2007 Florida Legislature
Post-Session Report

What You Should Know About Significant Bills Passed in Special Session A and the Regular Legislative Session

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2007
Florida Legislature
Post-Session Report

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How To Use This Report

This is a summary of significant legislation that passed in 2007 Special Session A (January) and the 2007 Regular Session (March-May) of the Florida Legislature. This report does not include legislation considered during 2007 Special Session B (June).

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.

As of this writing, many of the bills in this report are awaiting review of the Governor and are subject to the Governor's veto authority. The reader is therefore encouraged to check the ultimate status of any bill by visiting the Legislature's web site *(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 web site. This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives. Photo credits are given to Mark Foley and Meredith Hill, photographers, Florida House of Representatives and The Florida Memory Project.

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GOVERNMENT LAW AND CONSULTING PRACTICE GROUP

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The lawyers and government consultants of Carlton Fields' Government Law and Consulting practice are highly experienced in dealing with all levels of government 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 address effectively a wide variety of legislative, administrative, procedural, and political issues.

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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.

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Corporate, Construction, Business & Professional Regulation & Taxation

Please see Health Care & Health Insurance for bills regarding health care regulation.

CORPORATE, CONSTRUCTION, BUSINESS & PROFESSIONAL REGULATION & TAXATION

- **HB 9**

Trespass/Railroad Property

This bill defines the term "construction site" to mean any property where there is construction for which a building permit is required.

The bill provides that it is a third degree felony to trespass at construction sites of less than one acre in size and identified as such with a sign that appears predominantly, in letters not less than two inches in height, and reads in substantially the following manner:

THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY

The bill requires that the notice be placed where the building permits for construction are located. The bill provides that it is not necessary for a construction site of less than one acre to give the notice required by s. 810.011(5), F.S., which requires that multiple no-trespassing signs must be placed not more than 500 feet apart along, and at each corner of, the boundaries of the land.

The amendment would permit homeowners to designate their community association as their agent to issue "no trespass" notices. Current law only permits homeowners or land owners to designate an actual person as their agent.

If approved by the Governor, these provisions take effect July 1, 2007.

Governor Charlie Crist gestures as he makes a point during his State-of-the-State address in the House chamber Tuesday, March 6. Listening at center is Speaker Pro Tempore Dennis Baxley, R-Ocala, while right shows House Speaker Marco Rubio, R-Miami. (House photo by Meredith Hill)

- **HB 83**

Venture Capital Investments

This bill promotes venture capital investment in Florida with the creation of three entities or programs, discussed below. It also appropriates $35 million in nonrecurring general revenue in FY 2007-2008, to carry out the bill's purposes.

The bill creates the Florida Opportunity Fund, a private, not-for-profit corporation organized and operated under ch. 617, F.S., with Enterprise Florida, Inc. (EFI), as its sole shareholder or member. A selection committee comprised of EFI board members will appoint the five-member board of directors for the Florida Opportunity Fund. The Florida Opportunity Fund will hire an experienced investment manager to help it invest in a "fund-of-funds" approach in seed and early-stage venture capital funds. Such investments must focus on investment opportunities in Florida, in companies that include, but are

not limited to, enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace technologies, and homeland security and defense.

In its annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives due each December 1, the Fund must include, at least, an accounting of the amount of investments disbursed, a description of the program's benefits, such as the number of businesses and jobs created; and copies of independent audits.

The bill appropriates $29.5 million in nonrecurring general revenue in FY 2007-2008 to the Florida Opportunity Fund for investments, and $500,000 for start-up activities.

The bill also creates the Institute for the Commercialization of Public Research. This institute, operated by a public university and based in South Florida, shall mentor and otherwise assist companies close to bringing their products to market. The actual site will be selected by the EFI Board of Directors after review of proposals submitted by interested public Florida universities. The institute's primary purpose is to assist in the commercialization of products developed by the research and development activities of publicly supported universities and colleges, research institutes, and other publicly supported organizations within the state. To be eligible for assistance, the company or organization attempting to commercialize its product must be accepted by the institute before receiving the institute's assistance.

The institute's other responsibilities are:

- Support existing commercialization efforts at Florida universities, and not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.
- Maintain a centralized location to showcase companies and their technologies and products;
- Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;
- Facilitate meetings between prospective investors and eligible organizations in the institute; and
- Issue a report by Dec. 1 of each year that includes information on any assistance and activities provided by the institute; a description of the benefits to the state, such as the number of businesses started and jobs created; and copies of independently audited financial statements.

The bill appropriates $900,000 in nonrecurring general revenue in FY 2007-2008 for the institute's operational expenses; and $100,000 in nonrecurring general revenue to EFI to pay start-up costs associated with the institute.

Also created in the bill is the State University Research Commercialization Assistance Grant Program, within the existing Florida Technology, Research, and Scholarship Board of the State University System (SUS). The board will distribute grants to state universities to finance earlystage, pre-marketing activities geared to commercializing university research products. The grants will range from $100,000 to $250,000.

The bill appropriates $4 million in nonrecurring general revenue in FY 2007-2008 to the SUS' Board of Governors for the grants.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 90**

Motor Fuel Taxes/ Commercial Aviation

This bill entitles persons who purchase and use motor fuel in the operation of aviation ground support vehicles and equipment to a refund of the motor fuel sales tax, the State Comprehensive Enhanced Transportation System (SCETS) Tax, and the local-option fuel tax, provided none of the fuel is used in vehicles or equipment operated on public roads.

Specifically, the bill adds "commercial aviation purposes" to the list of motor fuel uses for which a person is entitled to a refund of the local option fuel tax, the SCETS tax, and the fuel sales tax. A refund would be available for "fuel used in the operation of aviation ground support vehicles or equipment, no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state." Under this definition, qualifying vehicles and equipment would include "tugs" used for maneuvering aircraft and transporting baggage and other freight between an aircraft and the terminal, concessionaire and fuel vehicles, emergency and other vehicles used exclusively on airport property, as well as landscaping and other gasoline or diesel fuel equipment. Fuel used in aircraft or any vehicle which operates on the public highway system would not be eligible for tax refund.

Commercial aviation ground support companies will receive, in the aggregate, an estimated $200,000 annually in motor fuel tax refunds, with a commensurate recurring loss in motor fuel tax revenues to the State Transportation Trust Fund, and an insignificant

recurring loss of local option fuel tax revenues to local governments.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 108**

Minority & Underrepresented Student Achievement

The bill requires the Florida Partnership for Minority and Underrepresented Student Achievement (Partnership) to work with school districts on the following activities:

- Identify minority and underrepresented students for participation in Advanced Placement (AP) and other advanced courses; and
- Provide information to students and parents regarding opportunities to take AP and other advanced courses, and the advantages of doing so.

The Partnership is tasked with providing information to students, parents, teachers, counselors, administrators, school districts, community colleges, and state universities regarding opportunities to take the PSAT/NMSQT or PLAN, and the value of doing so. The bill also requires the Partnership, in cooperation with the DOE, to provide information about its activities to administrators, teachers, and counselors.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 134**

Cardrooms/Dominoes/Gaming

The bill amends s. 849.086, F.S., to define and include dominoes in the list of author-

ized games permitted to be played at a cardroom.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 211**

Hurricane Preparedness/Sales Tax

The bill (Chapter 2007-25, L.O.F.) creates an unnumbered section of Florida Statutes and provides for a sales tax exemption period for the purchase of items typically associated with hurricane preparedness. The sales tax exemption period extends from June 1, 2007 through June 12, 2007. Items covered by the exemption include:

- Any portable, self-powered light source selling for $20 or less;
- Any portable self-powered radio, two-way radio, or weather-band radio selling for $75 or less;
- Any tarpaulin or flexible waterproof sheeting selling for $50 or less;
- Any ground anchor system or tie-down kit selling for $50 or less;
- Any gas or diesel fuel tank selling for $25 or less;
- Any package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile or boat batteries, selling for $30 or less;
- Any cell phone battery selling for $60 or less or any cell phone charger selling for $40 or less;
- Any non-electric food-storage cooler selling for $30 or less;
- Any portable generator used to provide light, communications, or preserve food in the event of a power outage selling for $1,000 or less;
- Any storm shutter device selling for $200 or less ("storm shutter device" is defined as materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms);
- Any carbon monoxide detector selling for $75 or less;
- Any reusable ice selling for $10 or less; and
- Any single product consisting of two or more of the items listed above selling for $75 or less.

These provisions were approved by the Governor and took effect on April 30, 2007.

- **SB 252**

Business Filings

This bill amends Article 1 of the Uniform Commercial Code (UCC or code), which is codified mainly in ch. 671, F.S. The changes, which are primarily technical, are based on revisions made in 2001 to Article 1 of the UCC model code by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. More specifically, the bill:

- Revises, deletes and provides new definitions;
- Revises the statutes to recognize changing business practices, particularly as they reflect terms and practices arising from electronic commerce;
- Clarifies the scope of Article 1 to encompass only transactions within the scope of other articles of the UCC;

- Defines the application of supplemental laws to the UCC such as the Electronic Signatures in Global and National Commerce Act (E-sign);

- Revises the definition of good faith to conform to the definition of that term as used in the majority of the recently revised UCC articles;

- Provides that evidence of "course of performance" may be used to interpret a contract along with "course of dealing" and "usage of trade";

- Deletes references to electronic filing in the fees provision, thereby, making current fees applicable to hard copy submissions as well as future electronic filings;

- Amends the fee provision of s. 713.901, F.S., the Florida Uniform Lien Registration Act, to specify the current filing and registration fees using the terminology of the act rather than that of the UCC; and

- Conforms cross-references to reflect the revisions to the code.

In addition, the bill incorporates the provisions of CS/SB 2148 and amends ss. 608.406 and 608.407, F. S., to require limited liability companies registered with the Department of State (DOS) to be distinguishable in the databases maintained by the Division of Corporations within DOS, with certain exceptions. In addition, the bill prohibits DOS from continuing to record duplicate names.

If approved by the Governor, these provisions take effect January 1, 2008.

- **SB 282**

Designated Drivers

The bill would prohibit licensed retail alcoholic beverage establishments from refusing service to a person who does not purchase alcohol because he or she is the designated driver for one or more persons who are purchasing alcoholic beverages at the establishment. The bill also provides that this provision does not excuse a retail alcoholic beverage establishment from complying with any applicable municipal or county ordinance regulating the presence of persons under 21 years of age on the premises of the establishment.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 404**

Construction & Housing Industry/ Regulation

The bill permits an applicant to qualify for licensure as a building code inspector or plans examiner if he or she demonstrates completion of an approved training program and a minimum of two years experience in the field of building codes inspection, plan review, fire code inspections, fire plans review of new buildings as a certified fire safety inspector, or construction. The approved training program must include 300 hours with 20 hours of instruction laws, rules, and ethics.

The bill requires that the certification examinations for building code enforcement officials must be substantially similar to those administered by the International Code Council. The bill permits building code enforcement officials employed by small counties having a population of 150,000 or less to provide building code services to another small county.

The bill limits the building code enforcement official's bill of rights to disciplinary investigations and proceedings against licenses under

ch. 468, part XII, F.S., relating to the official duties of an enforcement official. It provides that the building code enforcement official's bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official may hold.

The bill authorizes the Florida Building Code Administrators and Inspectors Board to take disciplinary action if the licensee fails to enforce the Florida Building Code or permitting requirements that the licensee knew were applicable, obstructs an investigation, or provides forged documents or false evidence or testimony in an investigation, or accepts free labor, services or materials or at non-competitive rates from non-family members.

The bill also requires a minimum of three hours continuing education in laws, rules, and ethics for building code enforcement officials. Proof of completion of core courses must be completed during the first two years of licensure.

The bill requires applicants for initial issuance of a certificate or registration as a contractor to submit to a statewide criminal history records check through the Florida Department of Law Enforcement. It provides that the Construction Industry Licensing Board rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding. Fifty percent of the requirement may be met by completing a 14-hour financial responsibility course.

The bill provides for the placement of manufactured housing on mobile home lots in mobile home parks, recreational vehicle parks, and mobile home condominiums, cooperatives, or subdivisions. Manufactured housing units may not be placed on a mobile home lot without the prior written approval of the mobile home park owner. Manufactured housing placed on mobile home lots must be taxed as mobile homes under s. 320.08(11), F.S., and may be subject to payments to the Florida Mobile Home Relocation Corporation as required under s. 723.06116, F.S.

The bill provides that engineers or architects may contract directly with a licensed contractor for the preparation of plans, specifications, or a master design manual addressing structural designs used in an application of building permits. It provides that a contractor is not required to prepare site plans for the design or construction of family dwellings, swimming pools, spas, or screened enclosures, or any other structure not exceeding 1,200 square feet or one story in height. The bill defines the term "master design manual," requires training for the contractor, architect, or engineer using the manual, and requires peer review of the manual by an architect or engineer.

The bill requires that the expansion of existing warehouses must comply with the fire protection system requirements in the Florida Building Code (code). It also provides that existing warehouses do not need to be updated to meet current requirements if they are in compliance with the 2001 version of the code and with the code requirements concerning sprinkler systems.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 426**

Ads/False, Deceptive, Misleading

This bill prohibits a person from advertising or conducting a live musical performance by using a false, deceptive, or misleading statement of an affiliation, connection, or association between a performing person or group and a recording person or group.

There is no violation of this prohibition if:

- The performing person or at least one member of the performing group was a member of the recording group and has the legal right to use the name of the recording group by not abandoning the affiliation with the recording group or its name;
- The performing person or group is the authorized registrant and owner of a federal service mark for that person or group which is registered with the United States Patent and Trademark Office;
- The live musical performance or production is identified as a "salute" or "tribute" to, and is otherwise unaffiliated with, the recording person or group;
- The advertising does not relate to a live musical performance taking place in this state; or
- The performance is expressly authorized in the advertising by the recording person or group.

Any person who violates the prohibition commits a misdemeanor. The bill also authorizes the Department of Legal Affairs or a state attorney to file a civil action for injunctive relief and authorizes a court to impose a civil penalty of up to $5,000 for each violation.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 500**

Instant Bingo/Gaming

The bill provides for the playing of instant bingo at the currently authorized locations provided in s. 849.0931, F.S. It provides new definitions that describe the tickets and the game and gives specifications for how the tickets must look, be manufactured, and the manner in which instant bingo tickets are to be sold and distributed in this state. It provides that instant bingo tickets may only be played where authorized bingo games are played.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 529**

Cable TV/Video Service Franchises

The bill establishes the authority to issue statewide cable and video franchises within the Department of State and designates the department as the state franchise authority. The bill removes local government authority to negotiate cable service franchises.

The bill creates a new chapter 610 of the Florida Statutes. The bill provides for definitions and establishes an application procedure for a state-issued certificate of franchise authority by the department. Incumbent cable or video services providers are eligible to immediately apply for a state-issued certificate and the applicable municipal or county franchise is terminated on the date the department issues the state-issued certificate of franchise authority. Certificateholders are required to update information every five years. The bill provides for application and processing fees, most of such fees will be transferred to the Department of Agriculture and Consumer Services. Franchise fees imposed by local governments, except those franchise fees already collected through the Communications Services Tax and permitting fees collected for the use of the right-of-way are prohibited under the bill. Buildout requirements are prohibited.

The bill requires that all cable or video service providers must comply with federal re-

quirements as provided in the bill. Local governments that have an office or department dedicated to respond to cable or video service customer complaints may continue to respond to such complaints until July 1, 2009, at which time the Department of Agriculture will have sole customer complaint authority.

Guidelines for the number of public, educational, and government (PEG) channels to be provided are established. Certificate holders must provide the same number of public, educational, and governmental access channels, or their functional equivalent, that a municipality or county has activated under the incumbent cable or video service provider's franchise agreement as of July 1, 2007. The bill provides criteria for additional channels and for two channels if no franchise agreement exists or the local government has no requirements. The bill provides for operation, interconnection, and transmission of video programming.

The bill provides for free cable or video services for K- 12 public schools, public libraries or local government administrative buildings under certain conditions. Municipalities or counties are prohibited from discriminating against certificateholders for items such as access to rights-ofway, buildings, or property or terms and conditions of utility pole attachments. Local authority is limited with regard to certain additional requirements on the certificateholder including financial, operational, and administrative requirements. A local authority may not require the filing of certain documents.

The bill prohibits discrimination against subscribers based on race or income, and creates a new section in the Deceptive and Unfair Trade Practices Act, ch. 501, F. S., to enforce the provisions. This section provides for definitions and declares discrimination among residents by a provider of cable or video service unlawful and violation of the section. The bill provides for how a certificateholder may satisfy the section, how to determine whether a violation has occurred, and for enforcement.

If a certficateholder is found by a court of competent jurisdiction not in compliance with the requirements of the chapter, it has a reasonable period of time as specified by the court to cure such noncompliance. If an incumbent cable or video service provider is required to operate under its existing franchise, certain conditions also apply to certificateholders that provide service in that area.

The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) and the Department of Agriculture and Consumer Services are required to submit certain reports to the Legislature.

The bill repeals statutes related to a 2003 law increasing basic local telecommunications rates and reducing rates for intrastate switched network access that affects long distance rates and adds an automatic enrollment requirement for Lifeline services.

The bill makes conforming changes to the Communications Services Tax (CST) and the use of rights-of-way statute. The bill repeals the current cable franchising law in s. 166.046, F.S., and the process for the Public Service Commission to consider petitions for reductions in intrastate switched network access rates in s. 364.164, F.S.

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

- **SB 640**

Public Accountancy/Licensure

The bill deletes the October 1, 2008 deadline to apply for licensure as a CPA under a licensing option that permits applicants to substitute five years of experience for a 5th year of education requirement. The bill would make this option permanent.

The bill clarifies that the 80 hours of continuing education required for certified public accountants may include self-directed study.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 721**

Sales Tax/Postsecondary Bookstore

This bill provides a sales tax exemption for payments made by bookstore operators for the use of the real property where the bookstore is located.

To qualify for the exemption, bookstores must be primarily involved in the types of sales, distribution, and provision of textbooks, merchandise, and services that are traditionally available at college and university bookstores.

Although this exemption operates retroactively to amounts paid on or after January 1, 2006, taxpayers are not entitled to refunds by any government entity for any tax, penalty, or interest paid to the Department of Revenue before the bill becomes law.

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

- **SB 752**

Cardrooms/Gaming

The bill amends the cardroom hours of operation in section 849.086(7)(b), F.S., by allowing for operation of the cardroom on any day for a cumulative amount of 12 hours if the permitholder meets the requirements of s. 849.086(5)(b), F.S., when the facility is authorized to accept wagers on pari-mutuel events, unless extended by the local government where the facility is located. It changes the maximum bet from $2 to $5, authorizes a cardroom operator to award giveaways, jackpots, and prizes to players. It authorizes Texas Hold'em games without betting limits under certain circumstances. The bill provides for poker tournaments under certain conditions. It requires approval by a majority vote of the local governing body where the proposed cardroom is seeking location.

Implementation of this bill may result in an estimated increase in revenues of $1.7 million annually. $15,000 would be from additional occupational license fees with the remainder from gross receipt taxes. $212,500 of this amount would be distributed to local governments where the cardrooms are located.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 815**

Motor Vehicle Dealers

The general impact of the bill is to raise the level of protection for franchised motor vehicle dealers in three different aspects of their businesses.

To address the issue of manufacturer chargebacks of warranty or incentive payment costs, the bill amends s. 320.64(25), F.S., by:

- Specifying a motor vehicle manufacturer may not charge back to a motor vehicle dealer extra costs subsequent to the payment of a warranty or incentive claim unless a representative of the manufacturer has met in person, by telephone, or by video teleconference with a representative of the dealer.

- Requiring the manufacturer at such a meeting to provide a detailed explanation, with supporting documentation, on the basis for each of the claims for which the manufacturer proposes to charge back the dealer, and a written statement containing the basis upon which the motor vehicle dealer was selected for audit or review. The dealer is given a reasonable period of time, commensurate with the volume of claims being considered, but not less than 45 days after the meeting, to respond to the proposed charge-backs.

- Prohibiting the manufacturer from changing or altering the basis for each of the proposed charge-backs as presented to the dealer following the conclusion of the audit, unless the manufacturer received new information affecting the basis for one or more charge-backs.

- Specifying if a manufacturer changes the basis for a proposed charge-back based on new information, the motor vehicle dealer must be given the same right to a meeting and right to respond as when the charge-back was originally presented. No provision in Florida law currently requires manufacturers to permit a dealer to respond to alleged improper claims.

The bill adds a subsection to s. 320.64, F.S., prohibiting a motor vehicle manufacturer from limiting, restricting, or refusing to allow a dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles to his facility, unless the manufacturer is able to prove its decision is justified after consideration of:

- Reasonable facility and financial requirements associated with adding the new line-make, and

- The dealer's performance with the existing line-make.

This prohibition would be enforced notwithstanding the terms of any franchise agreement to the contrary.

In addition, the bill amends s. 320.641(3), F.S., to clarify a new motor vehicle dealer must be given at least 180 days to correct an alleged failure related to sales or service performance before a manufacturer may send out a notice of discontinuation, cancellation, or nonrenewal of the franchise agreement.

As provided in current law, affected motor vehicle dealers could pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697, F.S., – including treble damages against the manufacturer – when a manufacturer fails to comply with or violates these new provisions.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 920
Cosmetology

The bill redefines the practice of cosmetology to include hair technician services, esthetician services, and nail technician services. The term "esthetician" relates to non-medical, cosmetic facial services. The bill permits a person to obtain a license as a hair technician, esthetician, or nail technician. A cosmetologist may provide all three of these specialty services. The bill defines the services that each class of license may perform. Persons licensed as a cosmetologist or as a specialist under current law may continue to hold their current license or registration.

The bill increases the minimum required education hours for licensure as a cosmetologist from 1,200 to 1,800 hours. It requires 1,000

minimum hours of education for a hair technician. It increases from 260 to 600 hours the minimum number of required hours for an esthetician and from 240 to 350 the minimum number of required hours for a nail technician. The bill permits a student who has enrolled and begun his or her education before July 1, 2008, to take the exam to be licensed as a cosmetologist upon completion of 1,200 hours of training.

The bill provides definitions of salon, provides age and education requirements, permits license by endorsement for foreign persons, and provides for certain services to be performed outside of a salon.

The bill provides for cosmetology internships through cosmetology schools and programs. It establishes the conditions and rights applicable to cosmetology schools or programs. It provides for selection, placement, eligibility, supervision, and field of study for the interns. The student's cosmetology school is responsible for the selection and placement of the intern, and determining whether a student is eligible to become a cosmetology intern, and whether an internship sponsor meets the requirements for its educational objectives.

The bill requires that the cosmetology intern must be supervised by a licensed cosmetologist in a licensed salon. The bill would permit the cosmetology intern to only practice within the field of cosmetology in which he or she is engaged in the course of study.

The bill appropriates $60,149 in nonrecurring funds for FY 2007-2008 to the Department of Business and Professional Regulation to begin implementation of the licensure provisions of the bill.

If approved by the Governor, these provisions take effect July 1, 2008.

- **HB 921**

Wireless Communications Funds

The Wireless Emergency Telephone System Fund is renamed the Emergency Communications Number E91 1 System Fund. This fund is used to administer the Florida Emergency Communications Number E91 1 State Plan as provided in s. 365.17 1, F.S. The bill specifies that all fees assessed and collected by the telecommunications industry from subscribers be remitted directly to the E9 11 Board for direct deposit into the State Treasury. The bill provides for the separation of said revenues into wireless and nonwireless categories. It revises the distribution of revenues and reduces the carry-forward provision for counties, from 30 percent to 20 percent. However, counties will be exempt from the carry-forward provision as it relates to funding received from grants. The bill requires wireless providers to submit all invoices for the previous year by no later than March 31. By September 1, 2007, up to $15 million is made available from the fund for the E91 1 Board to distribute to counties. This distribution of funds will help offset the current collection of nonwireless revenues at the local level to the future remittance at the state level.

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

- **SB 1014**

2007 Internal Revenue Code Adoption

This bill updates the Florida Corporate Income Tax Code to reflect changes in the U.S. Internal Revenue Code enacted by Congress during 2006. This definition provides for "piggybacking" each change made during 2006 in the Internal Revenue Code.

If approved by the Governor, these provisions take effect upon becoming law and shall operate retroactively to January 1, 2007.

- **SB 1026**

Ad Valorem Tax/Disabled Veterans

The bill codifies an amendment to s. 6, Art. VII of the State Constitution, that was approved by the voters in the November 2006 general election. The amendment and the bill provide that each partially or totally permanently disabled veteran who is age 65 or older shall receive an ad valorem discount on homestead property that the veteran owns and resides in if the veteran: has a combat-related disability, was a resident of the state of Florida when entering military service, and was honorably discharged from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.

To qualify for the discount, a veteran must, by March 1, submit to the county property appraiser: proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs that states the percentage of the veteran's disability and evidence that the disability is combat-related, a copy of the veteran's honorable discharge, and proof of age as of January 1 for the year in which the discount will apply. A veteran who is otherwise entitled to the discount, but who misses the March 1 deadline, may use the same procedure as someone who misses the deadline to apply for other ad valorem exemptions which involves petitioning the value adjustment board to grant the discount. The property appraiser must notify the applicant in writing of the reasons for denying an application for the discount by July 1 of the year for which the application was filed. The veteran may reapply in a subsequent year using the same procedure. All notifications from the property appraiser must specify the right to appeal to the value adjustment board and procedures to follow for such an appeal.

The bill provides procedures for property appraisers to apply the discount. It also allows a county to waive the requirement that a veteran reapply annually for the discount. If reapplication is waived, the veteran is subject to certain penalties for failing to notify the property appraiser of a change in eligibility for the discount.

If approved by the Governor, these provisions take effect upon becoming law and apply retroactively to December 7, 2006.

- **HB 1047**

Slot Machine Gaming

This bill allows for automated teller machines in the pari-mutuel facilities with slot machines but excludes them from the slot machine gaming area. It increases the number of slot machines per facility from 1500 to 2000. It requires drug testing of the slot machine facility employees.

It provides for a fixed $2 million payment bond and clarifies that the payment of the $3 million license fee is on the anniversary date of the issuance of the slot machine license.

It provides for temporary licensure for occupational licensees and for a single universal occupation license for employees.

It provides for additional storage facilities for the machines and possession for training purposes.

It allows for the gaming areas to be open 18 hours a day Monday through Friday and 24 hours on the weekend and allows for pro-

gressive games within the slot machine facility.

The bill excludes check cashing within the designated slot machine gaming area and also excludes the cashing of any government-issued check, third party check, or payroll check issued to an individual.

Outside of the gaming area, the bill allows for employee check cashing. These employees are prohibited from playing on the slot machines under s. 55 1.108(5), F.S. It allows acceptance of a check payable to a person licensed by the division, a patron, or a pari-mutuel facility.

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

- **HB 1051**

Blindness/Homestead Exemption/ Certification Form

The bill authorizes a Florida-licensed optometrist to certify a total and permanent disability due to legal blindness for purposes of qualifying a person within certain income limitations for an exemption of the total value of a homestead property from ad valorem taxation. Certification of total and permanent disability due to legal blindness by a Florida-licensed allopathic or osteopathic physician and a Florida-licensed optometrist satisfies the requirement for the exemption from ad valorem taxation. Only one of the two certifications required for total and permanent disability due to legal blindness may be completed by an optometrist; the other certification must be completed by a physician. The bill specifies a form for an optometrist's certification of total and permanent disability, including specified notices to the taxpayer and the optometrist.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1177**

Funeral & Cemetery Industry Regulation

The bill prohibits any person regulated by chs. 395, 400, or 429, F.S., relating to hospitals, nursing homes, and related health care facilities, including hospices and assisted care communities, from owning, managing, or operating any business entity whose service or activity is licensed under ch. 497, F.S. It applies this prohibition to any officer, administrator, or board member of an entity if the entity is a firm, corporation, partnership, or any person who owns more than five percent or more of such a business entity. It provides exemptions from the prohibition.

The bill provides that limited licenses can be issued to retired professionals when there is a critical need, and defines critical need. It requires that all limited licensees must be employed by an entity licensed under ch. 497, F.S. The bill also:

- Requires non-licensed operational personnel to complete a required course on communicable disease every six years;
- Provides that the monument installation requirement apply to all cemeteries in this state, including unlicensed cemeteries;
- Provides standards for the ventilation of private and family mausoleums;
- Permits deceased persons to be interned or entombed with the cremated inurned remains of their pets;
- Permits funeral director and embalmers to complete a continuing education instruction in HIV and AIDS once every six years instead of once every two years;

- Revises requirements for licensure by endorsement for funeral directors; and
- Changes the term "monument dealer" to "monument retailer."

The bill prohibits claims objecting to cremation against a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility under certain conditions.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1178**

Local Business Tax Receipts

The bill revises the date for beginning the annual sale of local business tax receipts from August 1 to July 1 of each year. It also provides a window for municipalities that adopted a local business tax ordinance after October 1, 1995, to reclassify businesses, professions, and occupations, and to establish new rate structures, before October 1, 2008, if certain conditions are met. This bill also specifically authorizes municipalities and counties to decrease or eliminate a local business tax.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1185**

Trespass/Construction Site

This bill defines the term "construction site" to mean any property where there is construction for which a building permit is required.

The bill provides that it is a third degree felony to trespass at construction sites of less than one acre in size and identified as such with a sign that appears predominantly, in letters not less than two inches in height, and reads in substantially the following manner:

THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY

The bill requires that the notice be placed where the building permits for construction are located. The bill provides that it is not necessary for a construction site of less than one acre to give the notice required by s. 810.011(5), F.S., which requires that multiple no-trespassing signs must be placed not more than 500 feet apart along, and at each corner of, the boundaries of the land.

The amendment would permit homeowners to designate their community association as their agent to issue "no trespass" notices. Current law only permits homeowners or land owners to designate an actual person as their agent.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1199**

Agricultural Electricity/ Sales Tax Exemption

This bill amends s 212.08, F. S., to exempt electricity used directly or indirectly in the production or processing of agricultural products thereby broadening the current sales and use tax exemption. Current law only allows an exemption for electricity used directly in the production or processing of agriculture products. The bill retains the statutory requirement that electricity be separately metered; and, the presumption that if not separately metered, then all of the electricity is taxable.

If approved by the Governor, these provisions take effect on July 1, 2007.

● HB 1283
Black Business Investment

The bill creates the Florida Black Business Investment Act, which is intended to increase the availability of capital to black business enterprises. The bill recreates the Black Business Investment Board (FBBIB) as a not-for-profit corporation to evaluate the needs and aid in the development of black business enterprises.

The bill also creates the Black Business Loan Program, under the administration of the Office of Tourism, Trade, and Economic Development (OTTED), to provide loans, loan guarantees, and investments through eligible recipients such as Black Business Investment Corporations (BBICs) or others, to black business enterprises that cannot otherwise obtain capital through conventional lending institutions. OTTED is required to annually certify entities to receive funds from the program. The FBBIB is required to receive and forward the applications for certification, and recommend to OTTED which entities should be annually certified. OTTED is required to contract with the entities certified to receive funds from the Black Business Loan Program, and specifies the conditions of such contracts, including recovery of disbursed funds when performance conditions are not met.

The bill requires the FBBIB to:

- Submit to OTTED quarterly compilations of the quarterly reports submitted by certified entities that have received funds from the Black Business Loan Program;
- Submit an annual report on the performance of the Black Business Loan Program to the Governor, President of the Senate, and Speaker of the House of Representatives; and
- Promote the expanded black business bonding program, which assists qualified black contractors in obtaining surety bonds and other credit instruments.

As to the regional BBICs, the bill:

- Expands the representation of the regional BBICs on the FBBIB;
- Makes it unlawful for any entity to hold itself out as a black business investment corporation without being certified as eligible to participate in the Florida Black Business Loan Program;
- Grants the BBICs priority consideration for funding from the Black Business Loan Program; and
- Allows the BBICs to use 7 percent of the Black Business Loan Program funds they receive to provide technical support to black business enterprises and 10 percent of program funds to fund direct administrative costs.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to prepare a status report and conduct a program review of the implementation of the Florida Black Business Investment Act.

The bill also declares that the public interest of the state has been served with respect to the use of any state funds received by the board and any BBICs prior to and through FY 2005-2006.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 1285
Construction Liens

This bill makes a number of changes to the Construction Lien Law. It defines the phrase

"final furnishing" to mean the last date that the lienor furnishes labor, services, or materials.

It requires written notices in all direct contracts between an owner and contractor on residential projects even if the direct contract is unwritten.

The bill provides that a contractor and the property owner must agree to any bonding provisions. Any termination of a direct contract before its completion can be a basis for the recommencement process.

It provides that a recorded notice of commencement can be amended to extend the effective period, to change erroneous information in the original notice, or to add information that was omitted from the original notice. The bill provides that statement of accounts must be under oath and that the lienor is only entitled to information regarding direct contracts under which it is providing labor, materials or services.

It provides that a lien cannot continue for more than one year after the claim of lien has been recorded, or one year after the recording of an amended claim of lien that shows a later date of final furnishing of labor, services, or materials.

The bill provides that the prevailing party is entitled to attorney's fees in a proceeding involving fraudulent liens.

It provides conformity with previous changes made in the law.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1325**

Don Davis Entertainment Industry Act

This bill extensively amends. s. 288.1254, F. S., reorganizing the existing cash-incentive program, revising the categories for entertainment productions, and establishing new criteria for qualifying production expenditures for state reimbursement.

Specifically, the bill creates three "queues," or categories, of entertainment productions eligible to receive cash incentives: the General Production queue (which includes major movies and television series); the Independent Florida Filmmaker queue; and the Digital Media Projects queue.

Productions in each queue must meet specific hiring and other criteria in order to obtain the cash incentives that reimburse a portion of their qualified expenditures. Of the amount appropriated by the state for the cash incentives: 85 percent is earmarked for qualified expenditures in the General Production queue; 5 percent is earmarked for the Independent Florida Filmmaker queue; and 10 percent is earmarked for the Digital Media Production queue.

General Productions also are eligible for greater percentage incentives if they meet the specified requirements as a "family-friendly film" or if they are filmed during the "off-season," June 1- November 30.

The bill also:

- Directs the state Office of Film and Entertainment to include in its annual report information about the economic benefits to Florida from the film industry;
- Adds a severability clause;
- Repeals an unnecessary section of law related to the film and entertainment program's funding; and

- Creates penalties for fraudulent applications and claims filed for the incentive funding. Violators must not only repay the fraudulently received incentive funding, but also a penalty double that amount.

If approved by the Governor, these provisions take effect July 1, 2007.

● CS/SB 1456
Sales Tax/School Supplies & Clothing

The bill provides that no sales and use tax will be collected on sales of books, clothing, wallets, or certain bags having a selling price of $50 or less during the period from 12:01 a.m. August 4, 2007, through midnight, August 13, 2007. The bill also provides that no sales and use tax shall be collected on sales of school supplies having a selling price of $10 per item or less during that same period of time.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 1489
Public Project Construction Bonds

The bill provides requirements for the performance and payment bonds that are required for formal contracts with the state or any county, city, or political subdivision thereof, or other public authority for the construction of a public building, the prosecution and completion of a public work, or repairs of a public building or public work. The bill permits a public owner to set the amount of a payment and performance bond at the largest amount reasonably available if the contract exceeds $250 million and a bond in the amount of the contract price is not reasonably available.

The bill provides that, if a public owner does not include the amount of the cost of design or other non-construction services in a construction-management or design-build contract, the bond may not be conditioned on performance of such services or payment to persons furnishing such services. It also provides that such a bond may exclude persons furnishing such services from the classes of persons protected by the bond.

The bill provides that a county, municipality, special district as defined in ch. 189, F.S., or other political subdivision of the state, may use a construction management entity or program management entity. The bill amends s. 287.055(9)(c), F.S., relating to the acquisition of professional services, to clarify that the specified local government entities must award construction-management and program-management contracts by use of a competitive process whereby the selected firm will, subsequent to competitive negotiations, establish a guaranteed maximum price and guaranteed completion date.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 1818
Telecommunications Industry/ Reports

The bill amends s. 364.3 86, F.S., relating to the annual Report on the Status of Competition in the Telecommunications Industry. The bill changes the dates for the Public Service Commission (commission) to request data, for certain companies to provide data, and the due date for the report to be provided to the Legislature. The bill also changes certain reporting criteria to allow the same information that is provided to the Federal Communications Commission (FCC) to be provided to the commission so long as it identifies Florida-specific access line data. The commission may still request and receive qualitative data from the industry that is usually provided in a question and answer format.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1822**

Carbon Monoxide Detectors

This bill requires that one or more carbon monoxide sensor devices be installed in any portion of a public lodging establishment that has an enclosed space or room containing a certain type of boiler regulated under ch. 554, F.S., in a portion of the establishment which also contains sleeping rooms. The bill exempts public lodging establishments that have adequately mitigated the carbon monoxide hazard as determined by the Division of Hotels and Restaurants (division) of the Department of Business and Professional Regulation. The bill also requires that each carbon monoxide device must have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent. The devices must be integrated into the establishment's fire detection system. The bill requires the division to adopt rules regarding the installation of the sensors and the determination of whether the establishment has adequately mitigated a carbon monoxide hazard.

The bill requires every building for which a building permit is issued for new construction on or after July 1, 2008, that has fossil-fuel-burning heaters or appliances, a fireplace, or an attached garage, to comply with installation of carbon monoxide alarms. It defines "carbon monoxide alarm" and "fossil fuel." The bill also requires the Florida Building Commission (commission) to adopt rules to administer the provisions of the bill and requires the commission to incorporate the requirements of the bill into the next revision of the Florida Building Code.

This bill is named "Janelle's Law" in memory of Janelle Bertot, Anthony Perez, and Tom Lueders, who all died from carbon monoxide poisoning in Florida.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1952**

Agriculture & Consumer Services Department

With one exception, the provisions in this bill relate to consumer service issues under the jurisdiction of the Department of Agriculture and Consumer Services. An additional issue relates to the use of the term "Chamber of Commerce."

The bill requires private investigators, managers of private investigative agencies, and private investigator interns to pass an exam before applying for licensure, and requires private investigator interns to complete a course on private investigative techniques. The bill also revises the requirements for those who provide training courses for recovery agents.

The bill updates the statutory reference to the organization from which Florida adopts antifreeze standards.

The bill increases the duration required between calibrations of petroleum measuring devices for volumes of 500 gallons or more from 1 year to 3 years.

Regarding brake fluid registration, the bill:

- Permits non-owners of brake fluid brand names to register brake fluid products with the department;
- Reduces the amount of the brake fluid sample required for registration from 64 ounces to 24 ounces; and

- Removes the requirement to affix labels to the brake fluid bottles when submitting samples to the department for registration and testing.

The bill revises the evidentiary requirement for proof of insurance or bond for certain applicants for liquefied petroleum licenses.

The bill expands the restrictions on unauthorized handling of gas in propane gas tanks.

The bill creates the 13 member Consumer Fertilizer Task Force within the department to address the proper use of non-agricultural fertilizers and local regulation related to such non-agricultural fertilizers. Specifically, the task force is charged to:

- Assess existing data and information regarding nutrient enrichment and surface waters due to fertilizer, assess management strategies for reducing water quality impacts associated with fertilizer, and identify additional research needs;

- Develop statewide guidelines governing nonagricultural fertilizer use rates, formulations, and applications;

- Take public input and testimony concerning these issues;

- Recommend methods to ensure local ordinances are based on best available data and science and to achieve uniformity among local government ordinances where possible, unless local ordinance variations are necessary to meet mandated state and federal water quality standards; and

- Develop model ordinances for municipalities and counties concerning the use of nonagricultural fertilizer.

The task force will be staffed by the department and shall consist of three appointments by the President of the Senate, three appointments by the Speaker of the House of Representatives, five appointment by the Commissioner of Agriculture, one member appointed by the Florida League of Cities, Inc., and one member appointed by the Florida Association of Counties.

The bill contains the provisions of SB 1862, and both defines the term "Chamber of Commerce" and prohibits a business entity that does not qualify as a chamber of commerce from using the term in its business name or to describe itself. The bill specifies that unauthorized use of the term "chamber of commerce" is a first-degree misdemeanor. A chamber of commerce is authorized to enjoin an entity improperly using the term from continuing to do so.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 2118
Debts & Debtors

An assignment for the benefit of creditors is an alternative to bankruptcy. Under ch. 727, F.S., an assignor or debtor may assign his or her assets to an assignee to pay creditor claims.

This bill revises the law related to assignments for the benefit of creditors. The bill also increases the amount of personal property owned by persons without homestead property that is exempt from creditor claims. A number of the changes are clarifying in nature. However, some changes were designed to reverse case law. The specific changes made by the bill are detailed below.

Property Exempt from Creditor Claims

The bill amends s. 222.25, F.S., to increase to $4,000 from $1,000 the amount of per-

sonal property owned by persons without homestead property that is exempt from creditor claims. The exemption for persons with homestead property will remain at $1,000 as provided in the Florida Constitution. However, the bill provides that this exemption does not apply to debts for child or spousal support.

Publication of Foreclosure Notices
Under existing law, foreclosure notices may be advertised in newspapers that publish at least five days per week in counties with a population of greater than 1 million residents. However, the bill expands the group of newspapers in which a foreclosure notice may be advertised to include newspapers that normally publish at least five days per week except for weeks with legal holidays.

Consensual Lienholder/ Actions against the Estate
The bill prohibits the levy, execution, or attachment by a judgment holder against any assets of the assignor's estate in the possession, custody, or control of the assignee, including real property. However, the bill provides that consensual lienholders may enforce their rights in personal or real property collateral.

The bill clarifies that causes of action are assets within an assignor's estate. Moreover, the bill clarifies that these causes of action may be assigned by the assignor to the assignee even if other law provides that they are not assignable. Under existing case law, some tort claims are not assignable.

Additionally, the bill provides that an assignee may further assign or sell the assignor's claims to others for enforcement. This provision of the bill appears to reverse *Champaign National Bank v. SOS Industries, Inc.,* 815 So. 2d 725 (Fla. 5th DCA 2002), which held that an assignee may not make a secondary assignment of claims.

Lastly, the bill prohibits those sued by an assignee or secondary assignee from asserting the assignor's misconduct as a defense. This provision of the bill codifies case law applicable to receivers.

Continuation of Business
Current law requires an assignee to have authorization from a court to run an assignor's business. The bill authorizes an assignee to operate an assignor's business for up to 14 days without authorization from a court. However, court authorization and notice to creditors are required to run the business for more than 14 days.

Rejection of Leases and Termination of Employment Contracts
Existing law does not address whether an assignee may reject an unexpired lease. The bill, however, permits an assignee to reject an unexpired lease. Whether approval of a court is required is unclear under the bill. Proposed s. 727.108(5), F.S., permits an assignee to reject an unexpired lease, but proposed s. 727.109(6), F.S., authorizes a court to approve the rejection of a lease.

If an assignee rejects a lease, damages are limited to the greater of one year of rent or 15 percent of the remaining rental payments and the landlord's attorney's fees, plus costs for reletting the property.

Currently, ch. 727, F. S., does not limit the damages resulting from the termination of an employment contract. Under the bill, an employee's damages are limited to wages for one year under his or her employment contract.

Filing of Claims
Under existing law, a court has no express authority to set a date after which claims against an assignor's estate are barred. Under the bill, a court may establish a claims

bar date that is at least 30 days after creditors receive notice of the claim deadline.

The bill also establishes a deadline by which secured creditors may file deficiency claims if the disposition of the secured property fails to satisfy their claims.

Objection to Claims
According to the Business Law Section of The Florida Bar, many parties have litigated whether one creditor has standing to challenge the claims on an assignor's estate by another creditor. The bill clarifies that a creditor has standing to object to the claims of other creditors. The bill also requires assignees to create and make available a register of all claims against the assignor's estate.

Priority of Claims
Under existing law, secured creditors have the highest priority for the payment of claims by an assignor's estate. The expenses for the administration of the estate have the next highest priority for payment. The bill clarifies that rent for the premises occupied by an assignment estate is an administration expense.

After administration expenses, the next highest priority under existing law is unsecured claims for taxes. The bill limits the claims under this priority level to those taxes that accrued within three years before the filing of an assignment for the benefit of creditors.

Following the claims for taxes, the next highest priority is unpaid wages and benefits of the assignor's employees. Current law limits these claims to wages and benefits that accrued within 90 days before the filing of the assignment for the benefit of creditors. The bill expands this period to 180 days before the assignment. The bill also increases to $10,000 from $2,000 per employee the amount of claims that may qualify at this priority level.

The next priority level following the claims for wages and benefits are claims for deposits paid to the assignor for an interest in property. The bill increases the amount available at this priority level to $2,225 from $900 per person.

Claims Arising Out of the Purchase of a Security
In *Moecker v. Antoine,* 845 So. 2d 904 (Fla. 1st DCA 2003), purchasers bought unregistered securities in a corporation that became insolvent and assigned its assets for the benefit of creditors. These purchasers sought to increase their priority for payment of claims against the corporation's estate. As stockholders, their payment would come after the satisfaction of all creditor claims. However, the stockholders were able to rescind their stock purchases and assert claims as unsecured creditors. This bill will effectively reverse *Moecker.* Under the bill, a person will not be able to become a creditor and thereby increase his or her priority for payment by rescinding a purchase of securities.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 2142
Protecting Florida's Investments Act
The bill creates ss. 215.442 and 215.473, F. S. The bill provides a series of legislative findings relative to current conditions in the countries of Sudan and Iran. The bill also requires the State Board of Administration (SBA) to perform certain tasks related to the "Public Fund" that may result in the Florida Retirement System divesting itself of equity holdings of companies doing business in Sudan and Iran.

Findings
The bill references declarations by the U.S. Congress, the U.S Secretary of State, and the U.S. President regarding Sudan and Iran.

With respect to Sudan, the bill recognizes and finds that:

- Sudan is designated as a State Sponsor of Terror and that the U.S. government has applied trade sanctions against Sudan for its ongoing actions;
- The U. S. Congress has declared that "the atrocities unfolding in Darfur, Sudan are genocide"; and
- It is the prerogative of the State of Florida not to participate in ownership or in a capital-providing capacity with entities that provide significant practical support for genocide, including certain non-U.S. companies currently doing business in Sudan.

With respect to Iran, the bill recognizes and finds that:

- The United Nations (UN) Security Council has imposed sanctions on Iran due to its failure to suspend uranium-enrichment activities;
- The UN Security Council has imposed an embargo on Iranian arms exports which is a freeze on assets abroad of an expanded list of individuals and companies involved in Iran's nuclear and ballistic missile programs;
- Iran is subject to sanctions pursuant to the Iran and Libya Sanctions Act of 1996 (PL 104- 172); and
- Investing in publicly traded companies having ties to Iran's petroleum-energy section places funds managed by the SBA at substantial financial risk.

Therefore:

- It is the responsibility of the State of Florida to decide how, where, and by whom financial resources in its control should be invested;
- Divestment from markets that are vulnerable to embargo, loan restrictions, and sanctions from the United States and the international community, including the UN Security Council, is in accordance with the rules of prudence; and
- This act should remain in effect only if it continues to be consistent with and does not unduly interfere with the foreign policy of the United States.

Required Actions

The bill requires the SBA to perform certain tasks related to the "Public Fund." The Public Fund is defined as all funds, assets, trustees, and other designates under the SBA. To comply with the provisions of this act, the SBA must take the following actions as they apply to companies doing business with Sudan and Iran. The SBA must:

- Make its best effort to identify all scrutinized companies in which the Public Fund has direct or indirect holdings or could possibly have such holdings in the future:
- The definition of a scrutinized company as it applies to Sudan includes a company with business operations in Sudan with revenues or assets linked to oil-related or power-production activities under certain circumstances, or is complicit in the Darfur genocide, or supplies military equipment within Sudan under certain conditions. A company designated as a "social-development company" that is not

complicit in the Darfur genocide is not considered a scrutinized company; and

- The definition of a scrutinized company as it applies to Iran includes a company with business operations that involve the Government of Iran or companies that have revenues or assets linked to Iran and involve oil-related or mineral-extraction under certain conditions.

- Assemble a list of scrutinized companies that meet the definitions for Sudan and Iran as described in the bill. The list shall be updated quarterly;

- Engage identified companies by providing written notice of their status as a scrutinized company and inform them of the possibility that they may become subject to divestment by the Public Fund;

- Encourage identified companies to cease scrutinized business activities within 90 days or convert such operations to inactive business operations. Companies with inactive business operations are encouraged to refrain from initiating active operations; and

- After 90 days following the Public Fund's first written engagement notice, if the company continues to have scrutinized active business operations, the Public Fund is required to sell, redeem, divest, or withdraw all publicly traded securities of the company. The SBA must complete this action within 12 months after the company's most recent appearance on the Scrutinized Companies List, subject to certain exceptions. If a company with inactive operations resumes active business operations, it is to be added back to the Scrutinized Companies List immediately.

In addition:

- The Public Fund is prohibited from acquiring securities of any company on the Scrutinized Companies List;

- The divestment provisions do not apply to indirect holdings in actively managed investment funds. The Public Fund is required to send letters to the managers of such funds requesting that they consider removing those companies from the fund or create an alternative fund. If an alternate fund is created, the Public Fund is required to replace all applicable funds with the new fund;

- The Public Fund must provide the Scrutinized Companies List, within 30 days of its creation, to each member of the Board of Trustees of the SBA, the President of the Senate, and the Speaker of the House of Representatives. At each quarterly meeting of the Board of Trustees thereafter, the Public Fund must file a report including a summary of correspondence with scrutinized companies and all investments divested in compliance with the act. This report shall also be distributed to the U.S. Presidential Special Envoy to Sudan and to the U.S. Presidential Special Envoy to Iran;

- The act expires if certain conditions are met as specified in the bill. These conditions include:

    - A Congressional or Presidential declaration that the Government of Sudan has ceased attacks on civilians, that the genocide in Darfur has been halted for at least 12 months, and that all sanctions imposed against the Government of Sudan have been revoked; and

- A Congressional or Presidential declaration that the Government of Iran has ceased to acquire weapons of mass destruction and that all sanctions against the Government of Iran are revoked.

o The Public Fund may cease divesting or reinvest in certain scrutinized companies if the value of all assets under management by the Public Fund becomes equal to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets under management assuming no divestment had occurred. Such activities require an additional report to the Board of Trustees of the SBA, the President of the Senate, and the Speaker of the House of Representatives; and

o The act includes a severability clause.

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

● SB 2224
Local Governments/ Authorized Investments

This bill authorizes local governments to invest surplus public funds in rated or unrated bonds, notes, or instruments backed by the full faith and credit of the government of Israel.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 2234
Regulation of Building Inspection Professionals

The home inspector portion of the bill provides requirements for practice or persons who engage in home inspections that include:

o Establishing definitions. The definition of "home inspector" means any person who provides or offers to provide home inspection services for a fee or other compensation. "Home inspection services" means a limited visual examination of one or more of the following readily accessible installed systems and components of a home.

o Establishing exemptions for governmental employees, certain licensed persons acting within the scope of their license who are not holding themselves out to the public as licensed home inspectors, officers appointed by the courts, utility safety inspectors, and certified energy auditors.

o Establishing licensure fees and requirements. The bill provides that the application and examination fee shall be limited to $125, plus the per-applicant cost of the examination to the department. The examination fee is refundable if the applicant is determined ineligible to sit for the examination. The initial license fee and biennial renewal fee may not exceed $200.

o Licensure requirements that include the completion of a 120 hour course of study approved by the Department of Business and Professional Regulation. The department to establish examination and licensing fees by rule.

o Establishing examination and licensure requirements. An applicant must satisfy good moral character requirements and satisfy certain education and experience requirements. The department is required to approve courses of study in home inspection services.

o Providing for licensure by endorsement, continuing education requirements, and the licensure of corporations and partner-

ships. The bill specifies the personal liabilities of corporate officers, partners, agents, employees, and owners for negligence, misconduct, or wrongful acts.

- Establishing prohibited acts that are considered misdemeanors of the first degree.
- Establishing prohibited acts that are subject to disciplinary action by the department. There is a maximum fine of $5,000 per violation.
- Providing that the department shall reissue the license of disciplined home inspectors that have complied with final orders.
- Providing for the disclosure of certain information to consumers prior to the home inspector contracting or commencing a home inspection.
- Requiring home inspectors to maintain a commercial general liability policy in an amount not less than $300,000.
- Establishing requirements for home inspection reports.
- Providing a grandfather clause that requires home inspectors to meet the requirements of the bill by July 1, 2010.

Mold

The mold assessor and mold remediator portion of the bill provides requirements for practice or persons who engage in business as a mold assessor or mold remediator that include:

- Establishing definitions. The definition of "mold assessment" means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis. "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive actives of mold or mold-contaminated matter of greater than ten square feet that was not purposely grown at that location.
- Establishing licensure fees. The bill provides that the application and examination fees each have a $125 cap, plus a per applicant cost the department may add to the examination fee if the department purchases the examination. The fee for an initial license and biennial license renewal may not exceed $200.
- Establishing examination and licensure requirements. An applicant must satisfy good moral character requirements and satisfy certain education and experience requirements. The department is required to approve courses of study in mold assessment and remediation.
- Providing for licensure by endorsement, renewals, and continuing education requirements.
- Providing for the certification of partnerships and corporations.
- Establishes personal liability standards for individuals, partners, officers, agents, and employees.
- Establishing prohibited acts that are second degree misdemeanors for first offenses, first degree misdemeanors for second offenses, and third degree felonies for third or subsequent offenses.

- Establishing disciplinary offenses and penalties, including a maximum fine of $5,000 per count.

- Providing a grandfather clause that requires mold assessors and mold remediators to meet the requirements of the bill by July 1, 2010.

The bill also allows a home warranty to be sold after a home inspection and mold assessment.

If approved by the Governor, these provisions take effect July 1, 2010.

● SB 2482
Tax Administration

CS/SB 2482 is the Department of Revenue's annual tax administration bill. The bill improves the administration and enforcement of our tax laws and eases taxpayer compliance. Specifically, the bill:

- Authorizes the Department of Revenue (DOR) to waive the service fee for dishonored tax payments.

- Allows homeowners who lost their homes in the 2004 hurricanes to keep their homestead status if they begin rebuilding by January 1, 2008.

- Provides relief for persons whose primary residence was damaged by the tornadoes which struck Florida on December 25, 2006, and February 2, 2007, by reimbursing up to $1,500 of property taxes levied on storm-damaged homesteads as well as reimbursing up to $1,500 of sales tax paid on the purchase or replacement of certain mobile homes.

- Reduces electronic filing thresholds from $30,000 to $20,000.

- Allows DOR to issue temporary motor fuel licenses during a declared state of emergency or a declared disaster.

- Provides that property owned by a limited liability company, the sole member of which is an exempt entity, is treated as if the property were owned directly by the exempt entity.

- Requires the property appraiser to set forth the specific requirements an applicant failed to meet in order to qualify for an exemption and to set forth the specific reasons the applicant was determined to have failed to meet such requirements. If the property appraiser's notification fails to comply with the requirements, the denial is invalid.

- Provides that property owned by an exempt entity will be deemed to be used for religious purposes if the institution has taken affirmative steps to prepare the property for use as a house of public worship.

- Clarifies the procedures for DOR to administer resale certificates issued to dealers under the communications services tax.

- Requires DOR to make adjustments to the proceeds of the communications services tax distributed under s. 202.18, F.S., that are necessary to reflect the proper amounts due to individual jurisdictions or trust funds.

- Removes the requirement that personal representatives of deceased Floridians file zero estate tax returns during the period that the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is in effect, eliminating an estimated 6,000 estate tax returns annually.

- Authorizes DOR to issue a credit or refund for an overpayment of insurance premium tax when DOR determines a credit or refund is due, even when a refund has not been requested by the taxpayer.

- Clarifies that separately stated delivery charges that can be avoided at the option of the purchaser is exempt from sales and use tax, which according to DOR, is currently exempt under DOR rule.

- Authorizes the department's General Tax Administration program to disclose taxpayer information to the Department's Child Support Enforcement (CSE) program for purposes of administering the CSE program. The taxpayer information will continue to remain confidential in the CSE program.

- Directs DOR to work with Florida banks to develop a pilot program for identifying account holders with tax liens.

- Adds language to the criminal provisions for tax payments made by electronic funds transfer that covers prima facie intent and identity when an electronic transfer to DOR is used and either not honored or refused because the taxpayer, knowingly at the time of the transaction, does not have sufficient funds on deposit or credit with the financial institution.

- Establishes the process for documenting a taxpayers' intentional failure or refusal to register and collect sales tax and create a penalty scale from a misdemeanor to first degree felony charge, depending on the amount of uncollected tax, for a taxpayers' repeated or continued failure or refusal to register and collect tax after written notification from DOR.

- Authorizes DOR to bill Agency for Workforce Innovation for the full reimbursement of their indirect costs associated with the collection of UC taxes, instead of the current 10% cap. This results in a savings to the General Revenue Fund because the reimbursement from AWI is made from federal funds. Under current law, costs above the 10% cap came from the General Revenue Fund. (FY 2005-06 costs were 19.8%).

If approved by the Governor, except as otherwise expressly provided in this act, this act shall take effect July 1, 2007.

● SB 2484
Lodging & Food Service Establishments

The bill increases the number of voting members from five to seven for the advisory council that assists the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation on matters affecting the food service and lodging industries. The bill provides that the Florida Restaurant and Lodging Association (formerly the Florida Hotel and Motel Association) may designate one representative to serve as a voting member of the council.

The bill changes the title of the person appointed from a college or university from "hospitality administration educator" to "hospitality education administrator," and increases the term of this appointment from two to four years. The bill eliminates the position of "director of education," and authorizes the director of the division to administer the Hospitality Education Program (HEP). The bill specifies that enhancement of school-to-career training programs for students interested in pursuing careers in the food service or lodging industry must be provided through the public

school system utilizing a nationally recognized curriculum approved by the division.

The bill specifies the expenses that may be funded by the grants. It provides that funds distributed by the council are subject to audit by the division. The bill increases from $150,000 to $250,000 the maximum amount of funds that the advisory council may designate annually to support school-to-career transition programs.

It authorizes the division to adopt rules to provide criteria for grant program approval and the procedures for processing grant program applications. The bill specifies the criteria for evaluating grant program applications. It limits grants to 4-year terms, with funding provided on an annual basis.

The bill provides that administrative fines assessed by the Division of Hotels and Restaurants may be used to fund the training of licensees through the HEP.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 2836
Florida Building Commission

Swimming Pools

The committee substitute for the committee substitute requires the Florida Building Commission (commission) to review requirements in the National Electric Code relating to bonding and grounding systems for swimming pools, and authorizes the commission to adopt a rule providing for the use of an alternative method, and to integrate the alternative method into the 2007 edition of the Florida Building Code (code.) Until the rule is adopted, the use of a specified underground bonding conductor is deemed a permissible alternative to or equal to compliance with the National Electric Code (2005), NFPA No. 70, adopted by reference within the code.

Gravel or stone roofing systems

The committee substitute for the committee substitute establishes that prior to eliminating gravel or stone roofing systems from the code, the commission must determine and document the following:

- If there is a scientific basis or reason for eliminating gravel or stone roofing systems;
- If eliminating gravel or stone roofing systems will unnecessarily restrict or eliminate business or consumer choices in roofing systems;
- If an alternative to gravel or stone roofing systems is available and equal in cost and durability, and
- In consultation with the Fish and Wildlife Conservation Commission, if eliminating gravel or stone roofing systems will affect the nesting habitat of any species of nesting birds.

The commission is authorized to adopt provisions to preserve gravel or stone roofing systems in future editions of the code, if necessary to address the determinations made with regard to eliminating the roofing systems.

Alternative building plans review and inspection

The committee substitute for the committee substitute provides the following definitions:

- "Audit" is defined as the process to confirm that building code inspection services have been performed by a private provider. The definition specifies that the term "audit" does not mean that the local building official is required to

replicate an inspection service performed by a private provider.

- "Immediate threat to public safety and welfare" is defined as a building code violation that could result in death, serious bodily injury, or significant property damage if allowed to continue. The definition does not limit the authority of a local building official to issue a Notice of Corrective Action at any time during construction so long as the condition cited is shown to be in violation of the code or in violation of approved plans.

- "Stop-work order" is defined as the issuance of any written statement, directive, or order specifying the reason for the statement, directive, or order and specifying the conditions under which work may resume.

Written contracts for inspection services may be executed by the property owner's contractor upon written authorization by the property owner. Private providers may change the name of an authorized representative identified in a permit application without a revision to the permit, and a fee may not be charged for such change. Deficiency notices must be posted at a job site by a private provider or a private provider's authorized representative, or a building department official, when an item that does not conform to either the code or permitted documents is found. Re-inspections must be performed after corrections are made and prior to the concealment of the corrected item. Re-inspection fees or re-audit fees may not be charged by a local jurisdiction prior to a private provider's inspection or for any administrative matter not related to a code violation.

Building Code Compliance and Mitigation Program

The Department of Community Affairs (department) is directed to develop the Florida Building Code Compliance and Mitigation Program (program) to develop, coordinate, and maintain education and outreach to persons required to comply with the code, and to ensure consistency in complying with code requirements, including methods of mitigating storm-related damage. The program replaces the Building Education and Outreach Program.

The Building Education and Outreach Council is abolished, and services and materials under the new program will be provided by a private, non-profit provider under contract with the department. Contract terms and experience requirements are established for the private provider. The commission is directed to provide by rule for the accreditation of courses relating to the code and also is required to establish qualifications of accreditors and criteria for accreditation. The department is authorized to use funds from the contractor licensing application fees for the new program.

State Product Approval

The committee substitute for the committee substitute requires that the certification method for compliance for state product approval can only be used for products for which the code designates standardized testing. The commission is granted authority to adopt by rule a schedule of penalties to be imposed against approved product validators who validate product applications in violation of state requirements. Additional rulemaking authority is granted to the commission to identify standards equal to or more stringent than those specifically adopted within the code to allow the use of products that comply with equivalent standards within the state.

Fire safety inspection training requirements and certification

The committee substitute for the committee substitute provides that every fire safety inspection conducted under state or local fire safety requirements must be conducted by a person who is at least 18 years of age and certified as having met the inspection training requirements set by the State Fire Marshall. Florida residency requirements are repealed. Additional criteria under which the State Fire Marshall may deny, refuse to renew, suspend, or revoke the certificate of a fire safety inspector or a special state fire safety inspector are established.

Legislative intent regarding the inspection of exposed underground piping and attached appurtenances, and the conducting of fire safety inspections by qualified persons is provided. Certified contractors of fire sprinkler systems are authorized to obtain provisional permits with an endorsement for inspection, testing, and maintenance of water-based fire extinguishing systems for certain employees. Such employees must achieve specific certification standards within two years after receiving a provisional certification or cease performing inspections. After an initial provisional permit expires, a certified contractor must wait for two additional years before a new provisional permit can be issued to prevent the use of employees who never achieve the required certification level. Continuing education requirements for certified contractors are established. After July 1, 2008, the technical curriculum for certification is at the discretion of the State Fire Marshall and can be used to meet other continuing education requirements or requirements for maintaining certification.

Energy efficiency

The commission, in consultation with the Florida Energy Commission and other entities, is directed to review the Florida Energy Code to evaluate the cost-effectiveness analysis that serves as the basis for energy-efficiency levels for residential buildings. The commission must identify cost-effective means to improve energy efficiency in commercial buildings, compare the findings to the International Energy Conservation Code and the American Society of Heating, Air Conditioning, and Refrigeration Engineers Standards, and present a report to the Legislature no later than March 1, 2008. The report must include a new energy-efficiency standard that may be adopted for the construction of all new residential, commercial, and government buildings.

Miscellaneous provisions

The committee substitute for the committee substitute increases from 90 to 120 the number of days a newly employed person can be a plan examiner or building inspector without certification. The commission is authorized to approve certain amendments to the code more than once every three years, including amendments that address changes to federal or state laws, and must issue or cause to be issued a formal interpretation of the code upon written application by any substantially affected person, contractor, or designer, or any group representing a substantially affected person, contractor, or designer.

The commission is required to review modifications relating to existing warehouses when those modifications have been reviewed by the commission's technical advisory committee. The commission must take public comment on the modifications, including the necessity of the modification, how it may affect the health, safety, and welfare of Florida residents, and the continuing need for any Florida-specific requirement of the code which the modification seeks to repeal. The commis-

sion can adopt or modify the modification in response to the public comment received subject only to the rule adoption requirements of ch. 120, F.S.

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

- **HB 7205**

RV Manufacturers/Distributors/ Dealers/Importers

The bill creates s. 320.3203, F.S., requiring manufacturers to have a written agreement with dealers to designate a market area within which a dealer has the exclusive right to display or sell new RVs of a particular linemake. A dealer may not sell or display RVs outside of its market area unless the dealer has obtained an offsite/supplemental license and other criteria are met.

Section 320.3205, F. S., is created to establish criteria under which a manufacturer/dealer agreement may be terminated. A manufacturer is prohibited from terminating, canceling or failing to renew an agreement without good cause. A dealer may terminate, cancel, or not renew its manufacturer/dealer agreement with or without cause by giving the manufacturer 30 days' notice.

If an agreement is terminated by the manufacturer without cause or by the dealer for cause, the dealer may cause a manufacturer to repurchase all new RVs, manufacturer's accessories and parts, and special tools, current signage, and other equipment and machinery which can no longer be used in the normal course of business.

The bill creates s. 320.3206, F.S., prohibiting a manufacturer from disapproving the change or sale of a dealership except under certain circumstances. Any succession of a dealership to a family member involving a relocation of the business requires the manufacturer's consent.

Section 320.3207, F.S., directs each warrantor to specify the obligations for preparation, delivery, and warranty service on its products and requires a dealer to be reasonably compensated for warranty service required by the warrantor at rates specified by the warrantor. However, the compensation of a dealer for warranty labor may not be less than the lowest retail labor rates actually charged by the dealer. Dealer claims for warranty compensation may not be denied except for cause, such as: performance of nonwarranty repairs, noncompliance with warrantor's published policies, lack of material documentation, fraud, or misrepresentation.

The bill creates s. 320.3209, F.S., prohibiting a manufacturer from coercing or attempting to coerce a dealer to purchase a product the dealer did not order, enter agreements, or take any action which is unfair or unreasonable to the dealer. A dispute resolution process is created.

The bill also establishes penalties in s. 320.3211, F. S., for violations of the provisions of the act and amends s. 320.8225, F.S., to require RV distributors and importers to annually obtain a license from the DHSMV, subject to the same conditions as RV manufacturers.

If approved by the Governor, these provisions take effect October 1, 2007.

CARLTON FIELDS

ATTORNEYS AT LAW

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Education & Workforce

EDUCATION & WORKFORCE

- **SB 412**

Education/Children of POWs or MIAs

The bill amends s. 295.015, F.S., to extend educational opportunity benefits at state expense to the dependent children of Florida resident parents who have been declared prisoners of war (POWs) or missing in action (MIA) since the Vietnam era. The bill includes the dependent children of parents who have been classified as a POW or MIA while serving in the Armed Forces of the United States or in the capacity of civilian personnel captured while serving with the consent or authorization of the United States Government. The bill reduces the parent's Florida residency requirement from five years to one year prior to the event that caused the parent to be classified as a POW or MIA.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 450**

Florida Teachers Lead Program Stipend/Pre-K

This bill would expand eligibility for the Florida Teachers Lead Program Stipend that provides funds to full-time certified classroom teachers for the purchase of classroom materials and supplies to be used for instruction. Under the bill, certified, full-time teachers of prekindergarten students who are funded through the Florida Education Finance Program (FEFP) and certified, full-time teachers in public charter schools would become eligible for the Florida Teachers Lead Program Stipend. A job-share classroom teacher who shares a full-time equivalent position with another teacher for the same teaching assignment would be eligible to receive a prorated share of the stipend.

House Speaker Marco Rubio, R-Miami, left, looks over the House chamber with Senate President Ken Pruitt, R-Port St. Lucie, right, while Senators enter for their opening day joint session of the Legislature on Tuesday, March 6. (House photo by Mark Foley)

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 461**

High School Athletics/Drug Testing

Contingent upon funding by the Legislature, this bill requires the Florida High School Athletic Association (FHSAA) to implement a 1-year anabolic steroid testing program for 9th through 12th grade student athletes who participate in football, baseball, or weightlifting competitions at member schools. Public and private schools must consent to the program as a prerequisite to membership in FHSAA under this bill.

The FHSAA board of directors is required to contract with an accredited testing agency. Regarding actual testing, the bill requires that the names of all competing students be provided by each member school to the FHSAA, which will forward the names to the testing agency. From this group, a maximum of 1 percent of students must be randomly tested. To compete in football, baseball, or weightlifting, students are required to consent to testing in writing.

The bill provides that an athlete who tests positive for steroids must be suspended from all athletic competition and practice for 90 days and may not be reinstated until he or she tests negative for steroids. Additionally, an athlete who tests positive for steroids will be subject to repeated tests for the duration of his or her high school athletic eligibility.

The bill specifies procedures for an appeal of the test findings, and authorizes challenges to findings and penalties by the member school or the student. The FHSAA is required to provide to the Legislature a report on the steroid testing program by October 1, 2008.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 511
School Districts

High Performing Districts

The bill provides for designating academically high-performing school districts, which must meet the following criteria:

- Earn a district grade of "A" for two consecutive years, beginning with the 2004-2005 school year;
- Have no district-operated school that earns a grade of "F";
- Comply with all class size requirements; and
- Have no material weaknesses or instances of material noncompliance noted in the annual financial audit.

The designation may be retained for three years, if the district complies with all the initial eligibility criteria and earns at least a grade of "A" for two years within a 3-year period. However, a district may not retain the designation if a district-operated school earns a grade of "F" during the 3-year period.

An academically high-performing school district is exempt from the following: program expenditure levels in the Florida Education Finance Program (FEFP) for kindergarten through grade 12; annual K-12 comprehensive reading plans; requirements for covered walkways for relocatable facilities (portables); the use of relocatable facilities; procurement of instructional materials through the state depository; and restrictions relating to the use of 50 percent of the instructional materials allocation.

The bill also provides for renewing the designation at the end of three years and specifies a district's requirements for reporting academic performance to the State Board of Education (SBE) and the Legislature.

Discretionary Capital Improvement (2-mill) Flexibility

The bill authorizes districts to use the 2-mill discretionary capital improvement millage for the payment of premiums for property and casualty insurance for the purpose of insuring the educational and ancillary plant if the district meets all of the following:

- Has met class size reduction requirements for the current year;
- Has received an unqualified opinion on its financial statements for the preceding three years;
- Has no material weakness or instances of material noncompliance noted in an audit for the preceding three years; and
- Certifies to the Commissioner of Education that all of the district's instructional space needs for the next five years can be met from capital outlay sources the district

reasonably expects to receive during the next five years from local revenues and from currently appropriated state facilities funding or from alternative scheduling or construction, leasing, rezoning, or technological methodologies that exhibit sound management.

The bill provides that operating revenues that are made available through the payment of property and casualty insurance premiums from funds generated through the 2-mill may be expended only for nonrecurring operational expenditures of the school district.

The bill provides that before a district school board may levy discretionary millage for the payment of property and casualty insurance premiums it must publish notice as provided in law.

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

- **HB 967**

Physical Education

The bill requires each district school board to provide 150 minutes of physical education each week for students in kindergarten through grade 5. The elementary school principal may designate any instructional personnel to provide the physical education.

The bill defines the term physical education to mean "the development or maintenance of skills related to strength, agility, flexibility, movement, and stamina, including dance; the development of knowledge and skills regarding teamwork and fair play; the development of knowledge and skills regarding nutrition and physical fitness as part of a healthy lifestyle; and the development of positive attitudes regarding sound nutrition and physical activity as a component of personal well-being."

The Commissioner of Education must prominently post on the department's website links to the department's internet-based clearinghouse for physical education professional development, school wellness and physical education policies and related information, and other Internet sites that provide professional development for elementary teachers of physical education. The links must provide elementary teachers with information concerning current physical education and nutrition philosophy and best practices.

The bill requires the Department of Education to review and revise the Sunshine State Standards related to physical education skills during the 2007-2008 school year to reflect state-of-the-art philosophy and practice. The revised standards must emphasize the role of physical education in promoting the knowledge, skills, and attitudes that prepare students to make healthy lifelong nutrition and physical fitness choices.

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

- **SB 1060**

Educational Facilities

This bill eliminates the requirement that $105 million of recurring documentary stamp tax revenues be transferred to the Public Education Capital Outlay and Debt Service Trust Fund to be used for the Classrooms for Kids Program and the High Growth County District Capital Outlay Assistance Grant Program. Nonrecurring appropriations, instead of recurring transfers, may be used to fund fixed capital outlay for these programs.

The bill also amends s. 203.01(1)(c), F.S., to speed up receipts of gross receipts utility tax revenues by advancing the remit date from the last day of the month to the 20th day of each month. This action provides a one-time

increase in funds available to be appropriated for public education capital outlay.

Finally, the bill revises s. 1013.64(1)(a) and (3)(a), F.S., to provide that, in calculating funds for public education capital outlay purposes, modular noncombustible facilities shall have a 35-year life. In addition, a school district's capital outlay FTE shall be comprised of K-12 students for whom the district provides educational facilities.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1161**

High School to Business Career Enhancement Act

This bill creates the High School to Business Career Enhancement Act and encourages district school boards to adopt policies to allow internships for high school students through employers that partner with the school district. High school internships must be consistent with the career goals of each student participant. At the conclusion of the internship, a student evaluation must be conducted to monitor the academic value of the internship.

Qualified internships must last a minimum of eight weeks but no more than 20 consecutive weeks, and would allow students to work up to 20 hours per week. A student may only participate in one internship per year.

School districts may authorize up to 100 internships each school year. The number of interns per employer is contingent upon the number of employees of the employer, with a maximum of four interns allowed.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1226**

Merit Award Program/School Board

The bill (Chapter 2007-3, L.O.F.) creates a voluntary performance pay program, the Merit Award Program for instructional personnel and school-based administrators. In order to be eligible for funding under the program, school districts must adopt plans that would designate the outstanding performers, who would receive a merit-based pay supplement of at least 5 percent, but no more than 10 percent of the district's average teacher's salary. School districts would determine eligibility for the merit-based pay supplement based upon student academic proficiency, learning gains, or both as measured by statewide standardized assessments and local district-determined assessments, as well as other performance factors. At least 60 percent of the overall personnel evaluation must relate to student performance and up to 40 percent must relate to professional practices, including the ability to implement differentiated instruction strategies to meet student needs for remediation or acceleration and the ability of administrators to manage so as to maximize resources used for direct instruction.

Beginning with the 2007-2008 school year, participating school districts must be able to administer end-of-course examinations based on the Sunshine State Standards. The statewide standardized assessment, the College Board Advanced Placement Examination, the International Baccalaureate Education Examination, the Advanced International Certificate of Education examination, or examinations resulting in national industry certification recognized by the Agency for Workforce Innovation satisfy the end-of-course examination requirement.

The bill sets forth the components of plans, allows the participation of charter schools, provides for an annual compliance review by the Commissioner of Education, and requires status reports to the Legislature and the Governor on the implementation of pay plans.

The bill repeals the Special Teachers are Rewarded (STAR) proviso and reappropriates $147,500,000 to the Department of Education (DOE) for FY 2006-2007 to allocate to school districts for performance pay. A district must use the funds for the following purposes:

- To fund a STAR performance pay plan;
- To fund a performance pay plan adopted under s. 1012.22, F.S., if a district amends the plan to conform to the bill related to eligibility criteria, pay structure, and assessments. Otherwise, a district may only disburse an amount equal to what the district disbursed under the plan for the 2005-2006 school year; or
- To fund a performance pay plan approved by the district school board under the provisions of the bill.

These provisions became law upon approval by the Governor on March 29, 2007.

- **SB 1232**

Career & Professional Education

This bill creates the Florida Career and Professional Education Act to provide a statewide planning partnership between business and education communities, to expand and retain high-value industry, and sustain a vibrant state economy. Career and professional academies would enable students to matriculate easily to both postsecondary education and the workforce. Participating public high schools would be required to offer a rigorous and relevant curriculum that leads to:

1. industry-recognized certification in high-demand occupations;
2. the award of a standard high school diploma; and
3. opportunities for high school students to simultaneously earn college credit.

School districts must develop, in collaboration with local workforce boards and the postsecondary community, strategic 5-year plans that objectively address the needs of local and regional workforce through the development and implementation of academies. Two or more school districts are authorized to collaborate in developing and offering career academies, provided the strategic plan is approved by the Agency for Workforce Innovation (AWI) and certain requirements are met. The strategic plan must include provisions for at least one career and professional academy to be operational in the school district at the beginning of the 2008- 2009 school year.

The State Board of Education must establish an expedited process for the continuous review of newly proposed rigorous and relevant core high school courses and decisions regarding course eligibility must be made within 60 days. Approved courses would be included in the Course Code Directory and also considered for possible dual enrollment and postsecondary credit.

The bill requires AWI to identify appropriate industry certification based on the highest national standards available. Local work force boards and academies may request additions to the list of industry certifications, provided requests are based upon high-demand labor needs of the regional workforce econ-

omy. The AWI will publish annually an updated list of industry certifications to be used within the career academies.

The Department of Education must work with Workforce Florida and Enterprise Florida in the collection and analysis of academic achievement and performance data of academy students. An evaluation plan and self-assessment tool would be required to determine outcomes such as graduation rates, achievement of industry certification, postsecondary enrollment, satisfaction of business and industry, employment rates, earnings, and awards of scholarships and postsecondary credit.

Finally, the Florida Education Finance Program (FEFP) is revised to provide supplemental weighted funding for students enrolled in career and professional academies, provided the instruction leads to industry certification for enrolled students upon academy completion.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1270**

Higher Education

This bill is the result of a comprehensive review of law regarding governance in higher education. The bill delineates powers and duties in higher education of the Board of Governors of the State University System. It also transfers responsibilities from the State Board of Education or the Commissioner of Education, to the Board of Governors or the university boards of trustees, where the duty relates to a state university and it is appropriate to do so.

This bill establishes the Board of Governors and the university boards of trustees as part of the executive branch of government. As such, these entities are subject to various ethics and accountability standards, as is required of other state entities. Additionally, when operating pursuant to legislative, rather than constitutional, authority, the Board of Governors and the university boards of trustees are required to comply with provisions of the Administrative Procedures Act.

The State Board of Education and the Board of Governors are required to collaborate in certain areas of responsibility, including postsecondary enrollment and state financial aid plans. The bill also requires a coordinated effort regarding articulation, to facilitate a smooth progression for students transitioning from community colleges, or qualifying private institutions, to state universities.

The Board of Governors, or its designee in certain instances, is tasked with duties in the following areas: ensuring access to general education courses, accounting for expenditures, preparing legislative budget requests, developing strategic plans, maintaining an effective information system, establishing an employee personnel system, and administering a program for facility maintenance and construction.

This bill specifies that new colleges, schools, or other programs leading to a degree offered as a credential for a specific license granted by law require specific legislative approval where they are funded through tuition and fees or appropriation.

This bill prohibits the Board of Governors from assessing fees, and universities from charging fees that are not authorized by law.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1301**

Workforce Services

This bill amends portions of the workforce statutes, ss. 402.305, 445.024, and 445.032,

F.S., in order to align them with the federal Temporary Assistance to Needy Families (TANF) program. These TANF revisions reflect changes made by the Department of Health and Human Services (HHS) following the passage of the federal Deficit Reduction Act of 2005. Specifically, CS/HB 1301 does the following:

- Deletes lengthy descriptions of work requirements for TANF recipients in s. 445.024, F.S. This change will align state practice to federal work requirement definitions, which were not previously detailed by federal law, but are now specifically outlined in the HHS interim final rule.
- Inserts language into the transitional child care statute, s. 445.032, F.S., to emphasize that child care is only available to assist those seeking employment, attempting to retain employment or attempting to improve their employment prospects.
- Amends s. 402.305, F.S., to correct cross-references and to replace the term "community service work experience activity" with "community service program" in order to conform to the proper federal term.

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

CARLTON FIELDS

ATTORNEYS AT LAW

2007 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

- **HB 99**

Nonprofit Organization/Solicitation/ Streets

This bill, the Iris Roberts Act, exempts organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered under ch. 496, F.S., as well as those persons or organizations acting on their behalf, from local government permitting requirements for solicitation along roadways not maintained by the state, provided certain conditions and requirements are met.

Specifically, the bill requires sponsoring entities to provide the local government with the following information:

- The names and addresses of those conducting the solicitation and of those receiving the contributions no fewer than 14 days prior to the proposed solicitation;
- A safety plan for persons participating in the solicitation and the motoring public;
- A detailed description of the location and hours of the solicitation activities;
- Proof of a commercial general liability insurance policy against bodily injury and property damage arising from the solicitation activities, with a limit of no less than $1 million per occurrence; and,
- Proof that the organization is either registered with the Department of Agriculture and Consumer Services, pursuant to s. 496.405, F.S., or is exempt from registration.

Policy and Budget Council Chairman Rep. Ray Sansom, R-Fort Walton Beach, unveils an overview of the House budget proposal with the help of a bar graph on Wednesday, April 11. (House photo by Mark Foley)

- The bill also establishes a number of operational requirements governing charitable solicitation activities along non-state-maintained roadways. Persons participating in the solicitation activities must be at least 18 years of age and possess picture identification. A local government may stop solicitation activities if any of the conditions or requirements discussed above are not met.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 124**

Custom Vehicles & Street Rods

This bill amends s. 320.0863, F.S., adding the term "custom vehicle" and its definition. A custom vehicle is defined as a vehicle 25 years old or older and of a model year after 1948 or was manufactured to resemble a vehicle 25 years old or older and of a model year after 1948; and has been altered from the manufacturer's original design or has a body constructed from non-original materials.

This bill requires the creation of a special, new license plate for those vehicles that meet the above definition of "custom vehicle." To

register a street rod or custom vehicle, the owner shall apply to the Department of Highway Safety and Motor Vehicles by submitting a completed application form and providing:

- The license tax prescribed by s. 320.08(2)(a), F.S., and a processing fee of $3.
- A written statement the vehicle will not be used for general daily transportation.
- A written statement the vehicle meets state equipment and safety requirements for the year listed as the model year on the certificate of title.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 275
Vehicles/Mobile Homes/ Vessels/Registration

The following is a section-by-section analysis of the bill:

Section 1 amends s. 320.01, F.S., to define an "extended registration period" as a period of 24 months during which a motor vehicle or mobile home registration is valid. Also, the definition of "registration period" is redefined to include the option of a 24-month period.

Section 2 amends s. 320.055, F.S., to establish extended registration and renewal periods for motor vehicles and mobile homes and clarifies that the following vehicles are eligible for the extended 24-month registration period and may be renewed biennially:

- Motorcycles
- Mopeds
- Automobiles for private use
- Trucks with a net weight of 5,000 pounds or less
- Heavy trucks with a gross vehicle weight of 5,001 pounds or more, but less than 8,000 pounds
- Motor vehicles for hire
- Trailers for private use
- Trailers for hire
- Recreational vehicles
- Park trailers
- Travel trailers
- 35 to 40 foot fifth wheel trailers
- Mobile homes

Section 3 amends s. 320.06, F.S., to extend the current five-year replacement cycle for license plates to six-years and increases the current $10 license replacement fee to $12. The Department of Highway Safety and Motor Vehicles is required to stagger the implementation of the 6-year license plate replacement cycle. More specifically, the bill provides a six-year license plate issuance period, with the current $2 per year fee paid each year to be credited towards the next $12 replacement fee. The expiration of the license plate is based on the applicant's appropriate registration period. The bill also provides license plates equipped with validation stickers are subject to the extended 24-month registration period. Further, this bill provides that for each extended registration period, a validation sticker showing the year of expiration shall be issued and is valid for not more than 24 months.

Section 4 amends s. 320.07, F.S., to authorize the biennial renewal of motor vehicle and mobile home registrations and to require payment of double the amount of license tax, service charge and surcharge on annual registrations which equates to the amount that would normally be paid for two 12-month registrations and clarifies semiannual registrations.

Section 5 amends s. 320.07 1, F.S., to clarify the registration period for a motor vehicle or mobile home may not exceed 27 months.

Section 6 creates s. 320.203, F.S., to provide for the disposition of the biennial registration revenues. After the distributions pursuant to s. 320.20(1), (2), (3), and (4) are fulfilled, an amount equal to 50 percent of the biennial registration revenues shall be retained in the Motor Vehicle License Clearing Trust Fund until July 1. After July 1 of the subsequent fiscal year, an amount equal to 50 percent of revenues collected from biennial registrations shall be retained. This revenue distribution smoothing will ensure that revenue collected for 50 percent of the optional 2-year registration is distributed in the same manner and in the same amounts as revenues currently collected for annual vehicle registrations.

Section 7 amends s. 328.72, F.S., to allow vessel owners the option of an extended registration period of 24 months.

According to the Revenue Estimating Conference, implementation of this bill in January 2008 will generate approximately $36.8 million in nonrecurring revenue in fiscal year 2007-08, with a recurring increase of $9.7 million in subsequent fiscal years.

If approved by the Governor, these provisions take effect January 1, 2008.

- **HB 431**

Tourist-oriented Directional Sign

The bill establishes a tourist-oriented directional sign program to provide travel directions to businesses, services, and activities in rural counties. Signs on the state highway system must comply with the federal standards established in the tourist-oriented directional sign program outlined in the Manual on Uniform Traffic Control Devices.

Eligible counties are defined by s. 288.0656, F.S., which defines a "rural community" as a county with a population of 75,000 or less; or a county with a population of 100,000 or less that is a contiguous to a county with a population of 75,000 or less. Currently there are 34 counties eligible for this program. Counties are responsible for sign construction, maintenance, and operation of the program. The bill authorizes counties and municipalities to establish permit fees to offset the associated costs of the program. The bill does not create a proprietary or compensable interest in any sign site or location. Permits may be terminated or signs relocated, as necessary, for construction, improvement of transportation facilities, or improved traffic control or safety.

The Florida Department of Transportation is authorized to adopt rules to establish qualifications, construction standards, sign sites, and other criteria.

If approved by the Governor, these provisions take effect July 1, 2007

- **HB 537**

Elections

This bill is an omnibus elections package that addresses numerous issues, including:

- Primary Dates for the Presidential Preference and the Fall Primaries
- Paper Ballots for Voting Systems
- Initiative Petition Signature Gathering and Revocation
- Resign-to-Run Exemptions
- Write-In Candidate Qualifying
- Minor Political Party Primary Elections
- Third Party Voter Registration Group Requirements and Penalties
- Absentee Ballot Requests
- Political Party Internal Procedures
- Florida Elections Commission Procedures and Standards of Proof

- Campaign Finance

Third Party Registration Organizations
The bill redefines a third party registration organization to include political parties. The bill lowers the amount of fines applicable to third party registration organizations for violations and caps the total amount of fines at $1,000 per calendar year. The bill also provides for the waiver of fines upon a showing of *force majeure* or impossibility of performance.

Primary Dates
The bill moves the date of the Florida presidential preference primary from the second Tuesday in March (March 11, 2008) to the last Tuesday in January (January 29, 2008) of a presidential election year. It also authorizes municipalities, by ordinance, to move municipal elections currently scheduled for March 2008 and thereafter to coincide with the new presidential preference primary date.

The bill also moves Florida's fall primary up one week to *10 weeks* before the general election.

Voting Systems/Paper Ballots
The bill requires all voters, except disabled voters, to cast a marksense ballot on an optical scan voting system beginning with the fall primary election of 2008; disabled voters may continue to vote on the existing touchscreen equipment through 2012, at which time they must be provided a means to cast an independent, marksense ballot.

Further, the bill allows the use of ballot-on-demand technology to produce early-voting and absentee marksense ballots, and authorizes the Secretary of State to permit counties to use ballot-on-demand for election-day ballot production (should the technology prove successful).

The bill requires the Secretary of State/Department of State to negotiate the disposition of unnecessary touchscreen voting equipment and to purchase new equipment for certain counties. The bill authorizes an expenditure of approximately $27.86 million from the Grants and Donations Trust Fund (federal Help America Vote Act, or "HAVA," monies) to be used for the purchase of optical scan voting equipment ($22.86 million) and ballot-on-demand technology ($5 million), including optical scan tabulators, to replace touchscreen equipment. Any money realized by the sale or other disposition of a county's existing touchscreen voting equipment, after paying off the county's current indebtedness, will be deposited back to the Trust Fund up to and including the amount of state funding the county has accepted.

Finally, the bill replaces an unused audit provision in Florida law with a requirement that local canvassing boards complete a public, random, post-election audit of one to two percent of the precincts in a randomly-selected race on the ballot. The board must make the audit results public by the 7th day after the election, which allows time for the filing of an election contest; and, file a report with the Department of State no later than 15 days after the audit is complete.

Pre-Registration to Vote
The bill expands the current under-18, voter pre-registration system — from pre-registering 17 year-olds to pre-registering persons to vote when they reach their 17th birthday or receive a valid Florida driver's license, whichever occurs first.

Voter Registration
The bill provides the voter with notice and an opportunity to present evidence necessary

prior to election day to validate the identification number on the voter's registration application. The bill also allows a voter who votes a provisional ballot to present evidence necessary to validate his or her identification number on the voter registration application within two days after the election instead of 3 days. The bill provides elections officials with 13 days to enter voter registration information rather than 15 days.

Resign-to Run Exemptions
The bill exempts persons seeking federal office from the resign-to-run law, s. 99.0 12, F.S.

Candidate Oath
The bill exempts federal candidates from the current candidate and public employee oath and creates a new candidate oath for federal candidates.

Candidate Qualification
With regard to candidate qualification, the bill does the following:

- Sets the qualification period for state, multicounty district, county, district, and special district offices, with the exception of judicial offices, federal offices, and the offices of state attorney and public defender, between the 71st and 67th days prior to the primary election.
- Sets the qualification period in apportionment years for federal candidates between the 71st and 67th days prior to the primary election.
- Provides a uniform method of qualifying for special district offices, which includes either paying a $25 qualifying fee not required to be drawn from the campaign account, or qualifying by the petition method by obtaining 25 signatures of voters from the geographical area represented by the office sought.
- Provides that single county special district candidates qualify with the county supervisor and multicounty district candidates qualify with the Department of State.
- Exempts special district candidates from appointing a campaign treasurer or designating a primary campaign depository if the candidate does not collect contributions and has only the filing or signature verification fee as an expense.
- Requires certifications for federal, state, multicounty district, or multicounty special district candidates qualifying by petition to be submitted to the Division of Elections by the 7th day prior to the 1st day of qualifying for the office sought.
- Requires write-in candidates to reside in the district of the office sought at the time of qualifying.

Minor Political Parties
The bill requires minor political parties to hold primary elections instead of designating its nominees.

County Commissioners
The bill provides that a county commissioner is deemed "elected" at the time the election results are certified.

Canvassing Returns
With regard to canvassing returns, the bill does the following:

- Conforms the canvassing of special elections to that of general elections.
- Provides that ballot canvassing may begin six days prior to the election, rather than four days prior to the election, in a *local*

all mail-ballot election.

- Provides that absentee ballots may be canvassed six days prior to the election, rather than four.

- Provides an additional 19 hours for the submission of final returns after a general election from 5 p.m. on the 11th day after the election to noon on the 12th day.

- Requires county canvassing boards to submit preliminary election returns to the Department of State on election night in a format specified by the department.

- Requires provisional ballots to be included in the first set of unofficial returns.

- Provides that the unofficial returns must be submitted by noon on the fourth day after a general election, or any election other than a primary election, rather than the fifth day after an election.

- Provides an extra day for the submission of the second set of unofficial returns after a general election in which a recount was conducted.

Initiative Petitions

With regard to initiative petitions, the bill does the following:

- Requires petition forms to be signed by the constitutionally required distribution of electors in addition to the constitutionally required number of electors currently required under law.

- Requires supervisors to verify signatures within 30 days of receiving petition forms.

- Requires supervisors to record in the statewide voter registration system the date each form is received and the date the signature on the form is verified as valid.

- Requires the form to contain the elector's original signature, the date the form was signed as recorded by the elector, the elector's name, address, county, and the voter identification number or date of birth.

- Requires the elector, at the time of signing the form, to be a registered elector of the county in which his or her signature is submitted.

- Provides that a signature may be revoked within 150 days of the date it was signed by the lector by submitting a signed petition-revocation form to the appropriate supervisor.

- Provides that petition-revocation forms and the process by which revocation form signatures are obtained, submitted, and verified are subject to the same relevant requirements and timeframes as petition forms.

- Requires supervisors to provide petition-revocation forms to the public at all main and branch offices.

- Provides that petition-revocation forms must be filed with the supervisor by February 1st preceding the next general election; however, if the initiative is not certified for ballot position in that election, the revocation forms must be filed by February 1st preceding the next successive general election.

- A fee of 10 cents or the actual cost of verifying such revocation signature, whichever is less, must be paid to the supervisor in order for the signature to be verified.

- The supervisor must record each valid and verified revocation form in the statewide voter registration system.

Identification at the Polls
The bill removes the following forms of photo identification acceptable at the polls:

- Employee badge or identification
- Buyer's club identification

Precinct-Level Reporting by Supervisors
The bill requires supervisors to report in an electronic format specified by the Department of State precinct level election results within 35 days, rather than 75 days, after a special, primary, presidential preference primary, municipal, and general election. The bill provides that the precinct level election results must separately record for each precinct all demographic data associated with each precinct at book closing for each election and individual vote history in addition to current data requirements. The bill requires this data to be cross-referenced by political party and other demographic information as defined by the Department of State. The bill mandates that the department create a uniform system for the collection and reporting of this data.

Absentee Ballots
The bill provides that an absentee ballot request is effective for all elections through the next two general elections after the request is made, rather than just for the elections in the calendar year in which the request was made. The bill requires supervisors to send absentee ballots overseas at least 45 days before the general election. The bill also provides an extra day for delivery of an absentee ballot to a voter's designee, from 4 days before an election to 5 days.

Use of Names Associated with Political Parties
The bill provides that political parties may file with the Department of State the names of groups associated with that party which may not be used by another organization or entity without obtaining prior written permission from the party's executive committee chair.

Political Parties
The bill sets the qualification period for candidates for a state or county executive committee office of a political party between the 71st and 67th days prior to the primary election. The bill requires a state committeeman and a state committeewoman to be a member in good standing of the county executive committee in which the man or woman is a registered voter. The bill also expands the membership of a state executive committee to include 10 state registered voters appointed by the Governor if the voters are members of the party and if the Governor is a member of the party.

Removal or Suspension of Certain Party Members
The bill expands the authority of the state executive committee chair to remove or suspend certain state or county party officers or members for violation of the oath of office or for activities that either interfere with the party's activities or cause harm to the name or status of the party.

Campaign Treasurers for Candidates and Political Committees
The bill removes the requirement that a campaign treasurer or deputy treasurer for a political committee or candidate be a Florida registered voter.

Committees of Continuous Existence
The bill allows groups to collect dues from its members and forward those dues to the committee of continuous existence, which

must report the dues as coming from the member who originally paid the dues.

Valuation of Private Air Travel
The bill provides that travel in a private aircraft must be valued at the actual cost of per person commercial air travel for the same or a substantially similar route.

Contribution Limits
The bill allows contributions to political committees and committees of continuous existence through affiliated organizations. The affiliated organization may commingle the contributions with its own funds and write a single check to the political committee or the committee of continuous existence for the aggregate amount of the contributions provided the funds are identified as intended to be contributed to the political committee or committee of continuous existence. Contributions received in this manner must be reported by the political committee or committee of continuous existence as having been made by the original contributor.

Cash Contributions
The bill prohibits a person from making or accepting a cash contribution in excess of $50 instead of $l00.

Political Advertisements
The bill requires a specific disclosure for 3-pack ads. These ads must state:

- That they are paid political advertisements;
- The names of those who sponsored and paid for the ad; and
- The names of persons, their party affiliation, and offices sought in the ad.

Candidacy Polls and Surveys
The bill provides that committees of continuous existence and electioneering communication organizations may conduct polls or surveys relating to candidacy for public office.

Florida Elections Commission
With regard to the Florida Elections Commission, the bill does the following:

- Requires sworn complaints to be based on personal information or information other than hearsay.
- Provides that if an expense item is reimbursed before a complaint is filed alleging violations regarding that expense item, the commission may not investigate the allegations contained in the complaint.
- Provides that a complaint may be withdrawn, before a probable cause hearing is held, if good cause is shown.
- Repeals s. 106.37, F.S., relating to the definition of a "willful violation."
- Provides that willfulness is a determination of fact.
- Allows a respondent to request a hearing on the determination of willfulness.
- Revises the procedures, notice requirements, and scope of inquiry of the commission after a complaint has been filed.
- Requires the commission to attempt to reach a consent agreement with the respondent if probable cause is found to exist.
- Requires that a hearing be conducted before an administrative law judge when the commission files allegations unless the alleged violator elects to have a formal or informal hearing before the commission or elects to resolve the complaint through a consent order. The administrative law judge is required to enter a final order subject to appeal.

- Requires the commission to maintain a searchable database of all final orders and agency actions.

Distribution of Election Campaign Financing Trust Funds
The bill requires the distribution of Election Campaign Financing Trust funds to begin on the 32nd day prior to the primary.

Municipal Officers
The bill provides that if a person is selected to fill a temporary vacancy in a municipal office due to the suspension of the officeholder, that person may serve the remainder of the officeholder's term if the officeholder is subsequently removed from office.

If approved by the Governor, these provisions take effect January 1, 2008, except as otherwise provided.

● HB 699
Veteran/Public Employment Preference
The bill repeals s. 295.101, F. S. The section limits the use of an employment preference for veterans once the veteran has initially been employed by the state or any agency of a political subdivision in the state. The effect of this bill will be to extend the eligibility for veterans' employment preference throughout a veteran's state or local government career.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 707
Lights on Motor Vehicles
The bill enables those vehicles "owned or leased by private security agencies" to display green and amber lights while engaged in security duties on private or public property. By striking the current language, "private watch, guard, or patrol agencies licensed pursuant to chapter 493" [F.S.], the bill allows a broader range of security providers to display green and amber lights. Many private security providers in Florida are proprietary services and not required to be licensed. Such services are authorized by s. 493.6102(4), F.S.

In addition, the bill allows the color green to be displayed by such security vehicles, when current statute only allows the color amber. The bill specifies either color may be no greater than 50 percent of the lights displayed.

The bill also allows security vehicles to display the green and amber lights over an increased area, by allowing the lighted vehicles on "private or public property".

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 803
Qualifying Adoptive Parents/Benefits
The bill creates s. 409.1663, F.S., to expand the categories of state employees who are eligible to receive adoption benefits and to consolidate statutory provisions regarding water management district employees who are already eligible to receive adoption benefits.

The bill adds community college and county school district employees to the list of employees eligible to receive $10,000 upon the adoption of a "special needs child" or $5,000 upon the adoption of a child who is not a "special needs child" but whose permanent custody has been awarded to the state. The bill clarifies that state university employees are eligible for adoption benefits as well.

The bill provides that adoption benefits are to be paid in a lump sum and are subject to a specific appropriation. The bill also transfers the administration of the program from the Department of Management Services to the

Department of Children and Family Services and grants DCF rulemaking authority.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 851**

Historic Preservation

This bill provides for the long-term preservation of state-owned historic properties in St. Augustine through a contract with the University of Florida. The university would provide oversight to enhance existing educational programs in historic preservation, archaeology, and cultural resource management at the University of Florida, while simultaneously meeting the needs for historic preservation in St. Augustine. The university may authorize a direct-support organization to assist the university in its role.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 900**

Initiative Petitions

This bill, entitled the "Beatrice T. Posey Truth in Petition Act," amends s. 100.37 1, F.S., and provides the following:

- Requires petition forms to be signed by the constitutionally required distribution of electors in addition to the constitutionally required number of electors currently required under law.
- Requires the elector who signs a petition form to date the form when he or she signs it.
- Requires a petition form to be given to a supervisor within 30 days from the date it is signed by the elector in order to be verified as valid.
- Requires supervisors to record in the statewide voter registration system the date each form is received and the date the signature on the form is verified as valid.
- Provides that a signature may be revoked within 120 days after it has been verified by the supervisor by submitting a signed petition-revocation form to the appropriate supervisor.
- Provides that petition-revocation forms and the process by which revocation form signatures are obtained, submitted, and verified are subject to the same relevant requirements and timeframes as petition forms.
- Requires supervisors to provide petition-revocation forms to the public at all main and branch offices.
- Provides that petition-revocation forms must be filed with the supervisor by February 1st preceding the next general election; however, if the initiative is not certified for ballot position in that election, the revocation forms must be filed by February 1st preceding the next successive general election.
- A fee of 10 cents or the actual cost of verifying such revocation signature, whichever is less, must be paid to the supervisor in order for the signature to be verified.
- The supervisor must record each valid and verified revocation form in the statewide voter registration system.

If approved by the Governor, these provisions take effect August 1, 2007.

- **HB 919**

Emergency Communications Systems

The bill merges the wireline 911 plan for landline telecommunications companies and the Wireless Emergency Communications Act. The bill redesignates the emergency telephone 911 section as the "Florida Emergency Communications Number E91 1 State Plan Act." Legislative intent is modified to declare that the communications number "911" is the emergency communications number and is to be used solely for that purpose by a public safety agency. Certain definitions are added, deleted, or clarified relating to this act. The bill modifies the requirements for a state plan and for regional or multi-jurisdictional systems to encourage enhanced 911 (E9 11) service availability throughout the state.

The bill broadens the statutes to include users of voice communication services which is a two-way voice service through the use of any technology (with certain exception). The bill provides for an E91 1 board to administer the fees in a manner that is competitively and technologically neutral and to ensure the fee is used as directed. Certain definitions are added, deleted, or clarified. It creates the E91 1 Board by modifying the make-up of the Wireless 911 Board and modifies or provides for certain duties, including the monitoring of the E91 1 fee. The wireless 911 fee is renamed the E9 11 fee and is collected from users of voice communications services. The bill provides for authorized expenditures of the E9 11 fee and provides for transfer of such fees under certain conditions. It provides for the liability of counties and indemnification and limitations of liability.

The bill makes technical and conforming changes and removes outdated provisions.

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

- **HB 1305**

Notary Public/Electronic Notarization of Documents

This bill authorizes notaries public to use electronic notarization for documents requiring notarization. The bill implements standards for secure electronic notarization in order to receive the same level of credibility and reliability as paper-based notarizations. For example, the bill provides that the electronic signature of a notary public must be:

- Unique to the notary public;
- Capable of independent verification;
- Retained under the notary public's sole control; and
- Attached to or logically associated with the electronic document in such a manner that any subsequent alterations to the document render evidence of the change.

Additionally, when a signature is required to be accompanied by a notary public seal, the bill provides that this requirement is satisfied when the electronic signature of the notary public contains all of the following seal information:

- The full name of the notary public exactly as provided on the notary public's application for appointment;
- The words "Notary Public State of Florida";
- The date the commission of the notary public expires; and
- The commission number of the notary public.

The bill also authorizes the Department of State to adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized by the legislation.

If approved by the Governor, these provisions take effect January 1, 2008.

● SB 1372
Agriculture & Consumer Services

This bill addresses the following issues related to agriculture and the powers and duties of the Department of Agriculture and Consumer Services. Specifically, the bill:

- Authorizes the department to issue biennial rather than annual pesticide registration renewals, effective on January 1, 2009.
- Authorizes the department to impose a late fee of $25 per pesticide brand for each month a payment is late, not to exceed a total of $250 per brand.
- Clarifies that registration requirements apply to each brand of pesticide.
- Updates statutory language relating to bottled water and bottled water plants to conform to federal regulations.
- Redefines the term "food establishment" to include tomato packing houses. Provides enhanced tomato food safety inspections on tomato farms, in tomato greenhouses, and in tomato packing houses and repackers.
- Updates terminology and the definitions of "dairy farm," "pasteurized milk ordinance," "imitation milk and imitation milk products," "milk," "milk products," and "substitute milk and substitute milk products" to conform to the federal Grade "A" Pasteurized Milk Ordinance.
- Transfers the permitting for milk manufacturing plants from the Division of Food Safety to the Division of Dairy Industry.
- Removes a provision for the temporary permitting of milk haulers in order to be consistent with the federal Grade "A" Pasteurized Milk Ordinance.
- Clarifies state law with respect to the sale of manufactured milk products and cheese within the state.
- Repeals ss. 591.27 through 591.34, F. S., to remove obsolete statutory language relating to the establishment, branding, and other requirements of seed trees.
- Creates the Consumer Fireworks Task Force within the department for the purpose of studying issues related to fireworks. Requires a report of the recommendations and findings of the task force to be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2008.
- Authorizes the department to conduct research projects on citrus diseases recommended by the Florida Citrus Production Research Advisory Council, within the limits of appropriations made specifically for such purpose.
- Designates the Unit No. 2 Packing House Building at the Palatka State Farmers' Market as the "E. H. 'Gene' Downs Building."

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1427**

Agriculture/Agritourism

This bill addresses the following issues related to agriculture. It:

- Provides for the Department of Agriculture and Consumer Services to assist the various tourism entities of Florida for the improvement of agritourism promotion in the state through the provision of marketing advice, technical expertise, promotional support, and product development. The purpose of agritourism is to provide access to agricultural lands to segments of the population previously unaccustomed to such experiences. This can be accomplished through farm tours, festivals, rural businesses, historical recreations, workshops/educational activities, and harvest your own activities.

- Defines the terms "agritourism activity", "farm", and "agritourism professional."

- Does not divest bona fide farm lands of the greenbelt classification for farms engaging in agritourism.

- Directs local governments and agricultural representatives to meet for the purpose of discussing the benefits of agritourism to local economies and opportunities for cooperation, conflict resolution, regulatory streamlining, and incentives.

- Directs the Department of Agriculture and Consumer Services to examine the conditions surrounding the sale and purchase of horses and to adopt rules to prevent unfair or deceptive trade practices.

- Deems that a person or organization owning, controlling, or possessing an interest in agricultural property, or an agent of such person or organization, will not be held liable for negligence related to such property that results in the death of, injury to, or damage to a person trespassing on the property who has engaged or is engaging in damaging, removing, or mutilating any posted notice and/or fence placed by the legal resident of the property.

  - The bill increases the punishment for the unlawful mutilation, removal, or damaging of a posted notice to a first degree misdemeanor.

  - A person who unlawfully damages a fence on land that is not their own two or more times will be charged with a felony of the third degree.

- Adds that notice of no trespassing may be painted on trees or posts on the property.

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

- **SB 1638**

Gift Certificates & Similar Credit Items

This bill requires that a gift certificate or credit memo sold or issued for consideration in this state may not have an expiration date, expiration period, or any post-sale charge or fee, such as a service charge, dormancy fee, account maintenance fee, or cash-out fee. The bill creates the following exemptions to this requirement:

- A gift certificate may have an expiration date of not less than three years if it is provided as a charitable contribution where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.

- A gift certificate may have an expiration date of not less than one year if it is provided as a benefit pursuant to an employee incentive program, consumer-loyalty program, or promotional program where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.

- A gift certificate may have an expiration date if it is provided as part of a larger package related to a convention, conference, vacation, sporting, or fine arts event having a limited duration and if the majority of the value paid by the recipient is attributable to the convention, conference, vacation, sporting or fine arts event.

- The prohibitions against expiration dates, expiration periods, or post-sale charges or fees do not apply to gift certificates or credit memos sold or issued by a financial institution, as defined in s. 655.055, F.S., (state-chartered banks and credit unions), or by a money transmitter, as defined in s. 560.103, F.S., if the gift certificate or credit memo is redeemable by multiple unaffiliated merchants that accept monetary consideration remitted through the financial institution or money transmitter that sold or issued the gift certificate or credit memo.

The terms "gift certificate" and "credit memo" are defined by the bill.

This bill provides that unredeemed gift certificates or credit memos are not required to be reported as unclaimed property. However, this does not apply to gift certificates that are exempt from the prohibitions against fees and expiration dates contained in the bill and are sold or issued by a financial institution as defined in s. 655.005, F.S., or a money transmitter as defined in s. 560.103, F.S.

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

● SB 1920
Ballot Initiatives

This bill provides that a private person exercising lawful control over any privately-owned property, including commercial property open to the public, may prohibit all activities on the property that support or oppose constitutional amendment initiatives.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 1974
State Information Technology

In its January 2007 Interim Report, *Enterprise Information Technology. Senate Review and Study,* the Florida Senate reported an uneven forty-year experience with the recognition and development of an electronic information infrastructure in government programs. Operationally a more than $2 billion annual investment itself, information technology is an indistinguishable part of the daily functioning of government agencies. In a state where access to publicly funded programs is a constitutional right, a properly functioning electronic infrastructure becomes an essential element in assuring operational accountability as well as giving the public confidence that government agencies can be both responsible and responsive.

In cataloging the State of Florida's experiences with large-scale information technology undertakings, that report pointed to many lessons learned from a whole series of project failures that either underperformed or overreached. Its overall recommendations

are embodied in this bill which creates an Agency for Enterprise Information Technology headed by the Governor and Cabinet. The agency will be responsible for the development of large-scale, or enterprise, information technology activities that span groups of state departments and commissions. The new agency is specifically directed and funded to develop a work plan, the initial elements of which – data center consolidation, alternative acquisition policies on the replacement of equipment, messaging systems, customer relationship management systems, and information security – are specified as expectations by its second year of existence. There should be no intrusion into individual state agency information technology operations, as the focus of the new agency lies with the development of shared systems common to all participants. Certain responsibilities assigned to the former State Technology Office are redistributed to the Department of Management Services and the bill provides conforming changes to that end. The bill specifically appropriates new funds and reappropriates current funds for the support of the new agency and its missions.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 2766**

Venomous Reptiles & Reptiles of Concern

The bill amends the requirement for licensing of venomous reptiles to include those persons that capture, keep, or transport such reptiles.

The bill requires the Fish and Wildlife Conservation Commission (FWC or commission) to establish a list of reptiles of concern by December 31, 2007, that may include venomous, nonvenomous, native, nonnative, or other reptiles that have the potential to negatively impact the environment, the ecology, or human health. It also adds such reptiles to the licensing, permit and inspection requirements, which includes a $100 licensing fee.

The bill raises the bond to exhibit venomous reptiles from $1,000 to $10,000 which shall be submitted to the commission in writing.

The bill creates a financial responsibility guarantee requirement for persons who exhibit Class I wildlife and authorizes the commission to establish, by rule, provisions for satisfying the financial responsibility. In lieu of such a financial guarantee, the exhibiter has the option to maintain comprehensive liability insurance in the amount of $2 million dollars for each occurrence.

The bill substantially rewrites the captive wildlife penalty provisions creating Level One, Two, Three, and Four violations.

Finally, the bill appropriates $75,000 from the State Game Trust Fund, for FY 2007-2008, to the commission for the initial costs associated with the additional regulatory responsibilities.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 2800**

Appropriations

The bill is the General Appropriations Act, which provides funding for the annual period beginning July 1, 2007 and ending June 30, 2008, to pay salaries, expenses, capital outlay – buildings, and other improvements, and for specified purposes of the various agencies of state government.

General Appropriations Act by major policy center:

- Education – $22.7 billion
- Criminal Justice & Corrections – $4.5 billion

- General Government – $5 billion
- Health & Human Services – $24.2 billion
- Judicial Branch – $500 million
- Natural Resources, Environment, Growth Management & Transportation – $13.2 billion

If approved by the Governor, these provisions take effect July 1, 2007, or upon becoming law, whichever occurs later, except as otherwise provided.

● SB 2802
Appropriations Implementing Bill

This is the bill implementing appropriations for FY 2007-2008. It makes one-year changes to substantive laws in order to prevent conflicts between the statutes and the budget so that the Legislature's budget decisions can be fully implemented. The bill:

- Implements Specific Appropriations 7, 8, and 86 through 91 of the General Appropriations Act for the 2007-2008 fiscal year adopting by reference the document "Public School Funding – The Florida Education Finance Program," for the purpose of displaying the calculations used by the Legislature consistent with the requirements of Florida Statutes in making appropriations for the Florida Education Finance Program in FY 2007-2008.
- Requires that funds appropriated for forensic mental health treatment services be allocated to the areas of the state having the greatest demand for services and treatment capacity.
- Requires all public and private agencies and institutions participating in child welfare cases to enter certain information into the Florida Safe Families Network (FSFN) in order to maintain the accuracy and usefulness of the automated child welfare case management system; and directs the Department of Children and Family Services to work with the Office of the State Courts Administrator and the Statewide Guardian Ad Litem Office to allow a judge, magistrate, or guardian ad litem to access FSFN information concerning cases to which they are assigned, by the date of the network's release during FY 2007- 2008.
- Requires the Department of Environmental Protection to lease the existing South Florida Evaluation and Treatment Center in Miami-Dade County to Miami-Dade County.
- 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.
- Allows the Executive Office of the Governor to request additional positions and other resources, including fixed capital outlay, for the Department of Corrections, if the Criminal Justice Estimating Conference projects a certain increase in the inmate population and the additional positions are approved by the Legislative Budget Commission.
- Authorizes the Governor to submit a budget amendment, in accordance with the provisions of s. 216.177, F.S., to transfer appropriations from the General Revenue Fund between categories in the criminal conflict and civil regional counsel budget entity. This section authorizes the transfer of appropriations between each of the criminal conflict and civil regional counsel budget entities. Also, this section authorizes budget

transfers between criminal conflict and civil regional counsel budget entities and child dependency and civil conflict cases within the Justice Administrative Commission.

- Authorizes the Department of Legal Affairs to spend funds from Specific Appropriations 1388 and 1389 on the same programs and in the same method as was done in FY 2006- 2007.
- Allows a municipality to expend funds in a special law enforcement trust fund to reimburse the general fund for moneys advanced from the general fund to the special law enforcement trust fund prior to October 1, 2001.
- Authorizes the Department of Juvenile Justice to spend $2.5 million in general revenue from Specific Appropriation 1169 for additional medical and mental health care at the department's detention centers.
- Allows the Executive Office of the Governor to transfer funds appropriated for the payment of risk management insurance premiums between departments. The amendment to the approved operating budget is subject to the notice and objection procedures of s. 216.177, F.S.
- Allows the Executive Office of the Governor to transfer funds appropriated for the payment of the statewide human resource management services contract between departments. The amendment to the approved operating budget is subject to the notice and objection procedures of s. 216.177, F.S.
- Limits the use of state owned motor vehicle and aircraft to "official state business." This section requires individuals traveling on state aircraft for purposes other than state business to reimburse the state for all costs.
- Requires the department to annually publish a master leasing report, allows the department to use real estate consulting or tenant brokerage services in order to carry out its duties, and provides that fees for real estate consulting and tenant brokerage services are subject to appropriation by the Legislature.
- Allows agencies to use the services of a tenant broker to assist in the competitive solicitation of leased space. The section requires that the tenant broker must be on state term contract.
- 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 Environmental Protection to award $9.4 million in solid waste management grants in equal amounts to counties with populations of fewer than 100,000, and to award $2.9 million for Innovative Grants.
- Provides that all funds from the Florida panther license plate be deposited in the Florida Panther Research and Management Trust Fund within the Fish and Wildlife Conservation Commission, to be used for programs to protect the endangered Florida panther.
- Requires the Department of Agriculture and Consumer Services to conduct research projects on citrus disease, including citrus canker and citrus greening, recommended by the Florida Citrus Production Research Advisory Council.
- Permits an agency to make cash awards to employees in appreciation and recognition of service to the state.
- Continues the employer contribution into the health insurance saving accounts for

FY 2007-2008.

- Authorizes moneys in the General Inspection Trust Fund to be appropriated for certain programs operated by the Department of Agriculture and Consumer Services.
- Allows proceeds from the Professional Sports Development Trust Fund to be used for operational expenses of the Florida Sports Foundation and financial support of the Sunshine State Games.
- Authorizes the Department of Transportation to expend funds to pay for administrative expenses incurred by multi-county transportation/expressway authorities when such expenses are in furtherance of the duties and responsibilities of the authority in the development of improvements to the state highway system.
- Authorizes the Governor to recommend the initiation of fixed capital outlay projects funded by grants awarded by the Federal Emergency Management Agency for FEMA disaster declarations.
- Requires the Department of Transportation to transfer funds to the Office of Tourism, Trade, and Economic Development in an amount equal to $25,400,000 for the purpose of funding economic development transportation projects. This section also requires the department to provide financial assistance to the Seaport Strategic Planning and Financing Task Force, specifies certain transportation projects to be funded, and prohibits the department from reducing, deleting, or deferring any existing projects funded, as of July 1, 2007, in the Department of Transportation's 5-year work program.
- Creates the Seaport Strategic Planning and Financing Task Force; provides for the purpose, duties, and membership of the task force; requires the Office of Program Policy Analysis and Government Accountability to staff the task force and provide funding assistance. Authorizes the funds from the sale of property by the Department of Highway Safety and Motor Vehicles in Palm Beach County to be deposited into the Highway Safety Operating Trust Fund.
- Reduces the required match for state funds for dredging projects in counties with populations below 300,000 that meet current statutory requirements from 50 percent to no less than 25 percent.
- Extends the time period for local governments to submit an application to the Executive Office of the Governor requesting a waiver of local match for public assistance projects resulting from Hurricanes Charley, Frances, Ivan, and Jeanne.
- Authorizes the use of revenues collected from administrative fines to support the Hospitality Education Program and increase the maximum amount of funds the Department of Business and Professional Regulation may designate to support the program.
- Provides that only funds appropriated specifically for distribution pursuant to this subsection may not be allocated for individual school projects. Funds for individual projects may be appropriated, as in Specific Appropriation 35B, separately from funds appropriated pursuant to s. 1013.34(d), F.S.
- Exempts the Suwannee River Water Management District and the Northwest Florida Water Management District from the match provisions of the Surface Water Improvement and Management Program.

- Expands the allowable uses of moneys in the Internal Improvement Trust fund and provides for the transfer of these funds to the Ecosystem Management and Restoration Trust fund for grants and aids to local governments for water projects.
- Provides that interest earnings accumulated in the Water Protection and Sustainability Program Trust fund shall be transferred to the Ecosystem Management and Restoration Trust fund for grants and aids to local governments for water projects.
- Amends s. 201.15, F.S., to expand the use of documentary stamp tax revenues to include water projects.
- Authorizes the transfer of Invasive Plant Control Trust Funds for transfer to the Ecosystem Management and Restoration Trust fund for grants and aids to local governments for water projects.
- Creates the Teacher's Down Payment Assistance Pilot Program and directs the Florida Housing Finance Corporation to establish, through rule, project selection and funding criteria, and specifies certain eligibility requirement for the program.
- Requires the Department of Highway Safety and Motor Vehicles to print and distribute the Official Florida Driver License Handbooks without the use of advertisement, and prohibits any governmental agency, including secondary public schools, from distributing any driver handbooks other than those printed by the department.
- Creates the Farm-to-Fuel Grants Program within the Department of Agriculture and Consumer Services. The department may adopt rules to establish project selection and funding criteria and must consult with the Department of Environmental Protection in evaluating and awarding grants.
- Requires the Florida Building Commission to convene a workgroup with specified representatives to develop a model residential energy efficiency ordinance and submit a report to the Legislature by March 1, 2008. The commission is required to revisit the analysis of cost-effective means to improve energy efficiency in commercial buildings and report with a standard which may be adopted for the construction of all new residential, commercial, and government buildings to the Legislature. The commission must develop and implement a public awareness campaign that promotes energy efficiency and the benefits of building green. The Department of Environmental Protection is directed to develop a public awareness campaign, with required elements, that promotes energy efficiency in the state and discourages all forms of energy waste.
- Directs the University of Florida, Institute of Food and Agricultural Sciences, to establish a research and demonstration cellulosic ethanol plant.
- Deletes a provision that requires the Department of Environmental Protection to consult with the Department of Agriculture and Consumer Services relating to bioenergy projects for renewable energy technology.
- Allows the Department of Financial Services to spend $846,021 of prior funding for salaries and related expenses to support 14 positions appropriated to administer the Florida Hurricane Damage Mitigation Program.

If approved by the Governor, these provisions take effect July 1, 2007, except as otherwise provided.

- **HB 7167**

Municipal Incorporation

The bill (Chapter 2007-26, L.O.F.) prohibits a county from requiring any municipality formed after January 1, 2000, to pay a charge, assessment, tax, fee, or other consideration as a condition of municipal incorporation.

These provisions became law upon approval by the Governor on May 4, 2007, and take effect on July 1, 2007.

- **HB 7173**

Fish & Wildlife Conservation Commission

The bill clarifies the Fish and Wildlife Conservation Commission's (FWC) constitutional authority over marine life specifying that it does not include any authority retained by the Legislature or vested in any other agency, other than the Marine Fisheries Commission, on March 1, 1998. It also does not include authority over marine aquaculture retained by the Legislature or vested in any other agency as of July 1, 1999. The bill further requires that the FWC adopt, by rule, adequate due process procedures and shall publish such rules in the Florida Administrative Code.

The bill authorizes use of up to ten percent of the annual use fee deposited into the Save the Manatee Trust Fund, the Florida Panther Research and Management Trust Fund, and State Game Trust Fund to promote or market manatee, Florida panther, and largemouth bass specialty license plates. It increases the annual use fee collected from the sale of the sea turtle specialty license plate from $17.50 to $23. It also authorizes the FWC to use the annual use fees deposited into the Save the Manatee Trust Fund from the sale of the manatee license plates, for FY 2007-2008, to buy back any manatee license plates not issued by the Department of Highway Safety and Motor Vehicles.

The bill provides for deposit and use of certain fees, fines, and penalties collected under the Marine Resources Conservation Trust Fund, for the funding of: the stone crab trap reduction program, the blue crab effort management program, the spiny lobster trap certificate program, and the derelict trap retrieval program.

The bill requires legislative approval for certain commission rules that establish equitable rent.

The bill establishes the Blue Crab Effort Management Program which includes a fee schedule for endorsements required by the FWC for the taking of blue crabs. It establishes a fee for each blue crab trap tag issued and for the replacement of lost or damaged tags. It establishes administrative penalty limits, license suspension and revocation requirements, and third-degree felony penalties. The FWC is authorized to automatically suspend or permanently revoke blue crab endorsements and deactivate blue crab trap tag accounts under certain circumstances. It requires the commission to adopt, by rule, a schedule for administrative penalties for the blue crab effort management program.

The bill appropriates $132,000 from the Marine Resources Conservation Trust Fund to the FWC, for the purpose of implementing the blue crab effort management program and for administrative costs of the Blue Crab Advisory Board, created by rule of the commission.

The bill authorizes the FWC to temporarily waive the trap tag fees for stone crab, blue crab, and spiny lobster fisheries in areas where massive trap losses occur due to natural disaster and if the area is declared, by

the governor, to be a disaster emergency area.

The bill provides that all endorsement and trap tag fees, as well as fines for administrative and criminal penalties, shall be deposited in the Marine Resources Conservation Trust Fund, and specifies the purposes for which the fees may be used.

The bill provides for the assessment of administrative penalties and deletes the suspension of endorsement provision, for first-time rule violations, in the stone crab and spiny lobster programs. It authorizes the application of trap retrieval fees for the recovery of blue crab traps and black sea bass traps. It also corrects a reference to saltwater crawfish conforming to the commission's current spiny lobster program.

The bill increases certain license and permit fees for residential and non-residential freshwater and saltwater fishing, and hunting and creates a 3-day non-residential freshwater fishing license.

The bill authorizes the commission, tax collectors and certain subagents to request and collect donations when selling recreational licenses or permits. The proceeds from the collection of the donations are to be solely for the purpose of enhancing youth hunting and fishing programs within the FWC. It also provides for an annual reporting of such programs by the FWC to the Governor and Legislature by January 1.

If approved by the Governor, these provisions take effect July 1, 2007 unless otherwise specified in the bill.

- **HB 7181**

Human Trafficking/ Immigrant Survivor

According to the Florida Coalition Against Human Trafficking, Florida is the second largest hub of human trafficking in the U.S.

The bill provides that during an interim period between application and receipt of a visa, victims of trafficking and other serious crimes are eligible for existing state and local benefits and services to the same extent as a refugee.

The bill provides that these individuals have access to a state-funded equivalent of the federal refugee cash, medical, and social service programs.

The bill permits an immigrant survivor of a serious crime to receive medical care, mental health care, and basic assistance in securing housing, food, and supportive services.

The bill provides for the creation of a state-funded component of the refugee cash, medical and social services programs to serve these victims during a temporary period while they wait for federal processing to be completed.

The bill provides that a sworn statement by a victim is sufficient evidence for determining eligibility if that statement is supported by at least one item of additional evidence providing a basis for the claim including, but not limited to:

- Police and court records;
- News articles;
- Documentation from a professional agency;
- Physical evidence; or
- A statement from an individual with knowledge of the circumstances.

The bill requires the development of a public awareness program for employers and other organizations that may come in contact with immigrant survivors of human trafficking.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 7183**

Rules & Rulemaking

This bill revises provisions in the Administrative Procedure Act (APA), codified in ch. 120, F.S., relating to unadopted agency rules. In addition to technical or administrative refinements, the bill makes the following significant changes:

- Strengthening provisions relating to challenges of unadopted rules;
- Restricting agencies' authority to rely upon unadopted rules in administrative hearings;
- Bolstering the ability of the Joint Administrative Procedures Committee to examine unadopted agency rules;
- Providing definitions of the terms "law implemented" and "rulemaking authority";
- Providing additional requirements for adoption of material that is being incorporated by reference in rules;
- Requiring electronic publication of the *Florida Administrative Code* (FAC);
- Providing for material incorporated by reference to be filed in electronic form, unless doing so would constitute a violation of federal copyright law;
- Providing that if an agency head is a board or other collegial body, then the agency head may not delegate the responsibility to conduct requested public hearings;
- Providing an award of attorney's fees to the petitioner in an unadopted rule challenge if, prior to the final hearing, the agency initiates rulemaking and the agency knew or should have known that the agency statement was an unadopted rule;
- Increasing the cap on awards of attorneys' fees for challenges to existing and proposed rules from $15,000 to $50,000 and places a $50,000 cap on awards of attorneys' fees for challenged to adopted rules; and
- Requiring an agency to discontinue reliance upon a statement that is being challenged as an unadopted rule until such challenge is not pending or the statement has been formally adopted as a rule..

Unless otherwise provided, the provisions of this bill take effect July 1, 2007.

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2007
Florida Legislature
Post-Session Report

Growth Management, Environment, Natural Resources, Real Property, Energy & Transportation

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

- **SJR 166**

Property Rights/Ineligible Aliens

The equal protection clause in s. 2, Art. I, State Constitution, generally requires the state to treat everyone equally. However, an exception within the equal protection clause permits the Legislature to regulate or prohibit the ownership of property by aliens ineligible for citizenship.

Laws restricting property ownership by aliens ineligible for citizenship originated in the early 1 900s. At that time, Asians were ineligible for citizenship. Today, however, eligibility for citizenship is not based on racial classifications.

Senate Joint Resolution 166 amends s. 2, Art. I, State Constitution, to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

If approved by the electors during the 2008 General Election, these provisions take effect January 6, 2009.

- **HB 197**

Surface Water Protection Programs

The bill makes changes to address discrepancies between the Northwest Florida's Environmental Resource Permitting (ERP) program and the rest of the state's ERP program. To provide consistency throughout the state's ERP program, the bill:

o Ensures that variance provisions are applicable to the Northwest Florida ERP program.

o Ensures that state surface water quality standards do not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption within the Northwest Florida Water Management District.

The bill removes the requirement for the Northwest Florida Water Management District, the Suwannee River Water Management District, or a financially disadvantaged small local government to provide a 50-percent match of cash or in-kind services towards the implementation of the surface water improvement and management (SWIM) projects.

Senate President Kenneth Pruitt, R-Port St. Lucie; right, holds up a stone entitled "Patience" while commenting on a successful legislative session after sine die before a crowd in the Capitol rotunda, ending the 2007 Legislature on May 4. From the left are: Majority Leader Marty Bowen, R-Winter Haven; Policy & Budget Chairman Ray Sansom, R-Fort Walton Beach; Speaker Marco Rubio, and President Pruitt. (House photo by Meredith Hill)

The bill provides that the authority of the Department of Environmental Protection (DEP) or the South Florida Water Management District (SFWMD) is not affected when adopting basin-specific criteria to prevent harm to the water resources of the SFWMD.

The bill eliminates the requirements that the SFWMD, prior to authorizing a discharge into works of the district, require responsible parties to demonstrate that proposed changes in land use will not result in increased phosphorus loading over that of existing land uses. This will allow SFWMD to seek greater phosphorus load reductions not authorized under current law.

The bill provides legislative recognition that peat harvesting represents a unique industry which occurs in specific wetlands in the state. It provides DEP rule making authority to oversee peat mining used exclusively in the horticultural industry.

The bill repeals s. 403 .265, F.S., relating to the permitting of peat mining which was transferred to a new section of statute as part of the bill.

Finally, the bill revises the exemption provided to certain mine operators from the requirement to notify the DEP when beginning to mine certain substances.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 259**

Mobile Home Relocation Corporation

The bill specifies the terms of the notice that mobile home park owners must provide to homeowners at least six months before a change in the use of the park and of the homeowners' need to secure other accommodations. The notice must inform the homeowner that he or she may be entitled to compensation from the Florida Mobile Home Relocation Trust Fund, and that information about the trust fund is available from the Department of Business and Professional Regulation.

The bill provides that, in an action brought by the Florida Mobile Home Relocation Corporation (corporation) to collect assessed payments, the corporation may file and maintain the action in Leon County. It also provides that Leon County is the proper venue for any action to which the corporation is a party.

The bill provides for a late fee for a mobile home park owner's untimely payments to the Florida Mobile Home Relocation Trust Fund. It provides a one year time limit during which a mobile home owner who has been required to move from a mobile home park may file a claim for relocation expenses from the Florida Mobile Home Relocation Corporation.

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

- **SB 314**

Condominiums

This bill substantially revises the provisions of Florida law governing the method and process of termination of a condominium. Many provisions are simply moved within the section with grammatical and editorial changes.

Substantively, the bill amends s. 718.117, F.S., to provide legislative findings related to condominium terminations and for approval of termination by less than 100 percent of owners and lienholders. It provides a written plan of termination with written notice provided to all unit owners prior to being voted upon. It provides for quarterly reports prepared by the receiver, as well as procedures to replace the receiver. It provides alternative methods for determining the allocation of pro-

ceeds from the sale of condominium property and sets forth procedures for management of the association during termination and for distribution of the proceeds. It provides for a right to contest the plan of termination and court review of the plan.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 392**

Watershed Restoration
The bill amends provisions related to the uses of the Save Our Everglades Trust Fund and the Lake Okeechobee Protection Program. In addition, new watershed restoration programs are established for the St. Lucie and Caloosahatchee Rivers.

Lake Okeechobee Protection Program
The bill renames this section the "Northern Everglades and Estuaries Protection Program." In addition, the Lake Okeechobee Protection Program and Lake Okeechobee Research and Water Quality Monitoring Program are renamed to include the term "watershed." Additional changes to the Lake Okeechobee Research and Water Quality Monitoring Program include requirements that reevaluations occur every three years and that a water volumes and timing assessment be done.

The bill provides that the Phase II technical plan, substantially expanded and modified by this legislation, be submitted to Legislature prior to the 2008 Regular Session. Should the Legislature take no action the plan will be deemed approved.

Caloosahatchee and St. Lucie River Watershed Protection Program
The bill creates these two new protection programs that are comprised of a series of program components and requirements. Though individual protection programs are created for each river watershed, the requirements are duplicative.

River Watershed Protection Plans
The South Florida Water Management District, in cooperation with other agencies, Lee County (Caloosahatchee River), Martin County (St. Lucie River), and other affected counties and municipalities, is directed to complete, by January 1, 2009, the River Watershed Protection Plans. The DEP and the South Florida Water Management District are designated as the parties responsible for implementing the plans. These entities shall jointly develop the annual funding priorities and the highest priorities shall be assigned to those projects with the greatest potential for achieving the goals and objectives of the plans. In addition, these entities shall establish priorities and an implementation schedule for the achievement of total maximum daily loads (TMDLs).

The bill provides that the protection plans be submitted to Legislature prior to the 2008 Regular Session. Should the Legislature take no action, the plan will be deemed approved. By March 1, 2012, and every three years thereafter, the protection plans shall be evaluated. Each plan shall include a "River Watershed Construction Project," which shall be designed to improve the hydrology, water quality, and habitats of the watersheds. The South Florida Water Management District shall, by January 1, 2012, plan, design, and construct the initial phases of the construction project.

Watershed Pollutant Control Program
These programs are created and designed to provide for a multifaceted approach to managing the pollutant sources within the watersheds. They are to be implemented through regulations, the use of best management practices, and utilization of alternative technologies. The coordinating agencies are di-

rected to facilitate the use of federal programs that offer opportunities for water quality treatment, including those designed to preserve, restore, or create wetlands on agricultural lands.

Watershed Research and Water Quality Monitoring Program
The South Florida Water Management District, in cooperation with affected local governments and other parties, must establish a program that builds upon existing research and will ensure that adequate data is generated to determine the effectiveness of the projects created by the programs.

An additional provision created in the bill directs the DEP to expedite the development and implementation of TMDLs for the Caloosahatchee River and estuary. These TMDLs are to be proposed for final agency action no later than December 31, 2008. Upon adoption of the TMDLs, the DEP shall initiate development of the basin management action plans.

The South Florida Water Management District is directed to include the following additional information in their annual report:

- A summary of the water quality and habitat conditions in the newly defined watersheds.
- The status of the watershed construction programs.
- A detailed accounting of the expenditure of funds from the Save Our Everglades Trust Fund. At a minimum, this accounting shall detail the amount and use of funds from all sources and an indication of what funds were designated to meet matching fund requirements.

Save Our Everglades Trust Fund
The bill amends existing statutory provisions to extend the trust fund through FY 2019-2020 and allow for the deposit into and the expenditure of funds from this trust fund, for the purposes of implementing the Caloosahatchee River and St. Lucie River Watershed Protection Plans.

The bill also creates a provision that ties the release of funds to the submission by the South Florida Water Management District to the DEP of an annual work plan for the protection projects.

Finally, the bill extends the South Florida Water Management District's match requirements for the life of the trust fund; allows funds to be distributed for implementation of the River Watershed Protection Plans including a local match requirement for Lee and Martin counties; and allows funds to be distributed to the Department of Agriculture and Consumer Services for implementation of agricultural nonpoint source controls.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 400**

Landlord/Possession of Dwelling Unit
The bill permits a landlord, under certain circumstances, to take possession of a dwelling unit and remove a deceased tenant's property 60 days after the tenant dies. A landlord's possession of the dwelling unit is permissible if rent remains unpaid and the landlord has not been notified in writing of the existence of a probate estate or the name and address of the personal representative. The bill, however, does not apply to a dwelling unit used in connection with federal housing programs.

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

● HB 405
Vacation & Timeshare Plans

This bill makes substantive changes to the Florida Vacation Plan and Timesharing Act. It amends the formula for funding reserve accounts for capital expenditures and deferred maintenance relating to condominium conversions. It amends the purchaser to accommodation ratio from a "one-to-one purchaser to accommodation ratio" to a "one-to-one use right to use night requirement ratio."

It allows a seller to offer an out-of-state timeshare interest in a timeshare plan without filing a public offering statement under certain circumstances.

It increases security and protection of personal information of timeshare owners, deletes the provisions requiring a public offering statement to include a description of developer financing and creates recordkeeping requirements for resale service providers and lead dealers.

It amends the insurance requirements of the managing entity and deletes the requirement that the amount of insurance coverage be equal to the replacement cost of the accommodations and facilities.

The bill amends the definition of "vacation club," to clarify that the law regulating "vacation clubs" does not apply to a business or entity simply because the term is part of the business or entity's name.

It provides that the Governor may appoint commissioners of deeds to take acknowledgments, proofs of executions, or oaths in international waters.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 506
Tampa Bay Area Regional Transportation

The bill creates ch. 343, part V, F.S. to establish the Tampa Bay Area Regional Transportation Authority (TBRTA) as an agency of the state to improve mobility and expand multimodal transportation options for passengers and freight in the seven county Tampa Bay region (Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota Counties.)

The TBRTA Board comprises 15 voting members including seven elected officers appointed by each of the represented counties' Boards of County Commissioners, and

- A member of the West Central Florida Chair's Coordinating Committee (CCC);
- The mayor or mayor's elected designee of the largest city served by the Pinellas Suncoast Transit Authority;
- The mayor or mayor's elected designee of the largest city served by Hillsborough Area Regional Transit Authority;
- The mayor or mayor's elected designee of the largest city in Manatee County. (After two years the mayor or designee of the largest city in Sarasota County shall be the board member. The seat rotates between these counties every two years.); and
- Four non-elected persons appointed by the Governor representing business, two of which must represent counties within the Tampa Bay Transportation Management Area.

Members of the TBRTA board will serve without compensation and must comply with financial disclosure requirements. The board

may employ staff and agents and has the right to plan, develop, finance, construct, own, purchase, operate, maintain, relocate, equip, repair, and manage transportation projects such as:

- Express bus services;
- Bus rapid transit services;
- Light rail, commuter rail, heavy rail, or other transit services;
- Ferry services;
- Transit stations;
- Park and ride lots;
- Transit-oriented development nodes;
- Feeder, reliever, or connector roads;
- Bypasses; or
- Appurtenant facilities.

A master plan, required by July 1, 2009, is to be updated every 2 years and presented to the governing bodies of the seven-county region and to the legislative delegation members representing those counties, as well as the CCC.

Any project may be tolled. Projects that will be part of the State Highway System require the concurrence of the Florida Department of Transportation (FDOT). All project planning, development, and implementation must be coordinated with the applicable adopted local government comprehensive plans and may be financed from state infrastructure bank loans and advances from the Toll Facilities Revolving Trust Fund and other sources.

The TBRTA is granted numerous powers including, but not limited to the power to:

- Exercise eminent domain;

- Establish and collect tolls, fares, and fees on TBRTA roads and other facilities within the region;

- Enter lease-purchase agreements with FDOT; and

- Borrow money and issue revenue bonds not pledging the credit of the state.

The TBRTA may also participate in public-private partnerships with private entities for the building, operation, ownership, or financing of transportation facilities within the region, if the project:

- Is in the public's best interest;

- Would not require state funds unless the project is on or provides increased mobility on the State Highway System; and

- Includes safeguards against the public realizing additional costs or unreasonable service disruptions in the event of default or cancellation by the authority.

A private entity engaged in a public-private partnership may be authorized to impose tolls or fares subject to regulation by the TBRTA. Any facility constructed via a public-private partnership must comply with all requirements of state, federal, and local laws, state, regional, and local comprehensive plans, and the TBRTA's rules, policies, and standards. The TBRTA may exercise any of its powers, including eminent domain, in developing and constructing projects via public-private partnerships.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 549
Power Plants/Integrated Gasification

The bill contains two types of provisions, those relating to siting an integrated gasification combined cycle power plant and those relating to consideration of adequate utilization of re-

newable energy resources and conservations measures.

The bill provides for advanced cost recovery for the costs of constructing an integrated gasification combined cycle power plant. It requires that, when the Public Service Commission is making a determination of the need for a proposed integrated gasification combined cycle power plant, it must consider specified information as to reliability, fuel diversity, and the need for base-load generation.

The bill also provides that it is the policy of this state and the intent of the Legislature that in siting power plants, courses of action be taken that balance the increasing demands for electrical power plant location and operation with the broad interests of the public, based on premises that, under the bill, include assuring the citizens of Florida that renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available. Additionally, the bill requires that, when the Public Service Commission is making a determination of the need for any proposed power plant, it must consider whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

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

● SB 606
South Florida Regional Transportation Authority

The bill revises the South Florida Regional Transportation Authority (SFRTA) Act. Specifically, the bill does the following:

Section 1 of the bill amends s. 343.54, F.S., to delete references to "commuter rail."

Section 2 of the bill creates a new s. 343.55(3), F.S., to allow the SFRTA to issue, reissue, or redeem bonds as necessary to fund the purposes of the SFRTA. The bonds shall be offered at public sale by competitive bid, or through a negotiated sale if recommended by a financial advisor and the SFRTA agrees. These bonds may not pledge the full faith and credit of the state.

Section 3 of the bill amends s. 343.58, F.S., as follows to:

- Clarify that each of the counties served by the SFRTA must dedicate and transfer at least $2.67 million annually to the SFRTA for capital funding before October 31 of each fiscal year. Existing language identifying each county's ninth cent fuel tax, local option fuel tax, and any other local gas tax or nonfederal tax as possible sources for the annual dedication, is deleted. Authorization of the counties to collect a $2 fee on vehicle registrations within their boundaries is repealed.

- Require the Legislature to transfer at least $45 million in recurring funds to the SFRTA to be used for capital, operating, and maintenance purposes. The funds are to come from an un-named state-authorized, local-option recurring funding source available to the affected counties and shall only be dedicated to the authority if all of the affected counties impose the local-option funding source.

- Release the affected counties from capital and operating funding obligations upon the collection of the recurring $45 million from the State. However, the counties' funding obligations resume when state funding ceases. Should the state funding result in funding only a part of a fiscal year, the affected counties' payments or

refunds would be prorated. The date on which the local capital funding requirements for the SFRTA cease if no federal matching funds have been received is extended from December 31, 2009, to December 31, 2015.

Section 4 of the bill provides the legislative finding that a proper and legitimate purpose is served by the bill and it fulfills an important state interest.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 668**

Surplus State Lands/Reconveyance

This bill exempts state lands meeting certain requirements from the surplus rules established in s. 253.034, F.S. These requirements include:

- The land was gifted or conveyed for a consideration of $1 by a fair association to the state prior to 1955;
- The land is less than three acres and;
- The notice for surplus has been filed by the Department of Environmental Protection by July 1, 2008.

The Pasco County Fair Association sold a parcel of land to the State Board of Education in 1954 in order to expand the University of Florida's West Coast Poultry Diagnostic Laboratory. The land was transferred to several different state entities before the title finally rested with the Board of Trustees of the Internal Improvement Trust Fund, which leased it to the Division of Forestry, within the Department of Agriculture and Consumer Services. The land went unused for several years, and the Pasco County Fair Association requested that the land be transferred back. This bill provides for this parcel of land to be transferred back to the Pasco County Fair Association at no cost.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 902**

Community Associations

The bill defines the term "equity facilities club" to mean a club comprised of recreational facilities in which proprietary membership interests are sold to individuals, and prohibits any law, ordinance, or regulation that establishes certain requirements on the equity facilities club form of ownership that are not applicable to other forms of ownership.

The bill provides the following provisions and requirements regarding the rights, powers, and duties of condominium associations and their members:

- Prohibits local ordinances or regulations that limit access to a public or private beach adjacent to the condominium for the condominium or its members and guests unless the ordinance or regulation is necessary to protect the public health, safety, or natural resources;
- Limits the enforcement of provisions in the governing documents recorded on or after October 1, 2007, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the condominium property for those mortgages; and
- Prohibits the acquiring or entering into agreements acquiring leaseholds, memberships, or other possessory or use interests within 12 months after a declaration.

The bill provides the following provisions and requirements regarding the powers and duties of a homeowners' association:

- The bill provides procedures for the revival of the declaration of covenants for non-mandatory homeowners' associations in which the covenants have lapsed;
- The bill authorizes for-profit homeowner's associations;
- All meetings of a homeowner's association regarding a final decision for the spending of association funds, and to approve or disapprove architectural decisions with respect to a specific parcel of residential property must be open to all members;
- Provides for the charging of a reasonable fee not to exceed $150 plus photocopying and attorney's fees to a prospective purchaser or lienholder or the current parcel owner for providing good faith responses to requests for information, unless otherwise required by law;
- Any member who prevails in an action against an association and is awarded attorney's fees may be awarded an amount sufficient to cover the member's share of assessments levied to fund the association's litigation expenses;
- Permits the merger or consolidation of one or more associations;
- Establishes for the maintenance of reserve accounts in the annual budget, including how to calculate reserves and conditions for waiving the maintenance of reserve accounts;
- It provides for procedures for guarantees of assessments of parcel owners, including establishing: the guarantee if it is not included in the purchase contract or declaration, the guarantee period, the funding requirements, calculation of the guarantor's final obligation, and funding of expenses;
- An association may review and approve building plans only to the extent that it is specifically stated or reasonably inferred in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants;
- An association can only enforce setbacks specifically provided for in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, and cannot enforce setback requirements that are inconsistent with applicable county or municipal setback standards;
- Each parcel owner's rights and privileges as provided in the declaration of covenants cannot be unreasonably impaired concerning the use of the parcel, and the construction of permitted structures and improvements;
- An association cannot enforce any policy that is inconsistent with the rights and privileges of a parcel owner set forth in the declaration of covenants, whether the policy is uniformly applied or not;
- It increases from 60 days to 90 days the time period after each fiscal year that an association must prepare and complete the annual financial report; and
- It specifies additional records and documents that the developer must provide to the association's board of directors upon the creation of the association. It also provides procedures for determining the

developer's financial obligation to the homeowner's association upon the creation of the association.

This bill repeals the mediation of disputes between homeowners' associations and members by the Department of Business and Professional Regulation. Such disputes would be mediated by private mediators. The mediator may require advance payment of fees and costs. The bill deletes the $200 filing fee requirement and provisions providing for the payment of fees for a department mediator.

If approved by the Governor, these provisions take effect July 1, 2007, unless otherwise provided.

- **HB 985**

Transportation & Infrastructure
The bill addresses a number of transportation issues related to the Florida Department of Transportation (FDOT) and other entities. Numerous sections of law are amended or created.

Florida Transportation Commission
Section 20.23, F.S., is amended to require the Florida Transportation Commission to monitor expressway authorities and regional transportation authorities' compliance with applicable laws and accounting principles. The commission will periodically review each authority's operations and budget, property acquisition practices, and management of revenue.

Metropolitan Planning Organizations
Sections 112.061, 121.021, 121.051, 121.055, 121.061, 121.081, and 339.175, F.S., are amended to clarify Metropolitan Planning Organizations (MPOs) are separate and distinct legal entities, provide autonomy to MPOs by requiring independent staff and granting specific powers and authority, and provide MPO staff eligibility to participate in the Florida Retirement System.

Transportation Concurrency
Section 163.3 18(e), F.S., is created, allowing FDOT to establish a pilot program for studying the benefits of and barriers to creating multimodal transportation concurrency districts extending over more than one local government jurisdiction.

Section 163.3 182, F.S., is created to allow county or municipal governing bodies to constitute themselves as transportation concurrency backlog authorities for the purpose of developing plans to eliminate concurrency backlogs. Such plans would be funded by tax increment financing within the jurisdiction.

Section 339.282 is created to allow developers to receive future credit against concurrency requirements for donations or improvements not included in a plan or program, through legally binding agreements.

Local Government Bond Issuance
Sections 2 12.055 and 336.025, F.S., are amended to remove prohibitions on local governments from issuing bonds more than once a year when those bonds are based on local government infrastructure tax or local option fuel tax revenues.

Fixed Guideway Revenue Bond Match
Section 2 12.055, F.S., is amended to revise the formula used by FDOT for matching fixed-guideway revenue bonds issued to finance local fixed-guideway transit projects. Rather than a fixed 50 percent match, the revision allows for various matching scenarios up to a limit of 50 percent on the State's share of the eligible project cost to allow FDOT to participate when state funds are not adequate to fund a 50 percent match.

Toll and Other Traffic Violation Penalties
Sections 316.65, 318.14, and 318.18, F.S., are revised to allow motorists cited for toll violations to pay a reduced fine and the unpaid toll directly to the tolling agency, and avoid the court process and assessment of points against the motorist's license. Motorists convicted of 10 toll violations within a 36 month period will have their license suspended for 60 days. A $3 surcharge will be added to certain criminal and all non-criminal moving traffic violations to fund the statewide law enforcement radio system.

Turnpike FDOT Toll Facility Issues
Section 338.2275, F.S., is amended to raise the maximum allowable dollar amount of bonds issued by the Florida Turnpike Enterprise from $4.5 billion to $10 billion. Under revisions to s. 338.161, F. S., the turnpike enterprise and expressway authorities may contract with private and public entities to expand the use electronic toll transponders to include the payment of parking fees. Section 338.23 1, F.S., is amended to extend, through June 2017, the requirement for the turnpike enterprise to program at least 90 percent of the turnpike toll revenues collected in Miami-Dade, Broward, and Palm Beach Counties in those counties.

Section 33 8.234, F.S., is amended to prevent the commercial rental tax authorized under s. 212.03 1, F.S., from being levied against the turnpike enterprise or its vendors and lessees on any capital improvements made for essential government functions.

Under revisions made to s. 338.165, F.S., tolls on the turnpike enterprise, as well as other toll facilities owned by FDOT, must be indexed to the Consumer Price Index at least every five years but no more frequently than annually.

FDOT Contracting
The following changes were made to FDOT contracting requirements in order to enhance the number of eligible contractors and increase the competition for contracts:

- Section 337.14, F.S., is amended to allow FDOT to waive the requirement for contractors to be pre-qualified to bid on jobs when the project is under $500,000 and noncompliance will not endanger the public health, safety, or welfare.

- Section 337.11, F.S., requires FDOT to expand the general advertising of bids to include those projects for which contractors do not need to be pre-qualified.

- Maintenance contractors are permitted to incrementally bond the work on long-term maintenance contracts by revisions to s. 337.18, F.S. which also increases, from $150,000 to $250,000, the maximum contract price threshold at which FDOT may waive surety bond requirements. The surety bond requirements may be waived for contracts greater than $250 million provided the contractor can provide alternate means of security for the balance of the contract amount.

Enhanced Bridge Program
The bill creates s. 339.285, F.S., to establish the Enhanced Bridge Program for Sustainable Transportation within FDOT to provide a funding mechanism to improve:

- Local bridges which are not on the State Highway System (SHS), and

- Highly congested roads on the SHS or local roads with high-cost bridges for the purpose of relieving congestion or providing an alternative corridor.

The program allows for state funds to be used to provide up to 50 percent of the project's cost and authorizes the expenditure of moneys from the State Transportation Trust Fund to fund the program. The bill also establishes a number of eligibility conditions for candidate projects. Bridge projects on regionally significant corridors connecting to the Strategic Intermodal System will receive preference.

Northwest Florida Transportation Corridor Authority

Section 343.81, F.S., is amended to prohibit elected officials from being appointed to the Northwest Florida Transportation Corridor Authority (NFTCA). Current members of the authority are exempted. The Emerald Coast Bridge Authority's responsibilities for developing bridge crossings of Choctawhatchee Bay, Santa Rosa Sound, or both are subsumed by the NFTCA.

Public-Private Partnerships

Revisions to s. 334.30, F.S., establish additional criteria allowing FDOT to enter public-private partnerships (P^3s) to advance projects outside of the 5-year work program if the project adds transportation capacity, costs more than $500 million, and is included in the 10-year Strategic Intermodal Plan. The projects may not preclude the ability of FDOT or the private entity from increasing capacity on the projects or other competing facilities and the P^3 projects must become property of FDOT upon completion of the contract.

With the exception of the Florida Turnpike System, FDOT may lease its existing toll facilities to private partners for up to 75 years upon approval of the Legislative Budget Commission. FDOT may develop new toll facilities or increase capacity on existing toll facilities through P^3s. Up to 15 percent of the total federal and state funds from the State Transportation Trust Fund may be obligated to P^3s.

Revisions are made to s. 348.0004, F.S., addressing the ability of expressway, bridge, transportation, and toll authorities to enter P^3s for projects increasing transportation capacity. Such authorities may sell or lease any transportation facility owned by the facility upon approval of the Legislative Budget Commission. The project may not preclude the ability of the authority or the private entity from increasing capacity on the project or other competing facilities and the P3 project must become property of the authority upon completion of the agreement.

Construction Aggregates

A new section of the Florida Statutes is created to form the Strategic Aggregates Review Task Force to evaluate the availability and disposition of construction aggregates defined as crushed stone, limestone, dolomite, limerock, shell rock, cemented coquina, and certain sands providing the basic materials for concrete, asphalt, and road base. The task force is to present its findings to the Governor and Legislature by February 1, 2008.

Local governments must consider the effect of local land-use decisions on the availability, transportation, and extraction of aggregate materials and no local government may impose a moratorium or moratoria on the mining of construction aggregate for more than 12 months duration.

Environmental permitting for limerock extraction is made eligible for the expedited permitting process established in s. 403.973, F.S., and FDOT is authorized to use special procurement practices in acquiring aggregate when necessary.

Aviation
Section 3 32.007, F.S., is amended to allow FDOT to fund up to 80 percent of the non-federal share of certain aviation development projects at publicly owned and operated airports with no scheduled commercial service. The Secure Airports for Florida's Economy Council is revised removing state agencies from the council. However, the agencies retain the ability to overrule any action of the council.

Miscellaneous Issues
Several miscellaneous issues are addressed in the bill:

- Sections 120.52, 349.03, and 349.04, F.S., are amended to revise Jacksonville Transportation Authority (JTA) membership and staffing, define JTA as an exempt 'agency' under ch. 120, F.S., and to grant JTA the authority to adopt rules.

- The amount of local matching funds required for projects funded through the Small Port Dredging program under s. 311.22, F.S., is reduced from 50 percent to 25 percent.

- Revisions to s. 316.2123, F.S., allow counties to allow the operation of all terrain vehicles on designated unpaved roads with speed limits less than 35 miles per hour during daylight hours.

- Provisions of ss. 3 16.605 and 320.061, F.S., related to the placement and legibility of vehicle license plates are revised to clarify prohibitions against obscuring or interfering with the legibility of license plates.

- Section 339.2819, F. S., is amended, revising the requirements of the Transportation Regional Incentive Program to allow the use of federal funds for the local match of public transportation projects.

- Under revisions to s. 339.55, F.S., the State Infrastructure Bank is authorized to make emergency loans to specified public transportation providers in declared disaster areas.

- A number of criteria are established for non-profit organizations desiring to contract with FDOT for youth work experience programs under s. 334.35 1, F.S.

- Local governments are provided authority to regulate wall murals by the creation of s. 479.156, F.S.

- The provisions of ch. 89-3 83, L.O.F., designating Red Road in Miami-Dade County as a state historic highway are revised to allow certain safety modifications provided no increase in the number of lanes is made.

- Section 341.071, F.S., is amended to require recipients of transit block grants to identify system improvements that would enhance profitability.

- 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. This bill also provides exceptions and prohibits certain acts in the sale of motor vehicles.

- Revisions to s. 348.0003, F.S., require the board of the Miami-Dade Expressway Authority to adhere to the financial disclosure requirements of s. 8, Art. II of the State Constitution.

- Section 348.754, F.S., is revised to allow the Orlando-Orange County Expressway Authority to implement a small business

economic development program for contracts between $200,000 and $500,000.

- The threshold established in s. 336.41, F.S., at which county construction contracts must be opened to competitive bidding is raised from $250,000 to $400,000.

Cross-references are corrected in ss. 163.3 177, 339.176, and 341.828, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 1039
Southwest Florida Water Management District

The bill increases the number of governing board members of the Southwest Florida Water Management District from 11 to 13 and revises the residency requirements.

It increases, from 1 to 2, the number of board members that reside in Polk County.

It requires one board member to be appointed at large from Sarasota and Charlotte Counties.

Finally, it specifies that Sarasota, Charlotte, Levy, Marion, Citrus, Sumter, Hernando, Lake, Hardee, DeSoto, or Highlands Counties may not have more than one member on the governing board.

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

● HB 1277
Residential Tenancies

The bill amends the landlord's available remedies in s. 83.595, F. S., to provide that if the landlord retakes possession after the early termination of the rental agreement, the landlord has the duty to exercise good faith in attempting to relet the premises. It requires that the landlord deduct from the balance due from the tenant any rent received by the landlord as a result of the reletting. The bill revises the definition of "rental agreement" and defines the term "early termination fee."

The bill also permits landlords to recover liquidated damages or early termination fees if they are provided for in the rental agreement. The liquidated damages and early termination fees are charged when the tenant gives notice of the early termination. The bill provides that this remedy is available only, if at the time the rental agreement was made, the tenant indicated his or her acceptance of liquidated damages or early termination fees by placing his or her signature or initials next to the provision in the rental agreement. If acceptance is not indicated, the liquidated damages and early termination fee remedies may not be imposed.

The bill provides that the landlord is entitled to both the liquidated damages and early termination fee if the total charged does not exceed an amount equal to two-month's rent.

In addition to the liquidated damages and early termination fees, the bill provides that the landlord may charge the tenant for any unpaid rent and other charges due under the rental agreement through the end of the month in which the landlord takes possession of the dwelling unit; and any rental concessions that the tenant has received up to the maximum of one month's rent.

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

• HB 1375
Affordable Housing

Comprehensive plans; plan elements
The bill clarifies that the housing element contained in the local comprehensive plan must identify adequate sites for affordable workforce housing. By July 1, 2008, each county that is not designated as an area of critical state concern, and for which the gap between the buying power of a family of four and the median county home sales prices exceeds $170,000, must adopt a plan to ensure affordable workforce housing, defined as housing that is affordable to natural persons or families whose total household income does not exceed 140 percent of the area median income, adjusted to household size. The county's failure to adopt an affordable workforce housing plan will result in the county being ineligible to receive any state housing assistance grants until the plan is adopted.

Development of Regional Impact
This bill provides a transportation concurrency exemption for certain affordable housing units in close proximity to employment centers. Specifically, the bill authorizes a local government and a developer of affordable workforce housing units in a project subject to the substantial deviation requirements governing a change in a development of regional impact, or subject to the statutory statewide guidelines and standards to determine review as a development of regional impact, to identify an employment center or centers located within 5 miles from the nearest point of the development of regional impact to the nearest point of the employment center. If at least half of the units are occupied by an employee or employees of an identified employment center or centers, all the affordable workforce housing units are exempt from transportation concurrency requirements, and the local government may not reduce any transportation trip-generation entitlements of an approved development-of-regional-impact development order. The employment center must employ at least 25 or more full-time employees.

The bill provides that all phase, buildout, and expiration dates for projects that are developmentsof-regional-impact and under active construction on July 1, 2007, are extended for three years regardless of any prior extension. The 3-year extension is not a substantial deviation, is not subject to further review, and must not be considered when determining if a subsequent extension is a substantial deviation requiring review as a development of regional impact.

The bill also creates an exemption from review as a substantial deviation for changes that permit the sale of an affordable housing unit to a person who earns less than 120 percent of the area median income, if a developer actively markets the unit for a minimum period of six months and is unable to close a sale to a qualified buyer in a lower income qualified class. A certificate of occupancy must have been issued for the unit, and the unit must be sold at a purchase price that is not greater than the purchase price at which the unit was originally marketed to a lower income qualified class. The new exemption may not be applied to residential units already exempt under s. 380.06(19)(b)7. and (i), and expires on July 1, 2009.

The bill amends statewide guidelines and standards for determining when certain developments are required to undergo development of regional impact review to remove a limitation restricting hotel or motel development accommodating 750 or more units, in counties with a population of 500,000 or more, to geographic areas specifically desig-

nated as highly suitable for increased threshold intensity in the approval of local comprehensive plans and the strategic regional policy plan. Hotel and motel development may be permitted in other locations but will still be subject to development of regional impact review if the number of units exceeds 750 or more.

Comprehensive plan amendments
The bill allows any local government that identifies within a comprehensive plan the types of housing development and conditions for which it will consider plan amendments which are consistent with the local housing incentive strategies required for participation in the State Housing Initiatives Partnership Program, to expedite consideration of those plan amendments. Requirements for consideration of the amendment are provided and the local government is authorized to hold only one public hearing which shall also be the plan amendment adoption hearing. Local government plan amendments which are consistent with the local housing incentive strategies required under s. 420.9076, F. S., are not subject to the twice per year limitation on the frequency of plan amendments required under s. 163.3 187(1), F.S.

Evaluation and appraisal of the comprehensive plan
The bill allows the appropriate local government to adopt a plan amendment in order to integrate a port comprehensive master plan with the coastal management element of the local comprehensive plan, notwithstanding the prohibition on the adoption of plan amendments until the evaluation and appraisal report update amendments have been adopted and transmitted to DCA. The port comprehensive master plan or the proposed plan amendment cannot have caused or contributed to the failure of the local government to comply with the requirements of the evaluation and appraisal report.

Affordable Housing Tax Deferral Program
The bill creates an affordable housing tax deferral program in ss. 193.307 - 197.3079, F.S., by authorizing a board of county commissioners or the governing authority of a municipality to adopt an ordinance to allow for the deferral of ad valorem taxes and non-ad valorem assessments if the owners of the property are engaging in the operation, rehabilitation, or renovation of affordable rental housing property. The ordinance must specify the percentage or amount of the deferral and the type and location of the affordable housing rental property, and the deferral is applicable only to taxes levied by the unit of government granting the deferral. Deferrals may not be granted for taxes and assessments levied for the payment of bonds or for taxes authorized by a vote of the electors, and any deferral granted remains in effect for the period for which it is granted regardless of any change in the authority of the county or municipality to grant the deferral.

The use of the property as affordable housing must be maintained over the deferral period or the total amount of deferred assessments, taxes and interest becomes due and payable on November 1 of the year in which the use of the property was changed. The bill establishes conditions under which a deferral may not be granted; establishes notice requirements; restricts the total amount of deferred taxes and assessments, together with interest, to not more than 85 percent of the assessed value of the property; and provides that deferred assessments and interest constitute a prior lien on the affordable rental housing property. An application process and an appeals process are created, and penalties

are provided for persons who willfully file incorrect information relating to a deferral.

Florida Housing Finance Corporation
The bill makes several revisions and clarifications relating to the duties and responsibilities of the Florida Housing Finance Corporation (corporation.) The corporation is deemed to be a state agency for purposes of the state allocation pool, can provide notice of internal review committee meetings by publication on an Internet website, and is not governed by the provisions of ch. 617, F.S. relating to corporations not for profit, but is governed by the requirements of ch. 420, part V, F.S. Outdated language relating to the authority of the corporation to enter into employee lease agreements with the Department of Management Services or the Department of Community Affairs is deleted, as is outdated language relating to the transfer of assets from the Florida Housing Finance Agency to the corporation in 1998.

As a condition of financing an affordable housing multifamily rental project, the corporation may require that an agreement be recorded in the official public records of the county in which the real property for the project is located. The agreement must require that the project be used for affordable housing for persons that meet specific income criteria. The recorded agreement is a state land use regulation limiting the highest and best use of the property for purposes of determining just value under s. 193.011(2), F.S.

The corporation is authorized to forgive a share of a loan to a nonprofit organization, if the loan is made from funds set aside for sponsors of housing for the elderly to make building preservation, health or sanitation repairs or improvements, or life-safety or security-related repairs or improvements. The nonprofit organization must be a sponsor of an affordable housing project for the elderly, and the project must have provided affordable housing to the elderly for 15 years or more. The share of the loan to be forgiven must be attributable to the units in the project that are reserved for extremely-low-income elderly tenants.

Community Workforce Housing Innovation Pilot Program (C WHIP)
The bill provides the corporation with rulemaking authority to create a loan application process for the CWHIP program. The application process must include selection criteria, an application review process, and a funding process. The corporation must also establish an application review committee that may include up to three private citizens representing the areas of housing or real estate development, banking, community planning, or other areas related to the development or financing of workforce and affordable housing.

The application selection criteria and review process must include a way for errors in the application or in responses to issues raised during the review process to be cured so long as no substantial change is made to the project. The review committee is authorized to approve or reject loan applications or responses due to insufficiency of information provided, and must make recommendations on program participation and funding to the corporation's board of directors. The board of directors must approve or reject the review committee's recommended participants, determine the tentative loan amount to be made available to each application selected for funding, and rank all of the approved applications. After all applications are ranked, the board of directors selects the program participants and deter-

mines the maximum loan amount for each participant.

The bill authorizes local governments to use State Housing Initiative Partnership (SHIP) program funds for the CWHIP program to assist persons or families whose total annual income does not exceed 140 percent of the area median income, adjusted for household size. In areas of critical state concern for which the Legislature has declared its intent to provide affordable housing, and in areas that were designated as areas of critical state concern for at least 20 years prior to the removal of the designation, local governments may use SHIP funds for the CWHIP program to assist persons or families whose total annual income does not exceed 150 percent of the area median income, adjusted for household size.

The bill requires that CWHIP funding be targeted to innovative projects where the difference between the area median income and the median sales price for a single-family home, and where population growth as a percentage rate of increase are the greatest. Projects must be funded in as many counties and regions of the state as is practicable, and priority funding consideration must be given to specified projects. Clarifications are made to the expedited plan amendment process for CWHIP projects and the adoption of CWHIP plan amendments is not subject to the twice per year limitation on the frequency of plan amendments under s. 163.3 187(1), F.S. An expedited process for approvals of development orders or development permits for CWHIP projects is required.

Local Affordable Housing Advisory Committees

The bill provides that membership in local affordable housing advisory committee is increased from 9 to 11 members by adding a citizen who represents employers within the jurisdiction, and a citizen who represents essential service personnel as defined in a local housing assistance plan. Local governments that receive a minimum allocation under the SHIP program may have an advisory committee with fewer members.

The bill authorizes the advisory committees to recommend comprehensive plan changes to their local governments. The committees must review the established policies and procedures, ordinances, land development regulations, and the adopted local comprehensive plan amendments every three years, and must submit a report to their local governments recommending and evaluating the implementation of affordable housing incentives. The committees may perform additional responsibilities related to affordable housing at the request of their local governments, including creating best management practices for the development of affordable housing in the community. Local housing and planning departments are directed to cooperatively staff the advisory committees.

Public Housing Authorities Self-Insurance Funds

The bill authorizes any two or more public housing authorities in the state to create a self-insurance fund for the purpose of self-insuring real or personal property against loss or damage from any hazard or cause, and against any loss consequential to such loss or damage, if the state requirements for local government self-insurance funds established in s. 624.4622, F.S., are met. Public housing authorities who are members of a self-insurance fund created under this provision are exempt from the assessments imposed under the insurance risk apportionment plan, the Florida Insurance Guaranty Association Act, and the Florida Hurricane Catastrophe Trust Fund.

Miscellaneous Provisions
The bill revises the corporation's annual reporting requirements to include a report on CWHIP addressing the success of the program in meeting the housing needs of the eligible areas. Also, all notes, mortgages, security agreements, letters of credit, or other instruments that arise out of, or that are given to secure the repayment of, loans issued in connection with the financing of the corporation's projects, are exempt from documentary stamp and intangible taxes. The cap on predevelopment loans made by the corporation is raised from $500,000 to $750,000, or the lesser of the development and acquisition costs for the project.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1472**

Beach & Shore Preservation
This bill amends the definition of public access for sandy beaches to provide that where the public has established an accessway through private lands to lands seaward of the mean high tide or water line by prescription, prescriptive easement, or any other legal means, development or construction shall not interfere with such right of public access unless a comparable alternative accessway is provided.

The bill allows the Department of Environmental Preservation (DEP) to issue permits for dune restoration projects that incorporate geotextile containers or similar structures and specifies the requirements governing the installation of these types of structures.

The bill provides that in any action alleging a taking of all or part of a property or property right as a result of a beach restoration project, in determining whether such taking has occurred or the value of any damage alleged with respect to the owner's remaining upland property adjoining the beach restoration project, the enhancement, if any, in value of the owner's remaining adjoining property of the upland property owner by reason of the beach restoration project shall be considered. If a taking is judicially determined to have occurred as a result of a beach restoration project, the enhancement in value to the owner's remaining adjoining property by reason of the beach restoration project shall be offset against the value of the damage, if any, resulting to such remaining adjoining property of the upland property owner by reason of the beach restoration project, but such enhancement in the value shall not be offset against the value of the property or property right alleged to have been taken. If the enhancement in value exceeds the value of the damage, if any, there shall be no recovery over against the property owner for such excess.

The DEP is directed to develop a sand source inventory which identifies offshore sand sources. Additionally, county commissions of coastal counties will be required to be notified when there is a proposal to use adjacent sand sources outside of the region.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1491**

Community Development Districts
This bill amends a number of provisions governing community development districts (CDDs or districts) in order to:

- Allow CDDs to be multi-county.
- Revise the definitions of the terms "cost", "water management and control facilities", and "water system."
- Require a petitioner to pay a filing fee and submit a copy of the petition to a

county only if the CDD will be located in an unincorporated area; the filing fee and a copy of the petition goes to the municipality if the CDD will be located within an incorporated area.

- Require a CDD located within multiple local governments' jurisdictions to pay a $15,000 filing fee to each jurisdiction.

- Require a CDD located across county boundaries to maintain records, hold meetings and hearings, and publish notices only in the county where the majority of the district's acreage lies.

- Allow public hearings on a petition for a new CDD only in counties and municipalities in which the proposed CDD will be located and municipalities that are contiguous to the proposed boundaries of the CDD.

- Limit those issues that may be addressed in an ordinance establishing a CDD to those matters that would be contained in a rule adopted by the Florida Land and Water Adjudicatory Commission (FLWAC) to establish a CDD, except for certain optional powers consented to by the commission.

- Require a petition to establish a CDD that will be located within 2 municipalities to be filed with FLWAC regardless of the size of the CDD.

- Require that platted lots be counted individually, with each lot rounded up to the nearest whole acre, for purposes of determining the number of voting units held by a landowner or a landowner's proxy in a CDD.

- Require at least 2 weeks notice of the qualifying period, as established by the supervisor of elections, for the election of board members.

- Provide a process to address a situation where there is no qualified elector for a seat on the board of a CDD.

- Eliminate a conflict of interest, effective October 1, 2007, for a board member, district manager, or other employee of the district who is employed by an entity affiliated with a landowner.

- Move the CDD budget process up one month, to June 15, and require that the budget reflect not only taxes and assessments, but also other revenues to the district.

- Require a CDD to record its disclosure documents and amendments to those documents in the property records of each county in which the district is located.

- Expand the special powers of a CDD to allow for the financing or construction of: districts roads and improvements to roads owned by or which will be conveyed to a local general-purpose government, or the state or federal government; street lights, alleys, landscaping and hardscaping (i.e., entry feature); the undergrounding of electric utility lines; and, any other project, facility, or service required by a governmental authority with jurisdiction in the district for the issuance of a development approval, zoning condition, or a permit within the CDD.

- Provide that a CDD can finance, construct and maintain projects, facilities or services required by a development approval, interlocal agreement; zoning condition or permit issued by a governmental authority with jurisdiction in the

district.

- Authorize a CDD to request the underground placement of utility lines by the local retail electric utility provider in accordance with the utility's tariff on file with the Public Service Commission.

- Authorize a CDD with the consent of the local government to construct and maintain site improvements related to school buildings which will be leased, sold, or donated to the school district.

- Allow a CDD to enforce deed restrictions pertaining to property outside the district pursuant to an interlocal agreement under ch. 163, F.S.

- Clarify that before a CDD board may adopt rules regarding the enforcement of certain deed restrictions, the majority of the board for residential districts must have been elected by qualified electors.

- Provide that non-ad valorem assessments levied to pay interest on bond anticipation notes are not assessments for purposes of the 30-year limitation on district assessments in s. 190.022, F.S.

- Allow the notice of the proposed amount of special assessments and maintenance special assessments, including the date and time of the hearing, prepared and delivered by the property appraiser to be used in lieu of the notice provisions in s. 197.3632(4)(b), F.S.

- Provide that special assessments authorized under ch. 170, F.S., relating to local municipal improvements, shall constitute a lien against real property which is coequal with ad valorem taxes until paid.

- Allow a CDD to use ch. 170, F.S., to foreclose a lien in favor of the district.

- Authorize a CDD board to use competitive solicitation, including a request for proposals or qualifications, when purchasing goods, supplies, materials, or construction services in certain instances and, if no response is received, to proceed with the purchase in the manner the board deems in the best interest of the district.

- Require a CDD wholly located in an unincorporated area and which meets the population standards for incorporation, as determined by the Department of Community Affairs, and satisfies the other requirements for incorporation in s. 165.061, F.S., to hold a referendum at a general election on whether to incorporate.

If approved by the Governor, these provisions take effect July 1, 2007, except as otherwise expressly provided.

● SB 1824

Mortgages

The bill provides greater consumer protections related to the mortgage loan application process and provides greater compliance and enforcement authority for the regulator, the Office of Financial Regulation (OFR). The bill:

- Requires mortgage brokers and lenders offering adjustable rate mortgages to provide borrowers with a copy of the *Consumer Handbook on Adjustable-Rate Mortgages,* which explains the different loan products and the potential risks associated with these products.

- Requires that brokers disclose to borrowers the amount of payment that the brokers will receive from lenders no later than three business days after brokers become

aware of the exact amount, and no later than three business days prior to closing.

- Requires the good faith estimate to be signed and dated by the mortgage broker or lender and borrower.

- Requires borrowers to be notified of any material changes to the terms of a previously offered loan within three days of being made aware of the change and no later than three business days before closing. The licensee bears the burden of proving that the notice was provided and that the borrower accepted the new terms.

- Permits a borrower to waive the right to notice if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and provides a written statement meeting certain criteria to the broker regarding the emergency. Permits imminent foreclosure to be a basis for a personal financial emergency for which a waiver of notice is sought.

- Authorizes the OFR to pursue an enforcement action against mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act (RESPA) or the federal Truth-in-Lending Act.

- Authorizes the OFR to impose an administrative fine of up to $5,000 for each separate violation of ch. 494, part I, F.S.

- Allows the OFR to charge a fee, not to exceed $50, for mortgage brokerage applicants to review their mortgage brokerage test results.

The bill also makes mortgage fraud a third-degree felony. Under the bill, a person commits mortgage fraud if, with the intent to defraud, the person knowingly:

- Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intent that such information will be relied upon by a party to the mortgage lending process;

- Uses or facilitates the use of any material misstatement, misrepresentation, or omission, with the intention that the misstatement, misrepresentation, or omission will be relied on by a party to the mortgage lending process;

- Receives any proceeds or other funds in connection with a mortgage lending process that the person knew resulted from such a misstatement, misrepresentation, or omission; or

- Files with the clerk of the court for any county in Florida a document related to a mortgage lending process which contains a material misstatement, misrepresentation, or omission.

Finally, the bill provides that any mortgage fraud violation is considered to have been committed in the county in which the real property is located or in any county in which a material act was performed in furtherance of the violation. The provision will allow flexibility for the venue for prosecution and investigation.

If approved by the Governor, these provisions take effect October 1, 2007.

● SB 1844
Homeowner's Associations

The bill provides for lien foreclosures by homeowner's associations. It provides that a homeowner may recover from the previous owner any amount that the present owner

has paid on an assessment. It provides for the assessment of interest and late fees for delinquent assessments. It provides that unpaid assessments earn interest at the rate provided in the declaration of covenants or the bylaws of the association, but that rate may not exceed 18 percent. This provision is identical to the provisions interest accruing on unpaid assessments for condominiums under ch. 718, F. S.

The bill requires that the homeowner's association must give the homeowner a written notice or demand for the past due amounts at least 45 days before bringing an action to foreclose on the lien. It specifies the addresses to which the written notice must be sent, including the parcel address and the last known address of the homeowner if it is not at the parcel address. The bill would permit the homeowner's association to recover reasonable attorney's fees in a lien foreclosure action or in an action to recover a money judgment.

The bill provides that, if unit owner files with the court a written "qualifying offer" to pay all amounts due plus interest, the foreclosure action is stayed for a period not to exceed 60 days in order to permit the homeowner to pay the delinquent amount. The bill specifies requirements for the written qualifying offer, including prohibiting the homeowner's association from adding any legal fees incurred by the association during the period of the stay. The bill permits the association to add costs to defend in a mortgage foreclosure action, in a bankruptcy proceeding in which the owner is a debtor, or in response to a filing by another party in the lien foreclosure action.

The bill provides that if the parcel owner breaches the qualifying offer, the stay is vacated and the association may proceed with the foreclosure action for the amount in the qualifying offer plus any amounts accruing after the date of the qualifying offer.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1972**

Leases/Private Property/ State Agency

This bill provides for state agency use of invitations to negotiate when soliciting for leased space in privately owned buildings, and designates requirements for the use of invitations to bid, requests for proposals, and invitations to negotiate. An invitation to negotiate may be used only when an invitation to bid or a request for proposal will not result in the best value to the state.

The bill makes permanent four provisions that would otherwise expire:

- A requirement that the Department of Management Services (DMS) annually publish a master leasing report concerning agency leases.
- A requirement that lease terms include certain specified clauses.
- A requirement that the DMS may not approve agency amendment of standard lease terms unless a comprehensive financial analysis demonstrates that the amendment is in the state's long-term best interest.
- A requirement that the DMS annually update its plan for implementing stated legislative policy of using state-owned buildings before leasing privately-owned buildings.

The bill requires the DMS to implement a strategic leasing plan for state agencies, and

allows the DMS to use the services of a tenant broker in implementing the plan. The bill allows agencies to use the services of a tenant broker in procuring leased space if the tenant broker is an awarded vendor on a term contract that contains specified provisions. Agencies may use the services of the current tenant broker until October 15, 2007, with the prior approval of the DMS. Payments made to a tenant broker must be made by the state, not a lessor, subject to appropriation by the Legislature.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 2038**

Real Property Electronic Recording

This bill adopts the Uniform Real Property Electronic Recording Act, which begins the process of electronic recording of real property documents with county recorders. The bill provides county recorders the legal authority to prepare for electronic recording of real property instruments, and authorizes county recorders to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these records. The bill equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality (paper document or manual signature) is satisfied by an electronic document and signature.

This bill creates an Electronic Recording Advisory Committee (Committee), with which the Department of State consults when adopting standards to implement electronic recording. The Committee shall consist of nine members: five members appointed by the Florida Association of Court Clerks and Comptrollers, one of whom must be an official from a large urban charter county where the duty to maintain official records exists in a county office other than the clerk of court or comptroller; two members appointed by the Florida Land Title Association; one member appointed by the Florida Bankers Association; and one attorney appointed by the Real Property, Probate, and Trust Law Section of The Florida Bar. The bill provides that the Committee shall terminate on July 1, 2010, and that the Florida Association of Court Clerks and Comptrollers shall provide administrative and technical support to the Department of State and the Committee.

Lastly, the bill provides that certain electronic documents are subject to the same excise tax as paper documents, and that the return that states the actual consideration paid for an interest in real property, which must be filed prior to the recordation of any deed transferring an interest in real property, may be filed electronically.

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

- **SB 2052**

Environmental Protection

This bill amends various provisions relating to solid and hazardous waste management. Specifically the bill:

- Deletes the provisions relating to Keep Florida Beautiful, Inc.
- Abolishes the Wildflower Advisory Council that was created within Keep Florida Beautiful, Inc. This council administered the wildflower grant and education programs that are funded by the use fees from the Wildflower License Plate. These use fees will now be distributed to the Florida Wildflower Foundation, an IRS 501(c)(3) corporation to administer the wildflower grant and education programs.

- Transfers the Adopt-a-Shore Program that was created within Keep Florida Beautiful to the Department of Environmental Protection (DEP).

- Alphabetizes the definitions used in the Solid Waste Management Act. Definitions that are not used were deleted and definitions found elsewhere in the act were moved to the definitions section.

- Deletes obsolete language relating to Class II landfills and biomedical incinerators from the Solid Waste Management Act. There are no Class II landfills being permitted and biomedical incinerators are regulated by the DEP under its air program.

- Allows the DEP to exempt, by rule, certain solid waste management facilities from the permit requirements if that facility is not expected to pose any significant threat to the environment or to public health. An example would be yard trash processing facilities.

- Clarifies that a permit to operate a solid waste management facility may not be transferred by the permittee without the consent of the DEP. To transfer a permit, the permittee must show proof of any financial assurance required by the department. The new permittee must agree to accept responsibility for any corrective actions required as a result of a department enforcement order or a consent order.

- Provides for the management of hurricane vegetative debris. To the greatest extent practicable, recycling and reuse of storm-generated vegetative debris is encouraged.

- Broadens the innovative grant program to allow more projects to qualify.

- Deletes the provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities. These operators are subject to the DEP's rules relating to air permits. The DEP has never had a separate solid waste training program for these operators.

- Amends the definition of "waste tire" to exclude solid rubber tires and those that cannot be separated from the rim.

- Reduces the local match requirements for local governments to receive hazardous waste collection grants. The match requirement may be waived under certain circumstances.

- Repeals the Statewide Multipurpose Hazardous Waste Facility Siting Act. This act has never been used.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 7123

Energy

The bill creates the Energy Policy Governance Task Force to recommend a unified approach to state energy policy including energy conservation and research, development, and the deployment of alternative and renewable energy technology. The task force is to consist of: two members appointed by the President of the Senate; two members appointed by the Speaker of the House of Representatives; two members appointed by the Governor; the Commissioner of Agriculture or a designee; the Secretary of the Department of Environmental Protection or a designee; a vice-president for re-

search designated by the Council of Vice-Presidents for State University Research; the Chair of the Florida Energy Commission or a designee; the Chair of the Florida Public Service Commission or a designee; and the Public Counsel. Task force members must be appointed no later than August 1, 2007. The task force must submit its report to the Governor, President of the Senate, and Speaker of the House of Representatives no later than February 1, 2008.

The bill provides a renewable energy source exemption on real property in which solar energy devices are installed and operated. Such exemption shall only apply on devices installed after July 1, 2007.

The bill creates a new Farm-to-Fuel Grants Program within the Department of Agriculture and Consumer Services (DACS). In reviewing grant applications, DACS is required to: consult with and solicit input from the Department of Environmental Protection; consult with persons having expertise in renewable energy technologies, and for the economic feasibility, consult with the Office of Tourism, Trade and Economic Development. Subject to appropriation, the bill creates new incentives for the production and retail sale of biofuels beginning after January 1, 2008, the Biofuel Retail Sales Incentive Program and the Florida Biofuel Production Incentive Program.

The bill establishes a Green Schools Pilot Project to meet specified energy ratings; requires that all newly constructed county, municipal, and public community college buildings meet a specified energy-efficiency rating; establishes minimum standards (subject to availability) for total diesel fuel purchases for use by state-owned diesel vehicles and equipment and (subject to availability) for use by school districts. The bill creates, subject to specific appropriation, the Florida Energy, Aerospace, and Technology Fund to identify business and investment opportunities in the area of alternative energy development and aerospace industry expansion.

The bill amends statutes on energy efficiency and conservation in state-owned buildings. It revises criteria for energy conservation and sustainability of state-owned buildings; requires buildings constructed and financed by the state to meet an approved rating system; requires state agencies to identify state-owned buildings that are suitable for a guaranteed energy performance savings contract; requires the Department of Management Services (DMS) to evaluate identified facilities and develop an energy efficiency project schedule; and revises provisions relating to guaranteed energy performance savings contracts to allow DMS and the Chief Financial Officer greater authority to review and approve contracts for state agencies that produce an energy related cost savings.

The bill provides for transfer of the corporate income tax credit based upon investment in renewable energy technology. The bill provides for a renewable energy production credit for the producer of electricity when such use of the electricity decreases the amount of electricity that would otherwise be purchased by the producer. It provides that the taxpayer's use of the renewable energy production credit shall not reduce the amount of alternative minimum tax credit pursuant to s. 220.186, F.S.

The bill provides for reservation of solar rebates and revises the rebate eligibility and application requirements for solar photovoltaic systems.

The bill requires the Department of Environmental Protection to develop greenhouse gas inventories that account for annual greenhouse gases emitted to and removed from

the atmosphere, and forecast gases emitted and removed. The inventory must also include emissions which are considered carbon neutral.

The bill provides for the construction of a research and demonstration cellulosic ethanol plant to be operated as a satellite facility by the Institute of Food and Agricultural Services (IFAS) at the University of Florida.

The bill directs the Florida Building Commission to convene a workgroup to: develop a model residential energy efficiency ordinance; review the cost-effectiveness of energy-efficiency measures in the construction of residential, commercial, and government buildings; and, by January 1, 2008, develop and implement a public awareness campaign that promotes energy efficiency and the benefits of building green.

The bill requires several studies and reports:

1. the Public Service Commission, in conjunction with the Florida Energy Commission, the Department of Environmental Protection, and the Department of Agriculture and Consumer Services, is required to recommend a Renewable Portfolio Standard;

2. the Public Service Commission, in conjunction with the Florida Energy Commission, the Department of Environmental Protection, and the Department of Agriculture and Consumer Services, is required to recommend an energy efficiency and solar energy incentive, including a public benefits fund and net metering;

3. the Public Service Commission is required to report the methods it uses to evaluate utilities' conservation programs;

4. the Department of Agriculture and Consumer Services in conjunction with the Department of Environmental Protection is required to recommend an appropriate Florida Loan Guarantee Program for cellulosic ethanol facilities;

5. the Department of Community Affairs is required to convene a work group to identify, review, and report on new or updated energy conservation standards for certain products that consume electricity.

Finally, the bill revises provisions under the Power Plant Siting Act and the Transmission Line Siting Ac that are considered technical corrections for administrative purposes.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 7203**

Growth Management

The bill makes a number of changes relating to growth management, including the areas of financial feasibility, transportation concurrency, school concurrency, port master plans, developments of regional impact (DRIs), transportation concurrency backlog areas, tax increment financing, and an alternative [to] state review process pilot program.

Comprehensive Plans and Financial Feasibility

The definition of "financial feasibility" is revised to provide that a local comprehensive plan is financially feasible for purposes of transportation and school concurrency if the adopted level-ofservice standards are achieved and maintained by the end of the appropriate planning period. The deadline for local governments to adopt and transmit an update of the capital improvements schedule which meets financial feasibility requirements is extended by one year, to December 1, 2008. Also, penalties for failing to update

the capital improvements schedule do not take effect until December 1, 2008.

This bill also provides that, at a local government's discretion and notwithstanding s. 163.3 180, F.S., a comprehensive plan is deemed financially feasible with respect to transportation facilities, as revised by a plan amendment, if the amendment is supported by a DRI development order condition or binding agreement that satisfies the requirements of s. 163.3180(12), F. S. Similarly, the comprehensive plan will be deemed financially feasible for transportation concurrency if a plan amendment is supported by a binding agreement that is consistent with s. 163.3 180(16), F.S., and the property subject to the amendment is located in an area designated for certain types of urban development and the binding agreement is based on the maximum amount of development allowed under the map amendment.

Transportation Concurrency
Under this bill, local governments are authorized to waive transportation concurrency in an urban service area that has been designated as a transportation concurrency exception area (TCEA) and includes lands appropriate for compact urban development. The land included in the TCEA may not exceed the amount of land needed to accommodate the projected population growth at densities consistent with the comprehensive plan for a 10-year period. The TCEA must also be served or planned to be served with public facilities.

The roles of the Department of Community Affairs (DCA or the state land planning agency) and the Florida Department of Transportation (FDOT) are revised, relating to the assessment and mitigation of impacts to Strategic Intermodal System (SIS) facilities. The proportionate-sharecontribution language for multiuse DRIs in s. 163.3 180(12), F.S., is broadened to include DRIs, Florida Quality Developments, and certain optional sector plans. Proportionate fair-share mitigation under s. 163.3 180(16), F.S., which applies to sub-DRIs may be used for "pipelining" or multiple transportation improvements reasonably related to the development and those improvements may address one or more modes of travel. This bill expressly limits proportionate share mitigation and proportionate fair-share mitigation to the impacts a development has on a transportation system and this does not include reducing or eliminating backlogs.

School Concurrency
The bill allows a development to move forward even if there is inadequate school capacity as long as "accelerated facilities" are included in years 4 or later of the capital improvements schedule, or will be included in the next update of the capital improvements schedule, or there is a binding agreement with the school district to construct these facilities. The cost of the accelerated facility must be equal to or greater than the development's proportionate share. The developer shall receive impact fee credits usable within the attendance zone where the accelerated facility is constructed or in a contiguous attendance zone once the developer conveys the school district to the school district.

Plan Amendments to Integrate Port Master Plans
The bill allows the appropriate local government to adopt a plan amendment in order to integrate a port comprehensive master plan with the coastal management element of the local comprehensive plan, notwithstanding the prohibition on the adoption of plan amendments until the evaluation and appraisal report update amendments have

been adopted and transmitted to DCA. The port comprehensive master plan or the proposed plan amendment cannot have caused or contributed to the failure of the local government to comply with the requirements of the evaluation and appraisal report.

Developments of Regional Impact (DRI)

The bill provides that all phase, buildout, and expiration dates for DRI projects that are under active construction on July 1, 2007, are extended for three years regardless of any prior extension. The 3-year extension is not a substantial deviation, is not subject to further review, and must not be considered when determining if a subsequent extension is a substantial deviation requiring review as a development of regional impact.

Alternative [to] State Review Process Pilot Program

The bill designates Pinellas and Broward Counties, the municipalities within those two counties, and the Cities of Jacksonville, Miami, Tampa, and Hialeah as pilot communities. Municipalities within the pilot counties may elect, by a super majority vote, not to participate in the pilot program. These pilot communities will follow an alternate, expedited process for plan amendments that provides for limited state agency review. The pilot communities will transmit plan amendments, along with supporting data and analyses to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Comments from state agencies may include technical guidance on issues of agency jurisdiction as it relates to ch. 163, part II, F.S., the Growth Management Act. Comments are due back to the local government proposing the plan amendment within 30 days of receipt of the amendment.

Following a second public hearing that shall be an adoption hearing on the plan amendment, the local government shall transmit the amendment with supporting data and analyses to DCA and any other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3 184(1)(a), F.S., or DCA may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. DCA's challenge is limited to those issues raised in the comments by the reviewing agencies. The bill explicitly states the Legislature strongly encourages DCA to focus any challenge on issues of regional or statewide importance. State agencies are prohibited from promulgating rules to implement the pilot program.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to submit a report to the Legislature and the Governor by December 1, 2008, regarding reduced state oversight of local comprehensive planning in urban areas. The report and its recommendations must address specific, identified issues. OPPAGA shall consult with specified entities while preparing the report and recommendations. Four full-time positions are established in the Division of Community Planning in DCA to provide technical assistance and advice to state and local governments regarding growth-related issues and compliance with ch. 163, F.S.

Transportation Concurrency Backlog Areas

This bill allows local governments to create, through an interlocal agreement, a transportation concurrency backlog area for the purpose of using tax increment financing to fund the construction and maintenance of transportation improvements to resolve backlog and deficiency issues. The governing board of the county or municipality would comprise the authority's membership and de-

velop and implement a plan to eliminate all backlogs within its jurisdiction. The plan must identify all roads designated as failing to meet concurrency requirements and include a schedule for financing and construction to eliminate the backlog within 10 years of plan adoption. The plan is not subject to the twice-per-year limitation on comprehensive plan amendments.

To fund the plan's implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25 percent of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financially feasible for purposes of calculating concurrency. The authority is dissolved upon completion of all backlogs.

Tax Increment Financing
The bill authorizes 2 or more counties, or at least one county and one or more municipalities, to enter into an interlocal agreement establishing a tax increment area that will generate revenue for the purchase of conservation lands. It also allows a water management district in which the conservation lands are located to enter into the interlocal agreement if the district contributes ad valorem revenues for the purchase.

The bill provides minimum requirements for the interlocal agreement. DCA is required to review the boundary of a tax increment area to determine whether the proposed purchase of conservation lands will benefit property owners within the boundary and serve a public purpose. Before any of the identified conservation lands are purchased, the DEP must determine whether the purchase is sufficient to provide additional recreational and ecotourism opportunities for residents in the tax increment area.

The tax increment shall be determined annually, but may not exceed 95 percent of the difference in ad valorem taxes as provided in s. 163.3 87(1)(a), F.S. Tax increment revenues are to be paid into a separate reserve account. These tax increment revenues may be spent to purchase the identified conservation lands only if all parties to the interlocal agreement approve the purchase price. There is an interest penalty for failure to pay the tax increment revenues into the separate reserve account as required by the interlocal agreement. The tax increment revenues may be bonded, but revenue bonds are payable solely out of revenues pledged to and deposited in the separate reserve account.

Miscellaneous
The bill extends the duration of certain development agreements between a local government and a developer from 10 to 20 years to coincide with longer-term concurrency management systems that, under existing law, range from 10-15 years.

This bill provides conservation easements shall survive the issuance of a tax deed.

Also, the bill provides DCA with rulemaking authority to implement a provision in the General Appropriations Act relating to the distribution of Local Update Census Addresses (LUCA) technical assistance grants.

This bill includes airport passenger terminals and concourses, air cargo facilities, and hangars for the maintenance or storage of aircraft in the list of public transit facilities that are exempt from concurrency requirements.

If approved by the Governor, these provisions take effect July 1, 2007.

CARLTON FIELDS

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2007
Florida Legislature
Post-Session Report

Health Care & Health Insurance

HEALTH CARE & HEALTH INSURANCE

- **HB 97**

Medicare Supplement Policies

The bill redefines the term "Medicare supplement policy" for purposes of the Florida Medicare Supplement Reform Act (ss. 627.671-627.675, F.S.), to exclude from regulation under this act, a policy or plan of one or more employers that have at least 50 employees at issue, or trustees of a fund established by one or more employers for employees or former employees, if, upon termination of eligibility, group members age 65 or older are offered continuation of coverage under the group plan or a conversion policy that has the same benefits as a Medicare Supplement policy.

By excluding policies or plans for Medicare supplement insurance provided to employers from the definition of "Medicare supplement policy" (whether the policy was issued in Florida or issued to an out-of-state group) the state Medicare supplement requirements of part VIII of chapter 627, F.S., would not apply to such policies or plans. However, if the Medicare supplement policy is issued to an employer in Florida, the provisions of the Insurance Code that apply to insurance policies in general and to "health insurance" policies in particular, other than those in ch. 627, part VIII, F.S., would continue to apply. For example, rates and policy forms for health insurance are subject to filing and approval by the OIR pursuant to ss. 627.410 and 627.411, F.S. If the policy is issued to an employer outside of Florida, the department would not have regulatory authority to assist Florida insureds who have problems or complaints with the insurer. However, any policy issued to such an employer would still be required to comply with the applicable laws of the state where the master group policy is issued.

Vice Chair Ed Hooper, center, R-Clearwater, helps guide the Committee on Healthy Families during an opening day meeting. (House Photo by Mark Foley)

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 246**

Certificates of Need/
Level I/Cardiology Services

The bill allows the holder of a certificate of need for a newly licensed hospital to apply for and be granted certification for Level I adult interventional cardiology services regardless of whether rules relating to Level I programs have been adopted by the Agency for Health Care Administration, as long as the following criteria are met: the hospital must be a newly licensed hospital with a certificate of need and located in a former hospital; the former hospital must have provided a minimum of 300 adult inpatient and outpatient diagnostic cardiac catheterizations for the most recent 12-month period; and the newly licensed hospital must have a formalized, written transfer agreement with a hospital that has a Level II program, including written transport protocols to ensure transfer within 60 minutes. A hospital that meets the

requirements may apply for certification before taking possession of the former hospital. The effective date of the Level I program status will be concurrent with the effective date of the newly issued hospital license.

If approved by the Governor, these provisions take effect July 1, 2007

- **SB 248**

Clinical Nursing Specialties

The bill defines "clinical nurse specialist practice" and defines "clinical nurse specialist" as any person licensed in Florida to practice professional nursing and certified in clinical nurse specialist practice. Procedures are specified for a nurse to be certified as a clinical nurse specialist. The bill revises the restrictions on the use of protected nursing titles and abbreviations to include "Clinical Nurse Specialist," "Certified Registered Nurse Anesthetist," and "Certified Nurse Midwife."

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 455**

Organ & Tissue Donation

The bill transfers responsibility for maintaining the organ and tissue donor registry from the Agency for Health Care Administration to the Florida Coalition on Donation, Inc., an existing private non-profit corporation established by Florida's certified organ procurement organizations. Costs to maintain the registry and for educational purposes aimed at increasing the number of organ and tissue donors are paid for by funds from the voluntary contribution of $1 from driver's license applicants and operators of motor vehicles, mopeds, motorized bicycles, and mobile homes, collected by the Department of Highway Safety and Motor Vehicles.

The bill designates the organ and tissue donor registry required to be maintained by the coalition as the "Joshua Abbott Organ and Tissue Donor Registry." The bill provides specific duties for the coalition including operating and maintaining the donor registry and developing and implementing, with the Department of Highway Safety and Motor Vehicles, a coordinated program to allow individuals to make anatomical gifts. The bill requires the coalition to comply with Florida's Open Government laws.

The bill clarifies the criteria under which persons may make anatomical gifts and provides technical revisions to the Uniform Donor Card. The bill requires the agency to continue to maintain oversight and certification responsibilities regarding organ procurement organizations and to assess fees for this purpose. The bill renames the Florida Organ and Tissue Donor Education and Procurement Trust Fund as the Florida Organ and Tissue Procurement Trust Fund.

The bill appropriates $607,000 in nonrecurring funds from the Florida Organ and Tissue Procurement Trust Fund to the Agency for Health Care Administration to contract with the Florida Coalition on Donation for the orderly transition of the organ donor registry.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 543**

Pharmacist Kevin Coit Memorial Act

The bill creates the Pharmacist Kevin Coit Memorial Act. The bill authorizes a Florida-licensed pharmacist to administer influenza virus immunizations to adults under a protocol with a supervisory Florida-licensed osteopathic or medical physician. The protocol must contain specific procedures for addressing any unforeseen allergic reaction to

the immunization. The bill establishes requirements for a pharmacist seeking to immunize patients, including:

- Maintenance of at least $200,000 of professional liability insurance;
- Maintenance of patient records using the same standards for confidentiality as for other patient records;
- Entering into a protocol with a supervising physician which specifies certain terms and conditions;
- Written approval to administer vaccinations from the pharmacy owner;
- Obtaining training and immunization certification approved by the Board of Pharmacy in consultation with the Board of Medicine and the Board of Osteopathic Medicine; and
- Completion of 20 hours of continuing education classes approved by the Board of Pharmacy, including instruction in safe and effective administration of influenza virus immunizations and potential allergic reactions to influenza virus immunizations.

The bill creates a task force for the study of biotech competitiveness within the Governor's Office of Tourism, Trade, and Economic Development and provides its duties and responsibilities. The task force is required to report its findings to the Governor and Legislature by January 1, 2009.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 590**

HMO Contract/
New Subscriber's Rights

This bill amends subsection (25) of section 641.31, F.S., to expand the right of a subscriber covered under a HMO contract who is a resident of a continuing care facility or a retirement facility, to be referred to that facility's skilled nursing unit or assisted living facility. The bill deletes the current requirement that the HMO primary care physician make a determination that such care is in the best interests of the subscriber. Instead, the bill requires that such referral be requested by the subscriber and agreed to by the facility, if the primary care physician finds that such care is medically necessary. The bill retains the requirements that the facility agree to be reimbursed at the HMOs contract rate negotiated with similar providers for the same services and supplies; and that the facility meet all guidelines established by the HMO related to quality of care, utilization, referral authorization, risk assumption, use of the HMOs network, and other criteria applicable to providers under contract for the same services and supplies. The bill further requires that HMOs provide in writing a disclosure of such rights to new subscribers who reside at a continuing care facility or retirement facility, including the right to use a specified grievance process in the event their request to be referred to the skilled nursing unit or assisted living facility at their place of residence is not honored.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 650**

Osteopathic Physicians

The bill combines existing language for obtaining a license by examination and a license by endorsement to practice osteopathic medicine in Florida into the general licensure

requirements for osteopathic physicians. In addition to the current licensure requirements for persons to practice osteopathic medicine, the bill requires applicants to not have received less than a satisfactory evaluation from an internship, residency, or fellowship-training program. The evaluation must be provided by the director of medical education from the medical training facility.

The bill revises requirements for the registration of persons wishing to practice osteopathic medicine as residents, interns, or fellows in training programs in Florida so that they must register before commencing the training program. The registrants must pay a fee, upon annual renewal of the registration, of no greater than $300 as set by the Board of Osteopathic Medicine. The bill revises the penalty for certain criminal offenses applicable to the registration of residents employed to practice osteopathic medicine. Under the revised criminal offense, the hospital or administrator must willfully fail to register a resident or furnish the required information to be liable for the offense and is subject to imposition of penalties applicable to a first-degree misdemeanor rather than a second-degree misdemeanor.

The bill repeals s. 459.006, F.S., relating to licensure by examination, and s. 459.007, F.S., relating to licensure by endorsement.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 666**

Fiscal Intermediary Services Organizations/Health Care

The laws regulating health maintenance organizations (HMOs) also provide for the regulation of fiscal intermediary services organizations (FISOs) by the Office of Insurance Regulation. The law is designed to protect funds received from an HMO and held by these entities, which have an obligation to distribute those funds to health care providers who contract with the HMO.

The bill revises the definition of entities that must be registered as a FISO by deleting the exemption for entities that are owned, operated, or controlled by certain licensed entities. Generally, under the provisions of the bill, only the licensed entities themselves would be exempt, including hospitals, authorized insurers, third party administrators, prepaid limited health service organizations, and HMOs. The current exemption for physician group practices would be limited to group practices providing services under the scope of licenses of the members of that group practice. The bill exempts from the FISO registration and regulatory provisions not-for-profit corporations that provide health care services directly to patients through employed, salaried physicians and that are affiliated with an accredited hospital licensed in Florida from the FISO registration and regulatory provisions. The bill exempts FISOs owned by third-party administrators (TPAs) from the surety bond requirements; however, the FISO would be subject to the other FISO requirements in the bill.

The bill further requires FISOs to comply with certain statutory requirements that apply to HMOs relating to payment of claims, including the prompt payment of claims; paying claims for which treatment authorization procedures have been followed; and requirements for adverse determinations of claims. In addition, the Office of Insurance Regulation would be required to periodically examine their operations and to take remedial action when necessary.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 682**

Nursing Facilities

The bill changes the frequency of visits to nursing facilities by quality-of-care monitors from quarterly to annually, however, if a nursing facility requests quarterly visits by quality-of-care monitors the Agency for Health Care Administration must continue to provide quarterly visits. It requires quarterly visits by quality-of-care monitors for conditionally licensed nursing facilities and visits for other nursing facilities as directed by the agency. The bill authorizes nursing facilities having a standard license to develop a plan to provide training for certified nursing assistants. The bill deletes the requirement for nursing facilities to submit an adverse incident report to the agency within one day after an adverse incident is reported to the facility's risk manager. The risk manager for the facility will determine whether an incident is an adverse incident. The bill provides that the most recent survey is considered a licensure survey for purposes of future survey scheduling. The bill clarifies that compliance with federal posting standards satisfies state posting standards relating to staff on duty.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 770**

Physician Workforce Assessment & Development

The bill expresses legislative intent, which recognizes that physician workforce planning is an essential component of ensuring that there is an adequate and appropriate supply of well-trained physicians to meet Florida's future health care service needs.

The bill requires the Department of Health (DOH) to serve as a coordinating and strategic planning body to actively assess Florida's current and future physician workforce needs and work with multiple stakeholders to develop strategies and alternatives to address current and projected physician workforce needs. The DOH must maximize the use of existing programs under the DOH and other state agencies and coordinate governmental and nongovernmental stakeholders and resources in order to develop a state strategic plan and assess the implementation of the strategic plan. The bill specifies a variety of functions the DOH must undertake as part of developing the strategic plan. The DOH must maintain a database to serve as a statewide source of data concerning the physician workforce.

The bill requires each Florida-licensed allopathic or osteopathic physician, in conjunction with the renewal of his or her license under procedures adopted by the DOH, to furnish specified information to the DOH in a physician survey. The bill lists the information for inclusion in the physician survey to be developed by the DOH. The DOH is granted rulemaking authority to develop the physician survey.

The DOH must issue a nondisciplinary citation to any Florida-licensed allopathic or osteopathic physician who fails to complete the survey within 90 days after the renewal of his or her license to practice as a physician. The citation must notify a physician who fails to complete the required survey that his or her license will not be renewed for any subsequent licensure renewal unless the physician completes the survey. In conjunction with issuing the license-renewal notice, the DO11 must notify each allopathic or osteopathic physician who has failed to complete the survey at the licensee's last known address of record with

the DO11, of the requirement that the physician survey be completed prior to the subsequent license renewal. At any subsequent license renewal, the DO11 may not renew the license of any allopathic or osteopathic physician, until the required survey is completed by the licensee.

Each year, the DO11 must analyze the results of the required physician survey and determine by geographic area and specialty the number of physicians who:

- Perform deliveries of children in Florida;
- Read mammograms and perform breast-imaging-guiding procedures in Florida;
- Perform emergency care on an on-call basis for a hospital emergency department;
- Plan to reduce or increase emergency on-call hours in a hospital emergency department; or
- Plan to relocate their allopathic practice or osteopathic practice outside of Florida.

The DO11 must report its findings to the Governor and the Legislature by November 1 of each year.

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

● SB 992
Health Care Providers Licensure

The bill conforms the Florida Statutes to legislation enacted during the 2006 Regular Session relating to health care providers regulated by the Agency for Health Care Administration. The bill amends and repeals those portions of the specific licensure statutes for health care facilities and services that are now covered under ch. 408, part II, F.S. Some of the areas affected by the changes are license fees; the license application process; payment of late fees; inspections; the establishment of procedures and rules for the electronic transmission of required information; procedures for the change in ownership; background screening; unlicensed activity; administrative fines; moratoriums and emergency suspensions; license denial or revocation; injunctive proceedings; fees and fines to be deposited in the Health Care Trust Fund; and license duration. The bill specifies in the various specific licensure statutes that the provisions of ch. 408, part II, F.S., apply.

The bill also makes numerous changes to statutory cross-references to reflect the movement of ch. 400, parts III, VII, and V, F.S., to ch. 429, parts I, II, and III, F.S., and the resulting renumbering of the parts in ch. 400, F.S.

The bill expands an exemption from clinic licensure for entities that provide health care services by licensed practitioners solely within a hospital. The bill provides an exemption from clinic licensure under the Health Care Clinic Act for orthotic and prosthetic clinical facilities that are wholly owned, directly or indirectly, by a publicly traded corporation. The bill defines a publicly traded corporation to mean one that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 1007
Physician Assistants/Prescriptions

The bill allows a supervisory physician to delegate the authority to dispense drugs to a phy-

sician assistant. The authority to dispense may be delegated only by a supervising physician who is registered as a dispensing practitioner as required by Florida law. The physician assistant is not required to register as a dispensing practitioner. The physician assistant must note the dispensing of medication in the appropriate medical record.

If approved by the Governor, these provisions take effect July 1, 2007

- **SB 1116**

Health Care

The bill provides statutory changes to conform to the FY 2007-2008 General Appropriations Act. Specifically, the bill:

- Allows dentists to qualify for loan repayment assistance, travel, and relocation reimbursement during their last two years of residency training or upon completion of residency training, in return for an agreement to serve a minimum of two years in the Florida Health Services Corps.
- Repeals references to the Florida Health Services Corps Trust Fund and replace with the Administrative Trust Fund.
- Requires a hospital to meet specific criteria to qualify for a reimbursement rate adjustment.
- Allows the Agency for Health Care Administration to pay for all-inclusive psychiatric inpatient hospital care for Medicaid recipients age 65 and older in qualified private freestanding specialty hospitals.
- Allows the Agency for Health Care Administration to pay for all services provided to a Medicaid recipient by an anesthesiologist assistant licensed under s. 458.3475, F.S. or s. 459.023, F. S. at a reimbursement level no less than 80 percent of the reimbursement that would be paid to a physician providing the same service.
- Repeals the authorization of a statewide laboratory services contract for Medicaid recipients.
- Eliminates the requirement that a nursing home provider receive a reimbursement rate that is equivalent to the previous owner's rate after a change of ownership; to eliminate a requirement that Medicaid will not pay coinsurance and deductibles for services that are not provided by Medicaid; and to limit Medicaid payments for nursing home Medicare Part A coinsurance to the Medicaid per diem rate less any amount paid by Medicare, but only up to the Medicare coinsurance amount.
- Updates the years of audited data used in determining Medicaid and charity care days for each hospital in the Disproportionate Share program from 2000, 2001 and 2002 to 2001, 2002, and 2003; and updates the state fiscal year dates from FY 2006-2007 to FY 2007- 2008 to allow for payments under the Disproportionate Share program.
- Updates the state fiscal year dates from FY 2005-2006 to FY 2007-2008, continuing the prohibition on distributing funds through the Regional Perinatal Intensive Care Disproportionate Share program.
- Updates the state fiscal year dates from FY 2006-2007 to FY 2007-2008, to allow for disproportionate share payments to teaching hospitals.
- Updates the state fiscal year dates from FY 2006-2007 to FY 2007-2008, continuing

the prohibition on distributing funds through the Primary Care Disproportionate Share program.

- Requires capitated prepaid behavioral health managed care companies to provide an annual report to the Agency for Health Care Administration that includes the annual percentage of the capitation expended for behavioral health care services; and eliminates the requirement that 80 percent of the capitation paid to a prepaid behavioral health managed care plan be expended for behavioral health services and that the difference be returned to the agency if expenditures fall below 80 percent.

- Repeals obsolete language that required the Agency for Health Care Administration to modify contracts by January 1, 2001 with entities providing comprehensive inpatient and outpatient mental health care services to Medicaid recipients in Hillsborough, Highlands, Hardee, Manatee, and Polk Counties.

- Exempts Medicaid-eligible children whose cases are open for child welfare services in the HomeSafeNet system and who reside in Area 10, from having to participate in the separate specialty prepaid plan operated by the community-based lead agencies.

- Allows the Agency for Health Care Administration to calculate prepaid behavioral health plan capitation rates using an encounter data system methodology based on 90 percent fee-for-service data and 10 percent encounter data in the first year of payments; and, 75 percent fee-for-service data and 25 percent encounter data in the second and third years of payments.

- Prohibits a pharmacist from dispensing a drug for immunosuppressive therapy following transplant unless the drug is the specific formulation and manufactured by the specific manufacturer as prescribed by the physician; and allows a pharmacist to substitute a drug product that is generically equivalent for immunosuppressive therapy following transplant only if the pharmacist obtains a signed authorization from the prescribing physician.

- Requires the Agency for Health Care Administration to notify the Legislature before implementing programs authorized under the federal Deficit Reduction Act of 2005.

- Requires the Agency for Health Care Administration to give priority consideration in medicaid managed care enrollment to certain managed care plans until the providers reach 15,000 members per month; and to prohibit enrollment assignment to a managed care plan that has an enrollment of 25,000 or more members statewide.

- Eliminates the requirement that managed care per-member per-month rate averages do not exceed the amount in the General Appropriations Act for the fiscal year in which the rates are in effect; increases the percentage payment limit used in the methodology for reimbursing managed care providers by 0.5 percent on January 1, 2008 and an additional 1.5 percent on January 1, 2009; and requires that the payment limit for managed care per-member per-month rates do not exceed 100 percent for any area or eligibility category.

- Excludes independent laboratory services from the Medicaid explanation of benefits.

- Requires long-term care community diversion pilot projects to include hospice care provided by a licensed hospice provider.

- Waives the biennial license renewal fee for up to 10,000 allopathic or osteopathic physicians, who have a valid, active license to practice under chapters 458 and 459; whose primary practice address, as reported under s. 456.041, is located within the state; and who submit to the department, prior to the applicable license renewal date, a sworn affidavit that the physician is prescribing medications exclusively through the use of electronic prescribing software at the physician's primary practice address. The term "electronic prescribing software" is defined to mean, at a minimum, software that electronically generates and securely transmits, in real-time, a patient prescription to a pharmacy; to allow the department to adopt rules; and to provide an expiration date of the section of law on July 1, 2008.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1155**

Drugs & Pharmacies

The bill creates a third-degree felony offense for any person who, with the intent to injure or defraud any person or to facilitate any violation of specified prohibited acts under the Florida Comprehensive Drug Abuse Prevention and Control Act, sells, manufactures, alters, delivers, utters, or possesses any counterfeit resistant prescription blanks for controlled substances.

The bill amends existing law relating to the dispensing of controlled substances by a pharmacist to:

- Limit the dispensing of a Schedule II drug in an emergency upon an oral prescription to a 72-hour supply;

- Limit the dispensing of a Schedule III drug upon an oral prescription to a 30-day supply;

- Preclude a pharmacist from dispensing a controlled substance listed in Schedules II, III, and IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the order is valid, however, a pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent;

- Exempt any pharmacist who dispenses by mail a controlled substance listed in

- Schedules II, III, and IV from the requirement to obtain suitable identification for the prescription dispensed by mail if the pharmacist has obtained the patient's identification through the patient's prescription benefit plan;

- Authorize a pharmacist to record a prescription electronically if permitted by federal law for certain controlled substances; and

- Impose additional requirements on prescriptions for controlled substances in Schedule II, Schedule III, or Schedule IV to prevent diversion.

The bill requires the Agency for Health Care Administration to develop an electronic prescribing clearinghouse and provide information regarding electronic prescribing on the agency's website. The bill requires the

agency to monitor public and private sector initiatives on the subject and report to the Governor and the Legislature by January 31 of each year on the progress of implementation of electronic prescribing.

The bill also creates s. 893.065, F. S., to require the Department of Health to develop counterfeit-resistant prescription blanks for Schedule II through IV drugs.

The bill specifies that, if a person dies of an apparent drug overdose, the law enforcement agency and medical examiner must respectively prepare reports identifying the Schedule II, III, or IV controlled substances on or near the deceased. The law enforcement report must identify the person who prescribed the controlled substance.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1508**

Informed Consent/Medical

The bill adds Florida-certified advanced registered nurse practitioners and Florida-licensed physician assistants to the list of health care providers who are granted immunity in actions brought for examining or treating a patient without his or her informed consent if:

- The patient at the time of the examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as required under the Florida Medical Consent Law;
- The patient at the time of the examination or treatment is experiencing an emergency medical condition; and
- The patient would reasonably undergo the examination, treatment, or procedure if he or she were advised in accordance with the Florida Medical Consent Law.

The bill amends the Florida Medical Consent Law to add advanced registered nurse practitioners and physician assistants to the list of health care providers from whom no recovery is allowed in an action brought for treating, examining, or operating on a patient without the patient's informed consent when the elements of informed consent are satisfied.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1700**

Physician Assistants/
Paramedic Certification

The bill adds physician assistants to the list of health care practitioners who may be certified as a paramedic. A physician assistant may be certified if he or she is certified in Florida as an emergency medical technician (EMT), has passed the required EMT curriculum, has successfully completed an advanced cardiac life support course, has passed the examination for certification as a paramedic, and has met other certification requirements specified by rule of the Department of Health. Any physician assistant so certified must be recertified under the regulations for paramedic certification.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1758**

Hospitals/
Off-premises Emergency Department

The bill provides that additional hospital off-premises emergency departments may not be authorized by the Agency for Health Care Administration until January 1, 2009. However, the bill allows for the licensure of an off-premises emergency department if initial li-

censure application documents were filed before April 30, 2007, and stage 2 architectural plans are submitted as of July 1, 2007, or stage 2 architectural plans are approved by July 15, 2007, as long as the hospital complies with requirements imposed on off-premises emergency departments licensed prior to July 1, 2007.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1916**

Assisted Living Facilities/ Adult Day Care

The bill amends s. 429.52, F.S., to require the Department of Elderly Affairs (DOEA) to adopt, or contract for the development of, a curriculum for training staff at Assisted Living Facilities (ALFs). The bill authorizes the department to consult with stakeholder agencies and associations in the development of the curriculum.

The bill requires that the training under s. 429.52(1), F.S., be conducted by a person registered with the DOEA and requires the DOEA to adopt rules establishing requirements for trainer registration. The bill provides that a person seeking the DOEA registration as a trainer must have completed the minimum core training education requirements, and must have passed the core competency test. The person must maintain continuing education, and must also:

- Possess a four-year degree from an accredited school and must have worked in a management position in an ALF for three years since completing the core education requirements and being certified;
- Possess five years experience with an ALF in a management position subsequent to completion of the core requirements and certification and one year of experience as an educator or trainer for an ALF or other long-term care facility employees;
- Possess experience as a trainer of core requirements for the DOEA; or
- Meet other qualification criteria as defined in rule.

The bill requires the DOEA to adopt rules to establish trainer registration requirements.

The bill amends s. 429.907, F.S., to provide an exception to the separate license requirement for separate premises of adult day care centers in the case of disaster or emergency that renders the current facility unusable. Under these circumstances, the licensee may continue operation at one or more premises under their current license for up to 180 days. The premises must be included in the licensee's comprehensive emergency management plan and approved by the county emergency management authority. The licensee of the adult day care center must notify Agency for Health Care Administration and county emergency management authorities within 24 hours of beginning operation in a separate premise.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 2114**

Independent Living Transition Services

Adolescence is a time of growth, learning, and developing independence, and most youth, with the support of their family, make a successful transition to adulthood. However, youth in the foster care system often lack the guidance, support, and training to learn the skills necessary to function independently when they leave the system. Independent living transition services are designed to help foster youth and young adults formerly in fos-

ter care obtain life skills and education so that they can live independently.

This bill makes a number of changes to the laws pertaining to independent living transition services. Specifically, the bill:

- Permits a caseworker at an agency at which a minor has been placed in foster care to sign the minor's application for a learner's driver's license without assuming liability for damages caused by the minor driver (this exemption is already available to foster parents and group home representatives);
- Permits a caseworker at an agency at which a minor has been placed in foster care to sign and verify the minor's application for a driver's license pursuant to a court-approved transition plan without assuming personal liability for damages caused by the minor driver;
- Provides that foster parents or caregivers who develop a written plan of goals for a transitioning child will not be held responsible under administrative rules or laws pertaining to state licensure as a result of any actions of the child pursuant to the plan;
- Makes young adults who finish high school before they age out of foster care eligible for the Road to Independence Program;
- Makes young adults who are placed with a court-approved dependency guardian or adopted from foster care after reaching age 16 eligible for independent living transition services, specifically for the Road to Independence Program;
- Mandates that youth between the ages of 16 and 18 be formally evaluated for subsidized independent living services under certain circumstances;
- Allows certain foster children to contract for financial services despite being minors; and
- Extends Medicaid eligibility from age 20 to age 21.

The bill appropriates $420,358 from the General Revenue Fund to DCF, and appropriates $519,479 from the General Revenue Fund and $686,089 from the Medical Care Trust Fund to the Agency for Health Care Administration to implement the act.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 2260
Department of Health/ State Surgeon General

The bill designates the head of the Department of Health as the State Surgeon General. The bill deletes references to the Secretary of Health, replacing them with the title "State Surgeon General." The State Surgeon General must serve as the leading voice on wellness and disease prevention efforts, including the promotion of healthful lifestyles, immunization practices, health literacy, and the assessment and promotion of the physician and health care workforce in order to meet the health care needs of the state. The State Surgeon General must focus on advocating healthful lifestyles, developing public health policy, and building collaborative partnerships with schools, businesses, health care practitioners, community-based organizations, and public and private institutions in order to promote health literacy and optimum quality of life for all Floridians.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 2634**

Hospice Facility Construction

The bill authorizes the Agency for Health Care Administration (agency), at the request of the prospective licensee of an inpatient hospice facility, to provide an informal review of the facility plans prior to construction to assist the facility in complying with the Florida Building Code requirements. It further authorizes the agency to charge a nonrefundable fee commensurate with the cost of providing this consultation.

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

- **SB 2858**

Chiropractic Medicine

The bill revises requirements for chiropractic physician licensure to delete a requirement that applicants must have successfully completed specified parts of the National Board of Chiropractic Examiners certification examination within 10 years immediately preceding application to the Department of Health. The bill corrects the references to the examination to state that applicants must pass part III of the certification examination, which is the portion that tests clinical competency. The Florida Board of Chiropractic Medicine is authorized to require an applicant who has graduated from an institution accredited by the Council on Chiropractic Education more than 10 years before the date of application to take the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic (SPEX), or its equivalent, as determined by the Florida Board of Chiropractic Medicine. The Florida Board of Chiropractic Medicine must establish by rule a passing score for applicants who must sit for the SPEX examination.

The bill revises requirements for chiropractic physician licensure to allow a student, in his or her final year of an accredited chiropractic school or college, to apply for licensure, take all of the required examinations for licensure, submit a set of fingerprints, and pay all fees for licensure. A chiropractic student who takes and successfully passes the licensure examinations and who otherwise meets all requirements for licensure as a chiropractic physician during the student's final year must have graduated before being certified for licensure by the Board of Chiropractic Medicine.

The bill revises requirements for the issuance of a chiropractic medicine faculty certificate, to authorize the certificate to be issued to an individual who has accepted a full-time faculty appointment at a college of chiropractic in Florida that has been accredited by the Council of Chiropractic Education. The faculty position is no longer required to be at a publicly funded university or college.

The bill restricts the indirect supervision of a certified chiropractic physician's assistant to the address of record or place of practice of the supervising chiropractic physician as required by s. 456.03 5, F.S., other than at a clinic licensed under ch. 400, part X, F.S. Any certified chiropractic physician's assistant who is certified by the Board of Chiropractic Medicine to perform services at a licensed clinic may only perform those services under the direct supervision of the chiropractic physician to whom the assistant is assigned.

Effective July 1, 2008, the bill prohibits any person other than a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more chiropractic

physicians, or chiropractic physicians and their relatives, from employing a chiropractic physician or engaging a chiropractic physician as an independent contractor to provide chiropractic services, with certain exceptions. A violation of this prohibition is a third-degree felony.

The bill requires chiropractic continuing education to be continuing education that is provided in the form of contact classroom hours, which requires face-to-face classroom interaction.

If approved by the Governor, except as otherwise provided, these provisions take effect July 1, 2007.

- **HB 7065**

Medicaid

The bill amends s. 409.9 12, F.S., to require the Agency for Health Care Administration (AHCA) to implement Florida Senior Care, an integrated fixed-payment delivery program for Medicaid recipients 60 years of age or older or persons dually eligible for Medicare and Medicaid. Specifically, the bill:

- Requires implementation of the program on a pilot basis in Area 7 (Orange, Osceola, Seminole, and Brevard counties) and Area 11 (Dade and Monroe counties) on a voluntary basis.
- Allows any qualified managed care entity to participate and offer services to enrollees in the pilot areas.
- Provides enrollees with access to the Subscriber Assistance Panel grievance process as well as requires AHCA to maintain an informal and formal provider grievance system.
- Adds a 10-business-day prompt payment requirement for participating managed care organizations to make payment to nursing homes that bill electronically and provides for an alternative capitated payment to prospectively pay nursing homes at the beginning of each month.
- Provides that OPPAGA is to evaluate the pilot for 24 months after enrollment of recipients into the pilot program and submit the report to the Legislature, no later than December 31, 2009.
- Requires AHCA to provide a report to the Governor and Legislature that contains an analysis of the merits and challenges of seeking a federal waiver to implement a voluntary program that integrates Medicare and Medicaid payments for persons 65 years of age or older, no later than December 31, 2007.
- Clarifies county participation in Medicaid nursing home payments for both health maintenance members and fee-for-service beneficiaries.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 7165**

Hospitals

The bill revises the definition of the types of specialty hospitals that may not be licensed or relicensed by the Agency for Health Care Administration. Instead of defining these prohibited specialty hospitals by enumerating specific diagnosis-related groups (DRGs), the bill defines them by major diagnostic categories (a higher level of classification than DRGs) or by the principal diagnosis or reason for admission. The bill creates an exemption from this prohibition for any hospital classified as an exempt cancer center hospital pursuant to 42 C.F.R. s. 412.23(f) as of December 31, 2005.

The bill changes the terms cardiology and interventional cardiology services to cardiovascular services throughout s. 408.0361, F.S., which relates to licensure of hospital cardiology services and burn units. The grandfathered licensure status of certain hospitals with adult interventional cardiology services or burn units is changed from a period specified in rule to until July 1, 2008.

The bill deletes the inclusion in rules of a standard data set for measuring outcomes of hospital adult cardiovascular services consisting of data elements reported to the agency in accordance with s. 408.061, F.S. It also requires Level I and Level II hospitals to participate in clinical outcome-reporting systems operated by the American College of Cardiology and the Society for Thoracic Surgeons.

If approved by the Governor, these provisions take effect July 1, 2007.

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2007
Florida Legislature
Post-Session Report

Insurance & Financial Services

Please see Health Care & Health Insurance for bills regarding health insurance.

INSURANCE & FINANCIAL SERVICES

- **1-A (Special Session) Hurricane Preparedness and Insurance**

This act (Chapter 2007-1, L.O.F.) is the result of a Special Session called specifically to address the affordability and availability of property insurance in the State of Florida, and to revise the Florida Building Code.

Florida Hurricane Catastrophe Fund

The act substantially increases the amount of hurricane losses covered by the Florida Hurricane Catastrophe Fund (Cat Fund), which is a tax-exempt state fund administered by the State Board of Administration (SBA). The Cat Fund reimburses insurers for a portion of their residential hurricane losses in exchange for a premium that is much lower than what private reinsurers charge. This results in lower premiums to policyholders and enables a greater number of policies to be written. The Cat Fund helps stabilize the property insurance market, particularly after an active hurricane period, as Florida experienced in 2004 and 2005, that is followed by increased costs and lower availability of private reinsurance.

Currently, Cat Fund coverage is mandatory, but the additional coverage authorized by this act would be optional to insurers, as follows:

- Allows residential property insurers to purchase additional coverage above the current maximum limits of the Cat Fund, referred to as Temporary Increase in Coverage Limit options ("TICL"), for the 2007, 2008, and 2009 contract years. The TICL options allow an insurer to purchase additional reinsurance for its share of up to $12 billion, in $1 billion increments, above the current Cat Fund annual limit of $16 billion estimated for 2007 (i.e., up to a total of $28 billion). The SBA may further increase the limits by an additional $4 billion (i.e., up to $32 billion). The TICL coverage will reimburse the insurer for 90 percent, 75 percent, or 45 percent of the insurer's losses above its retention, at the same percentage selected by the insurer for its mandatory Cat Fund coverage. Insurers must pay a premium established by the SBA under the same method for determining "actuarially indicated" premiums for the mandatory Cat Fund coverage, which generally establishes a premium equal to the estimated average annual loss for the coverage purchased. Based on current loss models, this is expected to be a premium equal to about 3 percent of the coverage amount (commonly referred to as a 3 percent "rate-online.") These premiums are significantly lower than charged by private reinsurers and are the primary source of premium savings under this act.

House Domestic Security Committee member Rep. Priscilla Taylor, R-Riviera Beach, gestures as she offers a question to a presenter before the committee. Left shows Rep. Ari Porth, D-Coral Springs. (House photo by Mark Foley)

- Allows residential property insurers to purchase additional coverage below each insurer's market share of the Cat Fund reten-

tion, referred to as Temporary Emergency Additional Coverage Options ("TEACO"), for the 2007, 2008, and 2009 contract years. For 2007, the Cat Fund retention is estimated to be $6 billion. Currently, each insurer is responsible for paying all hurricane losses up to its share of the retention for each hurricane, except that the retention drops to one-third of the full retention for a third hurricane or more in one year. The TEACO options allow an insurer to select its share of a retention level of $3 billion, $4 billion, or $5 billion, to cover 90 percent, 75 percent, or 45 percent of its losses up to the normal retention for the mandatory Cat Fund coverage. The act establishes the premiums that insurers must pay for the TEACO options. For the $3 billion retention, the premium is an 85 percent rate-on-line; for the $4 billion retention, the premium is an 80 percent rate-on-line; and for the $5 billion retention, the premium is a 75 percent rate-on-line. The TEACO coverage applies to two hurricanes for each contract year. The TEACO premiums established by the act are priced at near-market levels. Therefore, these coverage options primarily benefit insurers which are unable to obtain reinsurance at these low levels, but are not expected to generate premium savings for most insurers. The relatively high premiums also serve to significantly reduce the risk to the state for the TEACO coverage.

- Allows eligible residential property insurers to purchase up to $10 million in additional Cat Fund coverage at a level significantly below the normal Cat Fund retention and likely to be lower than the lowest retention ($3 billion) under the TEACO options. The $10 million coverage amount is above a retention equal to 30 percent of the insurer's surplus, as of December 21, 2006. The premium is set at 50 percent of the coverage amount (i.e., $5 million for $10 million coverage). The coverage applies to two hurricanes and is offered only for the 2007 contract year. This is similar to the $10 million coverage that was offered in 2006 to "limited apportionment companies," which are generally insurers with $25 million in surplus or less. The act will again make this coverage available, this time to insurers who participated in 2006, limited apportionment companies that began writing property insurance in 2007, and insurers approved to participate in either 2006 or 2007 for the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595, F.S.

Other changes made to the Cat Fund, are as follows:

- Repeals the 25 percent rapid cash buildup factor required to be charged for Cat Fund premiums. This was a requirement added in 2006 to increase Cat Fund premiums by 25 percent in order to build up cash reserves in the Cat Fund. However, this act repeals that requirement, in order to lower Cat Fund premiums to insurers, resulting in an estimated 3 percent average reduction to residential policyholder premiums.

- Deletes the additional Cat Fund coverage provided to Citizens Property Insurance Corporation ("Citizens") above their (market share) maximum limits, to the extent coverage is available after all other insurers have been reimbursed up to their maximum limits. This is re-

pealed in order to reduce Citizens' Cat Fund premium by about 10 percent, resulting in an estimated 1 percent premium savings for the average Citizens' policy.

- Authorizes the SBA to purchase capital market instruments to cover Cat Fund obligations, similar to its current authority to purchase reinsurance.

- Provides that premium income from the optional Cat Fund coverage provisions of the act are not included in the cash balance of the Cat Fund for determining the annual growth in the maximum Cat Fund limits.

Mandatory Rate Filings to Reflect Savings Due to Expanded Cat Fund Coverage

All residential property insurers are required by the act to make a rate filing with the Office of Insurance Regulation (OIR) reflecting the savings or reduction in loss exposure to the insurer due to the expanded Cat Fund coverage. The OIR must calculate a presumed factor to be used in the required rate filings to reflect the impact to rates of the changes, using generally accepted actuarial techniques and standards. The OIR may contract with an appropriate vendor to advise the office in determining the presumed factor or factors.

Each insurer's rate filing must take into account the presumed factor for any policy written or renewed on or after June 1, 2007, to reflect all expanded Cat Fund coverage options available to the insurer, whether or not the insurer purchases the coverage. Additional costs to the insurer for private reinsurance or loss exposure that duplicates the expanded Cat Fund options may not be factored in the rate. An insurer may not obtain a rate increase due to the election of coverage options from the Cat Fund.

The sum of $250,000 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services (DFS) to the OIR for the 2006-2007 fiscal year for the purpose of implementing these requirements.

Rates for Coverage from Citizens

The requirements, standards, and procedures for establishing rates for Citizens' policies are substantially revised, in an attempt to provide immediate rate relief to Citizens' policyholders while establishing a long term standard based on actuarial soundness, rather than non-competitiveness or collecting sufficient premium to have reserves and reinsurance to cover a specified probable maximum loss. Specifically, these changes are as follows:

- Deletes the requirement added in 2006 that Citizens charge rates sufficient to purchase reinsurance to cover specified levels of probable maximum loss for each of its three accounts. This has the effect of avoiding the 56.5 percent average premium increase for Citizens' High-Risk-Account (HRA) that was under consideration by Citizens.

- Deletes the requirement that Citizens' rates be non-competitive and no lower than the top 20 insurers. In certain areas, this requirement resulted in rates that are higher than the actuarially sound rate.

- Requires that Citizens' rates be actuarially sound and subject to s. 627.062, F.S., which prohibits rates that are excessive, inadequate, or unfairly discriminatory, and specifies factors for OIR to consider in making this determination. The act retains the current requirement that after the public hurricane loss model has been

found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, that model shall serve as the minimum benchmark for determining Citizens' windstorm rates.

- Rescinds the approved, actuarially sound rate increase that took effect January 1, 2007, and requires Citizens to provide refunds to persons who have paid this rate. This has the effect of avoiding an average 23.1 percent rate increase in the HRA for homeowners' policies.

- Freezes rates at the December 31, 2006 level for the remainder of 2007, except for any rate decreases implemented under the January 1, 2007 rate filing and any further rate decreases that may be approved during 2007 (such as a rate decrease for a policy change like the sinkhole exclusion pending before OIR).

- Requires a new rate filing, under the standard to be actuarially sound, effective January 1, 2008. The term "actuarially sound" does not have a precise definition, particularly when applied to a residual market insurer that depends on assessments for financing, which will depend upon the interpretation given by OIR. However, the term generally means a rate that will cover expected losses. When applied to windstorm losses, this means a rate sufficient to cover average annual expected losses, based on hurricane loss projection models. It is less clear whether any additional amount beyond average annual loss should be collected to cover an imputed "cost of capital" that would reduce the reliance on assessments. It is also not clear if the term encompasses charging an amount in excess of annual average loss to build towards financing a probable maximum loss for a specified period, such as a 50 or 100 year storm. (Even though Citizens would be subject to a rate standard substantially the same as for voluntary market property insurers, Citizens is not subject to the same solvency requirements such as minimum surplus, restrictions on premium writings, or having surplus and reinsurance to cover a 100-year probable maximum loss.) The "actuarial" rate filing approved by OIR that is being rescinded by this act did not add such factors to the average annual loss (for which the public hurricane model was used), but did add a 10 percent factor to reflect the higher risk of the property insured by Citizens compared to the voluntary market (beyond that reflected in hurricane loss models), due to more restrictive underwriting by the voluntary market.

- • Requires the OIR to annually establish Citizens' rates within 45 days after Citizens files recommended rates, and prohibits Citizens from legally challenging the OIR determination.

Assessments for Citizens' Deficits

The act substantially expands the types of insurance policies and premiums that are subject to assessments to fund deficits of Citizens, currently limited to property insurance premiums. As expanded, the assessment base would be substantially the same as that of the Cat Fund, which includes all lines of property and casualty insurance, including auto insurance, but not workers' compensation or accident and health. The act also exempts medical malpractice premiums (but the same exemption from Cat Fund assessments is scheduled for repeal in 2007). This expands the assessment base four-fold, from about $8.2 billion to $35 billion, based on 2006 premiums. This reduces the percentage assessment that may be imposed in the

future by about one-fourth, by spreading it to additional types of insurance, notably auto policies. It will also support a much larger bond issue, if necessary, and is expected to improve the bond rating and lower the cost of borrowing.

The act delays, until 2008, the requirement added in 2006 (SB 1980) that Citizens impose up to a 10 percent of premium assessment on its nonhomestead policyholders if a deficit occurs in any account, and if that assessment is insufficient, that Citizens impose an additional 10 percent renewal surcharge on all Citizens' policyholders, including nonhomestead policyholders.

Expanded Eligibility for Residential Coverage from Citizens

The act expands eligibility for residential coverage in Citizens in two primary ways. First, it deletes the provision added in 2006 (SB 1980) that nonhomestead property, as defined, is ineligible for coverage from Citizens, effective March 1, 2007, unless the property owner submits certification from an agent that coverage has been rejected by at least three surplus lines insurers and one authorized insurer.

Second, the act places Citizens in more direct competition with the voluntary market by substantially revising the current law that makes a property ineligible for coverage from Citizens if an offer of coverage is made by an authorized insurer at its approved rates. As revised, if a *new applicant* to Citizens is offered coverage from an insurer at its approved rate, the property is not eligible for a Citizens' policy, unless the insurer's premium is more than 25 percent greater than the premium for comparable coverage from Citizens. However, a *policyholder* of Citizens remains eligible for coverage regardless of any offer of coverage from a private market insurer. This will allow a policyholder to choose to stay in Citizens and to reject any "take-out" offers from the voluntary market. But, the voluntary market may continue to "keep out" policies from Citizens, provided the premium is no more than 25 percent greater than Citizens' premium. Together with the rating law changes described above, Citizens will be placed in a more competitive role with the private market, making it likely to increase its policy growth at an even greater pace, at least for the near future.

However, the act makes an additional change that restricts eligibility for coverage, by providing that as of January 1, 2009, to qualify for Citizens, properties within 2,500 feet landward of the Coastal Construction Control Line must be built to "Code-Plus" building standards developed by the Florida Building Commission.

The act also:

- Requires the Florida Market Assistance Plan to develop an electronic database for the purpose of confirming eligibility for coverage in Citizens.

- Requires Citizens to exempt applications from the 10-day waiting period requirement before coverage is effective, if the application is in conjunction with a real estate closing.

Expanded Eligibility for Commercial Coverage in Citizens

The act authorizes Citizens to provide commercial nonresidential (i.e., business) coverage, by including such coverage within the Commercial Lines Account (CLA), currently limited to commercial residential coverage. This authorizes multiperil coverage for commercial property in all areas of the state, except that non-wind coverage would be pro-

vided under the CLA for commercial property obtaining wind-only coverage in the HRA. The act is silent on the limits of coverage that would be offered. The act specifies that the plan of operation may establish limits of coverage (for all policies and accounts), which would be determined by the Citizens board and subject to approval by the Financial Services Commission. The act also provides that the plan of operation may require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

Citizens must adopt a plan, subject to approval by OIR, for the transition of commercial coverage from the Property and Casualty Joint Underwriting Association (PCJUA) to Citizens. The PCJUA is permitted to continue to provide commercial coverage pending the transition.

Multiperil Coverage in High-Risk Account of Citizens

Currently, Citizens issues wind-only coverage in coastal areas eligible for coverage in the HRA. These are the only areas where insurers in the voluntary market are allowed to write non-wind policies (except as allowed by this act, if elected by a policyholder). As required by the act, effective March 1, 2007, Citizens must submit for approval by the Financial Services Commission and the Legislative Budget Commission a business plan for issuing multiperil policies in its HRA, including the impact on Citizen's financial resources, its tax-exempt status, its customer service and claims procedures, its agents, its policyholders, and its rates and premiums. The expressed goal is to reduce average premiums by 10 percent or more for a Citizens' wind-only policyholder who obtains a multiperil policy from Citizens. If the business plan is approved, but no earlier than March 31, 2007, Citizens may offer multiperil coverage and wind-only coverage, or both, for risks located in areas eligible for coverage in the HRA.

Other Changes to Citizens

The act makes the following additional changes to Citizens:

- Clarifies that the plan of operation may establish maximum limits of coverage.
- Specifies that policies taken out, assumed, or removed from Citizens are considered to be the sole obligation and direct insurance of the take-out company (so that Citizens does not retain liability for such policies).
- Requires Citizens to be subject to assessments levied by the Florida Insurance Guaranty Association.
- Allows the SBA to invest and manage the assets of Citizens.
- Clarifies that the appointing officers may recall members of the Citizens Board of Directors at will.

Creates the Task Force on Citizens Property Insurance Claims Handling and Resolution. The task force has seven members, and is to conduct research and hearings and make recommendations as to issues regarding Citizens, including improving customer service and claims handling, and make recommendations as it deems appropriate for legislative action during the 2006-2008 legislative biennium. The task force expires after the 2006-2008 legislative biennium.

Coverage Exclusions; Deductibles

The act includes three provisions that would allow policyholders to significantly reduce their windstorm coverage and to assume the

risk of loss, in exchange for a lower premium, as follows:

- Requires insurers to make available to policyholders the option to exclude windstorm coverage, if the policyholder personally writes a statement that he/she does not want such coverage and provides documentation of approval by any mortgage or lien holder.

- Eliminates maximum allowable deductibles, but requires a written statement by the policyholder and approval by a mortgage or lien holder if the deductible is in excess of 10 percent for a home valued at less than $500,000. Insurers are still required to offer annual hurricane deductibles of 2 percent, 5 percent, and 10 percent of policy limits, with certain exceptions. The act allows, but does not require, the offer of a higher deductible.

- Requires insurers to make available to policyholders the option to exclude coverage for contents, if the policyholder personally writes a statement that he/she does not want such coverage.

Nonrenewal Restrictions; Timely Payment of Claims; Other Requirements

The act imposes the following requirements on property insurers:

- Requires 100 days written notice of nonrenewal of a residential property policy, rather than 90 days. However, notice is required by June 1, or at least 100 days notice, whichever is earlier, for a nonrenewal effective between June 1 and November 30 (hurricane season).

- Requires property insurers to pay or deny a claim within 90 days of the receipt of the claim, unless the failure to pay the claim is caused by factors beyond the control of the insurer that reasonably prevent payment.

- Prohibits property insurers from denying coverage based solely on the age of the structure and requires consideration of wind resistance of the structure.

- Requires insurers to allow personal lines residential and commercial policyholders to pay premiums on a quarterly or semiannual installment plan.

- Requires an insurer to provide the policyholder the option of selecting an appropriate reduction in the policy's hurricane deductible or selecting the appropriate discount credit or other rate differential.

Insurance Rating Law; Premium Notice

The act makes various changes to the property and casualty insurance rating law that generally strengthen the authority of the OIR to approve or disapprove rates, as follows:

- Prohibits, through January 1, 2009, the allowance for property and casualty insurers to implement a rate change prior to filing for approval with OIR (the current "use and file" option), unless the insurer files for a rate that is less than the insurer's most recent rate approved by the OIR. All filings that do not seek a lower rate must be made under the "file and use" procedures that require filing at least 90 days prior to the proposed effective date.

- Prohibits the allowance for property and casualty insurers to submit a rate filing disapproved by the OIR to an arbitration panel for final resolution for all filings made after the act's effec-

tive date until January 1, 2009. Rate appeals would go to the Division of Administrative Hearings.

- Deletes the "rate-flex" provision that allows residential property insurers to increase or decrease rates by up to 5 percent on a statewide average, or 10 percent for any territory, without being subject to a determination by the OIR that the rate is excessive or unfairly discriminatory, in areas where OIR determines a reasonable degree of competition exists.

- Requires the chief executive officer or chief financial officer and the chief actuary of a property insurer to sign a sworn certification, subject to perjury and administrative penalties, that the information in the rate filing does not contain any untrue statements of a material fact or omit material facts and reflects premium savings that are reasonably expected to result from legislative enactments and are in accordance with accepted actuarial techniques.

- Prohibits excess profits by property insurers and requires refunds to consumers of any excess profits collected by an insurer over a ten-year period, if certain thresholds are met.

- Allows a property and casualty insurer to provide a discount on a policy based on the fact that the insured purchased another policy or type of insurance from the insurer.

- Requires insurers to specify on the premium renewal notice the:

  - Amount of any assessment by the Florida Hurricane Catastrophe Fund, Citizens Property Insurance Corporation, and the Florida Insurance Guaranty Association; and the full name of the assessing authority.

  - Amount of premium change due to a change in rate or coverage.

  - Combinations of discounts, credits, rate differentials, or reductions in deductibles, for windstorm mitigation.

Insurer Affiliates and Subsidiaries

The act increases the minimum surplus requirement from $5 million to $50 million for a domestic residential property insurer that is a wholly owned subsidiary of an insurer authorized to do business in another state.

Auto Insurers or Affiliates Must Write Homeowners Insurance

Effective January 1, 2008, the act requires insurers writing private passenger automobile insurance in Florida and that write homeowners' policies in other states, to write homeowners' coverage in Florida, unless an affiliate writes homeowners insurance in Florida.

Hurricane Mitigation

The act requires the Financial Services Commission to take the following actions related to mitigation measures to strengthen homes against hurricane damage:

- Adopt by rule a uniform home grading scale to grade a home's ability to withstand the wind load from a hurricane.

- Develop by rule a uniform mitigation verification inspection form that must be used by all insurers to factor discounts for wind insurance.

The act makes the following changes to inspections and grants provided under the Florida Comprehensive Hurricane Damage Mitigation Program (for which $250 million was appropriated in 2006 to the DFS):

- Exempts low-income homeowners, as defined, from the requirement to have a dwelling with an "insured value" of $500,000 or less (i.e., the home does not have to be insured).
- Allows grants on a "rebuild," defined as a site-built, single-family dwelling that is under construction to replace a homestead significantly damaged or destroyed by a hurricane.
- Allows up to 20 percent of a grant to be used by low-income homeowners for repairs to existing structures leading to mitigation improvements.
- Authorizes the DFS to contract with a not-for-profit corporation to conduct all or parts of the Florida Comprehensive Hurricane Damage Mitigation Program.
- Requires wind inspectors to have a level 2 background check, which includes fingerprinting.
- Requires the DFS to develop and maintain as a public record, a statewide list of authorized wind certification and hurricane mitigation inspectors.

The act requires appointment of the Windstorm Mitigation Study Committee, to report by March 6, 2007. The committee must analyze solutions for mitigating the effects of windstorms on structures and make recommendations for mitigating windstorm damage, including proposals that provide for the full actuarial value to be reflected in premium credits for windstorm mitigation. The committee will have eight members, with the Governor, President of the Senate, Speaker of the House, and Chief Financial Officer each selecting two members. The committee expires May 15, 2007.

Florida Building Code

The act requires that the Florida Building Code be revised as follows, in order to repeal the so-called "Panhandle exemption" and other changes to strengthen the windstorm resistance requirements of the code:

- Requires the Florida Building Commission to amend the Florida Building Code by July 1, 2007, to adopt the wind-borne-debris protection requirements of the International Building Code (2006) and the International Residential Code (2006) within the windborne-debris region (120 mph+) as defined by those codes. This does not apply to the High Velocity Hurricane Zone. This also has the effect of deleting the internal pressurization option for buildings in the wind-borne-debris region.
- Prohibits amendments or modifications that diminish provisions related to wind resistance or water intrusion. However, the commission may amend such provisions to enhance those requirements.
- Requires local jurisdictions to immediately enforce these wind-borne debris protection requirements upon the effective date of the act (i.e. for building permits issued on or after that date) pending adoption by the Florida Building Commission.
- Requires the Florida Building Commission to develop voluntary "Code-Plus" guidelines for increasing the hurricane resistance of buildings that may be modeled on the Miami-Dade building code.

Self-Insurance Funds; Bonding Authority
The act authorizes various types of self-insurance funds to be formed as follows:

- Allows two or more hospitals licensed and located in Florida to form an alliance for pooling liabilities relative to property exposure, under certain conditions, and allows an alliance of hospitals in special districts, county hospitals, or municipal hospitals to borrow and bond to finance property coverage and claims.

- Allows two or more local governments to enter into interlocal agreements to insure or self-insure for property insurance and allows governmental entities to bond to finance property coverage and claims.

- Allows one or more community associations operating at least 50 residential parcels or units created and operating as condominiums, cooperatives, homeowners associations, vacation and timeshare plans, or mobile home park lot tenant associations to apply to OIR to form a commercial self-insurance fund for property and casualty insurance, under the requirements that otherwise currently apply to such funds.

- Allows two or more not-for-profit corporations to create a self-insurance fund for property or casualty insurance, under certain conditions.

Catastrophic Ground Cover Collapse Coverage; Sinkholes
The act requires property insurers to provide coverage for catastrophic ground cover collapse, defined as geological activity that:

- Results in the abrupt collapse of the ground cover that is clearly visible to the naked eye;

- Results in structural damage to the building and its foundation; and

- Results in the insured structure being condemned and ordered to be vacated by the appropriate governmental agency.

Contents coverage shall apply if there is a loss resulting from a catastrophic ground cover collapse. Structural damage consisting merely from the settling or cracking of a foundation, structure, or building does not constitute a loss resulting from a catastrophic ground cover collapse.

Insurers must continue to make sinkhole coverage as currently defined in statute available for an appropriate additional premium. Insurers offering policies that exclude coverage for sinkhole losses must provide written notice to the policyholder in 14-point type.

Other Changes
The act makes the following additional changes:

- Authorizes the OIR to waive or lower the deposit requirement for reinsurers licensed in other countries, based on criteria related to the financial strength of the insurer and the quality of the regulatory jurisdiction. Modifies insurance provisions in the Condominium Act to limit insurance requirements to "residential" condominiums, as defined, and to specify what constitutes "adequate insurance."

- Requires the Insurance Consumer Advocate to provide an annual report card on insurance companies, using a letter grade scale established by the Financial Services Commission.

- Authorizes OIR to require property insurers to report additional data on hurricane claims.

- For fiscal year 2006-2007, provides an appropriation of $100,066,518 from the Florida Small Cities Community Development Block Grant program fund to the Department of Community Affairs. The funding must be used to harden single-family and multi-family affordable housing, to mitigate against hurricane damage and increasing costs of property insurance.

- Clarifies the Legislature's intent of a 2006 law that the Florida Insurance Guaranty Association has the authority to use an emergency assessment of up to 2 percent of premium either to directly pay the covered claims of insolvent insurers or to utilize such emergency assessment proceeds to retire the indebtedness of bonds.

- States the Legislature intends to create during the 2007 Legislative Session a grant program to facilitate the purchase of property insurance by low-income persons as defined in s. 420.602(8), F.S., to protect their homestead property.

- Revises the Insurance Capital Build-Up Incentive Program to allow an insurer writing only manufactured housing residential property insurance to qualify for a surplus note of up to $7 million, if the insurer's surplus, new capital, and the surplus note total at least $14 million. Such an insurer is given priority to receive a surplus note under the program and must meet the premium to surplus ratio provisions of s. 624.4095, F.S.

These provisions were approved by the Governor (Chapter 2007-1, L.O.F.) and took effect January 25, 2007, except as otherwise expressly provided in this act.

● HB 111

Nonresident Title Insurance Agents

The bill provides for the following changes to the title insurance law:

- Requires nonresident title insurance agents to qualify for licensure by passing an examination and completing continuing education requirements in the same manner as Florida resident title insurance agents;

- Allows for the rebating of an attorney's fee charged for professional services, the title agent's portion of the insurance premium, or any other agent charge or fee, to the person responsible for paying the premium, charge, or fee;

- Clarifies that no portion of the attorney's fee, the title agent's portion of premium, any agent charge or fee, or any other monetary consideration or inducement, may be paid directly or indirectly for the referral of title insurance business;

- Clarifies definitions within the title insurance law and provides that "primary title services" do not include closing services or title searches, for which a separate charge may be made;

- Repeals the authority for the Financial Services Commission to establish limitations on related title services charges by rule;

- Provides that a title insurer may not issue a title policy until the insurer has made a determination of insurability based upon the evaluation of a reasonable title search;

- Repeals the provision that the title insurer or agency must maintain a record of the

related title service charges made for the issuance of a policy;

- Clarifies the definition of an "estoppel letter" relating to mortgage certificates of release;

- Clarifies the provisions to clear liens that have been paid off from the public records; and,

- Removes the requirement that the Financial Services Commission adopt rules to establish a premium charged by a title agent for preparing and recording of an affidavit of release of a mortgage.

If approved by the Governor, these provisions take effect October 1, 2007.

● HB 359
Motor Vehicle Financial Responsibility

The bill creates s. 324.023, F.S., under the Financial Responsibility (FR) law which provides for an additional financial responsibility requirement based on a vehicle owner or operator who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contentere to the charge of driving under the influence (DUI). Specifically, the bill requires after October 1, 2007, every owner or operator of a motor vehicle that is required to be registered or located in Florida, and who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contentere to the charge of DUI, under s. 3 16.193, F.S., must have and maintain $ 100,00 in Bodily Injury (BI) liability coverage for injury to, or death of, one person in any one crash; $300,000 in BI coverage for injury to, or death of, two or more persons in any one crash; and, $50,000 in Property Damage (PD) liability coverage in any one crash. The bill provides motorists the option of posting a bond or furnishing a certificate of deposit of not less than $350,000. The bill provides such higher limits must be carried for a period of three years. If the person has not been found guilty of a DUI or a felony traffic offense during the three year period, then the person is allowed to return to the standard coverage limits.

The bill amends. s. 3 16.646, F.S., pertaining to security requirements, to provide persons required to maintain the increased BI and PD liability coverages under s. 324.023, F.S. (Section

1 of the bill) must maintain in their possession at all times while driving proper proof of the required insurance coverages. Such proof may be an insurance card, policy, binder, certificate of insurance or such other proof prescribed by the Department of Highway Safety and Motor Vehicles (DHSMV). Persons who violate this provision commit a nonmoving traffic infraction under ch. 318, F.S. Failure to furnish proof of liability insurance results in suspension of the person's registration and driver's license and reinstatement of same is provided for under s. 627.733, F.S.

The bill also amends s. 320.02, F.S., pertaining to motor vehicle licenses. The bill requires county tax collector's to verify the increased BI and PD insurance coverages mandated under s. 324.023, F.S., have been purchased by the motorist at the time he or she applies for a vehicle registration or registration renewal. If such proof is not provided, the vehicle registration or renewal will not be issued.

This bill amends s. 627.73 3, F.S., relating to required motor vehicle security. Under current law, any operator or owner whose driver's license or registration has been suspended

under s. 3 16.646, F.S., may apply for reinstatement upon compliance with specified financial insurance requirements and payment to DHSMV of a nonrefundable fee of $150 for a first reinstatement; $250 for a second reinstatement and $500 for each subsequent reinstatement during the three years following the first reinstatement. The effect of this provision is that drivers who are required to maintain the increased liability insurance coverages under the bill, and who seek reinstatement of their license or registration, will have to pay the fees outlined herein.

The bill also adds ss. 324.021(8) and 324.023, F.S., to the requirements of s. 627.733, F.S., to clarify persons present proof to the DHSMV of securing the increased liability coverage required under the bill. Current law requires persons seeking reinstatement of their license or registration to also secure noncancelable insurance coverage described under s. 627.7275, F.S., [2]and present to the DHSMV proof the coverage is in force and such proof is noncancelable for 2 years.

In addition, the bill amends s. 627.7261, F.S., pertaining to refusal to issue automobile liability insurance. The bill prohibits insurers from denying an application for motor vehicle liability insurance, imposing a surcharge or otherwise increasing the premium for a policy "solely" on the basis the applicant, a named insured, a member of the insured's household, or a person who operates the insured's vehicle, is a "volunteer driver." The bill defines the term "volunteer driver" as a person who provides services, including transporting individuals or goods, without compensation in excess of expenses to a private nonprofit agency as defined in s. 273 .01(3), F.S., or a charitable organization defined in s. 737.501(2), F.S. [3] Finally, the bill states this provision does not prohibit an insurer from refusing to renew, imposing a surcharge on, or otherwise increasing premiums for a motor vehicle liability policy based on factors other than the volunteer status of the person.

Under current law, an insurer may not deny an application for automobile liability insurance "solely" on the ground that renewal of similar coverage has been denied by another insurer or on the ground of an applicant's failure to disclose that such denial has occurred.

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

- **HB 411**

Limited Insurance Licenses

The bill provides changes to two limited insurance licenses issued by the Department of Financial Services (department). It changes the license for personal accident insurance to "travel insurance," and changes the license for baggage and motor vehicle excess liability insurance to "motor vehicle rental insurance."

The "travel insurance" license is expanded to cover accidental death and dismemberment of a traveler; trip cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to illness or emergency of a traveler. The bill authorizes timeshare developers, sellers of travel, and their subsidiaries or affiliates to obtain a limited agent's license to sell travel insurance. Such insurance policies or certificates may be issued for terms longer than 60 days, but each policy or certificate, other than a policy or certificate providing coverage for air ambulatory

services only, must be limited to coverage for travel or use of accommodations of no longer than 60 days. Employee training is required and fingerprinting is mandated for specified officers of the licensed entity.

The "motor vehicle rental insurance" license is expanded to include accidental personal injury or death of the lessee and passengers in a leased or rented motor vehicle. The bill authorizes licensure of only the "business entity" for a motor vehicle rental insurance license, rather than licensing each entity's branch office, as under current law. The method used for calculating licensing fees is revised so the bill's effect is revenue neutral. License applicants must furnish to the department specified information about each business entity's branch office that is to be covered by the license. The bill expands the maximum time period for which insurance may be issued under a limited license leases or rental agreements from 30 to 60 days.

The bill also clarifies that limited insurance policies or certificates may only be sold by an authorized insurer or an eligible surplus lines insurer.

If approved by the Governor, these provisions take effect January 1, 2008.

- **HB 517**

Financial Responsibility for Motor Vehicles

The bill amends s. 324.02 1, F.S., to provide for an exemption, for United States Armed Forces members and their dependent spouses, from providing proof of financial responsibility relating to ownership or operation of a motor vehicle. To qualify for the exemption, the servicemember must be serving on active duty outside the state or outside the United States and the vehicle must be primarily maintained at the place of posting. The servicemember's dependent spouse must reside at the servicemember' s place of posting in order to also qualify for the exemption. The exemption applies only as long as the servicemember is on active duty outside the state and the owner complies with the security requirements of the state or any possession or territory of the United States where the member is posted.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 562**

Ownership or Transfer of Securities

This bill modifies the procedures for acquiring a controlling interest in a specialty insurer, domestic stock insurer or controlling company. The person acquiring stock must now send to the insurer and controlling company a letter of notification that contains information necessary to understand the transaction and identify all purchaser and owners involved. The notice must be filed no later than 5 days after a tender offer or exchange offer is proposed or no later than 5 days after the acquisition of the securities if not tender offer or exchange offer is involved. Previously, a different notice requiring more expansive information had been required to be filed with the insurer and the Office of Insurance Regulation. The more expansive notice now need only be filed with the office within 30 days after a definitive acquisition agreement is entered; a form of tender offer or exchange offer is proposed; or the acquisition of the securities if no definitive acquisition agreement, tender offer, or exchange offer is involved. A person may request and the Office of Insurance Regulation may waive the expanded notice to the office if there is no change in the ultimate controlling shareholder or ownership percentages, and no unaffiliated parties acquire a direct or indirect interest in the insurer.

The bill modernizes Florida law by expanding the scope of permissible custodians to allow licensed securities brokers and dealers to also serve as custodians of securities bought and sold by domestic insurance companies. The bill itself does not contain a definition of "broker or dealer." However, the term is defined elsewhere in Chapter 678, F.S., as well as in the NAIC Model Regulation on Custodial Agreements and the Use of Clearing Corporations (#298). Model rule 298 requires a "broker/dealer" to be "registered with and subject to jurisdiction of the Securities and Exchange Commission, "maintain membership in the Securities Investor Protection Corporation" and have "a tangible net worth equal to or greater than two hundred fifty million dollars ($250,000,000)." The Office of Insurance Regulation has indicated that it intends to conform the Florida Administrative Code to the NAIC Model Regulation, which would incorporate the model rule's safeguards on brokers/dealers.

The definition of a "clearing corporation" upon adding broker/dealers to the list of permissible custodians. The bill simplifies the Florida Statutes to include the various book-entry systems in which a Treasury security may be maintained in the definition of a closing corporation. The amendments are in conformity with the National Association of Insurance Commissioners Model Act on Custodial Agreements and the Use of Clearing Corporations (#295).

The bill changes the reference date of the Insurance Holding Company System Regulatory Act and Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners from January 1, 1997, to November 30, 2001.

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

- **SB 672**

Credit Balances/Unclaimed Property

The bill exempts credit balances held by a financial institution, credit union, or "participant" as defined in 12 USC s. 4001(19), that are the result of check-clearing functions from the unclaimed property requirements of s. 717.117, F.S. The bill states that this provision is clarifying and remedial in nature. It will apply retroactively to credit balances held before July 1, 2007, as well as to credit balances held on or after that date. The cited federal regulation defines "participant" as a depository institution which (a) is located in the same geographic area as that served by a check clearinghouse association; and (b) exchanges checks through the check clearinghouse association either directly or through an intermediary. A "check clearinghouse association" is defined as "any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System."

The provisions of the bill have been the subject matter of ongoing litigation in *Bank of America, N.A. v. McCann,* 444 Fed. Supp. 2d 1227 (USDC ND Fla. 2006). However, on February 15, 2007, the plaintiffs in the case filed for a voluntary dismissal with prejudice, effectively ending the legal action.

If approved by the Governor, these provisions take effect July 1, 2007

- **SB 746**

Workers' Compensation/ First Responders

The bill provides standards for determining benefits for employment-related accidents and injuries of "first responders," which generally increase the amount and likelihood of eligibility for workers' compensation benefits.

Many of these provisions have the effect of reversing the application to first responders of benefit changes to the workers' compensation law enacted in 2003.

The bill defines "first responder" to include a law enforcement officer, a firefighter, an emergency medical technician or paramedic, and a volunteer firefighter. The bill provides the following changes in workers' compensation for first responders:

- Lowers the standard of proof and other requirements for compensability for toxic substance exposure, occupational disease, and mental or nervous injury.
- Authorizes payment for medical benefits in cases involving a mental or nervous injury without an accompanying physical injury requiring medical treatment.
- Eliminates the six-month limitation on temporary total disability benefits for compensable mental or nervous injuries after a first responder reaches maximum medical improvement and the 1 percent limitation for permanent impairment benefits for psychiatric impairment.
- Provides that any adverse result or complication caused by a smallpox vaccination is deemed to be an injury arising out of work performed in the course and scope of employment.
- Extends the payment of permanent total disability supplemental benefits beyond age 62 for first responders that were employed by a public employer that did not participate in the social security program whether or not the employer provided an alternative retirement program.

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

- **SB 1100**

Securities Transactions Regulation

The bill increases the annual licensing fee for security agents from $30 to $50. The bill provides that this increased revenue will be distributed to the Regulatory Trust Fund within the Office of Financial Regulation to support program operations.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1206**

Warranty Responsibility/MV Dealers

The bill amends s. 320.696, F.S., to clarify "labor and parts'' are included in warranty work, repairs, and service and to require manufacturers to compensate dealers for work, "including labor and parts," to rectify warranty defects. In addition, the bill specifies reasonable compensation to dealers by manufacturers for warranty work equal to the amount charged by the dealer for similar work for non-warranty repairs or service, "including labor and parts."

Also, if a dispute on warranty compensation is taken to an administrative proceeding before the Department of Highway Safety and Motor Vehicles, the manufacturer is required to demonstrate that the dealer's retail charges for labor "and parts" are improper.

The bill also prohibits a manufacturer from recovering any of its costs for compensating a dealer for warranty work, including labor and parts, by imposing a charge or surcharge to the wholesale price paid by the dealer for any product, such as the vehicle and vehicle parts.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 1381
Insurance, Agencies, Agents & Adjusters

The bill makes the following changes pertaining to the regulation of insurance agencies, agents and adjusters under the authority of the Department of Financial Services (DFS or department):

- Requires the DFS and the Financial Services Commission (FSC) to adopt rules to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by insurers and agents involving the offer of life insurance products. The rules must be based upon model rules or model laws adopted by the National Association of Insurance Commissioners. This is in response to a 2006 federal law that expresses the intent of Congress that every state adopt rules or laws to protect members of the military from deceptive and improper insurance sales practices;

- Allows a branch location of a securities dealer to register as an insurance agency rather than obtain an insurance agency license;

- Provides that the current exemptions from taking the written examination for an adjuster's license for persons who complete certain educational programs apply to persons who are applying for an independent adjuster or company employee adjuster license. Therefore, the exemptions would no longer apply to applicants for a public adjuster licensee;

- Adds an entity ("ALL-LINES Training") to the list of entities that may apply to the DFS for approval to be a pre-licensing adjuster course provider. Persons who take a course which is approved by DFS are exempt from taking the adjuster license examination, except for public adjusters who must take the exam as provided for under the bill;

- Allows correspondence courses to be approved by the DFS for satisfying the pre-licensing education requirements for obtaining a life or health insurance agent license;

- Allows an insurance agent to be in charge of more than one agency branch location so long as insurance activities do not occur at the location when the agent is not physically present (effective January 1, 2008);

- Clarifies that the surety bond required for a public adjuster must be maintained continuously and for one year after termination of the license;

- Allows the DFS to extend the deadline for up to one year for an insurance adjuster to meet continuing education requirements, for good cause;

- Clarifies that the agent manual of the Florida Surplus Lines Service Office must be approved by the DFS;

- Requires that "risk bearing entities" (i.e., reciprocal insurers; commercial, group, local government, public utility or independent educational self insurance funds) clearly indicate on advertising materials that they are offering insurance products. The bill provides that there is no liability to the insured on the part of, and no cause of action of any nature shall be brought against any licensed or appointed insurance agent for the insolvency of any risk bearing entity

when such entity has been authorized or approved by the Office of Insurance Regulation to do business in Florida. However, if the agent was a "controlling producer" (i.e., controlling the management and policies of an entity) of the risk bearing entity within 2 years preceding the insolvency, the agent is subject to a penalty under s. 626.7491, F.S. (i.e., OIR can order the agent to cease placing business with the controlled insurer or the OIR may bring a civil action for recovery of damages); and

- Provides an appropriation of $132,000 to the DFS from the Insurance Regulatory Trust fund to make necessary computer system changes as required under the bill.

If approved by the Governor, these provisions take effect July 1, 2007, except as otherwise expressly provided in this act.

● HB 1549
Examination of Insurers

Currently, an insurer is generally subject to a financial examination by the Office of Insurance Regulation (OIR) of its affairs, transactions, accounts, records, and assets, no less frequently than once every 3 years. This bill changes the frequency of the required examination to at least once every 5 years, with the exception of domestic insurers that have held a certificate of authority for less than 3 years. These domestic insurers would continue to be subject to an examination on an annual basis.

The bill expands the specialists that qualify to conduct independent examinations. The current list comprised of independent certified public accountants, actuaries, and reinsurance specialists is expanded to also include investment specialists and information technology specialists.

The bill allows the OIR to unilaterally select the independent examining firm by removing the requirement that the insurer and the OIR must agree to an independent examination, the rates and terms of the examination, and the selection of such an independent examiner. The bill also provides additional criteria for the selection of an independent examiner. Rates charged by such firms must be consistent with rates charged by other firms in similar professions, and the firm selected by the OIR to conduct an examination may not have a conflict of interest that would preclude an independent examination. The bill also provides that if the OIR contracts with an outside examiner for an examination of an insurer, the insurer must pay the OIR, rather than the contract examiner, for the cost of the exam. Then, the office would reimburse the examiner pursuant to a legislative appropriation. The bill eliminates the $25,000 cap on the fee for the annual examination of a domestic insurer that has held a certificate of authority for less than 3 years.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 1624
Insurance/Workers' Compensation/ Public Construction Projects

The bill provides the following changes to the current statutory provisions regulating the use of an owner-controlled-insurance program (OCIP) by a public agency:

- Provides that a "specified contracted work site" for purposes of an OCIP applies to a *single* continuous system.

- Clarifies when a capital infrastructure improvement program at multiple work sites meets the $75 million threshold re-

quirement in order for the construction project to be eligible to use an OCIP. A capital infrastructure improvement program must be for a single public service, system, or facility that cannot be combined with another project unless certain conditions are met. The term "capital infrastructure improvement program" is also defined.

- Specifies that, under an OCIP with a large deductible workers' compensation rating plan, the individual contractors and subcontractors are not required to individually satisfy eligibility requirements and may combine their payroll if the deductible is $100,000 or more and the standard premium is $500,000 or more.

- Requires an OCIP to provide completed operations coverage, which insures against construction defections after the completion of the project, for at least 10 years rather than 5 years.

If approved by the Governor, these provisions take effect October 1, 2007.

● SB 1748
Insurance Contracts/ Workers' Compensation

The bill prohibits a person, such as a contractor, from rejecting workers' compensation coverage from a self-insurance fund that is subject to ch. 631, part V, F.S., based upon the self-insurance fund not being rated by a nationally recognized insurance rating agency. Such coverage is required pursuant to a construction project. Chapter 631, part V, F.S., establishes the Florida Workers' Compensation Insurance Guaranty Association to pay claims for insolvent insurers and self-insurance funds. Presently, some builders, notably national companies, require contractors or subcontractors to secure coverage with a workers' compensation carrier rated not less than an "A" by a nationally recognized rating agency as a condition of being a vendor or receiving payment. In Florida, workers' compensation insurance is offered by insurance companies and commercial self-insurance funds whose claims are protected by the Florida Workers' Compensation Insurance Guaranty Association in the event of insolvency. There is no current law requiring workers' compensation insurers or self-insurance funds to be rated by a rating service as a condition of being authorized to write workers' compensation insurance.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 1894
Joint Underwriting Plan/ Workers' Compensation

The bill amends laws governing the Florida Workers Compensation Joint Underwriting Association, Inc., (JUA) to provide greater accountability and oversight, to assist the JUA in achieving tax-exempt status, and to authorize additional funding mechanisms.

JUA Board Oversight; Tax-Exempt Status

The bill revises the JUA board appointment process by requiring the Financial Services Commission (FSC) to appoint eight of the nine members instead of three members. The insurance industry will have five representatives, as currently provided by law; however, the FSC will select and appoint each respective representative from a list of five nominees for each vacancy, which would be submitted by the industry. The number of state governmental appointees (including the Consumer Advocate of the Department of Financial Services) would remain at four members.

Upon dissolution of the JUA, the bill requires that all assets of the JUA first be used to pay all debts and obligations of the plan and that any remaining assets would revert to the state. This provision will also assist the JUA in its effort to obtain tax-exempt status.

To avoid significant future federal tax liabilities, the bill requires that, on or before January 1, 2008, the JUA must seek a letter ruling or determination from the IRS regarding the JUA's eligibility as a tax-exempt organization. Since its inception in 1994, the JUA has incurred an estimated $33 million in federal income tax expenses, including $16 million in 2006.

Code of Ethics and Financial Disclosure

Senior managers, officers, and board members are subject to certain provisions of ch. 112, part III, F.S., including, but not limited to, standards of conduct, public disclosure requirements, and reporting of financial interests to the Commission on Ethics on an annual basis. The bill authorizes an employee, director, etc., of an insurance entity to be a board member unless the insurance entity provides certain services to the JUA. The bill prohibits such a board member from voting on a matter if the insurance entity would obtain a special benefit that would not apply to similarly situated entities.

Current and prospective employees are required to submit an annual statement to the JUA attesting that no conflict of interest exists. Any senior manager or officer of the JUA employed as of January 1, 2008, who retires or terminates employment, is prohibited from representing another person before the JUA for a two-year period. Employees and board members are prohibited from accepting gifts of any value from a person or entity, or an employee or representative of such person or entity, that has a contractual relationship with the plan or who is under consideration for a contract. Employees or board members that fail to comply with this provision are subject to penalties, such as fines. The executive and legislative branches of government are subject to a similar prohibition as that applied to lobbyists.

Deficit Funding

The JUA is required to use any policyholder surplus attributable to former subplan C prior to assessing policyholders in the voluntary market for funding subplan D deficits on a cash flow basis. The surplus in subplan C is approximately $39 million and the estimated additional funding needed is less than $5 million. The deadline for levying "below-the-line" assessments to fund deficits in subplan D, and Tiers One and Two is extended from July 1, 2007, to July 1, 2012.

Regulatory Oversight

The JUA is required to refund premiums to their policyholders if the OIR subsequently disapproves the rate. Also, the OIR is required to conduct periodic market conduct examinations of the JUA.

Procurement of Goods and Services

Competitive selection of goods and services valued at over $25,000 is generally required. Exceptions for exempted services (legal and auditing, etc.), sole sourcing and emergency purchases are authorized. Any purchase that exceeds $100,000 requires approval by the board of governors. Guidelines and criteria are provided for determining whether staff attorneys or outside attorneys should be used and factors to be used in selecting outside firms.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 2498**

Citizens Property Insurance Corporation

This bill makes changes to the Citizens Property Insurance Corporation ("Citizens") law, prohibits the formation of new Florida domestic residential property insurance subsidiaries and requires rate filings for all insurance subsidiaries to include parent company profit information.

Citizens Property Insurance Corporation ("Citizens") [s. 627.351(6), F.S.]

Revises the legislative findings for establishing Citizens, in order to support its tax-exempt status, finding that the absence of affordable property insurance threatens the public health, safety, and welfare and that the state has a compelling public interest in assuring that property is insured at affordable rates.

- Prohibits any rate increase in Citizens until January 1, 2009. This extends for an additional year, the current prohibition against a rate increase until January 1, 2008. The rates in effect on December 31, 2006 shall remain in effect for 2007 and 2008 except for any rate change that results in a lower rate.

- Provides that if a new applicant to Citizens is offered coverage from an insurer at its approved rate, the applicant is not eligible for a Citizens policy unless the insurer's premium is more than 15 percent greater than the premium for comparable Citizens' coverage. (Current law has a 25 percent limitation.). Also provides criteria for determining when "comparable coverage" has been offered and allows an insurance agent to make this initial determination.

- Extends until January 1, 2009 (rather than July 1, 2008) the ineligibility of coverage in Citizens for personal lines residential structures that have a dwelling replacement cost of $1 million or more (except for dwellings insured by Citizens on December 31, 2008, which may reapply and obtain coverage under certain conditions).

- Clarifies that the expanded Citizens assessment base (per HB 1-A in Special Session) applies only to deficits incurred after January 25, 2007.

- Permits a policyholder whose coverage with Citizens has been assumed by another insurer to continue to be eligible for Citizens coverage through the end of the assumption period regardless of any offer of coverage by the insurer.

- Deletes the requirement that by July 1, 2007, an application for new coverage with Citizens is subject to a 10-day waiting period before coverage is effective.

- Limits the post-employment restrictions on employees of Citizens to senior managers of Citizens.

- Provides that Citizens may be liable for attorney's fees in an action for breach of contract for benefits.

- Requires a Citizens employee to notify the Citizens' Office of the Internal Auditor and the Division of Insurance Fraud of suspected fraud by a Citizens employee.

- Authorizes OIR to establish a pilot program in one or more counties, to allow Citizens to exclude sinkhole coverage (and offer sinkhole coverage as an option) pursuant to the sinkhole coverage changes enacted in HB 1-A, without being required to give the policyholder a notice of non-renewal.

- Deletes the requirement that an insurer that writes the ex-wind coverage must contract with Citizens to adjust the windstorm claims on behalf of Citizens.

- Allows for cross-collateralization of assets of the Personal Lines Account and the Commerical Lines Account for any bonds or other debt for new financing by Citizens, as current law allows for debt that Citizens inherited in the merger with the old Residential Property and Casualty Joint Underwriting Association.

- Creates the "Citizens Property Insurance Corporation Mission Review Task Force" to analyze and compile data for development of a report specifying the statutory and operational changes needed to return Citizens to its former role as a state created, noncompetitive residual market.

    - The Task Force consists of 19 members: the Governor appoints 4 members, of which 2 must be consumer representatives, the President of the Senate appoints 3 members, and the Speaker of the House of Representatives appoints 3 members. An additional 6 members are appointed as representatives of private insurance companies, of which 3 are appointed by the Governor, President, and Speaker, respectively. The Chief Financial Officer appoints 3 members representing insurance agents.

    - The Task Force must submit its report to the Governor, President of the Senate, and Speaker of the House by January 31, 2008.

    - Appropriates $600,000 from the Insurance Regulatory Trust Fund of the Department of Financial Services (DFS) to the Task Force, which may employ consultants. DFS must provide administrative support.

Prohibition on New Florida Subsidiaries; Profits of Parent Company

- Prohibits a new certificate of authority for the transaction of residential property insurance to any insurer domiciled in Florida which is a wholly owned subsidiary of an insurer authorized to do business in any other state. Effective December 31, 2008.

- Requires the rate filings of an insurer domiciled in Florida that is a wholly owned subsidiary of an insurer authorized to do business in any other state to include information relating to the profits of the parent company. Effective December 31, 2008.

Payment of Claims [s. 627.70131, F.S.]

- Revises the requirement for a property insurer to pay or deny a claim within 90 days of receiving notice of a claim to:

    - Apply this requirement to residential property insurance claims and to commercial property claims for structural or contents coverage if the structure is 10,000 sq. ft. or less. However, this would not apply to a policy covering commercial nonresidential structures or contents in more than one state.

    - Alternatively requires the insurer to pay a "portion of the claim" within

the 90-day period.

- Require an insurer to pay interest pursuant to s. 55.03, F.S. (as required for legal judgments) to a policyholder if the insurer fails to timely pay a claim within 90 days of receipt, or 15 days after circumstances that have reasonably prevented payment no longer exist, whichever is later.

Florida Hurricane Catastrophe Fund (FHCF) [s. 215.555, F.S.]

- Allows any insurer that qualifies as a limited apportionment company ($25 million in surplus or less) to purchase up to $10 million of additional coverage from the FHCF (at a premium of 50 percent of the coverage amount, above a retention of 30 percent of the insurer's surplus).
- Exempts medical malpractice insurance from FHCF assessments through May 31, 2010.
- Clarifies the method of determining coverage and premium for insurers purchasing optional ("TEACO") coverage below the insurer's retention for the mandatory FHCF coverage.
- Deletes the June 1, 2007 expiration date of the provision that allows Citizens to mutually agree with the State Board of Administration on how to structure FHCF coverage for policies that Citizens assumes from an insolvent insurer.

Policy Exclusions and Deductibles [ss. 627.701 and s. 627.712, F.S.]

- Requires an insurer to make available a policy that excludes coverage for windstorm coverage (rather than hurricane or windstorm coverage), and requires that all property insurers (commercial and residential) offer this coverage.
- Excludes a tenant's policy from the requirement for an insurer to offer an exclusion of contents coverage.
- Specifies that the policy exclusions for windstorm or contents coverage may only be implemented as of the date of a policy's renewal.
- Specifies that a new deductible for residential property insurance may only be implemented as of the date of the policy's renewal.

Rating Law
[ss. 62 7.062 and 627.0655, F.S.]

- Specifies that the temporary prohibition against making a "use and file" rate filing applies to property insurance (but not casualty insurance) rate filings and clarifies that it applies to a rate filing submitted after January 25, 2007 (the effective date of HB 1-A).
- Prohibits an insurer from recouping in its rates the interest payments the insurer makes for failure to pay or deny a property insurance claim within 90 days as required by statute.
- Clarifies that a multi-line discount may only be offered by an insurer to a consumer that has purchased another policy from the same insurer or insurer group.

Insurance Capital Build-Up Incentive Program [s. 215.5595, F.S.]

- Allows an insurer that exclusively writes manufactured housing to obtain a surplus note of up to $7 million from the Insurance Capital Build-Up Incentive Program. (Current law allows such an

insurer to have a total amount of surplus, new capital, and surplus note equal to $14 million, rather than $50 million.)

- Provides that an insurer is considered to be "writing only manufactured housing" if it is: 1) a Florida domiciled insurer that began writing policies after March 1, 2007, removes at least 50,000 policies from Citizens without a bonus, and at least 25 percent of its policies cover manufactured housing; or 2) a Florida domiciled insurer that writes at least 40 percent of its policies covering manufactured housing in Florida.

- Between insurers writing manufactured housing policies, priority shall be given to the insurer writing the highest percentage of manufactured housing policies.

Florida Insurance Guaranty Association (FIGA) [ss. 631.52, 631.57, and 631.695, F.S.]

- Specifies that any kind of self-insurance fund, liability pool, or risk management fund is not covered by FIGA.

- Clarifies that FIGA's authority to levy emergency assessments of 2 percent of premium is for payment of covered claims (not just homeowners claims) of insurers rendered insolvent by the effects of a hurricane.

- Permits all municipalities and counties in the state to issue bonds to assist FIGA in expediting the handling and payment of covered claims of insolvent insurers.

Surplus Lines Policies [ss. 626.914, 626.916, and 626.9201, F.S.]

- Requires a retail agent to inform a policyholder that coverage may be available and less expensive from Citizens before export to the surplus lines insurance market. The notice must also include information that Citizens assessments are higher and that Citizens coverage may be less than the property's existing coverage.

- Requires only one rejection from an authorized insurer, rather than three rejections, in order for coverage for a $1 million residential structure to be exported to the surplus lines market.

- If a policyholder pays for a surplus lines insurance policy with a bad check, or fails to maintain membership in an organization necessary to obtain insurance coverage, the policy may be cancelled for nonpayment of premium. If a bad check is the initial premium payment, the policy is retroactively void unless payment is tendered within the earlier of 5 days after actual notice by certified mail is received by the applicant, or 15 days after notice is sent to the applicant by certified or registered mail.

Florida Building Code; Internal Pressure Option

- Retains the internal design (pressure) options in the Florida Building Code (as an option to opening protections in the wind-borne debris region) until June 1, 2007, for a building permit application made prior to that date. This applies retroactively to January 25, 2007, the effective date of HB 1-A that repealed this option, and applies to any action taken on a building permit affected by that act.

Other Provisions

- Applies the $50 million surplus requirement to a domestic residential property insurer if it is a subsidiary of an insurer domiciled (rather than "doing business") in another state.

- Provides that the annual report card for insurers prepared by the Consumer Advocate regarding consumer complaints and the time it takes to pay claims applies to personal residential property insurers, rather than all property insurers, and requires the report to include the number of consumer complaints "as a market share ratio."

- Provides that 100 days' notice of nonrenewal is required, rather than June 1, if earlier, for a nonrenewal effective during hurricane season, if the policy is being non-renewed for the sole purpose of revising the coverage for sinkhole losses; or if the policy is non-renewed by Citizens for a policy assumed by an insurer that offers replacement or renewal coverage.

- Transfers and amends s. 627.7277(4), F.S., to s. 627.4133(7), F.S., to place in the proper section the requirement of HB 1-A that each residential property insurance renewal premium specify the amounts recouped for assessments, the dollar amount of a premium increase that is due to an approved rate increase, and the total dollar amount of increase due to coverage changes. The bill applies this to residential property policies and specifies that the amount of the increase for coverage changes need only specify the total dollar amount due to all coverage changes. It also is limited to identifying the amount of an "approved" rate increase which is intended to not require identification of a rate increase that is due, for example, to the home being one year older or such other rating change that was in a rate schedule that was not affected by a rate filing approved since the prior renewal.

- Creates the Florida Catastrophic Storm Risk Management Center at Florida State University, to promote and disseminate research on issues related to hurricane catastrophe loss and to assist in developing education and research grant funding opportunities. (The General Appropriations Act appropriates $1 million for this center.)

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.

- **HB 7031**

Community Associations/Insurance

This bill increases the options of condominium, cooperative, and homeowners' associations, with regard to insuring association property and participating in self insurance programs. Specifically, this bill amends laws relating to insurance and other issues for community associations to:

- Provide that the language relating to windstorm and self insurance (s. 718.111(11)(a), F.S.) that was added to the Condominium Act in HB 1-A during the 2007 special session on insurance applies to all residential condominiums in the state, regardless of the date of its declaration of condominium;

- Provide implementing provisions for condominium associations, cooperative associations, and homeowners' associations to participate in self-insurance funds authorized by the 2007 special session;

- Provide authorizing legislation for the homeowners' associations and cooperative associations to participate in the "pooled" insurance option for obtaining windstorm insurance coverage;

- Establish new budget disclosure requirements for condominium and cooperative prospectuses relating to budget changes due to increases in insurance premiums;

- Establish "good faith" estimates to be the basis for the budget;

- Preserve the developer assessment guarantees in the prospectuses and provide that unforeseen increases are not material changes to the offering circular; and

- Require new budgets to be given to purchasers at closing.

This bill also amends or creates provisions in Part VI of the Condominium Act relating to condominium conversions to:

- Expand the disclosure requirements for the improvements located on the property;

- Provide developers with additional requirements for warranties and reserve accounts;

- Conform the law by adding the terms "converter" and "as provided in this section" to modify reserve accounts in order to better differentiate between converter reserve accounts and regular reserve accounts;

- Require updated inspection reports when components are renovated or repaired; and

- Provide that the condominium owner and the association are third-party beneficiaries to the engineer and/or architect's report.

The bill includes a self-insurance fund under the definition of covered insurance policy for residential properties for the Florida Hurricane Catastrophe Fund.

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

● HB 7057
Hurricane Damage Mitigation

During the 2006 Regular Session, the Legislature created the Florida Comprehensive Hurricane Damage Mitigation Program and appropriated $250 million to provide financial incentives to encourage residential property owners in Florida to retrofit their properties, making them less vulnerable to hurricane damage and helping decrease the cost of residential property and casualty insurance. The program provides free home inspections and matching grants of up to $5,000 for home mitigation and is administered by the Department of Financial Services (DFS). The bill makes changes to the program and the Florida Building Code, and contains other issues related to hurricane damage mitigation.

My Safe Florida Home Program [s. 215.5586, F.S.]

- The name of the program is changed from the Florida Comprehensive Hurricane Damage Mitigation Program to the My Safe Florida Home Program (MSFH).

- Legislative intent is provided that the MSFH program provide at least 400,000 inspections and at least 35,000 grants by June 30, 2009.

- The bill clarifies that free home inspections are available statewide, but limits the in-

spections to site-built, single-family residential property.

- The amount of matching grants (and non-matching grants for low-income homeowners) are maintained at a maximum of $5,000, but grants are limited as follows:
  - Grants may only be used for opening protections (such as shutters); exterior doors, and to brace gable ends (and are no longer available for roof upgrades). The DFS may require that all openings be protected as a condition of approving a grant, under certain conditions.
  - The property must be homestead property with an insured value of $300,000 or less (rather than $500,000), located in the "wind-borne debris region," and built prior to March 1, 2002. The "wind-borne debris" region is the where the Florida Building Code requires new homes to have opening protections (shutters, etc.) and is where sustained winds of 120 mph or greater are likely to occur.
- The DFS must establish objective, reasonable criteria for prioritizing grant applications.
- The bill allows hurricane mitigation inspector training to be on line or in person and allows a hurricane mitigation inspector to also be the mitigation contractor if the inspector is otherwise qualified and certified.
- The bill requires that an application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.
- The DFS is authorized to contract with third parties for grants management, inspection services, educational outreach, and auditing services. Contracts valued at $500,000 or more shall be subject to review and approval by the Legislative Budget Commission.
- DFS shall transfer $40 million from funds appropriated to the MSFH program, including up to 5 percent for administrative costs, to Volunteer Florida Foundation, Inc. (VFF), for provision of inspections and grants to low-income homeowners. VFF must report its activities and account for state funds on a quarterly and annual basis.
- In making matching fund grants available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family residential property, the DFS must liberally construe such requirements in favor of availing the state of the opportunity to leverage program funding with other sources of funding.
- The DFS may use up to $10 million from the funds appropriated for the MSFH to develop a no interest loan program by December 31, 2007, to encourage the private sector to provide loans for mitigation measures. The DFS shall pay the interest on the loans which may be for a term of up to 3 years and cover up to $5,000 in mitigation measures.
- The DFS is directed to make an annual report by February 1 of each year on the activities of the program that shall account for the use of state funds.

- The DFS must transfer $1 million from the funds appropriated to the MSFH program to the Low-income Emergency Home Repair Program. Administrative expenses may not exceed 5 percent ($50,000) of the funds appropriated.

Florida Building Code: Roof Replacements and Adding Opening Protections [s. 553.844, F.S.]

The bill requires the Florida Building Commission to develop and adopt within the Florida Building Code standards for mitigation techniques for site-built, single-family-residential structures constructed prior to the implementation of the Florida Building Code, including gable-end bracing, secondary water barriers for roofs, roof-to-wall connections, roof-decking attachments, and opening protections.

The Florida Building Commission must adopt rules by October 1, 2007, to take immediate effect (to apply to building permits applied for on or after that date) to require that a roof replacement incorporate a secondary water barrier and strengthening the roof decking attachments. For single-family residential structures located in the wind-borne debris region that have an insured value of $300,000 or more, a roof replacement must also incorporate cost-effective improvements of roof-to-wall connections as determined by the Florida Building Commission, under the standard that such improvements add no more than 15 percent to the cost of the reroofing. These rules shall be incorporated into the next edition of the Florida Building Code.

Any construction activity that requires a building permit after July 1 2008, and for which the estimated cost is $50,000 or more must include opening protections (shutters, etc.) as required for new buildings if the building has an insured value of $750,000 or more and is located in the wind-borne debris region.

Eligibility for Coverage in Citizens Property Insurance Corporation [s. 627.351(6), F.S.]

Effective January 1, 2009, a home (personal lines residential structure) with an insured value of $750,000 or more that is located in the wind-borne debris region is not eligible for coverage from Citizens Property Insurance Corporation unless it has opening protections as required for new construction. A home complies with this requirement if it has opening protections on all openings and complied with the Florida Building Code at the time they were installed.

Contractor Continuing Education [s. 489.115, F.S.]

The bill adds, for applicable licensure categories, wind mitigation methodologies to contractor continuing education requirements.

Wind-loss Mitigation Study

The bill provides that it is the intent of the Legislature that scientifically valid and actuarially sound windstorm mitigation rate factors, premium discounts, and differentials be provided to residential and commercial property insurance policyholders. In order to ensure the validity of such factors, the Office of Insurance Regulation, in consultation with the Department of Community Affairs and the Florida Building Commission, is directed to conduct one or more wind-loss mitigation studies for both residential property (including mobile homes and condominiums) and commercial non-residential property. The studies related to residential property shall be completed by January 1, 2008 and the studies related to commercial nonresidential property shall be completed by March 1, 2008.

The General Appropriations Act contains an appropriation of $1.5 million to the Office of Insurance Regulation to conduct these studies.

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

- **HB 7087**

Financial Services

The bill:

- Authorizes the sale of optional guaranteed asset protection (GAP) products by motor vehicle installment sellers, sales finance companies, retail lessors and their assignees, and establishes requirements for the sale of such products. The seller of GAP coverage may not require its purchase as a condition for making a loan. In order to offer a GAP product, the seller of the GAP product must comply with specified statutory consumer protection requirements.

- Defines "debt cancellation product," specifies that such products may be sold by financial institutions and their subsidiaries and other business entities authorized by law, and states that it is not insurance for purposes of the Florida Insurance Code. Financial institutions are required to manage risks associated with debt cancellation products prudently, and to establish and maintain effective risk management and control programs regarding such products. Insurance purchased by a creditor for debt cancellation products is defined as a form of casualty insurance.

- Increases the maximum delinquency charge from $10 to $25 for a default of payment pursuant to a revolving account provision in a retail installment contract.

- Eliminates the $50,000 limit on insurance that may be procured on the life of a debtor under a debtor group contract, or pursuant to a credit life insurance policy. Instead, the limit is the amount of the person's indebtedness to the creditor. The bill also allows the term of credit disability insurance to extend for the term of the indebtedness, rather than the current 10-year time limitation.

- Specifies that a deposit or account made in the name of two persons who are husband and wife is considered a tenancy by the entirety unless otherwise specified in writing.

- Provides that an agreement to operate or share an ATM may not "prohibit, limit, or restrict" the right of the owner or operator to charge an access fee or surcharge not otherwise prohibited under state or federal law to a customer conducting a transaction using an account from a financial institution that is located outside of the United States. The bill also provides that nothing in the act is intended to restrict the owner or operator from entering into agreements regarding access free fee arrangements. The bill requires an owner or operator of an ATM to disclose such fees or surcharges in compliance with federal Regulation E,[1] addressing electronic fund transfers, which was issued by the Board of Governors of the Federal Reserve System, pursuant to the federal Electronic Fund Transfer Act.

- Allows state-funded endowments that are funded by a general appropriation act prior to 1990 to maintain funds in state or federal financial institutions.

- Raises the minimum capitalization for a proposed bank to $8 million and deletes the differing capitalization for banks in a metropolitan area and those in other counties. The bill also raises the minimum total capital accounts at opening for a trust company from $2 million to $3 million and sets differing capitalization standards for banks owned by a single-bank holding company and banks owned by multibank holding companies.

- Eliminates the need for a bank or trust company to obtain approval from the Office of Financial Regulation (OFR) in order to increase its capital. However, a state bank or trust company must notify the OFR in writing 15 days before increasing its capital stock. The bill deletes the prohibition against a bank or trust company issuing capital stock with over a $100 par value. It states a financial institution may not issue or sell stock of the same class which creates different rights, options, warrants, or benefits among the purchasers or stockholders of that class of stock. However, the financial institution may create uniform restrictions on the transfer of stock as permitted in s. 607.0627, F.S.

- Clarifies who can assert dissenter's rights pursuant to the approval of the sale of stock by a state bank or trust company. The fair value of the shares of stock will be determined using the procedures in s. 607.1326, F.S., and s. 607.1331, F.S., rather than by a panel of three appraisers. The new procedure would be the same as is applied to corporations.

If approved by the Governor, these provisions take effect October 1, 2007.

CARLTON FIELDS

ATTORNEYS AT LAW

2007
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Post-Session Report

Legal & The Judiciary

Including legislation relating to criminal justice and law enforcement.

LEGAL & THE JUDICIARY

- **SB 2**

Unattended Child in Motor Vehicle

In Florida, from 1990 to the present, at least 102 children under the age of 15 died in vehicles in non-traffic incidents. In 2004, ten children died due to hyperthermia after being left in cars or entering vehicles that were unlocked. In addition to heat related injuries, children left unattended in vehicles have been injured and died from strangulation by a power window, from accidentally setting the car in motion, from carbon monoxide poisoning, from falling out of the vehicle and being run over, from choking and from abduction.

Current law prohibits a parent, legal guardian, or other person responsible for a child under the age of six years from leaving the child unattended or unsupervised in a motor vehicle for a period in excess of 15 minutes or for any period of time if the motor vehicle is running or the health of the child is in danger. Violation of the section is a non-criminal traffic infraction, punishable by a fine of not more than $100, or by a fine of between $50 and $500 if the motor is running or the health of child is in danger.

This bill makes it a second degree misdemeanor to leave a child under the age of six unattended or unsupervised in a vehicle for longer than 15 minutes. In addition, the bill makes it a third degree felony to violate the section and thereby cause great bodily harm, permanent disability or disfigurement.

If approved by the Governor, these provisions take effect July 1, 2007.

Rep. Trey Traviesa, R-Tampa, signals approval on the House floor during closing debate of the Regulation of Communication Media Technology Services bill, which he sponsored. (House photo by Meredith Hill)

- **HB 25**

Adam Arnold Act/DUI

The bill requires the imposition of a two-year minimum mandatory sentence for the offense of leaving the scene of an accident involving death where the offender was driving under the influence. The bill also requires a judge to order an offender to make restitution to the victim upon conviction for the offenses of leaving the scene of an accident involving injury or death.

The bill provides for the imposition of "victim injury points" for these offenses. This will have the effect of significantly increasing the lowest permissible sentence a judge can impose for the offense of leaving the scene of an accident involving death.

In addition, the bill requires the imposition of a four-year minimum mandatory sentence for the offense of DUI manslaughter.

If approved by the Governor, these provisions take effect July 1, 2007.

● **HB 55**

Domestic Violence/Employee Leave

Any person who is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence may file a sworn petition for an injunction for protection against domestic violence. Florida law currently prohibits dismissing from employment any person who testifies in a judicial proceeding in response to a subpoena, but does not address other protections enumerated in this bill to victims of domestic violence.

The bill is tied to HB 63, which provides the public records exemption for records in public employee personnel files related to domestic violence.

The bill requires employers with 50 or more employees to allow employees who have been employed for at least three months to request and take up to three working days of leave with or without pay within a 12-month period if the employee is the victim of domestic violence and the leave is sought to:

- Seek an injunction for protection against domestic violence;
- Obtain medical care or mental health counseling;
- Obtain services from a victim-services organization;
- Make the employee's home secure or to seek new housing; or
- Seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

The bill requires employees to provide advance notice of the leave (except in cases of imminent danger) and use all annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in this bill (unless this requirement is waived by the employer).

The bill authorizes employers to require documentation of the act of domestic violence, requires employers to keep information relating to the employee's leave confidential, and prohibits employers from taking any disciplinary action against the employee for exercising rights under the bill.

The bill specifies that the remedy for damages to an employee aggrieved under the bill is limited to a civil suit for damages or equitable relief in the circuit court.

If approved by the Governor, these provisions take effect July 1, 2007.

● **HB 77**

Child Visitation

Pursuant to s. 753.001, F.S., supervised visitation programs provide for "contact between a noncustodial parent and one or more children in the presence of a third person responsible for observing and ensuring the safety of those involved." Supervised visitation programs may also be used to supervise the "movement of a child from the custodial to the noncustodial parent at the start of the visit and back to the custodial parent at the end of the visit."

The Florida Supreme Court has, by administrative order, adopted the Minimum Standards for Supervised Visitation Program Agreements. The standards contained in the order provide that the chief judge of each judicial circuit has the responsibility for the oversight of court-ordered, supervised visita-

tion and for agreements with service providers who meet the minimum standards.

This bill creates the "Keeping Children Safe Act" which limits visitation of a child by a parent, caregiver, or grandparent who has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving minors. Specifically, the bill creates a rebuttable presumption that visitation with a parent or caregiver will be detrimental to the child if the parent or caregiver has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving children. If the presumption is not rebutted, visitation must be prohibited or allowed only through a supervised visitation program.

The Clearinghouse on Supervised Visitation (Clearinghouse) is located within the College of Social Work at Florida State University. The Clearinghouse was created to provide statewide technical assistance on issues related to supervised visitation programs. The bill directs the Clearinghouse to recommend to the Legislature standards that will ensure the quality and safety of supervised visitation programs and requires that, until permanent standards are implemented, supervised visitation programs are to comply with the Florida Supreme Court's Minimum Standards for Supervised Visitation Programs Agreement.

In addition, the bill requires that a supervised visitation program that accepts referrals involving sexual abuse must satisfy not only the Minimum Standards for Supervised Visitation Programs Agreement, but also several additional requirements. Specifically, these supervised visitation programs must have specially trained staff and protocols for obtaining background material on client families before the initiation of services. The bill also directs the supervised visitation program to suspend visits if the child appears traumatized or if the visitor engages in inappropriate behavior.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 122
Child Custody/ Not Modifying Child Custody

This bill prohibits a court from permanently modifying a child custody order after a parent who is the primary caretaker of a minor child has been activated, deployed, or temporarily assigned to military service. In effect, the bill provides that a parent's military activation, deployment, or temporary service is not a sufficient change in circumstances permitting a court to permanently modify a custody award.

The bill, however, permits a court to change custody temporarily, if clear and convincing evidence shows that the change is in the best interest of the child. If custody is changed, the prior custody order must be reinstated when the parent returns from military service. The bill also directs courts to provide for liberal visitation between the military parent and the child while the military parent is on leave from military service.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 123
Law Enforcement & Correctional Officers

The bill amends current law to require any political subdivision that initiates or receives a complaint against a law enforcement or correctional officer to forward that complaint to the officer's employing agency. This must be done within 5 business days.

The term "political subdivision" is defined by the bill, for purposes of this requirement, as: a separate agency or unit of government created or established by law or ordinance and the officers thereof and includes, but is not limited to, an authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

The bill also amends s. 112.532, F.S., regarding the rights of a law enforcement and correctional officer while under investigation or under interrogation by his or her own agency.

The bill requires the investigating agency to interview all identifiable witnesses, whenever possible, and provide the officer with all witness statements and the complaint, before interviewing the accused officer. There is a provision for a tolling of the limitation of time on investigations when the Governor has declared a state of emergency. Also, the officer under investigation can waive the right to review the complaint and witness statements prior to his or her interview.

This bill substantially amends ss. 112.532 and 112.533, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 143**

Criminal Justice Commission

In 2004, Congress passed the "Law Enforcement Officers Safety Act of 2004," commonly known as HR 218. According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a "qualified law enforcement officer" or "qualified retired law enforcement officer" as defined by the act and who is carrying specified identification is authorized to carry a concealed firearm. Under this act, the definition of the term "qualified retired law enforcement officer" includes a requirement that the person has met the state's standards for training and qualification for active law enforcement officers to carry firearms.

This bill requires the Criminal Justice Standards and Training Commission within the Florida Department of Law Enforcement to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to persons who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person's name and the date on which he or she achieved the passing score. Such a card will be issued only by firearms instructors certified by the commission.

The bill allows facilities operating firing ranges which use certified firearms instructors to open the firing range to other persons who wish to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 146
Anti-Murder Act/Violent Offenders

The bill (Chapter 2007-2, L.O.F.) addresses felony probation and community control violations by designating certain alleged probation or community control violators as violent felony offenders of special concern. A violent felony offender of special concern who is alleged to have violated felony probation or community control, other than a failure to pay costs, fines, or restitution, cannot be released from jail until the court has held a hearing to determine whether supervision was violated. If supervision was violated, the court must determine and enter a written finding as to whether the violent felony offender of special concern is a danger to the community. The court must also determine whether to revoke or continue the probation or community control. If it is determined that the violator is a danger to the community, the court must revoke probation or community control and sentence the offender according to the Criminal Punishment Code, up to the statutory maximum or longer if permitted by law. The bill increases Criminal Punishment Code points for a violent felony offender of special concern to an additional 24 points for a new felony conviction and an additional 12 points for other violations.

The bill amends ss. 921.0024 and 948.06 and creates ss. 903.0351 and 948.064, F.S.

These provisions were approved by the Governor and took effect March 12, 2007

● SB 184
Strangulation/Domestic Battery

The bill amends s. 784.041, F.S., to provide that a person commits domestic battery by strangulation, a Level 6 third degree felony, if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the other person's nose or mouth. The bill also defines "family or household member" and "dating relationship," and exempts statutorily-authorized medical diagnosis, treatment, or prescription.

If approved by the Governor, these provisions take effect October 1, 2007.

● HB 311
Probate

This bill was designed by the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL) to update the Florida Probate Code. A number of the changes made by the bill are technical in nature. The effects of the provisions of the bill are described below.

Caveat

The bill integrates the language of Florida Probate Rule 5.260(f) into s. 731.110, F.S. As a result, the bill may clarify that a person who files a caveat is entitled to be served with a petition for administration before a will is admitted to probate. However, this provision of the bill read in conjunction with existing s. 733.2123, F.S., likely requires the caveator to challenge the will and the qualifications of the personal representative before a personal representative is authorized to take actions on behalf of an estate.

Arbitration of Disputes

The bill makes enforceable provisions of a will or trust requiring arbitration to resolve disputes between or among beneficiaries or beneficiaries and a fiduciary. A requirement for the use of arbitration will be interpreted to mean binding arbitration, unless specified otherwise.

Elective Share Laws
The bill conforms the value of property not subject to a spouse's elective share, which was given as a gift within a year of the decedent's death, to the current amount excludable from taxable gifts under s. 2503 of the Internal Revenue Code. As a result, this amount will increase to $12,000 from $10,000. Moreover, statute will track future changes in the amount excludable from taxable gifts resulting from the cost-of-living adjustment in s. 2503(b)(2) of the Internal Revenue Code.

The bill makes pensions, retirement or deferred compensation plans, or similar arrangements that were not subject to creditor claims during a decedent's life available to fund a spouse's elective share. As such, these funds, which are available under existing law to pay creditor claims on the death of the owner, may no longer be available to pay creditor claims under the bill.

This bill revises the definition of "elective share trust" in s. 732.2025(2)(b), F.S., to no longer include trusts "subject to the provisions of former s. 738.12, F. S." According to the RPPTL, the modification to the definition "ensures that an elective share trust will qualify for the Federal estate tax marital deduction."

The bill revises the description of a protected charitable interest in s. 732.2075(2), F. S. The changed description clarifies that certain transfers to protected charitable interests are not available for the payment of the elective share.

Exculpation of Personal Representative
The bill restricts the enforceability of a provision of a will which limits the liability of a personal representative for a breach of a fiduciary duty. Accordingly, under the bill, a personal representative cannot be relieved for a breach of a fiduciary duty committed in bad faith or with reckless indifference to the purposes of the will or the interests of interested persons. However, limitations on liability inserted in a will at the behest of a personal representative may be enforced if the limitation is fair and was communicated to the testator or the testator's attorney.

Definition of Descendant and Collateral Heir
The bill clarifies that the terms "descendant" and "lineal descendant" are synonymous. Moreover, the bill changes references in existing law to descendant from lineal descendant. The bill also provides a definition of collateral heir and makes other technical changes.

Foreign Personal Representatives
The bill increases the amount of time to 90 days from 60 days that a debtor to a decedent domiciled in another state must wait, in certain circumstances, to pay the debt to an out-of-state personal representative.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 339**

Federal Law Enforcement Officers
The bill redefines the term "law enforcement officer" under s. 784.07, F.S., to include federal law enforcement officers. The effect of this change is that provisions of s. 784.07, F.S., that reclassify the degree of assault or battery offenses committed upon law enforcement officers and others, provide for a five-year mandatory minimum term when the offense is aggravated battery, and provide for a three-year mandatory minimum term when the offense is aggravated assault, will apply to assault and battery offenses upon federal law enforcement officers. Various mandatory minimum terms relevant to battery with a firearm, destructive device, semi-

automatic firearm and its high-capacity detachable box magazine, or a machine gun will also apply.

The bill also amends s. 843.08, F.S., which punishes falsely personating a law enforcement officer and others, to also punish falsely personating a federal law enforcement officer. This false personation is a third degree felony. If this false personation occurs during the course of the commission of a felony, it is a second degree felony, except if such commission results in the death or personal injury of another human being, in which case it is a first degree felony.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 409**

Criminal Sentencing

This bill adds the offense of attempted felony murder to the list of offenses committed against law enforcement officers or other similar officials which are subject to an increased and certain penalty. Under such circumstances, a person convicted of attempted felony murder is subject to a 2.5 sentencing point multiplier under the Criminal Punishment Code. The bill also increases the sentencing multiplier in the case of second-degree murder of a law enforcement officer or other similar official to 2.5, from the existing multiplier of 2.0. As a result, this bill increases the lowest permissible sentence that can be imposed against a person for conviction of one of these violent offenses against a law enforcement officer or similar official.

The bill also adds attempted felony murder committed against a law enforcement officer or other similar official to those crimes that render an inmate ineligible for control release.

This bill substantially amends ss. 775.0823, 921.0024, and 947.146, F.S.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 448**

County Funding/Court Personnel

This bill clarifies the status of employees who are funded by the county to help with the operation of the circuit court under an agreement created pursuant to s. 29.008 1, F.S. The bill deletes existing language stating that county-funded personnel are employees of the judicial circuit. It provides that the county shall be considered the employer for purposes of s. 440.10, F.S., of the Workers' Compensation Law and for purposes of the Unemployment Compensation Law. The bill also permits these county-funded employees to be aggregated with other county employees for purposes of a flexible benefits plan under s. 125 of the Internal Revenue Code. The bill clarifies that when a county provides personnel to the judicial circuit, the circuit shall supervise the employees, shall be responsible for compliance with all requirements of federal and state employment laws (e.g., Americans with Disabilities Act and Family Medical Leave Act), and shall indemnify the county from liability under those laws for acts or omissions of the circuit.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 449**

Criminal Offenses/ State of Emergency

This bill reclassifies the felony degree of certain burglary and theft offenses if any of them were committed within a county that is subject to a state of emergency declared by the Governor under ch. 252, F.S., after the declaration of

emergency is made, and the perpetration of the offense was facilitated by conditions arising from the emergency. The term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

It also creates two new felony offenses, burglary of an authorized emergency vehicle and theft of law enforcement equipment valued at more than $300 from an authorized emergency vehicle.

The offense severity ranking level of the burglary and theft offenses is increased by one level if the offenses are reclassified.

A person arrested for committing any of these offenses within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing.

This bill substantially amends ss. 810.02 and 8 12.014, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 624**

Uniform Premarital Agreement Act

This bill substantially codifies the Uniform Premarital Agreement Act (UPAA) by the National Conference of Commissioners on Uniform State Laws (NCCUSL). In effect, this bill, with some changes and additions, codifies existing Florida judicial opinions defining the permissible content and validity of premarital agreements.

Subject Matter of Agreements

The bill provides a nonexclusive list of matters that may be addressed in a premarital agreement. For example, property rights, spousal support, life insurance, choice of law, and any other matter, including personal rights and obligations not in violation of public policy or criminal laws may be governed by a premarital agreement. The bill further provides that child support may not be waived by agreement.

However, the bill does not expressly state whether one may contract away a future obligation to pay attorney's fees, as well as alimony and suit money, during a separation prior to dissolution of marriage. Nevertheless, under existing case law, these contractual provisions likely will continue to be invalid as a violation of public policy.

Test for Validity

The test for determining the validity of a premarital agreement under the bill is similar to existing case law but with some subtle changes. First, the bill omits deceit and misrepresentation as potential grounds for the invalidation of a premarital agreement. However, these grounds may be redundant with fraud as a potential ground for invalidity under the bill.

Second, existing case law provides that a premarital agreement is invalid if it is "unfair or unreasonable" and there was a concealment of assets on the part of the defending spouse or a lack of knowledge of the defending spouse's assets on the part of the challenging spouse. The bill seems to subsume the elements of unfairness and unreasonableness into a new standard of unconscionability.

Third, the bill eliminates the shifting burden under existing case law. Under existing case law, if a spouse shows that a premarital agreement is unfair or unreasonable, an evidentiary burden shifts to the defending spouse to prove that the challenging spouse had adequate knowledge of a defending spouse's assets. Under the bill, the party chal-

lenging a premarital agreement has the burden to prove the lack of disclosure or knowledge of the defending spouse's assets. Lastly, the bill permits a party to an agreement to waive the right to disclosure of another party's assets and financial obligations.

Notwithstanding the foregoing, a court may require a party to a premarital agreement to support the other party to the extent necessary to make the party ineligible for public assistance.

Void Marriages
The bill provides that if a marriage is void, a premarital agreement made in connection with the marriage is enforceable only to the extent necessary to prevent an inequitable result.

Written Agreements Required
The bill departs from existing case law in that it requires premarital agreements to be in writing and signed by the parties. Oral premarital agreements entered into after the bill takes effect will no longer be enforceable. The bill further permits premarital agreements to be amended, abandoned, or revoked upon a written agreement signed by the parties. As such, the same formalities for creating a premarital agreement are required for amendment, abandonment, and revocation.

Interaction with the Florida Probate Code
The bill expressly provides that it "does not alter the construction, interpretation, or required formalities of, or the rights or obligations under, agreements between spouses under s. 732.701 or s. 732.702, F.S." This provision appears to require premarital agreements determining the disposition of a spouse's assets upon death to be attested by two witnesses. However, the bill does not appear to require other premarital agreements to be witnessed.

Limitation of Actions
The bill tolls statutes of limitations that apply during a marriage to claims for relief under a premarital agreement, but certain equitable defenses to the claim may apply. The Comment to Section 8 of the UPAA provides that this provision may "avoid the potentially disruptive effect of compelling litigation between spouses."

If approved by the Governor, these provisions take effect October 1, 2007, and apply to premarital agreements executed on or after that date.

- **HB 743**

Trusts
The bill amends various sections of the Florida Trust Code to:

- Expand the power of a bank or trust company that is acting as a trustee to invest in investment instruments that the bank or trust company owns or controls. A trust company or bank that is acting as a trustee of a trust may invest in an investment instrument it owns or controls if the investment instrument is available for sale to accounts of other customers (rather than "primarily" sold to other customers); and not sold to the trust account upon less favorable terms than the terms upon which they are "normally" sold to other customers.

- Limit the power of a trustee to distribute the principal of a trust when the trustee has absolute power under the trust's terms to invade the principal of the trust. A trustee with absolute power to invade principal may take the principal of a trust (first trust) and place the property in a second trust if the beneficiaries of the second trust include only beneficiaries of the first trust; the second trust does not reduce any fixed

income, annuity, or unitrust interest in the assets of the first trust; and if the first trust qualified for a marital or charitable federal income tax deduction, the second trust does as well and does not reduce the deduction. When principal is invaded under an absolute power, it must be done in writing, signed and acknowledged by the trustee, and filed with the records of the first trust. The exercise of this power may not be used to appoint in favor of the trustee or the trustee's creditors and cannot be used in a manner that would postpone the vesting of the trust estate beyond the rule against perpetuities. Sixty days advance notice must be given to all qualified beneficiaries of the first trust prior to the exercise of the power to invade principal.

- State that exculpatory terms caused to be drafted by a trustee are invalid unless the trustee proves that the exculpatory term is fair under the circumstances, and (if the trust is created after July 1, 2007) the term's existence and contents were adequately communicated to the settlor or the independent attorney of the settlor.

- Revise the definition of "land trust" to apply only to trusts in which ownership of real property is vested in the trustee and to provide that the recorded land trust instrument does not create an entity.

- Establish under what circumstances a trustee of a land trust may be personally liable for torts committed while administering a trust and for contracts made by the trustee in a fiduciary capacity. By operation of s. 736.1013(1), F. S., a trustee may be personally liable on contracts if the trustee did not disclose that he or she was acting as a fiduciary. Moreover, s. 736.1013(2), F.S., provides that a trustee may have personal liability for certain torts for which the trustee is personally at fault.

- Make certain provisions of the Florida Probate Code inapplicable to trusts.

- Provide that a creditor of a beneficiary of a discretionary trust may not compel a distribution from a trust or reach a beneficiary's interest in the trust.

- Make certain accounting provisions effective on the effective date of the new Florida Trust Code.

- Provide that certain anti-lapse statutes in effect before the effective date of the new Florida Trust Code apply to preexisting trusts.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 978
Court-ordered Nonbinding Arbitration

This bill revises procedures for court-ordered nonbinding arbitration. The bill also revises the threshold for the imposition of liability for an opponent's attorney's fees and costs after the rejection of an arbitrator's award and a trial of an arbitrated matter. Specifically, the bill provides that arbitration must be informal; the presentation of evidence must be kept to a minimum; matters must be presented primarily through counsel; litigants must show good cause for the issuance of subpoenas; and courts may impose attorney's fees and costs on a party who requests a trial if a judgment at trial varies by 25 percent or more from an arbitrator's decision.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 988**

High-risk Offenders

This bill amends Jessica Lunsford Act provisions that require background checks for contractors on school grounds. It specifies offenses that disqualify a noninstructional contractor from being on school grounds when students are present. The bill clarifies that contractors who contract directly with schools must be screened. It provides an exemption from the screening requirement for a non-instructional contractor who: (1) is under direct line-of-sight supervision of a person who meets the screening requirements; (2) is already required, and has, undergone a level 2 background screening; (3) is a law enforcement officer assigned or dispatched to school grounds, or an employee or medical director of an ambulance provider; (4) works and remains in an area separated from students by a 6-foot chain link fence; or (5) provides pick-up or delivery services to school grounds. The bill also exempts instructional personnel who work with children with developmental disabilities or who are child care personnel if they have undergone a required level 2 background screening in the previous five years, meet the standards, and have fingerprints retained by FDLE. Exempt contractors are subject to a search of the state and national registry of sexual predators and sexual offenders at no charge to the contractor.

The fingerprint-based background check must be performed at least every five years and may be paid for by the school board, the school, or the contractor. Any fee charged by a school board may not exceed 30 percent of the total costs charged by FDLE and the FBI for the check. FDLE is required to implement an Internet-based system for school districts to share the results of the background checks. A contractor who has submitted to a fingerprint-based background check in another district must report that fact to the district where he or she intends to work. School districts must use the shared system to verify the information at no charge to the contractor.

The bill requires a contractor who is arrested for a disqualifying offense to report the arrest to the employer or primary contractor and the school district within 48 hours. If a contractor has been arrested for a qualifying offense, it is a third-degree felony for the contractor to willfully fail to report the arrest or for an employer or primary contractor to knowingly authorize the contractor to be on school grounds when students are present.

If a school district determines that a contractor is to be denied access to school grounds, the bill requires that the contractor be notified of the basis for denial. The only basis for contesting the denial is mistaken identity and misinterpretation of an offense from another jurisdiction.

The bill provides immunity from civil and criminal liability for employees of school districts and schools who share background check information in good faith. It also provides that the new or amended portions of the School Code are not intended to create a new duty of care or basis of liability, or to create a private cause of action.

In addition, the bill requires sexual predators and sexual offenders to obtain a driver's license or identification card that has a designated marking on the front. Possession of a card on which the markings are not displayed or have been altered will be unlawful after February 1, 2008.

If approved by the Governor, these provisions take effect July 1, 2007, except as otherwise provided.

- **HB 989**

Crime Victims

This bill expands the rights and services for victims of sexual offenses, including sexual battery and lewd or lascivious offenses. Several of the proposed changes to ch. 960, F.S., are necessary to receive federal grant funding for law enforcement programs, victim advocacy services, and enhanced prosecution through the Violence Against Women Act. The bill expands the rights and services for victims of sexual offenses as follows:

- Allows a victim advocate to be present (at a sexual offense victim's request) during the forensic medical exam;
- Provides that a criminal justice official (law enforcement officer, prosecuting attorney, or other government official) may not ask for or require a lie detector test to be taken by a victim before a law enforcement agency will investigate a sexual offense allegation;
- Requires the court to order prescribed defendants to undergo an HIV test within 48 hours after the court orders such testing (there is currently no required time limitation);
- Requires reimbursement from the Crime Victims' Services Office for the victim's initial forensic medical exam, regardless of whether the sexual offense victim reported the offense or cooperated with the investigation (which is currently required);
- Increases the forensic medical exam reimbursement maximum amount from $250 to $500; and
- Permits a crime victim, who is a Florida resident, to be compensated when the crime occurs outside Florida, whether in another state or outside the United States, if such crime would otherwise be compensable had it occurred in Florida.

This bill substantially amends ss. 960.001, 960.003, 960.03, and 960.28, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1004**

Cybercrimes Against Children Act of 2007

This is the Cybercrimes Against Children Act of 2007. It enhances penalties for possession of certain types of child pornography and expands the scope of s. 847.0135, F. S., concerning use of the Internet to influence a child to commit sexual acts. New felony offenses are created for misrepresenting age in the course of committing an offense under s. 847.0135(3), F.S., and for traveling to meet a minor to engage in unlawful sexual conduct with a child or person thought to be a child, or to persuade the child's guardian to consent to the child's participation in sexual conduct. In addition, statutes are updated to address newer technologies that are used to facilitate sexual abuse of children and to transfer images of sexual abuse of children.

As of October 1, 2007, sexual predators and sexual offenders will be required to register any email address and instant message name with the Florida Department of Law Enforcement (FDLE) prior to use and to update any changes. FDLE must establish a method for online registration and is authorized to provide the information to social networking websites, which can use the information to screen for those users.

The legislation also expands the investigative and prosecutorial authority of the Office of Statewide Prosecution (OSP) and the subject matter jurisdiction of the statewide grand jury to include violations of ch. 827, F.S., (concerning abuse of children) when the crime is facilitated by or connected to use of the Internet or an electronic data storage or transmission device, and by deeming that crimes facilitated by or connected to use of the Internet occur simultaneously in every Florida judicial circuit. It authorizes prosecutors to charge an act that violates s. 827.071, F.S., (relating to sexual performance of a child) or s. 847.0135, F.S., (relating to child pornography) under any applicable statute, including one with greater penalties. It also authorizes alternative venues for trial of any crime facilitated by communication by mail, telephone, newspaper, radio, television, Internet, or other means of electronic data communication.

This bill amends ss. 16.56, 775.21, 827.071, 847.0135, 905.34, 910.15, 921.0022, 943.0435, 944.606, and 944.607 and creates ss. 775.0847 and 943.0437, F.S.

If approved by the Governor, these provisions take effect October 1, 2007.

● SB 1030

Court Costs

The bill increases court costs in the amount of one dollar ($1) assessed against a person who is found to have violated a criminal law or committed certain civil infractions. The bill also increases, by the same amount, the assessment to be remitted to the Department of Revenue from every bond estreature or forfeited bail bond.

The additional dollar is earmarked for the Florida Department of Law Enforcement's Criminal Justice Standards and Training Trust Fund.

The bill also requires a person seeking sealing or expunction of his or her criminal history records to pay all outstanding fines and court costs, unless the court makes a finding otherwise.

This bill substantially amends ss. 318.18, 327.73, 938.01, and 938.30, F.S.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 1088

Due Process

The bill revises the process whereby indigent persons and certain other eligible persons are provided criminal and civil representation at state expense. The current system uses private attorneys for criminal cases when a public defender has a conflict of interest, in dependency and termination of parental rights proceedings, as well as certain other civil proceedings as authorized by law.

- The bill creates five regional offices to handle criminal conflict and dependency cases.
- The Supreme Court Judicial Nominating Commission is to provide to the Governor three candidates for each of the five regional counsels for appointment.
- The regional offices are administratively housed in the Justice Administrative Commission.
- When the regional counsel has a conflict of interest, the court will appoint private counsel.
- The bill defines the regional counsel offices as an element of the state court system and

requires the counties to provide facilities and technology to the regional offices.

- The local indigent services committees are eliminated. Caps for attorney fees for cases handled by private counsel are continued in statute. The cap for capital cases is raised from $3,500 to $15,000. All rates will be set each year in the General Appropriations Act.

- When private attorneys believe the state fee is insufficient, the chief judge or designee must hold a hearing to determine if excess fees are needed. The court is to report to the Legislature by circuit the number and amount of excess fees.

- The bill has various effective dates. Some provisions, such as those relating to rates paid to private counsel become effective upon becoming law; the regional counsel is appointed July 1, 2007 and assumes the duties October 1, 2007.

If approved by the Governor, these provisions take effect upon becoming law except as otherwise provided.

● HB 1309
Adoption & Child Protection

In 2006, the Legislature established a centralized Office of Child Abuse Prevention within the Executive Office of the Governor to examine, oversee, and implement child abuse prevention services. Recognizing that increasing the adoption rate for children who have been abused or neglected and cannot safely return to their families is an important part of the state's child abuse prevention efforts, this bill renames the Office of Child Abuse Prevention as the Office of Adoption and Child Protection (Office), and revises the purpose of the Office to include the promotion of adoption and the support of adoptive families.

The bill redesignates the director of the Office as the Chief Child Advocate, and authorizes the Office to establish a direct-support organization to support the state in carrying out its purposes and responsibilities regarding the promotion of adoption, the support of adoptive families, and the prevention of child abuse, by raising money, receiving grants, and making expenditures on behalf of the Office.

The bill also modifies the state's subsidized adoption program, which provides financial aid to prospective adoptive parents to enable them to adopt children in foster care who, because of their special needs, have proven difficult to place in permanent homes.

This bill provides that, subject to appropriation, the Department of Children Family Services shall pay an annual subsidy of $5000 (or another agreed upon amount) to qualified adopting families for the support and maintenance of adopted children. The bill expands eligibility for these adoption subsidies to include children in the custody of DCF who do not otherwise meet the definition of a "special needs child."

The bill amends language in s. 409.166, F.S., to conform Florida law to federal law related to Title IV-E funding for maintenance adoption subsidies. These changes ensure compliance with federal Title IV-E, which reimburses the state for the care and maintenance of children in foster care as well as for maintenance adoption subsidies.

The bill appropriates $2,991,305 in recurring funds from the General Revenue Fund, $2,335,445 in recurring funds from the Federal Grants Trust Fund, and $346,772 in recurring funds from the Welfare Transition Trust Fund to DCF for the purpose of providing adoption maintenance subsidies.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 1441**

Female Genital Mutilation

Using data from the 1990 U.S. Census, along with country-specific prevalence data on female genital mutilation (FGM), the Center for Disease Control estimated that in 1990, there were approximately 168,000 girls and women living in the United States with or at risk for FGM.

The bill creates s. 794.08, F.S., which makes it a felony to perform or contribute to the performance of FGM. The following felonies are specified:

- **First Degree Felony:** A person who commits FGM on a female younger than 18 years of age commits a felony of the first degree. A felony of the first degree is punishable by a term of imprisonment not exceeding 30 years, a term of imprisonment not exceeding life when specifically provided by statute, and/or a fine not to exceed ten thousand dollars.
- **Second Degree Felony:** A person who removes, or causes or permits the removal of a female younger than 18 years of age from the state for the purpose of FGM commits a felony of the second degree. A felony of the second degree is punishable by a term of imprisonment not exceeding 15 years and/or a fine not to exceed ten thousand dollars.
- **Third Degree Felony:** A parent or guardian who consents to the FGM of a female younger than 18 years of age commits a felony of the third degree. A felony of the third degree is punishable by a term of imprisonment not exceeding five years and/or a fine not to exceed five thousand dollars. The punishment of a habitual felony offender or a habitual violent felony offender is comprised of enhanced penalties or mandatory minimum prison terms.

The bill does not apply to a procedure performed by or under the direction of a licensed physician, osteopathic physician, registered nurse, practical nurse, advanced registered nurse practitioner, midwife, or physician assistant.

The bill creates an exception for procedures necessary to preserve the health of a female younger than 18 years of age. The bill eliminates consent of a female person younger than 18 or the consent of a parent, guardian, or person who is in a position of familial or custodial authority to a female person younger than 18 as a defense to the offense of FGM.

The bill also amends s. 921.0022, F. S., to create felony classifications in the offense severity ranking chart of the Criminal Punishment Code for the specified violations.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 1604**

Sexual Offenders & Predators

The bill makes changes to Florida's laws regarding registration of sexual predators and sexual offenders to comply with the federal "Adam Walsh Child Protection and Safety Act of 2006" ("Adam Walsh Act"), Pub.L. No. 109-248 (2007), as well as making other changes necessary to effectuate implementation of the registration laws. The major features of the bill include:

- Expanding the population of offenders required to register to include some juveniles adjudicated delinquent of certain

crimes. A juvenile who, on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting or conspiring to commit, sexual battery or some types of lewd battery or lewd molestation or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense is required to register as a sexual offender.

- Providing that a person who was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S. (sexual battery), or s. 800.04, F.S. (lewd offenses), or who has committed such violation for which adjudication of guilt was or will be withheld, may move or petition a court for removal of the requirement to register as a sexual predator or sexual offender if other initial criteria are met and removal of the registration requirement will not conflict with federal law. The court may grant the motion or petition if the person meets initial criteria and removal of the registration requirement will not conflict with federal law. If the person is required to register pursuant to the Adam Walsh Act, the court will have to make a finding that consensual sexual conduct occurred so that the removal of the registration requirement does not conflict with the federal act.

- Sexual predators and certain sexual offenders will be required to report in person at the sheriff's office every three months, rather than every six months.

- Sexual predators and certain sexual offenders will be required to maintain registration for life without the possibility of petitioning for removal of the registration requirement.

- Local law enforcement agencies, the Department of Corrections, and the Department of Juvenile Justice will be required to report to the Florida Department of Law Enforcement (FDLE) the failure of a sexual predator or sexual offender to comply with registration requirements.

The FDLE will be required to develop and maintain a system to provide automatic notification of registration information regarding sexual predators and sexual offenders to the public. Schools, public housing agencies, agencies responsible for conducting employment related background checks, social service entities responsible for protecting minors in the child welfare system, and certain other organizations will have access to this system.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 1644
Theft

This bill amends the theft statute, s. 812.014, F.S., to provide that it is a second degree felony to individually, or in concert with one or more other persons, coordinate the activities of one or more persons in committing theft where the stolen property has a value in excess of $3,000.

This bill amends the retail theft statute, s. 812.015, F. S., to provide that it is a second degree felony to individually, or in concert with one or more persons, coordinate the activities of one or more persons in committing retail theft where the stolen property has a value in excess of $3,000.

The bill amends the Criminal Punishment Code offense severity ranking chart to rank the second degree felonies in Level 6.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 1770**

Technology to Supplement Visitation

Pursuant to s. 61.13 (2)(b), F.S., "it is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. . ."

Consistent with this policy, this bill permits a court, in connection with child custody proceedings, to order electronic communication between a parent and a child through telephones, e-mail, web cams, and other technologies. The bill creates a presumption that telephone communication between a parent and a child is in a child's best interests, and requires a court to order telephone communication unless the presumption is rebutted.

The bill provides that electronic communication must be used to supplement, rather than replace, face-to-face contact, and that court-ordered electronic communication may not have any impact on the calculation of child support. The bill requires the court to allocate between the parents any additional costs that will be incurred by either or both of them in order to implement the electronic communication, and requires the parents to timely furnish each other with access to information necessary to facilitate electronic communication.

The bill does not apply to judgments or orders issued before October 1, 2007, but permits a person whose child custody order does not prohibit electronic communication to seek court-ordered electronic communication without the need to prove a substantial change in circumstances.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 2312**

Florida False Claims Act

The Florida False Claims Act (FFCA) authorizes civil actions by individuals and the state against persons who file or conspire to file false claims for payment or approval with a state agency. This bill generally amends the FFCA to bring it into closer conformity to the Federal False Claims Act.

This bill makes the following changes to the Florida False Claims Act:

- Amends multiple sections of the FFCA which provide that the act applies to claims that are "false," to apply instead to claims that are "false or fraudulent";
- Increases the statute of limitation for bringing actions against people who violate the FFCA;
- Increases the civil penalty for violating the FFCA to between $5,500 and $11,000 from between $5,000 and $10,000;
- Reduces to 60 days from 90 days the time that the court can stay actions of discovery by a private individual initiating an FFCA action when the Department of Legal Affairs shows that the discovery would interfere with an investigation by the state or the prosecution of another matter arising out of the same facts; and
- Provides that the FFCA pertains to false or fraudulent claims submitted electronically.

The provisions of this bill seem to satisfy provisions of federal law which specify that, if a state has in effect a law relating to false or fraudulent claims which meets certain requirements, the federal medical assistance percentage with respect to any amounts recovered under a state action brought under that law shall be decreased by 10 percentage points.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 2866**

Sexually Violent Predators

In 1998, the Legislature enacted the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act. The act provides that persons who are determined to be sexually violent predators may be civilly confined upon release from custody or expiration of a prison sentence. These individuals are committed to the Department of Children and Families (DCF) for long-term residential treatment, care, and custody at the Florida Civil Commitment Center (Commitment Center) located in Arcadia.

There is no statutory authorization for the security personnel or other staff of the Commitment Center to use force on persons confined there. There have been several incidents at the Commitment Center that have necessitated intervention and outside assistance from local law enforcement or other state agencies to regain control of the facility and assure the safety of residents and staff.

This bill authorizes employees of the Commitment Center to use non-lethal force on persons committed to the program under certain circumstances. The bill describes procedures for documenting the use of force and incident reporting, and makes it a separate criminal offense for an employee to act with malicious intent in battering or cruelly or inhumanly treating a person who is confined in a secure facility.

This bill also requires the agency having jurisdiction over an individual who is convicted of a sexually violent offense and who is being evaluated for civil commitment to provide any available documentation indicating whether the offender's criminal history includes incidents involving sexual acts or sexual motivation. In addition, the bill clarifies that DCF, the Agency for Persons with Disabilities, and entities that contract to operate a forensic facility or secure facility are considered "employing agencies" for certified correctional officers.

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

- **HB 7107**

Child Support Enforcement

In 2006, the Florida Supreme Court found that a legal father, i.e., a man married to a child's mother at the time of birth, is an indispensable party in an action to determine paternity and to place support obligations on another man. In some cases, the whereabouts of the legal father are unknown, and he cannot be served because current law does not permit service of process by publication in paternity actions.

The bill permits service of process by publication on a legal father in a paternity action in which another man is alleged to be the biological father of the child after a diligent search and inquiry to locate the legal father is completed.

Additionally, the bill codifies the federal requirement regarding the mandatory annual fee for support services provided by the Department of Revenue (department), as well as the federal requirement that states report indi-

viduals who owe arrearages of child support in an amount exceeding $2,500, so that the federal government can deny, revoke or limit that person's passport. The bill permits the department to waive electronic remittance of child support payments in specified circumstances. Finally, the bill requires the department to use automated administrative enforcement when responding to a request by another state to enforce support orders.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 7111**

Guardianship/
Criminal History Record Checks

The bill revises the statute governing criminal history record checks, background checks, and credit history investigations for guardians, to delineate requirements according to whether the guardian is a professional or nonprofessional guardian. Specifically, the bill:

- Provides requirements for a state and national criminal history record check for nonprofessional guardians when ordered by a court;
- Clarifies that the Statewide Public Guardianship Office and the court shall accept the satisfactory completion of a criminal history record check for professional guardians, while solely the court shall accept it for nonprofessional guardians;
- Specifies that the clerk of court shall maintain results of criminal history record checks for nonprofessional and professional guardians in the guardians' files;
- Limits the use of electronic fingerprinting to professional guardians. Deletes references to the network of electronic fingerprinting equipment developed for public employees, the associated fee, and duties of the agency operators, and instead directs the Statewide Public Guardianship Office to develop rules relating to acceptable methods for completing electronic fingerprint criminal history record checks;
- Clarifies that only professional guardians pay the fee associated with electronic fingerprinting;
- Clarifies that the requirements related to the completion of level 1 and level 2 background screenings apply to professional guardians and certain employees and are tied to the date of "registration" as a guardian not "appointment"; and
- Clarifies that the requirements related to the completion of a credit history investigation for professional guardians and certain employees are tied to the date of "registration" as a guardian not "appointment."

If approved by the Governor, these provisions take effect July 1, 2007.

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Public Records

- ***Public Records Act***
- ***New Exemptions***
- ***Open Government Sunset Reviews***

PUBLIC RECORDS

- **HB 63**

Domestic Violence Victim

This bill is tied to HB 55, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence. This bill creates a public records exemption for personal identifying information contained in records documenting an act of domestic violence and submitted to an agency by an agency employee in order to obtain leave.

The bill also creates a public records exemption for written requests for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such requests.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

If approved by the Governor, these provisions take effect July 1, 2007, if CS/HB 55 or other similar legislation is passed, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

- **HB 131**

Florida Opportunity Fund

This bill creates a public records and public meetings exemption for certain information relating to venture capital investment in Florida businesses created by its linked bill, CS/CS/JIB 83, an act relating to venture capital investments.

CS/CS/SB 131 makes confidential and exempt certain proprietary, confidential business information held by three entities: the Florida Opportunity Fund, the Institute for the Commercialization of Public Research, and the Florida Technology, Research, and Scholarship Board. The bill also creates a public meetings exemption where certain information is discussed.

House Sergeant-at-Arms Earnest Sumner. left, and Senate Sergeant-at-Arms Donald Severance, right, drop their traditional handkerchiefs signaling sine die before a crowd in the Capitol rotunda, ending the 2007 Legislature on May 4. (House photo by Meredith Hill)

Specifically, the bill creates public records or meetings exemptions for:

- Materials related to the methods of manufacture or production, for potential trade secrets, or for patentable material received, generated, or discovered during the course of research or research projects funded under the new venture capital investment programs;
- Information that would identify an investor or potential investor who desires to remain anonymous;

- Any information received from a person from another state or nation or the federal government that is confidential or exempt under their laws;

- Proprietary confidential business information for 10 years after the termination of the alternative investment, in the case of the Florida Opportunity Fund and the Institute for the Commercialization of Public Research;

- That portion of a meeting of either of the three entities where confidential and exempt information is discussed, as well as the transcript and meeting minutes of those closed portions of a meeting.

At the time any of the records, materials or information made exempt by this bill becomes legally available or subject to public disclosure, then they are no longer confidential and exempt and are available for public review and copying.

The bill also establishes a process by which a request to inspect or copy a record made confidential and exempt by this bill for the Florida Opportunity Fund and the Institute for the Commercialization of Public Research may be granted by the courts, if the proprietor of the information has not verified certain information.

The bill provides for future review and repeal of the exemptions on October 2, 2012, and provides statements of public necessity.

If approved by the Governor, these provisions take effect July 1, 2007.

● HB 463
Drug Test/High School Athletics

The bill creates an exemption from the Public Records Law for records related to drug tests pursuant to the one-year random drug testing program for the use of anabolic steroids by high school student athletes in grades 9 through 12 who participate in football, baseball, and weightlifting competitions under the Florida High School Athletic Association (FHSAA). Additionally, records relating to challenge or appeal proceedings are exempt. The information may only be disclosed to the FHSAA, the student, the student's parent, the student's school, and the administration of any school to which the student transfers during a suspension from interscholastic athletics resulting from a positive finding. The bill creates an exemption from the Public Meetings Law for the portions of meetings at which exempt records are discussed. The exemptions are scheduled to repeal on October 2, 2012, in accordance with the Open Government Sunset Review Act.

If approved by the Governor, these provisions take effect July 1, 2007.

● SB 816
Law Enforcement Agencies

Section 119.07 1(2)(c)2., F.S., provides that a request of a law enforcement agency to inspect or copy a public record that is in the custody of another agency, the custodian's response to the request, and any information that would identify the public record that was requested by the law enforcement agency or provided by the custodian are exempt from public records requirements during the period in which the information constitutes active criminal intelligence or investigative information.

This bill makes some organizational changes for clarity, including transferring existing retroactive language to a new sub-subparagraph; clarifies that any information that would identify whether a law enforcement agency has requested or received that public record is pro-

tected; and deletes the repeal of the exemption.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 830**

HSMV Records/Public Disclosure

The bill amends s. 119.0712(2), F.S., to make personal information in a motor vehicle record confidential and exempt. Additionally, the bill modifies the definition of "personal information" by expressly including identification card numbers and emergency contact information. Also, the CS provides for the release of personal information held by the Department of Highway Safety and Motor Vehicles (DHSMV) to comply with the federal Drivers Privacy Protection Act (DPPA).

In addition, the bill includes the creation of a two tiered system for personal information contained within the records of DHSMV and places additional restrictions on the availability and use of social security numbers, photographs and images, medical disability information, and emergency contact information.

Specifically, the bill provides notwithstanding s. 119.07 12(2)(b), F.S., without the express consent of the person to whom such information applies, the following information contained in motor vehicle records may only be released as specified in this paragraph:

- Social security numbers may be released only as provided in subparagraphs (b)2., 5., 7., and 10.
- An individual's photograph or image may be released only as provided in s. 322.142, F.S.
- Medical disability information may be released only as provided in ss. 322.125 and 322.126, F.S.
- Emergency contact information held by DHSMV may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

The bill makes the exemption subject to the Open Government Sunset Review Act and it will repeal October 2, 2012, unless reviewed and reenacted by the Legislature.

In addition, the bill provides a public necessity statement as required by s. 24(c) Art. I, State Constitution, to justify the exemption from public records laws. The CS is needed, according to the public necessity statement, to make personal information in an individual's motor vehicle record confidential and exempt and to conform to federal law. The public necessity statement also states the personal information contained in the state's motor vehicle records could be used to invade the personal privacy of the person identified in the records or could be used for other purposes, such as solicitation, harassment, stalking, and intimidation. Therefore, limiting access will protect the privacy of persons who are identified in those records and minimize the opportunity for invading that privacy.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 853**

Historic St. Augustine

This bill exempts from public disclosure the identity of a donor or prospective donor who contributes or may contribute to a direct-support organization of the University of Florida for purposes of historic preservation in St. Augustine, if the donor wishes to remain anonymous.

The exemption sunsets on October 2, 2012, in accordance with the Open Government Sunset Review Act, unless reenacted by the Legislature.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 886**

OGSR/Building Plans & Drawings/ Agency

The bill reenacts and amends s. 119.071 (3)(b), F. S. This section provides a public records disclosure exemption for building plans, blueprints, schematic drawings, and diagrams which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility or other structure owned or operated by an agency as defined in s. 119.011, F.S. The exemption applies to draft, preliminary, and final formats of such plans. The bill makes the exemption permanent and reorganizes the section to clarify the exemption.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 1034**

Physician Workforce Surveys

The bill creates an exemption from the requirements of the Public Records Law to make all personal identifying information contained in records provided by Florida-licensed allopathic and osteopathic physicians in response to the physician workforce survey required by the Department of 11ealth (DO11) as a condition of license renewal and held by the DO11 confidential and exempt. The confidential and exempt information may be disclosed upon the consent of the individual to whom the information pertains, by order of a court, and to research entities under specified conditions. The bill provides a statement of public necessity for the public records exemption created in the bill.

If approved by the Governor, these provisions take effect on the same date that Senate Bill 770, or similar legislation requiring a physician survey as a condition of licensure, takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

- **SB 1452**

OGSR/Public Service Tax

The bill repeals s. 36, ch. 2001-140, Laws of Florida, which grants the authority to audit telecommunication service providers' records to ensure compliance with the Public Service Tax, and repeals s. 166.236, F.S., which provides an exemption for proprietary and confidential business information collected during Public Service Tax audits.

If approved by the Governor, these provisions take effect October 1, 2007.

- **SB 1510**

Sunshine State One-Call

This bill creates an exemption for protection of proprietary and confidential business information disclosed during the filing of a ticket and for information submitted to Sunshine State One-Call, Inc., describing the extent of damages during an excavation of underground facilities.

Confidential business information is defined as "maps, plans, facility location diagrams, internal damage investigation reports or analyses, dispatch methodologies, or trade secrets as defined in s. 688.002, F.S., or which describes the exact location of an underground facility or protection, repair, or restoration of a facility by a member operator."

Exemptions are subject to Open Government Sunset Review Act in accordance with s.

119.15, F.S., and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1760**

Custodian of Public Records

The bill amends the Public Records Act to provide that a custodian of public records, or other person in an agency having custody of a public record, may designate another officer or employee to permit inspection and copying of public records. If such designation is made, the custodian or person with custody must disclose the identity of the designee to person requesting to inspect or copy public records.

The bill requires a custodian or designee to promptly acknowledge requests to inspect or copy records and to respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether the record exists and, if so, the location at which the record can be accessed.

If approved by the Governor, these provisions take effect July 1, 2007.

- **SB 1848**

OGSR/DFS Information/ Unclaimed or Abandoned Property

The bill amends and reenacts the public records exemption in s. 717.117(8), F. S., related to reports of unclaimed property. The bill re-enacts the public records exemption for social security numbers and expands the exemption by exempting "property identifiers" contained in an unclaimed property report instead of "financial account numbers." Representatives from the Bureau of Unclaimed Property indicated that the term "financial account numbers" has been interpreted by the Department of Financial Services to include types of account numbers that are not directly related to finances (such as patient medical records). The bill removes the exemption for financial account numbers, a term that is undefined by statute. Instead, a property identifier— the descriptor used by the property holder to identify the unclaimed property—is made exempt under the bill. The bill does not include a reference to bank account numbers, debit, charge, and credit card numbers because an agency has authority to hold such items exempt pursuant to s. 119.071 (5)(b), F. S. Because the bill expands the public records exemption, it is made subject to the Open Government Sunset Review Act and will repeal on October 1, 2012 unless reviewed and reenacted.

If approved by the Governor, these provisions take effect October 1, 2007

- **SB 1852**

OGSR/Consumer Complaints/ Inquiries

This bill is the result of the Senate Interim Project Report 2007-202 (Open Government Sunset Review of Section 624.23, F.S., Personal Financial and Health Information in Consumer Complaints to Department of Financial Services or Office of Insurance Regulation). This bill makes exempt from the public record requirements certain personal financial and health information of a consumer held by the Department of Financial Services (department) or the Office of Insurance Regulation (OIR) relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code. Confidential and exempt information includes bank account numbers, debit, charge, and credit card numbers, and all personal financial and health information. However, this exemption does not include the

name and address of an inquirer or complainant or the name of an insurer or other regulated entity that is the subject of the inquiry or complaint.

This section is subject to repeal on October 1, 2007 without legislative action to save it. This bill retains the exemption; however, it makes the following revisions:

- The bill narrows the current exemption by specifying what "other personal financial and health information" is confidential and exempt based the current definition of such information provided in rules adopted by the department and the OIR. Personal financial and health information would include a consumer's personal health condition, disease, or injury and certain records and information relating to a consumer's personal finances and insurance coverage.

- The exemption is expanded to include the same personal financial and medical information provided by consumers to the Division of Workers' Compensation of the Department of Financial Services for the purpose of resolving disputes and complaints of employees.

- Bank account numbers and debit, credit, and charge card numbers are deleted from the exemption in the Florida Insurance Code since the general exemption, under s. 119.071 (5)(b), F. S., already exempts these identical records from the Public Records Law.

If approved by the Governor, these provisions take effect October 1, 2007.

● SB 1950
OGSR/Parental ID/Leaving Newborn

Section 383.51, F.S., makes confidential and exempt from public disclosure the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, F.S. This public records exemption is statutorily scheduled to expire on October 2, 2007. This bill repeals the October 2, 2007 expiration date for this public records exemption.

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

● HB 7127
OGSR/PEORP/ Identifying Information

The bill reenacts the public records exemption for personal identifying information of a participant in the Public Employee Optional Retirement Program, contained in Florida Retirement System records, held by the State Board of Administration or the Department of Management Services.

If approved by the Governor, these provisions take effect October 1, 2007.

● HB 7159
Lifeline Assistance Plan Participants

This bill exempts personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10, F.S., by the Public Service Commission. The information may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan. The exemption permits the release of confidential information for specific reasons. An officer or employee of a telecommunications carrier who intentionally discloses information in violation of the provision commits a misdemeanor of the second degree.

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

- **HB 7169**

Exemptions/Workers' Compensation

The bill creates an exemption for certain records and portions of meetings of the Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA), the insurer of last resort for employers who are unable to secure workers' compensation insurance coverage in the voluntary market. The bill makes confidential and exempt underwriting files, claims files until termination of litigation and settlement, audit records, certain proprietary information, medical records, records relative to an employee's participation in an employee assistance program, certain information related to negotiations, reports regarding fraud until the investigation is closed or ceases to be active, and payroll and client lists of employee leasing companies obtained from the Department of Revenue. The bill also makes confidential and exempt certain records prepared by an attorney retained by the association to protect or represent the interests of the association. Exceptions are provided. The bill also makes exempt that portion of a meeting at which exempt records are discussed and the minutes of that portion of such meetings. The exemption is subject to future review and repeal under the Open Government Sunset Review Act in 2012.

If approved by the Governor, these provisions take effect July 1, 2007.

- **HB 7187**

OGSR/Work Papers/DFS or OIR

This bill is the result of an Open Government Sunset Review of s. 624.31 9(3)(b), F. S. which makes confidential and exempt from the public record requirements work papers and other information held by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) and work papers and other information received from another governmental entity or the National Association of Insurance Commissioners (NAIC), for use by the DFS or the OIR in performance of its examination or investigation duties.

The bill retains the exemption; however, it narrows it by defining the term "work papers" to mean records of the procedures, tests, information and conclusions reached in an examination or investigation performed. The term also includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, schedules or commentaries prepared or obtained in the course of such examination or investigation.

The bill further narrows the exemption by providing that after an examination report is filed or an investigation is completed or ceases to be active, portions of the work papers may remain confidential and exempt if disclosure would:

- Jeopardize the integrity of another active investigation;
- Impair the safety and financial soundness of the licensee, affiliated party or insured;
- Reveal personal financial, medical, or health information;
- Reveal the identity of a confidential source;
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual;

- Reveal investigation techniques or procedures; or

- Reveal confidential and exempt information received from another governmental entity or the National Association of Insurance Commissioners with respect to the sharing of such information.

If approved by the Governor, these provisions take effect October 1, 2007.

● HB 7193
U.S. Census Bureau/ Address Information

The bill creates a public records exemption for U.S. Census Bureau address information held by an agency pursuant to the Local Update of Census Addresses Program (LUCA program). Confidential and exempt address information may be released to another agency or governmental entity in the furtherance of its duties and responsibilities under the LUCA program.

The bill also authorizes agency access to any other confidential or exempt information held by another agency if access is necessary for the receiving agency to perform its duties and responsibilities under the LUCA program.

The bill provides for future review and repeal of the exemption and provides a statement of public necessity.

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

● HB 7197
OGSR/Social Security & Financial Account Numbers

The bill reenacts the general public records exemption for social security numbers and bank account, debit, charge, and credit card numbers, held by an agency. The bill also repeals a duplicative exemption for credit card numbers. In addition, the bill transfers to a new section of law those public records exemptions related to court records and official records, and extends the period of time that redaction must be requested in court and official records.

If approved by the Governor, these provisions take effect October 1, 2007.

● HB 7201
Economic Development Agencies

This bill combines the two public records exemptions relating to the promotion and administration of economic development by state and local governments (ss. 288.075 and 288.1067, F.S.) into one provision. In addition, it expands the exemption to require that:

- "Proprietary business information" be protected indefinitely or until it is otherwise publicly available or no longer treated by the proprietor as confidential;

- "Trade secrets" be held confidential and exempt indefinitely, rather than for a period of ten years; and

- Business' federal employment identification numbers, unemployment compensation account numbers, and Florida sales tax registration numbers be held confidential indefinitely, rather than only for the time period in which the business is participating in an incentive program.

This bill amends sections 288.075 and repeals s. 288.1067 of the Florida Statutes.

If approved by the Governor, these provisions take effect July 1, 2007.

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