2008 Florida Legislature
Post-Session Report

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

CARLTON FIELDS
ATTORNEYS AT LAW

2008
Florida Legislature
Post-Session Report

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How To Use This Report

This is a summary of significant legislation that passed during the 2008 Regular Session of the Florida Legislature.

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

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.

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

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

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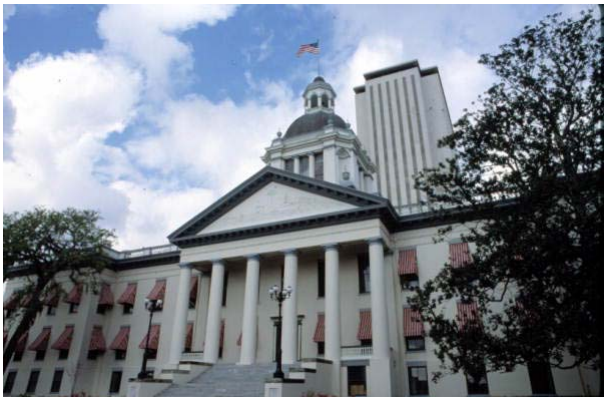

Legislative Lobbying, Cabinet & State Agencies Representation
We identify, track, analyze, and summarize legislative and Cabinet proposals and political and policy considerations in both the legislative and executive branches, assessing their impact on client operations. We also assist in drafting legislation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

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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.

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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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Note: Mr. Harbison is a member of the Florida Association of Professional Lobbyists.

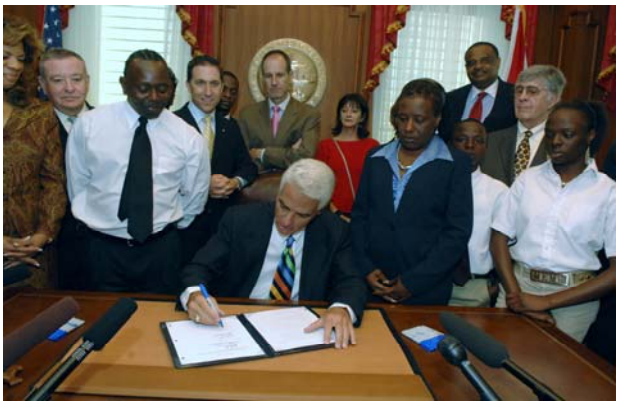
Florida Legislature Compensates Wrongfully Convicted Alan Crotzer

Three years of effort ended April 10, 2008, when Governor Charlie Crist signed legislation compensating Alan Jerome Crotzer for nearly 25 years of wrongful incarceration in Florida's prison system.

In a ceremony including Crotzer, his family, lawmakers, and members of his Carlton Fields *pro bono* team, Governor Crist put pen to paper and signed House Bill 7037 into law. The measure provides financial compensation to Crotzer, who was wrongfully incarcerated for 24 years, six months, and 13 days for a crime he did not commit. He was exonerated in January 2006 as a result of DNA evidence.

Carlton Fields has represented Crotzer *pro bono* since his release in 2006, committing more than 500 hours of legal time. The firm provided Alan Crotzer with legal representation during the initial stages of the claims process when the House and Senate appointed Special Masters to hear the case. They also represented him before members of the legislature and facilitated meetings with key policy-makers.

"Our firm has a rich history in *pro bono* work, helping to right legal wrongs," said Gary Sasso, president and CEO, Carlton Fields. "We thank the Governor, leadership in the House and Senate, the bill sponsors and members of the Florida Legislature for their commitment to Mr. Crotzer's cause and the opportunity they have afforded him to start a new life with his family."



Members of the *pro bono* team who worked closely with Crotzer include: John R. Blue, former chief judge of the Second District Court of Appeal and shareholder at Carlton Fields; Nancy Linnan, Tallahassee office managing shareholder; Rheb Harbison, senior government consultant; former firm shareholder Mike Olenick, who now serves as director of government affairs at The Morganti Group, Inc.; and Alia Faraj-Johnson, former communications director to Gov. Jeb Bush and currently vice president at Ron Sachs Communications.

"There are so many people to thank and I am overwhelmed by all of the support I have received from good people across the state," said Alan Crotzer. "I never lost faith in people or in the process. I am a happy and blessed man."

In early April, the House of Representatives voted unanimously to award Alan Crotzer $1.25 million - $50,000 dollars for every year he spent in prison. The full Senate also approved the measure which will also provide Crotzer a free education.

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Corporate, Business & Professional Regulation

CORPORATE, BUSINESS & PROFESSIONAL REGULATION

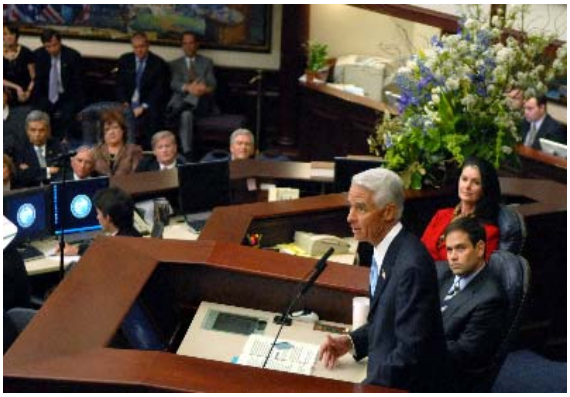
- **CS/CS/HB 105**

Secondary Metals Recyclers

Secondary metals recyclers purchase used metals typically salvaged from building demolition, remodeling, etc. and refine those metals into raw materials which can be used to make new products. Secondary metals recyclers are currently regulated under Ch. 538, Part II, F.S. All secondary metals recyclers in Florida must be registered with the Department of Revenue as provided in s. 538.25, F.S. CS/CS/HB 105 amends and expands several aspects of the laws relating to secondary metals recyclers.

Specifically, the bill:

- Eliminates the requirement that transactions must be greater than $10 in value to be regulated.
- Expands the definition of regulated metals to include stainless steel beer kegs.
- Requires secondary metals recyclers to gather more in depth information about the sellers of regulated metals.
- Enhances the penalties secondary metals recyclers face for repeated non-compliance with statutory requirements; increasing the penalty from a first degree misdemeanor to a third degree felony.
- Creates a third degree felony if a person acts as a secondary metals recycler and is not registered with the Department of Revenue.



Speaker pro-tem Marty Bowen, R-Winter Haven, and House Speaker Marco Rubio, R-Miami, center-far right, listen as Gov. Charlie Crist delivers the annual state-of-the-state address on opening day. (House photo by Meredith Hill.)

- Enhances the penalties sellers of regulated metals face for giving false information to secondary metals recyclers; increasing the penalties to second and third degree felonies (based on the dollar amount received by the seller).
- Requires the Department of Revenue to release the names of any registered secondary metals recycler to a law enforcement official upon request.
- Requires that all regulated metals be transported to a secondary metals recycler in a motor vehicle; eliminating current exceptions.
- Requires payments for all transactions in excess of $1000 be made by check.
- Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

▪ CS/SB 276 Food Donation by Public Food Service Establishment

The bill creates the "Jack Davis Florida Restaurant Lending a Helping Hand Act."

The bill amends existing provisions regarding liability for canned or perishable food distributed free of charge by expanding the definition of "perishable food" to include foods that have been prepared at a licensed public food service establishment. The bill provides protection from criminal and civil liability to public food service establishments that donate perishable foods apparently fit for human consumption to a bona fide charitable or nonprofit organization for free. This immunity from criminal penalty or civil damages does not apply if an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.

This bill was signed into law on April 22, 2008, by the Governor, Ch. 08-25, L.O.F. The effective date of this bill is July 1, 2008.

▪ CS/HB 419 Business Entities

This bill amends several statutory provisions relating to Florida business organizations. In particular, the bill:

- Corrects terms related to mergers and conversions to make them consistent throughout the relevant statutes;
- Eliminates duplicative filing requirements for business entities either merging or converting to other forms of business entities;
- Clarifies requirements for execution of certain certificates of conversion;
- Modifies the management rights of general partners in limited partnerships to require that all limited partners consent to the expulsion of a limited partner;
- Clarifies that a statement of cancellation is not required to be filed when a certificate of conversion has been filed for that partnership;
- Enables mergers between Florida professional corporations or limited liability companies and out-of-state professional corporations or limited liability companies; and
- Provides that any residue moneys after payment of creditors in the assignments process shall be returned to the assignor debtor.

Florida law establishes several forms of business organization including corporations (ch. 607, F.S.), limited liability companies (ch. 608, F.S.), not-for-profit corporations (ch. 617, F.S.), partnerships (Part II, ch. 620, F.S), limited partnerships (Part I, ch. 620, F.S.), and professional corporations and limited liability companies (ch. 621, F.S.). These various forms of organization are governed in terms of their formation, operation, merger, conversion, and dissolution.

In 2005, the Legislature amended the law governing mergers of different types of business organizations and conversions from one type of organization into another. CS/HB 419 amends provisions of Chapters 607, 608, 617, and 620, F.S., to correct terms related to mergers and conversions to make them consistent with the changes made in 2005.

The merger and conversion provisions applicable to each form of business organization require multiple filings of certificates or articles of merger and certificates of conversions with the Department of State when only Flor-

ida businesses are involved in the transaction. For example, when a limited liability company (LLC) converts into a partnership, the law requires that a certificate of conversion be filed both under the statutory provisions governing LLCs and the provisions governing partnerships. CS/HB 419 amends provisions of Chapters 607, 608, 617, and 620, F.S., to eliminate these duplicative filing requirements.

Section 620.1406, F.S., governs the management rights of general partners, and approval rights of other partners, in a limited partnership. Under this section, all general partners in the organization must approve the expulsion of a limited partner. CS/HB 419 amends this section to require that all limited partners also consent to the expulsion of a limited partner.

Section 621.113, F.S., prohibits any merger or consolidation of a professional corporation or limited liability company organized under Chapter 621, F.S., with an out-of-state professional corporation or limited liability company. The organizations governed by this chapter offer professional services that require the organizations' shareholders or members to obtain a license or legal authorization, such as certified public accountants, attorneys, doctors, and dentists. CS/HB 419 amends s. 621.13, F.S., to allow the merger or consolidation of a Florida professional corporation or limited liability company with an out-of-state professional corporation or limited liability company. The bill also amends s. 621.06 and 621.10, F.S., to remove language that would conflict with this merger/consolidation authority.

Chapter 727 establishes a procedure for the administration of insolvent estates. Section 727.114, F.S., prioritizes distributions from the estate for claims and expenses. CS/HB 419 amends this section to provide that any assets remaining after all claims have been paid in full shall be paid to the assignor (i.e., the person or entity who assigned its assets for distribution).

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/HB 601**

Department of Business and Professional Regulation

The bill contains numerous modifications relating to several programs under the Department of Business and Professional Regulation (DBPR), including the repeal of the land sales program. This bill de-regulates the sale of subdivided land by the DBPR under the Division of Florida Land Sales, Condominiums and Mobile Homes. The bill re-names the Division of Florida Land Sales, Condominiums and Mobile Homes as the Division of Florida Condominiums, Timeshares and Mobile Homes. The bill amends numerous statutory provisions for purposes of conforming references.

The bill revises and clarifies various insurance requirements for condominiums. It maintains the current requirement for adequate insurance but uses the term "adequate hazard insurance" to specify the type of insurance that is required and maintains the current provision that permits three or more communities to obtain insurance for an amount equal to the probable maximum loss for a 250 year windstorm event.

The bill specifies that a director of a condominium who abstains from voting on any action taken on any association corporate matter shall be presumed to have taken no position with regard to the action.

The bill provides that condominium expenses or items required by the federal, state or local

government, including fire safety equipment and water and sewer services, are common expenses whether or not identified as common expenses in the declaration of condominium, articles of incorporation, or the bylaws of the association.

The bill amends requirements to include a condominium unit owner's designee or a mortgagee designee among the persons that are entitled, upon request, to a certificate signed by an officer regarding the assessments owed by the unit owner to the association. The bill provides that the fee for the certificate must be set forth in the certificate.

The bill provides that the distribution of any sale proceeds to purchase money lienholders on units must not exceed a unit's share of the proceeds.

The bill creates estoppel certificates for homeowners' associations. The bill requires that the homeowners' associations must provide a certificate signed by an officer or agent of the association stating all of the assessments and other moneys that are owed to the association by the parcel owner.

The bill allows an application for the licensure examination to be submitted for approval in the last 100 hours of training by a pregraduate of a licensed cosmetology program. If an applicant passes all parts of the examination for licensure as a cosmetologist, the bill allows him or her to practice during the time between passing the examination and receiving a copy of the license if he or she practices under the supervision of a licensed cosmetologist in a licensed salon.

The bill eliminates the currently required background check for farm labor contractors that are federally registered. The bill authorizes the DBPR to close deficient license application files for all categories of applicants for licensure after two years. The bill deletes the requirement that classroom rosters for real estate courses be submitted to the DBPR.

The bill allows applicants to take the electrical/alarm contractor certification examination prior to review by the Electrical Contractor's Licensing Board of the applicant's experience and training qualifications. The bill authorizes the board to provide by rule the number of times per year the applicant may take the examination.

The bill provides for amateur mixed martial arts (MMA) events in Florida to be sanctioned and supervised by MMA amateur sanctioning organizations approved by the Florida State Boxing Commission. It adds language granting the boxing commission rule authority to require amateur fighters to compete in a certain number of amateur fights prior to licensure.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008 except as otherwise provided.

- **CS/CS/CS/HB 653**

Corporate Income Tax Credit Scholarship Program

The bill revises provisions of the Corporate Income Tax Credit (CITC) Scholarship Program. This program provides an income tax credit for corporations making eligible contributions to nonprofit scholarship funding organizations (SFOs). SFOs award scholarships to students from families with limited financial resources, i.e., the family's household income may not exceed 185 percent of the Federal Poverty Level.

The bill's revisions to the program include the following:

- The criteria for a scholarship award is amended to afford first-time eligibility to a student who is currently placed, or who was placed within the previous fiscal year, in foster care, and to the sibling of a current scholarship recipient if the family's household income does not exceed 200 percent of Federal Poverty Level.
- The maximum annual tax credit that may be granted to taxpayers contributing to the program is increased from $88 million to $118 million.
- The maximum scholarship award amount is increased from $3,750 to $3,950 and the authorized use of the award is expanded from tuition and textbook expenses to tuition and fees for a private school.
- A SFO that has operated under the program for at least three years and that did not have any negative financial findings in its most recent audit is authorized to retain up to three percent of taxpayer contributions for administrative expenses.
- A provision is added to clarify that a taxpayer who has made or who makes an eligible contribution to a SFO will not lose the tax credit retroactively if a court holds any portion of the statute creating the program unconstitutional.

The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to:

- review the advisability and net fiscal impact of increasing of the maximum tax credit in future years and of authorizing the use of insurance premium taxes as an additional scholarship funding source; and
- Identify strategies to encourage private schools that accept scholarship students to participate in the statewide assessment program. The OPPAGA must submit a report of its findings and recommendations to the Governor and Legislature by December 1, 2008.

Subject to the Governor's veto powers, the effective date of this bill is June 30, 2008.

▪ CS/CS/HB 679
Residential Properties

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments for violations of the governing documents. A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements. This bill:

- Removes the requirement that the Department of Health regulate swimming pools owned by a homeowners' association with 32 or less parcels. A similar exception was already in law for condominium association of 32 or less units.
- Requires additional disclosure to members of a homeowners' association if the association budget does not budget for deferred expenditures.

- Prohibits a director, officer or committee member of a homeowners' association from receiving compensation for service to the association. However, reimbursement for out of pocket expenses, recovery of insurance proceeds, or compensation authorized in advance by a majority vote of the owners are not prohibited.
- Provides that a fine greater than $1,000 by a homeowners' association against a parcel owner may become a lien on the property.
- Requires that an elected director of a condominium association or a homeowners association must certify in writing within 30 days of being elected that he or she has read the governing documents of the association as well as the relevant statutes.
- Provides for pre-suit mediation or presuit arbitration for disputes between homeowners'
- Provides that three or more condominium associations may form a self-insurance fund to cover insurance deductibles.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ HB 797
Public Accountancy

A certified public accountant (CPA) is regulated under the jurisdiction of the Board of Accountancy (board) within the Department of Business and Professional Regulation (DBPR), Division of Certified Public Accountants. Qualifications for "licensure" include meeting the requirements for good moral character, formal education, and successful completion of a comprehensive licensure examination.

In order to take the CPA examination, certain education qualifications must be met including a baccalaureate degree plus at least 30 semester or 45 quarter hours of formal education in excess of the hours required for a degree. This is commonly referred to as the 5th year/150 hour requirement. An applicant for licensure may substitute five years of work experience for the extra education credits required beyond the baccalaureate degree.

In order to take the CPA examination, certain education qualifications must be met including a baccalaureate degree plus at least 30 semester or 45 quarter hours of formal education in excess of the hours required for a degree. This is commonly referred to as the 5th year/150 hour requirement. An applicant for licensure may substitute five years of work experience for the extra education credits required beyond the baccalaureate degree.

The bill allows an applicant (often a student) to sit for the examination for licensure prior to achieving a college degree. The applicant is required to have completed 120 semester hours (or equivalent number of quarter hours). Though this is the normal number of hours for a degree, the applicant is not required to actually receive the degree or to complete the 5th year/150 hour requirement (to apply and sit for the examination) (these standards, and others, are required to be met for eventual "licensure").

Currently, an applicant to take the CPA examination must, in addition to education, meet statutory "good moral character" requirements. The bill removes the good moral character standard from the requirements to qualify for the examination and requires the good moral character standard as a quality to be approved for "licensure." The bill cre-

ates a new standard to be met in order to be "licensed." Beginning on January 1, 2009, an applicant for "licensure" must have one year of work experience to go along with the other requirements for "licensure." The board is authorized to establish work experience guidelines (similar to the authority of the board to approve work experience guidelines as an alternative to the 5th year/150 hour education standard).

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 854**

Unemployment Compensation/Day Laborer

This bill creates a specific provision providing for the disqualification of employees of day labor pools from receiving unemployment compensation benefits under certain circumstances. The specific provision would disqualify a day laborer from receiving unemployment compensation benefits if, without good cause, the day laborer fails to report on the next business day to obtain a new assignment.

The day labor pool is required to provide the day laborer with notice at the time of hire that he or she must report in person for reassignment the next business day following conclusion of each assignment. Unemployment benefits may be denied for failure to report in person. The bill defines the time of hire as when a day laborer accepts the first assignment following completion of an employment application with the labor pool. The bill requires the labor pool to provide notice to the temporary employee upon the conclusion of the latest assignment that work is available the next business day and that the temporary employee must report for reassignment the next business day. The bill specifies that such notice must be given by means of a notice printed on a paycheck, included in a pay envelope, or otherwise provided in writing at the end of each assignment.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 951**

Beverage Law

The Division of Alcoholic Beverages and Tobacco [Division] in the DBPR is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Activities between the license groups are extensively regulated and constitute the basis for Florida's "tied house evil" law. Notwithstanding the overall premise, the Beverage Law contains a series of exceptions to the structured three-tiered distribution system.

This bill prohibits alcohol beverage importers, primary American sources of supply, brand owners or registrants, or any broker, its sales agent or sales person, from obtaining licensure as retail vendors. It includes importers and primary American sources of supply in the current "tied house evil" prohibitions, which currently prohibits licensed manufacturers and distributors from giving gifts or loans to retail vendors.

The bill defines a brand owner as one who directly or indirectly controls any brand, brand name, or label of alcoholic beverage

but is not a manufacturer, importer, distributor, primary source of American supply, brand registrant, or broker, its sales agent or sales person.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/HB 995
Community Associations

A condominium is a form of ownership of real property created pursuant to Ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements. Speaker Marco Rubio created the Select Committee on Condominium & Homeowners Association Governance in January 2008. This act is a result of the work of the select committee. This act makes numerous changes to condominium law, including:

- Requires community association management firms to be regulated.
- Provides the Department of Business and Professional Regulations with more power to investigate complaints regarding Community Association Managers (CAMs) and community association management firms.
- Expands the duties of the Regulatory Council of Community Association Managers.
- Adds that officers and directors of a condominium association must perform his or her duties in good faith and provides that such officers and directors may be liable for monetary damages if he or she fails to perform or breaches a duty.
- Requires condominium association records must be made available to unit owners within 45 miles of the condominium property and provides for sanctions and civil penalties for any person who intentionally destroys association records.
- Provides that an association may not waive the financial reporting requirements for more than 3 consecutive years.
- Provides that units owned by the association may not vote.
- Provides that board meetings must be held within 45 miles of the condominium property, unless the bylaws provide for meeting at a place more than 45 miles from the condominium.
- Prohibits co-owners from serving at the same time on the board of administration of an association of 10 or more units.
- Requires a condominium association of 10 or more units to utilize the statutory election procedures.
- Provides that a person may not serve on the board if he or she is convicted of a crime that would be a felony in Florida and has not had his or her civil rights restored for at least five years. Limits condominium association board members to two year terms.
- Removes from office a director or officer that is more than 90 days delinquent in assessments owed to the association.
- Suspends from office a director or officer who has been charged with felony

theft or embezzlement involving association funds.

- Requires a notice of intent to file for receivership to all unit owners at least 30 days prior to a unit owner filing for receivership.
- Provides that the board of administration may install hurricane shutters or other forms of hurricane protection.
- Requires a condominium greater than 3 stories in height to have a structural inspection at least every 5 years, unless the requirement is waived by a majority vote of the owners.
- Allows the display of a religious object of a certain size on the mantle or frame of a unit owner's door.
- Requires an association to provide a unit owner notice before a lien for unpaid assessments may be filed.
- Prohibits Strategic Lawsuits Against Public Participation (SLAPP suits).
- Provides emergency powers for condominiums when a state emergency is declared. Requires a director or officer to disclose any financial interest of the director or officer in the contractor before voting to award a contract.
- Limits the jurisdiction of the Department of Business and Professional
- Regulation after turnover to financial matters and election disputes.
- Changes the Advisory Council on Condominiums to the Community Association Living Study Council.
- Requires that prospective condominium purchasers receive a copy of a governance form, prepared by the state, which form will generally educate the buyer about the role of a condominium board of administration, the responsibility of the board, maintenance, and the owner's legal rights and remedies.

This bill was signed into law on May 1, 2008, by the Governor, Ch. 08-28, L.O.F. The effective date of this bill is October 1, 2008.

- **CS/CS/CS/SB 996**

Cosmetology

The bill redefines the practice of cosmetology including hair stylist 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 stylist, esthetician, or nail technician. A cosmetologist may provide all three of these specialty services. The bill defines the services that each class of license will perform. For example, persons licensed as a cosmetologist or as a specialist under current law will continue to hold their current license or registration.

The bill increases minimum education requirements. The minimum education hours required, consisting of training from the hair stylist, esthetician, and nail technician curricula for licensure as a cosmetologist will increase from 1,200 to 1,500 hours.

The bill requires 1,000 minimum hours of education for a hair stylist and increases the minimum number of hours required for an esthetician from 260 to 600, and the minimum hours for a nail technician from 240 to 350. The bill permits a student who has enrolled and began 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 re-defines the term "salon," and requires that applicants be at least 16 years of age and have a high school degree, a general equivalency diploma, or have passed an ability-to-benefit test approved by the United States Secretary of Education. The bill permits licensure by endorsement and permits cosmetology and cosmetology specialty services to be performed outside of a licensed salon under certain circumstances. It also permits persons holding a valid cosmetology license in any state to conduct department store demonstrations.

The bill makes it unlawful for any person in the practice of cosmetology to use or possess a device containing a razor blade to remove, scrape, or cut calluses from the hands and feet.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008 except as otherwise provided.

- **CS/CS/SB 1076**

Motor Vehicles and Mobile Homes/Destruction

This legislation provides definitions, enhanced penalties, and additional requirements related to the dismantling or destruction of motor vehicles and mobile homes by salvage motor vehicle dealers and secondary metal recyclers.

The bill is designed, in part, to close loopholes in current law whereby towed vehicles can be sold as scrap to salvage yards and metal recyclers without the actual owner's permission. It requires salvagers and recyclers to hold so-called "derelict" vehicles for three full business days, excluding weekends and holidays, before destroying them, and to notify the Department of Highway Safety and Motor Vehicles (DHSMV) within 24 hours after receiving the derelict vehicle.

This bill requires that vehicles must be accompanied by a valid certificate of title, a valid salvage certificate of title, or a valid certificate of destruction, all issued in the name of the seller or properly endorsed over to the seller. If these documents are not available, the bill requires a "derelict motor vehicle certificate" to be completed by the owner of the motor vehicle or motor home, the owner's authorized transporter, and the salvage motor vehicle dealer or metal recycler. This option is available for motor vehicles with or without all major parts that are valued under $1,000, are at least 10 years old, and are in such condition that their highest value is in their sale, transport, or delivery to a salvage yard or recycler.

The bill also implements new reporting procedures for salvage motor vehicle dealers or metals recyclers, including electronic notification to the Department of Highway Safety and Motor Vehicles (DHSMV) within 24 hours after receipt of the motor vehicle.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/HB 1105**

Community Associations

A receiver is a disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of the diverse claims. Like other entities, condominium associations, cooperative associations, and homeowners' associations may be placed into receivership. This bill provides for notice of a unit or parcel owner's intent to file a petition for the appointment of a receiver to all unit owners or parcel owners of an association at least 30 days before the filing of the petition.

This bill also requires additional notice to unit owners or parcel owners should a petition for receivership be granted.

Condominium, cooperative and homeowners' associations may impose a lien against an owner for unpaid assessments, which lien may be foreclosed. Current law requires 30 days notice before the filing of a lien against a member of a homeowners' association. This bill requires condominium associations and cooperative associations to similarly give 30 days notice of intent to file a lien.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/HB 1167**

Reduced Cigarette Ignition Propensity Standard and Firefighter Protection Act

Fires caused by smoking occur when a smoker drops or improperly disposes of a lighted cigarette. 'Cigarette ignition propensity' refers to the likelihood a cigarette will ignite a fire. Currently, Florida does not regulate the fire safety of cigarettes. The Division of Alcoholic Beverages and Tobacco (division) of the Department of Business & Professional Regulation (DBPR) is responsible for enforcing chapter 210, F.S., relating to taxation of tobacco products, and aids in the enforcement of the Florida Clean Indoor Air Act.

The bill creates the Reduced Cigarette Ignition Propensity Standard and Firefighter Protection Act, requiring cigarettes sold in the state to be certified as meeting certain specified performance standards. The bill adopts a standard developed by the state of New York that requires testing, certification and marking of cigarettes.

The bill requires manufacturers to conduct or obtain testing; to certify cigarettes; and to provide records.

The division conducts inspections; approves markings; inspects records and cigarettes; destroys forfeited cigarettes; and reports the effectiveness of the program and recommended changes to the Legislature. The bill specifies division rule-making authority.

The Fire Marshal conducts or sponsors testing; approves alternative test methods; and may inspect records. The bill specifies Fire Marshal rule-making authority.

The Attorney General may file civil action and inspect records and cigarettes.

The bill includes language that it should be interpreted and implemented consistent with the New York Standards and the interpretation and implementation of those standards as they exist on March 1, 2008.

The bill preempts all other state and local laws that conflict with the provisions of the bill. The bill is automatically repealed if preempted by federal law. The effective date of the bill is January 1, 2010.

No appropriation has been provided and the costs to the division and the Fire Marshal are expected to be minimal.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2010.

- **CS/CS/SB 1310**

Sellers of Travel

This bill amends the Florida Sellers of Travel Act (Act), ss. 559.926-559.939, F.S., by increasing state oversight for those profiting from selling travel, which originates in Florida, to terrorist states as defined by the United States Department of State. This bill requires sellers of travel, selling travel originating in Florida, to any terrorist state, to comply with additional requirements and higher fees, not currently in the Act.

Specifically, the bill:

- Creates definitions for "Certifying party" and "Terrorist state," and revises the definition of "Prearranged travel, tourist-related services, or tour-guide services."
- Creates certification requirements for sellers of travel and classifies such sellers within three different categories based on each seller's level of involvement in selling travel, originating in Florida, directly to terrorist states.
- Creates requirements for sellers of travel that change the scope of their business activities after they have been certified.
- Creates different levels of security bonds that sellers must purchase according to seller classifications - the more involved in selling travel originating in Florida directly to terrorist states, the higher the required bond.
- Eliminates current alternatives to security bonds.
- Increases the requirements for waiver of bond by the Department of Agriculture and Consumer Services (department).
- Adds additional violations of the Act.
- Adds an administrative remedy and a civil penalty that the department may impose for violation of the Act.
- Adds a criminal penalty (a felony of the third degree) for violation of the Act. It increases certain annual registration fees and bond amounts for sellers of travel that sell travel, originating in Florida, directly to any terrorist state.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 1489**

Residential Tenancies

The bill amends the Florida Residential Landlord and Tenant Act to permit residential lease agreements to impose an early termination fee or liquidated damages on tenants who terminate their leases before the expiration of a lease. The total liquidated damages or any early termination fee cannot exceed two months' rent and is in addition to any unpaid rent and other charges accrued through the end of the month in which the landlord takes possession of the dwelling unit and charges for any damages to the dwelling unit.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

- **SB 1986**

Homeowners' Associations/Lien Claims

A homeowners' association is a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership in the subdivision. Many, but not all, homeowners' associations may impose regular assessments

that are a lien against each parcel, and that may be foreclosed upon if not paid. As to the lien of an association, and foreclosure thereof, this bill provides forms and procedures for notice of a claim by a homeowners' association and an objection to such a claim. The filing of an objection obligates the association to foreclose the lien within 90 days or, failing that, to waive the right to foreclose on that lien.

Provides that the holder of a first mortgage who forecloses on the mortgage is liable for up to twelve months of assessments or 1% of the original mortgage amount, whichever is less, in past due assessments.

Gives further direction and a form for use in qualifying offers, which are a means for an owner to forestall foreclosure of an association lien in exchange for an agreement to pay the outstanding balance by a certain date.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/CS/SB 2016**

Public Lodging and Food Service Establishments

The Division of Hotels and Restaurant (division) within the Department of Business and Professional Regulation (DBPR) is charged with protecting the public health, safety, and welfare by enforcing the provisions of ch. 509, F.S., and other laws relating to the inspection and regulation of public lodging establishments and public food service establishments.

The bill includes nontransient lodging, defined as establishments renting or advertised as regularly rented for at least 30 days or 1 calendar month, within the definition of "public lodging establishments." It defines nontransient establishment, nontransient occupancy and nontransient. It includes roominghouses within the definition of transient and nontransient apartments for purposes of licensure and amends the definition for transient apartments to include establishments in which more than 25% of the units are available for transient occupancy. Roominghouses would still be defined as a separate classification of public lodging establishments.

The bill removes the requirements for public lodging establishments to provide a copy of chapter 509 for the public onsite. The bill removes the requirements for public food service establishments to provide restrooms for guests, requiring instead that adequate facilities be provided for employees and to provide separate restrooms for each gender. The bill shortens the statutory timeframe for managers to complete a basic food protection practices test from within 90 days of employment to within 30 days.

The bill alters the division's duties and abilities by:

- Granting the division specific authority to collect fines and enforce final orders through additional sanctions, including fines, suspension or revocation of licenses and refusal to issue or renew licenses.
- Removing the division's role in updating and enforcing the Florida Fire Prevention Code. The division is required to report readily apparent fire code violations to firesafety officials.
- Providing that restrooms are to be maintained in accordance with the Florida Building Code as approved by local authorities and removing the di-

vision's ability to provide exceptions by rule.

The department will no longer collect fees for restroom variances but does expect to increase the collection of both unpaid and new fines.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 2582**

Motor Vehicle Dealers

This bill amends s. 320.64, Florida Statutes, relating to protections for franchised motor vehicle dealers against certain actions by automobile manufacturers resulting in loss or suspension of a dealer's license to do business in Florida.

The bill provides that manufacturers may not offer discriminatory inducements (including but not limited to grants, loans, or favorable supplies of vehicles) to franchised dealers to coerce relocation or improvement of dealer facilities or take any adverse action against a dealer who refuses to relocate or improve facilities. Reasonable standards for upkeep and cleanliness are permitted.

The bill modifies a burden of proof and a presumption relating to dealer export of motor vehicles. Manufacturers must prove that the dealer had actual knowledge of the buyer's intent to export the vehicle. The bill declares that vehicle registration in any U.S. state creates a conclusive presumption that the dealer did not have actual knowledge of the buyer's intent to export the vehicle.

The bill also modifies a burden of proof relating to franchise termination by providing that a manufacturer must prove by a preponderance of the evidence that the majority owner or dealer-principal had actual knowledge of fraudulent acts. It also requires a notice and cure period before such termination may be effected.

The bill substantially rewords provisions regarding manufacturer reimbursement for warranty parts and labor installed or performed by dealers for warranty customers. All compensation is deemed untimely after 30 days.

Specific criteria are provided for determining appropriate reimbursement amounts for parts. If the parties cannot agree on a percentage markup over the dealer's cost, the value is determined by finding the greatest of (i) the mean percentage markup for all parts charged by the dealer in 50 consecutive retail customer repairs within a 3-month period, (ii) the manufacturer's highest suggested retail or list price, or (iii) an amount equal to the dealer's markup over cost resulting in the same gross profit percentage for warranty parts as the dealer would have received for customer retail sales, as evidenced by the dealer's financial statements for the preceding two months.

Specific criteria are also provided for determining appropriate reimbursement for warranty labor performed by dealers. If the parties cannot agree on an agreed hourly labor rate, the labor rate is determined by finding the greater of (i) the dealer's retail labor rate, determined by dividing the amount of the dealer's retail labor sales by the number of retail customer repair hours that generated such sales, or (ii) an amount equal to the dealer's markup over cost that results in the same gross profit percentage for labor hours performed under warranty as the dealer receives for labor related to retail customer repairs.

The bill prohibits manufacturers from auditing or modifying compensation payments outside of predetermined schedules, and prohibits

manufacturers from attempting to recover any costs under s. 320.64, Florida Statutes, by modifying Florida dealers' participation in state, regional, or national bonus or incentive programs for dealers; by imposing separate surcharges on wholesale parts; reducing dealers' gross margins on other products or services; or other means.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law.

- **CS/CS/SB 2598**
Impaired Medical Practitioners/Treatment Programs

The bill expands the list of persons who may be retained by the Department of Health (department) to work as a consultant for the impaired practitioners' treatment program to include an entity employing a medical director who must be a practitioner or recovered practitioner who holds a Florida license as a medical physician, osteopathic physician, or nurse.

The bill authorizes the impaired practitioner program consultant, at the school's request, to provide services to students enrolled in schools for medical physicians or physician's assistants, osteopathic physicians or physician's assistants, nurses, or pharmacists who are alleged to be impaired as a result of the misuse or abuse of alcohol or drugs or due to a mental or physical condition. The department is not responsible under any circumstances for paying the costs of care provided by the approved treatment providers, and the department is not responsible for paying the costs of the consultants' services provided for students.

The bill specifies additional criteria the department must consider when adopting rules for approval of treatment providers. It provides immunity from civil liability to the medical and osteopathic schools for the referral of a student to a consultant or for disciplinary actions that adversely affect the status of the student.

The bill grants sovereign immunity to an impaired practitioner consultant, its officers, employees, and persons acting at the direction of the consultant for the limited purpose of an emergency intervention, when the consultant is unable to perform the intervention, for actions taken within the scope of the contract with the department. The bill specifies contractual conditions that must exist in order for sovereign immunity to be granted.

The bill requires the Department of Financial Services to defend any claim, suit, action, or proceeding against the consultant for acts or omissions arising out of the consultant's duties under the contract.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 2760**
Dentistry

The bill creates a health access dental license to allow an out-of-state dentist to practice dentistry in a health access setting without taking the state exam. "Health access settings" are defined to mean programs and institutions of the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, nonprofit community health centers, Head Start centers, and federally qualified health centers.

The bill creates an application process, license renewal requirements, and license revocation requirements for the health access dental license. The Board of Dentistry is required to grant a health access dental license

to practice dentistry in health access settings if an applicant meets certain educational and practice standards, files an appropriate application, and pays the required fees. The bill provides an individual with a health access dental license the ability to take the Florida dental license examination if these conditions are met, rather than require the individual to successfully complete the national exam within 10 years of the date of application. The bill specifies that the failure of an individual with a health access dental license to limit the practice of dentistry to health access settings is the unlicensed practice of dentistry.

The bill requires the Board of Dentistry to adopt rules to administer the application process, renewal requirements, and revocation requirements for a health access dental license, and provides a sunset date of January 1, 2015, for the health access dental license statute.

The bill requires a licensed dentist who uses the services of a dental laboratory to furnish the laboratory with a written prescription that, in addition to existing requirements, must include the license number of the dentist and a specification of materials to be contained in each work product. The bill requires the laboratory to disclose to the prescribing dentist in writing the materials used and all certificates of authenticity for each product with the point of origin of manufacture and the address and contact information of the dental laboratory. The bill further specifies that a dental laboratory accepting prescriptions from dentists is liable for damages caused by inaccuracies in material disclosure, certificates of authenticity, or point of origin provided by the dental laboratory to the prescribing dentist.

The bill establishes continuing education requirements and limits the Board of Dentistry's authority to require an applicant for licensure as a dental hygienist who graduated from a nonaccredited dental college or school to complete additional coursework only if the applicant has failed the initial licensure examination.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2009.

- **HB 5047**

Department of Business & Professional Regulation

This bill has 4 main provisions:

- Continues the privatization of the Board of Architecture & Interior Design within the Department of Business & Professional Regulation (DBPR). The board will be required to submit an annual report to the Legislature.
- Provides that any DBPR board that seeks privatization must obtain approval from the Legislature through general law.
- Eliminates the duplication of duties between the DBPR and the Department of Financial Services related to the Fire Prevention Code.
- The bill also updates requirements for the annual reports from the Divisions of Hotels & Restaurants and Land Sales, Condominiums & Mobile Homes.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

CARLTON FIELDS

ATTORNEYS AT LAW

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TAXATION

TAXATION

- **CS/HB 909**

Ad Valorem Taxation

The bill changes the composition of Value Adjustment Boards in all counties to include two citizens: one appointed by the county and one appointed by the school board. It precludes the county attorney from representing the VAB.

The Department of Revenue is required to develop a uniform policies and procedures manual to be used before all VABs and is required to offer training for the special magistrates. The department is required to keep records on annual percentage increase in total non-voted millage levied by taxing entity. This information will be placed on the DOR website and the existing websites of county property appraisers. Special magistrates will be required to preserve the record of all hearings and make written recommendations to the VABs which include findings of fact, conclusions of law, and the reason for sustaining or changing the assessed value of the property appraiser for all petitions heard. When all petitions, complaints, appeals and disputes have been heard, the county clerk, who is currently required to publish a public notice of the findings and results of the board, will now include in the results the number of parcels for which petitions were filed but not considered by the board because of petitions being withdrawn or settled.

The bill clarifies that in determining the highest and best use of a property (one of the eight factors considered in determining the assessed valuation), the property appraiser must take into account the legally permissible use of the property, as well as any zoning changes, concurrency requirements, or permits which would be necessary before the property could actually be used for that highest and best use. The bill precludes property appraisers from establishing a minimum acreage below which they will not grant an agricultural classification. The Legislature also states its express intent that taxpayers never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment.

Rep. Joyce Cusack, D-DeLand, left, and Democratic leader Dan Gelber, D-Miami Beach, confer with Speaker Marco Rubio, R-Miami, on the House floor. (House photo by Meredith Hil.).

Subject to the Governor's veto powers, the effective date of this bill is September 1, 2008.

- **CS/HB 1059**

Exemptions from the Tax on Sales, Use, and Other Transactions

The bill amends s. 212.08, F.S., by allowing nonprofit cooperative hospital laundries to provide laundry supplies and services to businesses that are not members of the cooperative, pursuant to declaration of emergency under s. 252.36(2), F.S., and a written emergency plan of operation executed by the members of the cooperative, without invalidat-

ing or causing the cooperative's certificate of exemption to be denied.

The bill further provides that any member that changes its Internal Revenue Code s. 501(c)(3) status must divest all participation in the nonprofit cooperative hospital laundry within 90 days after the change in status.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 1373**

Qualified Defense Contractor Tax Refund Program

This bill expands s. 288.1045, Florida Statutes, relating to the Qualified Defense Contractor tax refund program (QDC), administered by the Office of Tourism, Trade and Economic Development (OTTED) within the Executive Office of the Governor, to allow for space flight businesses or entities with space flight contracts to qualify for QDC tax refunds. The bill also makes several other changes to the QDC program that will affect both space flight business contracts and defense contracts.

The bill provides definitions for the terms "space flight business," "space flight business contract," "new space flight contract," and "consolidation of space flight contract."

The QDC tax refund is an incentive designed to grow Florida's high-technology and defense-related industries. Currently, approved projects are eligible to receive up to $5,000 in tax refunds for every job created.

This bill amends the amount of tax refund available to qualified applicants to match the tiered system used to award tax refunds under the Qualified Targeted Industry Tax Refund Program, raising the maximum tax refund per job created from $5,000 to as high as $8,000 per job if the project is in a rural county or enterprise zone and the average wage per job is 200 percent of the average private sector wage in the area.

The bill further amends the QDC program by:

- Allowing local governments to use donated or discounted land and buildings to qualify as local match;
- Simplifying the application process by removing the requirement that a notarized signature be placed on an application and removes the requirement that an applicant estimate the amount of tax refunds claimed each year;
- Removing the annual report requirement from s. 288.1045, Florida Statutes, because this requirement was duplicative in nature; and
- Delaying the sunset provision from 2010 to 2014.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1588**

Property Taxation

In 2007, the Legislature enacted two laws governing the taxation of property. Ch. 2007-321, L.O.F., limited local governments' property tax revenue growth by imposing maximum millage rates based upon growth in state-wide per capita personal income and growth in the tax base due to new construction and additions within each jurisdiction.

The bill implemented the provisions of Amendment 1 to the Florida constitution that was approved by the voters January 29,

2008. This amendment increased the homestead exemption by $25,000, except for school district taxes; allowed homestead property owners to transfer up to $500,000 of the Save-Our-Homes benefits to their next homestead (portability); provided a $25,000 exemption for tangible personal property; and limited annual assessment increases for specified nonhomestead real property to 10%, except for school district taxes.

The bill also directed the Department of Revenue (department) to report, by March 1, 2008, the results of the implementation of the millage rate limitations, including issues that may have needed to be addressed by the legislature and improvements in the information required to be provided by local governments, property appraisers, and tax collectors. The department's report also included issues that have arisen in the implementation of the provisions of Amendment 1.

This bill addresses the issues identified in the department's report. Issues include drafting errors in the legislation, ambiguities, and unforeseen circumstances not addressed in the original bills.

In addition, this bill contains special provisions for determining the maximum millage rates for the 2008-2009 Fiscal Year. Amendment 1 to the Florida Constitution, adopted on January 29, 2008, contained provisions that reduced the property tax base. Under current law, local governments will be allowed to levy a millage rate to recover the tax loss due to the loss of tax base by a majority vote of the governing body. This bill will require a two-thirds vote to recover the loss.

Taxing authorities that levy millage rates not exceeding the rates that can be levied by majority vote will experience a decline in ad valorem revenues relative to the millage rates that could be levied by majority vote under current law. The difference between the maximum millage rates that can be levied by majority vote under current law and under the provisions of this bill is estimated to be $1.1 billion in tax revenues in Fiscal Year 2008-09.

The issues addressed by the bill that were identified in the department's report include:

- Information needs of the Department of Revenue and the Revenue Estimating Conference to properly oversee and administer the property tax system, and estimate impacts;
- Clarification that votes of the "membership" of the governing board are needed to override the millage limitations;
- Classification of some Downtown Development Authorities as dependent districts;
- Clarification of the calculation of the special provision for the public health trust in Miami-Dade County;
- Requiring a study of the effects of all the recent statutory and constitutional changes on the TRIM notice requirements;
- Providing an administrative appeal process for portability issues;
- Clarification of the rules for the transfer of portability benefits when there are multiple owners;
- Clarification of the rules for the application of the Tangible Personal Property $25,000 exemption;

- Deletion of the application requirement for the 10% assessment growth limitation;
- Requiring notification by the property owner to the Property Appraiser when ownership or control of property subject to the 10% limitation changes.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law, except as otherwise provided, and applies to the 2008 and subsequent tax rolls.

▪ HB 5065
Corporate Income Tax

Florida's Corporate Income Tax code follows the Federal Internal Revenue Code (IRC) by using federal rules and using federal taxable income as the starting point for the Florida Income Tax calculations. Florida Statutes define specific terms as they apply to Florida's corporate income tax code, including the term "Internal Revenue Code." This bill redefines the term to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 2008. This change is retroactive to January 1, 2008.

The bill does not adopt all changes to the Internal Revenue Code made during 2007. It disallows sections 102 and 103 of H.R. 5140, the Economic Stimulus Act of 2008, Public Law 110-185, for purposes of calculating Florida taxable income. These federal provisions grant temporary increases in the expensing and depreciation allowances for certain capital assets put into service during 2008.

Florida's Corporate Income Tax code also requires corporations to make estimated payments of a portion of their annual income tax liability. The requirement that the payments are to be made on or before the first day of certain months during a corporation's taxable year is changed slightly to require these payments before the first day of the month. Most notably, estimated payments that would otherwise be made on July 1, 2009 will be made in June 2009 and available for appropriation in the state's FY 2008-09, representing a largely one-time speed-up of revenues ($93.8 million). The changes regarding estimated tax payments are effective January 1, 2009.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law and shall apply retroactively to January 1, 2008.

CARLTON FIELDS

ATTORNEYS AT LAW

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EDUCATION AND WORKFORCE

EDUCATION & WORKFORCE

- **SB 186**

University of South Florida Polytechnic

The bill designates the Lakeland campus of the University of South Florida as the "University of South Florida Polytechnic." The University of South Florida Polytechnic (USF Polytechnic) will be a separate organizational and budget entity of the University of South Florida (USF).

The bill requires USF Polytechnic to have a Campus Board and a Campus Executive Officer. The Campus Board will be comprised of four residents of the Polytechnic campus service area recommended by the President of USF and appointed by the USF Board of Trustees. The fifth member of the Campus Board must be selected by the USF Board of Trustees from among its membership and that trustee will serve jointly as a member of the USF Board of Trustees and the Campus Board.

The bill requires the Campus Board to submit an annual legislative budget request to the USF Board of Trustees. The bill provides for USF Polytechnic to apply for accreditation from the Commission on Colleges of the Southern Association of Colleges and Schools when separate accreditation is in the best interest of the campus.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 242**

Schools/Single-gender Classes

The bill authorizes a district school board to establish a nonvocational single-gender class, extracurricular activity, or school for elementary, middle, or high school

House Democrats stretch and settle in for a long night. The gridlock continued into the early morning hours after Republicans refused to take up the minority party's education amendment. The Democrats responded by forcing the reading of the entire content of each bill. (House photo by Meredith Hill.)

students. If a single-gender program is established, the school board must also provide :

- A single-gender option for students of the other gender; and
- A coeducational option. All single-gender and coeducational options must be substantially equal in quality.

Student participation in a single-gender program must be voluntary. Each district school board is required to evaluate its single-gender programs every two years to ensure compliance with state and federal law.

This bill became law without the Governor's signature on April 24, 2008.

- **CS/CS/SB 428**

Workforce Innovation

This bill permits regional workforce boards to be designated as one-stop operators and direct providers of intake, assessment, eligibility determinations, or other direct provider ser-

vices except training services, subject to agreement of the chief elected official and the Governor as specified in 29 U.S.C s. 2832(f)(2).

The bill also requires Workforce Florida, Inc., to develop procedures and criteria for a regional workforce board to request permission to be designated as a one-stop operator. It specifies that the criteria must include a reduction in the cost of providing the permitted services. Finally, the bill provides that such permission shall only last for three years for each request.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 526**

Interscholastic Extracurricular Activities

The bill establishes a pilot program in Bradford, Duval, and Nassau Counties for the 2008-2009 and 2009-2010 academic years. Under the pilot, a private school student in middle or high school may participate in athletics at the public school zoned for the student's residence if his or her private school is not a member of the Florida High School Athletic Association (FHSAA) and does not offer an interscholastic or intrascholastic athletics program.

The pilot program is to be conducted by the FHSAA, in cooperation with the district school boards in the counties where the program will be implemented. The FHSAA must establish guidelines for program participation that require private school students to meet the same standards of eligibility, acceptance, behavior, educational progress, and performance applicable to student athletes attending FHSAA member schools.

The FHSAA and participating district school boards must submit a copy of the program's guidelines by August 1, 2008, and a report on the program by January 1, 2010, to the Governor and Legislature. The report must include the number of students who participated in the program, the number of students who transferred to the public school where they participated, implementation issues, and recommendations for expanding the program statewide. Bill provisions establishing the pilot program are repealed on June 30, 2010, unless reviewed and reenacted by the Legislature.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 610**

Physical Education/Grades 6-8

The bill expands the existing 150 minute physical education (P.E.) requirement for students in kindergarten through grade 5 to include students in grade 6 who are enrolled in a school that contains one or more elementary grades. Beginning with the 2009-2010 school year, the bill requires that students in grades 6 through 8 take the equivalent of one class period per day of physical education for one semester of each year. The bill deletes language encouraging a district school board to provide 225 minutes of P.E. each week for students in grades 6 through 8. The P.E. requirement may be waived for students in kindergarten through grade 5 and students in grades 6 through 8, if they meet one of the following criteria:

- The student is enrolled or required to enroll in a remedial course. The student's parent indicates in writing to the school that:
- The parent requests that the student enroll in another course from among

those courses offered as options by the school district; or

- The student is participating in physical activities outside the school day which are equal to or in excess of the mandated requirement.

The bill requires a school district to notify a student's parent of the waiver options provided in the bill before scheduling the student to participate in P.E.

The bill is cited as the "Don Davis Physical Education Act.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 623**

School Food Service Programs

The bill requires each district school board, beginning with the 2010-2011 school year, to expand the School Breakfast Program (currently required in elementary schools) to all middle and high schools. Each school district is also directed, beginning with the 2009-2010 school year, to annually set prices for breakfast meals which cover the meal costs, except if the district school board decides to set lower prices. Each school district is also required to annually provide students and parents with information about the district's School Breakfast Program.

Each school is directed, to the maximum extent practicable, to serve breakfast through alternative options described in publications of the federal Food and Nutrition Service of the U.S. Department of Agriculture (e.g., prepackaged breakfasts served on school buses or alternative sites away from the school cafeteria, such as hallways with high student foot traffic). Beginning with the 2009-2010 school year, a school must make breakfast available for a student who arrives at school on the school bus less than 15 minutes before the first bell rings. In addition, the school must allow the student at least 15 minutes to eat the breakfast.

The bill encourages each school district to provide universal-free school breakfast in all schools and requires district school boards, by the beginning of the 2010-2011 school year, to consider a policy for providing universal-free school breakfast for all students in schools in which 80 percent or more of the students are eligible for free or reduced-price meals.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed, by January 15, 2009, to issue a report that estimates the implementation costs of universal-free school breakfast, examines school meal prices and the efficiency and effectiveness of school district food service programs, identifies best practices and strategies for reducing food service costs, evaluates the state's reporting of food service revenues and costs, assesses the methodology used for allocating state funds to school district food service programs, and evaluates the state's organizational structure for implementation of the National School Lunch Program, federal School Breakfast Program, and federal Summer Food Service Program.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **SB 642**

School/Multiple Birth Siblings/Classroom Placement

The bill authorizes the parents of multiple birth siblings assigned to the same grade level and school to request that the school place the siblings in the same classroom or in separate classrooms. The school must assign the class-

room placements of multiple siblings as requested by the parents, except if:

- Factual evidence of performance shows that the siblings should be separated;
- The request would require the school district to add an additional class to the siblings' grade level; or
- After the first grading period following the multiple birth siblings' enrollment, the principal, in consultation with the teacher of each affected classroom, determines that the requested placement is disruptive to the school. (A parent may appeal the principal's determination according to school district policy).

A parent's requested classroom placement must be submitted in writing and made at least 5 days before the first day of each school year (or 5 days after the first day of attendance for multiple birth siblings enrolling after the first day of school).

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ HB 669
School Safety

The bill creates the "Jeffrey Johnston Stand Up for All Students Act" which prohibits the bullying or harassment of any public K-12 student or employee during a public K-12 education program or activity; during a school-related or school-sponsored program or activity; on a public K-12 school bus; or through a public K-12 computer, computer system, or computer network.

The Department of Education (DOE), by October 1, 2008, must adopt a model policy prohibiting bullying and harassment. By December 1, 2008, each school district is required to adopt a bullying and harassment policy in substantial conformity with DOE's model policy.

For the 2009-2010 school year, the bill directs that a school district's Safe Schools funding is contingent upon DOE's approval of the district's bullying and harassment policy. The bill specifies that DOE shall approve a district's policy if it is in substantial conformity with DOE's model policy.

Beginning with the 2010 - 2011 school year, a school district's annual allocation of Safe Schools funding is contingent upon the district's compliance with requirements for submitting reports of bullying and harassment to DOE as part of the district's reports of safety and discipline data. The bill requires the Commissioner of Education to submit an annual report to the Governor and Legislature which includes data on the district reports of bullying and harassment.

The bill provides limited civil immunity for a school employee, volunteer, student, or parent who reports bullying or harassment in good faith.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

▪ CS/CS/SB 696
Community Colleges

This bill authorizes community college boards of trustees to enter into short-term financing contracts for goods, materials, and services for a term of not more than five years. Payments on such contracts must be subject to an annual appropriation by the board of trustees.

Community college boards of trustees may pledge capital improvement fee revenues as a dedicated revenue source to the repayment of debt with an overall term of not more than seven years and revenue bonds with a term not exceeding 20 years. The revenue bonds must be issued by the Division of Bond Finance. The Division of Bond Finance may pledge fees collected by one or more community colleges to secure such bonds.

A community college board of trustees may also pledge parking fee revenues as a dedicated revenue source for the repayment of debt with an overall term of not more than seven years and revenue bonds with a term not exceeding 20 years. Community colleges must use the services of the Division of Bond Finance to issue any revenue bonds supported by parking fee revenues.

The bill prohibits the use of tuition, financial aid fees, the Community College Program Fund, or any other operating revenues of a community college to secure revenue bonds.

The bill requires community college boards of trustees to authorize all debt incurred by a direct support organization, but permits the trustees to delegate to the board of directors of the direct support organization authority to approve short term loans and lease purchase agreements with a term of five years or less. Revenues of the community college may not be pledged to debt issued by direct-support organizations.

The bill makes the following name changes: Daytona Beach Community College to Daytona Beach College and Indian River Community College to Indian River College.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 1203**

Interstate Compact on Educational Opportunity for Military Children

The bill adopts the Interstate Compact on Educational Opportunity for Military Children. This compact was developed by the Council of State Governments in cooperation with the U.S. Department of Defense to enable member states to uniformly address educational transition issues faced by military families. It will govern member states in areas that include school eligibility, program placement, enrollment, school record transfers, and graduation for the children of relocated military families. It takes effect when it is adopted by ten states. As of May 2, 2008, three states have enacted the compact; three state legislatures, including the Florida Legislature, have sent legislation to adopt the compact to the Governor; and 13 state legislatures are considering legislation to adopt the compact.

The compact establishes an Interstate Commission on Military Children to administer the compact among member states and will adopt rules to govern the compact's operation. The Interstate Commission is to be comprised of a voting representative from each member state and ex officio members representing stakeholders. It must meet at least once annually and must annually report to the legislatures, governors, judiciaries, and state councils of the member states.

The bill requires Florida's Governor to designate:

- A Compact Commissioner to represent the state on the Interstate Commission; and
- A Military Family Education Liaison to assist military families and the state in implementing the compact.

As required by the compact, the bill provides for the establishment of the State Council on Interstate Educational Opportunity for Military Children (Council) to coordinate state and local government implementation of, and compliance with, compact requirements. The Council's membership will consist of five voting members: the Commissioner of Education, the superintendent of the school district with the highest percentage per capita of military children, two appointees by the Commissioner of Education, and one legislative appointee. It will also include the Compact Commissioner and the Military Family Education Liaison, who will serve as ex officio, nonvoting members.

The bill specifies that its provisions are repealed two years after its effective date unless reviewed and saved from repeal by the Legislature. The repeal will allow the Legislature to review the compact after the adoption of rules by the Interstate Commission.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008, or upon enactment of the compact into law by nine other states, whichever date occurs later.

- **CS/CS/SB 1276**

Educational Facilities Construction

The bill increases the maximum permissible amount for day-labor contracts executed by educational boards from $200,000 to $280,000. Thus, under the bill, a day-labor project may cost up to $280,000 before other types of contracting processes involving more extensive procurement procedures must be utilized by an educational board. Further, beginning January 2009, the bill requires the maximum permissible amount for a day-labor contract to be annually adjusted based upon changes in the Consumer Price Index.

The bill also amends law that expands the purposes for which a school district's two-mill funds may be used during the 2008-2009 fiscal year when the district has complied with class size reduction requirements. Under the bill, the class size compliance calculation need only consider the number of students served in educational facilities operated, rather than merely provided, by the district. Accordingly, the number of students served in conversion charter schools need not be included in the district's compliance calculation.

Finally, the bill authorizes community colleges located within specified areas of critical state concern to construct dormitories for up to 100 students. Such dormitories are exempt from the building permit allocation system and may be constructed up to 45 feet in height if the buildings are otherwise consistent with the comprehensive plan. The community college must have a hurricane evacuation plan that requires all dormitory occupants to be evacuated 48 hours in advance of tropical force winds and that provides transportation for dormitory occupants during an evacuation.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 1313**

Students with Disabilities

The bill updates the terminology used throughout the Florida K-20 Education Code, which relates to educational programs and services for persons with disabilities, in order to reflect the current usage in the field of special education. For example, the bill replaces the terms "students with handicapping conditions" and "mental retardation" with the updated terms "students with disabilities" and "intellectual disability," respectively.

The bill deletes a provision authorizing district school boards to adopt rules concerning the admission of eligible children 3 years of age or older to special education programs and related services. The bill also authorizes the State Board of Education to adopt rules concerning special programs and other services for children with disabilities younger than 3 years of age.

Finally, the bill eliminates a provision that prohibits regional autism centers (i.e., Centers for Autism and Related Disabilities) from providing direct medical or pharmaceutical interventions.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/CS/SB 1712**

Ethics in Education

The bill creates the "Ethics in Education Act." If a person has been convicted of any criminal offense, from among a list of offenses established by the bill, the person is ineligible, without any exceptions, for educator certification or employment as instructional personnel or school administrators in a position that requires direct contact with students in a school district, charter school, the Florida School for the Deaf and the Blind, or private school that accept scholarship students under the Corporate Income Tax Credit Scholarship Program or John M. McKay Scholarships for Students with Disabilities Program. The bill also requires each of these schools and districts to:

- Adopt standards of ethical conduct for instructional personnel and school administrators and provide training on the standards;
- Require instructional personnel and school administrators to report the misconduct of other instructional personnel and school administrators, if the misconduct affects the health, safety, or welfare of a student;
- Require the reporting of misconduct to the Education Practices Commission, if the misconduct involves an employee in a position that requires educator certification;
- Prohibit confidentiality agreements that conceal the misconduct of instructional personnel or school administrators who are fired or resign for misconduct (the bill also voids any such agreements);
- Refrain from giving an employment reference, for instructional personnel or school administrators who are fired or resign for misconduct, without disclosing the misconduct; and
- Contact the previous employer of applicants before hiring them as instructional personnel or school administrators and screen the applicants through the Department of Education's educator discipline and certification databases for any past misconduct.

The bill provides various sanctions for elected or appointed school board officials, district school superintendents, charter schools, and private schools that accept scholarship students which knowingly fail to comply with its requirements.

The bill requires a district school superintendent, in consultation with the school principal, to suspend instructional personnel or school administrators from their regularly assigned duties, with pay, upon receiving an allegation of misconduct by the personnel or administrators whose misconduct affects the health, safety, or welfare of a student. In addition, the superintendent must suspend instructional personnel or school administrators for their

alleged misconduct upon the request of the Commissioner of Education.

The bill specifies that a public officer or employee in any publicly funded retirement plan, including the Florida Retirement System, forfeits his or her retirement benefits, except for the return of accumulated contributions, if the officer or employee is convicted of using or attempting to use the power, rights, privileges, duties, or position as a public officer or employee to, on or after October 1, 2008, commit a felony sexual battery against a victim younger than age 18 or a felony lewd and lascivious offense against a victim younger than age 16.

The bill increases the membership of the Education Practices Commission (EPC) from 17 to 25 members and requires each of the commission's panels convened to hear a complaint against a teacher or administrator to include a parent or sworn law enforcement officer. The commission's authority is expanded to discipline certificated personnel who knowingly fail to report child abuse or report misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student. Finally, the bill revises procedures are for the Department of Education's investigation of complaints filed before the commission.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/CS/SB 1716
Postsecondary Education

This bill establishes the Florida College System to maximize open access for students; respond to community needs for postsecondary academic education and career degree education; and to provide, in a cost-effective manner, the associate and baccalaureate degrees that will best meet the state's employment needs. The Florida College System will be comprised of the public postsecondary institutions identified as community colleges that grant 2-year and 4-year academic degrees as provided by law.

The bill establishes the Florida College System Task Force for the purpose of developing findings and issuing recommendations regarding the transition of community colleges to baccalaureate degree-granting colleges and the criteria for establishing and funding state colleges. The task force will be comprised of the Commissioner of Education and 11 members appointed by the Commissioner. The appointees will include seven community college presidents, one state university president, the president of an institution that is eligible to participate in the Florida Resident Access Grant Program, the president of an institution that is licensed by the Commission for Independent Education and grants baccalaureate degrees, and one member at large.

The bill creates the Florida State College Pilot Project for the purposes of recommending to the Legislature: an approval process for transition of baccalaureate degree-granting community colleges to state colleges; criteria for the transition of institutions in the Florida College System to state colleges; and a funding model for the Florida College System. The Florida State College Pilot Project will be conducted by Chipola College, Daytona Beach College, Edison College, Indian River College, Miami Dade College, Okaloosa-Walton College, Polk College, Santa Fe College, and St. Petersburg College in collaboration with the Florida College System Task Force.

The bill makes the following name changes: Broward Community College to Broward College; Daytona Beach Community College to Daytona Beach College; Indian River

Community College to Indian River College; Polk Community College to Polk College; and Santa Fe Community College to Santa Fe College.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1774**

Postsecondary Student Fees

The bill makes technical corrections to out-of-state fee provisions for workforce education and community colleges and adds a "grandfather" provision to address changes made during the 2007C Special Session that could impact a community college's activity and service fee.

The bill amends current statutory provisions relating to student financial aid fees in order to increase the financial aid revenue available to smaller colleges. The bill permits community colleges to collect up to an additional 2 percent from the student financial aid fee if the total revenue generated by the financial aid fee is less than $500,000 rather than $250,000 as currently authorized. The bill also provides more flexibility in the use of financial aid fee revenue.

Effective July 1, 2009, the bill amends the workforce and community college technology fees to be consistent with the state university technology fee, which is scheduled to take effect in the 2009-2010 fiscal year. The bill increases the maximum technology fee for workforce and community college programs from $1.80 per credit hour to 5 percent of the tuition per credit hour for residents; prohibits the fee from being included in Bright Futures Scholarship awards; and specifies that the revenue generated by the fee shall be used to enhance instructional technology resources for students and faculty.

The bill places in statute a requirement for the University of Miami to submit documentation each year to the Department of Education of an operating agreement with a government-owned hospital meeting specified criteria prior to the payment of the annual appropriation to the first accredited medical school.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008, except as otherwise expressly provided in the bill.

- **CS/CS/SB 1906**

Alternative Credit High School Courses

The bill authorizes a pilot project beginning in the 2008-2009 school year that would enable high school students enrolled in a career academies to simultaneously earn alternative credit for Algebra, Geometry, or Biology while completing similar academy coursework. For such alternative credit to be awarded, the bill requires:

- The career academy coursework to include the standards for Algebra, Geometry, or Biology; and
- The student to verify mastery of the standards by passing a Department of Education approved end-of-course assessment.

The pilot project may be offered in up to three school districts selected by the Commissioner of Education from applications submitted by interested districts. The department is required to submit a report to the Governor and Legislature by January 2010, which includes data for the number of students receiving alternative credit under the pilot and which provides recommendations for expanding the use of alternative credit statewide.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/SB 1908
Sunshine State Standards

The bill requires the State Board of Education to review the Sunshine State Standards, replace them by December 31, 2011, with "Next Generation Sunshine State Standards," and establish a schedule for the periodic revision of the standards. The Next Generation standards must be rigorous, provide increased content specificity, and establish grade-by-grade expectations in kindergarten through grade 8 for language arts, science, mathematics, and social studies. High school standards for these subjects may be organized by grade clusters. The Commissioner of Education must develop the proposed standards in consultation with curricular content experts, Florida teachers, and other stakeholders.

The bill revises the calculation of school grades for high schools. Fifty percent of a high school's grade continues to be based on student performance on the Florida Comprehensive Assessment Test (FCAT).

The remaining 50 percent will be based on several factors, including high school graduation rates; graduation rates of at-risk students; student participation and performance in Advanced Placement (AP), International Baccalaureate (IB), Advanced International Certificate of Education (AICE), and dual enrollment courses; and industry certifications.

The bill revises the statewide assessment program by authorizing end-of-course assessments to be administered in addition to FCAT assessments, eliminating the norm-referenced test sections of the FCAT, and revising the types of test items included in the FCAT writing assessment. The assessment schedule must require the FCAT to be administered later in the school year (not before March 15 for the writing assessment or April 15 for other assessments). The bill also allows the commissioner to discontinue outdated assessments (e.g., high school equivalency test). School districts must prohibit each public school from suspending a regular program of curricula in order to administer practice tests or engage in other test-preparation activities for a statewide assessment.

Finally, the bill includes provisions that:

- Authorize a school to receive Florida School Recognition Program funds, if the school improves two or more letter grades and maintains the improvement in the following school year;
- Add flexibility in the methods (e.g., direct deposit, check, debit card, or purchasing card) by which funds are distributed to teachers under the Florida Teachers Lead Program for the purchase of classroom materials and supplies;
- Allow a practical arts course, which incorporates artistic content and techniques, to satisfy the graduation requirement for one credit in fine or performing arts;
- Establish the Florida Ready to Work Credential, which is awarded as a bronze, silver, or gold-level credential based on the student's score on specified career preparatory assessments;
- Allow an educator to obtain certification to teach a world language other than the four languages for which the Department of Education currently offers a subject area test through passage of national examinations administered by the American Council on the Teaching of Foreign Languages;

- Require postsecondary educational institutions to assign letter grades for dual enrollment courses and require school districts to post the assigned grades to the student's high school transcript;
- Require a high school diploma to include designations for the student's major area of interest; completion of four or more accelerated college credit courses (AP, IB, AICE, or dual enrollment); career education certification; and the Florida Ready to Work Credential;
- Require high schools to evaluate certain students for college readiness before grade 12 using the college placement test, or an equivalent assessment, and, if remediation is indicated, provide the student with the opportunity for remedial instruction before graduation from high school;
- Exempts a school from receiving a school grade (or school improvement rating), if the number of students tested is less than the minimum sample necessary for statistical reliability and protection of personally identifiable student data;
- Require a school district to forfeit Florida School Recognition Program funds for 1 fiscal year if the district fails to assign an alternative school student's FCAT scores to the alternative school or "home school," which the bill defines as the school the student would be assigned if not assigned to an alternative school;
- Exempt adult students enrolled in an apprenticeship program from completing an entry-level examination;
- Require each school district to conduct an annual review of a student's electronic personal education plan;
- Express legislative intent that the K-20 education accountability system must comply with the federal Individuals with Disabilities Education Act (IDEA);
- Clarify that members of a school advisory council may not be employed by the school district; and
- Require school cafeterias to post sanitation certificates and inspection reports.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008, except as otherwise provided in the bill.

- **HB 5083**

Education

The bill amends sections 121.021 and 1012.72, Florida Statutes, limiting the Excellent Teaching Program bonuses to one 10-year period and deleting authority to fund the certification fee, portfolio incentive, and the Florida Retirement System contribution. In the event of insufficient funds, the mentoring bonuses will be prorated; however local school district funds may be used to fund the bonuses.

The bill amends sections 220.187 and 1008.22, Florida Statutes, deleting norm-referenced test requirements from statute. Effective for Fiscal Year 2008-09 only, section 1001.451, Florida Statutes, is amended to allow for the proration of education consortium membership incentive grants. The bill amends section 1002.33, Florida Statutes, prohibiting school districts from including Merit Award Program funds in the calculation of school district administrative fees. Section 1012.225, Florida Statutes, is amended extending by one year, to October 1, 2008, the deadline for submitting 2008-09 Merit Award Program plans. Section 1003.03, Florida Statutes, is amended ex-

tending to 2008-09 class size compliance at the school level. The bill amends section 1007.271, Florida Statutes, deleting obsolete language concerning reporting dual enrollment FTE.

Several revisions relating to the Florida Education Finance Program (FEFP) are made to section 1011.62, Florida Statutes. The current practice for the calculation of FTE for dual enrollment instruction is codified. The value of the additional FTE weight calculated for one credit courses is decreased from .24 to .16 for International Baccalaureate, Advanced Placement, and Advanced International Certificate of Education programs. One-half credit courses are decreased from .12 to .08. The additional FTE weight of .088 for the completion of high school level algebra courses in middle school is eliminated. The requirements for earning the additional FTE weight for career industry certification are revised to include the highest level of industry certification and a high school diploma. The industry certification appropriation is revised from $30 million to $15 million. School district fiscal year FEFP revenues are aligned with school district expenditures by requiring that the school tax roll used in the FEFP final calculation shall be the tax roll used in the final calculation. Flexibility to use Instructional Materials and research-based reading allocations for academic classroom instruction is extended to 2008-09. The percentage of declining enrollment that is eligible for funding is specified in the General Appropriations Act.

The bill amends section 1011.71, Florida Statutes, revising the capital outlay millage cap from 2.0 mills to 1.75 mills and authorizing up to .25 mills of the taxable value for school purposes to be available for lease-purchase agreements. The bill extends to 2008-09 the flexibility to use up to $65 per FTE in capital outlay funds to purchase certain motor vehicles and to pay property and casualty insurance premiums. This statutory modification expires July 1, 2009. The bill amends 1013.45, Florida Statutes, requiring the use of prototype design and construction when a district's five-year plan includes two schools in the same grade group.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 7067**

Virtual Education

Beginning with the 2009-2010 school year, the bill requires school districts to implement virtual instruction programs. Under the bill, each district must offer:

- Full-time virtual courses to students in kindergarten through grade eight.
- Full-time or part-time virtual courses to students in grades nine through 12, who are in Department of Juvenile Justice, dropout prevention, or career education programs.

A school district may operate its own program or may contract with providers approved by the Department of Education. Districts may also participate in multi-district contractual arrangements for such programs. A charter school may enter into an agreement with the district in which it is located for its students to participate in the district's virtual instruction program.

The bill establishes district and provider qualifications, instruction requirements, student eligibility and participation requirements, and assessment and accountability standards. The bill also states that funding for a district virtual instruction program is provided through the Florida Education Finance Program.

Finally, the bill authorizes districts to begin offering virtual instruction programs in the 2008-2009 school year, but limits the providers authorized to contract with a district to specified entities with prior experience offering virtual courses in Florida.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008, except as otherwise provided.

- **CS/HB 7105**

Postsecondary Distance Learning

This bill establishes the Florida Distance Learning Task Force to make recommendations to facilitate access to undergraduate distance learning resources that enable public postsecondary educational institutions to fulfill their missions while contributing to and sharing in the distance learning resources of the Florida Distance Learning Consortium. The 9-member task force will be appointed by the chancellors of the Division of Community Colleges and the Board of Governors and will be comprised of four members from the State University System, four members from the Community College System, and the executive director of the Florida Distance Learning Consortium. The Task Force must submit a report, including recommendations, to the Governor, the Legislature, the State Board of Education, the Board of Governors, and the university and community college boards of trustees no later than March 1, 2009.

The bill establishes the Florida Higher Education Distance Learning Catalog as an interactive, Internet-based central point of access to distance learning courses, degree programs, and resources offered by public postsecondary educational institutions.

The bill authorizes community college and state university boards of trustees to establish a distance learning fee that may be assessed for courses listed in the Florida Higher Education Distance Learning Catalog. The amount of the distance learning fee may not exceed the additional costs of the services provided which are attributable to the development and delivery of the distance learning course.

The bill requires state universities and community colleges to prominently display a link to the Florida Distance Learning Catalog on the institution's website.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

CARLTON FIELDS

ATTORNEYS AT LAW

2008
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 35**

Social Worker Identification

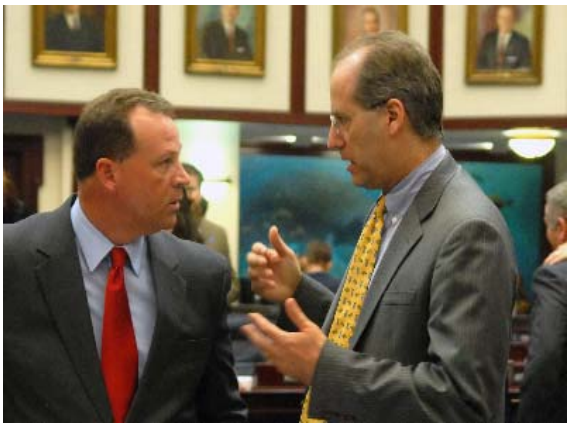
The bill amends s. 491.003, F.S., to create the definition of "social worker" in the Clinical, Counseling, and Psychotherapy Services Act. The bill defines "social worker" to mean a person who has a bachelor's, master's, or doctoral degree in social work.

The bill prohibits a social worker from conducting clinical social work unless he or she is licensed or certified pursuant to Chapter 491, F.S.

The bill provides title protection for persons who meet specified criteria as a social worker. The bill requires a social worker to have a bachelor's or master's degree from an institution accredited by the Council on Social Work Education or an equivalent foreign institution whose equivalency is determined by the Council on Social Work Education. The bill provides that it is a misdemeanor of the first degree for persons to hold themselves out to the public, for or without compensation, as a social worker.

The bill exempts persons who have used the title "social worker" in their employment, prior to July 1, 2007, from provisions of the bill. Employees who provide social work services under administrative supervision at long-term care facilities licensed by the Agency for Health Care Administration are also exempt from the provisions of the bill.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.



Speaker-designate Rep. Ray Sansom, R-Fort Walton Beach, left, is questioned by Democratic Leader Rep. Dan Gelber, D-Miami Beach, as the House took up the 2008-09 budget bill. (House photo by Meredith Hill.)

- **CS/HB 165**

Agency Inspectors General

The bill requires each inspector general (IG), at the conclusion of any audit of a program or contract that involves an entity contracting with the state, to submit preliminary findings and recommendations to that entity. The entity must be advised that they may submit a written response to the adverse findings within 20 working days. Similarly, the bill requires each IG, at the conclusion of an investigation that involves an entity contracting with the state, or an individual substantially affected, to submit its findings to the entity or affected individual. The entity or individual must be advised that they may submit a written response to the adverse findings within 20 days. Responses to adverse findings and the IG's rebuttal, if any, are to be included in the final IG report.

The bill further requires each IG to provide to the agency head all written complaints concerning the duties or responsibilities of the office of the inspector general received from the subjects of investigations who are indi-

viduals substantially affected or entities contracting with the state. In addition, for agencies under the Governor's jurisdiction, the agency IG must report to the Chief Inspector General all written complaints or alleged misconduct concerning the office of the IG or its employees.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **SB 230**

State Symbols/Fla. Cracker

SB 230 designates the Florida Cracker Horse as the official state horse and the Loggerhead Turtle as the official state water reptile. A repeal date of July 1, 2018, is provided, unless reviewed and reenacted by the Legislature before that date.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 630**

Vehicle Registration/Family First Contribution

CS/SB 630 requires that application and renewal forms for motor vehicle registration and driver's license, renewal driver's license and duplicate driver's license applications include an option to make a voluntary contribution of $1 to Family First, a nonprofit organization located in Tampa, Florida. A voluntary check-off box would be added to these Department of Highway Safety & Motor Vehicle application forms.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/HB 687**

Service-Disabled Veteran Business Enterprises

Current Florida law does not contain state contracting set-asides, goals, or preferences to specifically benefit small businesses owned and operated by service-disabled veterans.

This bill creates a certification process within the Department of Management Services (DMS) for small business enterprises owned and operated by service-disabled veterans (SDVBE). The certification process is substantially similar to the certification process implemented by DMS for minority business enterprises (MBEs). Potential benefits of certification include business promotion through the MyFloridaMarketPlace online purchasing system, first tier referrals to state agencies, special email notices about purchasing opportunities, networking activities, and technical assistance training.

If a certified SDVBE bids on a state contract, the bill requires the state agency to award the contract to the SDVBE if each bid is equal with respect to all relevant considerations. However, if a certified SDVBE and another business that is eligible for a different statutory vendor preference (such as a MBE) submit bids that are equal with respect to all relevant considerations, the bill requires the state agency to award the contract to the business having the smallest net worth.

This bill does not:

- Impose any type of fee for certification of SDVBEs;
- Require a certain number of state contracts to be set-aside for SDVBEs; establish state goals for contracting with SDVBEs; or

- Requires local governments to offer any special contracting consideration for certified SDVBEs, although the bill does encourage local governments to do so.

Subject to the Governor's veto powers, the effective date of this bill is November 11, 2008.

- **CS/CS/SB 704**

Open Government Act/Administrative Procedures

This bill has two major purposes. The first is to create incentives for agencies to promulgate rules rather than rely on unadopted rules to implement their statutory responsibilities. Second, the bill provides enhancements to the online electronic publication of the Florida Administrative Code (FAC) to make it more user friendly. An "unadopted rule" is an agency statement that meets the definition of "rule" as defined in the Administrative Procedures Act (APA), but which has not been adopted through the rulemaking process.

The bill amends provisions of Chapter 120 (The APA) as follows:

- Provides that upon notification to the administrative law judge in a rule challenge proceeding that an agency, prior to the final hearing, has published a notice of rulemaking, the notice will operate as an automatic stay of the proceedings pending adoption of the statement as a rule.
- Narrows the circumstances in which an agency may continue to base its action against an individual on unadopted rules.
- Requires a petitioner seeking to challenge an unadopted rule to give notice to the agency that the agency statement at issue may constitute an unadopted rule at least 30 days before the petition is filed.
- Provides that if the agency, within the 30 day time period, publishes notice of rulemaking to address the statement, no attorneys fees will be assessed against the agency.
- Provides that in circumstances where the rule challenge is proceeding, but before the final hearing, the administrative law judge is notified that the agency has published notice of rulemaking, the notice shall operate as a stay of the proceedings pending rulemaking. In such instances, the administrative law judge shall award attorney's fees accrued by the petitioner prior to the date the notice was published, unless the agency proves that it did not know and should not have known that the statement was an unadopted rule.
- Increases the existing attorney fee cap from $15,000 to $50,000.
- Requires that effective July 1, 2010, the Department of State will electronically publish the Florida Administrative Code on its website to allow for a full text search of the code.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008 except as otherwise provided.

- **CS/HB 853**

Cemetery Lands

Cemetery property greater than one acre cannot be taken by eminent domain for purposes other than road systems, transportation corridors or rights-of-way, unless it is determined at a public hearing that there is no reasonable alternative.

Additionally, a governmental entity may not require the transfer of property dedicated for cemetery purposes and licensed, pursuant chapter 497, as a condition for obtaining regulatory approval.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 866**

Elections

In 2007, Florida passed a sweeping voting systems standardization bill (HB 537; Chapter 2007-30, Laws of Florida) that required paper ballots in precincts and early voting sites by July 1, 2008. CS/CS/SB 866 clarifies certain sections of the Florida Election Code and conforms other sections following the changes made in 2007.

The highlights of the bill are:

- Political Party Affiliation. The bill allows a voter to change his or her party affiliation after the book-closing deadline for any *non-primary* election.
- Municipal Recall. Procedures are reorganized to provide clarification for municipal recall.
- Precinct-Level Reporting of Election Results. Precinct-level election reporting is modified so it more closely matches the election reporting procedures used by the Department of State and the supervisors of elections.
- Municipal Election Dates. Allows municipalities to change election dates by ordinance to run concurrently with a statewide or countywide election.
- Electronic Reporting in Local Elections. Permits counties and cities to require electronic reporting of campaign reports for local officers and candidates.
- Non-Partisan Candidates. Provides that circuit judges will appear in alphabetical order on the ballot just as other non-partisan candidates such as county judges and school board candidates.
- Qualifying for Federal Office. The bill provides that a person cannot qualify for a federal office and another office, if the offices or any part of the terms of those offices run concurrently.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2009, except as otherwise provided.

- **CS/HB 987**

Cultural and Historical Programs

CS/HB 987 transfers the Historical Museum grant program and the Museum of Florida History, its programs, and citizen support organization from the Department of State Division of Historical Resources (Chapter 267, Florida Statutes: Historical Resources) to the Department of State Division of Cultural Affairs (Chapter 265, Florida Statutes: Memorials, Museums and Fine Arts).

The bill revises the start date for appointments to the Florida Historical Commission to January

1st of the appointment year. The Great Floridian Program ad hoc committee program is amended to delete the appointment by the citizen support organization for the Museum of Florida History and adds an appointment by the Secretary of State.

CS/HB 987 allows for the establishment of a Citizen Support Organization (CSO) for the enhancement of the Legislative Research Center and Museum at the Historic Capitol. The bill repeals s. 267.174, Florida Statutes, which established the Discovery of Florida Quincentennial Commemoration Commission.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1026**

Unemployment Compensation Benefits

CS/SB 1026 authorizes the Agency for Workforce Innovation (AWI) to develop and implement a system for the payment of Unemployment Compensation (UC) benefits by electronic funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of electronic payment that the agency determines is commercially viable or cost-effective. The bill also requires that any commodities or services related to such a system be procured through a competitive solicitation, unless they are purchased through a state-term contract.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1070**

Intergovernmental Cooperation

The bill authorizes district school boards to enter into interlocal agreements for the following purposes: the use or maintenance of facilities or equipment on a cost-reimbursement basis; the transportation of students; the rental of buildings; and the maintenance or upkeep of school plants.

The bill also authorizes district school boards to enter into agreements that permit public agencies to use school buses for public transportation or other public purposes. Under the bill, the agreement may provide for reimbursement to the school board based on maintenance costs or other activities attributable to the use of the buses and must require to public agency to indemnify and hold the school board harmless from liability.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law.

- **CS/SB 1378**

Display of Flags/Homeowners' Associations

A homeowner may display a portable, removable United States flag and another official, portable, removable flag in a respectful manner notwithstanding any association rule that would prohibit or limit the display of such a flag. This bill provides that a homeowner may also display a United States flag not larger than 41/2 feet by 6 feet and another official flag of Florida or the United States Army, Navy, Air Force, Marines, Coast Guard, or a POW-MIA flag on a freestanding flagpole not more than 20 feet high on any portion of a homeowner's property regardless of any homeowners' association rules or declarations as long as it does not obstruct sightlines at intersections and is not erected on an easement.

This bill also provides that a mobile home park homeowners' association may allow residents who live in concrete block homes in

the park under a 99-year lease to join the association.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1502**

Leased Property for Public Purposes

This bill authorizes constitutionally chartered counties, as defined in s. 125.011(1), F.S., to enter into a lease with the state, another governmental entity, or as authorized under the powers and duties of the county, without being subject to the 30-year lease limitation found in s. 125.031, F.S.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **SB 1558**

Official State Anthem and Official State Song

SB 1558 designates the song "Where the Sawgrass meets the Sky" as the official state anthem.

The song was written and composed by Jan Hinton, a music teacher from Pompano Beach, Florida, and was selected through a statewide search. The search was conducted by the Florida Music Educators' Association. Entries were narrowed to three finalists by judges from the Florida Music Educators' Association and then an online internet vote was held in which "Where the Sawgrass Meets the Sky" won, receiving more than half of the 8,020 votes cast for the three final songs.

The bill also designates the official state song as "The Swanee River (Old Folks at Home)" with revised lyrics, as adopted by the Center for American Music, Stephen Foster Memorial, at the University of Pittsburgh. "The Swannee River (Old Folks at Home)" was designated as Florida's official state song in House Concurrent Resolution 22 in 1935, with the original lyrics. The song will now be codified in Chapter 15, Florida Statutes, along with other official state designations.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1694**

911 Emergency Dispatchers

The bill creates the "Denise Amber Lee Act", providing for voluntary certification of 911 emergency dispatchers.

The bill requires the Department of Health (department) to establish, by rule, educational and training criteria for certification and requirements for certificate renewal. The department is authorized to suspend or revoke a certificate at any time if it is determined that the certificate holder does not meet the qualifications. A certificate holder is allowed to request inactivation of his or her certification and may renew the inactive certification for a fee. The department is directed to establish a procedure by rule for the initial certification of individuals who have at least 5 years of documented supervised full-time employment as a 911 emergency dispatcher since January 1, 2002.

The bill requires an application fee of $75 for an original 911 emergency dispatcher certificate, an application fee of $100 for the biennial renewal certificate, a duplicate certificate fee of up to $25 for a lost or destroyed certificate, and a replacement certificate fee of up to $25 for a change in name. All fees collected must be deposited into the Emergency Medical Services Trust Fund and used solely for salaries and expenses the department incurs in administering the act.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/CS/SB 1702**

Department of Agriculture and Consumer Services

The bill is one of three conforming bills within the Environment and Natural Resources Council's jurisdiction adopted by the Conference Committee.

The Florida Government Accountability Act requires the Department of Agriculture and Consumer Services (department) and its advisory committees to be reviewed by July 1, 2008, to determine if it and its committees should be retained, modified, or abolished. This bill reenacts provisions pertaining to the department and makes statutory changes recommended in the agency sunset review report.

To reduce the reliance on general revenue funds for services provided by the department, the bill makes adjustments to the following fees.

- County fire protection and land management assessments;
- Wholesale and retail saltwater products dealer licenses;
- Annual registrations for each registered pesticide brand;
- The statutory cap on permit fees for food stores;
- Fertilizer inspections;
- Master registrations for distributors of commercial feed;
- Aquaculture certificates of registration; and
- Annual registration fees for independent agents of sellers of travel.

The bill changes the date by which the Citrus Commission sets the tax rate for the season from "prior to August 1" to "prior to November 1" of each year. This change allows the Citrus Commission to set the citrus tax rate based upon the first official United States Department of Agriculture crop estimate of each season.

This bill expands the authorized uses of funds in the Agricultural Emergency Eradication Trust Fund within the department. The bill provides that the money in the fund may be made available for the promotion, advancement and protection of agriculture in this state, including maintaining or increasing market share and the suppression or eradication of wildfire, animal or plant disease, and insect infestation. This bill repeals the required notice that the Commissioner of Agriculture must give the Governor, the President of the Senate, and the Speaker of the House of Representatives before using funds from the Agricultural Emergency Eradication Trust Fund.

This bill eliminates the administration, purchase and distribution of the brucellosis vaccine by the department for domestic livestock. In addition, there is an estimated $140,000 in cost savings in the department's recurring expense budget as a result of eliminating this program.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1892**

State Data Center System

This bill sets forth a framework for data center consolidation to occur over the next decade. It creates the state data center system, which is composed of primary data centers, non-

primary data centers and computing facilities. The Agency for Enterprise Information Technology is made responsible for establishing policy and for overall coordination in the transition to a consolidated system. Two primary data centers, the Northwood Shared Resource Center and the Southwood Shared Resource Center are established in the bill. The bill authorizes the creation of boards of trustees for each primary data center as a data center Governance structure. The bill consolidates the mainframe functions of The Department of Transportation and the Department of Highway Safety into the Southwood Shared resource Center by July 2009.

Unless legislatively authorized, or unless exception is granted by the Agency for Information Technology under specified conditions, the bill prohibits agencies from: creating new computing facilities or data centers or expanding existing computing facilities or data centers; transferring existing computing services to with a non-primary data center or computing facility; initiating new computing services with a non-primary data center if the agency doesn't have an internal data center; or terminating services with a primary data center or transferring services between primary data centers without written notice 180 days before such termination.

The bill transfers all data center functions by state agencies with resources and equipment located in a primary data center created by the act to that primary data center and requires the agency to become a full-service customer entity by July 1, 2010.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law.

▪ CS/SB 2222

Citrus

The bill establishes a permitted 5-year pilot program within the Department of Agriculture and Consumer Services (department) to allow the planting of *Casuarina cunninghamiana* as a windbreak for commercial citrus groves growing fresh fruit in specified areas of the state (Indian River, Martin and St. Lucie counties). To participate in the windbreak program, each commercial citrus grove is required to have a permit, renewable every 5 years. If ownership of the property is transferred, the seller must notify the department and provide the buyer with a copy of the permit and copies of all invoices and certification documentation prior to the closing of the sale.

The windbreak trees must come from an authorized registered nursery and be certified by the department as being from certified male plants. Nurseries authorized to produce the windbreak trees must obtain a special permit from the department, to be renewed annually, certifying that the windbreak trees are from sexually mature male source trees. Each male source tree must be registered by the department and labeled with a source tree registration number. Nurseries may only sell the windbreak trees to persons with a special permit issued by the department. At the end of the 5-year pilot program, if it is determined that the potential is low for adverse environmental impacts from planting the trees as windbreaks, the department may, by rule, allow the use of the tree windbreaks for commercial citrus groves in other areas of the state.

The bill requires that all windbreak trees be destroyed by the property owner within six months after:

- The property owner takes permanent action to no longer use the site for commercial citrus production;
- The site has not been used for commercial citrus production for a period of five years; or the department determines that the windbreak trees on the site have become invasive.

The determination of invasiveness shall be based on, but not limited to, the recommendation of the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and in consultation with a representative of the citrus industry who has a tree windbreak. If the owner or person in charge refuses or neglects to comply with the destruction of the trees, the director of the Division of Plant Industry may, by authority of the department, destroy the windbreak trees. The department is authorized to assess the owner for expenses incurred in the destruction of the trees. If the owner fails to pay the assessed cost, the department is authorized to record a lien against the property.

The bill provides that the use of trees for windbreaks will not restrict or interfere with any other agency or local government efforts to manage or control noxious weeds or invasive plants. Other agencies or local governments are not allowed to remove any trees planted as a windbreak under special permit issued by the department.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 2310**

Economic Stimulus

Economically Targeted Investments

This legislation provides legislative findings that prudent and sound economically targeted investments by the State Board of Administration (SBA) of funds in the Florida Retirement System Trust Fund in endeavors that have the potential for high-growth and high-wage jobs will provide significant benefits to state residents, will serve the broad interests of the plan's beneficiaries, and will continue the maintenance of the contributions into the plan by strengthening the economy and well being of employers.

The bill also provides that it is the policy of the state that the SBA identify and invest in economically targeted investments (ETIs) if the investments do not compromise or conflict with the fiduciary obligations of the board to a fund's participants, members, or beneficiaries.

The bill provides the SBA with the authority to invest no more than 1.5 percent of the net asset value of any fund in technology and growth investments of businesses domiciled in this state or businesses whose principle address is in this state. In addition, the bill provides for a definition of technology and growth investments, including but not limited to space technology, aerospace and aviation engineering, computer technology, renewable energy, and medical and life sciences. It also requires the SBA to include in its annual report to the Legislature the beginning and ending asset values and changes and sources of changes in the asset value for technology and growth investments within the Florida Retirement System Trust Fund. The bill provides a definition of "life sciences" for the purpose of the program, to mean the use of information technology, en-

gineering, and biological and chemical sciences for the development and production of goods and services, including, but not limited to, drug development, medical implants and devices, bio-related diagnostic products, bioagriculture technologies, biosecurity, biofuels, and biorelated applications.

The bill permits the SBA to offer opportunities to small, state-based investment management firms to facilitate their development and growth.

The bill increases from 5% to 10% the allowable amount of alternative investments, alternative investment vehicles or in securities or investments that are not publicly traded and are not otherwise authorized by this section.

The bill requires the Office of Program Policy Analysis and Government Accountability to perform an annual review of technology and growth investments made by the SBA within the state, including the direct and indirect economic benefits to the state resulting from such investments.

Reusable Space Industry Prize Program

The bill creates the Reusable Space Vehicle Industry Prize Program within the Office of Tourism, Trade and Economic Development. The program will award a cash prize of $20 million in state funds and $20 in funds provided by private sponsors, to the firm or individual in the private sector providing the most significant advancements within the reusable space vehicle industry from January 1, 2009 through January 1, 2014. The Lieutenant Governor of Florida will be the chair of the program and is responsible for appointing a committee. The committee will adopt an application and criteria for the awarding of the program prize. The bill requires the program to mirror the Ansari X Prize program as awarded by the X PRIZE FOUNDATION on November 6, 2004. The bill does not provide an appropriation.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ SB 2820
Juvenile Offenders/Residential Facilities

This bill places limitations on residential facilities that house juvenile offenders by redefining the "restrictiveness level" so that low-risk, moderate-risk, high-risk, and maximum-risk residential facilities must have no more than 165 beds each. This does not apply if the facility has a specified campus-style program that includes more than one level of restrictiveness, provides multilevel education and treatment programs using different treatment protocols, and has facilities that co-exist separately in distinct locations on the same property.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ HB 5001
2008-2009 General Appropriation Act

The general appropriations act provides moneys for the annual period beginning July 1, 2008 and ending June 30, 2009. House Bill 5001 provides for a total budget of $66.2 billion including:

- General Revenue: $25.6 billion
- Trust Funds: $40.6 billion

The budget is summarized as follows:

- Pre-K–12 Education – 12.1 billion
  - $9.1 billion General Revenue
  - $3.0 billion Trust Funds
- Higher Education – $6.0 billion

  - $3.8 billion General Revenue
  - $2.2 billion Trust Funds
- Health – $23.4 billion
  - $7.1 billion General Revenue
  - $16.2 billion Trust Funds
- Criminal and Civil Justice – $5.0 billion
  - $4.3 billion General Revenue
  - $.7 billion Trust Funds.

Effective July 1, 2008, with line-item veto authority available to the Governor.

- **HB 5003**

Implementing the 2008-2009 Appropriations Act

This is the "Implementing Bill" which provides the statutory authority necessary to implement and execute the General Appropriations Act for Fiscal Year 2008-2009. The statutory changes are effective for only one year and either expire on July 1, 2009 or revert to the language as it existed before the changes made by the bill.

Section 19 of Article III of the Florida Constitution states that appropriations acts "shall contain provisions on no other subject" other than making appropriations. This language has been interpreted to defeat proviso to appropriations that have the effect of amending general law. For this reason, when general law changes are required to effectuate appropriations, those changes are placed in a general bill implementing the General Appropriations Act (GAA) instead of in the GAA.

- Requires that the Department of Children and Family Services ensure that all public and private agencies and institutions participating in child welfare cases enter specified information into the Florida Safe Families Network, the department's child-welfare case-management system. The department shall coordinate with the courts and guardian ad litems to provide access to the information, and shall submit a report to the legislature and Governor by February 1, 2009.
- Requires the Agency for Health Care Administration to study the effects of the minimum nursing home staffing ratios found in s. 400.23(3), F.S., and the relationship to Medicaid reimbursement and the quality of care provided to residents. The agency shall report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2009. Until July 1, 2009, the agency shall not impose sanctions against a nursing home for failure to meet the staffing ratios in s. 400.23(3), F.S., or failure to impose a moratorium on new admissions pursuant to s. 400.141(15)(d), F.S., as long as the certified nursing assistant ratio is not below 2.6 hours per resident per day and the licensed nurse ratio is not below 1.0 hours per resident per day.
- Provides that the Department of Corrections and the Department of Juvenile Justice may expend appropriated funds to assist in defraying the costs of impacts that are incurred by a municipality or county and associated with opening or operating a facility under the authority of the respective department which is located within that municipality or county. The amount that is to be paid under this section for any facility may not exceed 1 percent of the facility construction cost, less building impact fees im-

posed by the municipality or by the county if the facility is located in the unincorporated portion of the county.

- Amends s. 216.262, F.S. Allows the Executive Office of the Governor (EOG) to request additional positions and appropriations from unallocated general revenue during the 2008-2009 fiscal year for the Department of Corrections (DOC) if the actual inmate population of the Department of Corrections exceeds the inmate population projections of the February 15, 2008 Criminal Justice Estimating Conference by 1 percent for two consecutive months or 2 percent for any month. The additional positions and appropriations may be used for essential staff, fixed capital improvements, and other resources to provide classification, security, food services, health services, and other variable expenses within the institutions to accommodate the estimated increase in the inmate population, and must be approved by the Legislative Budget Commission.

- Amends s. 255.503, F.S. Extends for another year (until July 1, 2009) the authorization for the Department of Management Services to sell, lease, or otherwise dispose of facilities within the Florida Facilities pool and to report to the Legislature, the Governor, and the Division of bond Finance.

- Amends ss. 61.1824 and 409.2558, F.S. Requires that any payments made to the Child Support Enforcement program's State Disbursement Unit that are owed to the obligee shall be disbursed electronically. The obligee may designate a personal account for deposit of payments. If the obligee does not designate a personal account, the State Disbursement Unit shall deposit any payments into a stored-value account that can be accessed by the obligee. Section 24 of the bill authorizes the Department of Revenue to extend for 66 months the current contract for the State Disbursement Unit (with ACS).

- Provides direction to the Department of Revenue on how to distribute the appropriation to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties which occur as a direct result of the implementation of revisions of Article VII of the State Constitution approved in the special election held on January 29, 2008 (Amendment 1). The appropriated funds shall be distributed in January of 2009 among the fiscally constrained counties based on each county's proportion of the total reduction in ad valorem tax revenue resulting from the implementation of the revision. On or before November 15, 2008, each fiscally constrained county must apply to the Department of Revenue to participate in the distribution of the appropriation and provide documentation supporting the county's estimated reduction in ad valorem tax revenue. The documentation must include an estimate of the reduction in taxable value directly attributable to the constitutional revisions for all county taxing jurisdictions within the county and shall be prepared by the property appraiser in each fiscally constrained county. The documentation must also include the county mil-

lage rates applicable in all such jurisdictions for both the current year and the prior year; rolled-back rates, determined as provided in s. 200.065, F.S., for each county taxing jurisdiction; and maximum millage rates that could have been levied by majority vote pursuant to s. 200.185, F.S. Each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value times the 2007 applicable millage rate.

- Amends s. 255.518, F.S. Current law provides that payment of debt service charges and any reserves on obligations during the construction of any facility financed by such obligations shall be made from funds other than proceeds of obligations. This section strikes the words "and any reserves" so that such reserves may be funded from bond proceeds during the 2008-2009 fiscal year. The practical effect of this provision is that it applies only to the construction of the new building for the First District Court of Appeal in the Capital Circle state office complex in Tallahassee, since that will be the only project in the state facilities pool authorized during the 2008-2009 fiscal year.

- Amends s. 215.559, F.S. Provides that the $10 million of Florida Hurricane Catastrophe Fund that is appropriated each year pursuant to s. 215.555, F.S., shall be allocated as follows:

  - The sum of $2.8 million shall be used for the same purpose as specified in s. 215.559(3)(a), F.S. (to inspect and improve tie-downs for mobile homes).

  - The sum of $700,000 shall be allocated for the same purpose as specified in s. 215.559(4), F.S. (to the Florida International University for hurricane research).

  - The sum of $6,421,764 shall be used to install emergency power generators in special-needs hurricane evacuation shelters as provided in section 1 of chapter 2006-71, Laws of Florida, except that such funds may not be used for administrative purposes.

  - The sum of $78,236 shall be allocated for operational purposes of the Department of Community Affairs as specified in the 2008-2009 General Appropriations Act.

- Amends s. 339.135, F.S. Provides that the Department of Transportation shall transfer funds to the Office of Tourism, Trade, and Economic Development in an amount equal to $36,750,000 for the purpose of funding economic development transportation projects. Requires the department to provide specified funds for certain road and bridge projects specified in the 2008-2009 General Appropriations Act. Provides that the transfer of funds for economic development and the requirement to spend certain funds on specific projects shall not reduce, delete, or defer any existing projects funded, as of July 1, 2008, in the Department of Transportation's 5-year work program. Also provides that funding for the specified projects shall not negatively impact safety, preservation, mainte-

nance, or project contingency levels as of July 1, 2008.

- Amends s. 339.08, F.S. Authorizes funds in the Department of Transportation's State Transportation Trust Fund to be used to pay administrative expenses incurred in accordance with applicable laws for a multicounty transportation or expressway authority created under chapter 343 or chapter 348, where jurisdiction for the authority includes a portion of the State Highway System and the administrative expenses are in furtherance of the duties and responsibilities of the authority in the development of improvements to the State Highway System. This authorization implements the $2,000,000 appropriation to the Tampa Bay Regional Transportation Authority in Specific Appropriation 2153 of the 2008-2009 General Appropriations Act.

- Amends ss. 220.183, 624.5105 and 212.08, F.S. Provides that the total amount of tax credit which may be granted for all Community Contribution Tax Credit programs is $13 million annually for projects that provide homeownership opportunities for low-income or very-low-income households and $3.5 million annually for all other projects. Specific Appropriation 1615A of the GAA provides $2,500,000 for this purpose in addition to the current statutory authorization of $10,500,000 for projects that provide homeownership opportunities for low-income or very-low-income households.

- Amends s. 403.7095, F.S. Requires the Department of Environmental Protection to award $9,428,773 of grant funds equally to counties having populations of fewer than 100,000 for waste tire, litter prevention, recycling and education, and general solid waste programs. It also authorizes the sum of $2,000,781 to be used for the Innovative Grant Program.

- Amends s. 373.1961, F.S. Provides that, notwithstanding s. 373.1961(3), F.S., which governs the allocation of funds for water projects, $5,000,000 provided for alternative water supply shall be allocated as shown in the General Appropriations Act.

- Provides that, notwithstanding the provisions of s. 11.13(1), F.S., relating to the annual adjustment of salaries for members of the Legislature, for the 2008-2009 fiscal year only, the authorized salaries of members of the Legislature in effect on June 30, 2008, shall be reduced by 5 percent. Effective June 30, 2009, the annual salaries of members of the Legislature shall be set at the amounts authorized and in effect on June 30, 2008.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008; or, if this act fails to become a law until after that date, it shall take effect upon becoming a law and shall operate retroactively to July 1, 2008.

▪ HB 7109
Small Business Regulatory Relief

This legislation designates the Florida Small Business Development Center Network (FSBDC) as the principal business assistance organization for small businesses in the state. Further, the bill establishes the Small Business

Regulatory Relief Act by creating a Small Business Regulatory Review Advisory Council (Council) and a Small Business Advocate, both housed and staffed by the FSBDC. The bill also authorizes the Council to address claims that private property rights of small businesses are affected by rules or programs adopted by agencies, and requiring the Council to prepare a Small Business Friendliness and Development Scorecard of agency rules in conjunction with the agency sunset review process.

The duties of the Small Business Advocate include:

- Serving as principal advocate in the state on behalf of small business;
- Representing the views and interests of small businesses before state agencies whose policies and activities may affect small businesses; and
- Establishing an annual process for small businesses to nominate agency rules or programs for reform. The advocate must publish those nominations online and update the status of agency action.

The bill also amends the Administrative Procedures Act by requiring state agencies to prepare a statement of estimated regulatory cost if the proposed rule will impact small business, and creating a review process utilizing the Office of Program Policy Analysis and Government Accountability when an agency does not utilize a less burdensome alternative offered by the Small Business Regulatory Review Advisory Council.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

CARLTON FIELDS

ATTORNEYS AT LAW

2008
Florida Legislature
Post-Session Report

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

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

- **CS/SB 464**

Transfer Fee Covenants/Real Property

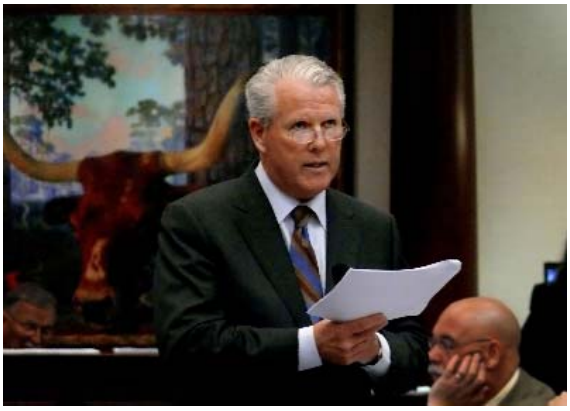
The seller of real property may place conditions in the deed that act as restrictions binding upon future owners of the property. These conditions are known as covenants. A transfer fee covenant requires the payment of a fee upon each future transfer or sale of the property. Some sellers are attempting to use transfer fee covenants to compel future owners of the property to pay that seller a fee, usually a percentage of the sales price, upon every future transfer or sale of the property. This bill provides that, in general, transfer fee covenants are void and unenforceable. This bill also provides limited exceptions that allow a transfer fee covenant, such as a fee to a homeowners' association, a fee to a nonprofit or charitable organization, or a fee imposed by the government.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 527**

Environmental Site Redevelopment

The bill revises the Innocent Victim Petroleum Storage System Restoration Program to provide that a transfer of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the program. It also clarifies that the current property owner of the contaminated site must have acquired the property prior to July 1, 1990. The provisions of the bill will allow an unknown total number of petroleum contaminated sites to remain eligible for state-funded clean up, which may otherwise become ineligible under current law.



Environmental & Natural Resources Chairman Stan Mayfield, R-Vero Beach, takes questions on the sweeping energy policy bill, debated and later approved during the final days of the Legislature. (House photo by Mark Foley.)

The Department of Environmental protection (DEP) has currently identified nine contaminated sites that may be eligible for state-funded clean up as a result of this bill becoming law.

The bill also amends the Brownfield Redevelopment Act, and establishes a new tax credit for an additional 25% of total site rehabilitation costs, up to $500,000, as a bonus for the construction and operation of a health care facility or a health care provider on a brownfield site. The bill requires that the "health care facility" or "health care provider" meet the definitions in ss. 408.032, 408.07 or 408.7056, F.S. additionally, the bill encourages state and local governments to evaluate, measure, and monitor the community health benefits associated with the rehabilitation and redevelopment of brownfield sites. The bill expands the Brownfield Areas Loan Guarantee Program to include a 75% state loan guarantee for the primary lender's loan to construct or operate a health care facility or health care provider.

The bill establishes that tax credits for affordable housing, healthcare facilities or providers, and site rehabilitation completion orders are applicable to solid waste removal sites. Such a site may not be, or have even been, a permitted landfill, dump, or other area which is or was the recipient of solid waste for a fee or direct compensation.

The bill clarifies the requirements for submittals of both site rehabilitation and solid waste removal tax credit applications:

- Provides for tax credit applications to be reviewed for both completeness and eligibility;
- Allows for a one-time correction of completeness deficiencies; and establishes review and eligibility determination time frames.

The bill also clarifies, reduces, or eliminates some of the requirements for brownfield area designations and Brownfields Site Rehabilitation Agreement (BSRA) execution. For instance, because the statutory requirement to hold a public hearing in the proposed brownfield area is sometimes not feasible because there are no facilities available, the bill requires that at least one meeting be held as near to the brownfield site as is feasible. The requirement to provide a redevelopment agreement that has been reviewed and approved by the local government has proven to be problematic to both the private sector and the local governments, therefore the bill requires that the person responsible for the brownfield site rehabilitation certify that he or she has consulted with the local government and that the local government approves of the project. In addition, current law includes contractor insurance requirements that are appropriate for a state-managed project, but since brownfields projects are managed by private sector volunteers, and are subject to applicable state and federal safety standards, the insurance requirements are unnecessary. The bill eliminates the contractor insurance requirement.

The bill provides a retroactive application to January 1, 2008, to avoid creating a split-calendar year for tax credit applications claiming new incentives (e.g., the health care credit).

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law and shall operate retroactively to January 1, 2008.

▪ CS/CS/SB 542
Land Acquisition and Management

Florida Forever

The bill extends the current Florida Forever program by 10 years and increases the bonding capacity from an aggregate of $3 billion to $5.3 billion while maintaining the $300 million per year cap. The bill requires the Legislature, beginning July 1, 2010, to analyze the state's debt ratio in relation to projected revenues prior to the authorization of any bonds for land acquisition and directs the Legislature to complete an analysis of potential revenue sources for the Florida Forever program by February 1, 2010.

The bill expands the scope of the program to include protecting agricultural lands and working waterfronts from conversion to other land uses and revises the allocation of Florida Forever funds and the uses of those funds to reflect the expansion. The allocation to the water management districts is reduced from 35% to 30% ($15 million reduction, if Florida Forever is funded at $300 million) and the allocation to the Florida Community Trust is reduced from 22% to 21% ($3 million reduction, if Florida Forever is

funded at $300 million). New allocations are provided to the Department of Agriculture and Consumer Services (DACS) to acquire perpetual conservation easements on agricultural lands (3.5% or $10.5 million, if Florida Forever is funded at $300 million) and to the Department of Community Affairs (DCA) to acquire fee and less-than-fee interests in working waterfronts (2.5% or $7.5 million, if Florida Forever is funded at $300 million). The bill establishes a 1% to 3% floor and a 10% ceiling for capital projects that enhance public access at the time of acquisition.

The bill states legislative intent for the state to play a major role in the recovery and management of imperiled species through the acquisition, restoration, enhancement, and management of ecosystems, and to support programs benefiting imperiled species habitat by providing public and private land owners meaningful incentives to participate in such activities. The bill defines the term "imperiled species" to mean plants and animals that are federally- listed under the Endangered Species Act, or state-listed by the Fish and Wildlife Conservation Commission (FWC) or the DACS. Intent is provided that public lands identified by the lead management agency, in consultation with the FWC and DACS, as potential habitat for such species be restored, enhanced, managed, and repopulated to advance imperiled species management consistent with the purposes for which such lands are acquired without restricting other uses identified in the management plan. The bill provides additional intent that additional consideration be given to acquisitions that achieve a combination of conservation goals, including restoration, enhancement, management, or repopulation of habitat for imperiled species.

The bill provides that all state lands that have imperiled species habitat include as a consideration in management plan development the restoration, enhancement, management, or repopulation of such habitats. The bill requires the FWC and DACS to be included in any advisory group relating to state lands where habitat or potentially restorable habitat for imperiled species is located, and requires the short-term and long-term goals of the land management plan to advance the goals and objectives of imperiled species management plans. Such goals and objectives are to be consistent with the purposes for which the land was acquired and not restrict other uses identified in the land management plan. In addition, the lead land managing agency is authorized to use fees received from public or private entities for projects to offset adverse impacts to imperiled species or their habitat in order to restore, enhance, manage, repopulate, or acquire land and to implement land management plans.

The bill recognizes that acquisition of lands in fee simple is only one way to achieve the goals of the Florida Forever program and encourages the use of less-than-fee interests and other techniques to further these goals. The bill recognizes that rural land protection agreements and non-state funded tools such as rural land stewardship areas, sector planning, and mitigation and similar tools can be used to bring environmentally sensitive tracts under protection at a lower financial cost to the public while providing private landowners with the opportunity to continue to enjoy and benefit from their property. The bill requires recipients of Florida Forever funds to coordinate their expenditures to form more complete patterns of protection of natural areas, ecological greenways, and functioning ecosystems.

The bill defines "public access" as access to state land and waters, including vessel access made possible by boat ramps, docks and associated support facilities when compatible with conservation and recreation objectives.

The bill revises the performance measures for the Florida Forever program to reflect the specific criteria and numeric performance measures developed by the Acquisition and Restoration Council (ARC) and adds the following measures:

- The number of acres acquired through the state's land acquisition programs that contribute to the enhancement of essential natural resources, ecosystem service parcels, and connecting linkage corridors as identified and developed by the best available scientific analysis.
- The number of acres of publicly owned land identified as needing restoration, enhancement, and management, acres undergoing restoration or enhancement, and acres with restoration activities completed, and acres managed to maintain such restored or enhanced conditions; the number of acres which represent actual or potential imperiled species habitat; the number of acres which are available pursuant to a management plan to restore, enhance, repopulate, and manage imperiled species habitat; and the number of acres of imperiled species habitat managed, restored, enhanced, repopulated, or acquired.

Acquisition and Restoration Council

The bill revises and expands the membership of the (ARC) from 9 members to 11 members. One of the two new members will be appointed by the Commissioner of Agriculture and the other by the Executive Director of the FWC. One of the Governor's existing appointments shall be filled with an individual who has experience in managing lands for both active and passive types of recreation. The bill removes the compensation provisions for ARC members.

The bill requires the ARC, by December 1, 2009, to develop rules that define specific criteria and establish numeric performance measures needed for ranking lands that are to be acquired for public purposes under the Florida Forever program. Each recipient of Florida Forever funds is to assist the ARC in the development of these rules. The rules are to be reviewed and adopted by the board, then submitted to the Legislature for consideration by February 1, 2010. The Legislature may reject, modify, or take no action relative to the proposed rules. If no action is taken, the rules shall be implemented. Subsequent to approval of the rule, each recipient of Florida Forever funds is required to annually report to the Division of State Lands regarding the numeric performance measures for the previous fiscal year.

Land Management

The bill requires state lands to be managed to ensure the conservation of the state's plant and animal species and to ensure the accessibility of state lands for the benefit and enjoyment of all people of the state, both present and future. The bill requires the development of land management plans that provide desired outcomes, short-term and long-term management goals, and measurable objectives to achieve those goals. The measurable objectives are to be established for the following, as appropriate:

- Habitat restoration and improvement;

- Public access and recreational opportunities;
- Hydrological preservation and restoration;
- Sustainable forest management;
- Exotic and invasive species maintenance and control;
- Capital facilities and infrastructure;
- Cultural and historical resources;
- Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

The short-term and long-term management goals are to be the basis for all subsequent land management activities.

The land management plan is required to contain the following elements:

- A physical description of the land;
- A quantitative resource description of the land which includes an inventory of forest and other natural resources; exotic and invasive plants; hydrological features; infrastructure, including recreational facilities; and other significant land, cultural, or historical features;
- A detailed description of each short-term and long-term land management goal, the associated measurable objectives, and the related activities that are to be performed to meet the land management objectives;
- A schedule of land management activities which contains, for each activity, a timeline for completion, quantitative measures, and detailed expense and manpower budgets; and
- A summary budget for the scheduled land management prepared in such manner that it facilitates computing an aggregate of land management costs for all state-managed lands using the categories established by the Land Management Uniform Accounting Council.

The bill provides the ARC 90 days to review land management plans and submit its recommendations to the Board of Trustees (BOT). If the ARC fails to make a recommendation for a land management plan, the Secretary of the DEP, Commissioner of Agriculture, or Executive Director of the Fish and Wildlife Conservation Commission (FWC) or their designees shall submit the land management plan to the (BOT). The land management plan becomes effective upon approval by the BOT.

The bill requires land management plans to be updated every 10 years on a rotating basis and requires at least one public hearing to be held in each county affected by the land management plan.

Biennially, each Land Management Uniform Accounting Council (LMUAC) reporting agency shall also submit an operational report for each management area along with an approved management plan. The report should assess the progress toward achieving short-term and long-term management goals of the approved management plan, including all land management activities, and identify any deficiencies in management and corrective actions to address identified deficiencies as appropriate. This report must be submitted to the ARC and the DSL for inclusion in the annual Florida Forever report.

(NOTE: CS/HB7059 revises this reporting interval from biennial to every three years.)

Board of Trustees and the Division of State Lands

The bill provides the BOT rulemaking authority for selecting appraisers and waiving sales history requirements currently held by Division of State Lands (DSL), and removes the requirement for a review appraiser to perform field inspection of the property.

The bill requires that if the financial contribution of the acquiring agency exceeds $100 million in any one fiscal year, the agreement shall be submitted to and approved by the Legislative Budget Commission. The threshold for requiring two appraisals is increased from $500,000 to $1 million dollars. The bill requires that option contracts presented to the BOT for final purchase price approval must explicitly state that payment of the final purchase price is subject to an appropriation from the Legislature.

The bill removes the current requirement for the DEP to initiate an information system to record and document lands titled to the BOT, replacing it with a requirement for an information system to record and document all lands acquired under the Preservation 2000 and Florida Forever programs.

The bill revises the appraisal requirement for surplus lands and Murphy Acts lands by authorizing the DSL to require a second appraisal if the estimated value of the land is $1 million or greater. The bill require the DSL to have an inventory prepared by July 1, 2009, that values the carbon capture and sequestration value of state lands acquired under Preservation 2000 and Florida Forever programs.

The bill requires the DSL to notify the county local delegation if a parcel of state-owned land is subject to annexation. The bill also extends the notification period from 30 days to 45 days to notice the board of county commissioners of the sale of state lands by the BOT.

The bill requires the BOT to adopt rules that pertain to the use of state lands for carbon sequestration, carbon mitigation, or carbon offsets and that provide for climate-change-related benefits.

The bill requires the DSL to prepare an annual work plan. The annual work plan must prioritize projects on the Florida Forever list and set forth the funding for the upcoming year. The annual work plan must categorize existing Florida Forever projects into the following:

- A critical natural lands category that targets lands that have functional landscape-scale systems, intact large hydrological systems, significant imperiled communities, or provide corridors linking large landscapes;
- A partnerships or regional incentive category that targets acquisitions which utilize cost-share agreements to lower costs and provide greater conservation benefits or that utilize bargain or shared projects that remove development rights;
- A substantially completed projects category;
- A climate change category that targets lands that assist in addressing the potential impacts of climate change, including carbon sequestration and sea-level rise; and
- A less-than-fee category for working agricultural lands.

The terms of the easements proposed for acquisition under the less-than-fee are to be developed by the DSL in coordination with DACS. Projects within each category are to be ranked in order of priority.

Conservation and Recreation Land Trust Fund

The bill makes revisions to the Conservation and Recreation Lands Trust Fund by:

- Expanding the intent language regarding state lands to include prioritizing the restoration and management of the state's conservation and recreation lands and acquiring lands that advance the goals and objectives of the FWC 's approved species or habitat recovery plans;
- Expanding the public purpose of acquiring lands to include preserving agricultural lands under the threat of conversion to development through less-than-fee acquisitions;
- Changing the 1.5% ceiling for the funding of land management, maintenance and capital improvement to a 1.5% floor to fund such activities;
- Requiring the land management Uniform Accounting Council (LMUAC) to prepare and deliver a report on the methodology and formula for allocating land management funds to the ARC
- Requiring the ARC to review the report submitted by the LMUAC, modify as appropriate, and submit the report to the BOT;
- Requiring the BOT to review the report submitted by the ARC, modify as appropriate, and submit the report to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 2008. The report is to provide an interim management formula and a long-term management formula, and the methodologies used to develop the formulas that will be used to allocate CARL land management funds. The methodology and formula for interim management shall be based on the estimated land acquisitions for the fiscal year in which the interim funds will be expended. The methodology and formula for long-term management must recognize, but not be limited to, the following:

  - The assignment of management intensity associated with managed habitats and natural communities and the related management activities to achieve land management goals provided in land management plans:
    - The acres of land that require minimal effort for resource preservation or restoration;
    - The acres of land that require moderate effort for resource preservation or restoration;
    - The acres of land that require significant effort for resource preservation or restoration.
  - The assignment of management intensity associated with public access, including, but not limited to:
    - The acres of land that are open to the public but offer no more than minimally developed facilities;

- ❖ The acres of land that have a high degree of public use and offer highly developed facilities; and
- ❖ The acres of land that are sites that have historic significance, unique natural features, or a very high degree of public use.

▪ The acres of land that have a secondary manager contributing to the over-all management effort;

▪ The anticipated revenues generated from management of the lands;

▪ The impacts of, and needs created or addressed by, multiple-use management strategies;

▪ The acres of land that have infestations of nonnative or invasive plants, animals, or fish.

o Providing for the Legislature during the 2009 regular legislative session to review the funding formulas for interim and long-term management proposed by the agencies. The Legislature may reject, modify, or take no action relative to the proposed funding formulas. If no action is taken, the funding formulas shall be used in the allocation and distribution of CARL land management funds.

Land Management Uniform Accounting Council

The bill revises the reporting requirements of the LMUAC. The reporting categories are expanded to include: support; recreation visitor services; law enforcement activities. The reporting categories for new facility construction and facility maintenance are combined into capital improvement. Additionally, the bill requires each reporting agency to also:

- o Include a report of the available public use opportunities for each management unit of state land, the total management cost for public access and public use, and the cost associated with each use option;
- o List the acres of land requiring minimal management effort, moderate management effort, and significant management effort. For each LMUAC reporting category, the reporting agency is to report the amount of funds requested, the amount of funds received, and the amount of funds expended for land management;
- o List acres managed and cost of management for each park, preserve, forest, reserve, or management area;
- o List acres managed, cost of management, and lead manager for each state lands management unit for which secondary management activities were provided;
- o Include a report of the estimated calculable financial benefits to the public for the ecosystem services provided by conservation lands.

Rural and Family Lands

The bill requires the DACS to develop rules that provide a parcel listing, ranking, and annual acquisition approval process that is consistent with the Florida Forever program for the purpose of implementing the Rural and Family Lands program. No funds may be expended for the implementation of the pro-

gram until rules have been adopted by the BOT.

Working Waterfronts

The bill creates the Stan Mayfield Working Waterfronts Program within the Florida Community Trust (FCT) program. Working Waterfronts are defined as parcels of lands directly used for the commercial harvest of saltwater products and the marketing of seafood and aquaculture. The FCT and the DACS are to jointly develop rules to administer the program and to develop a process that evaluates, scores and ranks working waterfront acquisitions. The rules must establish a system of weighted criteria that give increased priority to projects:

- Within a municipality with a population less than 30,000; or
- Within a municipality or area under intense growth and development pressures, as evidenced by a number of factors, including a determination that the municipality's growth rate exceeds the average growth rate for the state; or
- Within the boundary of a community redevelopment agency established pursuant to s. 163.356, F.S.; or
- Adjacent to state-owned submerged lands designated as an aquatic preserve identified in s. 258.39, F.S.; or
- Which provide a demonstrable benefit to the local economy.

Both fee simple and less-than-fee acquisitions are authorized.

Payment in Lieu of Taxes

The bill extends "payment in lieu of taxes" made by the state and the water management districts until a county population exceeds 150,000, and eliminates the current guarantee of 10 consecutive payments regardless of changes in eligibility. The Florida Communities Trust (trust) is required to develop a ranking list of projects based on the criteria established in rule, and submit the list to the BOT by the first BOT meeting each February. The BOT may remove, but not add, projects to the list, approve grant awards, acquisitions, and terms of less than fee simple acquisitions. The trust is required to implement a process to monitor and evaluate projects.

Surplus Lands

The bill extends the notification period from 30 days to 45 days to the board of county commissioners for the sale of state lands by the BOT.

The bill allows a local government to request that state lands be declared surplus for the purposes of providing water resource development projects, alternative water supply projects, or other public facilities such as schools, fire and police facilities.

The bill provides specific guidance for the surplus of lands by the water management districts. The districts must first offer title to any lands acquired in whole or in part with Florida Forever funds to the BOT, unless the lands are being surplused for one of the following reasons:

- The land is used as linear facilities for electric transmission or distribution, telecommunications transmission and distribution, pipeline transmission or distribution, or public transportation corridors;
- A conservation easement on the land is retained;

- The land is exchanged for lands with a higher conservation value; and
- The land is used by a governmental entity for a public purpose.

The bill requires the DEP in its supervisory capacity to ensure that the districts provide consistent levels of public access to district lands, consistent with the purposes for which the lands were acquired.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/HB 547
Water Pollution Control

The bill amends current law governing water quality credit trading and authorizes the Department of Environmental Protection (DEP) to adopt rules to implement a water quality credit trading program. Water quality credit trading is a voluntary, market-based approach to promote the protection and restoration of Florida's rivers, lakes, streams and estuaries, and is intended to enhance other voluntary, regulatory and financial assistance programs already in place.

The bill authorizes Basin Management Action Plans (BMAPs) to allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted Total Maximum Daily Load (TMDL) or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation. The generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices (BMPs). The plans must allow trading between National Pollutant Discharge Elimination System (NPDES) permittees, and trading that may or may not involve NPDES permittees, under certain conditions. All regulated parties must fulfill their DEP permit obligations as they engage in water quality trading. For permits that are issued by a federally authorized DEP program, DEP has the authority to assure consistency between any trading actions and federal regulatory requirements. The bill makes water quality credit trading available to nonpoint source dischargers to supplement their ability to meet pollutant load reduction requirements through the implementation of BMPs.

The bill requires DEP to incorporate trades into permits, BMAPs, certifications, or other binding mechanisms that assure enforceability, and requires DEP to establish, by rule, trading mechanisms and procedures, including a registry to track trades. Water quality credit trading is limited to the Lower St. Johns River Basin as a pilot project.

The bill requires that reasonable implementation schedules necessary for reducing pollutants in order to comply with water quality requirements be incorporated into the permit revisions that would accompany most trades.

The bill requires that by September 1, 2008, rulemaking for the water quality credit trading program be initiated, and requires that at the time of publication of the draft rules on water quality credit trading, the DEP submit a copy to the United States Environmental Protection Agency for review.

The bill allows DEP to authorize water quality credit trading and establish specific requirements for trading in the adopted basin management action plan for the Lower St. Johns River Basin prior to the adoption of rules required by the bill in order to effectively implement the pilot project. Entities that participate in water quality credit trades must timely report to the department the prices for cred-

its, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. The department may not participate in the establishment of credit prices.

No later than 24 months after adoption of the basin management action plan for the Lower St. Johns River, the department is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the effectiveness of the pilot project, including the following information:

- A summary of how water quality credit trading was implemented, including the number of pounds of pollutants traded.
- A description of the individual trades and estimated pollutant load reductions that are expected to result from each trade.
- A description of any conditions placed on trades.
- Prices associated with the trades, as reported by the traders.
- A recommendation as to whether other areas of the state would benefit from water quality credit trading and, if so, an identification of the statutory changes necessary to expand the scope of trading.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 682**

Department of Transportation

CS/HB 682 is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Among its key provisions, this bill:

Planning

- Revises requirements for comprehensive plans to provide for airports, land adjacent to airports, and certain interlocal agreements relating to certain elements of local government comprehensive plans to better integrate airport planning and adjacent land uses through the local planning process;
- Provides legislative findings relative to transportation concurrency backlogs and authorizes transportation concurrency backlog authorities to issue bonds. The 25 percent tax increment financing rate for ad valorem tax proceeds may be exceeded through an interlocal agreement of all affected taxing authorities;
- Provides that facilities determined by the Department of Community Affairs and the applicable general purpose local government to be port-related industrial or commercial projects are not considered to be a development of regional impact provided they are located within 3 miles of a port and rely upon the utilization of port and intermodal transportation facilities or are in a port master plan area; and
- Directs the Department of Transportation (DOT) to develop a methodology that recognizes some developments, due to their size, location, and mix of uses can result in at least 30 percent of the traffic generated in the development remaining in the development. The methodology, known as "internal capture," is to be based

on professionally accepted modeling techniques that reflect these larger mixed use developments of regional impact. This must be accomplished by March 2009.

Contract Administration

- Authorizes DOT to pay stipends to firms that have submitted responsive proposals for construction and maintenance contracts and were not the successful bidder;
- Sets the goal for DOT to let design-build contracts for 25 percent of its capacity construction contracts;
- Revises surety bond recording requirements. Under the bill, contractors would be required to maintain copies of surety bonds at their principal place of business and at the jobsite rather than in the county public records. Copies of the surety bonds would also remain available from DOT; and
- Increases the maximum amount of project agreements within the Local Government Reimbursement Program that may be advanced from outside the adopted work program from $100 million to $250 million.

The bill also creates a new reimbursement program for counties with a population of 150,000 or less. The program authorizes DOT to enter into agreements with governmental entities to advance a maximum of $200 million in projects or project phases from outside the five-year adopted work program. Projects included in these agreements must also be included in the governmental entity's comprehensive plan. This new program authorizes DOT to enter into long-term repayment agreements with these counties for up to 30 years.

Tolling

- Authorizes DOT to request the issuance of bonds secured by revenues collected on HOT/express lanes on I-95 in Broward and Miami-Dade counties. Tolls may continue to be collected after the discharge of any bond indebtedness but must first be used for operation and maintenance of the HOT/express lane project or associated transportation project. Any remaining toll revenues may be used for the construction, maintenance, or improvement of any road on the State Highway System. DOT is authorized to implement variable toll rates on the HOT/express lanes. Except for HOT/express lanes, no tolls may be charged on any interstate highway where tolls were not being charged on July 1, 1997;
- Directs DOT to pursue and implement technologies and processes to provide all electronic toll collections and requires that all new and replacement electronic toll collection systems belonging to other toll entities be interoperable with the DOT's system; and
- Provides for alternative tolling and payment methods including video billing and variable pricing. The revisions also require DOT's Turnpike Enterprise to individually solicit competitive responses to contracts that include, but are not limited to, fuel, food, maintenance, and construction contracts for the Turnpike System Toll Plazas.

Utilities

- Requires DOT or a local governmental entity to pay the cost of relocation of a utility interfering with public road or publicly owned rail corridor improvements if the utility facility serves the DOT or governmental entity exclusively; and requires DOT to pay costs associated with certain underground utility relocations; and
- Authorizes DOT to direct the relocation or removal of public pay telephones if they present an endangerment to life or property.
- The revisions also allow public pay telephones, including advertising, to be installed within governmental right-of-way limits under certain circumstances. Written authorization by the appropriate local governmental entity is required before pay phones can be installed.

Outdoor Advertising

- Prohibits un-permitted signs outside urban areas, rather than incorporated areas. The provisions revise requirements for display of sign permit tags and direct DOT to establish, by rule, a fee for furnishing a replacement permit tag in an amount that covers the actual cost of the tag. The bill relegates the permitting of signs viewable from two or more roads in separate jurisdictions to the more stringent requirements. The bill adds Hillsborough County and the City of Miami to a pilot program reducing the allowable minimum distance between signs to 1,000 feet if all other requirements are met;
- Revises provisions for the denial or revocation of a sign permit for violations. Any notice of a violation must include a detailed description of the violation;
- Revises provisions relating to a municipality's or county's ability to permit and regulate wall murals as 'customary use' under federal law. The bill allows a determination of customary use, whereby the determination overrides the controls in the agreement between DOT and the United States Department of Transportation;
- Expands the services for which the interstate highway logo sign program is applicable. DOT is authorized to implement a three-year rotation system to provide for the removal or addition of participating businesses. Permit fees are to be established based on market demand, population, traffic volume, and costs but may not exceed $5,000 in urban areas or $2,500 in other areas; and
- Creates a business partnership pilot program which authorizes the Palm Beach County School District to display names of business partners on district property in unincorporated areas.

Expressway and Transit Authorities

- Requires the members of each statutorily-created expressway authority, transportation authority, bridge authority, and toll authority to comply with constitutional financial disclosure requirements. The Miami-Dade Expressway Authority currently is required to comply;

- Authorizes expressway authorities, at their discretion, to increase tolls to the Consumer Price Index, or similar inflation factor, at least every 5 years, but no more frequent than once a year, if the authority's executive board attains a majority vote in a public meeting; and

- Abolishes the non-functioning Tampa Bay Commuter Transit Authority.

Motor Vehicles and Drivers' Licenses

- Redefines hybrid vehicles as it relates to their ability to use high-occupancy-vehicle (HOV) lanes. DOT is authorized to limit or discontinue issuance of certifications which permit hybrids to use HOV lanes as a single-occupant-vehicle if the HOV lane becomes congested. Requires all hybrid and other low emission and energy efficient vehicles using the HOV lanes to comply with federally mandated minimum fuel economy standards;

- Lowers the blood and breath alcohol level (BAL) for the purposes of triggering driving under the influence enhanced penalties to maintain eligibility for federal safety grant funding; and provides that when a person who is in possession of a commercial driver's license (CDL) is found to be driving under the influence, his or her CDL shall be disqualified regardless of the vehicle driven at the time of the violation; and

- Provides for exemptions from child restraint and safety belt requirements. The revisions raise the current 5,000 pound maximum to 26,000 pounds, effectively reducing the number of vehicles currently exempted from child restraint and safety belt requirements.

Miscellaneous

- Directs the department to complete a study of transportation alternatives for the travel corridor parallel to Interstate 95 which takes into account the transportation, emergency management, homeland security, and economic development needs of the state;

- Provides for the salary and benefits of the executive director of the Florida Transportation Commission to be established in accordance with Senior Management Service provisions;

- Prohibits any county, municipality, or special district from owning or operating an asphalt plant or a portable or stationary concrete batch plant having an independent mixer; grandfathers in counties with plants prior to April 15, 2008;

- Revises the sunset date of the Strategic Aggregate Task Force to June 30, 2009;

- Revises the notification process used by DOT when amending the work program. Under the revisions, DOT must notify each affected municipality, metropolitan planning organization, and county when deleting or deferring capacity-enhancing projects. DOT must include comments received from affected bodies in its preparation of work program amendments;

- Reenacts the Small County Resurfacing Assistance Program (SCRAP) in fiscal

year 2012-2013 and does not provide for a sunset of the program; and

- Authorizes the use of, but does not appropriate, public funds for certain non-capacity improvements to Old Cutler Road in Miami-Dade County.

Subject to the Governor's veto powers, the bill is effective upon becoming law.

- **HB 961**

Cleanup of Sites Contaminated by Petroleum

The bill increases the restoration cap amount for the Petroleum Cleanup Participation Program from $300,000 to $400,000. For the Florida Petroleum Liability and Restoration Insurance Program, the $1 million cap is increased to $1.2 million, the $300,000 cap is increased to $400,000, and the $150,000 cap is increased to $300,000.

In all cases these cap increases only apply to Petroleum Cleanup Participation Program and Florida Petroleum Liability and Restoration Insurance Program eligible sites where the Department of Environmental Protection (DEP) has not issued a site rehabilitation completion order prior to June 1, 2008, indicating that the discharge has been remediated. These cap increases also apply to sites that have reached the current statutory caps and have transitioned to the party responsible for the contamination for completion of the cleanup. Expenses incurred for such sites that have transitioned out of state funding due to reaching the increased caps are not reimbursable.

The bill also requires a remediation preapproval contractor to submit an invoice within 30 days after the date of the DEP's written acceptance of each interim deliverable or the final deliverable specified in a site rehabilitation agreement. In addition, remediation preapproval contractors or their assignees are required to pay subcontractors in accordance with the prompt payment provisions of section 287.0585(1), F.S. The bill also states that section 287.0585(2), F.S., which provides for an alternative to the prompt payment provisions, shall not apply to preapproval site rehabilitation agreements.

By raising the state funding assistance caps, the bill may extend the Petroleum Cleanup Program by five years.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 1094**

Gambling Vessels/Clean Ocean Act

The bill creates section 376.25, F.S., cited as the "Clean Ocean Act." The bill provides definitions relating to different types of "waste" (biomedical waste, hazardous waste, oily bilge water, sewage, blackwater and graywater), defines what constitutes a "berth" for purposes of this section and defines "coastal waters." The bill specifically excludes traditional cruise ships from the definition of "gambling vessel." The bill authorizes the Department of Environmental Protection (DEP) to adopt rules to implement and administer the provisions provided for in the bill.

The bill requires owner/operators of gambling vessels (sometimes referred to as "day cruises" or "cruises to nowhere") to register under oath with the DEP on an annual basis. Registration must include the business name of the owner/operator of each vessel, contact information, and the registered agent for service of process located in the state. In addition the registration must list the vessel's name or call sign, its port of registry, berth location, passenger and crew capacity, and

a weekly schedule of the vessel's operation as a gambling vessel in coastal waters for the calendar year. Finally, the registration must describe the waste treatment system of each registered vessel by type, design, operation and location of all discharge pipes, including the capacity of the holding tank(s). The registrant has a continuing obligation during the period the registration is valid to advise the department of any change in the information provided.

The DEP is required to estimate the minimum volume of waste that is reasonably expected to be released from registered gambling vessels based upon the information provided by the registrants and to post the information on the department's website.

The bill requires an owner/operator of a gambling vessel berth location to establish procedures for the release of waste from gambling vessels and to make available a waste-management service to handle and dispose of the vessel's waste, based upon the department's calculations. The owner/operator of the berth location must collect a fee not to exceed the costs associated with making the waste-management service available to each Berthed gambling vessel.

The bill requires that an owner/operator of a gambling vessel that releases any waste into coastal waters must report that release to the DEP within 24 hours of the release. A vessel that discharges for the purpose of securing the safety of the vessel or saving life at sea is not required to notify the DEP of the release.

The bill defines "waste" to include sewage, oily bilge water, treated graywater, untreated graywater, treated blackwater, untreated blackwater, or hazardous waste. Furthermore, the bill defines "release" to include any discharge, leak, escape, or emitting. The bill requires a vessel to report the discharge of any waste. A vessel that discharges for the purpose of securing the safety of the vessel or saving life at sea is not required to notify the DEP of the release.

The Act is intended to supplement and not conflict with federal law, and provides for several exemptions, including U.S. military vessels, and any gambling vessel that operates a marine waste treatment system that produces sterile, clear and odorless reuse water without generating solid waste, and which eliminates the need to pump out or dump wastewater. The Act does not require a person holding a valid National Pollutant Discharge Elimination System (NPDES) permit governing releases from a gambling vessel to violate the permit.

A violation of the act subjects the actor to a civil penalty of not more than $50,000 for each violation. The DEP is required to consider all relevant circumstances when determining the amount of civil penalties to impose, including the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects can be reversed or mitigated, and the defendant's ability to pay, prior history of violations, and economic benefit.

The DEP is required to establish and collect fees that are adequate to cover the entire cost to the DEP for developing the database for vessel registration, for tracking releases, for compliance with the Act, and for enforcement.

The bill instructs the DEP to submit a request by August 1, 2008, to the U.S. Secretary of Commerce to propose that the Florida Coastal Zone Management Program be amended to include this Act.

If the Secretary of Commerce approves the amendment of the Florida Coastal Zone Management Act, the DEP must request the appropriate federal authorities to prohibit the release of waste from gambling vessels in any waters that could affect the coastal waters of the state. The DEP is directed to request the appropriate federal authorities to prohibit the release of waste within federal territorial waters off the coast of the state.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 1286**

Fish and Wildlife Conservation Commission

This bill is one of three conforming bills within the Environment and Natural Resources Council's jurisdiction adopted by the Conference Committee.

The Florida Government Accountability Act requires the Florida Fish and Wildlife Conservation Commission (FWC) and its advisory committees to be reviewed by July 1, 2008, to determine if it and its committees shall be retained, modified, or abolished. This bill reenacts provisions pertaining to the Florida Fish and Wildlife Conservation Commission and makes statutory changes recommended in the agency sunset review report.

In addition, this bill contains a vessel registration fee adjustment to continue to support law enforcement activities within the commission. These vessel registration fees have not been increased since 1992. The increases will correspond to the increase in the Consumer Price Index from 1992 to today. The increase in fees will generate approximately $10.2 million. This bill also has CPI indexing provisions for vessel registration fees and for recreational hunting and fishing licenses that will allow for adjustments every 5 years unless proscribed by general law.

Finally, the bill directs reviews by OPPAGA of several programs to determine if there are any cost-saving benefits or efficiencies, including:

- FWC's public relations and outreach staffing in their Executive Direction and Administrative Services division.
- FWC's outreach and education activities within the Freshwater Fisheries and Marine Fisheries Management divisions.
- Complete a 5 year "Air Station" conceptual plan designed to improve agency aircraft operations and maintenance efficiency.
- FWC's current land management activities.
- FWC's Fish and Wildlife Research Institute.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 1294**

Department of Environmental Protection

This bill is one of three conforming bills within the Environment and Natural Resources Council's jurisdiction adopted by the Conference Committee.

The Florida Government Accountability Act requires the Department of Environmental Protection (DEP) and its advisory committees to be reviewed by July 1, 2008, to determine if it and its committees should be retained, modified, or abolished. This bill reenacts pro-

visions pertaining to the department and makes statutory changes recommended in the agency sunset review report.

In addition, the conforming bill provides the following:

- Provides for a revised organizational structure within the DEP by creating and renaming certain departments and offices;
- Establishes an additional phosphate severance surcharge to generate $60 million in revenue to be deposited into the Nonmandatory Land Reclamation Trust Fund for land reclamation activities associated with Piney Point and Mulberry sites and for other approved reclamation of nonmandatory lands;
- Provides for a transfer of the Invasive Plant Bureau in the DEP to the Fish and Wildlife Conservation Commission with the exception of the permitting program component related to the nonnursery cultivation, collection and sale of aquatic species which is transferred to the Department of Agriculture and Consumer Services;
- Changes the date to January 1, 2011, for water management districts, various state agencies, and associations to review standards and guidelines relating to landscape irrigation design;
- Requires a registered dry-cleaning facility to display a valid and current certificate evidencing registration with the DEP;
- Revises "regulated air pollutant" definition;
- Amends statutes relating to environmental data and quality assurance to allow the DEP to adopt rules and establish quality objectives for training laboratory staff and field sampling activities;
- Revises and establishes fees associated within the environmental resource permitting and drinking water programs;
- Revises renewal of certain license requirements within the DEP;
- Restricts the DEP from issuing any permit for a Class I landfill to be located on or adjacent to a Class III landfill that was permitted on or before January 1, 2006, and that is located in the Southern Water Use Caution Area;
- Repeals s. 378.011, F.S., relating to Land Use Advisory Committee;
- Repeals chapter 325, F.S., relating to motor vehicle refrigerants and emissions; and
- Repeals s. 403.08725, F.S., relating to citrus juice processing facilities.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law except as otherwise provided.

▪ CS/CS/SB 1302
Wastewater Disposal/Ocean Outfalls

The bill directs the South Florida Water Management District (SFWMD) to include water resource and water supply development projects that promote the elimination of wastewater ocean outfalls within its regional water supply plan. It also provides that such projects should be given first consideration for state

or water management district (WMD) funding assistance. Subject to specified conditions, the SFWMD must require the use of reclaimed water made available by the elimination of the wastewater ocean outfalls as part of their consumptive use permitting process.

The bill prohibits the new construction or expansion of wastewater ocean outfalls and limits the discharge of wastewater through ocean outfalls to the permitted capacity in effect on July 1, 2008. It requires that discharge of domestic wastewater through ocean outfalls meet advanced wastewater treatment and management requirements no later than December 31, 2018. Such requirements are defined to include those set forth in s. 403.086 (4), F.S.; a reduction in baseline loadings of total nitrogen and total phosphorus, equivalent to advanced wastewater treatment requirements in s. 403.086 (4), F.S., or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008 and December 31, 2025, which is equivalent to that which would be achieved if the requirements of s. 403.086 (4), F.S., were fully implemented December 31, 2018, and continued through December 31, 2025, as determined by the Department of Environmental Protection (DEP) pursuant to specified criteria, by December 31, 2018. It provides an exemption to treatment standards for those facilities that meet 100 percent reuse for domestic wastewater discharge by the same date.

The bill requires all facilities that discharge wastewater through ocean outfalls to achieve, at a minimum, 60 percent reuse of the facilities actual annual flow by December 31, 2025, and prohibits discharge through ocean outfalls beyond that date, unless as a backup to the functioning reuse system.

The bill creates a reporting schedule for permit holders who discharge domestic wastewater through ocean outfalls. Permit holders are required to detail the plan to meet the requirements of the act and provide a summary of actions accomplished to date. The bill provides a reporting schedule for the DEP to summarize the progress to date, to be submitted to the Legislature.

The bill establishes the Leah Schad Memorial Ocean Outfall Program. As funds become available, the bill allows the state to assist local governments and agencies responsible for implementing the requirements for domestic wastewater disposal. Funds received from sources provided for in law and the General Appropriations Act; gifts designated for such disposal requirements from individuals, corporations, or other entities; or federal funds appropriated by the United States Congress for implementation of such disposal requirements may be deposited into a designated account within the Ecosystem Management and Restoration Trust Fund.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 1427**

Beach Management

The bill provides legislative intent to direct and commit the state's beach management efforts to address beach erosion caused by Florida's inlets, and declares that it is in the public interest to replicate the natural flow of sand at inlets.

The bill also:

- Directs that all beach quality sand associated with inlet construction and maintenance dredging, including that at federal inlets, be placed on adjacent beaches, and that the De-

partment of Environmental Protection (DEP) maintain current estimates of the natural net annual transport volume of sand at all inlets and ensure that these volumes be placed on adjacent eroding beaches;

- Requires a port to follow its port master plan and DEP permits in a port's effort to place beach quality sand from dredging and construction projects on eroding beaches, and provides for inland navigation districts to participate in the local government's or the port's plan regarding sand recovery;
- Provides for undertaking studies and assessments for determining the cost-sharing responsibilities among entities associated with the extent of erosion caused by inlets;
- Directs the DEP to protect the state's investment in beach nourishment projects within an inlet's zone of influence by taking all reasonable action to reinstate the natural flow of sand in disputes between beneficiaries of the inlet, local governments, or adjacent inlet property owners, regarding how much sand should be by-passed; and,
- Creates a new section in Chapter 161, F.S., specifically for inlet management. It addresses plan development, establishes annual funding priorities for studies, projects, or other activities relating to inlet management, requires separate ranking criteria exclusively for inlet management and specific funding provisions, and provides for the designation of an Inlet of the Year.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/SB 1552
Everglades Restoration Bonds

The bill extends the authorized issuance and maturity of Everglades restoration bonds, which are deposited into the Save Our Everglades Trust Fund, by an additional ten years to FY 2019-2020. The bill expands the issuance of Everglades restoration bonds to include costs associated with the Florida Keys Area of Critical State Concern protection program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Keys Wastewater Plan dated November 2007. The bill authorizes, subject to future Legislative authorization, an additional amount of bonds not to exceed $50 million per fiscal year, for no more than 4 fiscal years, specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program.

Subject to specific appropriation, the Department of Environmental Protection (DEP) shall use moneys from the Save Our Everglades Trust Fund to fund projects identified in the Keys Wastewater Plan. The DEP may establish requirements, through grant agreements or other contractual arrangements, to ensure the timely construction of projects and expenditure of appropriated funds by the local governments in Monroe County, including, but not limited to, project implementation deadlines, local matching requirements, fair and competitive procurement requirements, and financial tracking requirements.

Beginning July 1, 2010, the Legislature shall analyze the state's ratio of debt in relation to projected revenues prior to the authorization

to issue any bonds under the provisions of this bill.

The bill defines the "Keys Wastewater Plan" as the plan prepared by the Monroe County Engineering Division dated November 2007 and submitted to the Florida House of Representatives on December 4, 2007.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1706**

Developments of Regional Impact

CS/SB 1706 amends s. 380.06, Florida Statutes, to exempt certain developments that include an office or laboratory appropriate for the research and development of medical technology, biotechnology, or life science applications from a development-of-regional impact (DRI) review if the specified conditions detailed below are met:

- The development must be located within a county having a population greater than 1.25 million. This currently qualifies Broward, Miami-Dade and Palm Beach counties.
- The land is located in a designated urban infill area or within five miles of a state supported biotechnical research facility or the local government adopts a resolution recognizing the land is located in a compact, high-intensity, and high density multi-use area.
- The land is located within three-fourths of one mile from one or more planned bus or light rail transit stops.
- The development is registered with the United States Green Building Council and there is intent to apply for certification of each building under the Leadership in Energy and Environmental Design program, or the development is registered by an alternate green building rating system that the local government approves by resolution.

The bill also clarifies the three-year extension provided in 2007 for the phase, buildout, commencement, and expiration dates applied to DRI and related local approvals. Further, the bill modifies the qualifying developments to include Florida Quality Developments as defined by s. 380.061, Florida Statutes, and developments for which a development order was adopted between January 1, 2006, and July 1, 2007, regardless of whether or not active construction has commenced.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/CS/SB 1992**

Department of Highway Safety and Motor Vehicles

This legislation addresses Department of Highway Safety and Motor Vehicles' (DHSMV) issues related to federal motor carrier safety requirements, commercial driver's licenses, and compliance with the federal REAL ID Act. Many of these changes are necessary to ensure the state's continued receipt of federal funds. Other provisions in the bill are technical or administrative in nature and will have no fiscal impact.

<u>High Occupancy Vehicle (HOV) lanes</u>

With regard to HOV lanes, the bill:

- Requires all hybrid and other low-emission and energy-efficient vehicles that do not meet the minimum occupancy requirement and are driven in an HOV lane to comply with fed-

erally mandated minimum fuel economy standards and requires the Florida Department of Transportation (FDOT) to review and provide its recommendations to the Legislature of any statutory changes necessary to comply with EPA's final rule related to the eligibility of hybrid and other low-emission energy-efficient vehicles that may operate in an HOV lane regardless of occupancy;

- Provides for determination of continued eligibility of hybrid and other low-emission and energy-efficient vehicles for operation in an HOV lane;
- Authorizes limitation or discontinuance of vehicle decals for use in an HOV lane if the facilities are degraded due to congestion;
- Provides that vehicles eligible to be driven in an HOV lane that is redesignated as a HOT lane may continue to be driven in the HOT lane without payment of a toll; and
- Transfers rulemaking responsibility with regard to HOV lanes from DHSMV to FDOT.

Rail Crossings

The bill provides that all persons approaching a railroad-highway grade must stop when a law enforcement officer indicates that a train is approaching.

School Zones

The bill requires FDOT to establish "Speeding Fines Doubled" signage which must be installed in all newly established school zones or when school zone signs are replaced.

Drag Racing; Spectators

The bill creates a definition for the term "spectator" in s. 316.191, Florida Statutes, relating to illegal drag racing, and prohibits being a spectator at such a race. Violation of this prohibition is a moving violation punishable as provided in Chapter 318, Florida Statutes. Section 318.18(3)(a), Florida Statutes, calls for a $60 fine (plus court costs and surcharges which vary by county) for a moving violation.

DUI Offenses; Ignition Interlock Devices

The bill lowers the threshold for DUI-related enhanced penalties and mandatory adjudication from a blood-alcohol level (BAL) of .20 grams to a BAL of .15 grams. It also provides that the six-month and two-year periods of required ignition interlock device usage provided in s. 316.193, Florida Statutes, must run continuously.

The bill provides that persons who commit more than three times any violation of ignition interlock device requirements must attend a DUI program course specified by s. 322.291, Florida Statutes, and use the ignition interlock device for an additional month beyond the otherwise-required timeframe.

Traffic School Elections

The bill amends s. 318.14, Florida Statutes, allowing drivers committing non-criminal traffic offenses to avoid certain penalties by taking a basic driver improvement course. Under the bill, offenders may elect to take the course up to five (5) times within ten (10) years. Current law provides for a lifetime limit of five (5) times.

Child Restraints and Safety Belts

The bill expands the use of child restraints and seat-belt usage to motor vehicles weigh-

ing up to 26,000 pounds. Current law exempts vehicles over 5,000 pounds from child restraint and safety belt requirements.

Motor Carrier Compliance Office

The bill amends s. 316.302, Florida Statutes, relating to commercial motor vehicles, safety regulations, transporting of hazardous equipment, and enforcement. The bill makes technical changes to an FDOT requirement to perform certain duties assigned under federal rules and to a federal reference governing out-of-service requirements for commercial vehicles.

Arrest Authority; Traffic Citations

The bill adds Chapter 320, Motor Vehicle Licenses, to the list of "arrestable offenses" contained in s. 316.645, Florida Statutes. As a result, law enforcement officials may arrest any person committing any offense relating to registering a vehicle in the state.

The bill also makes several grammatical changes and modernizes the workflow between law enforcement agencies and the courts. It permits "electronic transmission" of "replicas of the citation data," rather than an "electronic facsimile" of the citation, as currently provided, and permits "batches" of electronic transmissions to be transmitted to courts electronically. Under the bill, law enforcement officers may collect fingerprints electronically.

Certificates of Title

The bill defines "certificate of title," for purposes of Chapter 319, Florida Statutes, stating that a certificate of title is the ownership record for a vehicle, "whether a paper document authorized by the department or a certificate consisting of information that is stored in an electronic form in the department's database." This will allow DHSMV to implement a more efficient paperless title system.

Motorcycles; Registration

The bill adds an exception to the definition of motorcycle for those vehicles "in which the operator is enclosed by a cabin." The bill also removes the endorsement-before-registration provision from s. 320.02, Florida Statutes. As a result, owners will continue to be able to register a motorcycle or moped without obtaining a motorcycle drivers' license endorsement in advance.

Voluntary Contribution Check-offs

The bill removes requirements that a voluntary contribution statement for the Election Campaign Financing Trust Fund be included on certain DHSMV forms, as that particular trust fund expired November 4, 1996, by operation of s. 19(f), Art. III of the State Constitution.

Commercial Vehicle License Plates

The bill provides that a violation of s. 320.0706, Florida Statutes, regarding proper placement of license plates on commercial vehicles weighing more than 26,000 pounds, is a noncriminal traffic infraction punishable as a moving violation pursuant to Chapter 318. Section 318.18(3)(a), Florida Statutes, calls for a $60 fine (plus court costs and surcharges which vary by county) for a moving violation.

International Registration Plan

The bill authorizes DHSMV to withhold vehicle registrations and license plates if a carrier fails to supply its appropriate federal identifying number. The department may subsequently refuse to issue registrations, or suspend existing registrations, if the carrier or vehicle operator has been prohibited from

operating by a federal or state agency responsible for motor carrier safety.

Specialty Tags

The bill modifies the specialty tag design process by removing paragraph (3) from s. 316.08053, Florida Statutes, containing some of the agency's rulemaking authority, in favor of existing statutory design standards.

The bill amends the requirements for a Gold Star license plate to allow Florida residents to receive a plate regardless of whether the service member in their family who was killed while serving was also a Floridian.

The bill also directs DHSMV not to issue any new specialty license plates between July 1, 2008 and July 1, 2011. The bill exempts from this prohibition any group that has submitted a letter of intent prior to May 2, 2008, and has submitted a valid survey, marketing strategy, and application fee prior to October 1, 2008, or any group included in a bill filed during the 2008 Legislative Session.

Temporary Motor Vehicle License Tags

The bill removes the option of attaching a temporary tag to the inside of the motor vehicle's rear window, and requires DHSMV to designate specifications for non-permeable or otherwise weatherproofed tag media to protect the tag's structural integrity.

The bill requires the DHSMV to implement the print-on-demand electronic system by the end of the 2007-2008 fiscal year, and provides that issuers may continue to use a backup manual-issuance system when the electronic system is not working.

Motor vehicle dealers are authorized under the bill to charge a fee to comply with the requirements, and the department is granted express rulemaking authority to administer these provisions.

Automobile Dealer Insurance Requirements

Currently, all motor vehicle dealers are required to have a "garage" liability insurance policy. Under the bill, franchise motor vehicle dealers are still required to carry a garage liability insurance policy, but all other dealers may alternatively provide proof of a general liability policy coupled with a business automobile policy.

Drivers' Licenses and ID Cards Generally

The bill clarifies the definition of "hazardous materials" by citing additional federal regulations related to required endorsements to commercial drivers' licenses to transport such materials. It adds a definition of "convenience service" to explain transactions made electronically, by mail, or telephonically, and clarifies that a renewal may be made via a convenience service only once.

The bill provides for a gradual phase-out of "Florida Only" licenses. Current licenses will be valid until the stated expiration, but new "Florida Only" licenses may not be issued after July 1, 2009. For both ID cards and drivers' licenses, standards are clarified to ensure that social security and proof-of-resident documents are "satisfactory to the department." The bill clarifies that passports, green cards, and employment authorization cards must be valid and unexpired. In addition, a new identity document is added, the "Consular Report of Birth Abroad, provided by the United States Department of State," and fee provisions are moved to a new statute.

The bill amends the current requirement that licenses contain a "mailing" address. Under the bill, drivers' licenses must con-

tain the "residential" address instead. The bill also modifies expiration dates of ID cards and drivers' licenses. ID cards for children under five continue to have a term of four years, but for persons between five and 15, the valid term is raised to eight years. Drivers' license terms (both original issuance and renewals) are raised to eight years, however, persons over 80 will continue to expire every six years.

Florida At-Risk Driving Council

The bill repeals s. 322.181, Florida Statutes, deleting language regarding the defunct Florida At-Risk Driving Council.

Unauthorized Operators

It requires a one-year suspension of a person's driver's license, if that person knowingly loans a vehicle to a person whose driver's license is suspended and the vehicle is involved in an accident resulting in bodily injury or death.

Commercial Drivers' Licenses; Vehicle Registration; Disqualification

It provides that a person holding a commercial drivers' license ("CDL") may not possess more than one drivers' license. Under the bill, certain DUI-related offenses result in the suspension of a CDL, even if the offense itself occurs in a non-commercial vehicle. The bill also clarifies the definition of "out-of-service order" in s. 322.01, Florida Statutes, to provide that a prohibition need not be limited to 72 hours.

The bill allows law enforcement officers to immediately disqualify not only drivers of commercial motor vehicles who commit DUI offenses or refuse to submit to DUI testing, but also commercial drivers' license holders operating non-commercial vehicles who commit DUI offenses or refuse to submit to DUI testing. It also increases the penalty for first and subsequent DUI offenses to match the penalties for a first and subsequent refusal to submit to testing. Under the bill, the first DUI violation results in a one year disqualification, and the second offense results in permanent disqualification.

The bill clarifies that a person disqualified under s. 322.64, Florida Statutes is not entitled to a hardship reinstatement of a commercial vehicle license under s. 322.271, Florida Statutes, but only a license to operate a non-commercial vehicle.

Automobile Lenders Industry Task Force

It creates within DHSMV the Automobile Lenders Industry Task Force. This task force, consisting largely of private sector officials representing industries related to automobile lending, is directed to make recommendations on proposed legislation and other issues and make a full report to the Speaker of the House of Representatives, the President of the Senate, and the Governor by June 30, 2009, at which time it shall cease to exist.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008 except as otherwise provided.

- **CS/SB 2052**

Water and Wastewater Utilities

This legislation increases the gross annual revenue level for private water and wastewater utilities to qualify for a staff-assisted rate case from the Public Service Commission ("PSC"). This revenue cap is increased from $150,000 to $250,000 to adjust for inflation. The PSC is required to adjust the level once every five years based on the price index the PSC establishes for water and wastewater utilities. Once every five years, the PSC is also required to submit a report

to the Legislature on the status of staff-assisted rate cases.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 5067**

State Infrastructure

HB 5067 makes statutory changes necessary to conform to the General Appropriations Act for Fiscal Year 2008-2009 and to implement program reductions and efficiencies relating to the Department of Community Affairs, the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Transportation (DOT). Specific provisions in the bill include:

- Authorizes the DHSMV to issue electronic certificates of title and to collect e-mail addresses of vehicle owners and registrants for notification purposes related to vehicle titles;
- Reenacts the Department of Highway Safety and Motor Vehicles; Authorizes DHSMV, at its discretion, to waive the hardship hearing requirements following a drivers' license suspension after review of the driver history and to reinstate the license on a restricted basis for business and employment purposes for non-egregious first time offenders;
- Authorizes DHSMV to make necessary changes to drivers' license requirements to implement the Federal REAL ID Act; Specifically the bill:
- Provides for a gradual phase-out of "Florida Only" licenses. Current licenses will be valid until the stated expiration, but new "Florida Only" licenses may not be issued after July 1, 2009;
- Clarifies that passports, green cards, and employment authorization cards must be valid and unexpired;
- Modifies expiration dates of ID cards and drivers' licenses. ID cards for children under five continue to have a term of four years, but for persons between five and 15, the valid term is raised to eight years. Drivers' license terms (both original issuance and renewals) are raised to eight years, however, persons over 80 will continue to expire every six years;
- Requires that a license indicate a mailing address for the residence address of the licensee; and
- Eliminates licensees' ability to extend a license term or change addresses via sticker.

Department of Transportation

- Requires DOT's Turnpike Enterprise to individually solicit competitive responses to contracts that include, but are not limited to, fuel, food, maintenance, and construction contracts for the Turnpike System Toll Plazas; and
- Revises the mandatory 1.5 percent landscaping requirement for DOT construction contracts to make the inclusion of these items permissive, rather than mandatory;

Department of Community Affairs

- Directs DCA to develop grant administration procurement procedures to be used in the administration of community development block grants; such procedures shall not impose restric-

tions or requirements greater than those provided in the federal code;

- Authorizes the Florida Building Commission to conduct business by teleconferencing; Removes the prohibition that the Emergency Management and Preparedness Assistance Trust Fund may only be used to supplement, not supplant existing expenditures.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008, unless otherwise specified in the bill.

- **CS/HB 7059**

Protection of Wild and Aquatic Life

The bill authorizes the Board of Trustees of the Internal Improvement Trust Fund (BOT) to provide for the establishment of seagrass mitigation banks to offset unavoidable impacts to seagrasses by projects that are determined to be in the public interest.

The bill creates definitions for the terms "seagrasses" and "seagrass scarring" and creates penalties for any person who operates a vessel in a careless manner outside lawfully marked channels and causes seagrass scarring within an aquatic preserve. The bill provides uniform boating citation and escalating misdemeanor penalties for violations of boating laws pertaining to seagrasses.

The bill provides for the confiscation, forfeiture and disposition of illegally taken wildlife, freshwater fish and saltwater fish (fish and game). The bill provides that photographs of illegally taken fish and game may be deemed competent evidence admissible in judicial proceedings to the same extent as if the physical items themselves were introduced as evidence. All live, unlawfully possessed fish and game seized by a law enforcement agency must be documented as evidence and then returned to their habitat unharmed, except for non-native species which may be released only as allowed by rules of the Fish and Wildlife Conservation Commission (FWC). Proceeds from disposal of forfeited fish and game are credited to the investigating state and local law enforcement agencies in proportion to their participation in the enforcement action.

Beginning July 1, 2010, and every 3 years thereafter, the bill requires the state's land managing agencies to prepare an operational report for each managed area. The report is to assess the land manager's progress toward achieving short term and long-term land management goals of the approved management plan, identify any deficiencies in management and provide corrective actions to address identified deficiencies. The operational report is to be submitted to the Division of State Lands (DSL) within the Department of Environmental Protection (DEP) for inclusion in the Acquisition and Restoration Council's (ARC) annual management review team report.

The bill further creates a three member monitoring team, which will consist of one member selected by the Executive Director of the FWC who has experience with applied habitat management, one member selected by the Secretary of the DEP who has experience with public recreation or use administration, and one member selected by the Commissioner of Agriculture who has experience with applied land management. The DSL will provide the monitoring team with the operational report submitted by the land manager. The monitoring team is to review the operational report and is to prepare a monitoring report that assesses the managing agency's progress toward achieving short-term and long-term land management goals. Also, this monitor-

ing report is to propose corrective actions for identified deficiencies. The monitoring report is to be submitted to the ARC and the managing agency. The ARC is to review the monitoring report and determine whether the deficiencies warrant a corrective action plan or revisions to the land management plan. Significant and recurring deficiencies are to be brought to the BOT, which must determine whether the corrective actions being proposed by the land manager and the ARC sufficiently address the deficiencies.

The bill repeals s. 372.107, F.S., which created the now obsolete FWC Federal Law Enforcement Trust Fund. This trust fund was terminated in 2005 (Chapter 2005-17, L.O.F). Statutory references to this section are also removed.

The bill transfers, by a type 2 transfer, the Bureau of Invasive Plant Management currently within the DEP to the FWC with the exception of the permitting program component related to business activities involving the importation, transportation, non-nursery cultivation, collection, sale, or possession of aquatic plant species which is transferred to the Department of Agriculture and Consumer Services.

The bill repeals s.327.803, F.S. This eliminates the Boating Advisory Council.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

▪ HB 7019
Real Property

The bill eliminates the filing requirement of Form DR-219 relating to the transfer of an interest in real property to the clerk of the circuit court.

Because the form is no longer required to be filed, the bill eliminates the clerk's authorization to deduct 1.0 percent of the tax paid on deeds as compensation for the cost of processing the return.

In March 2008, the revenue estimating conference determined that eliminating Form DR-219 would increase state revenues during Fiscal Year 2008-2009 by approximately $8.8 million. In addition, the change will result in a $35,000 cost savings based on reductions in printing, postage, and storage of the form.

The effective date of this bill is June 1, 2008.

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2008
Florida Legislature
Post-Session Report

CONSTRUCTION & ENERGY LAW

CONSTRUCTION & ENERGY LAW

- **CS/HB 697**

Building Standards

CS/HB 697 addresses a wide range of building construction issues including Florida Building Code standards, the Florida Building Commission, and energy efficiency standards relating to planning and construction.

Florida Building Code and Building Standards

The bill makes numerous changes to the Florida Building Code, building standards and related regulations. Major changes include:

- Allows licensed roofing contractors to perform additional functions of replacing and removing wood roof sheathing and fascia during reroofing work.
- Clarifies the definition of "manufactured building" to include the terms "modular" and "factory built" buildings which are terms used to describe homes built in a factory in the Florida Building Code.
- Clarifies that "temporary" buildings are buildings other than those designated permanent in the approved development order.
- Provides language to ensure the preservation of flexibility to achieve a secondary water barrier by allowing more than a single accepted method.
- Repeals s. 627.351(6)(a), Florida Statutes, relating to the date on which code-plus applies as a condition of coverage by Citizens Insurance.
- Repeals s. 553.731, Florida Statutes, relating to a specified standard for wind resistant construction to be enforced by building officials. The repeal does not affect ss. 553.73(6)-(8), Florida Statutes, which permanently prohibited the commission from adopting amendments to the code that diminish the standards pertaining to wind resistance and water intrusion.

Florida Building Commission

The bill makes several changes to the structure and process of the Florida Building Commission including:

- Revises the membership of the Florida Building Commission to 25 members, adding a representative from the swimming pool industry and a representative from the green building industry; and specifically authorizes various professional associations to recommend candidates for membership.
- Imposes a four year term limit on the chair, which is consistent with the limitations on all other commission appointments.
- Allows the commission to render declaratory statements; changes the meeting procedures of the commission to allow for teleconferencing; and requires at least one opportunity for public comment on proposed action of the commission before a final vote is taken.

- Clarifies the jurisdictional responsibilities of the Department of Community Affairs (DCA) and the Florida Building Commission. Historically, DCA has operated the program to approve plans for construction of buildings and building components assembled off-site. Since 1998, the authority for the program has been divided between the Florida Building Commission, which establishes the plan review, the inspection requirements and the technical standards for the building, and DCA, which has maintained the business practices of the program, such as procurement, form development and processing requests for approval. The bill more clearly delineates the responsibilities of each body.

Energy Planning and Conservation Practices

The bill implements certain recommendations of the Florida Energy Commission contained in its "2007 Report to the Legislature"

The bill revises requirements relating to the installation of energy devices based on renewable resources on buildings.

The bill requires that the Florida Building Code must facilitate and promote the use of cost-effective energy conserving, energy demand-management, and renewable energy technologies in buildings.

The bill integrates energy efficiency issues into several components of the local government comprehensive plan, which will be due at the next evaluation and appraisal update of each local government's comprehensive plan:

- The future land use element must address reduction in urban sprawl and energy efficient land use patterns in relation to existing and future electric power generation and transmission systems, as well as greenhouse gas reduction strategies.
- The traffic circulation element must address strategies to reduce greenhouse gases.
- The conservation element must address factors that affect energy conservation.
- The housing element must contain standards and principals for energy efficiency in new houses.
- Allows the Florida Building Commission to select the most current version of the International Energy Conservation Code as a foundation code.
- Creates s. 553.9061, Florida Statutes, to establish the following schedule of required increases in the energy efficiency performance of buildings subject to the Florida Energy Efficiency Code. These increases are relative to the 2004 Florida Building Code, as amended on May 22, 2007.
- By 2010, efficiency increases of at least 20 percent. By 2013, efficiency increases of at least 30 percent. By 2016, efficiency increases of at least 40 percent. By 2019, efficiency increases of at least 50 percent.
- Adds declarations to the list of deed restrictions, covenants, or other binding agreements which may not prohibit the installation of energy devices based on renewable resources. The bill specifies that condominium units are residential dwellings for purposes of installation of solar collectors or other energy devices,

and removes the three-story height restriction for installation of solar collectors or other energy devices on such residential dwellings.

- Directs the DCA, in consultation with the Florida Energy Affordability Coalition, to identify and review issues relating to improving the effectiveness of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program.

Other Provisions

To be eligible for state affordable housing funds, certain counties must annually certify they have adopted an affordable workforce housing plan.

Prohibits any county, municipality, or special district from owning or operating an asphalt plant or a portable or stationary concrete batch plant having an independent mixer; grandfathers in counties with plants prior to April 15, 2008.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 727**

Firesafety

Truss type construction is popular, versatile, and cost effective in the erection of commercial, industrial and residential structures. These factors make the truss type systems increasingly popular. A truss system can be comprised of boards, timbers, beams, or steel bars, all of which are joined together in a rigid framework. However, the firefighting community has concern because certain roof and floor truss systems can collapse without warning during a firefighting operation, due to the fact that the truss system is often hidden and may be on fire for long periods of time before being noticed.

The "Aldridge/Benge Firefighter Safety Act" requires the owner of any commercial or industrial structure or multiunit residential structure, with three units or more, that is built of light-frame truss-type construction to mark the structure with a sign or symbol to alert fire and emergency personnel of this type of construction. An owner's failure to provide such notice is subject to penalties. The State Fire Marshal shall adopt rules to determine the details of such sign or symbol and other matters necessary to implement the bill. Additionally, the State Fire Marshal and local fire officials shall enforce the provisions.

Additionally, the bill requires licensed nursing homes that desire to participate in the Nursing Home Fire Protection Loan Guarantee Program to submit completed fire sprinkler construction documents to the Agency for Health Care Administration for review by December 31, 2008, and gain final approval to begin construction by June 30, 2009, with exceptions that may extend the deadline to December 31, 2009.

The bill also requires the State Fire Marshall to conduct a study of the use of managed, facilities-based, voice-over-Internet-protocol telephone service for monitoring fire alarm signals. The study is to be completed by December 1, 2008.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 794**

Underground Utilities/Excavations and Demolitions

This bill amends the "Underground Facility Damage Prevention and Safety Act" in ch. 556, F.S., to expressly prohibit an operator of

underground facilities from charging an excavator any costs or expenses associated with the operator's compliance with the Act. It also expressly prohibits an excavator from charging an operator of underground facilities any costs or expenses associated with the excavator's compliance with the Act. Finally, it provides that the prohibition against charging fees does not excuse a member operator or excavator from liability for damage or injury for which it would be responsible under applicable law.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law.

- **HB 7135**

Energy

During the 2007 Legislative Session, the Legislature enacted comprehensive legislation to promote energy security and affordability by encouraging energy efficiency and diversity. Although this legislation was vetoed, approximately $62 million in funds were made available to address energy goals. In the summer of 2007, Governor Crist issued three executive orders addressing issues related to global climate change. The executive orders: established reduction targets for greenhouse gas (GHG) emissions; directed the Department of Environmental Protection (DEP) to implement through agency rules a regulatory cap on electric utility GHG emissions and, through adoption of California's proposed standards, GHG emission limits on new motor vehicles; requested the Public Service Commission (PSC) to implement net metering and a renewable portfolio standard (RPS) for electric utilities; and created the Governor's Action Team on Energy and Climate Change to develop additional energy and climate change policies. The Florida Energy Commission, created by the 2006 Legislature, also issued a series of recommendations addressing energy affordability, security, efficiency, reliability and global climate change.

In response to these developments, the House Environment & Natural Resources Council held a symposium on the "Science and Economics of Climate Change" and a series of workshops to discuss the interrelated issues of energy affordability, security, efficiency, reliability and global climate change. These discussions focused on international, national and state options to mitigate climate change and their potential costs and benefits.

This bill builds on last year's legislation and includes policies relating to energy affordability, security, efficiency, and reliability and also provides a responsible response to concerns with global climate change and anticipated federal legislation. The bill provides for a new governance structure to enable the state to establish and implement a comprehensive strategy to address these interrelated and rapidly evolving issues, and includes the following provisions:

<u>Hearing on Order of Taking Property by Electric Utilities (s. 74.051, F.S.)</u>

Provides that it is the intent of the Legislature that the court, when practicable, conduct the hearing within 120 days after the petition is filed when the petitioner is an electric utility that is seeking to appropriate property for an electric generation plant, associated facility of such plant, an electric substation, or a power line; provides additional legislative intent that the court, when practicable, issue its order of taking no more than 30 days after the conclusion of the hearing.

Telecommuting (ss. 110.171 and 255.249, F.S.)

- Encourages the use of telecommuting by state agencies for qualified employees by requiring each state agency's telecommuting program be posted on the state agency's website to allow access by employees and the public.
- Requires each state agency telecommuting program to provide measurable financial benefits associated with the program.

Renewable Energy Devices within a Condominium Unit (s. 163.04, F.S.)

Provides that condominium governing documents cannot prohibit unit owners from placing renewable energy devices within the boundaries of the condominium unit, and removes the three-story height restriction for installation of solar collectors on residential properties.

State Comprehensive Plan/Energy and Climate Change (s. 186.007 and 187.201, F.S.)
Amends provisions relating to air quality, energy, and land use goals and policies of the State Comprehensive Plan. Includes encouragement of the development of low carbon emitting electric power plants, and includes under the land use goal, the siting of nuclear power plants to meet the state's determined need for electric power generation.

Property Tax Exemption for Renewable Energy Source Devices (ss. 196.012(14) and 196.175, F.S.)

- Removes the expiration date of the property tax exemption for real property on which a renewable energy source device is installed and is being operated, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009.
- Retains the period of each exemption at 10 years.
- Revises the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.
- Removes outdated and obsolete language from the definition of "renewable energy source device," provided in s. 196.012(14), F.S.

Sales Tax Exemption for Renewable Energy Technologies (s. 212.08, F.S.)

- Makes revisions to the existing sales and use tax exemption for renewable energy technologies.
- Revises the definition of "ethanol" to mean anhydrous denatured alcohol produced by the "conversion of carbohydrates" rather than by the "fermentation of plant sugars."
- Specifies that items eligible for the sales tax exemption are limited to one refund and requires a purchaser who receives a refund to notify a subsequent purchaser on the sales invoice or other proof of purchase that the item is no longer eligible for a tax refund.
- Transfers current responsibilities of the Department of Environmental

Protection (DEP) to the Florida Energy and Climate Commission.

Capital Investment Tax Credit (s. 220.191, F.S.)

- Makes revisions to the existing capital investment tax credit section to provide for the transferability of tax credits for a project that includes locating a new solar panel manufacturing facility in the state that generates a minimum of 400 jobs within 6 months with an average salary of at least $50,000.
- Limits credit that can be transferred to the lesser of the qualifying business' tax liability for that year or the credit amount granted for that year.

Renewable Energy Technologies Investment Tax Credit (s. 220.192, F.S.)

- Makes revisions to the existing corporate income tax credit provision for investment costs associated with hydrogen vehicles and hydrogen vehicle fueling stations, commercial stationary fuel cells, and biofuels, including biodiesel and ethanol.
- Provides for the transferability of tax credits and authorizes existing tax credits to be passed through to underlying partners, members, or owners by written agreement.
- Transfers current responsibilities of the Department of Environmental Protection (DEP) to the Florida Energy and Climate Commission.

Renewable Energy Production Tax Credits (s. 220.193, F.S.)

- Makes revisions to the existing corporate renewable energy production tax credit provision to include electricity "sold" as well as electricity "used" by the producer when the producer would have otherwise been required to purchase the electricity.
- Clarifies that corporations that own an interest in a partnership can claim the tax credits earned by those partnerships for generating renewable energy.
- Allows taxpayers using the alternative minimum tax process to also utilize the credit.
- Provides for retroactivity of the amendments to the section (to the effective date of the law establishing the credit) so that entities that have been prohibited from taking advantage of the production tax credits, due to a lack of clarification, may now claim such credit.

Construction of Electric Transmission Lines on State Uplands (s. 253.02, F.S.)

- Authorizes the Board of Trustees of the Internal Improvement Trust Fund (board) to delegate its authority to grant easements across state lands for the construction of electric transmission lines to the DEP.
- Requires the electric utility to compensate the state in an amount equal to the market value of the interest acquired and vest in the board fee simple title to replacement lands that must be 1.5 times the size of the easement acquired when the DEP ap-

proves such easements for electric transmission lines on behalf of the board.

- Grants the board the discretion to determine the amount of replacement lands within a range of 1 to 2 times the size of the easement granted where the board approves the grant of an easement for electric transmission lines across state lands.

Green State Buildings (ss. 255.251-255.257, F.S.)

- Provides all state agency facilities constructed and renovated by the state comply with the Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high performance green building rating system as approved by the Department of Management Services (DMS).
- Provides requirements for state buildings relating to energy management and addresses life-cycle costs in public facilities.
- Requires each state agency occupying space within buildings owned or managed by the DMS to compile a list of state-owned buildings (that are over 5,000 square feet in area and for which the agency is responsible for paying utility and operating expenses as they relate to energy use) suitable for a guaranteed energy performance saving contracts.
- Requires the DMS to consult with state agencies and create a schedule to prioritize state-owned buildings suitable for energy conservation projects by July 1, 2009. The schedule is to provide a deadline for guaranteed energy performance savings contract improvements to be made.

Green Government Buildings (Section 22)

- Requires all county, municipal, school district, water management district, state university, community college, and court buildings be constructed to meet the LEED rating system, Green Globes rating system, Florida Green Building Coalition standards, or other nationally recognized building rating system.
- Provides applicability of section to buildings whose architectural plans are started after July 1, 2008.
- Authorizes St. Petersburg College to provide training and educational opportunities that will ensure that green building rating system certifying agents are available to work with entities as they construct public buildings to meet green building rating system standards.

Climate-friendly Public Business (s. 286.29, F.S.)

- Creates the Florida Climate Friendly Preferred Products List to be used by state agencies for purchasing decisions.
- Requires state entities to contract with facilities for meeting and conference space from hotels or conference facilities granted the "Green Lodging" designation.
- Requires each state agency to ensure that all maintained vehicles

meet certain minimum maintenance schedules.

- Requires that, when procuring a new vehicle, all state agencies, state universities, community colleges, and local governments procure vehicles with the greatest fuel efficiency available for a given use class when fuel-economy data are available.

- Requires all state agencies to use ethanol and biodieselblended fuels when available.

Deferred Payment Commodity Contracts (s. 287.063, F.S.)

- Deletes a subparagraph limiting agencies' authority to obligate an annualized amount of payments in excess of current operating capital outlay appropriations.

- Adds a provision that the payment term may not exceed the useful life of the equipment unless the contract provides for the replacement or extension of the useful life of the equipment during the term of the loan.

- Provides that the annualized amount of a deferred-payment contract must be supported from available recurring funds.

Consolidated Financing of Deferred-Payment Purchases (s. 287.064, F.S.)

Provides that a master equipment financing agreement may finance the cost of energy, water, or wastewater efficiency and conservation measures for a term of repayment that may exceed 5 years but not more than 20 years.

DMS/DOT Biofuel Analysis (s. 287.16, F.S.)

- Directs the Department of Management Services (DMS) to conduct, in coordination with the Department of Transportation (DOT), an analysis of fuel additive and biofuel use by the DOT through its central fueling facilities.

- Directs the DMS to encourage other state government entities to analyze transportation fuel usage and report such information to the DMS.

Innovation Incentive Program (s. 288.1089, F.S.)

- Authorizes the Office of Tourism, Trade, and Economic Development to provide incentive awards to alternative and renewable energy projects.

- Establishes criteria for these projects, authorizes Enterprise Florida, Inc., to evaluate proposals for the awards, and requires Enterprise Florida, Inc., to solicit comments and recommendations from the Florida Energy and Climate Commission for alternative and renewable energy project proposals.

High Occupancy Vehicles (HOV) Lanes (s. 316.0741, F.S.)

- Authorizes the use of HOV lanes by specified hybrid, low-emission, and energy-efficient vehicles.

- Authorizes certain vehicles having decals to use any HOV lane redesignated as high-occupancy toll lanes without payment of a toll.

Placement of Electric Transmission Lines on Department of Transportation (DOT) Controlled Rights -of-Way (s. 337.401, F.S.)

- Provides that for transmission lines that operate more than 69 kilovolts, and where there is no practical alternative available, DOT rules must provide for placement of, and access to, transmission lines within the right-of-way of any department-controlled public roads, including longitudinally within limited access facilities to the greatest extent allowed by federal law, provided that compliance with minimum clear zone and other safety standards established by rules or regulations is achieved.
- Provides that when the DOT notifies an electric utility that the property where the transmission lines have been co-located is to be expanded, the electric utility will relocate their transmission lines at the utility's expense.

Metropolitan Planning Organizations (s. 339.175, F.S.)

- Adds "greenhouse gas emissions" to the list of the negative impacts of transportation systems that the Legislature wishes to minimize while promoting the management, operation, and development of these transportation systems.
- Provides that each Metropolitan Planning Organization is encouraged to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions.

Public Service Commission (PSC) Nominating Process (ss. 350.01, 350.012, 350.03, 350.031, 350.061, and 350.0614, F.S.)

- Provides that a Public Service Commissioner seeking reappointment to the commission apprise the PSC Nominating Council (Nominating Council) no later than June 1 prior to the year in which their term expires and changes the beginning of the chair's term to January 2 of the first year of the term to coincide with the terms of the commissioners.
- Provides that "the Governor shall have the same power to remove, suspend, or appoint to fill vacancies in the office of commissioners as in other offices," as set forth in Art. IV, s. 7, of the State Constitution.
- Renames the Committee on PSC Oversight as the Committee on Public Counsel Oversight and removes the Oversight Committee's authority and responsibility to recommend applicants to the Governor for appointment to the PSC, but retains the committee's authority for oversight of the Public Counsel and authority to file complaints with the Commission on Ethics for alleged violations of the chapter by commissioners, former commissioners, former commission employees, or members of the PSC Nominating Council.
- Reverts commissioner selection process to the pre-2005 process, whereby the Nominating Council screens applicants and makes recommendations to the Governor.
- Clarifies that the Governor has 30 "consecutive" calendar days to make

an appointment after receipt of the Nominating Council's recommendations.

- Provides that, after an appointment is made to fill a vacancy occurring due to expiration of the term, a successor Governor may, within 30 days after taking office, recall the appointment under specified circumstances.

- Increases the membership of the Nominating Council from nine to twelve to consist of six members appointed by the Speaker of the House of Representatives, including three representatives; and six members appointed by the President of the Senate, including three senators.

- Requires that one legislative member from each chamber must be from the minority party.

- Provides that the President of the Senate appoint the chair in even-numbered years and the vice chair in odd-numbered years, and the Speaker of the House of Representatives appoint the chair in odd-numbered years and the vice chair in even-numbered years.

- Provides that the Nominating Council send to the Governor "not fewer than three persons" per vacancy.

- Changes the deadline for the Nominating Council to recommend applicants to the Governor to September 15 to shorten the overall length of time for the selection process.

- Terminates the current Nominating Council members' terms on June 30, 2008. Provides for reappointment of the Nominating Council, and provides for staggered terms.

- Establishes the beginning date for nonlegislator Nominating Council member terms as January 2 after initial terms under the act expire.

Jurisdiction of the Public Service Commission (PSC) over Municipal Electric Utilities (s. 366.04, F.S.)

Requires each municipality that operates an electric utility that serves two cities in the same county, is located in a non charter county, has between 30,000 and 35,000 retail electric customers as of September 30, 2007, and does not have a service territory that extends beyond its home county as of September 30, 2007, to conduct a referendum election of all its retail electric customers to determine whether a separate electric utility authority should be created to operate the business of the electric utility in the affected municipal utility. If a majority of the retail electric customers vote in favor of creating the authority, the municipal electric utility must provide each Legislative member whose district includes any part of the utility's service territory a proposed charter that transfers the utility's operations to a duly-created authority.

Energy Efficiency and Conservation (ss. 366.81 and 366.82, F.S.)

Revises the Florida Energy Efficiency and Conservation Act (FEECA), to explicitly allow efficiency and conservation investments across generation, transmission, and distribution as well as efficiencies within the user base; to encourage the development of demand-side renewable energy; and to provide criteria the Public Service Commission (PSC) is to consider when evaluating proposed conservation and efficiency measures.

The criteria the PSC is required to consider include the following:

- The costs and benefits to customers participating in the measure (Participants test).
- The costs and benefits to the general body of ratepayers as a whole, including both utility incentives and participant contributions (similar to a Total Resource Cost test or TRC test but including the costs of incentives).
- The need for incentives to promote both customer-owned and utility-owned energy efficiency and renewable energy systems.
- The costs imposed by state and federal regulations on the emissions of greenhouse gases.

The bill further provides budget authority for the PSC to expend up to $250,000 from the Florida Public Service Regulatory Trust Fund to obtain technical consulting assistance. The newly-created Florida Energy and Climate Commission must be included in the proceedings to adopt goals and must file with the PSC comments on the proposed goals.

The PSC may require modifications or additions to a utility's plans and programs when there is a public interest consistent with conservation, energy efficiency, and demand-side renewable energy system measures. The bill grants the PSC flexibility to modify or deny plans and programs that would have an undue impact on the costs passed on to ratepayers.

The bill also grants the PSC authority, for those utilities over which it has rate-setting authority, to provide financial rewards for utilities which exceed their goals and financial penalties for utilities which fail to meet their goals, including but not limited to the sharing of generation, transmission, and distribution cost savings associated with conservation, energy efficiency, and demand-side renewable energy system additions. In addition, the bill authorizes the PSC to allow an investor owned electric utility an additional return on equity of up to 50 basis points for exceeding 20 percent of their annual load growth through energy efficiency and conservation measures. The additional return on equity is to be established by the PSC through a limited proceeding.

Environmental Cost Recovery (s. 366.8255, F.S.)

Revises the definition of "environmental compliance costs" to include the costs or expenses prudently incurred for the quantification, reporting, and third party verification as required for participation in greenhouse gas emission registries for greenhouse gases as defined in s. 403.44, F.S.; and costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in Florida for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with State of Florida government agencies and State of Florida universities.

Net Metering (s. 366.91, F.S.)

- Expands the term "biomass" to include waste, byproducts or products from agricultural and orchard crops, waste or co-products from livestock and poultry operations, and waste or byproducts from food processing.
- Requires investor-owned utilities to develop a standardized interconnection agreement and net metering program for customer-owned renewable gen-

eration on or before January 1, 2009, and directs municipal electric utilities and rural electric cooperatives that sell electricity at retail to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation, as well.

- Directs each governing authority to establish requirements relating to such.

- Requires that if a utility is purchasing power generated from biogas produced by the anaerobic digestion of agricultural waste, including food waste and other agricultural byproducts, that net metering be available at a single metering point or be available as a part of conjunctive billing of multiple points for a customer at a single location on the condition that the provision of such service is not projected to result in higher costs of electric services to the general body of ratepayers or adversely affect the adequacy or reliability of electric service to all customers.

Renewable Portfolio Standard (s. 366.92, F.S.)

Directs the Public service Commission (PSC) to adopt a rule for a renewable portfolio standard (RPS) requiring each provider, which includes an investor-owned utility, but not a municipal electric utility or a rural electric cooperative, to supply renewable energy to its customers, either directly, by procuring, or indirectly providing through the purchase of Renewable Energy Credits (RECs). Requires the rule to provide for the following:

- Methods of managing the cost of compliance with the RPS whether through direct supply, procurement of renewable power, or through the purchase of RECs.

- Appropriate compliance measures and the conditions under which noncompliance can be excused due to a determination by the commission that the supply of renewable energy or RECs was not adequate to satisfy the demand for such energy, or that the cost of securing renewable energy or RECs was cost prohibitive.

- An appropriate period of time for which renewable energy credits may be used for purposes of compliance with the RPS.

- The monitoring of compliance with and enforcement of the requirements of this section.

- A means of ensuring that energy credited toward compliance with the provisions of the RPS not be credited toward any other purpose.

- Development of procedures to track and account for RECs, including ownership of RECs that are derived from a customer-owned renewable energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by that supplier.

- Conditions and options for the repeal or alteration of the rule in the event that new provisions of Federal law supplant or conflict with the rule.

- Provides that the rule may give added weight to energy provided by wind and solar photovoltaic over other forms of renewable energy.

- Requires the PSC to present the draft rule for legislative consideration by February 1, 2009, and prohibits the rule from being implemented until ratified by the Legislature.
- Provides rulemaking authority to the PSC for providing annual cost recovery and incentive-based adjustments to authorized rates of return on common equity to providers to incentivize renewable energy.
- Authorizes the PSC to approve projects and power sales agreements with renewable power producers, and the sale of renewable energy credits which are needed to comply with the RPS.
- Provides that if there is a conflict between this provision and s. 366.91(3) and (4), F.S., the RPS section will supersede s. 366.91(3) and (4), F.S., in terms of paying more than avoided costs.
- Provides that nothing in the section shall impede or impair terms and conditions in existing contracts.
- Directs the PSC to provide for full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by a provider for renewable energy projects that are zero greenhouse gas emitting at the point of generation, up to a total of 110 MW statewide.
- Provides conditions and a July 1, 2009, deadline for filing for such cost recovery.
- Directs municipal electric utilities and rural electric cooperatives to develop standards for the promotion, encouragement, and expansion of the use of renewable energy resources and energy conservation and efficiency measures.

Alternative Cost Recovery Mechanisms for Nuclear Power Plants (s. 366.93, F.S.)

Specifies that the advanced cost recovery requirement consists of the costs incurred in the siting, design, licensing, construction, or operation of new, expanded, or relocated electric transmission lines and facilities that are necessary to serve a nuclear power plant. Furthermore, the bill allows utilities to recover preconstruction and construction costs associated with such electrical transmission lines and facilities incurred after the issuance of a final order granting a determination of need for a nuclear power plant, rather than at the time that the nuclear power plant commences operation. In the event that the utility elects not to complete or is precluded from completing construction of any new, expanded, or relocated electrical transmission lines or facilities of a nuclear power plant, the utility may recover all prudent costs incurred after the issuance of the final order granting the determination of need for the nuclear power plant. This is intended to lower capital costs by reducing financial risk and allowing utilities to begin recovering costs prior to operation, and therefore shortening the required financing period.

Florida Energy and Climate Commission (ss. 377.601 - 377.806 and 377.901, F.S.)

Provides for a transfer of the Florida Energy Commission from the Office of Legislative Services (and authorizes 4 FTEs) and the State Energy Program from the Department of Environmental Protection (DEP) to the Florida Energy and Climate Commission (commission) in the Executive Office of the Gov-

ernor and repeals the Florida Energy Commission. The bill provides for the following:

- The FECC is to be comprised of nine (9) members, seven (7) of which are appointed by the Governor, for 3-year terms. The other two positions are to be appointed, one each, by the Commissioner of Agriculture (Commissioner), and the Chief Financial Officer (CFO). Provides for staggered terms.
- The Governor is to select from three people nominated by the Florida Public Service Commission Nominating Council (Nominating Council) for each seat on the commission. In addition, the Commissioner and the CFO are each to select from three people nominated by the Nominating Council.
- The Nominating Council is to submit the nominations by September 1 of those years in which the terms are to begin the following October, or within 60 days after a vacancy occurs for any reason other than the expiration of the term.
- The Governor, the Commissioner, and the CFO may proffer names to be considered by the Nominating Council.
- The Governor is to select a chair from one of the nine people appointed to the FECC. If the Governor, Commissioner, or the CFO does not make an appointment within 30 days of receiving the Nominating Council's recommendations or if the Senate fails to.
- Clarifies that the definition of "energy resources" includes "energy converted from solar radiation, wind, hydraulic potential, tidal movements, geothermal sources, biomass, and other energy sources the commission determines to be important to the production or supply of energy."
- Expands the requirement of the Department of Management Services to furnish data on agencies' energy consumption to include their emissions of greenhouse gases.
- Renames the "Florida Renewable Energy Technologies and Energy Efficiency Act," as the "Florida Energy and Climate Protection Act." Renames the "Renewable Energy Technologies Grants Program," as the "Renewable Energy and Energy-Efficient Technologies Grants Program," and adds "innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings" to the list of projects for which the program will provide renewable energy matching grants.

<u>Florida Green Government Grants Act (s. 377.808, F.S.)</u>

- Creates the "Florida Green Government Grants Act," to provide that the newly-created Florida Energy and Climate Commission (FECC) award grants to assist local governments, including municipalities, counties, and school districts, to develop programs that achieve green standards.
- Authorizes the FECC to provide necessary administrative expenses to local governments from the grants. Requires "green standards" to be determined by the FECC to provide cost-efficient solutions that reduce green-

house gas emissions, improve the quality of life, and strengthen Florida's economy.

Florida Climate Protection Act (Cap and Trade Regulatory Program) (s. 403.44, F.S)

- Authorizes Department of Environmental Protection (DEP) to adopt rules for a cap-and-trade regulatory program to reduce greenhouse gas emissions by electric utilities.
- Provides for methodologies, reporting periods, and reporting systems that must be used when electric utilities report to the Climate Registry. Requires the DEP to consult with the Florida Energy and Climate Commission and the Public Service Commission (PSC) when developing the rules.
- Requires the Florida Energy and Climate Commission (FECC) to review the draft rule and report to the Legislature on the design, cost, and economic impact factors.
- Provides that the rule may not become effective until ratified by the Legislature and not until after January 1, 2010.

Electrical Power Plant and Transmission Line Siting Act (ss. 403.502 - 403.5365, F.S.)

- Revises various provisions of the Power Plant Siting and Transmission Line Siting Acts to create greater efficiency in the siting process and facilitate the need for expanded power generation.
- Creates an alternate corridor proposal process within the Power Plant Siting Act that mirrors the same process currently in the Transmission Line Siting Act, and allows electric utilities constructing a nuclear power plant to obtain certain preconstruction site support permits before obtaining the certification.

Recycling (s. 403.7032, F.S.)

- Requires a long term goal by state and local governments, private companies and organizations, and the general public to reduce the amount of recyclable solid waste disposed of in waste management facilities, landfills, or incinerator facilities by a statewide average of at least 75 percent.
- Directs the Department of Environmental Protection (DEP) to develop a recycling program designed to achieve the 75 percent reduction and submit the program to the Legislature by January 1, 2010.

Analysis of Disposable Plastic Bags by DEP (s. 403.7033, F.S.)

- Authorizes the DEP to undertake an analysis of the need for regulation of auxiliary containers, wrappings or disposable plastic bags.
- Requires Department of Environmental Protection (DEP) to report their findings to the Legislature no later than February 1, 2010, and prohibits local or state government entities from enacting any regulation of such auxiliary containers, wrappings, or disposable plastic bags until the Legislature has acted on the DEP's recommendations.

Methane Capture (s. 403.7055, F.S)

- Encourages counties to form multi-county regional solutions to capture methane gas from landfills and wastewater treatment facilities.
- Requires the Department of Environmental Protection (DEP) to provide planning guidelines and technical assistance to each county to develop these multicounty efforts.

Composting (s. 403.706, F.S.)

- Requires each county by July 1, 2010, to develop and implement a plan to achieve a goal of up to 10 percent and no less than 5 percent of organic material to be composted within the boundaries of a county or municipality.
- Authorizes the Department of Environmental Protection (DEP) to provide exemptions for the plan if the county demonstrates that the achievement of the goal is impractical given the county's unique demographic, urban density, or inability to separate normally compostable material from the solid waste stream.
- Encourages each county to consider plans for mulching organic materials otherwise disposed of in a landfill.

Guaranteed Energy Performance Savings Contracts (s. 489.145, F.S.)

Authorizes all state agencies to use the guaranteed energy, water, and wastewater performance savings contracting program to utilize savings from energy, water, and wastewater conservation and efficiency measures to finance such measures.

Florida Renewable Fuel Standard Act (ss. 526.06, ss. 526.201 - 526.207 and 206.43(2)(b), F.S.)

- Establishes the Florida Renewable Fuel Standard Act (act). Provides that beginning on December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.
- Defines blended gasoline as a "mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume." The ethanol portion may be derived from any agricultural source.

Exempts the following from the standard:

- Fuel used in aircraft.
- Fuel sold for use in boats and similar watercraft.
- Fuel sold to a blender.
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines.
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency.
- Fuel transferred between terminals.
- Fuel exported from the state in accordance with s. 206.052, F.S.
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.

  - Fuel for a railroad locomotive.
  - Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

- Requires that all records of sale of unblended gasoline include the following statement: "Unblended gasoline may be sold only for the purposes authorized under s. 526.203(3), F.S."
- Requires each terminal supplier, importer, blender, and wholesaler to provide to the Department of Revenue (DOR) the number of gallons of blended and unblended gasoline sold and directs the DOR to provide a monthly summary report of these totals to the Department of Agriculture and Consumer Services (DACS).
- Provides for a waiver of the standard in situations where a terminal supplier, importer, blender, or wholesaler is unable to obtain fuel ethanol or blended gasoline at the same or lower price as unblended gasoline.
- Provides that if a supplier, importer, blender, or wholesaler has made a good faith effort to comply with the requirements but has been unable to do so for reasons beyond the applicant's control, such as delays in receiving governmental permits, he or she can apply to the DACS for an extension of time to comply with the requirements.
- Provides for suspensions of the standard requirement in cases of emergency, which are addressed in s. 252.36(2), F.S.
- Provides for penalties for violations of the act.
- Directs the Florida Energy and Climate Commission to conduct a study to evaluate and recommend the lifecycle greenhouse gas emissions associated with all renewable fuels including, but not limited to, biodiesel, renewable diesel, biobutanol, and ethanol derived from any source and evaluate and recommend a requirement that all renewable fuels introduced into commerce in the state, as a result of the Renewable Fuel Standard, reduce the lifecycle greenhouse gas emissions by an average percentage.
- Provides that the study may also evaluate and recommend any benefits associated with the creation, banking, transfer, and sale of credits.
- Directs that the study be submitted to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 2010.
- Provides for fuel volatility standards for gasoline and gasoline blended with ethanol and provides for a transition period for retail service stations transitioning from unblended gasoline to the new standard.
- <u>Florida Building Code (s. 553.73, F.S.)</u>
- Directs the Florida Building Commission to select the most recent International Energy Conservation Code as a foundation code.

- Provides for modification of the code by the commission to achieve the efficiency levels of the Florida Energy Efficiency Code for Building Construction.

Thermal Efficiency Standards (s. 553.9061, F.S.)

Provides for targeted increases in the energy efficiency standards in the Florida Building Code totaling 50 percent by the year 2019. Prior to implementing the increases, requires the Florida Building Commission to adopt by rule and implement a cost-effectiveness test to ensure increases in efficiency result in a positive net financial impact.

Appliances and Pool Pumps (s. 553.909, F.S.)

- Sets minimum requirements for commercial or residential swimming pool pumps, swimming pool water heaters, and water heaters used to heat potable water.
- Requires commercial or residential swimming pool pumps or water heaters sold after July 1, 2011, comply with requirements for appliances set by the Florida Energy Efficiency Code for Building Construction.
- Sets requirements for residential pool pump motors and portable electric spas.

Agency for Enterprise Information Technology (Section 111)

- Requires the Agency for Enterprise Information Technology to define specified objective standards and conduct evaluations relating to energy efficiency.
- Requires the agency to submit recommendations to the Legislature for reducing energy consumption and improving the energy efficiency of state data centers by December 31, 2010, and bi-annually thereafter.
- Requires that when the total cost of ownership of an energy efficient product is less than or equal to the existing data center facility or infrastructure, technical specifications for energy efficient products be incorporated in the plans and processes for replacing, upgrading, or expanding data center facilities or infrastructure.

Florida Energy Systems Consortium (s. 1004.648, F.S.)

- Establishes the Florida Energy Systems Consortium (consortium), consisting of all eleven state universities. The consortium is designed to promote collaboration between experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a "comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state."
- Provides for the consortium to be administered at the University of Florida (UF). Provides that the director be selected by the President of UF and that the director's office be located at the UF.
- Requires the director to report to the Florida Energy and Climate Commission. Creates an Oversight Board, consisting of the Vice President for Research, or other appropriate representative, at each of the universities, which will have ultimate responsibility for both the technical

performance and financial management of the consortium.

- Specifies that the consortium is responsible for soliciting and leveraging state, federal, and private funds for the purpose of conducting education and research and development in the area of sustainable energy.

- Creates a Steering Committee, consisting of representatives of the University of Florida, Florida State University, the University of South Florida, the University of Central Florida, the Florida Atlantic University, the Florida International University, and the Florida Energy and Climate Commission, to establish and assure the success of the consortium's strategic plan.

Woody Biomass Economic Study (Section 113)

- Directs the Department of Agriculture and Consumer Services, in conjunction with the Department of Environmental Protection, to conduct an economic impact study on the effects of granting financial incentives to energy producers who use woody biomass as fuel.

- Requires study to include an analysis of effects on wood supply and prices, impacts on current markets, and on forest sustainability.

- Requires results of the study to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than March 1, 2010.

Decoupling (Section 114)

Directs the Public Service Commission (PSC) to analyze utility revenue decoupling and provide a report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2009.

Motor Vehicle Emissions Standards (Section 115)

Prohibits DEP from adopting and implementing the California motor vehicle emissions standards until ratified by the Legislature and prohibits DEP from modifying its rules to implement such standards until ratified by the Legislature.

Recognition Program for Green Schools (Section 116)

Requires the Department of Education and the Department of Environmental Protection (DEP) to develop a program to provide awards or recognition for outstanding efforts in conservation, energy and water use reduction, environmental enhancement, and conservation-related educational curriculum development; authorizes students, classes, teachers, schools, or district school boards to be eligible for such awards or recognition; encourages the departments to seek private sector funding for the program.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008, except as otherwise provided.

CARLTON FIELDS

ATTORNEYS AT LAW

2008
Florida Legislature
Post-Session Report

HEALTH CARE & HEALTH INSURANCE

HEALTH CARE & HEALTH INSURANCE

- **CS/CS/SB 370**

Personal Care Attendant Program

This legislation amends the existing Personal Care Attendant (PCA) program and expands participant eligibility to provide personal care attendants to persons who have severe and chronic disabilities of all kinds. The bill names the program the "James Patrick Memorial Work Incentive Personal Attendant Services Program."

The bill merges the Cross Disability Pilot (CDP) program that provides personal care attendants to the significantly disabled in Orange, Osceola, Lake, and Seminole counties with the PCA program and specifies that all persons who are enrolled in the existing PCA and the CDP pilot projects on June 30, 2008, are automatically eligible for and enrolled in the revised program.

The bill requires the Florida Endowment Foundation for Vocational Rehabilitation (FEFVR, also known as the Able Trust) to enter into an agreement with the Florida Association of Centers for Independent Living (FACIL, or the association) by no later than October 1, 2008, to administer the program. To ensure continuity of services, the parties will execute a memorandum of understanding to cover the period between July 1, 2008, and the execution of the final order. The bill earmarks 12 percent of the funds paid to program participants from the funds deposited with FEFVR pursuant to the Tax Collection Enforcement Diversion Program and the Motorcycle Specialty License Tag to pay for this administrative expense.

The bill deletes obsolete language regarding eligibility criteria, training and program development. The bill establishes a program oversight group and requires the FACIL to work with the oversight group to provide training to program participants regarding hiring and managing personal care attendants, and to adopt and revise policies and procedures governing the program.

Little William Ausley Hollimon, right, puts the gavel to good use after it was handed to him by Speaker Marco Rubio, R-Miami, to the delight of his mom Rep. Loranne Ausley, D-Tallahassee. (House photo by Mark Foley.)

The bill continues to use existing funding sources for the PCA and CDP programs, which are the Tax Collection Enforcement Diversion Program and the Motorcycle Specialty License Plate Program. There is no additional fiscal impact to the General Revenue Fund in Fiscal Year 2008 - 09.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 461**

Health Flex Plans

The bill expands the population eligible to purchase health flex plans by raising the income limit from 200 to 300 percent of the federal poverty level, which is $63,600 for a family of four, and removes obsolete eligibility provisions.

The bill extends the program, which expires July 1, 2008, through July 1, 2013. Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 535**

Health Insurance

The bill revises the definition of "bone marrow transplant" to include, for insurance coverage purposes, nonhablative therapy and transplants intended to prolong life.

Health insurers and health maintenance organizations (HMOs) are currently not required to provide insurance identification cards to policyholders/subscribers. This bill requires such entities to provide identification cards with specified information. The identification card must present information in a readily identifiable manner; the information may also be embedded on the card and be available through magnetic stripe/smart card or provided through other electronic technology.

At a minimum, the insurance identification card must contain the following information:

- The name of the organization issuing or administering the policy/contract and the name of the contract holder/certificate holder/subscriber;
- The type of plan if filed in the state, an indication that the plan is self-funded, or the name of the network (individual and group health plans only);
- The member identification number, contract number, and policy or group number, if applicable;
- A contact phone number or electronic address for authorizations and admission certifications;
- A phone number or electronic address for obtaining benefits verification and information to determine patient financial responsibility; and
- The national plan identifier.

An HMO must also include a statement that it is indeed an HMO. The bill specifies that HMOs are only those authorized under the applicable Florida law.

Insurers must issue cards with the specified information when cards are issued or policies are renewed on or after January 1, 2009, except that state group insurance program providers are allowed to wait until new cards are issued, regardless of renewals, to make the changes.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2009.

- **CS/CS/SB 564**

Automated External Defibrillators

An Automated External Defibrillator (AED) is a small, lightweight device used to assess a person's heart rhythm and, if necessary, administer an electric shock to restore a normal heart rhythm in a victim of cardiac arrest.

The bill revises the requirements for the use of an AED in cases of cardiac arrest. Under the bill, any person who uses an AED is encour-

aged, rather than required, to obtain appropriate training. Also, the bill encourages persons or entities that possess an AED to notify, rather than register with, the local emergency medical services director of the location of the device.

The bill also revises requirements under which a person who acquires an AED may obtain immunity from civil liability for harm resulting from the use of an AED. The bill provides that the immunity applies to a person who acquires the AED and makes the device available for use. Furthermore, the bill eliminates a requirement that those who acquire and make available an AED must notify the local emergency medical services medical director of the most recent placement of the device. Finally, an employer or principal who acquired an AED may still enjoy immunity if he or she did not provide appropriate training to his or her employee or agent provided that the device is equipped with audible, visual, or written instructions on its use.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 607**

Orthotics, Prosthetics, and Pedorthics

The definitions for orthotics, pedorthics, and prosthetics are modified to delete the requirement that the orthotist, pedorthist, or prosthetist consult with a licensed occupational therapist or physical therapist regarding treatment, if the patient is under the therapist's care.

The bill amends the composition and member terms of the Board of Orthotists and Prosthetists (board) and provides the board the authority to define standards of practice for orthotic fitters, orthotic fitter assistants, pedorthists, and residents.

The bill requires an individual seeking to attain the required orthotics and prosthetics experience to be approved by the board and registered as a resident by the department. To be considered by the board for registration, the applicant must have a Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics or, at a minimum, a bachelor's degree and a certificate in orthotics or prosthetics. The board is allowed to set a registration fee not to exceed $500.

The bill requires mandatory courses for licensure as an orthotist, prosthestist, orthotic fitter, orthotic fitter assistant, and pedorthist. It also expands the educational requirements for orthotists and prosthetists to include a higher-level postgraduate degree in orthotics and prosthetics, in addition to a Bachelor's degree in orthotics and prosthetics.

The bill repeals the board's authority to issue a temporary license. Effective January 1, 2009, the bill specifies duties that a licensed orthotist, prosthetist, or pedorthist may delegate to support personnel. The person acting as support personnel must wear an identification tag.

Effective January 1, 2009, the bill requires the posting of a license or registration and information about the Department of Health's Consumer Services Unit at each facility where patients are seen. The bill also requires each licensee or resident to wear an identification tag during patient contact.

The bill adds making deceptive, untrue, or fraudulent representations in the practice of orthotics, prosthetics, or pedorthics and practicing orthotics, prosthetics, or pedorthics without a licensed physician's written prescription to the list of acts that constitute grounds for discipline.

The bill expands title protection for certain licensed and/or registered orthotist, prosthetists, prosthetist-orthotists, orthotic fitters, orthotic fitter assistants, pedorthists, prosthetic residents, and orthotic residents.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008, except as otherwise expressly provided.

- **CS/CS/SB 686**

Nursing Facilities

This bill permits nursing homes operating under a standard license to develop a plan to provide training for certified nursing assistants (CNAs), and provides for agency approval of such training programs. The bill also redefines what constitutes an "adverse incident" within a nursing home, and removes the state requirement that facilities notify the Agency for Health Care Administration within one day of a risk manager's receipt of a report detailing an adverse incident. The bill provides that, if additional surveys of a licensed nursing facility have been conducted due to cited deficiencies and those deficiencies are overturned as the result of administrative action, the most recent survey must be considered a licensure survey for purposes of scheduling future visits. Finally, for purposes of compliance with minimum staffing requirements, the bill authorizes a nursing home to allocate a licensed nurse's time between CNA duties and licensed nursing duties without first seeking agency approval for the allocation.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 803**

Licensure of Psychologists

The bill requires the Board of Psychology (board) to close the application file of an applicant for licensure who fails to pass the national psychology exam and the state laws and rules exam, or who fails to complete the required post-doctoral supervision, within 24 months.

The bill requires the board to implement a procedure for an applicant to apply for an extension beyond 24 months.

The bill also allows the board to create a rule that will allow an individual who completes the required post-doctoral supervision to continue to practice under supervision of a licensed psychologist as long as the individual has a current application on file and no final order of denial has been issued.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2009.

- **HB 989**

Physician Assistants

The bill deletes antipsychotics and parenteral preparations from the formulary of drugs that a physician assistant is prohibited from prescribing. There are several drugs included under each of class.

For example, a PA may be allowed to prescribe injectables such as:

- Forteo, which may be used to treat symptoms of severe osteoporosis.
- Emitrex, which may be used to treat migraine headaches.
- Lovenox, which may be used to prevent blood clots.

Also, a PA may be allowed to prescribe antipsychotics such as:

- Saraquel, which may be used to treat Alzheimer patients.
- Abilify, which may be used to treat bi-polar disorder.
- Other non-controlled substances such as Haldol, Resperdol, Thorazine, and Lithium.

The bill grants authority to the PA Council to change the PA formulary; it does not mandate any change to the formulary.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 1012**

Health Insurance Claims Payments

The bill authorizes the Office of Insurance Regulation to waive the requirement that a multiple-employer welfare arrangement maintain its principal place of business in this state if the arrangement meets certain specified conditions and has a minimum specified fund balance at the time of licensure.

The bill requires insurers which contract with preferred providers to make payments directly to the preferred provider for services rendered to insureds by those preferred providers, and adds ambulance providers providing emergency transport to the group of (non-preferred) providers for which an insurance contract may not prohibit direct payment.

The bill redefines the term "small employer" for purposes of the Employee Health Care Access Act.

The bill creates a new section of law, s. 627.64731, F.S., applicable to group health insurance, blanket health insurance, and franchise health insurance contracts. The bill defines the terms applicable to this section and provides that a contracting entity may not sell, lease, rent, or otherwise grant access to the health care services of a participating provider under a health care contract unless expressly authorized by the contract. The bill provides for: (1) specific information that must be included in the contract; (2) notice requirements to participating providers; and (3) circumstances under which the contracting entity can provide access to a participating provider's services by a third party. The bill specifies requirements that contracting entities must comply with to identify third parties that have been granted access to the health care services of the participating provider upon request, and to ensure that explanation of benefits or remittance advice identifies the contractual source of any applicable discount. The bill also provides for circumstances under which a third party's access to the provider's discounted rate shall terminate, and requires contracting entities to ensure third parties to comply with the contract terms it has with the provider. The bill creates exceptions to these provisions for specified entities, and specifies information that may be used to determine a contracting entity's compliance. The bill provides that s. 627.64731 does not apply to a contract between a contracting entity and a discount medical plan organization licensed or exempt under part II of chapter 636.

The bill requires health maintenance organization ("HMO") claims forms to allow for assignment of benefits from the insured to any contracted hospital, ambulance provider, physician or dentist if any benefits are due to the subscriber for covered services under the terms of the agreement between the subscriber and HMO. With a few exceptions already provided for in law, the bill limits the HMOs payment to the provider to the

amount that the insurer would otherwise have paid without the assignment.

The bill provides an exception to the 30-month claim period for insurer and HMO overpayments, applicable to services by physicians, chiropractors, podiatrists and dentists. All health insurer or HMO contract claims for such overpayments must be submitted within 12 months after payment of the claim, with certain exceptions. The bill requires such providers to submit underpayment claims within 12 months after payment of the claim.

Subject to the Governor's veto powers, the effective date of this bill is November 1, 2008, and applies to contracts entered into, issued, or renewed on or after that date, and the amendments made by the act to ss. 627.6131 and 641.3155, F.S., apply to claims payments made on or after November 1, 2008.

- **SB 1092**

Alzheimer's Disease/Medicaid Waiver Program

This bill extends the repeal date for the Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer's Disease. The bill directs the Office of Program Policy Analysis and Government Accountability to conduct an evaluation of comparable Medicaid waivers to determine their comparative cost effectiveness and ability to delay or prevent institutionalization of Medicaid recipients, with findings and recommendations due to the Legislature prior to the 2010 Regular Session.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

- **CS/CS/SB 1360**

Pharmacy Technicians

The bill revises the requirements for pharmacy licensure by endorsement by deleting the requirement that an applicant for licensure as a pharmacist must have obtained a passing score on the licensure examination not more than 12 years prior to application.

The bill requires the Board of Pharmacy (board) to adopt rules for the registration application process and registration administration. Effective January 1, 2010, pharmacy technicians must be registered. The board must register pharmacy technician applicants who are at least 17 years old, complete an approved application form, submit the required fees, and otherwise meet registration requirements. A person whose license to practice pharmacy has been suspended, denied, or restricted, is prohibited from registering as a pharmacy technician.

Effective January 1, 2011, an applicant to become a registered pharmacy technician must also have completed an approved pharmacy technician training program. The bill specifies that a registered pharmacy technician registered prior to January 1, 2011, who has worked as a pharmacy technician for a minimum of 1,500 hours under a licensed pharmacist's supervision or who has received certification as a pharmacy technician from the national Commission for Certifying Agencies is exempt from the requirement to complete an initial training program for the purposes of registration.

Pharmacy technician students obtaining practical training and persons licensed as pharmacy interns are exempted from the registration requirements. The bill specifies registration renewal requirements for pharmacy technicians as well as grounds for discipline

against an applicant for registration or a registered pharmacy technician.

Effective January 1, 2010, it will be unlawful for a person who is not registered as a pharmacy technician, or who is not otherwise exempt, to perform the functions of a registered pharmacy technician or hold himself or herself out as a pharmacy technician. A violation of this provision is a misdemeanor of the first degree.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law except as otherwise provided.

- **CS/HB 1363**

Controlled Substances

Salvia divinorum is a perennial herb in the mint family that is native to Oaxaca, Mexico. The active component is the hallucinogen Salvinorin A. In recent years, Salvia divinorum has begun to be used as a recreational drug in this country. No state or federal statute regulates the sale, purchase or possession of Salvia divinorum or Salvinorin A in Florida.

Chapter 893 classifies controlled substances into five different categories, known as schedules, in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States and its use under medical supervision does not meet accepted safety standards.

The bill adds Salvia divinorum and Salvinorin A to schedule I. This will make possession of these substances a third degree felony in conformity with other Schedule I hallucinogens. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver Salvia divinorum or Salvinorin A will be a third degree felony. The offense of purchase of Salvia divinorum or Salvinorin A will also be a third degree felony.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 1429**

Mental Health and Substance Abuse Services

CS/HB 1429 provides authority and direction to the Department of Children and Families to implement Behavioral Health Managing Entities. Managing entity is a Florida corporation that is exempt from taxation under s. 501(c)(3), of the Internal Revenue Service and is under contract to the department to manage the day-to-day operational delivery of behavioral health services through the establishment of an organized system of care.

The bill provides the Department of Children and Families the option of contracting with a managing entity for behavioral health services provided under the authority of chapters 394 and 397, Florida Statutes. The bill allows currently operating managing entities that provide mental health, substance abuse, Medicaid and child welfare services to continue operating with this structure.

The operating cost of the managing entity contracts is to be funded by the department and through savings and efficiencies achieved by implementing the managing entities. Managing entities are to submit plans to the department which describe anticipated efficiencies. The bill provides Legislative intent that reductions in state cost for contract management and administrative duties be proportionately reduced and the savings used to fund the administrative functions of the managing entity. The circuit and region offices of the department, upon con-

tracting with a managing entity, are to redirect their efforts to monitoring the managing entity contract, negotiating quality improvement goals, reviewing plans, licensing functions, health planning activities, conducting onsite readiness reviews of managing entities and communicating with and advising department headquarters.

The bill provides requirements and essential elements for managing entities including but not limited to core functions, governance structures, planning and budgeting functions and information access requirements. In addition, the bill provides department's responsibilities, such as directions for contracting and the role of the department after entering into a managing entity contract.

The department must provide reports to the Governor and Legislature twice each year until full statewide transition to managing entities is accomplished.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

- **CS/CS/SB 1488**

Health Care Consumer's Right to Information Act

This bill, which may be cited as the "Health Care Consumer's Right to Information Act," has a stated purpose of providing health care consumers with reliable and understandable information about facility charges in order to assist consumers in making informed decisions about health care. The bill specifies information that must be provided to uninsured persons in the form of a reasonable estimate of charges and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. The bill specifies time limits for providing certain information regarding billing estimates, provides that the estimate may be based on average charges, and requires facilities to post a notice in their reception area regarding their charity care policies. The bill provides for a $500 fine for each instance of a facility's failure to provide the requested information.

Additionally, the bill modifies the current reporting and data collection requirements pertaining to the Agency for Health Care Administration ("AHCA") and health care facilities by including such measures as the average of undiscounted charges on frequently preformed procedures and preventive diagnostic procedures, and the range of procedure charges from highest to lowest, in the information that AHCA shall disclose. Furthermore, the bill requires AHCA to publish electronically the charges for no fewer than 150 of the most commonly performed adult and pediatric procedures, including outpatient, inpatient, diagnostic, and preventative procedures.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2009.

- **CS/CS/SB 1648**

HIV Testing/Informed Consent

The bill allows an HIV test to be ordered on the available blood of a source patient in the event of a significant exposure if consent cannot be obtained from the patient within the time period necessary to perform the test and begin prophylactic treatment of the exposed medical or nonmedical personnel. This includes instances when the source patient is incapable of providing consent to testing.

The bill also directs appropriate medical personnel under the supervision of a licensed physician to document that a significant exposure has occurred and the results of an HIV test are medically necessary to de-

termine the course of treatment for the medical or nonmedical personnel. The medical personnel will base these decisions on written protocols based on the National Centers for Disease Control and Prevention's guidelines on HIV post-exposure prophylaxis. This is currently done by a licensed physician in his or her medical judgment.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 2326**

Certificates of Need/General Hospitals

The bill amends the process "general hospitals" use to apply for and obtain a certificate of need ("CON") from the Agency for Health Care Administration ("AHCA"). In doing so, the bill limits the criteria that AHCA uses to review CON applications for general hospitals as opposed to all other health care facilities that are subject to the CON process.

The bill requires an application for a CON for a general hospital to identify the project's location as well as the primary and secondary service areas by zip code. The bill also provides for revocation of the CON if the project's location or service area described in a general hospital's CON application materially changes. Further, the bill provides that parties participating in an administrative hearing regarding the issuance of a CON may participate in a subsequent proceeding regarding the revocation of the CON based upon a material change in location or primary service area, specifies time periods within which a general hospital must furnish satisfactory proof of the hospital's financial ability to operate, and authorizes AHCA to establish documentation requirements.

The bill provides for eligibility requirements and procedures for existing hospitals to challenge a decision by AHCA regarding a general hospital CON application, and defines a process by which the applicant may respond to another hospital's challenge of its CON application.

The bill also amends the administrative hearing and appeals processes for actions regarding CON applications by:

- Requiring administrative hearings regarding general hospital applications to commence within 6 months after the administrative law judge has been assigned;
- Precluding the granting of continuances in general hospital administrative cases absent a finding of extraordinary circumstance; (3) limiting the adversarial process to hospitals that are competing applicants or who have submitted a detailed written statement of opposition to an application, and to issues raised in those opposition statements absent the showing of good cause to expand the scope; and
- Providing that a party who appeals an administrative decision and loses must pay the opposing party's attorney's fees in an amount up to $1 million and post a bond in the amount of $1 million in order to maintain the appeal. The new attorney's fees requirements do not apply to AHCA.

Subject to the Governor's veto powers, the bill is effective upon becoming law.

▪ CS/CS/SB 2534
Health Insurance/Uninsured

The bill makes several provisions to improve access to health care and health coverage.

Cover Florida Health Care Access Program

The Cover Florida Health Access Program (Cover Florida) is designed to provide an affordable health care option for uninsured individuals in Florida between the ages of 19-64 who meet certain other criteria. A Cover Florida plan must provide non-catastrophic coverage and may provide catastrophic coverage, supplemental insurance, prepaid health clinic, and discount medical plan product options to enrollees. The Agency for Health Care Administration (Agency) and the Office of Insurance Regulation (Office) are responsible for jointly establishing and administering Cover Florida, and must issue an invitation to negotiate by July 1, 2008, for the design of a Cover Florida plan proposal, and may issue an invitation to negotiate for Cover Florida Plus plan proposals offering supplemental insurance, prepaid clinic services, or discount medical plans. Cover Florida Plans are not subject to licensure under the Florida Health Insurance Code or ch. 641. The agency and the office are required to approve at least one Cover Florida plan entity having an existing statewide provider network and may approve at least one regional network plan in each Medicaid area. Cover Florida plans are considered health insurance for the purposes of the state employee retiree health insurance subsidy.

Florida Health Choices Program

The Florida Health Choices Program is created as a single, centralized market for the sale of products that enable individuals to pay for health care. These products include but are not limited to insurance plans, health maintenance organization plans, limited benefit plans, prepaid services, service contracts, and flexible spending accounts.

Participation is voluntary. Eligible employers include those with 50 or fewer employees as well as certain public employers. Participating employers will receive assistance to qualify under federal tax regulations in order to offer a cafeteria of health benefits to their workers. Eligible vendors include licensed insurers and licensed HMOs which may sell risk-bearing products and other arrangements for services. Prepaid clinics, health care providers, provider organizations, and other corporate entities are eligible to sell service contracts and other arrangements for a specified amount and type of health services or treatments. Eligible individuals are workers of participating employers. Health insurance agents may also participate in order to assist individuals to choose the coverage or services they want from the program. Products sold through the program are not subject to the mandated coverages established in state law or certain other regulations normally applied to health insurance. However, all insurers and HMOs offering risk-bearing products must be licensed to do so in the State of Florida. The program will use post-enrollment risk adjustment or other risk pooling methodologies to avoid selection bias.

Information about the products and services in the program will be made available to consumers in a variety of ways including through a secure website. This information will include comments from the Office of Insurance Regulation regarding any risk-bearing products sold through the program.

The bill establishes a corporation, Florida Health Choices, Inc., to be responsible for implementation of the program. The governing board of the corporation will be ap-

pointed by the Governor, the President of the Senate, and the Speaker of the House. The corporation will be subject to the Sunshine Law, and the Florida Code of Ethics.

Dependent Coverage

The bill requires group health insurers to offer policyholders the option to continue coverage of their children on their family policy until age 30, if the child is:

- Unmarried with no dependents;
- A resident of Florida or a full-time or part-time student; and
- Does not have insurance coverage under any private or public plan.

Health Flex Plans

The Health Flex Plan Program was established to offer basic affordable health care services to low-income, uninsured residents. The bill expands eligibility for Health Flex plans by:

- Raising the family income limit from 200 to 300 percent of the federal poverty level (FPL);
- Allowing persons who lose eligibility for Medicaid or KidCare due to income limits to apply without a lapse in coverage;
- Allowing individuals covered by a HMO that has a Health Flex plan to enroll in the HMO's Health Flex plan without a lapse in coverage; and
- Allowing individuals in an employer group to access Health Flex plans if they were not covered by private insurance for the last 6 months, and at least 75 percent of the employees have an income at or below 300 percent FPL (or only 50 percent of the employees is the Health Flex plan is offered by an insurer or HMO).

The bill also extends the expiration date of the program from July 1, 2008 to July 1, 2013.

KidCare

The bill expands eligibility by eliminating the 10 percent cap on full-pay enrollees in MediKids (ages 1-5) and Healthy Kids (ages 6-19) with a family income greater than 200 percent of the federal poverty level. Healthy Kids Corporation is required to submit a report to the Legislature and Governor, by February 1, 2009, on the premium impact to the subsidized portion of KidCare from the increase of full-pay enrollees, and make recommendations on how to eliminate or mitigate any premium impact.

Insurance Code Exemption for Certain Religious Organizations

The bill creates an exemption from the Florida Insurance Code for nonprofit religious organizations that qualify under Title 26, s. 501 of the IRS Code which meet the following criteria: limit membership to members of the same religion; act as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and those with the ability to pay for the benefit of those members in need; provide for medical or financial needs of participants through payments directly from one participant to another; suggest amounts that participants may voluntarily give with no assumption of risk or promise to pay either among the participants or between the participants.

Appropriations

The bill appropriates $1.5 million for the Florida Health Choices, Inc.

Subject to the Governor's veto powers, the bill is effective upon becoming law.

▪ CS/CS/CS/SB 2654
Autism Spectrum Disorder

Medicaid

The bill authorizes the Agency for Health Care Administration (AHCA) to seek federal approval for a Medicaid waiver or state plan amendment to provide home and community-based therapies and behavioral interventions to children under age 6 diagnosed with a developmental disability, autism spectrum disorder, or Down syndrome. The bill limits such Medicaid benefits to $36,000 annually not to exceed $108,000 in total lifetime benefits. AHCA is required to report to report progress and recommendations to the Legislature annually starting January 1, 2009, and is prohibited from implementing the new program without prior legislative approval.

Insurance Compact

The bill requires the Office of Insurance Regulation (OIR) to convene a working group of representatives of all licensed insurers and health maintenance organizations (HMOs) to negotiate an industry compact that includes a binding agreement regarding coverage and access to services for persons with developmental disabilities or autism spectrum disorder. The working group also includes representatives of employers with self-insured plans, 2 designees of the Governor and 1 designee each of the Senate President and Speaker of the House. The compact must include:

- Requirement that each signatory increase coverage for behavioral interventions and therapies when medically necessary due to the presence of a developmental disability. Procedures for clear and specific notice to policyholders identifying the amount, scope, and conditions under which coverage is provided.
- Penalties for documented cases of denied claims for medically necessary services due to the presence of a developmental disorder or autism spectrum disorder.
- Proposals for new product lines that may be offered in conjunction with traditional health insurance and provide a more appropriate means of spreading risk, financing costs, and accessing favorable prices.

Upon completion of compact negotiations, OIR must report the results, and beginning Feb. 15, 2009, OIR annually report specified information regarding the compact.

Insurance Mandate

The bill imposes a coverage mandate on all large group health insurance policies, benefit plans and HMO contracts issued or renewed on or after April 1, 2009. Plans are required to cover well-baby and well-child screening for diagnosing autism spectrum disorder, and treatment of autism spectrum disorder through therapies and applied behavior analysis, including services habilitative in nature. Coverage is limited to $36,000 annually not to exceed $200,000 in total lifetime benefits, which shall be adjusted annually based on the medical price component of the Consumer Price Index. The bill prohibits an insurer from various contractual actions be-

cause an individual is diagnosed as having a developmental disability.

OIR is prohibited from enforcing the coverage mandate in the bill against insurers and HMOs which are compact signatories by April 1, 2009, but must enforce the mandate against signatories which have not complied with the terms of the compact by April 1, 2010.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 5045**

Workers' Compensation Medical Services and Supplies

This bill transfers the responsibilities of the Agency for Health Care Administration (AHCA) with respect to workers' compensation medical services and supplies from AHCA to the Department of Financial Services (DFS). The responsibilities transferred to DFS include certification of health care providers to treat injured workers; certification of expert medical advisors; determination of whether any health care provider has engaged in a pattern or practice of overutilization; and resolution of reimbursement and utilization disputes concerning medical services. DFS through the Division of Workers' Compensation has provided day-to-day responsibility for these activities since November 2005 pursuant to an interagency agreement with AHCA.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 7049**

Drugs, Devices, and Cosmetics

The bill is primarily a clarification and reorganization of the laws that regulate drugs, devices, and cosmetics. These clarifications include consolidating the use of terminology; ensuring that drug manufacturers are not inadvertently subject to unnecessary regulation; and ensuring that drug wholesalers can efficiently distribute medical convenience kits.

The bill also provides greater flexibility for prescription drug wholesalers to use the direct-purchase pedigree paper. In addition, the bill exempts a nonresident prescription drug manufacturer from obtaining a Florida permit if it ships an active ingredient that it manufacturers to a Florida-permitted prescription drug manufacturer for research and development purposes only.

Last, the bill creates two new permits. The first permit is a third party logistics provider permit for any person that contracts with a prescription drug wholesale distributor or prescription drug manufacturer to provide warehousing, distribution, or other logistics services on behalf of a manufacturer or wholesale distributor, but who does not take title to the prescription drug. The second permit is a health care clinic establishment permit, which authorizes the direct purchase of prescription drugs by group physician practices.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 7083**

Health Care Fraud and Abuse Home Health Agency Licensure

The bill revises sections of ch. 400 to increase regulation of home health agencies by the Agency for Health Care Administration (AHCA) in the following manner:

  - Requires license applicants to provide a business plan, contingency funding, detailed financial and ownership information and accreditation documentation in licensure applications, and

prohibits transferring an application to another entity prior to the license being issued;

- Prohibits AHCA from granting a license if the applicant is within a certain distance of an existing agency owned by the same entity.
- Creates new bases for action by AHCA on a license, including:
  - Falsifying patient and staff training records; billing for services not provided a basis for action by AHCA on a license;
  - Failing to provide services specified in the agreement with the patient or in the plan of care;
  - Providing remuneration for staffing services connected to patient referral transactions;
  - Providing services or staffing to assisted living facilities without fair market value compensation;
  - Providing remuneration to persons involved in referrals or discharge-planning;
  - Failing to submit certain quarterly reports and five years' worth of certain contracts to AHCA; giving cash to Medicaid or Medicare patients; and
  - Improperly contracting with, compensating or failing to properly document compensation for, medical directors.
- Provides for various actions on licenses for and imposes specific fines for patterns of the above offenses.
- Limits the number of agencies an administrator or nursing director may supervise, with some exceptions, requires notice to AHCA of a change or loss of a nursing director and imposes a specific fine for failing to do so, requires staff training and documentation of that training, and requires AHCA to promulgate certain rules related to oversight by the director of nursing.
- Makes fines for licensure deficiencies mandatory, rather than discretionary, and raises fine amounts for each class of deficiencies.

<u>Nurse Registry Licensure</u>

The bill revises sections of ch. 400 to increase regulation of nurse registries by AHCA. The bill requires that home health aides and certified nursing assistants be properly trained, and creates new bases for action by AHCA on a license, including:

- Providing services or staffing to assisted living facilities without fair market value compensation;
- Providing remuneration to persons involved in discharge-planning;
- Providing free staffing or remuneration to facilities or persons for referrals; and
- Failing to submit five years' worth of certain contracts to AHCA.

The bill provides for various actions by AHCA on licenses, and imposes specific fines for the above violations.

Medicaid Durable Medical Equipment Providers

The bill revises sections of ch. 409 relating to Medicaid provider changes of ownership and Medicaid durable medical equipment (DME) providers. The bill expressly defines "change of ownership", specifies liability for moneys owed to AHCA when a provider changes ownership, requires notice of a change of ownership, and clarifies the effective dates of provider agreements. The bill requires AHCA to limit its network of DME providers, with certain exceptions, to those which are accredited, meet certain requirements for physical business locations, directly provide the DME to the Medicaid recipient, provide a $50,000 surety bond per location, and obtain level 2 background screenings for employees in direct contact with Medicaid recipients.

The bill requires AHCA to submit a report to the Legislature by January 1, 2009, on the feasibility and costs of accessing the Medicare system to disallow Medicaid payment for home health services paid for under the Medicare prospective payment system for recipients who are dually eligible for Medicaid and Medicare.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

CARLTON FIELDS

ATTORNEYS AT LAW

2008
Florida Legislature
Post-Session Report

Insurance & Financial Services

INSURANCE & FINANCIAL SERVICES

- **CS/CS/HB 343**

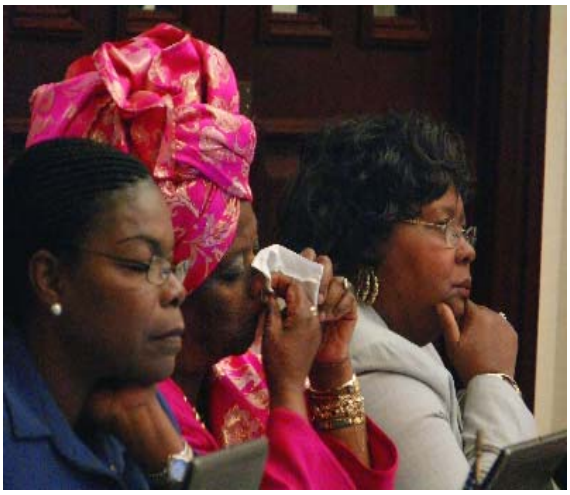
Financial Services

The bill authorizes financial institutions, insured depository institutions, or other authorized business entities to offer debt cancellation products. In general, debt cancellation products mean loan, lease, or retail installment contract terms, or modifications to loan, lease, or retail installment contracts, under which a creditor agrees to cancel or suspend all or part of a customer's obligation to make payments upon the occurrence of specified events. Debt cancellation products do not include title or liability insurance as defined in the Insurance Code. Additionally, the purchase of such debt cancellation products may not be used as a condition for making a loan.

The bill also authorizes a motor vehicle retail installment seller, sales finance company, or retail lessors, to sell guaranteed asset protection products in conjunction with any new retail installment contract or contract for a loan. These products must be offered in accordance with chapter 520, Retail Installment Sales, and the Financial Service Commission rules. Additionally, the purchase of such guaranteed asset protection products may not be used as a condition for making a loan.

Additionally, the bill creates a new insurance product that enables insurers to directly insure, rather than reinsure, banks and other entities against losses resulting from the writing of debt cancellation or debt suspension agreements. These debt products are not regulated by the Office of Insurance Regulation.

The bill removes the limit on the amount and duration of credit life insurance that may be purchased, but the total amount of credit life insurance on any debtor shall at any time exceed the total amount of indebtedness, under certain circumstances.



Rep. Dorothy Bendross-Mindingall, D-Miami, center, wipes a tear while documents are read on the House floor regarding Florida's historical role on the slavery issue. Left shows Rep. Audrey Gibson, D-Jacksonville, while right is Democratic Leader-pro tem Joyce Cusack, D-DeLand. (House photo by Mark Foley.)

The bill also amends provisions relating to the capital requirements for new state banks and trust companies.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/HB 643**

Foreclosure Fraud

It is estimated that over 150,000 mortgage foreclosures have occurred in Florida during 2007. National ranking of foreclosures places Florida second on the list. As the foreclosure numbers ascend, there is a correlated rise in foreclosure related crimes. According to Florida Attorney General data, criminals and scam artists have found a new market of consumers to defraud by making

false promises to rescue homeowners from foreclosures. Homeowners victimized by these crimes have unknowingly signed over their deeds or even their accumulated equity has been stolen.

The bill creates consumer protections for homeowners who are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment, and such homeowners find themselves securing services from foreclosure-rescue consultants or equity purchasers.

In the course of offering or providing foreclosure-related rescue services, a foreclosure rescue consultant is prohibited from:

- Initiating services without first executing a written agreement with the homeowner; or
- Collecting or securing payment before completing or performing all agreed upon services.

For homeowners who secure services from foreclosure-rescue consultants, the bill provides that the:

- Nature and specific details of a foreclosure-related rescue services agreement be expressed in writing in 12-point uppercase type.
- Homeowner is given one business day to review the agreement prior to signing. Homeowner is given a 3-business day right to cancel without penalty. This right may not be waived by either party.
- Date of the agreement may not be earlier than the date the homeowner signs. Consultant is to return any payments received from the homeowner within 10 days after receipt of a notice of cancellation.
- Notice of cancellation is to be printed immediately above the signature line in 12-point uppercase type in a specified format.

For homeowners who conduct business with an equity purchaser, the bill provides that the:

- Nature and entire understanding of the transaction is to be expressed in writing in 12- point uppercase type completed and executed by the parties prior to encumbering or conveying an interest in the residence in foreclosure.
- Homeowner receives a copy of the completed agreement within 3 hours after signing.
- Transaction agreement must state the specifications of any option or right to repurchase the property in foreclosure and must comply with applicable federal regulations.
- Homeowner may cancel without penalty with notification by 5 p.m. on the 3rd business day after signing the agreement.
- Money paid by the equity purchaser to the homeowner or by the homeowner to the equity purchaser must be returned at cancellation.
- Right to cancel may not be waived by either party.
- At the time an agreement is signed, a notice of the homeowner's right to cancel is provided.
- Homeowner with a right to repurchase the property has a 30-day right

to cure any default on three separate occasions. This right must be included in the written agreement. Equity purchaser fully assumes or discharges any liens.

- Equity purchaser must verify and demonstrate that a homeowner with a right to repurchase has the ability to make the required payments in order to exercise the repurchase option.
- Rebuttable presumption exist that the homeowner has a reasonable ability to make the required payments to repurchase the property, provided the homeowner's monthly expenses do not exceed 60 percent of the homeowner's monthly gross income.
- Price to repurchase must not be unreasonable. A rebuttable presumption arises between the equity purchaser and the homeowner if the repurchase price is greater than 17 percent per annum more than the total amount paid by the equity purchase, except under certain circumstances.

The bill also provides that a rebuttable presumption exists solely between the purchaser and the homeowner for any foreclosure rescue transaction involving a lease option or other repurchase agreement that the transaction is a loan and the conveyance from the homeowner to the purchaser is a mortgage. This provision does not apply to a subsequent purchase unless it is recorded.

Further, a person who violates any provisions of the bill commits an unfair and deceptive trade practice subject to the penalties and remedies provided in chapter 501, part II, F.S., including a monetary penalty up to $15,000.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/SB 648**

Insurable Interest/Insurance Contracts

This bill establishes requirements for issuance of a personal insurance policy (life, health, and disability) when a person seeks to insure someone other than him/herself. Under these circumstances, benefits must be payable to the person to be insured, the insured's personal representatives, or a person with a sufficient interest, known as an insurable interest, in the insured. Further, with limited exceptions, the person to be insured must consent to issuance of the policy. The bill does not apply to policies not issued for delivery in Florida or that are not issued in Florida.

The insurable interest requirement prevents purchasers from insuring individuals in whom they have virtually no interest and making benefits under the policy payable to themselves or another person who is disinterested in the continued life or health of the insured. The insurable interest must exist at the time coverage begins, but may subsequently be extinguished without affecting the validity of the policy.

The bill lists relationships that create an insurable interest in the person to be insured under a life, health, or disability insurance policy, and include the following. Family members have an insurable interest in close family members whom they hold in great affection. Business entities have an insurable interest in the owners of the business entity, or any affiliate or subsidiary of the business entity and key employees. Parties to a contract for the purchase or sale of a business entity have an insurable interest in the lives of all other parties to the contract solely for purposes of the contract. Trusts and trustees have an

insurable interest in the trust grantor under life insurance policies owned by the trust when trust beneficiaries meet specified criteria.

When benefits are paid under a policy that is issued without the required insurable interest, the person insured under the policy or the insured's personal representatives may bring an action to recover benefits from the person to whom they were paid.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/HB 743
Mortgage Fraud

During the recent real estate boom Florida ranked high in the number of mortgages that were entered into with some component of fraud. Mortgage fraud is divided into two types: fraud for property and fraud for profit. Fraud for property is a misrepresentation made by a borrower or other party in order to qualify for a mortgage loan. The applicant may alter or falsify tax returns or misrepresent income or expenses. Generally, the buyer intends to repay the loan.

However, the most prevalent type of mortgage fraud is fraud for profit. This crime generally involves multiple loan transactions with several financial institutions involved. The FBI estimates that fraud for profit accounts for 80 per cent of all mortgage fraud and involves collaboration or collusion by industry insiders.

The bill addresses the reassessment of real property involved in the crime of mortgage fraud primarily for profit. This bill creates s. 193.133, F.S., which provides two opportunities for a property appraiser to adjust, if necessary, an assessment of property affected by mortgage fraud, or other fraud involving real property, that may artificially inflated property values.

The bill also increases the criminal penalty for mortgage fraud from a third degree felony to a second degree felony if the loan value exceeds $100,000.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ SB 874
Title Loans/Regulation/Consumers

In recent years, litigation has arisen regarding the application of the Florida Title Loan Act being used for commercial transactions, such as financing floor planning or inventory purchases by independent used car dealers. This bill amends the legislative intent of the Act to clarify that it applies only to the regulation of title loans made to consumers. The term "consumer" is defined to mean individual borrowing of money for personal, family, or household purposes.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/HB 937
Title Insurance

This bill creates the Florida 2008 Title Insurance Study Advisory Council to undertake a comprehensive examination of the title insurance system in Florida and make findings and recommendations in its final report to the Governor, Speaker of the House of Representatives, and President of the Senate on or before December 31, 2009.

The council is composed of 21 members, with representatives from government, title insurers, insurance agents, the banking and real estate industries, and attorneys, and is chaired by the Governor or his designee, with the

Chief Financial Officer or her designee serving as vice chair. The council is required to include in its examination of the title insurance delivery system:

- The historical development of the title insurance industry in Florida and its uniqueness among other lines of insurance.
- The current regulatory structure under which oversight responsibility is shared between different state agencies.
- The adequacy of funds and agency personnel to exercise regulatory oversight.
- The adequacy of current mechanisms and expertise to gather meaningful data to properly evaluate and adopt title insurance rates.

Such other topics as the chair, in consultation with the Council, deems necessary to conduct a thorough examination of the title insurance industry.

To assist the council, the Office of Program Policy Analysis and Government Accountability is required to conduct an independent review of the historical development of the title insurance industry in Florida and the current regulatory framework and report its findings to the council by September 30, 2008.

The Council must hold its first meeting by August 1, 2008, with all meetings to be held in Tallahassee. The Council will terminate after submitting its final report, but no later than December 31, 2009. The final report must be approved by at least two-thirds of the council's membership and the chair must be in the prevailing majority.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

- **CS/SB 966**

Automated Teller Machine Transactions

In 2006, the Legislature passed SB 704, relating to Automated Teller Machine surcharge, which took effect July 1, 2006. Provisions in the law allowed automated teller machine owners and operators to charge customers an access fee, or a surcharge, whenever customers conducted transactions using an international account.

However, the internal policies and practices of Visa and MasterCard do not allow automated teller machine owners or operators to collect surcharges from international cardholders at automated teller machines in the United States, except in states where it is expressly allowed by law.

This bill authorizes an owner or operator of an automated teller machine to charge an access fee or surcharge to a customer conducting a transaction using an automated teller machine card issued by an international banking corporation. The bill requires an owner or operator of an automated teller machine to disclose such fee or surcharge in compliance with federal Regulation E, addressing electronic fund transfers. The bill also protects an owner or operator's ability to enter into an agreement to participate in a fee-free or surcharge-free network.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/CS/SB 2012**
  Insurance Policies

This bill makes the following changes relating to insurance:

- Requires insurers to notify long-term care insurance policyholders annually, rather than every two years as under current law, of the right to designate a secondary addressee to receive notice of possible lapse in coverage or termination due to nonpayment of premium.
- Permits reinstatement of long-term care policies that have been canceled for nonpayment of premium when the failure to pay premium was due to the policyholder's continuous confinement in a hospital, skilled nursing facility, or assisted living facility for more than 60 days.
- Requires that notice of possible lapse in coverage of a long-term care policy for nonpayment of premium be sent to the policyholder and secondary addressee.
- Extends the statute of limitations for claims on Holocaust-era insurance policies until July 1, 2018.
- Permits the Office of Insurance Regulation to waive the requirement that a multiple-employer welfare arrangement maintain its principal place of business in Florida under specified conditions.
- Clarifies that physician reimbursement for purposes of motor vehicle personal injury protection (PIP) insurance for specified medical services is based on 200 percent of the "participating physicians" schedule of Medicare Part B.
- Permits hospitals to form alliances to obtain self-insurance coverage for its members; provides that contracts of reinsurance issued to such alliances are to receive the same tax treatment as reinsurance contracts issued to insurance companies.
- Makes underwriting files of Citizens Property Insurance Corporation available to the policyholder and his/her attorney to the same extent that the files would be available from a private insurer in litigation under the Florida Rules of Civil Procedure.
- Permits Citizens to release confidential and exempt underwriting file records to government agencies upon written request and demonstration of need.
- Specifies criteria that public housing authorities must meet to form self-insurance funds.
- Amends various provisions relating to public adjusters, including prohibition of certain solicitation practices; limiting fees that can be charged; providing licensure qualifications; and establishing a public adjuster apprenticeship program and license.
- Authorizes titles insurers to petition the Office of Insurance Regulation for a rate deviation for personal property title insurance, a Uniform Commercial Code insurance product.
- Extends for an additional year the offer of availability of excess coverage under the Florida Hurricane Catastrophe Fund to certain limited apportionment companies, insurers approved to participate in the Insurance Capital Build-Up Program, and insur-

ers that purchased such coverage from the fund in 2007.

- Provides an exemption from the customer representative licensing examination for applicants with an associate's or bachelor's degree who have completed at least 9 academic hours in property and casualty insurance.
- Prohibits insurers, including Citizens Property Insurance Corporation, from requiring insurance agents, as a condition of appointment or continuation of appointment, to take a course or educational program that offers continuing education credits.
- Authorizes independent study programs offering continuing education credits through correspondence to allow students to take a final closed book examination without being monitored under specified conditions.
- Requires Citizens Property Insurance Corporation to electronically report certain claims data and histories to a consumer reporting agency upon request.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008 except as otherwise provided.

▪ CS/CS/SB 2082
Insurance

The "John and Patricia Seibel Act" creates enhanced consumer protections related to annuity and insurance transactions.

For senior consumers, 65 and older, the bill:

- Requires that the insurer or insurance agent have an objectively reasonable basis for believing that a recommendation to a senior consumer is suitable.
- Requires insurance agents, prior to recommending an annuity to a senior consumer, to obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation, on a form adopted by the Department of Financial Services.
- Provides that a consumer who refuses to provide information requested by an agent or insurer, before execution of the sale to sign a verification from the senior consumer on a form adopted by Department of Financial Services of the refusal.
- Requires the insurer or agent to provide the consumer with specified information on a form adopted by the Department of Financial Services concerning differences between the annuity product being recommended for purchase and an existing annuity that would be exchanged.
- Requires an agent to disclose to the applicant that purchase or exchange of an annuity contract may have tax consequences and the applicant should contact a tax advisor for additional advice.
- Increases the "free look" period for a consumer to obtain a refund from 10 days to 14 days after purchase of a life insurance or annuity.
- Authorizes the Office of Insurance Regulation to order an insurer to rescind an annuity and provide a full refund of the premiums paid or the accumulation value, whichever is greater, when a consumer is

harmed by a violation of the suitability statute.

- Provides criminal and civil liability protection to insurers for the acts of independent individuals not affiliated with the insurer for selling its products, when it involves an unauthorized sale.

- Expands the scope of recordkeeping requirements to entities responsible for the maintenance of records.

Provisions related to criminal penalties:

- The bill imposes increased fines and penalties for the unfair and deceptive insurance practices known as "twisting" and "churning." Twisting is defined as knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.

- Churning, in general means the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are utilized to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation.

- The bill penalties for "twisting" or "churning" are a first degree misdemeanor and an administrative fine not greater than $5,000 for each nonwillful violation or an administrative fine not greater than $30,000 for each willful violation. However, to impose the criminal penalties, the practice must involve fraudulent conduct.

- The bill also establishes penalties for willfully submitting to an insurer on behalf of a consumer documents bearing a false signature. A person commits a third degree felony for this act with an administrative fine not greater than $5,000 for each nonwillful violation or an administrative fine not greater than $30,000 for each willful violation.

- Administrative fines may not exceed an aggregate amount of $50,000 for all nonwillful violations arising out of the same action or an aggregate amount of $250,000 for all willful violations.

- Prohibits an agent from utilizing designations or titles that falsely imply that he or she has special financial knowledge or training.

Additional measures in the legislation:

- Requires all licensees to complete three hours of Department of Financial Services approved continuing education on the subject of suitability in annuity and life insurance transactions, with certain exceptions.

- Clarifies the regulatory jurisdiction of the agencies under the Department of Financial Services regarding the sale of annuities and grants rulemaking authority. Conditional effective date: Section 9 related to annuity invest-

ments by seniors shall take effect 60 days after the date on which the final rule is adopted or January 1, 2009, whichever is later.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2009.

▪ CS/CS/CS/SB 2158

Money Services Businesses

Over the last decade, crimes involving money laundering have risen to astronomical heights. Drug trafficking, alien smuggling, tax evasion, and health care fraud are among the top ranking money laundering offenses plaguing the nation. Consequently, this epidemic has created a problem with multiple facets. As federal and state regulatory agencies, including law enforcement entities collaborate to intensify their focus on money laundering crimes, the State of Florida is also strengthening its efforts.

This bill packages together several measures designed to reduce incidents of money laundering. The legislation incorporates recommendations made by the Eighteenth Statewide Grand Jury in its March 2008 report, as well as recommendations made by the Office of Financial Regulation, law enforcement, and industry representatives that substantially rewrites chapter 560, F.S. There are four parts to chapter 560: Part I General Provisions, Part II Payment Instruments and Funds Transmissions, Part III Check Cashing and Foreign Currency Exchange, and Part IV Deferred Presentment (Payday Loans). The bill made the following changes in the four parts:

General Provisions

- Clarifies the general provisions of chapter 560, part I, are applicable to all Money Services Business licensees (Parts II-IV).
- Requires an examination of Money Services Business licensees at least once every five years. New licensees must be examined within 6 months after licensure. Licensees will incur the costs of examination.
- Requires the Office of Financial Regulation to provide a written referral of any violations that may be a felony to the appropriate criminal investigatory agency.
- Requires the Office of Financial Regulation to submit an annual report to the President of the Senate and Speaker of the House that summarizes it regulatory activities, beginning January 1, 2009 through January 1, 2014.
- Allows the Office of Financial Regulation to outsource licensee examinations. Increases licensee record retention from 3 to 5 years. Willful failure to comply with a record request constitutes a third-degree felony.
- Expands prohibited acts to include violations under 18 U.S.C., s. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity, punishable as a third-degree felony.
- Authorizes the Office of Financial Regulation to seek restitution on behalf of injured consumers. Strengthens injunctive authority, and grants authority to appoint a receiver under certain circumstances.

- Creates additional causes of action relating to the maintenance and production of records. Enhances penalties to include the denial, suspension, revocation of a license plus imposition of fines from $1,000 to $10,000 per day for each violation of the chapter. Requires the Financial Services Commission to adopt disciplinary rules.
- Requires licenses to submit an audited annual financial report.
- Requires licensees and authorized vendors to establish and maintain anti-money laundering programs, and register, if applicable, as a Money Services Business with the Financial Crimes Enforcement Network of the U.S. Department of Treasury.
- Expands civil liability protection to Money Services Businesses, law enforcement, prosecutors and regulators regarding the sharing of information.
- Establishes penalties for unlicensed money transmitters and payment instrument issuers. Requires licensees to provide notice to the Office of Financial Regulation of any significant event by registered mail.
- Clarifies controlling interest of a Money Services Business.
- Reduces application and renewal fees by 25% and caps license application fees for branch offices to $20,000 when a change in controlling interest occurs.
- Defines "net worth" as assets minus liabilities determined in accordance with generally accepted accounting principles.

<u>Money Transmitter Provisions</u>

- Requires a money transmitter to be organized as a limited liability company, limited liability partnership, or a corporation to assist in the determination of net worth requirements.
- Provides standard policies and procedures that are to be included in the contractual terms and conditions between a licensee and its authorized vendor(s).
- Clarifies that a licensee is responsible for the acts of its authorized vendor(s) in accordance with their written contract.
- Increases the maximum net worth requirements for a licensee from $500,000 to $2 million.
- Reduces net worth requirements per location from $50,000 to $10,000. Increases bonding requirements by raising the cap from $500,000 to $2 million based on financial condition, locations and volume of business.
- Revises the requirement regarding the registration of an authorized vendor and notification to the Office of Financial Regulation within 60 days after the authorized vendor engages in business.
- Specifies licensing standards, procedures and renewal provisions.
- Requires recordkeeping that monitors vendor relationships as well as the detection and prevention of money laundering.

Check Casher Provisions

- Exempts from licensure, the cashing of payment instruments with an aggregate face value of less than $2,000 per person per day that is incidental to retail sale of goods or services whose compensation for the service does not exceed 5% of total income from retail sales during the last 60 days.
- Requires a licensee to deposit payment instruments into a commercial account at a federally insured financial institution or sell them within 5 business days after acceptance.
- Prohibits the acceptance or cashing of multiple payment instruments from a person who is not the original payee, except under certain circumstances.
- Requires licensees to submit suspicious activity reports with the U.S. Department of Treasury Financial Crimes Enforcement Network, as applicable.
- Requires each location of a licensee to be equipped with a security camera system, unless such locations have an installed bulletproof or bullet-resistant partition or enclosure.
- Prohibits the assessment of collection costs, other than fees for insufficient funds, without a court judgment.
- Requires a licensee to maintain files on corporate and third-party customers with payment instruments exceeding $1,000.
- Requires a customer to present acceptable photo identification and provide a thumbprint to cash payment instruments that exceed $1,000.

Deferred Presentment Providers Provisions

- Requires deferred presentment providers to be licensed as a Money Services Business.
- Requires declaration of intent be renewed every 24 months.
- Requires a deferred presentment provider to notify the Office of Financial Regulation within 15 business days after ceasing operations or failure to maintain licensure.
- Authorizes the Office of Financial Regulation to take action that administratively releases all open and pending transactions in its database if a provider fails to provide notice of the cessation of operations or failure to maintain licensure.
- Authorizes the Financial Services Commission to adopt rules regarding the reconciliation of open transactions.
- Prohibits a deferred presentment provider from accepting more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred presentment transaction for a single deferred presentment transaction.
- Prohibits the assessment of collection costs, other than fees for insufficient funds, without a court judgment.

Subject to the Governor's veto powers, the effective date of this bill is January 1, 2009.

▪ CS/SB 2462
Group Self-insurance Funds

Section 624.4621, F.S. allows two or more employers to pool their liabilities under the workers' compensation act and form a group self-insurance fund (fund). There are four active authorized group self-insurance funds currently in Florida. All members of a self-insurance fund must have common interest. The Financial Services Commission through the Office of Insurance Regulation (OIR) has promulgated extensive rules dealing with self-insurance funds. A basic requirement is that the fund must have, and will continue to have, the financial strength to pay claims.

Under current law, if a group self-insurance fund has surplus monies for a year in excess of the amount necessary to fulfill the obligations of the fund, the surplus monies may be refunded to fund members in the form of dividends. The trustees of the fund determine whether payment of a dividend is warranted. Before a dividend can be distributed to fund members, the fund must provide financial information about the fund to the OIR and obtain approval for the dividend distribution from the OIR. The OIR has sixty days to approve the dividend distribution or the distribution is deemed approved. A fund cannot require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for a fund member to receive a dividend.

This bill amends current law relating to the process by which group self-insurance funds pay dividends to members. It does not change what type of dividends are payable and it maintains authority for the fund trustees to decide whether to pay dividends to the fund members. The bill changes current law by allowing the trustees of the fund established prior to June 1, 2008 to distribute fund dividends to fund members without prior approval of the OIR but with notification to the OIR of the dividend distribution within 10 days of the distribution. The self-insurance fund must also provide certain information and records to the OIR to support the dividend payment. The bill restricts the amount of dividends distributed to no more than the total sum of the dividends declared and recorded on the current audited financial statement of the fund. There is no restriction on dividend amount in current law. In addition, the bill prohibits the distribution of dividends to jeopardize the financial condition of the fund. Current law does not specify this restriction either. The bill maintains current law prohibiting funds to require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for the fund member to receive a dividend.

This bill requires funds established after June 1, 2008 to obtain approval by the OIR before distributing dividends during the first seven years the fund is in operation. The OIR has sixty days to approve the dividend distribution.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law.

▪ CS/CS/SB 2860
Property Insurance

This act is titled the "Homeowner's Bill of Rights Act."

Insurance Capital Build-Up Incentive Program (s. 215.5595, F.S.)

- Revises the requirements for the Program, which provides for surplus note loans to insurers of up to $25 million, repayable over 20 years at the 10-year Treasury bond rate, as ap-

proved by the State Board of Administration (SBA).

- Insurers must apply by September 1, 2008 for a surplus note loan equal to the amount of new capital that an insurer contributes. Insurers that apply after September 1, but before June 1, 2009, may apply for a surplus note equal to one-half of the amount of new capital that the insurer contributes.

- The bill revises the minimum premiums that the insurer must commit to write, by adding a minimum *gross* premium to surplus ratio requirement, as an alternative to the current *net* premium to surplus writing ratio requirement. The distinction is that net premiums deduct the reinsurance premiums that the insurer pays (cedes) to a reinsurer.

- Adds a requirement for the insurer to write at least 15 percent of its premiums for new policies for policies taken out of Citizens Property Insurance Corporation (Citizens), for each of the first 3 years of the surplus note.

- Requires the SBA to make annual reports to the Legislature on the results of the program and each insurer's compliance with the terms of its surplus note.

- Requires the SBA to transfer to Citizens on January 15, 2009 uncommitted or unreserved funds, that were funded by transfers from Citizens. However, another provision in the bill requires the SBA to do this on July 1, 2009. Because insurers are allowed to apply for a surplus note until June 1, 2009, all of the funds would be "reserved" so that Citizens would not transfer any funds on January 15, 2009, unless hurricane losses exceed the specified threshold.

- Requires Citizens to transfer $250 million to the SBA for the Program. The appropriation of $250 million from General Revenue to the SBA for the Program is contained in the Conference Report for the General Appropriations Act.

<u>Market Conduct Examinations; Required Filing of Claims-Handling Procedures (s. 624.3161, F.S.)</u>

- Authorizes the Office of Insurance Regulation (OIR) to order an insurer to file its claims handling practices and procedures as a public record based on findings of a market conduct examination.

- The OIR findings must be that the insurer had a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling causing harm to policyholders, as prohibited by s. 626.9541(1)(i), F.S.

- The requirement applies to the claims-handling procedures for the line of insurance that was the subject of the market conduct exam. The filings must be held by the OIR for a 36-month period.

<u>Increased Administrative Fines for Violations (s. 624.4211, F.S.)</u>

Doubles all current fines that may be imposed upon an insurer for violation of the Insurance Code or any rule or order, or any person who violates an unfair insurance trade practice:

- $40,000 (rather than $20,000) for a willful violation, not to exceed an amount equal to $200,000 (rather than $100,000), for all willful violations arising out of the same action.
- $5,000 (rather than $2,500) for a nonwillful violation, not to exceed an amount of $20,000 (rather than $10,000) for all nonwillful violations arising out of the same action.

Requirements for Trade Secret Documents (creating s. 624.4213, F.S.)

- Specifies requirements for submission of a document to the OIR or the Department of Financial Services (DFS) in order for a person to claim that the document is a trade secret.
- Requires each page or portion to be labeled as a trade secret and be separated from non-trade secret material.
- Requires the submitting party to include an affidavit certifying certain information as to the trade secret status of the documents.
- Authorizes the OIR to release a document marked as trade secret to a requestor if the OIR provides the insurer with 30-days notice and opportunity to obtain a court order barring disclosure.
- Allows the OIR or the DFS to disclose a trade secret to an employee or officer of another governmental agency whose use of the trade secret is within the scope of their employment.

Notice to OIR of Nonrenewal (creating s. 624.4305, F.S.)

Requires an insurer planning to nonrenew more than 10,000 policies within a 12-month period to notify the OIR 90 days before issuing any notices of nonrenewal.

Increased Administrative Fines for Unfair Insurance Trade Practices (s. 626.9521, F.S.)

Doubles the maximum fines that may be imposed by the OIR or the DFS for a violation by any person of any unfair or deceptive act or practice related to insurance:

- $40,000 (rather than $20,000) for a willful violation, not to exceed an amount equal to $200,000 (rather than $100,000), for all willful violations arising out of the same action.
- $5,000 (rather than $2,500) for a nonwillful violation, not to exceed an amount of $20,000 (rather than $10,000) for all non-willful violations arising out of the same action.

Unfair Insurance Trace Practices; Payment of Undisputed Claim Amount (s. 626.9541, F.S.)

Prohibits an insurer from failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after determining the amount and agreeing to coverage, unless payment of the undisputed benefits is prevented by an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed. Violations of this provision would be grounds for a private civil remedy action, due to the cross-reference in current s. 624.155, F.S.

Administrative Proceedings in Rating Determinations (s. 627.0612, F.S.)

The bill specifies that an administrative law judge may make the following findings of fact in an administrative hearing on a property insurance rate filing:

- Whether factors used in a rate filing or applied by the OIR are consistent with standard actuarial techniques or practices or are otherwise based on reasonable actuarial judgment.
- Whether a factor for underwriting profit and contingencies is reasonable or excessive. Whether the cost of reinsurance is reasonable or excessive.

It also allows an administrative law judge to enter a recommended order that approves, modifies or rejects the requested change, as supported by the record.

Rating Law for Property and Casualty Insurance (s. 627.062, F.S.)

Repeal of Arbitration

Repeals the option for an insurer, for any property and casualty insurance rate filing (or any other filing), to appeal a rate filing disapproved by the OIR to an arbitration panel in lieu of an administrative hearing. Current law prohibits use of arbitration until January 1, 2009.

Extension of Prohibition on "Use and File"

Extends for one additional year, until December 31, 2009, the current prohibition on insurers using the "use and file" option for property insurance rate increases. This would continue to require that an insurer make a "file and use" filing that prohibits an insurer from increasing its rates prior to approval by the OIR, unless deemed approved by failure of the OIR to issue a notice of intent to disapprove within 90 days. Current law prohibits "use and file" rate increases until December 31, 2008.

Use of Approved Hurricane Loss Models

Requires that projected hurricane losses must be estimated using a model or method found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology (as further provided in s. 627.0628, F.S., as amended in Section 11).

Profit Factor

Deletes the requirement that the OIR approve a profit factor in a rate filing for an insurer that is commensurate with the risk, for that portion of the rate covering hurricane losses for which the insurer has not purchased reinsurance. By striking this language, the law would return to its pre-2006 version, to require the OIR to consider "a reasonable margin for profit and contingencies."

Expedited Hearings on Rate Filings

Provides for an expedited hearing process for rate filings by:

- Requiring Division of Administrative Hearings to hold the hearing within 30 days after the request for the hearing.
- Requiring the hearing officer to issue the recommended order within 30 days after the hearing (or after receipt of the transcripts).
- Requiring parties to submit written exceptions within 10 days.
- Requiring the OIR to enter a final order within 30 days after the entry of the recommended order.

Timeframes may be waived upon agreement of all parties. Allowing an insurer to request an expedited appellate review of a final the OIR rate order and providing legislative intent that the First District Court of Appeal grant the insurer's request.

Required Use of Models Approved by Florida Commission on Hurricane Loss Projection Methodology (s. 627.0628, F.S.)

- Requires that for purposes of a rate filing insurers must use, and may not modify or adjust, a model or method found to be accurate or reliable by the Commission on Hurricane Loss Projection Methodology (Commission).
- Deletes the current law that in order for an approved model to be admissible and relevant, the OIR must have access to all of the assumptions and factors used in developing the model. Requires the Commission to adopt findings related to the private model's probable maximum loss calculations. An insurer must use and may not modify or adjust models found by the Commission to be accurate or reliable in determining probable maximum loss levels for rate filings made more than 60 days after the Commission has made such findings.
- Provides that the processes, standards, and guidelines of the Commission do not constitute final agency action or statements of general applicability that implement, interpret, or prescribe law and are exempt from chapter 120, F.S.

Hurricane Mitigation Premium Credits Tied to Uniform Home Rating Scale (s. 627.0629, F.S.)

- Requires the OIR to develop, by February 1, 2011, a proposed method for insurers to establish windstorm mitigation premium credits (discounts) that correlate to the numerical rating of a structure pursuant to the uniform home rating scale.
- Requires the Financial Services Commission to adopt rules by October 1, 2011, requiring insurers to make rate filings which revise their credits pursuant to this method, consistent with generally accepted actuarial principles and wind loss mitigation studies.
- Requires that the rules must allow a period of at least two years after the effective date of the revised credits for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer must continue to apply the old mitigation credit.

Citizens Property Insurance Corporation (s. 627.351, F.S.) Extension of Rate Freeze

- Extends the freeze on rate increases in Citizens from January 1, 2009 to January 1, 2010.
- Requires Citizens to make an annual, actuarially sound rate filing beginning July 15, 2009, to be effective no earlier than January 1, 2010.

Assessments for Citizens Deficits

Revises the required assessments to fund a deficit in *each* of Citizens' three accounts

(high risk, personal lines, or commercial lines) to:

- Requires up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal;
- If this is insufficient, a regular assessment against insurers which may be recouped from their policyholders, of up to 6 percent (rather than 10 percent) of premium for most lines of property and casualty insurance or 6 percent of the deficit, whichever is greater;

Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders on most types of property and casualty insurance, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.

The bill deletes "replaces the current" law on assessments for funding a deficit in each of Citizens' three accounts (high risk, personal lines, or commercial lines), that currently requires:

- An immediate assessment of up to 10 percent of premium against all Citizens' nonhomestead policyholders (as defined);
- If this is insufficient, an additional assessment of up to 10 percent of premium against all Citizens' policyholders (including nonhomestead), collected upon issuance or renewal of a policy;
- If this is insufficient, a regular assessment against insurers which may be recouped from their policyholders, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.
- Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders of most types of property and casualty insurance, of up to 10 percent of premium, or 10 percent of the deficit, whichever is greater.
- If a regular assessment is imposed under 3), above, Citizens must make a rate filing to impose a surcharge on Citizens policyholders equal to the average percentage regular assessment imposed on insurers (and recouped from non-Citizens policyholders).
- Deletes the definition of "homestead property" and the requirement for Citizens to account separately for homestead property because it is no longer relevant to determining assessments or any other purpose.
- Allows the board of Citizens the discretion to apply the amount of any assessment or surcharge which exceeds the amount of the deficit to various business purposes.

<u>Eligibility for Higher Value Homes</u>

Provides that homes with a dwelling replacement cost of $2 million or more, rather than $1 million or more, are ineligible for coverage, effective January 1, 2009, with limited exceptions for current policyholders who obtain rejections from three surplus lines insurers and one authorized insurer.

Eligibility for Properties Within 2,500 Feet of the Coast

Deletes the current law requiring that new properties constructed after January 1, 2009, within 2,500 feet of the coast must meet "Code Plus" requirements in order to be eligible for Citizens. By repealing this provision, the law would still require that any new home meet the Florida Building Code.

Forced Purchase of Bonds

Deletes current law requiring insurers to purchase bonds that remain unsold for 60 days.

Access to Claims and Underwriting Files

Provides that a policyholder who has filed suit against Citizens has the right to discover the contents of his claims file to the same extent that discovery would be available from a private insurer. Allows Citizens to release confidential underwriting and claims file information under certain circumstances.

Required Disclosure of Windstorm Mitigation Rating Upon Sale of Home (Citizens)

Effective January 1, 2010, requires disclosure of a home's windstorm mitigation rating, for a home insured by Citizens in the windborne debris region with an insured value of $500,000 or more.

Increased Notice of Nonrenewal (s. 627.4133, F.S.)

Increases the required notice of nonrenewal of a personal or commercial residential insurance policy from 100 days to 180 days if the policy has been written for 5 years or more.

Required Disclosure of Windstorm Mitigation Rating Upon Sale of Home (creating s. 689.262, F.S.)

- Effective January 1, 2011, requires that a purchaser of residential property located in wind-borne debris region and insured by any insurer be informed of the windstorm mitigation rating of the structure, either in the contract for sale or as a separate document attached to the contract.
- Authorizes the Financial Services Commission to adopt rules, including the form of the disclosure and the requirements for the inspection or report that is required.

Transfer of $250 million from Citizens to General Revenue

- Requires Citizens to transfer $250 million from its Personal Lines Account and Commercial Lines Account to the General Revenue Fund on December 15, 2008, unless the estimated year-end surplus in the Personal Lines Account and the Commercial Lines Account is less than $1 billion. (Citizens currently estimates that its year-end surplus in these two accounts combined will be about $2.6 billion, if there are no hurricane losses.) The appropriation of $250 million from General Revenue to the SBA for the Insurance Capital Build-Up Program is contained in the Conference Report for the General Appropriations Act.
- Requires the "board" (apparently referring to the SBA), beginning July 1, 2009, to make quarterly transfers to Citizens of interest and principal payments for surplus notes, that were

funded by appropriations from Citizens in FY 2008-09.

Citizens May Not Increase Rates due to Transfer

Prohibits Citizens from using any of the amendments to the Insurance Capital Build-Up Program or any transfer of funds as justification or cause in seeking any rate or assessment increase.

Use of Public Hurricane Loss Model

- Allows insurance companies to use the Public Hurricane Loss Model to determine rate requests in advance of filing, but requires the insurer to pay for use of the public model.
- Requires the OIR (the "office" which would actually be the Financial Services Commission that has rulemaking authority for the OIR) to establish by rule, by January 1, 2009, a fee schedule for access and use of the model, reasonably calculated to cover only the actual costs.

Multi-Policy Discount

Allows insurers to offer a multi-policy discount if the policyholder has wind-only coverage with Citizens or an insurer that has removed a policy from Citizens, provided that the same insurance agent services both policies.

Citizens Property Insurance Corporation Mission Review Task Force

Creates the Citizens Mission Review Task Force to analyze and report on changes needed to return Citizens to its former role as a state-created, noncompetitive residual market mechanism that provides property insurance coverage to risks that are otherwise entitled but unable to obtain such coverage in the private market.

The bill requires the task force to submit reports by January 31, 2009 to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The task force is composed of 11 members, as follows:

- Two members appointed by the Speaker of the House, representing insurance companies meeting certain criteria;
- Two members appointed by the President of the Senate, representing insurance companies meeting certain criteria;
- Three members appointed by the Governor who are not affiliated with an insurance company, at least one of whom must be a consumer advocate;
- Two members appointed by the CFO representing insurance agents;
- One member representing Citizens appointed by its board; and
- The Insurance Commissioner or his designee;

The task force must be funded by Citizens and the members do not receive any compensation, but are entitled to travel and per diem.

The task force shall employ consultants and staff.

Annual Report by CFO

Requires the CFO to annually report to the Governor and Legislative presiding officers regarding the economic impact on Florida from a 1-in-100 year hurricane and the premium increase needed to fund such a hurricane.

Transparency in Rate Regulation (creating s. 627.0621, F.S.)

For residential property insurance rate filings, the bill requires the OIR to provide information on an Internet website of:

- All assumptions made by any OIR actuary;
- The overall rate change requested by the insurer;
- A statement describing any assumptions that deviate for actuarial standards of the Casualty Actuarial Society; and
- A certification by the office's actuary that based on the actuary's knowledge, that his or her recommendations are consistent with accepted actuarial principles.

In any administrative or judicial proceeding, work-product and attorney-client privilege exemptions from public disclosure do not apply to communications with office attorneys or records prepared by or at the direction of an OIR attorney except when both of the following conditions are met:

- The communication or record reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the OIR that was prepared exclusively for civil or criminal litigation or adversarial administrative proceedings;
- The communication occurred or the record was prepared after the initiation of a court action, after issuance of a notice of intent to deny a rate, or after the filing by an insurer of a request for a hearing.

Florida Hurricane Catastrophe Fund; $10 Million Coverage Option

Requires the Florida Hurricane Catastrophe Fund to offer $10 million of additional coverage to qualified insurers in 2008, as was required in 2006 and 2007. This coverage would again be made available to limited apportionment companies (having $25 million in surplus or less and writing at least 25 percent of its premiums in Florida), insurers approved to participate in the Insurance Capital Build-Up Incentive Program, and insurers that purchased the supplemental coverage in 2007. This coverage would reimburse the insurer for up to $10 million in losses, for each of two hurricanes. The coverage will again be priced at a 50 percent rate on line (e.g., $5 million premium for $10 million in coverage) with a free reinstatement for a second storm. The insurer's retention for such coverage remains at 30 percent of the company's surplus. The bill would provide that the coverage expires on May 31, 2009.

Exclusion of Windstorm Coverage (s. 627.712, F.S.)

Provides that if a policyholder is eligible for a wind-only policy from Citizens, the insurer issuing the non-wind policy is not subject to the requirement to obtain a signed rejection of windstorm coverage; but requires notice to the mortgage holder under certain conditions.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008 except as otherwise provided.

- **HB 5049**

Mortgage Broker's Licenses

Currently, the Office of Financial Regulation administers a written test for the licensing of mortgage brokers. The law provides that the

Office of Financial Regulation may offer an electronic version and requires the associated fees to be promulgated by rule. The Office has been unsuccessful in its rulemaking attempts to establish the fees for the electronic version of the examination.

The bill:

- Requires the Office of Financial Regulation to make the Mortgage Broker Licensing Exam available electronically.
- Reduces the Mortgage Broker application fee from $200 to $195.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 5057**

Insurance Capital Build-Up Incentive Program

In 2006, the Insurance Capital Build-Up Incentive Program (ICBIP) was created to increase the availability of residential property insurance covering the risk of hurricanes and mitigating premium increases by providing a low-cost source of capital to write additional residential property insurance. The State Board of Administration (SBA) administers the ICBIP. The SBA makes available, upon application, loans (surplus notes) of up to $25 million, or 20 percent of the total funds available, to qualifying new or existing residential property insurers. ICBIP loans are memorialized in surplus note agreements, repayable over 20 years, with interest at the 10 year treasury rate on unpaid principal. Payments for the first three years are of interest only.

The bill:

- Provides that insurers must apply by September 1, 2008 for a surplus note loan equal to the amount of new capital that an insurer contributes. Insurers that apply after September 1, but before June 1, 2009, may apply for a surplus note equal to one-half of the amount of new capital that the insurer contributes.
- Revises a minimum writing ratio of premium to surplus an insurer must maintain.
- Provides that an insurer must also commit to writing at least fifteen percent of its net or gross written premium for new policies, not including renewal premiums, for policies taken out of Citizens Property Insurance Corporation, during each of the first 3 years after receiving the surplus note.
- Provides that an insurer must commit to maintaining a level of surplus and reinsurance sufficient to cover in excess of its 1-in-100 years probable maximum loss.
- Allows the SBA to charge a late fee for repayments.
- Provides that amendments made by the act do not affect the terms of surplus notes approved prior to January 1, 2008, but authorizes the SBA and an insurer to renegotiate such terms consistent with such amendments.

Citizens Property Insurance Corporation is directed to transfer $250 million to the General Revenue Fund by December 15, 2008 if the combined surplus of each of its accounts exceeds $1 billion. While this bill makes available $250 million to the General Revenue Fund for the ICBIP, it does not provide an appropriation of those funds to the program. The appropriation is made in House Bill 5001, the proposed General Appropriations Act for Fiscal Year 2008-2009.

Beginning July 1, 2009, the SBA is directed to quarterly transfer any interest and principle repaid on any surplus notes issued after December 1, 2008 to Citizens provided that the surplus notes were funded exclusively by an appropriation to the ICBIP by the Legislature for the 2008-2009 fiscal year.

The bill additionally provides that Citizens may not use any amendments made to s. 215.5595, Florida Statutes, by this act or any transfer of funds authorized by this act as justification or cause in seeking any rate or assessment increase.

Also see the End of Session Summary for CS/CS/SB 2860, Third Engrossed. That bill provides that provisions of SB 2860 shall supersede and control over any conflicting provisions adopted in HB 5057, to the extent of such conflict, if both bills becomes a law.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 7103**

Mitigation Enhancement

The bill makes several changes to the My Safe Florida Home (MSFH) program administered by the Department of Financial Services (DFS) that provides hurricane mitigation inspections and grants for improvements to homes designed to mitigate against hurricane damage.

To qualify for selection by the DFS as a wind certification entity to provide hurricane mitigation inspections, an entity must use mitigation inspectors who are certified or licensed building inspectors, general or residential contractors, professional engineers or architects, or individuals who have at least two years prior experience in residential building inspection or residential construction and have received specialized training in hurricane mitigation procedures.

DFS must adopt a quality assurance program that includes a statistically valid number of re-inspections.

DFS is allowed to verify that mitigation improvements have been made to all openings, including exterior doors and garage doors, prior to issuing a reimbursement grant check to the homeowner.

DFS is allowed to contract with third parties for the provision of information technology and contractor services for low-income homeowners, which shall be considered direct program costs, rather than administrative costs for purposes of administrative cost limitations.

DFS must develop the No-Interest Loan Program in the MSFH program by October 1, 2008 contingent upon the selection of a qualified vendor and execution of a contract acceptable to the department and the vendor.

DFS is allowed to contract with additional not-for-profit entities or local governments to provide inspections and grants to low-income homeowners or to provide the services itself.

Uniform mitigation verification forms provide information to insurers about the construction and mitigation of a home. The form allows homeowners to access insurance discounts or credits for which they are eligible. The bill mandates that property insurers accept as valid a uniform mitigation verification form signed by inspectors employed by an approved MSFH wind certification entity, certified or licensed building inspectors, general or residential contractors, professional engineers or architects so that Additionally insurers must accept as valid a uniform mitigation verification form certified by DFS.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

CARLTON FIELDS

ATTORNEYS AT LAW

2008
Florida Legislature
Post-Session Report

Legal, Criminal Justice & The Judiciary

Including legislation relating to courts, criminal justice and law enforcement.

LEGAL, CRIMINAL JUSTICE &THE JUDICIARY

- **CS/HB 29**

DNA Testing

This bill provides that incarcerated persons and persons under community supervision are required to submit blood or other biological specimens for inclusion in the statewide DNA data bank if they have been convicted of any felony offense, certain misdemeanors, or any offense that was found to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

This bill was signed into law on April 29, 2008, by the Governor, Ch. 08-27, L.O.F. The effective date of this bill is July 1, 2008.

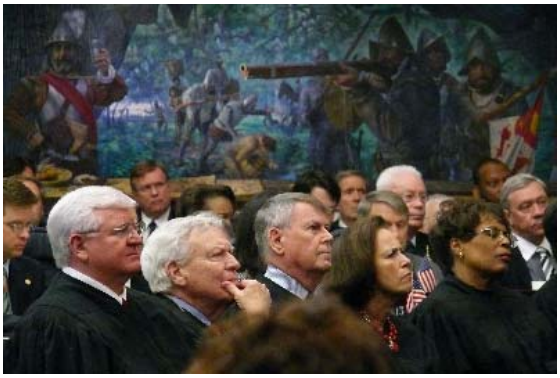
- **CS/CS/HB 43**

Criminal Activity

The bill renames chapter 874, F.S., the "Criminal Gang Prevention Act" and replaces the term "criminal street gang" with "criminal gang" throughout the chapter and other referencing statutes.

The bill makes it a crime for a person to:

- Knowingly initiate, organize, plan, finance, direct, manage, or supervise criminal gang-related activity;
- Use electronic communication to further any criminal purpose, to intimidate or harass other persons, or to advertise his or her presence in the community for a gang-related purpose;
- Possess or manufacture any unlawfully issued identification document for a gang-related purpose.



Justices of the Florida Supreme Court listen to the Governor's state-of-the-state message on the House floor during the opening session of the 2008 Legislature. (House photo by Mark Foley.)

In addition the bill:

- Provides additional registration requirements for felons convicted of gang-related offenses and a penalty for failing to comply with such requirements.
- Provides enhanced penalties if it is found that a defendant committed an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.
- Prohibits a person from possessing a bulletproof vest while committing or attempting to commit certain offenses, including criminal gang-related offenses.
- Increases the penalty for felons who have been found to have committed a gang-related offense to possess a firearm.
- Adds criminal gang-related duties to the Florida Violent Crime and Drug Control Council and creates the Drug

Control Strategy and Criminal Gangs Committee within the Council.

- Creates the Coordinating Council on Criminal Gang Reduction Strategies within the Department of Legal Affairs.
- Creates community supervision conditions prohibiting certain offenders from communicating with criminal gang members, except as authorized for the purpose of aiding in the investigation of criminal activity.
- Adds items to the list of things a court must consider when determining whether to release a defendant on bail or other conditions.
- Amends the penalties for tampering and harassing witnesses.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008, except as otherwise provided.

▪ HB 61
Offenses Against Officers

Section 776.051, F.S., *precludes* a person from using a "justifiable use of force" defense in a criminal prosecution if the person resists an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer. This statute also precludes a law enforcement officer from using a "justifiable use of force" defense if the officer used force during an arrest that he or she knew was unlawful. The Florida Supreme Court recently held that s. 776.051, F.S., only applies to arrest situations.

This bill expands s. 776.051, F.S., so that in addition to applying to arrest situations, it also applies to other police-citizen encounters. Thus, under the provisions of the bill, if a person hits a law enforcement officer who is conducting a *search* and is subsequently charged with "battery on a law enforcement officer," that person may *not* use a "justifiable use of force" defense. The bill also precludes a law enforcement officer from using a "justifiable use of force" defense if the officer used force during an arrest or during an execution of a legal duty that he or she knew was unlawful.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ HB 85
Lewd or Lascivious Molestation

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits the offense of lewd or lascivious molestation. If an offender is 18 years of age or older and the victim is under the age of 12, the offense of lewd or lascivious molestation is a life felony. This offense is punishable by a term of imprisonment for life or by a sentence of not less than 25 years' imprisonment followed by probation or community control for the remainder of the offender's natural life. The offender must be electronically monitored during this term of probation or community control.

HB 85 requires the imposition of a life sentence for a second or subsequent violation for the offense of lewd or lascivious molestation where the victim is under the age of 12 and the offender is 18 or older.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 92**

Persons Injured by Crime/Medical Treatment

This bill creates s. 843.21, F.S., which provides that a person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity and deprives that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury commits:

- A third degree felony where the victim's medical condition worsens as a result of the deprivation of medical care.
- A second degree felony where the deprivation of medical care results in the victim's death.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/HB 137**

Operating a Motor Vehicle

This bill provides additional penalties for certain offenses committed by motor vehicle operators. These penalties include increases in fines and license suspension for motor vehicle operators who exceed the speed limit by more than 50 miles per hour, or who operate a motorcycle improperly. The bill expands restrictions on the proper operation of a motorcycle to include a requirement that both wheels remain on the ground at all times and a requirement that the motorcycle's license plate be permanently affixed horizontally to the ground and incapable of being flipped up.

A first violation of the motorcycle or speeding prohibitions in the bill results in a non-criminal violation punishable by a $1,000 fine. A second violation is a non-criminal violation resulting in a $2,500 fine and the suspension of the operator's license for one year. Violators cited for a third violation commit a 3rd degree felony, receive a mandatory fine of $5,000 and 10-year revocation of the offender's driver's license.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **SB 154**

Pedestrian Safety/Driver Requirements

This legislation amends sections 316.075 and 316.130, Florida Statutes, to clarify certain requirements related to pedestrians and motor vehicles in intersections.

The bill clarifies the requirement for a driver of a vehicle stopping at a steady red signal (or any crosswalk where signage so indicates) to remain stopped to allow:

- A pedestrian already in the crosswalk with a permitted signal to cross the roadway, and
- A pedestrian stepping into the crosswalk to cross if upon the half of the roadway upon which the vehicle is traveling, or if the pedestrian is approaching so closely from the other half of the road as to be in danger.

The bill further clarifies that a driver approaching a stop sign-controlled intersection shall, unless signage indicates otherwise, yield the right-of-way to pedestrians crossing the roadway when a pedestrian is in the crosswalk or the pedestrian steps into the crosswalk and is upon the half of the roadway that the vehicle is traveling on, or is approaching so closely from the other half of the road as to be in danger.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 173**

Controlled Substances

Currently, section 893.1351, F.S. provides that a person may not lease or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that such place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance or the sale of a controlled substance. The offense is a third degree felony. The bill expands this offense to include owning as well as leasing or renting any place, structure, trailer or conveyance with the knowledge that it will be used for the purpose of manufacture of a controlled substance intended for sale or distribution to another.

The bill provides that a person may not knowingly be in actual or constructive *possession* of any place, structure, or part thereof, trailer or any conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose or trafficking in a controlled substance, the sale of a controlled substance or the manufacture of a controlled substance intended for sale or distribution to another. This offense will be a second degree felony.

The bill further provides that a person who is found to be in actual or constructive possession of a place, structure, trailer or conveyance with the knowledge that the place, structure, trailer or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another and who knew or should have known that a minor is present or resides in the place, structure, trailer or conveyance commits a first degree felony. Proof of the possession of 25 or more cannabis plants is prima facie evidence that the cannabis is intended for sale or distribution.

The bill provides that in the prosecution of an offense involving the manufacture of a controlled substance, a photograph or video recording of the manufacturing equipment used in committing the offense may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence. The bill provides that after a law enforcement agency documents the manufacturing equipment by photography or video recording, the manufacturing equipment may be destroyed on site and left in disrepair.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 313**

Dating Violence

Section 741.29, F.S., provides a variety of requirements for law enforcement officers who are investigating alleged incidents of domestic violence. Such requirements include providing victims notice of their legal rights and remedies, providing the victim information about local domestic violence centers, and including certain information in police reports. However, these requirements only pertain to incidents of *domestic violence,* and do not pertain to incidents of dating violence. Also, persons who willfully violate a condition of pretrial release, when the original arrest was for an act of domestic violence, commit a first degree misdemeanor and must be held in custody until his or her first appearance. No such penalty exists with respect to dating violence.

This bill creates the Barwick-Ruschak Act and adds the requirements of s. 741.29, F.S., to the dating violence statute so that they apply

to incidents of dating violence as well as domestic violence. The bill also creates a first degree misdemeanor for the willful violation of a condition of pretrial release when the original arrest was for dating violence and requires that the offender be held in custody until his or her first appearance.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/HB 321**

Murder of Law Enforcement Officers

Currently, the Law Enforcement Protection Act provides penalty enhancements for violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges. These enhancements provide for penalties ranging from 7 years to life in prison dependent upon the offense and other factors evaluated at sentencing for the crimes that are the subject of this bill.

CS/HB 321 creates s. 782.065, F.S., which provides that notwithstanding the Act and other sentencing statutes, a person must be sentenced to life imprisonment without eligibility for release upon a finding by the fact-finder that a person committed one of the following crimes against a law enforcement officer, part-time law enforcement officer, or auxiliary law enforcement officer engaged in the lawful performance of a legal duty:

- Murder in the first degree;
- Murder in the second or third degree;
- Attempted murder in the first or second degree; or
- Attempted felony murder.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **SB 366**

Elderly Persons & Disabled Adults/Abuse & Neglect

Section 825.102(2), F.S. provides that aggravated abuse of an elderly person or disabled adult occurs when a person:

- Commits aggravated battery on an elderly person or disabled adult;
- Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or
- Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

The bill reclassifies the offense of aggravated abuse of an elderly or disabled person from a second degree felony to a first degree felony. This will have the effect of increasing the maximum sentence for the offense from fifteen years in prison to thirty years in prison. The bill also requires certified law enforcement personnel to receive training in the identification and investigation of elder abuse and neglect.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 435**

Trust Administration

The Trust Code is the portion of the Florida Statutes that pertains to the administration of trusts. The bill provides that when a grantor appoints trustees for particular purposes, the

trustees excluded from those purposes are not liable for any consequence that results from compliance with the exercise of those purposes, regardless of the information available to the excluded trustees, except in cases of willful misconduct on the part of the directed trustee of which the excluded trustee has actual knowledge. The trustees having the power for a particular purpose shall be liable to the beneficiaries with respect to the exercise of that power.

The bill allows a trustee to pay attorney's fees and costs from trust assets unless a beneficiary applies to a court for an order to prohibit such payment. The bill requires the trustee to notify interested beneficiaries in advance of paying attorney's fees and costs from trust assets and allows sanctions against trustees who fail to comply with a court order to reimburse the trust for fees.

The bill revises time limitations for the bringing of legal claims by a beneficiary against a trustee for breach of trust. The bill provides that all claims by a beneficiary against a trustee are barred upon the later of:

- Ten years from the date that the trust terminates, the trustee resigns or the fiduciary relationship between the trustee and the beneficiary otherwise ends if the beneficiary had actual knowledge of the existence of the trust and of their status throughout the 10-year period; or
- Twenty years after the date of the act or omission of the trustee that is complained of, if the beneficiary had actual knowledge of the existence of the trust and of their status throughout the 20-year period; or
- Forty years after the date the trust terminates, the trustee resigns, or the fiduciary relationship between the trustee and the beneficiary otherwise ends.

Any existing applicable statute of repose is extended by 30 years when a beneficiary shows evidence that a trustee actively concealed facts supporting a cause of action.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 489**

Sexual Violence

Current law requires employers to grant victims of domestic violence leave for certain purposes, such as obtaining medical care and protective injunctions. No such provisions exist for victims of sexual violence.

The bill extends existing employment protection to victims of sexual violence. It requires employers with 50 or more employees to permit employees who have been employed for at least 3 months to request or take up to 3 working days of leave with or without pay within a 12-month period, if the employee is a victim of sexual violence and the leave is sought to:

- Seek an injunction for protection against sexual 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 sexual violence and to attend and prepare for court-related proceedings arising from the act of sexual violence.

The bill includes the following limitations on an employee seeking leave:

- Unless waived by the employer, employees must use all other available leave before using this leave;
- Employees must notify their employer of their planned absence (except in cases of imminent danger);
- Employers may require documentation of the sexual violence;

The bill includes the following limitations on the employer:

- Employers must keep information relating to the employee's leave confidential;
- Employers may not interfere with or retaliate against the employee's use of this leave;
- Employers may discipline or terminate employees for any other reason.
- To enforce the bill, employees are provided with a right to civil suit for damages or equitable relief.

The bill attempts to expand an existing public records exemption covering personal identifying information submitted by state agency employees who are victims of domestic violence to include those who are victims of sexual violence as well. Florida's constitution requires public records exemptions be passed in legislation containing only the exemption by two-thirds vote. HB 1141, which is linked to this bill, has been filed for this purpose.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 502**

Missing Persons/Investigation

The bill requires law enforcement agencies in the state to adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults.

The bill provides that if a person who has been reported as missing has not been located within 90 days after the missing person report is filed, the law enforcement agency that accepted the missing person report must attempt to obtain a biological specimen for DNA analysis from the missing person or from appropriate family members of the missing person to enable the agency to use the specimens in conducting searches of DNA databases.

The bill also provides that an entry concerning a missing child or missing adult may not be removed from the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC) databases based solely on the age of the missing child or missing adult.

Additionally, the bill requires that upon the filing of a credible police report that a person is missing, the law enforcement agency must, within 2 hours after receiving the missing person information, transmit the information for entry into the FCIC and NCIC databases. FDLE maintains a Missing Children Information Clearinghouse which is a central repository of information regarding missing children. The bill changes the name of this entity to the Missing Endangered Persons Information Clearinghouse. The bill also expands the duties of the clearinghouse which currently only relate to missing children to apply to missing persons younger than 26 years of age and missing persons (of any age) suspected by a law enforcement

agency of being endangered or the victim of criminal activity.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 503**

Preservation & Protection of the Right to Keep & Bear Arms in Motor Vehicles Act of 2008

This legislation prohibits public or private employers from prohibiting a customer, employee who possesses a valid concealed weapons license, or invitee from possessing a legally owned firearm locked inside, or locked to, a private motor vehicle in a parking lot if the person is lawfully in such area. A public or private employer may not violate the privacy rights of said persons by verbal or written inquiry regarding the presence of a firearm inside a private motor vehicle in a parking lot or by an actual search of the private motor vehicle in the parking lot to ascertain the presence of a firearm. The bill prohibits the public or private employer from taking action against the person based upon verbal or written statements and requires any searches of the vehicle to be conducted by on-duty law enforcement personnel. The search must be based upon due process and comply with constitutional protections.

Employers are prohibited from conditioning employment upon either an employee's or a prospective employee's holding or not holding a license to carry a concealed weapon or firearm, or any agreement by an employee or a prospective employee that prohibits an employee from keeping a legal firearm locked inside a motor vehicle when the firearm is kept for lawful purposes. Additionally, an employer cannot prevent or prohibit an employee, customer, or invitee from entering the parking lot of the employer's place of business because the person's motor vehicle contains a legal firearm, which is out of sight within his/her vehicle. Neither may an employer terminate the employment of, or discriminate against, an employee or expel a customer or invitee when the person is exercising his/her right to keep and bear arms or for exercising the right of self-defense as long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.

The provisions of this act do not apply to:

- Property owned or leased by an employer or the landlord of an employer upon which activities involving national defense, aerospace, or homeland security are conducted;
- Property owned or leased by an employer or the landlord of an employer upon which the primary business involves the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law or property owned or leased by an employer who has obtained a permit required under 18 U.S.C. s. 842 to engage in the business of importing, manufacturing, or dealing in explosive materials on such property;
- Any property where a nuclear-powered electricity generation facility is located. A motor vehicle owned, leased, or rented by an employer or the landlord of an employer;
- Any other property owned or leased by an employer or the landlord of an employer upon which possession of a firearm or other legal product is prohibited pursuant to any federal law,

contract with a federal government entity, or general law of this state;

- Any school property as defined and regulated under s. 790.115, F.S.; or
- Any state correctional institution regulated under s. 944.47, F.S. The bill provides for immunity from liability for employers under certain conditions and provides for enforcement by the Attorney General.

The bill was signed into law on April 9, 2008, by the Governor, Ch. 08-7, L.O.F. It will take effect July 1, 2008, and shall apply to causes of action accruing on or after that date.

- **CS/HB 537**

Offense of Voyeurism

Currently, s. 810.145, F.S., provides that a person who commits the offense of video voyeurism commits a first degree misdemeanor. If a person commits the offense of video voyeurism and has a prior conviction for video voyeurism, the person commits a third degree felony.

CS/HB 537 amends s. 810.145, F.S., to create additional video voyeurism offenses. The bill creates third degree felonies:

- In cases where the offender is 18 years of age or older and commits video voyeurism against:
- A child under 16 when the offender is responsible for the welfare of the victim, or
- A student at a voluntary prekindergarten program or K-12 school, whether public or private, at which the offender is employed.
- If a person 24 years of age or older commits video voyeurism against a child younger than 16 years of age.

The bill provides that the penalties for a violation of this subsection increase to a second degree felony if the offender has a prior conviction for video voyeurism.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 559**

Material Harmful to Minors

There is currently a three-pronged test to determine whether material is harmful to minors. Specifically, material is harmful to minors if it depicts nudity, sexual conduct, or sexual excitement that:

- Predominantly appeals to the prurient, shameful, or morbid interest of minors;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

This bill expands what materials might be determined harmful to minors by amending paragraph (b) to read, "Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material *or conduct* for minors."

The bill also provides that ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in certain prosecutions relating to using minors in the production of certain

materials and distributing obscene materials and materials that are harmful to minors.

The bill also increases the penalties related to the distribution of obscene materials when the materials depict a minor engaged in any act or conduct that is harmful to minors, and creates 3rd degree felony offense that prohibits a person from knowingly using a minor in the production of certain materials that are harmful to minors.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 622**

Orders of No Contact with Victims of Crimes

Currently, courts must issue an order prohibiting an offender from having contact with the victim for the duration of the sentence imposed when sentencing offenders who have been convicted of:

- Sexual battery (s. 794.011, F.S.); or
- Lewd and lascivious offenses committed upon or in the presence of persons less than 16 (s. 800.04, F.S.).

This bill adds to the above list of qualifying crimes by requiring courts to issue a no contact order when sentencing persons convicted of any of the offenses contained in s. 775.084(1)(b)1.a.-o., F.S. These crimes include arson, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/HB 663**

Termination of Parental Rights

The bill substantially amends Chapter 63, Florida Statutes, relating to the adoption of children. Provisions include, but are not limited to:

- Providing for constructive service by publication for termination of parental rights proceedings under chapter 63, Florida Statutes;
- Making substantive changes to the definitions of "parent", primarily lives and works outside Florida" and "unmarried biological father";
- Providing that an unmarried biological father who fails to file a claim of paternity with the Putative Father Registry (registry) prior to the date a petition for termination of parental rights is filed is also barred from filing a paternity claim pursuant to chapter 742, Florida Statutes, with some exceptions;
- Providing that the consent of an unmarried biological father is required only when he secures a paternity judgment or files a paternity affidavit prior to the date that a petition for termination of parental rights is filed, providing for the court to enter a default under certain circumstances, and specifying what actions an unmarried biological father must take in order to avoid default;
- Providing that written disclosure shall be provided to the parent who did not initiate contact with the adoption

entity, adds language to the adoption disclosure providing information about the Florida Putative Father Registry and what actions an unmarried biological father must take in order to protect his parental rights, and specifies the exact information which must be provided to a prospective adoptive family prior to the child's placement in the home;

- Providing that abandonment as a result of incarceration may be found when the time period for which a person has been, as well as is expected to be, incarcerated constitutes a significant (rather than substantial) portion of the child's minority; and

- Clarifying that a foreign judgment terminating a parental relationship is recognized in this state and no further proceedings are required before adoption can be finalized.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 739**

Guardian Advocates for Persons with Developmental Disabilities

CS/HB 739 amends the process for the appointment of guardian advocates for persons with developmental disabilities.

The bill provides that guardian advocates are not required to be represented by counsel unless required by the court or if they are delegated rights to oversee property other than being the representative payee for government benefits.

The petition to the court for appointment of a guardian advocate must detail the relationship of the proposed guardian advocate to service providers of health care, residential or other services to the person with a developmental disability. In addition, the notice of hearing on the petition to the person with a developmental disability must be delivered to the next of kin, any surrogate resulting from an advance directive or agent under a durable power of attorney.

The court must appoint an attorney for the person with a developmental disability within 3 days of receiving the petition for a guardian advocate. The court shall initially appoint a private attorney selected from the attorney registry in accordance with s. 27.40, F.S. Attorneys may not represent both the individual with a developmental disability and the guardian advocate or the person who files the petition. Court appointed attorneys must complete 8 hours of education in guardianship unless waived by the court.

The court must determine if a valid advance directive or durable power of attorney exist for the person who is the subject of a petition to appoint a guardian advocate. The court must also determine the sufficiency of these instruments for the person with a developmental disability. If a guardian advocate is appointed, the court must include in the letter of appointment how the advance directive or durable power of attorney are affected by the guardian advocacy.

A person may file a petition with the court for suggestion of restoration of rights for the person with a developmental disability. The bill provides the process for considering a suggestion for restoration of rights.

The bill clarifies that the right of an individual with a developmental disability to consent to or refuse treatment is subject to the powers

given to the guardian advocate or guardian.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/CS/CS/SB 756
Wrongful Incarceration Compensation

The bill creates the "Victims of Wrongful Incarceration Compensation Act" and creates a program to compensate persons who were wrongfully convicted and incarcerated for a felony offense. It provides a process whereby the person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation upon a final order vacating his or her sentence based upon exonerating evidence. The bill provides an opportunity for the prosecuting authority to either acquiesce to or contest the petition. If the prosecuting authority contests the petition, there is a hearing before an administrative law judge who then reports findings of fact and recommendations to the court. The court makes the determination as to the person's status as a wrongfully incarcerated person and eligibility for compensation under the program. A wrongfully incarcerated person is not eligible for compensation if:

- Before the person's wrongful conviction and incarceration, the person was convicted of, regardless of adjudication, any felony offense, excluding any delinquency disposition;
- During the person's wrongful incarceration, the person was convicted of, regardless of adjudication, any felony offense; or
- During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

A wrongfully incarcerated person may not submit an application for compensation if the person is the subject of a claim bill pending for claims arising out of the facts in connection with the claimant's conviction and incarceration; if the person has a lawsuit pending requesting compensation arising out of the facts in connection with the claimant's conviction and incarceration. Once an application is filed, a wrongfully incarcerated person may not pursue recovery under a claim bill until the final disposition of the application.

Upon approval of a wrongfully incarcerated person's status and eligibility, the person may then apply for compensation with the Department of Legal Affairs. Upon review and approval of the application, the Chief Financial Officer (CFO) is authorized to pay compensation in the amount of $50,000 per year of imprisonment (adjusted for inflation beginning January 1, 2009) up to a $2 million limit; a waiver of tuition and fees up to 120 hours; payment of any fines, penalties, or court costs imposed and paid by the wrongfully incarcerated person; and reasonable attorney's fees and expenses. Additionally, the person is entitled to automatic administrative expunction of his or her criminal record associated with the wrongful conviction. The CFO must purchase an annuity on behalf of the claimant for a term of not less than 10 years. Prior to the purchase of the annuity, the claimant must forever release all governmental entities from all claims arising out of the facts in connection with the wrongful conviction. The bill provides a continuing appropriation from the General revenue Fund sufficient to pay any the approved payments under this bill.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 773**

Judicial Sales

The Clerks of the Circuit Court have traditionally conducted foreclosure sales and tax deed sales by in-person auction. This bill allows a clerk of court the option to conduct foreclosure sales and tax deed sales through electronic means, such as over the Internet.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 799**

Theft of Copper or Other Nonferrous Metals

The bill creates s. 812.145, F.S., which provides that a person who knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider commits a first degree felony if the theft:

- Damages the facilities of a utility or communications services provider;
- Interrupts or interferes with utility service or communications services; or
- Interferes with the ability of a utility service or communications services provider to provide service.

A first degree felony is punishable by up to 30 years in prison and a $10,000 fine.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/SB 948**

Concealed Weapons Licenses

CS/SB 948 provides that only persons who are resident United States citizens or permanent resident aliens of the United States may obtain a concealed weapons/firearms license (license). Current law requires an applicant to be a resident of the United States. The revised residency requirement applies to all license applications pending on the date the act becomes effective as well as to all licenses renewed after the effective date.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming law.

- **CS/HB 1037**

Escrow Agents

The bill provides that an unauthorized person may not, in connection with the purchase and sale of real property:

- Transact business using the term "escrow" or words of similar import, or
- Circulate, simulate, or advertise that the business is regulated as an escrow agent.

These restrictions in the bill do not apply to:

- Certain financial institutions Attorneys.
- Persons licensed pursuant to chapter 475, Real Estate Brokers, Sales Associates, Schools, and Appraisers.
- Title insurance agents licensed pursuant to s. 626.8417, a title insurance agency that is licensed pursuant to s. 626.8418, or a title insurer who is authorized to transact business in this state pursuant to s. 624.401.

- Any person aggrieved by a violation of the bill provisions may bring an action in a court of competent jurisdiction to obtain a declaratory judgment. In any such action brought, a person may recover actual damages, plus attorney's fees and court costs. Further, a willful violation by any person is a misdemeanor of the first degree.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/HB 1417
Counterfeit Goods

In 2005, the federal government passed the "Stop Counterfeiting in Manufactured Goods Act," which strengthened federal laws against counterfeit labels and packaging and strengthened penalties for counterfeiters. In response, the United States Chamber of Commerce prepared a model *state* anticounterfeiting statute which targets those who manufacture, distribute, or possess counterfeit goods with the intent to sell, as well as those who counterfeit goods which cause bodily injury.

This bill re-organizes the provisions of ss. 831.03 and 831.05, F.S., relating to counterfeiting, and creates new sections of statutes relating to counterfeiting based upon the above-described model legislation. Specifically, the bill:

- Provides definitions; Provides that proof of a person possessing more than 25 pieces of property that bear a counterfeit mark gives rise to an inference that such property is being possessed with the intent to offer it for sale or distribution;
- Provides a tiered penalty system based on the quantity or total retail value of counterfeited goods that are knowingly sold, manufactured, distributed, or transported;
- Increases the penalty for counterfeiting offenses if a person, during the commission of the offense or as a result of the offense, knowingly, or by culpable negligence, causes bodily injury, serious bodily injury, or death; and
- Increases the penalty for repeat offenders of counterfeiting.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

▪ CS/CS/CS/SB 1442
Exploited Children

This bill provides a civil cause of action for victims of certain sexual abuse crimes if:

- Any portion of such abuse was used in the production of images or movies of child pornography; and
- The victim suffers personal or psychological injury as a result of the production, promotion, or possession of such images or movies.

The bill provides a statute of limitations for such actions and specifies that victims who are awarded damages are deemed to have sustained damages of no less than $150,000. The Office of the Attorney General, upon the request of the victim, is designated to pursue cases on behalf of any victim.

The bill also expands the definition of the terms "crime" and "victim" for victim compensation purposes and makes the following persons eligible to receive compensation for

counseling and other mental health services to treat psychological injury:

- A child less than 18 years of age who suffers psychiatric or psychological injury as a direct result of online sexual exploitation and who does not otherwise sustain personal injury or death; or
- Any person who, while under the age of 18, was depicted in any image or movie, regardless of length, of child pornography and who has been identified as a victim of child pornography, who suffers psychiatric or psychological injury as a direct result of the crime, and who does not otherwise sustain a personal injury or death.

The bill requires law enforcement officers who submit for prosecution a case that involves the production, promotion, or possession of child pornography to provide certain information to prosecutors. The bill also requires prosecutors, in every filed case that involves an identified victim of child pornography, to enter certain information into the Victims in Child Pornography Tracking Repeat Exploitation database that will be developed and maintained by the Office of the Attorney General.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008

- **CS/SB 1474**

Dissolution of Marriage

The bill allows a court to order an interim partial distribution of marital assets and liabilities if good cause is shown. The bill provides that all real property held by the parties as tenants by the entireties and all personal property titled jointly by the parties as tenants by the entireties, shall be presumed to be a marital asset which presumption can be overcome by showing that the property is non-marital. The bill provides the burden of proof to overcome the gift presumption shall be by clear and convincing evidence. The bill abolishes all special equity claims and replaces them with claims for unequal distribution of marital property or as a claim of enhancement in value or appreciation of nonmarital property.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 1509**

Community Service for Infractions of Noncriminal Traffic Offenses

CS/HB 1509 amends s. 318.18(8), Florida Statutes, relating to payment of non-criminal traffic penalties by performing community service. The bill provides that a person desiring to perform community service in lieu of payment must prove a demonstrable financial hardship. CS/SB 1509 provides additional detail to clerks of court by defining "community service" as uncompensated labor for a community service agency. A "community service agency" is defined as a non-profit corporation, a community organization, a charitable organization, a public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.

The bill provides that clerks shall value community service at minimum-wage unless certain conditions justify "prevailing wage rates," which are higher rates applicable to specialized trades and professions.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1790**

State Judicial System

The bill increases certain service charges, court costs, and fees. The bill reassigns the funding responsibility for court juror payments from the State Court System to the clerk of the courts.

Other principal changes in the bill include:

- Providing that the public defender shall provide appellate representation in criminal cases handled at trial by the criminal conflict and civil regional counsel, unless the case presents a conflict for the public defender, in which case the regional counsel or private court-appointed counsel shall handle the appeal;
- Requiring the clerks to report to the Office of the State Court Administrator on a quarterly basis on moneys collected and remitted to the Mediation and Arbitration Trust Fund;
- Requiring a person who seeks a determination of indigent status in order to receive court-appointed counsel in a dependency proceeding to pay a $50 application fee;
- Creating a $10 administrative fee to be paid for all noncriminal moving and nonmoving traffic violations under Ch. 316, F.S.;
- Mandating costs of prosecution in all criminal and violation-of-probation or community-control case convictions;
- Adding additional court fees for filing counterclaims, cross claims and third party complaints; and
- Increasing the fines for DUI and BUI.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1988**

Drivers' Licenses/Suspended, Revoked, or Canceled

The bill subjects a person convicted of knowingly driving while his or her license is suspended, revoked, or cancelled for underlying violations as enumerated in the bill, to a second degree misdemeanor penalty for the first conviction and a first degree misdemeanor penalty for the second or subsequent conviction.

The underlying enumerated violations (allowing a driver to be subject to a first degree misdemeanor penalty rather than the third degree felony penalty for a third or subsequent conviction) include:

- Failing to pay child support under s. 322.245 or s. 61.13016, F.S.;
- Failing to pay any other financial obligation under s. 322.245, F.S., (other than those specified criminal offenses in s. 322.245(1), F.S).;
- Failing to comply with a required civil penalty (paying traffic tickets and fees) under s. 318.15, F.S.;
- Failing to maintain required vehicular financial responsibility under Ch. 324, F.S.;
- Failing to comply with attendance or other requirements for minors under s. 322.091, F.S.; or

- Having been designated a habitual traffic offender under s. 322.264(1)(d), F.S., (driving with a suspended license three times in five years) as a result of license suspensions for any of the underlying violations listed above.

This newly created first degree misdemeanor penalty will only be available to drivers who do not have a prior forcible felony conviction.

The bill requires the Department of Highway Safety and Motor Vehicles, in consultation with OPPAGA, to study the effectiveness of suspending a person's driver's license for the underlying violations listed above and submit a report to the Governor and Legislature by January 2, 2009.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

▪ CS/SB 2438
Spaceflight/Informed Consent

The bill provides that a spaceflight entity is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight activities, so long as the required warning is given to and signed by the participant. The bill provides that a participant or participant's representative may not recover from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities. The immunity provided by the bill does not apply if the spaceflight entity:

- Commits gross negligence or willful or wanton disregard for the safety of the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition; or
- Intentionally injures the participant.

The limitation on liability provided by the bill is in addition to any other limitation of legal liability that might otherwise be provided by law. The bill provides that the provisions of the newly created section will expire October 2, 2018, unless reviewed and reenacted by the Legislature.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

▪ CS/CS/SB 2532
Child Custody and Support

The bill makes changes to a significant number of sections of the Florida Statues, related to custody, visitation, and child support, including, but not limited to, the following:

- Redesignates chapter 61, Florida Statutes, as "Dissolution of Marriage; Support; Time-Sharing;
- Deletes definitions of the terms "custodial parent" or "primary residential parent" and "noncustodial parent" and creates a definition for the terms "parenting plan", "parenting plan recommendation" and "time-sharing schedule;
- Amends all applicable sections of chapter 61, Florida Statutes, to delete the terms "custodial parent" and "noncustodial parent"; and replace references to either term with the term "parent" or "obligee" or "obligor". It also replaces existing references to "custody order" or "visitation order" with "parenting plan" and/or "time-sharing plan";

- Repeals s. 61.121, Florida Statutes, relating to rotating custody; and
- Amends sections of chapters 409, 414, 445, 741, 742, 753, and 827, Florida Statutes, to conform to changes in terminology in chapter 61, Florida Statutes.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/CS/SB 2676**

Citizens' Right-to-Know Act/Pretrial Release

The bill provides for reporting requirements for pretrial release programs and also amends several sections related to the posting of bail. The bill makes the following changes:

- requires pretrial release programs to maintain a register with the clerk of the court which provides detailed information about defendants interviewed and released through the program; requires pretrial release programs to make annual reports about defendants released through the program;
- provides any monetary component of pretrial release may be met by a surety bond;
- provides differing monetary amounts may not be set for cash bonds, surety bonds, or other forms of pretrial release;
- requires cash bond forms to display a notice that any and all part of a cash bond may be subject to withholding by the clerk of the court to pay court costs, fees, and fines, regardless of who posts the cash bond; and provides for an annual study by the Office of Program Policy Analysis and Government Accountability to assess the effectiveness and cost-efficiency pretrial release programs.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **HB 7073**

Child Support Enforcement

The bill makes changes related to the child support enforcement program, including providing that past due support payments are applied first to the principal amount due and then to interest that accrued on the past due amount. The bill also amends a number of provisions relating to the suspension of licenses in order to conform with another specified section of the statutes. The bill provides that if a putative father is incarcerated, the correctional facility shall assist the putative father in complying with an administrative order for genetic testing and repeals a duplicative provision relating to administrative orders for genetic testing. The bill also requires that any payments made to the State Disbursement Unit which are owed to the obligee or any payments owed to an obligee in a Title IV-D case shall be disbursed electronically.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

- **HB 7113**

Department of Law Enforcement

The bill makes several changes to the policies and procedures of the Florida Department of Law Enforcement (FDLE) as follows:

- Allows FDLE to maintain electronic copies of all fingerprints submitted

for the purpose of criminal background checks;

- Allows FDLE to use the electronic copies in the statewide fingerprint system;
- Specifically provides that FDLE may accept fingerprint submissions electronically for criminal background checks;
- Eliminates the requirement that FDLE receive a duplicate copy of a waiver granting permission to release a person's criminal history record;
- Allows a request for an administrative expunction to be made by the arresting law enforcement agency, as well as an agency that issues a warrant that is the basis for an arrest;
- Provides judges access to sealed criminal records;
- Adds the Secretary of the Department of Children and Family Services to the membership of the Criminal and Juvenile Justice Information Systems Council;
- Amends the duties of the Criminal and Juvenile Justice Information Systems Council to reflect advances in technology; and
- Creates a "citizen support organization" to raise funds and organize events for Florida Missing Children's Day.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

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Public Records

- ***New Exemptions***
- ***Open Government Sunset Reviews (OSGR)***

PUBLIC RECORDS

- **CS/CS/SB 766**

Public Records Exemption/Judicial and Administrative Officials

Current law provides a public record exemption for identification and location information of certain agency personnel. The following information is exempt from public records requirements:

- Home addresses and telephone numbers of the personnel;
- Home addresses, telephone numbers, and places of employment of their spouses and children; and
- Names and locations of schools and day care facilities attended by their children.

The bill makes the exemption applicable to general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers. The exemption, however, only applies if such magistrates, judges, or hearing officers provide a written statement that they have made reasonable efforts to protect such information from access via other means available to the public.

The bill provides for future legislative review and repeal of the exemption and provides a public necessity statement.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

House Sergeant at Arms Earnest Sumner, left, and Senate Sergeant at Arms Donald Severance drop the traditional Sine Die handkerchiefs signaling the end of the session. (House photo by Meredith Hill.)

- **CS/HB 863**

Public Records Exemption/Direct-Support Organization/DVA This bill makes confidential, and exempt from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution, the identity of a donor or prospective donor to the direct support organization established by the Department of Veterans' Affairs, provided such donor desires to remain anonymous. The bill further provides an exemption for portions of meetings of the direct-support organization during which the identity of donors or prospective donors is discussed.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/SB 1042**

OGSR/Putative Father Registry/Department of Health

Current law provides a public record exemption for all information contained in the Florida Putative Father Registry. It authorizes release of the information to an adoption entity, the regis-

trant unmarried biological father, and the court. The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It authorizes additional access to information in the registry by the birth mother, upon receipt of a notarized request for a copy of any entry in which she is identified as the birth mother.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **SB 1046**

OGSR/Foster Parents/DCFS

Current law provides a public record exemption for certain personal information of licensed foster parents and foster parent applicants, and their spouses, minor children, and other adult household members. Their home, business, work, child care, or school addresses and telephone numbers; social security numbers; birth dates; medical records; home floor plans; and photographs are exempt from public records requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It repeals a duplicative exemption for social security numbers.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2008.

- **CS/HB 1141**

Public Records Exemption/Sexual Violence Victim

This bill is linked to HB 489, which requires the submission of documentation in order for an employee to be guaranteed leave related to incidents of sexual violence.

This bill extends to victims of sexual violence seeking to obtain leave the same existing public records exemptions as those allowed for victims of domestic violence. The public records exemptions being extended to victims of sexual violence include:

- Written requests for leave submitted by an agency employee who is a victim of sexual violence and any agency time sheet reflecting such requests; and
- Personal identifying information contained in records documenting an act of sexual violence submitted to an agency by an agency employee in order to obtain leave.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity. This public record exemption will not have a fiscal impact to the state.

The bill required a two-thirds vote of the members present and voting for passage.

Subject to the Governor's veto powers, the effective date of this bill is on the same date that House Bill 489 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

- **CS/SB 1618**

OGSR/Victims of Child Abuse or Sex Crimes

Current law provides a public record exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses. The bill reenacts and expands the exemption to include victims of crimes such as sex trafficking and child pornography, and authorizes release of the information under limited circumstances. The

bill clarifies that the confidential and exempt status of the criminal intelligence information and the criminal investigative information must be maintained in court records and court proceedings. Finally, it provides for future legislative review and repeal of the exemption and provides a public necessity statement.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/SB 1630**

OGSR/Department of Agriculture & Consumer Services

Current law provides a public record exemption for information deemed confidential under federal law and that is provided to the Department of Agriculture and Consumer Services during a joint food safety or foodborne illness investigation or for regulatory review. The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/SB 2224**

OGSR/Paratransit Services

Current law provides a public record exemption for all personal identifying information contained in records held by local governmental entities and that is used for determining eligibility for paratransit services. The bill reenacts and expands the exemption making it applicable to any agency that is the custodian of such information in lieu of local governmental entities only. It provides for future legislative review and repeal of the exemption and provides a public necessity statement.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

- **CS/SB 2610**

Public Records Exemption/Organ & Tissue Donor Registry

This bill is the public records exemption companion to SB 2630, which creates the organ and tissue donation registry. The bill makes confidential and exempt, from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution, the identity of a donor listed in the donor registry. The bill further provides that such donor information may be disclosed to organ, tissue, and eye procurement organizations that have been certified by the Agency for Health Care Administration for the purpose of ascertaining or effectuating a gift, as well as persons engaged in bona fide research if the person agrees to comply with four requirements specified in the bill.

The bill specifies this exemption is subject to the Open Government and Sunset Review Act in accordance with s. 119.15, F.S., and provides that such exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption.

Subject to the Governor's veto powers, the effective date of this bill is contingent upon the Governor's approval of CS/SB 2630, and will be effective on July 1, 2008 if such is approved.

- **HB 7033**

Public Records Exemption/Complaint of Discrimination

Current law provides a public record exemption for all complaints and other records in the custody of an executive branch state agency, which relate to a complaint of discrimination in connection with hiring practices. The bill expands the exemption by making it applicable to all agencies. The exemption expires when a probable cause finding is made, the investigation becomes inactive, or the complaint is made part of the official record of a hearing or court proceeding. This bill provides for future legislative review and repeal of the exemption and provides a public necessity statement.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

- **HB 7053**

OGSR/Florida Kidcare Program

Current law provides a public record exemption for information identifying a Kidcare program applicant (parent or legal guardian) or enrollee (child) and provides for exceptions to the exemption. A violation of the exemption is a misdemeanor of the second degree.

The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It removes unnecessary language and repeals a duplicative public record exemption specific to the Florida Healthy Kids Corporation.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2008.

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