health emergency;
- Revises provisions affecting nursing homes as follows:
 - Limits the DOH food service inspections in nursing homes to twice per year, absent complaints, and the State Fire Marshal inspections to once per year, absent complaints;
 - Expands the authorized staffing of a geriatric outpatient clinic in a nursing home to include a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, or physician;
 - Authorizes nursing homes to provide respite care for a maximum of 14 days per stay pursuant to an abbreviated plan of care;
 - Authorizes a \$1,000 fine per day if a nursing home fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements;
 - Revises the timeframe for a nursing home to provide a

- | | |
|--|--|
| <p>resident accounting of personal property held by the facility;</p> <ul style="list-style-type: none"> ○ Eliminates the requirement for a newly hired nursing home surveyor to observe a facility's operations as a part of basic training; ○ Relieves the annual assessment related to Medicaid overpayments for leased nursing homes if the bond fund exceeds \$25 million; ○ Requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age; and ○ Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility; <ul style="list-style-type: none"> ▪ Revises provisions affecting assisted living facilities (ALFs) as follows: <ul style="list-style-type: none"> ○ Repeals the limited nursing services (LNS) specialty license and authorizes LNS to be provided by appropriately licensed persons in an ALF with a standard license; ○ Increases the per-bed fee for a standard-licensed ALF by \$8.50 biennially for beds that are not designated for recipients of optional state supplementation payments (OSS), to offset the loss of revenue that is currently generated from the fees associated with the LNS specialty license. The maximum amount that an ALF is required to pay for the standard license fee is increased; ○ Requires additional monitoring, either onsite or by a desk review, for an ALF that has been cited with a class I or class II deficiency. The bill repeals the requirement for additional monitoring inspections of an ALF licensed with an extended | <p>congregate care (ECC) specialty license;</p> <ul style="list-style-type: none"> ○ Requires all ALFs to report electronically to the AHCA, at least semiannually, certain aggregated data related to the residents and staff of the facility; ○ Modifies the AHCA's consultation responsibilities; and ○ Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility; <ul style="list-style-type: none"> ▪ Expands the definition of a portable equipment provider within the requirements for a health care clinic license to include a portable <i>health service</i> or equipment provider; ▪ Provides additional exemptions for licensure and regulation as a health care clinic for the following: <ul style="list-style-type: none"> ○ Pediatric cardiology or perinatology clinic facilities; ○ Certain corporate entities with \$250 million or more in annual sales of health care services provided by licensed health care practitioners; and ○ Certain publicly traded entities; ▪ Enhances the general licensing provisions of part II of ch. 408, F.S., to: <ul style="list-style-type: none"> ○ Provide that the license renewal notice that the AHCA sends is a <i>courtesy</i> notice; ○ Authorize the AHCA to impose an administrative fine, not to exceed \$500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations; ○ Authorize the AHCA to extend the license expiration date for up to 30 days and impose other conditions during that extension period in order to accomplish the safe and orderly discharge of clients or residents; and |
|--|--|

2010 LEGISLATIVE REPORT

- Prohibit activities related to altering, defacing, or falsifying a license certificate;
- Authorizes the AHCA to impose an administrative fine for class IV violations that are uncorrected or repeated by a licensed intermediate care facility for developmentally disabled persons;
- Requires a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements;
- Eliminates the requirement for a pedigree paper for prescription drugs that are distributed in certain medical convenience kits; and
- Includes licensed orthotists and prosthetists in the definition of a health care provider under ch. 766, F.S., related to medical malpractice.

The bill authorizes an insurer that issues a group or individual health benefit plan to offer a voluntary wellness or health-improvement program that allows for rewards or incentives to encourage or reward participation in the program. The bill prohibits an individual or group health insurance policy or health maintenance contract which is purchased through an exchange with any state or federal funds in the form of any tax credit or cost-sharing credit, from providing coverage for an abortion unless it is performed to save the life or physical health of the mother or when the pregnancy resulted from an act of rape or incest. Separate coverage for abortion may be provided to a private person or entity if the coverage is not purchased with any state or federal funds.

A physician or trained person must perform an ultrasound before an abortion is performed which is not a medical emergency. As a part of informed consent for the abortion, the woman must be allowed to view the live ultrasound images while a licensed medical professional explains the images to her. A woman may decline to view the ultrasound images. If she declines, she

must complete a form acknowledging the opportunity to view her ultrasound which she declined and that her decision was not based on any undue influence. The opportunity to view the ultrasound is not required for a woman who presents documentation that she is obtaining the abortion because she is a victim of rape, incest, domestic violence or human trafficking, or that she has been diagnosed with a condition that would create a serious risk of substantial and irreversible impairment of a major bodily function if the termination of her pregnancy is delayed.

In addition, the printed materials that are required to be made available to the pregnant woman as a part of informed consent must include a description of the various stages of development of the fetus. The bill declares the public policy of this state that a federal, state, or local government may not compel a person to purchase health insurance or health services except under certain conditions; preserves the collection of debts lawfully incurred for health insurance or health services; and authorizes the Attorney General to implement or advocate this public policy in any court or administrative forum on behalf of persons whose constitutional rights concerning health insurance coverage may be subject to infringement by federal action.

▪ **CS/HB 1253** **Continuing Care Facilities**

Continuing care retirement communities (CCRCs), also known as life-care facilities, are retirement facilities that furnish residents with shelter and health care for an entrance fee and monthly payments. Under ch. 651, F.S., the Office of Insurance Regulation (OIR) authorizes and monitors a CCRC's operation, its financial status, and the management capabilities of its managers and owners.

The OIR is also mandated to discipline a facility for violations of residents' rights. Currently there are 70 CCRCs in the state, and approximately 29,000

residents call these facilities home. In June 2009, the Florida Life Care Residents Association and the Florida Association of Homes and Services for the Aging created a joint task force to review the provisions of ch. 651, F.S., and the recommendations of the task force form the basis of this legislation.

This bill provides disclosures to residents of CCRCs and provides for more financial transparency in the operation of CCRCs. Among its key provisions, the bill:

- Increases the availability and distribution of certain information and reports to residents and prospective residents of CCRCs;
- Increases transparency by requiring providers to give the residents' council chair a copy of ch. 651, F.S., the quarterly and annual reports that must be filed with the OIR, and, if requested, a copy of new contracts approved by the OIR;
- Gives residents the right to receive memos and announcements from the residents' council as well as unrestricted access to the council;
- Increases allowable cancellation processing fees for prospective residents who cancel a contract prior to occupancy;
- Clarifies that a provider may assess a non-refundable application processing fee;
- Clarifies that the taxes and insurance that must be factored into the escrow account as a debt service reserve, pertain to "property." ;
- Clarifies that if a prospective resident signs a contract but delays moving into the facility, he or she is considered to have occupied a unit in the facility when he or she pays an entrance fee, or any portion thereof, and has begun paying a monthly fee;
- Provides that such resident has seven days from the date of signing the

contract to cancel without financial penalty;

- Changes the OIR inspections from once every three years to once every five years;
- Requires the Continuing Care Advisory Council (council) to annually report the council's findings and recommendations concerning CCRCs to the Governor and to the OIR; and
- Requires the OIR to disclose to council members specified information regarding complaints filed with the Division of Consumer Services within the Department of Financial Services and to notify the council regarding rule changes and rule workshops and hearings.

▪ **CS/CS/HB 1337**
Nursing Education Programs

The bill continues to streamline the Florida Board of Nursing (BON) education program approval process and regulatory process, that was substantially restructured in 2009. The bill provided that a nursing education program that is accredited by one of two specialized accrediting agencies that are recognized by the United States Secretary of Education to accredit nursing education program is not subject to regulation by the BON, as long as the program maintains its accredited status. The bill makes other changes to the current nursing education approval process to:

- Clarify that the BON must approve or deny a nursing education program application within 90 days after the receipt of a *complete* application;
- Provide that the graduate passage rate on the National Council Licensure Examination (NCLEX), which must be achieved by approved programs, is no lower than 10 percentage points less than the national average passing rate;

2010 LEGISLATIVE REPORT

- Clarify that the requirements for NCLEX graduate passage rates, as adopted by the Legislature last year for approved programs, should only be applied prospectively beginning with the 2010 calendar year;
- Eliminate probation as a penalty if an approved program fails to submit an annual report; and
- Authorize a nursing education program director to receive information on the NCLEX exam date and pass/fail scores for the program's graduates included in the program's graduate passage rate.

▪ **CS/CS/SB 1484** **Medicaid**

This bill makes statutory changes to conform to the funding decisions included in the General Appropriations Act for Fiscal Year 2010-2011.

Among other things, the bill:

- Directs the Agency for Health Care Administration (AHCA) to request an extension of the Medicaid Reform waiver obtained under section 1115 of the Social Security Act by no later than July 1, 2010, and to preserve the Low Income Pool provisions of the waiver. In addition, the bill requires the AHCA to report monthly to the Legislature and the Governor on the waiver extension negotiations with the federal Centers for Medicare and Medicaid Services;
- Directs the AHCA to convene a workgroup of stakeholders to develop methodologies to maintain the use of intergovernmental transfers and certified public expenditures in a Medicaid managed care environment and requires the AHCA to provide a report by January 1, 2011, on the developed methodologies;
- Creates the Medicaid and Public Assistance Fraud Strike Force (Strike Force) within the Department of Financial Services (DFS) to develop a statewide strategy and coordinate

state and local efforts and resources to prevent, investigate and prosecute Medicaid and public assistance fraud;

- Requires the Strike Force to hold its organization meeting by no later than March 1, 2011, and requires the Strike Force to meet at least four times annually. The Strike Force will consist of 11 members with Chief Financial Officer (CFO) serving as chair, and the Attorney General serving as vice-chair;
- Directs the Strike Force to provide recommendations and advice to the CFO on initiatives that include, but are not limited to:
 - Conducting a census of current Medicaid and public assistance fraud efforts;
 - Developing a strategic plan targeting state and local resources to prevent, detect, and deter Medicaid and public assistance fraud;
 - Developing innovative technology and data sharing among affected entities;
 - Establishing a program that provides grants to state and local agencies to implement effective anti-fraud measures;
 - Providing grants, contingent upon appropriation, for multiagency Medicaid and public assistance fraud efforts;
 - Providing assistance to state attorneys for support services or for the hiring of assistant state attorneys to prosecute Medicaid and public assistance fraud; and
 - Providing assistance to judges for support services or for the hiring of senior judges so that Medicaid and public assistance fraud cases can be heard expeditiously.
- Requires the CFO to develop model interagency agreements to coordinate the investigation of

- Medicaid and public assistance fraud;
- Transfers the Public Assistance Fraud Division from the Florida Department of Law Enforcement to the DFS on January 1, 2011;
 - Authorizes Medicaid related fraud units to be collocated, to the extent possible, and requires the Medicaid managed care fraud investigators within the Attorney General’s Office to collocate with the Division of Insurance Fraud within the DFS;
 - Requires the Auditor General and the Office of Program Policy Analysis and Government Accountability to review and evaluate the AHCA’s Medicaid fraud and abuse systems and requires a report to the Legislature and Governor by December 1, 2011;
 - Requires each Medicaid managed care plan to adopt an anti-fraud plan to address overpayment, abuse, and fraud in the provision of Medicaid services and to submit the plan for approval to the Office of Medicaid Program Integrity within the AHCA. The amendment establishes minimum standards for anti-fraud plans and requires each Medicaid managed care plan to establish a fraud investigative unit or contract with such an entity. In addition, the amendment provides penalties for Medicaid managed care plans that fail to comply with these provisions;
 - Requires all Medicaid managed care plans to report any suspected instance of overpayment, fraud, or abuse to the Office of Medicaid Program Integrity within 15 days;
 - Revises the requirements for the selection of a behavioral health care provider in Broward County to allow foster children who are in the custody of the Department of Children and Family Services to enroll in a managed care plan which provides both physical and mental health care services;

- Authorizes a participating specialty plan to receive an administrative fee for coordination of services based upon the receipt of the state share of the fee from intergovernmental transfers;
- Allows a provider service network to provide behavioral health services in addition to physical health services in areas of the state not under Medicaid reform; and
- Provides additional time for converting from fee-for-service payments to capitated payments for approved provider service networks and Children’s Medical Services Networks.

▪ **CS/CS/SB 2272
Pain Management**

The bills require all privately owned pain-management clinics that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications to register with the Department of Health. Exceptions to registration and regulation as a pain-management clinic include a clinic:

- That is licensed as a hospital, ambulatory surgery center, or mobile surgical facility;
- In which the majority of the physicians primarily provide surgical services;
- That is owned by a publicly held corporation whose total assets at the end of the corporation’s most recent fiscal quarter exceeded \$50 million;
- That is affiliated with an accredited medical school at which training is provided;
- That does not prescribe or dispense controlled substances for the treatment of pain; or
- That is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3).

A registered pain-management clinic must be owned by a medical physician,

2010 LEGISLATIVE REPORT

osteopathic physician, or group of medical or osteopathic physicians, or be licensed as a health care clinic under other provisions of law. Certain regulatory or criminal actions will prevent physicians owning or having a contractual or employment relationship with a pain-management clinic.

A grandfathering provision authorizes physicians who qualify to continue to practice in a pain-management clinic after July 1, 2012. On and after that date, a physician must have completed a pain medicine fellowship or a pain medicine residency in order to practice in a pain-management clinic. Certain activities pertaining to a pain-management clinic are regulated, including, but not limited to:

- The maximum number of prescriptions for certain controlled substances that may be written at a clinic during any 24-hour period;
- Requiring a physician to perform a physical examination of a patient on the same day that the patient receives controlled substances or a prescription for controlled substance; and
- Prohibiting a practitioner from dispensing more than a 72-hour supply of controlled substances to a patient who pays for the medication by cash, check, or credit card, with certain exceptions. In addition, disciplinary action may be taken for promoting or advertising the use, sale, or dispensing of controlled substances.

The Department of Health, with input from others, is required to develop rules for identifying indicators of controlled substance abuse. The program manager for the prescription drug monitoring program is authorized to provide relevant information to the applicable law enforcement agency upon determining that a pattern consistent with these rules and having cause to believe that certain violations related to controlled substances has occurred.

The Department of Health is authorized to obtain patient records without patient authorization when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances involving a pain-management clinic.

▪ **HB 5301** **Medicaid Services; Budget Conforming Bill**

The bill provides statutory changes to conform to the Fiscal Year 2010-2011 General Appropriations Act. Among other things, the bill:

- Revises the method by which the Agency for Health Care Administration (agency) must assess fees used for nursing home Medicaid underpayments and overpayments;
- Modifies the nursing home staffing requirements to allow for a combined direct care staffing requirement of 3.9 hours per resident per day;
- Extends the sunset date for the Medicaid Aged and Disabled (Meds-AD) and Medically Needy programs to June 30, 2011;
- Authorizes the agency to enroll Medicare cross-over providers for payment and claims purposes only; and
- Clarifies the use of the quality assessment on nursing home facilities and privately operated intermediate care facilities for the developmentally disabled, and authorizes the use of quality assessments to restore rate reductions as specified in the General Appropriations Act.

▪ **HB 5303** **Agency for Persons with Disabilities; Budget Conforming Bill**

This bill makes statutory changes to conform to the funding decisions included in the General Appropriations Act for Fiscal Year 2010-2011.

Among other things, the bill:

- Directs the Agency for Persons With Disabilities (agency) to develop and implement a comprehensive redesign of the home and community-based services delivery system;
- Includes age as a characteristic for the purpose of tier assignment. In addition, the bill specifies that individuals enrolled in tier four on July 1, 2007, are assigned to tier four without the need for further assessment;
- Establishes an expenditure cap on tier 1 at \$150,000 per client each year with some exceptions for individuals who need intensive behavioral services or special medical home care as identified in the Developmental Disabilities Waiver Services Coverage and Limitations Handbook;
- Reduces the expenditure caps on home and community based waiver tiers 2, 3, and 4 by 2.5 percent; and
- Directs Medicaid administrative hearings requested by clients or their representatives, who have any substantial interest determined by the agency, to be conducted by the Department of Children and Family Services pursuant to s. 409.285, F.S.

▪ **HB 5311
Department of Health;
Budget Conforming Bill**

The bill provides statutory changes to conform to the Fiscal Year 2010-2011 General Appropriations Act.

Among other things, the bill:

- Provides direction to the DOH related to organizational changes, requires a comprehensive DOH evaluation and justification review, and establishes the following program limitations:
 - Requires the DOH to submit a comprehensive evaluation and justification review of each division. The report is to include a rationale for each division, the return on investment for each

- division, and federal funding associated with each division, and any alternative course of action based on outcomes from the report. The report is to be submitted to the Governor, the Legislature, and the State Surgeon General by March 1, 2011;
- Removes the authority for the DOH division directors to appoint ad hoc advisory committees;
- Prohibits the DOH from creating new programs without the express consent of the Legislative Budget Commission or the Legislature;
- Requires the DOH to notify the Governor and the Legislature in writing before applying for any continuation of or new federal or private grants for an amount of \$50,000 or greater;
- Identifies the role of the DOH in an emergency by listing its specific duties and responsibilities;
- Clarifies the DOH's environmental health responsibilities over group care facilities. Redefines the term "group care facility";
- Provides for any rule developed by the Department of Education in relation to public or private schools be developed in consultation with the DOH;
- Specifies the duties related to food service inspections administered by the DOH. Redefines the term "food service establishment";
- Exempts medical device manufacturers that are registered by the Federal Food and Drug Administration from regulation by the DOH to eliminate duplicative regulation;

2010 LEGISLATIVE REPORT

- Provides a definition for a “medical convenience kit” and exempts the wholesale distribution of medical convenience kits that contain prescription drugs from the pedigree paper requirements in certain circumstances;
- Requires the DOH to develop a plan to treat contagious Tuberculosis in private and non-state public hospitals, including a transition plan for closing A.G. Holley State Hospital and transferring patients to private and non-state hospitals over a 90 day period. The DOH must submit the plan to the Governor and Legislature by November 1, 2010; and
- Transfers the administration of chapter 499, Florida Statutes, relating to the regulation of drugs, devices, cosmetics, and household products, from the DOH to the Department of Business and Professional Regulation on October 1, 2011. ■

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

INSURANCE & FINANCIAL SERVICES

INSURANCE AND FINANCIAL SERVICES

▪ **CS/CS/CS/HB 159**
Guaranty Associations

Insurance guaranty associations provide a mechanism for the payment of covered claims of insolvent insurance companies. Insurance companies are required by law to participate in guaranty associations as a condition of transacting business in Florida.

❖ *Florida Insurance Guaranty Association*

The bill consolidates the two automobile accounts in FIGA and streamlines the assessment recoupment process insurers use to recover FIGA assessments from their policyholders. Under current law, FIGA can impose regular and emergency assessments against property and casualty insurers to raise funds to pay the claims of an insolvent insurer. An insurance company is allowed by law to pass the assessment through to its policyholders. The bill exempts the recoupment of regular assessments from the imposition of commissions and fees. The recoupment of emergency assessments is currently exempt from insurance premium tax, commission, and fees.

❖ *Florida Life and Health Insurance Guaranty Association (FLAHIGA)*

The bill increases the coverage limits for some types of claims covered by FLAHIGA, permits insurance agents to provide information about FLAHIGA with potential or current policyholders or annuity purchasers, and makes numerous statutory changes to conform the FLAHIGA statutes to the National Association of Insurance Commissioners model act.

❖ *Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)*

The bill designates FWCIGA responsible for covering employment liability claims

of insolvent workers' compensation insurers.

▪ **HB 545**
Residential Property Sales

In November 2007, the Financial Services Commission adopted a uniform home grading scale to grade the ability of a home to withstand the wind load from a tropical storm or hurricane. The uniform home grading scale scores homes on a scale of 1 to 100 and takes into account the construction features of the home, the wind zone location, and the terrain surrounding the home.

In 2008, the Legislature enacted legislation that established a "two-part phase-in" of a requirement that sellers of homes located in the state's wind borne debris region disclose the home's windstorm mitigation rating based on the uniform grading scale to prospective purchasers. The first part of the phase-in was to begin January 2010, and would have required sellers of homes insured by Citizens Property Insurance Corporation for \$500,000 or more to disclose the home's windstorm mitigation rating to buyers. However, in 2009, before it took effect, this disclosure requirement was repealed. The second part of the phase-in, which remains law today and is scheduled to begin on January 1, 2011, will require sellers of any home in the windborne debris region to disclose to the purchaser the home's mitigation rating.

This bill repeals the second part of the disclosure phase-in before it takes effect on January 1, 2011. Consequently, sellers of homes located in the windborne debris region will not be required to disclose the home's windstorm mitigation rating. The bill would save sellers of homes located in the windborne debris region the cost of a windstorm mitigation inspection, which averages between \$150 and \$250.

2010 LEGISLATIVE REPORT

▪ **HB 661** **Surplus Requirements; Mortgage Guaranty Insurers**

When a lending institution makes a loan to a homebuyer, it often requires that an insurance policy be written on the loan that compensates the lender in the event that the borrower fails to make payments on the loan. This type of insurance is written by mortgage guaranty insurers, which are regulated by the Office of Insurance Regulation.

This bill grants the Commissioner of Insurance Regulation, within the Office of Insurance Regulation, discretion to grant a temporary exception to mortgage guaranty insurers with regard to the current minimum capital surplus requirements. Mortgage guaranty insurance companies may request such an exception and the Commissioner of Insurance Regulation, at his discretion, will determine whether to grant the temporary exception.

▪ **CS/CS/HB 885** **Life Insurance**

The bill makes changes to various aspects of life insurance and annuities sales. The bill:

- Specifies circumstances under which an insurer is not required to send notice of replacement of a life insurance policy to the current insurer;
- Allows coverage of spouses and dependent children under a group life insurance policy up to the amount for which the employee is insured under the policy;
- Bars the sale or transfer of annuities that were purchased as part of a settlement to satisfy Medicare secondary payer requirements to third parties that are not connected with the settlement;
- Prohibits, for purposes of group life insurance, the creation of a class of employees consisting solely of

employees covered under the employer's group health plan; and

- Exempts certain inactive life insurance sales agents from the continuing education requirements currently required in order for an agent to maintain a license.

▪ **CS/HB 1281** **Loan Origination**

This bill defines a "loan processor" as an individual licensed as a loan originator but only performing clerical or support duties. This definition is consistent with federal law. If the individual wishes to work for multiple employers, (s)he must file a "declaration of intent to engage solely in loan processing" with the Office of Financial Regulation. A loan processor may be employed by a company other than a mortgage broker or mortgage lender.

This bill provides an exception to Florida Statutes, which prohibit the payment of fees or commissions in any mortgage loan transactions to any person or entity other than a licensed or exempt mortgage broker or lender.

The bill removes the current statutory requirement that mortgage lenders file a new license application upon a change of control in the business. The bill provides clarifications as to disclosures provided as part of the good faith estimate process and requires that the borrower acknowledge receipt of the disclosure by signing and dating the document. Additionally, the bill removes the requirement that mortgage lenders file a new license application because of a change of control in the business.

The bill also reenacts s. 494.00255(1)(m), F.S., thereby providing a basis for disciplinary action by the Office of Financial Regulation for violating provisions of the federal Real Estate Settlement Procedures Act, the federal Truth in Lending Act, or any regulations adopted under such acts, regarding mortgage transactions.

▪ **CS/SB 1460**
Florida Hurricane Catastrophe Fund; Contract Year

The Florida Hurricane Catastrophe Fund (FHCF or fund) is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. All companies that write such insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the fund. Legislation enacted in 2009 changed the contract year of the FHCF from June 1st through May 31st to January 1st through December 31st (a calendar year), starting January 1, 2011.

To implement the contract year date change, the legislation created a "transitional" contract year for 2010, which began on June 1, 2010, and ended on December 31, 2010. The shortening of the 2010 contract year to 7 months will cause an accounting problem for insurers due to the acceleration of the recognition of an insurer's expense (of FHCF reinsurance) resulting in potential solvency difficulties for insurers. In essence, an insurer's revenue will not match its expense, and the resulting loss could unduly reduce surplus, thus impacting an insurer's financial solvency.

The bill corrects the "transitional" 2010 contract year problem by changing the FHCF's contract year back to June 1st through May 31st thereby eliminating the acceleration of an insurer's expenses for purchasing FHCF reinsurance. The bill provides legislative intent language which emphasizes the importance of providing residential property insurers with more time to negotiate and purchase private reinsurance and a greater degree of certainty regarding the coverage provided by the fund.

To facilitate these goals, the bill requires the FHCF's aggregate coverage and aggregate retention to be published in the Florida Administrative Weekly by January 1 of each year, the FHCF's

reimbursement contract to be adopted by February 1 of each year, and insurers to execute their FHCF reimbursement contract by March 1 of each year (with an effective date of June 1). These procedures will afford insurers greater opportunity to better estimate their coverage from the fund and their private reinsurance needs.

The bill also changes the retention multiple formula in calculating an insurer's retention, by using exposure from "two years" prior (as opposed to "one year" provided under current law) in calculating the retention factor. This change will permit the fund to calculate and provide retention multiples to insurers earlier in the year because the fund will no longer have to wait on its more recent exposure data. The retention formula change will enable property insurers to obtain FHCF reinsurance earlier in the year and be able to more accurately assess their need for additional private reinsurance in advance of the upcoming hurricane season.

The legislation also caps the FHCF's mandatory layer at \$17 billion, unless the FHCF has capacity to pay \$17 billion in one year and \$17 billion in the subsequent year. This provision accomplishes the objective of making the FHCF's mandatory layer more of a certain or known benefit for insurers.

▪ **CS/CS/SB 2044**
Insurance

This bill makes numerous changes to the laws related to insurance, primarily residential property insurance. The bill addresses the following issues:

❖ *Insurer Solvency*

- Requires new residential property insurers, meaning those insurers who do not have a certificate of authority before July 1, 2010, to have a minimum surplus as to policyholders of \$15 million.

For residential property insurers having a certificate of authority prior to July 1,

2010 LEGISLATIVE REPORT

2010, the minimum surplus requirement will be \$5 million until July 1, 2015, \$10 million after July 1, 2015, and \$15 million after July 1, 2020. The bill allows the Office of Insurance Regulation (OIR) to reduce this surplus requirement if the insurer is not writing new business, has premiums in force of less than \$1 million per year in residential property insurance, or is a mutual insurance company.

- Allows an insurer to file a plan with the OIR to cancel or non-renew property insurance policies in 45 days upon a finding by the OIR that the insurer needs to reduce exposure for solvency purposes.

❖ *Insurer Affiliates and Managing General Agents*

- Provides the OIR with additional authority to monitor residential property insurer funds going to affiliates when an insurer's surplus falls below certain levels.

If the insurer's risk based capital level drops below 200 or when an insurer loses 15 percent of its surplus, the OIR may require the insurer to file a detailed report identifying financial information, including remunerations paid to its affiliates.

- Allows the OIR to examine a managing general agent (MGA) even though the entity represents only one insurer.
- Requires an insurer to notify the OIR of its intention to enter into contracts with its affiliates within 30 days of such contracts being executed.

❖ *Public Adjusters (Certain provisions become effective January 1, 2011)*

- Prohibits public adjusters from making certain statements in advertisements or solicitations.
- Institutes a 3 year claims filing deadline for new, supplemental, or reopened claims under a personal lines residential insurance policy from the date of a hurricane or windstorm.

- Caps public adjusters' fees in supplemental or reopened cases at 20 percent of the reopened or supplemental claim payment.
 - Clarifies that after one year of a declaration of emergency, the compensation cap that applies to non-emergencies goes into effect.
 - Requires persons acting on behalf of an insurer to provide at least 48 hours' notice to an insured or claimant, public adjuster, or legal representative prior to scheduling a meeting with the claimant or an onsite inspection of the insured property.
 - Requires a public adjuster to ensure prompt notice of property loss claims to the insurer.
 - Prohibits an insurer from excluding the public adjuster from in-person meetings with the insured.
 - Prohibits a public adjuster from restricting or preventing an insurer, or other person acting on behalf of the insurer, from having reasonable access at reasonable times to any insured or claimant or to the insured property that is the subject of the claim.
 - Prohibits a public adjuster from acting or failing to reasonably act in a manner that would obstruct or prevent an insurer or insurer's adjuster from timely gaining access to conduct an inspection of the insured property.
 - Provides restrictions for licensed contractors and subcontractors.
 - Mandates that certain information be included in all public adjuster contracts.
 - Requires public adjuster apprentices to complete additional hours of continuing education.
- ### ❖ *Rate Standards*
- Prohibits the OIR from, directly or indirectly, impeding an insurer's right

to acquire policyholders, advertise, or appoint agents, including the amount of agent commissions.

Under current law, property insurers are prohibited from using the "use and file" option for filing rate increases with the OIR until December 31, 2010. The bill extends the prohibition to December 31, 2011.

- Allow insurers, under the expedited rate filing procedure which was implemented last year, to include a rate adjustment for reinsurance costs, financing products used to replace reinsurance, and applicable inflation trend factors published annually by the OIR. Specifies that the increases from this filing and any other rate filing combined cannot exceed 10 percent for any individual policyholder, excluding coverage changes and surcharges, within the same policy year.
- Allows the OIR to develop or contract for development of a website that will allow consumers to compare prices, complaints, financial information and other useful data regarding insurers and includes a \$310,700 appropriation.

During the rate filing procedure, an insurer may provide the OIR with additional information, upon request by the OIR, without having its initial certification rendered false.

❖ *Mitigation Discounts*

- Allows insurers to apply "debits" as well as the currently allowed credits to base rates for the purposes of reflecting mitigated and non-mitigated features in rates.
- Establishes Legislative intent to provide that implementation of mitigation discounts not result in a loss of income to the insurers granting the discounts, so that the aggregate of mitigation discounts should not exceed the aggregate of the expected reduction in loss that is

attributable to the mitigation efforts for which the discounts are granted.

❖ *Correlation of Mitigation Discounts to the Home Grading Scale*

- Repeals the requirement that the OIR develop the method, by February 1, 2011, for insurance companies to establish mitigation discounts, credits, or other rate differentials for hurricane mitigation measures that correlate to the home's rating calculated by the uniform home grading scale.

❖ *Mitigation Verification Inspectors*

- Eliminates mitigation inspectors certified by the My Safe Florida Home program from the list of persons who can sign a mitigation verification form (form). Adds a "home inspector," licensed under s. 468.8314, F.S., to the list of persons who can sign such forms.
- Provides that an insurer may accept a form from any other person possessing qualifications and experience acceptable to the insurer.
- Requires that the person signing the form must inspect the structure personally and not through an employee or another person; however, an exception is allowed for general building contractors who do not have to personally inspect the structure, but may have a "direct employee" conduct the mitigation verification inspection.
- Defines "misconduct" as to when a mitigation inspector signs a uniform mitigation verification form and provides penalties for same.
- Provides that persons obtaining evidence of mitigation inspection fraud must report such incidences to the Division of Insurance Fraud. Such persons receive immunity from liability for any statements made to the Division.
- Requires the Division to issue an investigative report if it finds

2010 LEGISLATIVE REPORT

- probable cause that mitigation inspectors made intentionally false or fraudulent statements in the inspection form.
- Mandates that the Division send its report to the OIR and the agency responsible for the professional licensure of the mitigation inspector.
 - Allows insurers to have mitigation verification forms verified by quality assurance providers.
- ❖ *Citizens Property Insurance Corporation*
- Changes the name of the Citizens' "high risk" account to the "coastal account" and directs the Division of Statutory Revision to prepare a reviser's bill for introduction next regular session to change the term to conform the Florida Statutes to this requirement.
 - Provides a date of attachment of Citizens' surcharges to ensure that assessments are fully collected from Citizens' policyholders.
 - Clarifies that board members of Citizens, who are appointed for having expertise in insurance, are within the scope of the code of ethics. Clarifies conditions for board members to abstain from voting when an issue "would inure to his or her special private gain or loss."
 - Extends by two years, to December 1, 2012, the requirement that the Citizens' board reduce the boundaries of the high risk account (wind-only coverages) if the 100-year probable maximum loss is not reduced by at least 25 percent from the benchmark provided under law.
 - Provides that insurers offering Citizens' policyholders replacement coverage must give notice of nonrenewal to such policyholders at least 45 days prior to the effective date of the nonrenewal.
- ❖ *Notice of Change in Policy Terms*
- Allows an insurer offering personal lines property insurance to provide policyholders with a "notice" of change in coverages as opposed to having to non-renew and re-write a policy if the coverages change.
 - Provides that the intent of the provision is to allow an insurer to make a change in policy terms without non-renewing policyholders that the insurer wishes to continue insuring. Also provides that this provision is intended to alleviate the confusion to the policyholder caused under current law by the required policy nonrenewal in the limited instance when an insurer intends to renew the policy, but the new policy contains a change in policy terms.
- ❖ *Replacement Costs for Dwellings*
- Provides that in the event of a loss for which a dwelling is insured for replacement costs:
 - The insurer must initially pay the insured the actual cash value of the insured loss, less any deductible, and the insured must subsequently enter into a contract for building and structural repairs. The insurer must pay any remaining amounts as repairs are done. With the exception of incidental expenses to mitigate damages, the insurer, contractor, or subcontractor may not require the insured to advance payment for other repairs or expenses. The insurer may waive the requirement for the insured to enter into a contract.
 - Allows the insured to have a period of 1 year after the date the insurer pays the actual cash value to make a claim for replacement costs.
 - If a total loss occurs, the insurer must pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702, F.S., the valued policy law.

- ❖ *Property Insurance Claims*
 - Clarifies that the same time frame in which an insurer must pay or deny a claim applies to both the initial or the supplemental claim.
- ❖ *Insurer Report Card by the Consumer Advocate*
 - Specifies that the Consumer Advocate's annual report card, which grades personal residential property insurers, must be prepared by June 1, 2012, and each June 1 thereafter, and must "objectively" grade such insurers.
 - Clarifies that the report card include only "valid" consumer complaints and other "measurable and objective" factors, and defines the term "valid consumer complaint."
- ❖ *Medical Malpractice Insurance*
 - Continues the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund emergency assessments for three years, from May 31, 2010, to May 31, 2013.
- ❖ *Federal Crop Insurance*
 - Provides that gross written premiums for federal multiple-peril crop insurance ceded to the Federal Crop Insurance Corporation or authorized reinsurers may not be included in the calculation of an insurer's gross writing ratio. The bill requires insurers that write other insurance products, along with federal multiple-peril crop insurance, to provide disclosures in the notes to its annual and quarterly financial statements, or in a supplement, the gross written premiums for federal multiple-peril crop insurance.
- ❖ *Audited Financial Reports*
 - Provides that an accountant for an insurer cannot prepare audited financial reports for more than 5 consecutive years. Current law is 7 years.

- ❖ *Customer Representatives*
 - Exempts applicants who have earned the designation of Certified Insurance Representative from the National Association of Christian Catastrophe Insurance Adjusters, from examination for customer representative licensure.

▪ **CS/CS/CS/SB 2086
Consumer Debt Collection**

Part VI of chapter 559, Florida Statutes, governs the regulation of consumer debt collection agencies. The Office of Financial Regulation (OFR) is responsible for the registration and regulation of consumer debt collection agencies. The Attorney General is authorized to initiate actions in any federal court against out-of-state consumer collection agencies for violations of this part. This bill provides the following regulatory and enforcement changes:

- Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency, by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR
- Provides that a violation of Part VI, ch. 559, F.S., is actionable by the Attorney General, including consumer complaints.
- Increases administrative fines for violations, currently capped at \$1,000, to \$10,000. It would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.
- Provides the OFR with broad, discretionary authority in promptly investigating the books and records of a consumer collection agency. Investigations would be based on the nature and severity of an alleged violation rather than the accumulation of five unresolved sworn complaints.

2010 LEGISLATIVE REPORT

▪ **CS/CS/SB 2176** **Insurance**

❖ *Insurer Rating Laws*

The bill amends the insurance "Rating Law," to allow specified types of commercial lines insurance to be exempt from the rate filing and review requirements of s. 627.062(2), F.S. The bill provides that in order to exercise this exemption an insurer must notify the Office of Insurance Regulation (OIR) of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill specifies the information that must be included in the notice, and requires that underwriting files, premiums, and loss/expense statistics must be maintained by the insurer and subject to review by the OIR.

The bill provides that commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings. A

although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverages continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory. This bill prohibits an association, fund, or pool created to manage a risk management program or self-insurance public entity from requiring its members to give more than a 45 day notice of the member's intention to withdraw from the association, fund, or pool.

❖ *Firefighters and Law Enforcement Officers*

Current law establishes a presumption for state and local firefighters and law enforcement, and correctional and correctional probation officers regarding determinations of employment related

disability. It provides that certain diseases (tuberculosis, heart disease, and hypertension) acquired by such firefighters and officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer, the burden of proving by competent evidence that the disabling disease resulted from the person's employment.

The bill provides that a law enforcement officer, correctional officer, or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and departs from the prescribed course of treatment of his or her physician, and the departure is demonstrated to result in an aggravation of his or her condition, would lose a specified presumption for claims after July 1, 2010. The bill also specifies that only retirement coverage under claims made prior to leaving employment are eligible for a specified presumption. These provisions do not apply to state or local firefighters.

The bill provides a broader interpretation of workers' compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for

a private employer. For purposes of workers' compensation benefits related to off-duty employment, the bill authorizes a sheriff to include the sheriff's proportionate cost of workers' compensation premiums for the off-duty deputy sheriffs providing such off duty employment.

❖ *Medicare Supplement Policies*

The bill amends provisions relating to the regulation of Medicare supplement policies. First, the bill revises provisions related to unfair methods of competition and unfair or deceptive acts to provide that this section does not prohibit a Medicare supplement insurer from providing a premium credit to an insured for using an in-network inpatient facility. The bill expressly provides that an insurer

offering Medicare supplement policy is not prohibited from entering into an agreement through a network with inpatient facilities that agree to waive the Medicare Part A deductible in whole or part. The insurer's network agreement would not be subject to the approval of the OIR and the insurer would not be required to file a copy of the agreement with the OIR.

Further, the bill requires an insurer to factor such a waiver of the Medicare Part A deductible and premium credit into the insurer's loss-ratio calculation and policy premium. Pursuant to s. 627.410, F.S., plans are required to have their forms and rates approved by the OIR prior to their use. Section 626.9541(1)(g), F.S., prohibits unfair discrimination between insureds of the same actuarially supportable class in the amount of premiums or rates charged for any policy of health insurance or in any of the terms or conditions of such contract. Section 626.9541(1)(h), F.S., prohibits an insurer, except as otherwise expressly provided by law, or in an applicable filing with the office, to knowingly permit or offer to make, or make, any contract or agreement as to such contract other than as plainly expressed in the insurance contract or to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premium payable on the contract.

The OIR has noted that there is no provision in the underlying insurance contracts of insurers using such agreements stating that a discount, rebate or premium credit will be available to an insured for using a preferred hospital, and there is nothing in the rate filing demonstrating how the arrangement is assumed to be utilized by the insureds or how it impacts premiums. Representatives of the OIR also state that they have not received a filing from a Medigap insurer requesting approval of the arrangement, incorporating the arrangement into the contract, or incorporating the arrangement into the rate to be charged insureds. This bill may

limit the ability of the OIR to evaluate the fairness or adequacy of a discount and the impact of such discount agreements in the ratemaking process.

❖ *Warranty Associations*

This bill reduces much of the regulatory oversight that OIR currently exercises over warranty associations. The bill also creates new prohibited acts and adds new criminal penalties to the statutes that regulate warranty associations. Among its key provisions, the bill:

- Exempts, from regulation under the Florida Insurance Code, motor vehicle service agreements that are sold to non-consumers.
- Provides that unlicensed activity by warranty associations is a first-degree misdemeanor.
- Prohibits false, deceptive or misleading advertising by warranty associations.
- Removes the requirement to submit warranty service agreements to OIR for approval; however, the bill provides that OIR may order a form not to be used if it doesn't meet specified criteria.
- Switches from quarterly to annual financial reports requirements for warranty associations.
- Makes periodic OIR examinations discretionary and provides factors to consider in choosing to conduct an examination.
- Provides that there is no violation for knowingly overcharging if a motor vehicle service agreement company refunds any excess premium within 45 days.
- Makes a failure to provide a complete sample copy of the terms and conditions of a service or warranty agreement prior to sale an unfair practice, but provides that this information may be provided online.
- Broadens the definition of home warranty service agreements.

2010 LEGISLATIVE REPORT

- Allows premium increases in renewal home warranty contracts if supported by claims history or claims cost data.
- Removes OIR's ability to require additional regular or special reports from home warranty associations.
- Repeals the requirement for home warranty associations and motor vehicle service agreement companies to file rates with OIR.
- Requires that warranty contracts sold in Florida must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the OIR.

❖ *Annuities Sales*

This bill makes several changes in the insurance code to enhance penalties for unethical annuities sales practices as well as provide certain consumer protections for seniors who purchase annuities contracts. The act makes the following provisions:

- Prohibits annuity sales agents from making a member of his/her family the beneficiary of an annuity if that annuity is sold to anyone other than another family member.
- Strengthens DFS's ability to deny licensure to agents who have a history of financial misconduct involving seniors.
- Requires more favorable annuity contract terms for seniors and requires sales agents to provide seniors with greater disclosures prior to the sale of an annuity contract.
- Heightens administrative fines for deceptive annuity sales practices towards seniors and gives DFS the

authority to order the selling agent to pay restitution to a senior who is harmed by a violation of this section.

▪ **HB 7217** **Hurricane Catastrophe Fund** **Emergency Assessments**

The bill extends the exemption of medical malpractice insurance premiums from the Florida Hurricane Catastrophe Fund (FHCF or fund) emergency assessment for three years, from May 31, 2010, to May 31, 2013. The FHCF is a tax-exempt trust fund created as a form of mandatory reinsurance for residential property insurers. All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. If the cash balance of the FHCF is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders.

The FHCF is authorized to levy emergency assessments against most property and casualty insurance premiums paid by policyholders, including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations. By law, workers' compensation, accident and health, federal flood and, until May 31, 2010, medical malpractice insurance are not included in the fund's assessment base and thus are not assessed for fund deficits. Medical malpractice insurance premiums were subject to FHCF's emergency assessments from 1993 (when the fund was created) until 2003, when an exemption was enacted. ▪

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

**LEGAL, CRIMINAL JUSTICE &
THE JUDICIARY**

Including legislation relating to:

- *Courts*
- *Criminal justice; and*
- *Law enforcement.*

LEGAL, CRIMINAL JUSTICE AND THE JUDICIARY

▪ **HB 1
Statutes of Limitations**

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law.

HB 1 amends s. 95.11, F.S., to provide an exception to the current two-year statute of limitations for wrongful death actions, to provide that wrongful death actions for intentional torts resulting in death from acts described in the murder or manslaughter statutes may be commenced at any time.

▪ **HB 11
Crimes Against Homeless Persons**

The bill amends Florida’s hate crimes statute, s. 775.085, F.S., to reclassify the felony or misdemeanor degree of an offense in which prejudice based on the homeless status of the victim is evidenced in its commission. The bill defines “homeless status” to mean that the victim:

- Lacks a fixed, regular, and adequate nighttime residence; or
- Has a primary nighttime residence that is:
 - A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
 - A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

▪ **CS/CS/HB 25
Temporary and Concurrent Custody of a Child**

The bill authorizes a court to order concurrent custody of a minor child to an extended family member who has physical custody of the child, but does not have signed, written documentation from a parent which is sufficient to

enable the custodian to do things necessary to care for the child. The bill provides petition requirements for requesting concurrent custody and provides that if one of the minor child’s parents objects to the petition, the petitioner may convert the petition to one for temporary custody.

The bill provides that concurrent custody may not eliminate or diminish the custodial rights of the parent, and the court must terminate an order for concurrent custody if one of the minor child’s parents objects to the order. The bill allows an order granting concurrent custody to redirect all or part of an existing child support obligation to the extended family member who is granted concurrent custody of the child. However, at any time the person requesting temporary or concurrent custody or the child’s parents may petition the court to modify the child support order.

The bill provides that an active-duty service-member, upon deployment, may designate a family member or a stepparent to exercise the service member's time-sharing periods.

▪ **CS/HB 33
Alcoholic Beverages; Persons Under 21 Years of Age**

The bill creates a first degree misdemeanor for a subsequent violation within one year of a prior conviction for the sale or delivery of alcoholic beverages to a person under 21 years of age on the premises of an alcoholic beverage licensee. A first degree misdemeanor carries a jail sentence not to exceed one year as well as a fine not to exceed \$1,000. Under current law, a person who sells or delivers alcoholic beverage to a person under the age of 21 on an alcoholic beverage licensed premises is subject to a second degree misdemeanor, which carries a term of imprisonment not to exceed 60 days and a fine not to exceed \$500. The bill also

2010 LEGISLATIVE REPORT

creates a complete defense for any person who violates the prohibition against the sale or delivery of an alcoholic beverage to a person under 21 years of age on an alcoholic beverage licensed premises.

The defense applies if: The buyer or recipient of the alcoholic beverage falsely evidenced that he or she was 21 years of age or older, The appearance of the buyer or recipient was such that an ordinarily prudent person would believe him or her to be 21 years of age or older, and The person carefully checked the buyer or recipient's identification card, acted in good faith, and relied upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

▪ **CS/HB 91** **Adult Protective Services**

The bill amends several provisions in Chapter 415, Florida Statutes, relating to adult protective services. The bill replaces the terms "disabled adults" and "elderly persons" with "vulnerable adult." The bill also amends the definition of "vulnerable adult" by including the term "sensory."

The bill creates a definition for "activities of daily living" that conforms the phrase to the definition of "activities of daily living," relating to adult family-care homes. The bill provides that the central abuse hotline must transfer to the appropriate county sheriff's office reports of known or suspected abuse of a vulnerable adult involving a person other than a relative, caregiver, or household member.

The bill specifies that the Department of Children and Family Services (DCF) may file a petition to determine incapacity in adult protective proceedings. Upon filing the petition, DCF is prohibited from being appointed guardian or providing legal counsel to the guardian. The bill provides DCF with access to records of the Department of Highway Safety and Motor Vehicles for use in conducting adult protective investigations.

▪ **CS/CS/HB 119** **Sexual Offenders and Predators**

This bill deals with regulation of sexual offenders, sexual predators, and other persons who have committed certain sex-related crimes. Its provisions include:

- Creation of s. 856.022, F.S., which includes new criminal offenses and enhanced penalties that apply to persons who have been convicted of certain sexual offenses. The new statute:
 - Enhances the punishment for loitering and prowling to a first degree misdemeanor when a sexual offender commits the offense within 300 feet of a place where children were congregating;
 - Prohibits such an offender from approaching a child at a public park or playground with the intent to engage in conduct or communication of a sexual nature; and
 - Requires that such an offender notify school officials before entering the building or grounds of a child care facility or school and that he or she be directly supervised while on school grounds. There are exceptions for voting locations and offenders who are dropping off their own child or grandchild.
- Amending a number of statutes to require registration and reporting of a transient address of sexual predators and sexual offenders if no permanent or temporary address is available, and to include related definitions.
- Renumbering the statewide residency restriction for persons convicted of certain sexual offenses from s. 794.065, F.S., to s. 775.215, F.S. Substantively, the statute is amended to:

- Add definitions of “child care facility,” “park,” “playground,” and “school”;
- Include a grandfather clause providing that an offender who lives in a residence that meets the residency requirement is not required to relocate if a prohibited location is subsequently established within 1000 feet of that residence;
- Relieve offenders who have been removed from the requirement to register as a sexual offender or a sexual predator pursuant to s. 943.94354, F.S., from complying with the residency restriction; and (4) applying the residency restriction to offenders who have been convicted of similar sexual offenses in other jurisdictions.
- Amending s. 943.04352, F.S., to require a search of the Dru Sjodin National Sex Offender Public Website when a person is placed on misdemeanor probation.
- Adds s. 827.071, F.S. (Sexual Performance by a Child), to the list of offenses for which a young sexual offender can be considered for removal from the requirement to register as a sexual offender under the “Romeo and Juliet” provision in s. 943.04354, F.S. As in other cases, a judge will make the final decision as to whether the specific circumstances of the offense warrant removal from the registry.
- Amending s. 947.005, F.S. (relating to conditional release), and s. 948.001, F.S. (relating to probation and community control), to add definitions of “child care facility,” “park,” “playground,” and “school.” The existing definition of “qualified practitioner” is amended to require a practitioner who is not a psychiatrist or a psychologist to have the qualifications and experience to evaluate and treat sexual offenders.
- Amending s. 948.31, F.S., to provide that any sexual predator or sexual offender who is placed on conditional release, probation, or community control must be evaluated and, if needed, treated by a qualified practitioner trained to treat sex offenders.
- Amending conditions of conditional release, probation, and community control in ss. 947.1405 and 948.30, F.S., that apply to certain sexual offenders. The amendments include:
 - Replacing the undefined term “day care center” with the newly defined term “child care facility” in relation to the residency restriction;
 - Providing that an offender who lives in a residence that is in compliance with the residency restriction does not have to relocate if a prohibited location is subsequently established within 1000 feet of that residence;
 - Providing that a “qualified practitioner,” rather than the offender’s therapist, must approve certain activities;
 - Requiring that the annual polygraph examination be performed by a polygrapher who is a member of a national or state polygraph association and who is certified as a post-conviction sex offender polygrapher, and that the results must be provided to the offender’s probation officer and therapist.
- Including additional conditions of conditional release, probation, and community control to ss. 947.1405 and 948.30, F.S., for certain sexual offenders. The new conditions are:
 - A prohibition against visiting schools, child care facilities, parks or playgrounds without approval from the offender’s probation officer, with exceptions

2010 LEGISLATIVE REPORT

for attending religious services or dropping off or picking up the offender's child or grandchild;

- Prohibitions against certain activities relating to children, including distributing candy or other items at Halloween; wearing a Santa Claus or Easter Bunny costume, or another costume designed to appeal to children, around the time of Christmas or Easter; entertaining at children's parties; or wearing a clown costume without prior approval from the commission or the court.

▪ **CS/HB 315** **Adoption**

This bill amends the Florida Adoption Act (Chapter 63, F.S.) to prohibit public and private adoption agencies or entities from making adoption suitability determinations based on the lawful possession, storage, or use of a firearm or ammunition. The bill also prohibits an adoption agency or entity from requiring the adoptive parent or prospective adoptive parent to disclose information relating to the lawful possession, storage, or use of a firearm or ammunition. Further the bill prohibits the adoption agency or entity from restricting the lawful possession, storage, or use of a firearm or ammunition as a condition for an individual to adopt.

The bill also amends provisions relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies to provide that requirements for the licensure and operation of a child-placing agency shall also include compliance with newly created and current law relating to the prohibition of firearms registration, and to provide that failure to comply with certain statutory requirements is a ground for denial, suspension, or revocation of a license for a family foster home, residential child-caring agency, or child placing agency.

The bill requires that the Department of Children and Family Services' rules include a form to be used by child-placing agencies during an adoption home study. The form must require all prospective adoptive parent applicants acknowledge in writing the receipt of a document containing the statutory language relating to the safe storage of firearms.

▪ **CS/HB 317** **Threats**

Section 836.10, F.S., provides that is a second degree felony to make written threats to kill or do bodily injury. The bill amends this offense so that it also applies to the same type of threats when they involve electronic communications.

▪ **CS/CS/HB 325** **Uniform Traffic Control; Red Light Cameras**

This bill creates the "Mark Wandall Traffic Safety Act" and the "Mark Wandall Safety Program." The bill preempts the regulation and use of all traffic camera enforcement systems to the state and creates s. 316.0083, F.S., establishing requirements for the use of traffic infraction detectors by the Department of Highway Safety and Motor Vehicles (the Department), counties and municipalities in enforcement of the requirements of s. 316.074(1) or s. 316.075(1)(c)1., F.S., which requires vehicles to stop before entering an intersection when so directed by a traffic signal.

The bill authorizes the Department, counties, and municipalities to use traffic infraction enforcement officers. The penalty for failing to stop at a steady red light, as determined through the use of a traffic infraction detector, is a fine of \$158.

The bill provides processes regarding required notifications, the issuance of citations to registered owners of motor vehicles, and defenses available to vehicle owners. The bill provides a \$158 penalty for any violations of ss.

316.074(1) or 316.075(1)(c)1., F.S., regardless of the method of enforcement. If the violation is enforced under s. 316.0083, F.S., and the penalty is paid within 30 days of notification, the total penalty is \$158. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$158, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

The bill requires signage at intersections using traffic infraction detectors and provides traffic infraction detectors may not be used to enforce violations when the driver is making a right-hand turn in a careful or prudent manner where such turns are allowed.

The bill provides a transitional implementation period (until July 1, 2011) for those counties and municipalities currently engaged in the use of traffic detectors or who enter into an agreement to acquire such equipment on or before July 1, 2011. A severability clause is also provided. The bill provides that each county or municipality operating a traffic infraction detector must submit an annual report to the Department which details the results of the detectors and the procedures for enforcement.

The Department must submit a summary report to the Governor and Legislature on or before December 31, 2012, which includes a review of the information submitted by the counties and municipalities and any recommendations or necessary legislation

▪ **CS/CS/SB 366**
Sale of Smoking Pipes and Smoking Devices

The bill provides that it is a first degree misdemeanor for any person to offer for sale at retail any item listed in the bill as a smoking pipe and smoking device (such as a bong) unless the person has a retail tobacco products dealer permit under s. 569.003, F.S., and: Derives at least 75 percent of its annual gross revenues from the retail sale of

cigarettes, cigars, and other tobacco products; or Derives no more than 25 percent of its annual gross revenues from the retail sale of items listed as "smoking pipes and smoking devices."

▪ **CS/HB 437**
Contingency Fee Agreements;
Department of Legal Affairs

This bill (Chapter 2010-7, L.O.F.) provides that, before the Department of Legal Affairs (department) can enter into a contingency fee contract with a private attorney, the Attorney General must make a written determination that contingency fee representation is both cost effective and in the public interest. After the determination to enter into a contingency fee contract is made, the bill requires the Attorney General to request proposals from private attorneys to represent the department on a contingency fee basis, unless the Attorney General determines that requesting proposals is not feasible.

This bill requires private attorneys entering into contingency fee contracts with the department to keep contemporaneous time records in increments of no greater than one-tenth of an hour, and requires copies of executed contingency fee agreements, as well as payment of contingency fees, to be posted on the department's website for specified periods of time. The bill also provides contingency fee caps on the amount that a private attorney may be awarded. Specifically, under the bill the department may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee in excess of:

- 25 percent of any recovery up to \$10 million; plus
- 20 percent of any portion of such recovery between \$10 million and \$15 million; plus
- 15 percent of any portion of such recovery between \$15 million and \$20 million; plus

2010 LEGISLATIVE REPORT

- 10 percent of any portion of such recovery between \$20 million and \$25 million; plus
- 5 percent of any portion of such recovery exceeding \$25 million.

Additionally, the bill prohibits an aggregate contingency fee in excess of \$50 million, exclusive of reasonable costs and expenses, irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

Lastly, the bill requires the Attorney General to submit a report annually to the President of the Senate and to the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year.

▪ **CS/HB 449** **Sanctions for Court Pleadings**

The bill amends the current attorney's fee sanction statute for frivolous claims, unsupported defenses, and sham appeals. The bill retains the existing exceptions to an award of attorney's fees as a sanction, but adds two exceptions that are currently included in the Federal Rules of Civil Procedure.

First, when an initial claim or defense is not supported by the application of then-existing law, an award of attorney's fees may not be imposed against a party if the party is represented by an attorney. However, such a sanction could still be imposed against the party's attorney.

In addition, an award of attorney's fees is precluded altogether on the court's own initiative, unless the award is made prior to the voluntary dismissal of the claim or defense or settlement of the claim.

▪ **CS/SB 492** **Garnishment**

The bill increases, from \$500 to \$750 per week, the amount of disposable earnings of a head of family that is exempt from attachment or garnishment.

For a head of family earning greater than \$750 per week, the individual's wages are exempt from garnishment unless the protection is waived in writing. The bill provides requirements for the agreement, including that the writing:

- Be in the same language as the contract or agreement to which the waiver relates;
- Be contained in a separate document attached to the contract or agreement; and
- Be written in a form substantially similar and in 14-point font to a notice provided in the subsection. The notice informs the individual of the availability of the exemption and the effect of the agreement to waive such protection.

▪ **HB 525** **Statutes of Limitation for Sexual Battery**

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as "statutes of limitation." Section 775.15(3), F.S., provides that the time for prosecution of a criminal case starts to run on the day after the offense is committed.

Section 775.15, F.S., provides the following general time limitations for initiating a criminal prosecution for any felony offense:

- For a capital felony, a life felony, a felony resulting in death, or a first degree felony sexual battery on a victim under 18, there is no time limitation;
- For a first or second degree felony violation of s. 794.011, F.S., (which includes several different sexual battery offenses) if reported to a law enforcement agency within 72 hours after commission of the crime, there is no time limitation;
- For any felony that results in injury to a person when the felony arises from

- the use of a destructive device, a ten-year limitation applies;
- For a first degree felony, a four-year limitation applies;
 - For any other felony, a three-year limitation applies.

These general time limitation periods are extended to five years for prosecutions involving securities transaction violations (ch. 517, F.S.), Medicaid provider fraud (s. 409.920, F.S.), insurance fraud by an employer (s. 440.105, F.S.), filing a false insurance claim (s. 817.234, F.S.), felony abuse against elderly persons or disabled adults (s. 825.102, F.S.), and prosecutions involving environmental control felony violations (ch. 403, F.S.).

- For the offenses of sexual battery, lewd or lascivious acts, and other enumerated felony offenses, in addition to these general time periods, an offender may be prosecuted at any time after the date on which his or her identity is established, or should have been established through the exercise of due diligence, through the analysis of DNA evidence (except that for offenses committed between July 1, 2004 and June 30, 2006, an offender may be prosecuted within 1 year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of DNA). ss. 775.15(15), (16), F.S.

Under current law, there is no time limitation for beginning a prosecution of most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable time limitation. The specific sexual battery crimes to which this change would apply are found in subsections 794.011(5) and (8), of the sexual battery statute. As to these two offenses, the applicable time limitation does not begin to run until the earlier of the date that the minor reaches 18 years of age or the crime is reported

to law enforcement. The two offenses are as follows:

- Section 794.011(5), F.S., provides that a person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree. There is no time limitation for commencing prosecution for this crime if the sexual battery was reported to law enforcement within 72 hours after the commission of the crime or if there were multiple perpetrators. Otherwise, the time limitation is 3 years.
- Section 794.011(8), F.S., provides that without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who solicits that person to engage in any act which would constitute sexual battery commits a felony of the third degree. The time limitation is 3 years.

This bill eliminates the statute of limitations in criminal cases of sexual battery when the victim is under the age of 16 at the time of the offense. In civil actions, s. 95.031, F.S., provides that the time within which an action commences under any statutes of limitation runs from the time that the cause of action accrues. In an action for recovery of damages based upon a theory of intentional tort, the action must commence within four years, pursuant to s. 95.11(3)(o), F.S. In a case where the action is specifically based upon abuse or incest, the action must commence within seven years of the victim reaching age 18, or within four years after the child leaves the dependency of the abuser, or of the discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later. s. 95.11(7), F.S. This time limitation is the

statutory application of the “delayed discovery doctrine” and its use in childhood sexual abuse or incest cases was upheld in *Hearndon v. Graham*, 767 So.2d 1179 (Fla. 2000). In that case, the Florida Supreme Court held that the delayed discovery doctrine applies in childhood sexual abuse cases.

This doctrine is applied in other types of tort actions as well. The delayed discovery doctrine provides that a “cause of action does not accrue until the plaintiff either knows or reasonably should know of the tortious act giving rise to the cause of action.” *Id.* at 1184. As the court noted, it is both the majority rule and the modern trend to apply the doctrine in cases of childhood sexual abuse followed by a temporary loss of memory. *Id.* at 1186.

This bill eliminates the civil statutes of limitation in cases involving acts which constitute sexual battery on a minor during the time when the victim is under the age of 16 at the time of the act. The current time limitation in an action for recovery of damages based upon a theory of intentional tort is four years.

▪ **CS/HB 615**
**Substantial Assistance
by Felon**

State attorneys are authorized by statute to file a motion requesting that a court suspend or reduce the sentence of a person convicted of a felony if he or she provides substantial assistance to law enforcement or the prosecutor in one or more other felony specific type of cases. Substantial assistance in the identification, arrest, or conviction of the person’s coconspirator, accomplice, accessory, or principal in the crime he or she has been convicted of committing is what is required in order for the state attorney to file the motion on behalf of the convicted person. Current law limits the authority of the state attorney to cases in which the person offering the assistance has been convicted of drug trafficking, planting a hoax bomb, or identity theft.

There is no apparent time limitation for filing the motion in the current statutes. For good cause, the motion may be filed and heard in camera, and the arresting agency is given an opportunity to be heard in aggravation or mitigation. If the court finds that substantial assistance was in fact rendered by the convicted person, it may reduce or suspend his or her sentence.

The bill creates s. 921.186, F.S., to provide that the state attorney may move the sentencing court to reduce or suspend the sentence of a defendant convicted of a felony charge if the defendant provides substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant, or of any other person engaged in felonious criminal activity.

The bill provides that the motion may, for good cause shown, be held “in camera.” It also provides that the arresting agency may be heard in mitigation or aggravation on the motion. This bill proposes an extension of current practice, in that it allows the state attorney to request leniency of the court on behalf of all persons convicted of any type of felony if they provide substantial assistance in the prosecution of anyone in any type of felony case.

▪ **HB 689**
**Negligence; Slip on Foreign
Substance**

The bill (Chapter 2010-8, L.O.F.) repeals the current statute providing the burden of proof in “slip-and-fall” negligence claims and delineates the new burden of proof in these cases. This new standard reinstates the requirement that the plaintiff prove that the business had actual or constructive knowledge of the dangerous condition causing the injury, but specifies that the business owner or operator retains any common-law duties owed to invitees.

The bill specifies that, if a person slips and falls on a foreign transitory substance in a business, the injured

person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it.

The bill also provides that constructive knowledge may be proven by circumstantial evidence demonstrating that:

- The dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or
- The condition occurred with regularity and was therefore foreseeable.

In effect, the burden of proof rests with the slip-and-fall plaintiff, who must present affirmative evidence of the business's actual knowledge of, or circumstantial evidence of the business's constructive knowledge of, the transitory substance or object on the floor and that the business should have removed the hazard prior to the accident.

The bill specifies that the new burden of proof does not affect any common-law duty of care owed by a person or entity in possession or control of a business premises.

▪ **CS/CS/CS/SB 694**
Child Support

This bill amends statutes relating to the Child Support Enforcement Program administered by the Department of Revenue (DOR). Specifically, the bill:

- Provides for the use of the clerk of court's depository in private child support cases.
- Makes support obligation modifications.
- Authorizes the DOR to collect non-covered medical expenses in installments and gives the DOR access to health insurance records received by the Agency for Health Care Administration.

- Authorizes the DOR to claim as program income un-cashed checks of less than one dollar.
- Clarifies terms used during the administrative establishment of child support orders.
- Directs the Office of Vital Statistics (OVS) to amend a child's birth certificate based on a marriage license application; a final judgment of dissolution of marriage providing for the payment of child support; or a marriage license identifying a child whose parents married at any time after the child's birth.
- Makes it discretionary for the DOR to request a federal waiver to provide services without the need of an application.
- Extends the deadline for the DOR to implement electronic filing of documents with the court.
- Clarifies assignment of child support rights to the DOR in temporary cash assistance cases.

▪ **CS/SB 704**
Capital Felonies

The bill adds an additional aggravating circumstance for consideration by the judge and jury in a capital sentencing proceeding to determine whether the death penalty or life imprisonment is warranted. The new aggravating circumstance is that the capital felony was committed by a person subject to an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence, or a foreign protection order that is given full faith and credit in Florida, and was committed against the petitioner who obtained the injunction or protection order, or any spouse, child, sibling, or parent of the petitioner.

▪ **CS/HB 731**
Uniform Commercial Code

This bill modernizes the language in ch. 677, F.S., the Florida Uniform

2010 LEGISLATIVE REPORT

Commercial Code (UCC), pertaining to documents of title, including warehouse receipts, bills of lading, transport documents, dock warrants, dock receipts, and orders for the delivery of goods. The modernized language recognizes electronic documents of title, which is a necessity today with the ubiquity of electronic commerce.

In the bill, recognition of electronic documents of title begins with the definition of "document of title," which provides that a document of title is a business record evidencing that a person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods covered under the record. A document of title may be an "electronic document of title" stored in an electronic medium or a "tangible document of title" consisting of information inscribed on a tangible medium. Thus, a document of title is no longer required to be a tangible document, and control of an electronic document of title is treated as possessing the document of title. In keeping with the intent to modernize the UCC, the bill provides for electronic transfer of documents of title, conversion of an electronic document of title to a tangible document or vice versa, and negotiation of an electronic document of title.

The bill also revises definitions, clarifies the concept of "control" of an electronic document, and includes language to avoid preemption by the federal Electronic Signatures in Global and National Commerce Act. The bill expands the scope of application of certain UCC provisions under ch. 677, F.S., pertaining to documents of title, by applying those provisions to lease agreements, lessees, lessors, and merchants doing business with lessees.

▪ **CS/HB 765 Animal Protection; Horses**

The bill strengthens current laws relating to horse meat for human consumption, horse-killing and abuse, and related veterinary licensing requirements.

Specifically, the bill:

- Creates four new offenses: knowingly transporting, distributing, purchasing, or possessing horse meat for human consumption;
- Increases the penalties for said offenses to a third degree unranked felony;
- Authorizes the sentencing of violent career criminals, habitual felony and habitual violent felony offenders, and three-time violent felony offenders of the horse meat for human consumption provision;
- Provides for a minimum mandatory fine of \$3,500 and a minimum mandatory period of incarceration of one year for violations of said offenses;
- Authorizes the suspension of any license of any restaurant, store, or other business, as provided for in the applicable licensing law, upon the conviction of an owner or employee of said business for a violation of the horse meat for human consumption provision;
- Expands the classification of protection for registered breeds of horses to include any animal of the genus *Equus* (horse) and provides for a minimum mandatory fine of \$3,500 and period of incarceration of one year for violations of the horse killing or aggravated abuse provision;
- Specifies that anyone convicted of a violation relating to animal cruelty or whose license to practice veterinary medicine has been revoked, suspended, inactive, or delinquent is not exempt from the veterinary license requirements provided in ch. 474, F.S., relating to veterinary medical practice;
- Requires a county or municipality that has a licensing requirement for dogs to provide a 45 day notice to dog owners prior to any licensure renewal deadline;

- Requires said notice to contain information describing the licensing requirements and any associated penalties; and Encourages development of online licensing systems.

▪ **CS/CS/HB 787**
Child Abduction Prevention

The bill amends s. 61.45, F.S., by adding additional risk factors for a judge to consider when deciding whether or not a child is at risk of abduction. The bill also clearly outlines and makes additions to preventative measures that a judge may order if the judge finds credible evidence that a child is at risk of abduction. Finally, the bill provides that violation of the parenting plan may subject the party to civil or criminal penalties or a federal or state warrant under federal or state law.

▪ **CS/HB 795**
Penalties for Violation of Traffic Laws

This bill amends current law to clarify that non-criminal traffic fines may be paid in installments using the payment plan mechanism currently contained in Florida Statutes.

The bill also provides for additional categories of drivers to be added to a list of offenses for which a driver may provide "proof of compliance" to a clerk of court's office and have adjudication withheld for the offense.

The bill also provides that if a driver labeled a habitual traffic offender is able to resolve fines through this process, he or she may have the habitual traffic offender status removed. This option remains unavailable for criminal charges and driving-related infractions.

▪ **SB 808**
Murder; Unlawful Distribution of Methadone

The bill amends s. 782.04, F.S., to provide that first degree murder, a

capital felony, includes the unlawful killing of a human being which resulted from the unlawful distribution of methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user.

▪ **CS/HB 821**
International Commercial Arbitration

This bill repeals current law relating to international commercial arbitration and adopts instead the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) as amended in 2006.

The bill, in accordance with the UNCITRAL Model Law on International Commercial Arbitration, applies to any international commercial arbitration subject to an agreement between the United States of America and any other country.

The bill provides certain definitions, principles under which the law is to be interpreted, procedural requirements, discovery and evidentiary requirements, and arbitral tribunal powers and immunity.

The bill also limits a court's authority to intervene in arbitration and specifies when a court should intervene.

▪ **CS/HB 907**
Child Support Guidelines

Child Support This bill amends provisions of law dealing with child support. Specifically, the bill:

- Requires that all child support and income deduction orders must provide for termination of support upon a child's 18th birthday, unless certain exceptions apply, and for a schedule stating the amount of support that will be owed for the remaining children, if any;

2010 LEGISLATIVE REPORT

- Outlines the basic principles the court shall adhere to when implementing the child support guidelines schedule;
- Provides that under certain circumstances the court shall impute income equivalent to the median income of year-round full-time workers;
- Creates a rebuttable presumption when imputing income to an unemployed or underemployed parent;
- Places the burden on the party seeking to impute income to present certain evidence;
- Prohibits imputing income for out-of-date records or unprecedented earnings;
- Amends the child support guidelines schedule;
- Changes the calculation obligation amounts for incomes that fall below the minimum amount set forth in the child support guidelines schedule;
- Removes the requirement that certain child care costs are reduced by 25 percent before being added to the basic support obligation;
- Allows the court to consider the impact of the Child & Dependent Care Tax Credit and the Earned Income Tax Credit when adjusting a child support award; and
- Changes the overnight time-sharing threshold from 40 percent to 20 percent.

The bill provides that when a court issues a child support order, the court will also provide the amount of child support that will be owed for any remaining children after one or more children are no longer entitled to receive support Alimony.

This bill also provides that before a court may make an award of any type of alimony, it must make a specific factual determination as to whether there is an actual need for alimony or maintenance

by either party and whether either party has the ability to pay. It also adds to the list of factors a court must consider when determining an alimony award.

The bill provides that in addition to permanent or rehabilitative alimony, a court may also award bridge-the-gap alimony or durational alimony, or any combination thereof, and specifies the circumstances appropriate for each type of alimony.

▪ **CS/CS/SB 926** **Relating to Trusts**

This bill eliminates the application of the Prudent Investor Rule and the Prudent Trust Administration Rule with respect to a contract for life insurance acquired or retained on the life of the trust settlor. The bill removes certain duties from the trustee in specified situations, provides that a trustee is not allowed to receive compensation for performing certain services, and eliminates liability of the trustee to the beneficiaries for a loss sustained with respect to certain life insurance contracts. The bill also adds additional duties that a trustee may delegate to an investment agent.

▪ **CS/CS/SB 998** **Trust Administration**

The bill clarifies current law that specific gifts under both the will and trust are to be appropriated proportionately to pay expenses of administering the estate and other obligations if the residue of the will or trust is insufficient to pay them. The bill also clarifies that when spouses contributing to an irrevocable trust make a "split gift election," two annual exclusion amounts for gift tax purposes are exempt from claims by creditors of a beneficiary who has the right to withdraw the contributions to the trust when the power to withdraw lapses.

The bill provides that, as to trusts under 26 U.S.C. s. 2523(e) and 26 U.S.C. s. 2523(f), upon the death of the settlor's spouse, the assets are considered to have been contributed by the settlor's

spouse and not by the settlor. As the form of such trusts make them non-revocable as of the death of a spouse, this appears to have the effect of allowing certain self-settled trusts to protect assets from creditors upon the death of a spouse. The bill further provides, however, that this protection does not apply if the funding of the trust was a fraudulent transfer under s. 726.105, F.S. It deletes certain duplicative and unnecessary provisions concerning proceedings to determine reasonable compensation for the attorney for the trustee and notice in proceedings to determine reasonable compensation of trustees and persons employed by trustees. It provides that the court in such proceedings has the discretion to award a reasonable expert witness fee from the assets of the trust unless it finds that the expert testimony did not assist the court.

The bill creates a new statutory section to address the suspension of federal estate and generation-skipping transfer taxes for 2010 as a result of the federal Economic Growth and Tax Relief Reconciliation Act of 2001. The bill permits a trustee or any qualified beneficiary of a trust to request the court to construe the terms of a trust that is not revocable at the time of the request. The qualified beneficiary may request the court to define the respective shares or determine beneficiaries in accordance with the settlor's intention, if the trust contains provisions that include specific formulas and other tax related provisions.

Lastly, the bill creates a new statutory section, s. 736.1211, F.S., which provides that neither state government nor local government may require charitable organizations and trusts to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of their employees, officers, directors, trustees, members, or owners.

▪ **CS/CS/HB 1005**
Corrections

The bill creates a new third-degree felony offense prohibiting lewd or lascivious exhibition by an inmate in the presence of a correctional employee. It also includes employees of private correctional facilities in the existing felony offense prohibiting an employee of the Department of Corrections from engaging in sexual misconduct with an inmate. The bill creates statutory standard conditions of probation or community control that require offenders to live without violating any law and to submit to a digital photograph, prohibits offenders from possessing a firearm, and requires consent from the correctional probation officer before the offender can possess any other type of weapon. References to "criminal quarantine community control," which has never been used, are removed from the statutes.

The bill codifies the department's current practice of electronically transmitting the names of inmates and supervised offenders who are eligible for the restoration of civil rights to the Parole Commission. It also specifically authorizes the department to provide information concerning release of certain inmates to law enforcement officials by electronic means. The bill revises the Correctional Mental Health Act regarding custody and treatment of mentally ill inmates, and specifically authorizes the department to transport mentally ill inmates to placement hearings while incarcerated and to a receiving facility upon release.

The bill changes statutory references to elderly correctional facilities to include all facilities in which elderly inmates are housed, rather than only specifying River Junction Correctional Institution. The bill authorizes the use of inmate work squads on private property for certain public purposes. It also authorizes Public Safety Coordinating Councils to develop a comprehensive local reentry plan.

2010 LEGISLATIVE REPORT

▪ **CS/CS/HB 1237** **Probate Procedures**

This bill makes substantial changes to the Florida Probate Code and related laws.

❖ *Safe-Deposit Boxes*

The bill requires a lessor (e.g., a financial institution) to make a complete copy of any document removed from a safe-deposit box and to place the copy, along with a memorandum of delivery identifying the name of the officer, the person to whom the document was delivered, the purported relationship of the person to whom the document was delivered, and the date of delivery, in the safe-deposit box leased by the decedent. This ensures that the personal representative has an accurate record of everything in the safe-deposit box when the decedent died.

❖ *Notice of Probate Proceedings*

The bill defines formal and informal notice for purposes of the Florida Probate Code, Florida Trust Code, and other sections of law. The bill eliminates the requirement that a copy of the will that is being offered for probate be attached to the formal notice of the petition for administration served on interested persons. Also, the bill limits jurisdiction over a person served by formal notice under the Florida Probate Code to only the person's interest in the estate or in the decedent's protected homestead. Additionally, the bill authorizes the filing of a pre-death caveat by an interested person. However, a creditor may still only file a caveat after the person's death.

The bill eliminates the requirement to include the following information in the caveat: the decedent's social security number, last known residence address, date of birth, and a statement of the interest of the caveator in the estate, and the name and specific residence address of the caveator. The bill provides that a pre-death caveat expires two years after filing.

❖ *Devise, Descent, and Disclaimer of Homestead Property*

The bill authorizes a surviving spouse to elect to take an undivided one-half interest in homestead property as a tenant in common, rather than a life estate. The remaining undivided one-half interest vests in the decedent's descendants in being at the time of the decedent's death, per stirpes. The election to take an undivided one-half interest in the homestead must be made within six months after the decedent's death and during the surviving spouse's lifetime. In order to make an election, the appropriate party must file a notice of election containing the legal description of the homestead, as well as other statutorily defined language, in the official record books of the county or counties where the homestead property is located.

If an election is not made, the bill provides that expenses relating to the ownership of the homestead are to be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen. However, if an election is made, the expenses are to be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares. The bill also provides that if an interest in homestead has been devised to the surviving spouse as authorized by law and the constitution, and the surviving spouse's interest is disclaimed, the disclaimed interest shall pass in accordance with Florida's Uniform Disclaimer of Property Interests Act (ch. 739, F.S.).

❖ *Lifetime Transfers of Homestead Property*

The bill provides that if the owner of homestead property transfers an interest in the property, including a transfer in trust, to one or more persons during the owner's lifetime, the transfer is not a devise and the interest transferred does not descend if the transferor fails to retain a power, held in any capacity, acting alone or in conjunction with any

other person, to revoke or revest that interest in the transferor.

The bill defines the term “transfer in trust” and permits the owner of the homestead property to retain the power to alter the beneficial use and enjoyment by any one or more of the beneficiaries of the trust, as long as the power is not exercised in favor of the owner, the owner’s creditors, the owner’s estate, or the creditors of the owner’s estate, or in a manner that would discharge a legal obligation of the owner.

The bill also provides that the transfer of an interest in homestead property under the proposed law may not be treated as a devise of that interest even if:

- The transferor retains a separate legal or equitable interest in the homestead property, directly or indirectly through a trust or other arrangement;
- The interest transferred does not become a possessory interest until a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, the death of the transferor; or
- The interest transferred is subject to divestment, expiration, or lapse upon a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, survival of the transferor.

❖ *Spousal Rights Procured by Fraud, Duress, or Undue Influence*

The bill creates a new section of law that provides that a surviving spouse found to have procured a marriage to the decedent by fraud, duress, or undue influence is not entitled to certain rights or benefits that inure solely by virtue of

the marriage or the person’s status as surviving spouse, unless the marriage is subsequently ratified. Specifically, the surviving spouse is not entitled to the following:

- Any rights or benefits under the Florida Probate Code, including entitlement to elective share or family allowance; preference in appointment as personal representative;
- Inheritance by intestacy, homestead, or exempt property; or
- Inheritance as a pretermitted spouse.
- Any rights or benefits under a bond, life insurance policy, or other contractual arrangement if the decedent is the principal obligee or the person upon whose life the policy is issued, unless the surviving spouse is provided for by name in the bond, life insurance policy, or other contractual arrangement.
- Any rights or benefits under a will, trust, or power of appointment, unless the surviving spouse is provided for by name in the document.
- Any immunity from the presumption of undue influence that a surviving spouse may have under state law.

If the surviving spouse is found to have procured the marriage by fraud, duress, or undue influence, then any of the above rights or benefits that would have passed solely to the surviving spouse by virtue of the marriage shall pass as if the spouse has predeceased the decedent. Any interested person may challenge a surviving spouse’s rights by establishing, by a preponderance of the evidence, that the marriage was procured by fraud, duress, or undue influence.

If the surviving spouse raises ratification as a defense, the spouse has the burden of establishing, by a preponderance of the evidence, the subsequent ratification by both parties. Finally, the bill provides that an insurance company, financial institution, or other obligor that makes a payment according to the terms of its

2010 LEGISLATIVE REPORT

policy or obligations will not be held liable for making payments to the surviving spouse, unless prior to the payment it received written notice of the challenge.

❖ *Judiciary Construction of a Will with Federal Tax Provisions*

The bill creates a means for judicial construction of a will that includes federal tax provisions. Specifically, if a will contains a formula-based distribution where the formula is based on federal tax provisions, and the personal representative or a beneficiary applies, the court may construe the terms of the will to reflect the testator's probable intent. In determining probable intent, the court may consider evidence relevant to the testator's intent even though the evidence contradicts the apparent plain meaning of the will.

The personal representative is authorized to delay or refrain from making any distribution, without being subject to liability, while the court determines the testator's intent.

The bill provides that it applies retroactively to January 1, 2010, which is the date upon which the suspension of the federal estate and federal generation-skipping transfer taxes took effect.

❖ *Guardianship*

The bill permits a plenary guardian of property, or a limited guardian of property within the powers granted to it by the court, to seek approval to make an election in accordance with s. 732.401, F.S., which relates to descent of the homestead.

❖ *Other Provisions*

The bill provides that in a hearing contesting the validity of a will, a self-proving affidavit of the will, or oath of an attesting witness, is admissible and is prima facie proof of the formal execution and attestation of the will. The bill also provides that the laws for determining paternity and relationships for purposes of intestate succession apply to determine whether class gift terminology and terms

of relationship in wills and trusts include adopted persons and persons born out-of-wedlock.

▪ **CS/HB 1291 Domestic Violence Fatality Review Teams**

The bill provides that information and records acquired by a Domestic Violence Fatality Review Team (FRT) are not subject to discovery or introduction into evidence in any criminal or administrative proceeding, similar to a civil or disciplinary proceeding under current law. However, if the information, documents, or records are otherwise available from other sources, they are not immune from discovery or introduction into evidence at the criminal or administrative proceeding solely because they were presented to or reviewed by the FRT.

The bill also provides that a person who has attended a meeting of the FRT may not testify in a criminal or administrative proceeding regarding certain records or information that were produced or presented by the team, similar to a civil or disciplinary hearing under current law. However, if the person who testifies before the FRT is a member of the FRT, he or she may testify as to matters otherwise within his or her knowledge. Finally, the bill deletes the requirement that the Governor's Task Force on Domestic Violence provide information and technical assistance to the FRTs. The Governor's Task Force on Domestic Violence was part of an executive order that expired on June 30, 2001.

▪ **CS/HB 1493 Career Offenders**

The bill provides that it is first degree misdemeanor for a person to:

- Withhold information from, or fail to notify, a law enforcement agency about a career offender's noncompliance with the requirements of the Florida Career Offender Registration Act (s. 775.261, F.S.)

- and, if known, the whereabouts of the career offender;
- Harbor or attempt to harbor, or assist another in harboring or attempting to harbor, the career offender;
 - Conceal or attempt to conceal, or assist another in concealing or attempting to conceal, the career offender; or
 - Provide information to the law enforcement agency regarding the career offender which the person knows to be false.

Each specified act is only unlawful if the person has reason to believe that a career offender is not complying, or has not complied, with the requirements of s. 775.261, F.S., and commits the act with the intent to assist the career offender in eluding a law enforcement agency that is seeking to find the career offender to question the career offender about, or to arrest the career offender for, his or her noncompliance with the requirements of s. 775.261, F.S.

▪ **CS/CS/SB 1964**
Design Professionals

The bill limits the tort liability of licensed engineers, surveyors and mappers, architects, interior designers, and landscape architects (design professionals). It limits potential tort claims for recovery of economic damages resulting from a construction defect that may be filed by a claimant contracting for the professional services of a design professional. The tort liability limitation for design professionals does not apply if:

- The contract requires professional liability insurance and the liability of the design professional is limited in the contract to an amount less than the liability insurance coverage required by the contract;
- The claim relates to economic damages resulting from personal injury;

- The claim relates to damage to property that is not the subject of the contract;
- The contract or agreement was entered into before July 1, 2010; or
- The professional services were performed before July 1, 2010.

The bill also amends the individual practice acts governing the design professionals to conform the professional liability provisions for the design professional to the liability limitation created in the bill.

▪ **CS/SB 2060**
Sovereign Immunity

The bill (Chapter 2010-26, L.O.F.) increases the current waiver-of-liability limits for the state and its agencies and subdivisions to \$200,000 per individual claim and \$300,000 per aggregate claim. The current liability limits are \$100,000 per individual claim and \$200,000 per aggregate claim. In effect, the state and its agencies and subdivisions may pay up to \$200,000 for any claim or judgment by any one person, or portion thereof, which, when totaled with all other claims or judgments paid arising out of the same incident or occurrence, does not exceed the sum of \$300,000. Any portion of the judgment that exceeds these amounts may only be paid in part or in whole by further act of the Legislature.

▪ **CS/SB 2440**
Liability Releases

This bill (Chapter 2010-27, L.O.F.) provides statutory authority for natural guardians, on behalf of their minor children, to execute pre-injury releases or waivers, waiving any claim or cause of action against a commercial activity provider, or its owners, affiliates, employees, or agents, for the inherent risks involved in an activity.

The bill clarifies that it is not limiting the ability of natural guardians, on behalf of their children, to waive any claim against a noncommercial activity provider to the

2010 LEGISLATIVE REPORT

extent authorized by common law. The bill defines the term “inherent risk” to mean the dangers or conditions that are characteristic of, intrinsic to, or an integral part of the activity; the failure of the activity provider to warn of the inherent risks; and the risk that the minor child or another participant may act negligently or intentionally and contribute to the injury of the minor child.

The bill also provides specific language that must be included in a waiver or release, and be at least five points larger than the rest of the text of the waiver or release, in order for it to be enforceable. As long as the waiver or release includes the statutory language and waives no more than allowed by statute, there is a rebuttable presumption that the waiver or release is valid and that the minor child’s injury or damage arose from an inherent risk.

A claimant can rebut the presumption that the waiver or release is valid by showing by a preponderance of the evidence that the waiver or release does not comply with the statute. In order to rebut the presumption that the injury or damage to the minor child arose from an inherent risk, the claimant must demonstrate by clear and convincing evidence that the conduct, condition, or other cause resulting in the injury or damage was not an inherent risk of the activity. If a claimant successfully rebuts one of the presumptions, liability and compensatory damages must be established by a preponderance of the evidence at trial.

Additionally, the bill provides that a motorsport liability release signed by a natural guardian on behalf of a minor is valid to the same extent provided for other non-spectators, if the minor is participating in a sanctioned motorsports event. However, if a minor is participating in any other activity at a closed-course motorsport facility, other than a sanctioned motorsports event, then the waiver is valid only if it complies with the general waiver requirements proposed by the bill. The bill also

expands the definition of “non-spectators” to include a minor, if the minor’s natural guardian signed the motorsport liability release.

▪ **HB 5305** **Child Welfare; Budget** **Conforming Bill**

This bill makes statutory changes to conform to the funding decisions included in the General Appropriations Act for Fiscal Year 2010-2011.

Among other things, the bill:

- Requires child welfare contracting agencies to limit administrative monitoring to once every three years if the contracted provider is accredited by specified accrediting organizations, and mandates the department to limit contract monitoring of a child-caring or child-placing provider to only once per year.
- Authorizes private-sector development and implementation of an internet-based secure and consolidated data warehouse for maintaining corporate, fiscal and administrative records related to child welfare provider contracts, and requires state agencies that contract with child welfare providers to access records from this database, unless records are outdated or unavailable.
- Grants the Department of Children and Family Services authority to outsource program, administrative or fiscal oversight monitoring of community-based agencies and authorizes these agencies to use funding received through contracts for certain expenditures including staff cellular telephone allowances, contracts requiring deferred payments and maintenance agreements, security deposits for office leases, professional fees, costs of promotional materials, and grant writing.

▪ **CS/HB 5401
Clerks of the Courts;
Budget Conforming Bill**

This bill deals with the state judicial system, changes laws related to the state courts system, the Justice Administrative Commission, the state attorneys, the regional conflict counsels, the guardian ad litem, the Department of Legal Affairs and the clerks of court. The amendment also redirects revenue into the Administrative Trust Fund within the state courts and the State Attorney Revenue Trust Fund within the Justice Administrative Commission. Among other things, it:

- Requires court appointed counsel to maintain records and to ensure the redaction of privileged information so that the Justice Administrative Commission can inspect such records relating to the state's payment of legal services performed.
- Establishes rates to be set annually in the General Appropriations Act for court reporters, investigators, and Jimmy Ryce experts.
- Clarifies that the regional conflict counsels are to take 3.850 and 3.800 cases for certain indigent clients. These cases are related to post-conviction complaints against an person's attorney. Also, the regional conflict counsels can take termination of parental rights cases under chapter 63, Florida Statutes.
- Requires the clerk of court to make a search of property records and motor vehicle title records for a more accurate determination of indigency for the purposes of receiving the services of a public defender. Also, the amendment presumes that a person is not "indigent for costs" if the person's private attorney fees exceed a certain amount, with exceptions and provisions. Other changes are made to the definition of "indigent for costs" in order to control costs.
- Imposes additional penalties for court appointed counsel requesting payments after one and two years from the dispositions of cases. Also, requires a court appointed attorney paid by state funds to obtain approval from the court when requesting certain services for out of state due process providers.
- Requires due process providers paid from state funds by the Justice Administrative Commission to use electronic funds transfer beginning January 1, 2011.
- Provides criteria and conditions under which transcripts will be provided and specifies that the state will pay for only one original transcript when the state would provide transcripts to state paid court appointed attorneys.
- Clarifies that changes made in the 2009 session did not intend to assess filing fees for domestic violence cases.
- Requires the clerk of court to transmit moneys collected to the Department of Revenue within 10 working days after the end of the month instead of 20 days.
- Provides that the clerk of the court can release the initial application of an indigent client when using a collection agent to collect fees, service charges, fines and court costs.
- Deletes the reporting requirements of redundant budget expenditure reports submitted by the chief judge, state attorneys and public defenders.
- Clarifies that a new small claims fee created by the 2009 legislature for when a person files a small claims and a request for a replevin action to recover property at the same time shall only be required to pay one filing fee, not the combination of the two.
- Requires that a parent who qualifies and receives the services of regional

2010 LEGISLATIVE REPORT

- conflict counsel or any other court appointed attorney under a child dependency case is responsible and liable for payment of the \$50 civil indigency application fee.
- Clarifies that the existing \$50 civil indigency application fee for dependency cases is mandatory. If the fee has not been paid within the seven days, the court is to enter an order requiring payment. Also, requires the court to order the payment of the application fee upon appointing counsel to the indigent party.
 - Requires all guardian ad litem applicants certified on or after July, 1, 2010, to undergo a level 2 background screening, which searches the state and national criminal history information. Also, allows the guardian ad litem to pay the reduced fee of \$8 rather than the current fee of \$24 to the Department of Law Enforcement for background screening.
 - Provides a one year extension for the redaction of confidential information of the court records. The clerks must comply with this requirement by January 1, 2012.
 - Clarifies that counties may impose one of the statutory surcharges to fund court facilities through local ordinance, but not more than one surcharge at the same time.
 - Provides that the alteration of a vehicle tag, unlawful use of a temporary tag, failure to surrender a commercial license and certain restrictions on driver's licenses are punished as a moving violations which are noncriminal traffic infractions.
 - Clarifies that the \$20 court cost for crime stoppers is mandatory on all criminal convictions and criminal cases when adjudication is withheld.
 - Provides that a judicial lien for attorney's fees or costs remains in force notwithstanding a child reaching the age of majority. Provides for imposition of a lien when a person receives state paid legal representation or due process costs in certain legal cases.
- Allows trial court administrators to appoint a court employee as a designee to approve certain expenditures.
 - Requires the Department of Law Enforcement to modify the statewide uniform statute table used by local law enforcement and state attorney offices in charging persons accused of committing crimes.
 - Appropriates \$3.6 million of nonrecurring funds from the Clerks of Court Trust Fund to assist the clerks of court with the backlog of foreclosure cases.
- **HB 7035
Criminal Justice**
- This bill repeals a number of obsolete statutes and cross-references related to criminal justice. The repealed statutes:
- Prohibit the Attorney General from collecting a fee from defendants and require sheriffs to live within two miles of the county seat;
 - Create unused sentencing alternatives of "criminal quarantine community control" and "community drug punishment centers";
 - Require the Department of Corrections to assist inmates in completing the forms for restoration of civil rights, even though the application process is now automatic;
 - Provide for the construction of juvenile corrections facilities by the now-defunct Correctional Privatization Commission; and
 - Authorize county and municipal law enforcement agencies to operate sheriff's training and respect

programs for certain juvenile offenders.

▪ **CS/HB 7069
Screening**

The bill substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. Major provisions of the bill include:

- Requiring that no person required to be screened may begin work until the screening has been completed;
- Increasing all Level 1 screening to Level 2 screening for persons working with vulnerable populations;
- Requiring all fingerprints to be submitted electronically by August 1, 2012;
- Requiring certain personnel that are not presently being screened to begin Level 2 screening;
- Including additional serious crimes to the list of disqualifying offenses;
- Authorizing agencies to request the retention of fingerprints by the Florida Department of Law Enforcement;
- Providing that an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head;
- Requiring the department to randomly drug test licensed foster parents if there is reasonable suspicion that he or she is using

illegal drugs, and providing that the cost of testing shall be paid by the foster parent and reimbursed by the department if the test is negative; and

- Providing that school districts provide a list of available substitute teachers to the early learning coalitions.

The new screening requirements are prospective; existing persons working with vulnerable populations are not required to be rescreened until such time they are otherwise required to be rescreened by existing law.

▪ **HB 7131
Criminal Justice**

This bill is a staff work product generated from research from the Division of Statutory Revision (DSR) this past summer. The DSR identified items in the statutes that in their opinion needed some sort of technical and/or slightly substantive correction beyond what the DSR is authorized to do in its annual reviser's bill.

Substantive staff in both the House of Representatives and the Senate disseminated and reviewed the list of statutes relevant to criminal justice, consulted with relevant stakeholders and agency officials, determined whether an amendment was needed and prepared the proposed revisions.

Predominantly, the statutory errors or ambiguities were related to obsolete provisions, references to repealed or transferred statutes, transferred statutes which did not include all of the cross references, and conflicting versions of laws. Those errors and ambiguities are corrected in the bill. ▪

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

PUBLIC RECORDS

- *New Exemptions*
- *Open Government Sunset Reviews (OSGR)*

PUBLIC RECORDS

▪ **CS/SB 312
Public Records; Public Defenders;
Regional Counsel; Exemption**

Section 119.071(4)(d), F.S., currently provides public-records exemptions for specified personal identifying and locating information of the following current and former agency personnel, as well as for specified personal identifying and locating information of their spouses and children:

- Law enforcement and specified agency investigative personnel;
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem; and
- Specified Department of Juvenile Justice personnel.

Although there is some inconsistency among the types of information that are exempted, the following information is protected in all of the above-listed exemptions:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel. Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant

criminal conflict and civil regional counsel are appointed by the courts to represent defendants in criminal cases.

- Criminal conflict and civil regional counsel also represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.
- Clients of public defenders and criminal conflict and civil regional counsel have a great deal at stake in the outcome of their legal matters, which can lead to violent outbursts. According to the Offices of the Public Defender, past such outbursts have included battery and threats of physical harm.

The bill creates an exemption from the public-records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution for the following information:

- Home addresses, telephone number, and photographs of current or former public defenders, assistant public defenders, criminal conflict and regional counsel, and assistant criminal conflict and regional counsel;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.

The bill also provides for legislative review and repeal of the exemption under the Open Government Sunset Review Act.

The bill provides a statement of public necessity for the exemption. It justifies the exemption by explaining that disgruntled clients of the public defenders or of the

2010 LEGISLATIVE REPORT

criminal conflict and civil regional counsel could target the defenders, counsel, and their families for acts of violence. The statement concludes that disclosure of the personal information exempted by the bill would jeopardize the safety of such defenders, counsel, and their families.

▪ **CS/HB 393** **Public Records; Exemption**

The bill creates a public record exemption for personal identifying information held by a public transit provider for the purpose of prepaying transit fares or acquiring a prepaid transit fare card or similar device.

It provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

▪ **CS/HB 551** **Public Records; Exemption**

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission on Ethics or a Commission on Ethics and Public Trust established by a county or a municipality. In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements.

The bill expands those exemptions for the Commission on Ethics and the Commission on Ethics and Public Trust established by a county or municipality by extending its application to any county or municipality that has established a more stringent local investigatory process. It provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

▪ **CS/HB 1059** **Public Records; Examination Techniques and Procedures; DFS; Exemption**

Current law provides a public records exemption for certain information related to investigations and examinations conducted by the Office of Financial Regulation (OFR) pursuant to the Florida Securities and Investor Protection Act (Act). Generally, the exemption expires once the investigation or examination is completed or ceases to be active; however, certain information remains confidential and exempt, including information that would disclose investigative techniques or procedures. Protection is not provided for information that would reveal examination techniques or procedures.

The bill creates a public records exemption for information that would reveal examination techniques or procedures used by the OFR pursuant to the Act. It provides for retroactive application of the exemption. Information that would reveal such examination techniques or procedures may be provided by the OFR to another governmental entity having oversight or regulatory or law enforcement authority.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

▪ **SB 1678** **Moffitt Cancer Center and Research Institute; Exemption**

This bill reenacts the public records exemptions for information held by the corporation that governs the H. Lee Moffitt Cancer Center and Research Institute. The exemptions apply to: Information relating to methods of manufacture, potential trade secrets, potentially patentable material; and reimbursement methodologies and rates; and Information that is otherwise exempt under Florida law or under the laws of

the state or nation from which a person provided the information to the corporation or its subsidiaries.

▪ **HB 7017**
Public Records; Credit History;
Credit Scores; OFR ; Exemption

This bill makes credit history information and credit scores held by the Office of Financial Regulation (OFR) for licensure purposes under ch. 494, F.S., pursuant to the Federal Secure and Fair Enforcement for Mortgage Licensing (S.A.F.E.) Act of 2008, confidential and exempt from public-records requirements.

The bill provides for review and repeal of the newly-created public-records exemption under the Open Government Sunset Review Act. The bill provides a public necessity statement as required by the State Constitution.

▪ **HB 7079**
Voter Information; Reenactment

The bill reenacts public records exemptions protecting the confidentiality of certain private information relating to voters and voter registration, specifically:

- Declinations to register to vote;
- The location where a person registered or updated a voter registration;
- Social security numbers ("SSN"), drivers' license numbers, and Florida identification ("ID") numbers; and,
- Signatures (exemption limited to copying).

It also enacts a new public-records exemption for the names, addresses, and telephone numbers of victims of stalking or aggravated stalking who file a sworn statement asserting the stalking with the Attorney General; protection is afforded to victims in the same manner and under the same circumstances as participants in the Address Confidentiality Program for Victims of Domestic Violence (ss.741.401-741.409, F.S.). The new exemption is made expressly subject to

the Open Government Sunset Review Act, and will automatically be repealed in 5 years if not reenacted by the Legislature.

▪ **HB 7085**
Commission on Ethics; Ethics and
Public Trust; Reenactment

The bill reenacts public-records exemptions protecting the confidentiality of a complaint or any records relating to the complaint or to any preliminary investigation by the Commission on Ethics or by a Commission on Ethics and Public Trust established by a county or a municipality.

The bill also saves from repeal the public-meetings exemption for any proceedings regarding a complaint or preliminary investigation conducted by the Commission on Ethics or by a Commission on Ethics and Public Trust established by a county or a municipality.

▪ **HB 7087**
Guardian ad Litem; Reenactment

This bill is the result of the Legislature's Open Government Sunset Review of the public-records exemption for specified personal information relating to current or former guardians ad litem found in s. 119.071(4)(d)1.h., F.S. Currently, the exemption protects from disclosure under the public-records law the home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem.

Additionally, the exemption covers the names, home addresses, telephone numbers, and places of employment of the spouses and children of current or former guardians ad litem.

The review found that this exemption is necessary to protect guardians ad litem and their families from harm and is also necessary for the administration of the Guardian ad Litem Program. Therefore, the bill reenacts the exemption and also expands it to include the names and locations of schools and day care

2010 LEGISLATIVE REPORT

facilities attended by a current or former guardian ad litem's children within the scope of protected information.

This expansion is based upon the finding that comparable public-records exemptions exist for specified individuals, such as judges, magistrates, and code enforcement officers, which exempt from disclosure the names and locations of schools and day care facilities attended by the specified individuals' children. The bill also includes a statement of public necessity, providing that the expansion of the exemption is necessary in order to protect the safety and welfare of the children of current or former guardians ad litem.

▪ **HB 7089** **Florida Self-Insurers Guaranty Association; Reenactment**

The Florida Legislature created the Florida Self-Insurers Guaranty Association (association) as a nonprofit corporation. The purpose of the association is to provide a mechanism to fund covered workers' compensation claims of individual insolvent self-insurers other than public utilities or governmental entities. The association is under the general oversight of the Department of Financial Services, which also regulates individual self-insurers for purposes of workers' compensation coverage.

This bill is the result of an Open Government Sunset Review by the Senate Banking and Insurance Committee of public-records and public-meetings exemptions relating to the Florida Self-Insurers Guaranty Association, Inc. These exemptions are scheduled to expire on October 2, 2010, unless reviewed and saved from repeal by the Legislature. This bill reenacts the exemptions and reorganizes the public-meetings exemption for clarity.

If approved by the Governor, these provisions take effect October 1, 2010.

▪ **HB 7091** **Insurance Claim Data Exchange Information; DOR; Reenactment**

Current law requires the Department of Revenue (DOR or "the department") to develop and operate an insurance claim data exchange system in which an insurer may voluntarily provide the department with the name, address, and, if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent who has a claim with the insurer and who owes past-due child support.

- Section 409.25659, F.S.
- Section 409.25661, F.S.

Current law also provides that specified information regarding a noncustodial parent who owes past-due child support, collected by the department pursuant to the insurance claim data exchange system, is confidential and exempt from the public-records requirements of s. 119.07(1), F.S., and s. 24(a), art. I of the State Constitution. This bill extends the repeal date of the exemption from October 2, 2010, to October 2, 2012, thereby reenacting the exemption. This extension provides the department with additional time to determine the success of a similar federal program.

▪ **HB 7093** **Domestic Security Oversight Council; Reenactment**

This bill reenacts the open meetings and open records exemption found in s. 943.0314, F.S., relating to the Domestic Security Oversight Council. The bill exempts active criminal investigation and active criminal intelligence information involving domestic security and terrorist activities from public disclosure. The exemption authorizes the Council to go into closed session when it discusses active criminal or active intelligence information. However, the Council in closed session must record and maintain those records of the closed portion including time of commencement and termination of closed portions, all

discussion and proceedings, and the names of persons present. The records exemption terminates as soon as the investigative or intelligence information ceases to be active.

▪ **HB 7111**
Information Held by Guardians Ad Litem; Reenactment

This bill saves from repeal and amends the exemption relating to records held by a Guardian ad Litem. It makes the following information confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution when held by the Guardian ad Litem: medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information which is confidential under Chapter 39, F.S.

▪ **HB 7113**
Child Abuse Death Review Committee; Reenactment

The bill saves from scheduled repeal under the Open Government Sunset Review Act, the exemption from the Public Records and Meetings Laws for information that reveals the identity of household members of a deceased child whose death is under review and that is held by the State Child Abuse Death Review Committee or local panels or committees and portions of meetings at which such information would be revealed.

▪ **HB 7115**
Parental Notice of Abortion Act; Reenactment

This bill is the result of the Legislature's Open Government Sunset Review of the public-records exemption for any information in a court record which could be used to identify a minor who petitions for a judicial waiver of the parental notice requirement under the Parental Notice of Abortion Act.

The review found that this exemption is necessary to protect minors from harm and may also be necessary for the

administration of the program. Therefore, the bill reenacts the exemption and expands it to also protect from disclosure under the public-records law any identifying information of a minor under the Act if held by the Office of Criminal Conflict and Civil Regional Counsel or by the Justice Administrative Commission.

This expansion is based upon the finding that identifying information may sometimes be retained by regional counsel and the commission during representation and processing of payments for representation of minors in these cases.

▪ **HB 7117**
Funeral Cemetery and Consumer Services Board; Reenactment

This bill reenacts the ch. 497, F.S., public record and public meeting exemptions for the Board of Funeral, Cemetery, and Consumer Services (Board) relating to examination development meetings and probable cause panel meetings. It requires a recording to be made of any closed portion of a meeting and for the recording to be maintained by the Board.

The bill reenacts the temporary public record exemption for records related to examinations, inspections, and investigations conducted by the Department of Financial Services. Finally, it reenacts the public records exemption for trade secrets held by the Board or the Department of Financial Services. This bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement.

▪ **HB 7119** **Hurricane Loss Projection** **Methodology; Reenactment**

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology (commission), under s. 627.0628, F.S., which describes the legislative intent “to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for residential property insurance coverage.” The commission is administratively housed within the State Board of Administration, but independently exercises its powers and duties as specified in the statute. Section 627.0628(3)(a), F.S., specifies that “[t]he commission shall consider any actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in residential property insurance rate filings.”

A number of vendors produce highly complex computer models that purport to reflect an average annual expected loss from hurricanes and other perils. Models of this nature are driven by an array of internal assumptions, within a variety of scientific disciplines (e.g., meteorology, structural engineering, actuarial science, statistics, computer science). Although some basic assumptions may be common to more than one model, many of the detailed internal assumptions have been developed only after considerable research by each vendor, which closely guards that information as a trade secret. If all internal information of a model were published, that model could be replicated, and the vendor that produced the model would lose the entirety of its value.

Current law provides a public-records exemption for a trade secret used in designing and constructing a hurricane loss model that is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (commission), Office of Insurance

Regulation (OIR), or an appointed consumer advocate. Current law also provides a public-meetings exemption for that portion of a meeting of the commission or a rate proceeding on an insurer’s rate filing at which confidential and exempt trade secrets are discussed.

The bill repeals s. 627.0628(3)(f)3., F.S., and thereby saves from repeal the public-records exemption and the public-meetings exemption created in s. 27.0628(3)(f)1., F.S., and s. 627.0628(3)(f)2., F.S., respectively. This bill also requires a recording to be made of any closed portion of a meeting. The bill expands the existing exemptions to make such recordings exempt from public-records requirements. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015.

It also provides a public necessity statement as required by the State Constitution. The bill provides that the public-records exemption applies to a “trade secret” as defined in the Uniform Trade Secrets Act. This makes the public-records exemption for trade secrets consistent with other similar exemptions.

▪ **HB 7121** **Hurricane Loss; Associated** **Exposure Data; Reenactment**

This bill is the result of the Banking and Insurance Committee’s Open Government Sunset Review (Interim Report 2010-204) of the public records exemption for reports by insurers of their hurricane loss and associated exposure data. These reports are provided on an annual basis to Florida International University (FIU) for the development and maintenance of the public hurricane loss projection model (public model). This public records exemption stands repealed on October 2, 2010, unless reenacted by the Legislature.

The bill reenacts and narrows the exemption by requiring FIU to annually publish a report summarizing by county the loss and exposure data collected from residential property insurers. The report must be submitted to the

Governor, the President of the Senate, and the Speaker of the House of Representatives beginning on October 1, 2011, and each subsequent October 1.

▪ **HB 7123**
Address Confidentiality;
Domestic Violence; Reenactment

This bill saves from repeal the public-records exemption for the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The ACP was established in 1998 by ss. 741.401 through 741.465, F.S., and is administered by the Office of the Attorney General. Any victim of domestic violence who relocates to an address unknown to her abuser or potential assailant is eligible to participate in the program. The exemption protects from disclosure the addresses, telephone numbers, and social security numbers of ACP participants held by the Office of the Attorney General, the supervisor of elections, or the Department of State. This bill repeals s. 3 of chapter 2005-279, Laws of Florida.

▪ **CS/HB 7165**
Domestic Violence Fatality Review
Teams; Reenactment

Domestic violence fatality review teams (team or teams) are established at a local, regional, or state level. The purposes of the team is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence. In accomplishing this purpose, teams may review events leading up to a domestic violence incident, available community resources, current laws and policies, actions taken by the systems and individuals related to the incident and the parties, and any information or action deemed relevant by the team.

This bill reenacts the public-records and a public-meetings exemption for the teams. Any confidential or exempt information obtained by a team retains its confidential or exempt status. In addition, any information that identifies a victim of domestic violence or the victim's

children is confidential and exempt from public-records requirements when contained in a record created by a team. Those portions of meetings of a team regarding domestic violence fatalities and their prevention, during which confidential or exempt information is discussed, are also exempt from public-meetings requirements.

▪ **HB 7167**
Commission for Independent
Education Public Records
Exemption; Reenactment

This bill reenacts the public records exemption for investigatory records held by the Commission for Independent Education for investigations of suspected violations of law or rule by licensed private postsecondary education institutions. The bill reenacts the exemption from public disclosure for the portion of probable cause panel meetings where the panel discusses exempt records.

The bill requires a recording to be made of any closed portion of a probable cause panel meeting and prohibits any portion of the meeting from being off the record. The recording, the minutes, and the findings of the probable cause panel are exempt from public records disclosure requirements for up to 10 days after the panel makes a determination of probable cause. The public records and public meetings exemptions will be repealed on October 2, 2015 unless reenacted by the Legislature.

▪ **HB 7193**
Public Records; Voluntary
Prekindergarten Education
Program; Reenactment

This bill reenacts the public records exemption for records of a child enrolled in the Voluntary Prekindergarten Education Program that are held by an early learning coalition, the Agency for Workforce Innovation, or a Voluntary Prekindergarten Education Program provider. These records are confidential and exempt from the public-records

2010 LEGISLATIVE REPORT

requirements and include assessment data, health data, records of teacher observations, and personal identifying

information of the enrolled child and his or her parent. ■

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

TAXATION

TAXATION

▪ **CS/HB 109**
Excise Tax on Documents; Short Sale

This bill defines the term “short sale” and provides that a documentary stamp tax applies to transfers of real property pursuant to a short sale, but that the taxable consideration does not include unpaid indebtedness that is forgiven or released by a mortgagee holding a mortgage on the property. The bill defines a short sale as a purchase and sale of real property in which the following apply:

- The grantor’s (seller’s) interest in the real property is encumbered by a mortgage in an amount greater than the purchase price paid by the grantee (buyer);
- A mortgagee releases the real property from its mortgage for an amount less than the total outstanding mortgage indebtedness;
- The releasing mortgagee does not receive any interest in the property transferred; and
- The releasing mortgagee is not controlled by or related to the grantor or grantee.

▪ **CS/CS/HB 163**
Prepaid Wireless Telecommunications; E 911 Fees

The bill amends ss. 365.172 and 365.173, F.S., providing that the E911 Board shall collect the E911 fee from the sale of prepaid wireless service, beginning July 1, 2013, if it determines that a fee should be collected from the sale of such service and the service is a prepaid calling arrangement that is subject to sales and use tax under s. 212.05(1)(e), F.S. Before July 1, 2013, the E911 fee shall not be assessed on or collected from providers with respect to prepaid calling arrangements. The bill strikes obsolete language requiring the Board to conduct an already completed

study concerning the feasibility of collecting E911 fees from the sale of prepaid wireless service.

The bill increases to 30 percent, from current law’s 20 percent, the portion of funds disbursed to a county from the Emergency Communications Number E911 System Fund for capital outlay, capital improvement, or equipment replacement which the county may carry forward into the next calendar year.

▪ **CS/HB 173**
Tax on Sales, Use, and Other Transactions

The bill creates paragraph 212.08(7)(ggg), F.S., to provide two new tax exemptions for aircraft owned by nonresidents. A use tax exemption is created for aircraft that are sold in this state free of sales tax to a non-resident when the plane returns to Florida for fewer than 21 total days within 6 months after the date of purchase. The aircraft owner may demonstrate to the Florida Department of Revenue that it has met the requirements of the exemption by producing specified documentation.

An use tax exemption is created for aircraft owned by a non-resident when it is used in Florida exclusively for the purpose of flight training, repairs, alterations, refitting, or modification. The non-resident owner must be able to prove entitlement to the exemption by producing written documentation issued by in-state vendors or suppliers that identifies the aircraft. There are no time limitations associated with this exemption.

These exemptions are not mutually exclusive and are in addition to the existing aircraft tax exemption provisions of s. 212.05(1)(a), F.S., which requires the aircraft to leave the state within a specified time subsequent to the authorized purposes. Further, under the bill, the penalty for failure to pay sales

2010 LEGISLATIVE REPORT

and use tax on an aircraft or boat is no longer mandatory.

▪ **HB 281** **Communications Services Taxes**

This bill amends s. 202.29, F.S., by allowing dealers to “net” the credit on the Communications Services Tax allowed by s. 202.29, F.S., against the amount of tax due to the state or to a local jurisdiction for reporting purposes. This “netting” may not reduce the amount due to the state or to any local jurisdiction below zero. This bill allows dealers to use a “proportionate allocation method” to determine the credit for bad debt attributable to the state or to a local jurisdiction, rather than specifically identify the jurisdiction in which the bad debt originated.

The allocation method must be based upon current gross taxes due, rather than requiring dealers to identify the specific time period of the sales associated with the bad debt. In addition, the bill allows dealers to use other reasonable allocation methods approved by DOR. This bill provides for retroactive operation to July 1, 2000, as a remedial measure. However, the bill specifies that the retroactive operation of its provisions does not create a right to a refund or require a refund by any governmental entity of any tax, penalty, or interest remitted to DOR before July 1, 2010.

▪ **CS/HB 483** **Sales Tax Holiday**

This bill provides that no sales and use tax will be collected on the sale of books, clothing, wallets, or certain bags having a selling price of \$50 or less during the 3 day period beginning 12:01 a.m., Friday, August 12, 2010, and ending midnight Sunday, August 14, 2010.

The bill also provides that no sales and use tax shall be collected on sales of an expanded list of school supplies having a selling price of \$10 per item or less during that same period of time. The temporary exemption does not apply in

theme parks, public lodgings or airports as defined by statute. There is an appropriation to the Department of Revenue to administer the bill.

▪ **HB 1279** **Assessment of Property for Back Ad Valorem Taxes**

This bill creates an exemption from the assessment for back taxes under s. 193.092, F.S., for property that was not assessed by a property appraiser. Specifically the bill exempts:

- Property where the owner complied with all necessary permitting requirements when the property was built; and
- Property where the owner voluntarily disclosed the existence of the property to the appraiser, on the prescribed form, before January 1 of the year in which the property was assessed.

▪ **CS/SB 1514** **Recreational Licenses**

This bill eliminates the \$7.50 shoreline fishing license fee and retains the 50-cent compensation to subagents for services. Chapter 2009-65, Laws of Florida, repealed the exemption that allowed Florida resident anglers to fish from the saltwater shoreline without a saltwater fishing license and established a \$7.50 fee for a license.

The bill requires Florida resident anglers to continue to register with the Fish and Wildlife Conservation Commission according to federal requirements; however, the \$7.50 assessment is eliminated.

▪ **CS/SB 1730** **Biodiesel Fuel**

This bill provides an exemption from fuel tax for biodiesel fuel manufactured by a public or private secondary school. To qualify, the school must produce less than 1,000 gallons annually for the exclusive purpose of school use by

employees or students. Qualifying schools are exempt from fuel tax registration requirements.

▪ **CS/SB 2024**
Tax on Communications and Utility Services

The bill, relating to the tax on communications and utility services:

- Reduces the rate of the communication services tax from 6.8% to 6.65%.
- Increases the gross receipts tax on communication services from 2.37% to 2.52%.
- Preserves the existing residential exemption for state sales tax on this increased percentage of gross receipts tax, ensuring no person would pay any additional tax.
- Revises the calculation for the amount of issuance of Public Education Capital Outlay bonds to reflect the revenues that would have been collected had this legislation been in place throughout the 24 month measurement period.
- Provides that the dealer of communication services, in administering the tax, shall collect a combined rate of 6.8%.
- Provides the Department of Revenue emergency rule making authority.

The bill amends sections 202.12, 202.125, 203.1 and 215.61, Florida Statutes.

The bill is effective upon becoming a law, except that sections 1 through 5 apply to taxable transactions included on bills for service dated on or after August 1, 2010.

▪ **CS/HB 5801**
Taxation; Budget Conforming Bill

The bill, relating to taxation:

- Directs the Department of Revenue (department) to create an amnesty program for taxpayers subject to state and local taxes imposed by

chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681, Florida Statutes. The amnesty program will:

- Begin July 1, 2010, and end on September 1, 2010,
- Be available to a taxpayer whether or not the taxpayer is under audit,
- Prohibit the imposition of penalties, and
- Allow interest due to be reduced to 75% of the amount due for certain liabilities and to 50% for those taxpayers that make initial contact with the department through the amnesty program.
- Provides an appropriation of \$1,234,000 in nonrecurring general revenue to administer the amnesty program.
- Revises the severance tax on phosphate by:
 - Reducing the rate of the severance tax on phosphate from \$1.945 per ton to \$1.71 per ton as of July 1, 2010, and then to \$1.61 per ton as of July 1, 2011.
 - Eliminating a contingent tax reduction.
 - Revising the distributions from the tax for 2010-11 and again for 2011-12.
- Provides additional enforcement tools to the department by:
 - Allowing the department to share information with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (DBPR) and allowing the disclosure of certain information regarding delinquent taxpayers.
 - Authorizing DBPR to suspend the license of a public lodging

2010 LEGISLATIVE REPORT

- establishment for outstanding tax warrants.
- Integrating the department's enforcement authority with respect to certification of registration, permit or licenses. Provides emergency rule making authority.
- Providing for transfers of tax liabilities when business assets are transferred under certain circumstances.
- Revises the calculation for certain payments to fiscally constrained counties.
- Provides 25 full time audit positions to the department and \$817,448 in salary rate and appropriates \$1,445,100 recurring funds and \$96,925 nonrecurring funds from the General Revenue Fund.

The bill amends sections 211.3103, 213.053, 213.50, 213.692, 213.758, and 218.12, Florida Statutes.

▪ **CS/HB 7157** **Taxation**

This bill includes several statutory changes that will reduce the burden on taxpayers, reduce Department of Revenue costs and increase efficiency, improve tax administration, and improve enforcement of tax laws. The improved enforcement and tax administration provisions of this bill are expected to have a positive but indeterminate impact on state revenue. Specifically the bill:

- Specifies the duration for tax liens for unemployment compensation taxes as 10 years;
- Excludes certain unpaid indebtedness from the taxable consideration for short sale transfers of real property;
- Clarifies that sales made to residential households in facilities such as apartment complexes are exempt from the communications services tax, due to uncertainty created by a change in the definition

of "public lodging establishment" in ch. 2008-240, L.O.F., which created separate designations for "transient" and "non-transient" public lodging establishments;

- Excludes the cleaning of interiors of transportation equipment from the tax imposed on cleaning services, which were not listed or taxed prior to the 2009 law change replacing Standard Industrial Classification (SIC) with the current North American Industrial Classification System (NAICS); further, to be consistent with the appropriate NAICS categories, the bill specifies that nonresidential building pest control services are taxed;
- Revises the content of a required notice that must be posted on vending machines, including deleting the requirement to post identifying taxpayer information on the machine;
- Provides criteria to determine whether the tax on sales, use, and other transactions applies to a package containing exempt food products and taxable nonfood products;
- Revises application requirements for tax exemption for building materials used in the rehabilitation of real property in an enterprise zone;
- Clarifies when sales of tangible personal property used in construction of public works projects are tax exempt sales to a governmental entity; if the Department of Revenue later determines that the sales were not tax exempt, the governmental entity is liable for any tax, penalty, and interest owed on the transactions;
- Revises references to the Florida Energy and Climate Commission for purposes of the Renewable Energy Technologies Investment Tax Credit;
- Permits the Department of Revenue to communicate with taxpayers electronically;

- Authorizes the Department of Revenue to provide certain confidential taxpayer information to other entities and to publish a list of taxpayers against whom the department has filed a warrant or judgment lien certificate;
 - Authorizes the Department of Revenue to continue the information-sharing program with financial institutions, which was previously conducted as a pilot program to match electronic data from financial institutions with public records to recover delinquent tax liabilities; by making the program permanent, the department is now allowed to take action to collect outstanding tax liabilities;
 - Authorizes the department to reduce a tax refund or credit owing to a taxpayer to the extent of liability for unemployment compensation taxes;
 - Authorizes the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to suspend or deny the renewal of a license for a hotel or restaurant having an outstanding tax warrant;
 - Authorizes the Department of Revenue to notify financial institutions or other entities by electronic means or personal service when those entities possess assets to be garnished;
 - Revises the distribution of the ninth-cent fuel tax on motor fuel and diesel fuel;
 - Conforms cross-references in unemployment compensation statutes;
 - Provides for the treatment of a single-member limited liability company as the employer for purposes of unemployment compensation law, consistent with Internal Revenue Service regulations;
 - Increases penalties for erroneous, incomplete, or insufficient reports submitted by employers to the Department of Revenue for unemployment compensation tax purposes;
 - Integrates enforcement of tax laws, by permitting the Department of Revenue, after a conference with the taxpayer, to revoke a taxpayer's certificate(s) of registration, permit, or license for any tax when the taxpayer owes any tax liability and a tax warrant, notice of lien, or judgment lien certificate has been issued;
 - Prohibits the Department of Revenue from issuing a certificate of registration, permit, or license to a taxpayer whose certificate of registration, permit, or license has been revoked and requires security as a condition of issuing a new certificate of registration to such person;
 - Repeals s. 195.095, F.S., relating to the authority of the Department of Revenue to develop lists of bidders that are approved to contract with property appraisers, tax collectors, or county commissions for assessment or collection services because counties now engage in these services without assistance from the department; and
 - Repeals s. 213.054, F.S., relating to monitoring and reporting on the use of a tax deduction claimed by international banking institutions.
- **CS/HB 7179**
Qualifying Improvements to Real Property
- This bill authorizes local governments to levy non-ad valorem assessments to fund energy efficiency and renewable energy improvements and changes or improvements made for the purpose of improving a property's resistance to wind damages for property owners who voluntarily participate in a generated local government financing program.
- The bill also grants local governments the authority to issue debt, payable from revenues received from the improved property, and to partner with one or

2010 LEGISLATIVE REPORT

more local governments for the purpose of providing such improvements. The bill further provides a funding mechanism for the energy-related improvements to real property by:

- Authorizing the existing Florida Development Finance Corporation to participate in a federal program providing loan guarantees for capital projects relating to renewable energy.
- Leveraging left-over funds from existing grant programs: the state guarantees 5% of the loan amount, the federal government guarantees 75%; and the business provides the other 20%.

Additionally, the bill revises the term "renewable energy" to include energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

▪ **CS/HB 7203** **Community Development Districts**

Community Development Districts (CDDs) are local units of special-purpose government created pursuant to Chapter 190, F.S. They are authorized to exercise the limited and specialized functions described in that chapter, through a board of supervisors, for the purpose of facilitating the delivery of urban community development services in concert with private developers.

Among the powers granted to CDDs are the power to raise money by way of user fees and charges, to impose special assessments, to issue bonds and to levy taxes and special assessments when

approved. CDDs may be exclusively comprised of land used only for commercial purposes, and some districts have no qualified electors, meaning that no person registered to vote resides in that district. In these situations, a CDD's Board of Supervisors is elected by the district's landowners.

The bill authorizes CDDs that have no residents who are registered to vote to levy a tax of up to one percent on the consideration paid on commercial rental transactions occurring in the district. The levy requires approval by 4 out of 5 of the elected board members of the CDD and the approval of at least two-thirds of the landowners within the CDD.

▪ **HB 7219** **Corporate Income Tax**

Florida's Corporate Income Tax Code follows the federal Internal Revenue Code by using federal rules and starting with federal taxable income as the tax base for the Florida income tax. Section 220.03, F.S., defines specific terms as they apply to Florida's Corporate Income Tax Code. The term "Internal Revenue Code" is defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1 of a specific year.

The bill updates the Florida Income Tax Code to reflect changes in the U.S. Internal Revenue Code enacted by Congress and in effect on January 1, 2010. This essentially provides for "piggybacking" each change made to the Internal Revenue Code during 2009. ▪

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

PROPOSED CONSTITUTIONAL AMENDMENTS

Florida Proposed Constitutional Amendments: November 2010

▪ **BALLOT NUMBER 1**

Ballot Title: Repeal of Public
Campaign Financing
Requirement
Sponsor: 2009 Florida Legislature

Ballot Summary:

Proposing the repeal of the provision in the State Constitution that requires public financing of campaigns of candidates for elective statewide office who agree to campaign spending limits.

▪ **BALLOT NUMBER 2**

Ballot Title: Homestead Ad Valorem
Tax Credit for Deployed
Military Personnel
Sponsor: 2009 Florida Legislature

Ballot Summary:

Proposing an amendment to the State Constitution to require the Legislature to provide an additional homestead property tax exemption by law for members of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard who receive a homestead exemption and were deployed in the previous year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the Legislature. The exempt amount will be based upon the number of days in the previous calendar year that the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the Legislature. The amendment is scheduled to take effect January 1, 2011.

▪ **BALLOT NUMBER 3**

Ballot Title: Property Tax Limit For
Non-homestead Property;
Additional Homestead
Exemption For New
Homestead Owners
Sponsor: 2009 Florida Legislature

Ballot Summary:

The State Constitution generally limits the maximum annual increase in the assessed value of non-homestead property to 10 percent annually. This proposed amendment reduces the maximum annual increase in the assessed values of those properties to 5 percent annually. This amendment also requires the Legislature to provide an additional homestead exemption for persons who have not owned a principal residence during the preceding 8 years. Under the exemption, 25 percent of the just value of a first-time homestead, up to \$100,000, will be exempt from property taxes. The amount of the additional exemption will decrease in each succeeding year for 5 years by the greater of 20 percent of the initial additional exemption or the difference between the just value and the assessed value of the property. The additional exemption will not be available in the 6th and subsequent years.

2010 LEGISLATIVE REPORT

▪ **BALLOT NUMBER 4**

Ballot Title: Referenda Required For Adoption and Amendment of Local Government Comprehensive Land Use Plans
Sponsor: Florida Hometown Democracy, Inc., PAC

Ballot Summary:

Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body and notice. Provides definitions.

▪ **BALLOT NUMBER 5**

Ballot Title: Standards for Legislature to Follow In Legislative Redistricting
Sponsor: FairDistrictsFlorida.org

Ballot Summary:

Legislative districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

▪ **BALLOT NUMBER 6**

Ballot Title: Standards for Legislature to Follow In Congressional Redistricting
Sponsor: FairDistrictsFlorida.org

Ballot Summary:

Congressional districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

▪ **BALLOT NUMBER 7**

Ballot Title: Standards for Legislature to Follow in Legislative and Congressional Redistricting
Sponsor: 2010 Florida Legislature

Ballot Summary:

In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in the State Constitution. The state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of Article III of the State Constitution. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards contained in the State Constitution and is consistent with federal law.

▪ **BALLOT NUMBER 8**

Ballot Title: Revision of the Class Size Requirements for Public Schools
Sponsor: 2010 Florida Legislature

Ballot Summary:

The Florida Constitution currently limits the maximum number of students assigned to each teacher in public school classrooms in the following grade groupings: for prekindergarten through grade 3, 18 students; for grades 4 through 8, 22 students; and for grades 9 through 12, 25 students. Under this amendment, the current limits on the maximum number of students assigned to each teacher in public school classrooms would become limits on the average number of students assigned per class to each teacher, by specified grade grouping, in each public school. This amendment also adopts new limits on the maximum number of students assigned to each teacher in an individual classroom as follows: for prekindergarten through grade 3, 21 students; for grades 4 through 8, 27 students; and for grades 9 through 12, 30 students. This amendment specifies that class size limits do not apply to virtual classes, requires the Legislature to provide sufficient funds to maintain the average number of students required by this amendment, and schedules these revisions to take effect upon approval by the electors of this state and to operate retroactively to the beginning of the 2010-2011 school year.

▪ **BALLOT NUMBER 9**

Ballot Title: Health Care Services
Sponsor: 2010 Florida Legislature

Ballot Summary:

Proposing an amendment to the State Constitution to ensure access to health care services without waiting lists, protect the doctor-patient relationship, guard against mandates that don't work, prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permit a person or an employer to purchase lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or an employer for lawful health care services; exempt persons, employers, and health care providers from penalties and fines for paying directly or accepting direct payment for lawful health care services; and permit the purchase or sale of health insurance in private health care systems. Specifies that the amendment does not affect which health care services a health care provider is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers' compensation; affect laws or rules in effect as of March 1, 2010; affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or an employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or an employer for lawful health care services; or affect any general law passed by two-thirds vote of the membership of each house of the Legislature, passed after the effective date of the amendment, provided such law states with specificity the public necessity justifying the exceptions from the provisions of the amendment. The amendment expressly provides that it may not be construed to prohibit negotiated provisions in insurance

2010 LEGISLATIVE REPORT

contracts, network agreements, or other provider agreements contractually

limiting copayments, coinsurance, deductibles, or other patient charges.

CARLTON FIELDS

ATTORNEYS AT LAW

**2010
Florida Legislature
Post-Session Report**

INDEX

INDEX

BILL NUMBER	PAGE
1	107
4	11
6	12
10	27
11	107
25	107
31	15
33	107
91	108
105	15
109	143
119	108
131	27
143	69
150	16
159	95
163	143
173	143
281	144
295	29
303	3
312	131
315	110
317	110
318	30
325	110
341	83
350	30
366	111
393	132
434	16
435	69
437	111
449	112
451	30

BILL NUMBER	PAGE
464	31
467	16
483	144
491	83
492	112
523	31
525	112
545	95
550	69
551	132
569	70
573	83
615	114
622	31
631	34
644	35
661	96
663	36
689	114
694	115
704	115
713	37
723	17
729	3
731	115
742	38
747	17
751	39
765	116
787	117
795	117
808	117
814	39
821	117
843	71

BILL NUMBER	PAGE
846	71
885	96
907	117
926	118
927	71
945	83
951	40
963	40
965	72
971	40
981	44
982	72
998	118
1003	44
1004	45
1005	119
1012	45
1013	45
1035	3
1050	4
1058	17
1059	132
1073	83
1118	73
1136	45
1143	84
1150	5
1152	5
1157	46
1166	73
1178	46
1196	73
1207	47
1237	120
1253	86

2010 LEGISLATIVE REPORT

BILL NUMBER	PAGE
1264	48
1279	144
1281	96
1291	122
1307	49
1337	87
1363	18
1377	5
1385	75
1389	50
1401	50
1411	76
1460	97
1471	48
1484	88
1493	122
1505	18
1514	144
1516	50
1551	51
1565	52
1612	53
1678	132
1730	144
1736	6
1752	54
1842	77
1964	123
2014	19
2024	145

BILL NUMBER	PAGE
2044	97
2046	7
2060	123
2086	101
2126	19
2176	102
2272	89
2374	58
2386	58
2440	123
2742	59
5001	59
5003	59
5101	21
5201	22
5301	90
5303	90
5305	124
5309	61
5311	91
5401	125
5501	61
5505	62
5603	62
5611	62
5801	145
7017	133
7033	63
7035	126
7037	22

BILL NUMBER	PAGE
7069	127
7079	133
7085	133
7087	133
7089	134
7091	134
7093	134
7103	77
7109	64
7111	135
7113	135
7115	135
7117	135
7119	136
7121	136
7123	137
7129	78
7131	127
7157	146
7165	137
7167	137
7179	147
7193	137
7203	146
7205	65
7217	104
7219	146
7237	23
7243	78