



# 2011 FLORIDA LEGISLATURE POST-SESSION REPORT

WHAT YOU SHOULD KNOW ABOUT SIGNIFICANT  
BILLS PASSED IN THE REGULAR LEGISLATIVE SESSION,  
AND 2012 PROPOSED CONSTITUTIONAL AMENDMENTS

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# 2011 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 2011 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 contacting our Tallahassee Office or by visiting the Legislature's website ([www.leg.state.fl.us](http://www.leg.state.fl.us)). Please select the "Enrolled" (ER) version of the bill. Chapter Law citations and final legislative staff analyses of bills are also available on the Legislature's website.

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

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## GOVERNMENT LAW AND CONSULTING PRACTICE GROUP

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

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

Individual group member practices are as diverse as the wide range of professions and industries collectively represented. Client services are effectively delivered by lawyers and government consultants operating within specialized subgroups to enable the quick composition of cross-disciplinary teams as are necessary to negotiate, litigate, lobby, and advocate in the areas of:

- **Administrative Law and Litigation**

We monitor agency activity, rulemaking, and advocate challenges to existing and proposed rules to include agency statements that meet the definition of a rule but have not been formally adopted. Our experience in this area ranges across a wide array of subjects, including diverse matters as building code criteria, professional and business licensure, environmental permitting,

state tax, and insurance. We also represent clients in administrative litigation proceedings involving challenges to licenses, permits, and comprehensive plan amendments, administrative bid protests and government agency divisions. We also provide advice on non-rule policy issues.

- **Affordable Housing**

We are quite familiar with all of the state, local and federal housing agencies involved in provisions or funding of affordable housing and we represent a variety of clients in the planning and development of affordable housing projects throughout the state. We prepare, review and advocate applications for funding before the Florida Housing Finance Corporation, including Low Income Housing Tax Credit Applications and State Apartment Incentive Loan Applications. Lawyers and government consultants within the firm's Real Estate Development, Land Use, Planning, and Environmental Regulation areas give depth to our work in affordable housing and they are tapped when necessary.

- **Business and Professional Regulation and Licensure**

We routinely guide clients through the often complex requirements necessary to obtain professional or business licensure in Florida. These include construction, medical, engineering, architecture, real estate, condominium, and the alcoholic beverage industry. We often resolve issues by working at the highest levels within the state agencies regulating these professions and businesses. We are also experienced at representing a this clientele in the defense of government initiated

disciplinary actions based on alleged regulatory violations. Our statewide network of attorneys and diverse practice groups also allows us to assist clients in their efforts to be proactive about tax, corporate form, real estate and other implications of contemplated business activities.

#### ▪ **Education, including Charter Schools**

We have extensive experience in all aspects of education law. We represent numerous school districts across the state, charter schools, and private entities doing business before local school districts and at the state level. We practice before the State Board of Education and have significant experience assisting clients with matters at the Florida Department of Education. We are experienced in school construction, litigation (including appellate), personnel matters, lobbying, contractual issues, procurement, and with environmental issues including mold remediation, asbestos abatement, permitting issues, funding and charter issues.

#### ▪ **Energy**

We provide a wide range of services to businesses and energy-related companies, both public and private, including manufacturing, electric and natural gas entities. We counsel and advocate positions between private companies, before state regulatory agencies, state and federal courts, and arbitration panels. Our services involve:

- Utility Regulatory Proceedings and Strategy
- Litigation, Arbitration, and Alternative Dispute Resolution
- Legislative and Executive Branch Lobbying and Government Relations
- Local Government Relations (e.g. counties, municipalities)

- Siting, Permitting and Obtaining State Leases For Linear Facilities (e.g., Power Lines, Pipelines)
- Contract Negotiations
- Tax, Corporate, and Securities
- Real Estate, Land Use, and Environmental Issues
- Renewables and Alternative Energy Sources (e.g. Bio-Fuels)
- Eminent Domain
- Employment

#### ▪ **Environmental Regulation and Natural Resources**

We are experienced in the area of environmental law and advocate on behalf of clients in a diverse range of industries that regularly confront environmental issues. We regularly represent clients before the state's regulatory agencies on issues relating to liability, litigation, permits, clean air and water compliance, groundwater, waste disposal, Brownfield sites, Superfund, wetlands, zoning, listed species and water rights and supply.

#### ▪ **Ethics and Elections**

We guide clients and candidates through the requirements necessary to qualify to run for public office, and campaign finance reporting requirements. We are well-versed in the state's constitutional amendment petition process, third party voter registration procedures, and general campaign, voting procedures and redistricting.

#### ▪ **Government Procurement**

We have extensive experience advising and representing client vendors and contractors who seek to do business with government at state and local levels. We protect the client's legal interests in contract negotiations with state and local government entities to include the mitigation of exposure under public records laws. We guide clients through all phases of the public procurement process, from providing information to government entities

during the development of procurement solicitation documents, assisting public contractor clients in the preparation of their responses to competitive procurements, defending and challenging awards through both administrative and judicial proceedings, participating in the negotiation of contract terms, and providing advice and representation of clients in matters regarding contract compliance. In addition, we both represent certain public entities in defending award decisions and provide legal advice to such entities regarding the implementation of procurement policies and procedures designed to minimize the likelihood of future procurement litigation.

#### ▪ **Insurance and Financial Services Regulation**

Our insurance practice was ranked by Chambers USA among the top insurance practices in Florida in its inaugural Chambers USA guide to America's Leading Business Lawyers. We have an extensive experience in the areas of licensure, coverage matters, property damage claims, bad faith, business litigation, and regulation to include:

- Formation and licensing of foreign and domestic insurers and specialty insurers
- Self-insured licensure status for workers' compensation
- Ratemaking, including administrative rate proceedings, judicial proceedings, and rate arbitration
- Form and product filing approvals
- Statutory accounting, admitted asset, diversification and solvency issues
- Residual market issues in connection with catastrophic coverage, residential and commercial property coverage, and depopulating state residual markets

- Insurance taxation, including premium tax, corporate income tax, retaliatory tax, and special purpose assessments
- Issues pertaining to the affiliation of banking and insurance
- Administrative rule challenge proceedings
- Market conduct investigations and cases
- Representation of companies and agents regarding Unfair Trade Practices Act
- Market exit disputes with regulators
- Solvency and receivership actions against regulated insurance entities under Chapter 631, Florida Statutes
- Ongoing compliance issues

#### ▪ **Land-Use and Economic Development**

We have extensive on-the-ground experience in comprehensive plans and plan amendments that includes preparation and processing, and litigation of compliance and consistency challenges and have taken a leadership role in the Legislation in this policy area. In combination with our certified in-house planning staff, we have very deep capabilities in preparing and handling rezoning applications, site plan review, variances, special use permits, impact fees, transportation planning and financing, expert witness testimony, due diligence research for real estate transactions, comprehensive planning and preparing and processing DRI and FQD applications.

We prepare impact analyses for any type of development, having coordinated and/or assisted clients in preparing and presenting over 200 DRIs and FQDs in many local governments in all areas of Florida. We are very successful in supervising and shepherding comprehensive plan amendments that support DRI and FQD applications through the local

and state approval process. We also deal extensively with aggregation issues and Binding and Clearance letters as well as other issues regarding vesting of development rights.

Our lawyers and government consultants are also substantially experienced in establishing Community Development Districts (CDD) and in representing CDDs or others dealing with them in all phases of their activities.

Additionally, we are very familiar with other aspects of special district laws.

▪ **Lobbying**

We use a comprehensive approach to lobbying that includes advocacy efforts to help pass or defeat legislative and policy proposals consistent with client positions. We work closely with clients to identify, track, analyze, and summarize legislative proposals and political and policy considerations, assessing their impact on client operations. We draft legislation and amendments to legislation, and use our extensive political relationships efficiently to advocate client positions before local governments, all executive agencies, the Legislature and the Florida Cabinet. We are fully engaged in local and statewide elections and regularly counsel clients about political contributions to candidates.

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

*Biographical information on our practice group members are located at [www.carltonfields.com](http://www.carltonfields.com).*

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**WORK BEGINS TO CARVE FLORIDA’S NEW CONGRESSIONAL AND LEGISLATIVE BOUNDARIES**

With the 2010 Census complete, the Florida Legislature now begins the grueling work to redraw state congressional and legislative district lines in preparation for the 2012 General Election. The House and Senate have each named committees to handle the project.

The resulting Congressional plan will incorporate two additional seats for Florida, bringing the state’s total seats in the US House of Representatives to 27.

In terms of the Florida Legislature, the State Constitution provides there shall be between 30 and 40 Senate districts and between 80 and 120 House districts.

The current number of state legislative districts is 40 in the Senate, and 120 in the House of Representatives, and this ratio will most likely remain unchanged.

The final Congressional redistricting plan will be developed and passed as a “General Bill” within the 2012 Legislature.

Unlike the Congressional plan, the final state Legislative redistricting plan will be developed and passed as a “Joint Resolution” during the 2012 session.

General bills are subject to gubernatorial review and veto; Joint Resolutions bypass the governor and are not subject to gubernatorial review or veto.

Florida last redrew districts ten years ago. The current effort is a watershed moment and could alter Florida’s political landscape for the foreseeable future. A couple of factors will make the already complex exercise a very thorny task – setting the stage for a big political battle over power.

❖ **Republicans are in Power, But Democrats Lead Voter Registrations**

Democrats continue to lead in overall voter registrations, holding 41 percent of

the state’s 11.2 million total registrants at the time of the 2010 General Election. Republicans hold 36 percent, while all other affiliations, including Independents and “No Party Affiliation,” rest at 23 percent of the electorate.

Regardless of the electorate mix, the Republicans hold a Super Majority of members within both the State Senate and House of Representatives. Super Majority status essentially means one party completely controls the chamber’s political agenda by controlling the procedural rules of the chamber. It often yields hard-line partisan policy as witnessed in the 2011 Legislature; but redistricting is a numbers game, and the true facts around voter registration by party will make redistricting very tricky for the Republicans due to recent changes to the State Constitution.

❖ **New Constitutional Provisions Dictate Redistricting**

In November 2010, voters approved two amendments to the Florida Constitution that change the rules about how the Legislature is to go about the redistricting exercise. Essentially the amendments say that Congressional and Legislative districts may not be drawn *to favor or disfavor an incumbent or political party*. Nor shall districts deny racial or language minorities the equal opportunity to participate in the political process. The new districts must be contiguous, and unless otherwise required, districts must be compact and make use of existing city, county and geographical boundaries. This substantial change in the rules will make drawing new district lines difficult and, no doubt, very political. Theoretically the end result could be a new legislator mix that closer replicates residents’ ethnic and political demographics – maybe, maybe not.

Democrats can certainly be expected use Florida voter facts and the new



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constitutional language as leverage in an effort to elevate themselves out of their

Super Minority situation.

<b>Congressional Districts; New section 20 added to Article III of the State Constitution</b>	
Section 20. STANDARDS FOR ESTABLISHING CONGRESSIONAL DISTRICT BOUNDARIES	
In establishing Congressional district boundaries:	
(1)	No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
(2)	Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
(3)	The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

<b>Legislative Districts; New Section 21 added to Article III of the State Constitution</b>	
Section 21. STANDARDS FOR ESTABLISHING LEGISLATIVE DISTRICT BOUNDARIES	
(1)	No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
(2)	Unless compliance with the standards in the subsection conflicts with the standards in subsection (1) or with the federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
(3)	The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

### ❖ Redistricting Timeline, Early 2012 Legislative Session

The House and Senate redistricting committees will be spending the summer months conducting public meetings across the state. Under the schedule, the committees will spend June 20-22 in the Panhandle, with stops in Tallahassee, Milton, Fort Walton and Panama City. The joint panel will then move to the state's northern end on July 11-13, with scheduled public hearings in Jacksonville, St. Augustine, Daytona Beach, The Villages, and Gainesville. The committees have yet to determine specific meeting locations in other areas of the state, but the following meeting days have been determined: Central Florida, July 25-28; Southeast Florida, tentatively scheduled for August 15-18; and South-

west Florida, tentatively August 29-September 1.

The Senate Redistricting Committee is chaired by President-Designee Don Gaetz (R-Fort Walton Beach). The House committee is led by Rep. Will Weatherford (R-Wesley Chapel), the House Speaker-Designee.

The 2012 Legislature will also convene two months early in January of 2012 to codify the redistricting committees' recommended work products. An early legislative start is necessary because the final legislative product must be validated by the Florida Supreme Court.

Republicans have aside money in the 2011-2012 budget to defend the final work product if it is challenged. They did so in anticipation of litigation, given the requirements of the constitutional amendments that passed last year. The

timeline, with and an early 2012 Legislative Session, may or may not allocate enough time for a legal challenge.

The public can follow and participate in the Legislature’s redistricting effort on the Internet: [www.floridaredistricting.org](http://www.floridaredistricting.org)

<b>Florida’s Redistricting Process and Timeline for The Florida Legislature and Congress</b>	
<b>June-September 2011:</b>	The Florida Legislature will be host statewide public meetings for citizen input on redistricting.
<b>October-December 2011:</b>	Likely time for House Redistricting Committee and Subcommittees to begin reviewing public input.
<b>January 10-March 9, 2012:</b>	2012 Legislative Session; The Legislature officially approves new district plans.
<b>2012: After Legislative Enactment of Both Plans</b>	
<b>Legislative (State House and Senate) Redistricting Plans</b>	<b>Congressional Redistricting Plan</b>
Between January 10 and March 9 – The Legislature approves Legislative plans as a Joint Resolution*	Between January 10 and March 9 – The Legislature approves Congressional plan as a General Bill*
15 Days – The Attorney General submits Legislative plans to the Florida Supreme Court	7 or 15 Days – The Governor signs Congressional plan into law
30 Days – The Florida Supreme Court upholds the Legislative plans	NO AUTOMATIC COURT REVIEW
60 Days – The US Dept. of Justice pre-clears the Legislative plans	60 Days – The US Dept. of Justice pre-clears the Congressional plan
June 4 to 8 – Qualifying for state and federal elections in Florida	June 4 to 8 – Qualifying for state and federal elections in Florida

*\*Joint Resolutions bypass the governor and are not subject to gubernatorial review or veto. General bills are subject to gubernatorial review and veto.*



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**CORPORATE, BUSINESS & PROFESSIONAL  
REGULATION**



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**CORPORATE, BUSINESS & PROFESSIONAL REGULATION**

▪ **HB 93**  
**Security Cameras**

In response to ongoing litigation over SB 360, passed in 2009, the bill (Chapter 2011-8, L.O.F.) reenacts a section of law created by ch. 2009-96, Laws of Fla., to eliminate any possible question that it could be subjected to a single-subject challenge or struck down as an unconstitutional unfunded mandate. The bill does not change the law, but reaffirms the change to the law made in 2009 by SB 360 that prevents local governments from requiring that a business spend funds for security cameras. The section does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras.

▪ **CS/CS/HB 139**  
**Child Care Facilities**

This bill creates a definition for “household children” in ch. 402, F.S., providing that the supervision of household children belonging to a family day care or large family child care home operator is to be left to the discretion of the operator, unless the children receive subsidized child care through the School Readiness Program to be in the home. The bill also amends the definitions of “family day care home” and “large family child care home” to require that household children under the age of 13 be included in the capacity calculation of those homes when the child is on the premises of the home or on a field trip with children enrolled in child care. The bill expands the requirements for advertising by prohibiting a person from advertising a child care facility, family day care home, or large family child care home without including the license or registration

number of the facility or home. Lastly, the bill allows a Gold Seal Quality Care provider to correct any Class III violations for which it is cited within one year from the date of the violation before losing its Gold Seal designation or becoming ineligible for such designation.

▪ **CS/HB 253**  
**Limited Liability Companies**

In response to a Florida Supreme Court holding about remedies available to a judgment creditor of a single-member limited liability company, CS/HB 253 substantially amends s. 608.433, F.S. The bill clarifies that the general application of the decision in *Olmstead v. Federal Trade Commission* to single-member limited liability companies does not apply to multiple-member limited liability companies. The bill provides, with one exception, that a charging order is the “sole and exclusive remedy” by which a judgment creditor of a member or member’s assignee may satisfy a judgment from a judgment debtor’s interest in a limited liability company or rights to distributions from a limited liability company. The exception arises in situations where a limited liability company has only one member. The bill provides that the court may order the sale of a member’s interest in a single-member limited liability company if the judgment creditor shows that distributions under a charging order will not satisfy the judgment in a reasonable time. The bill provides that the amendments made to s. 608.433, F.S., are clarifying and apply retroactively.

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### ▪ **CS/SB 444 Scrutinized Companies**

This bill prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more. The bill provides an exception to the prohibition under specified circumstances.

The bill requires a company to certify that it is not on either list before it submits a bid or proposal for or enters into or renews such a contract. Any such contract entered into or renewed on or after July 1, 2011, must contain a provision that allows for termination of the contract if the company is found to have submitted a false certification.

The bill provides a process through which an agency or local government that makes a determination of false certification must provide notice to the company, and through which the company may respond to and challenge the determination. The bill also requires the agency or local government to bring a civil action if the company does not disprove the determination of false certification within a specified time, and specifies penalties for a company that a court determines has made a false certification. Only the agency or local governmental entity that is a party to the contract is authorized to bring such a civil action.

The bill also:

- Specifies that the section of law created by the bill preempts any ordinance or rule or any agency or local governmental entity involving public contracts for goods or services of \$1 million or

more with a company engaged in scrutinized business operations.

- Requires the Department of Management Services to submit a written notice describing the section to the Attorney General of the United States within 30 days after July 1, 2011.
- Provides that the section becomes inoperative on the date that federal law ceases to authorize the states to adopt and enforce the contracting prohibitions of the type provided for in the section.

### ▪ **CS/CS/CS/HB 599 Corporations Not For Profit**

The bill adopts the 2006 Uniform Prudent Management of Institutional Funds Act (act), and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments. The new act applies to all charitable endowment funds with the exception to funds administered by the State Board of Administration. Charitable purpose is defined under the new act as "the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community."

The primary benefit of this act is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited. The Uniform Prudent Management of Institutional Funds Act (UPMIFA) has been adopted in 47 states. The bill also provides that when a not for profit corporation is issued a deed to real property in the state by the Board of Trustees of the Internal Improvement Trust Fund

containing a reverter clause that restricts the use of property to specified uses in the deed, the failure to put the property to the required use within a period of 3 years after the grant, unless a stricter time period is contained in the deed, is prima facie evidence that the restriction is violated, subjecting the property to reversion to the board at its discretion. This section applies retroactively and prospectively and may not be construed to excuse for any period of time a use of the property in violation of the restrictive use. The bill creates s. 617.2014 of the Florida Statutes.

▪ **CS/CS/HB 647**  
**Protection of Volunteers**

The "Florida Volunteer Protection Act", codified in s. 768.1355, F.S., provides that any person who volunteers to perform any service for any nonprofit organization, without compensation, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under the volunteer services. Such person may not incur civil liability for any act or omission by the person which results in personal injury or property damage under specified circumstances. The bill amends the Act to specify that, as long as a volunteer is not being compensated by the nonprofit organization for which he or she is volunteering, liability for the volunteer's acts still may be shifted to the nonprofit organization, provided the other criteria of the Act are satisfied. In addition, if the volunteer is being compensated by another source and is not acting as an agent of the source of compensation, neither the volunteer nor the source of the compensation may incur any liability for the volunteer's acts or omissions if the other criteria of the Act are also met. Specifically, under the bill, any person who volunteers for any nonprofit organization,

including an officer or director of such organization, without compensation *from the nonprofit organization, regardless of whether the person is receiving compensation from another source*, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source*, may not incur any civil liability for any act or omission by the volunteer which results in personal injury or property damage if other specified criteria in the Act are also met. If approved by the Governor, these provisions take effect July 1, 2011, and apply to causes of action accruing on or after that date.

▪ **CS/SB 650**  
**Mobile Home Park Lot Tenancies**

The bill provides that local governments must cite the responsible party for violations of local codes or ordinances in mobile home parks. It would also prohibit local governments from assessing a lien, penalty, or fine, or initiating an administrative or civil proceeding against the mobile home owner or park owner who does not have any duty or responsibility for the alleged violation.

The bill provides mobile home park homeowners' associations a right of first refusal to purchase a mobile home park when a mobile home park is subject to a change in land use. The bill also establishes notice procedures. The bill gives the homeowners' association the right to execute and deliver a contract for purchase of the park to the park owner within 45 days after the park owners mails a written notice that sets forth the price and terms and



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conditions for the sale of the mobile home park. The contract offer by the homeowners' association must be for the same price and terms and conditions set forth in the notice. If the park owner decides to offer the park at a lower price, the homeowner's association has 10 days to execute and deliver a contract meeting the new terms. The park owner is not obligated to provide any further notice to, or to negotiate with, the homeowners' association for the sale of the mobile home park after six months from the date of mailing the initial notice that set forth the price and terms and conditions for the sale of the mobile home park.

The bill clarifies that the provisions of s. 723.083, F.S., which requires local governments to consider the adequacy of parks for relocation, apply when a mobile home park owner gives notice of eviction based on a change in land use under s. 723.061, F.S.

### ▪ **HB 883** **Public Lodging Establishments and Public Food Service Establishments**

The bill provides an exemption from the definition of "public lodging establishment" for housing provided by a nonprofit organization for patients and their families and caregivers and not to the general public.

The bill preempts to the state matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments. This bill prohibits local governments from enacting such ordinances.

The bill requires that public food services establishments must complete, rather than simply attend, a remedial education program when such program is given as a sanction because of a violation of ch. 509,

F.S., or rules of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department), because the establishment was operating without a license, or because the establishment operated with a revoked or suspended license. The bill also requires that such educational programs be administered by a food safety training program provider whose program has been approved by the division rather than programs sponsored by the Hospitality Education Program.

The bill replaces the classifications "resort condominium" and "resort dwelling" with the single term "vacation rental." It provides that local laws, ordinances, or regulations may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. However, the bill specifies that this prohibition does not apply to any local law, ordinance, or rule adopted on or before June 1, 2011. The bill also exempts from the prohibition local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if it is required to be approved by the Department of Community Affairs (or its successor) pursuant to an area of critical state concern designation.

Florida Statutes provide for an advisory council to promote better understanding and cooperation between the division and the individuals and businesses that the division regulates. The bill changes the number of members appointed to the advisory council by the secretary of the department from seven members to six members.

Additionally, the bill creates one new voting member of the advisory council who must represent the Florida Vacation Rental Managers

Association. Consequently, the number of members composing the advisory council remains at 10 members.

The bill amends current law related to distribution of handbills at public lodging establishments and public food service establishments and specifies that this may be cited as the "Tourist Safety Act." Under the bill, handbills may only be distributed with the written permission of the owner, manager, or agent of the owner or manager of the public lodging establishment. The bill increases the penalties for violation of the handbill statute by:

- Imposing new fines for persons who unlawfully distribute handbills and who direct others to unlawfully distribute handbills for subsequent violations of the statute (\$2,000 for the second violation, and \$3,000 for the third and any subsequent violations);
- Expanding the property that is subject to seizure or forfeiture under the Florida Contraband Forfeiture Act to include property used in violation of a person's third or subsequent violation of the handbill distribution statute; and
- Permitting law enforcement officers to issue a notice to appear to a person without a warrant when the officer has probable cause to believe that the person has committed a violation of the Tourist Safety Act and the owner of the public lodging establishment and one other affiant sign affidavits to that effect.

The bill specifies that the amendments made by the Tourist Safety Act do not affect or impede the provisions of Florida Statutes allowing lawful possession of a firearm in one's automobile, or any other protection or right guaranteed by the Second

Amendment to the United States Constitution.

▪ **CS/SB 926  
Liability/Employers of  
Developmentally Disabled**

CS/SB 926 creates a new section of the Florida Statutes to provide an employer who employs an individual who has a developmental disability with immunity from liability for negligent or intentional acts or omissions by that individual if:

- The employee receives or has received supported employment services through a supported employment service provider; and
- The employer does not have actual prior notice of the employee's actions that created the unsafe conditions in the workplace. The bill also allows a supported employment service provider that has provided employment services to a person with a developmental disability to be immune from liability for the actions or conduct of the person that occur within the scope of the person's employment. The bill creates s. 768.0895, F.S.

▪ **CS/SB 960  
Liquefied Petroleum Gas**

The bill requires all state agencies to adopt standards relating to the separation distance between liquefied petroleum gas containers and structures, property lines, and sources of ignition contained in the 2011 edition of the National Fire Protection Association 58, also known as the Liquefied Petroleum Gas Code. The bill provides for repeal under certain circumstances.

▪ **CS/CS/HB 1231  
Telecommunications**

The bill completes retail deregulation of wireline telecommunication services by repealing statutes that provide for price regulation, including rate caps; require

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companies to offer a flat-rate pricing option for basic local telecommunications service; and authorize the Public Service Commission to engage in consumer protection activities, including service quality regulation. It maintains the role of the Public Service Commission in resolving wholesale disputes between service providers and consolidates these statutes. It maintains Lifeline and Link-Up and creates authority for the Public Service Commission to inform customers of these programs.

### ▪ **CS/SB 1884** **Consumer Protection**

This bill prohibits a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless specific disclosures are made and the seller receives the informed consent of the consumer. It also requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges. Finally, it prohibits an initial merchant from disclosing a consumer's credit card number, debit card number, bank account number, or other account number, or disclose other consumer billing information, to a post-transaction third-party seller. This bill is very similar to recently enacted federal law, enacted to counter "negative option marketing," which refers to a category of commercial transactions in which sellers interpret a customer's failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services. By including these same protections in our statutes, Florida has jurisdiction to enforce the consumer protections provided in the act under state law.

### ▪ **HB 4023** **Sales Representative** **Contracts/Commissions**

This bill repeals s. 686.201, F.S., relating to sales representatives contracts. Enacted in 1984, this provision requires a written contract between principal and commissioned sales representatives which specifies the terms of the commission. In the event that there was no written contract, this provision requires that the sales representative be paid within 30 days of termination of the unwritten contract. Should the principal not comply with this requirement, the sales representative has a cause of action for damages equal to triple the amount of commission found to be due, and reasonable attorney's fees and court costs. This bill repeals s. 686.201, F.S.

### ▪ **HB 4033** **Florida Industrial Development** **Corporation**

This bill repeals all of ch. 289, F.S., the Florida Industrial Development Corporation (FIDC). The chapter had been enacted by the Legislature in 1961 to create a process by which residents, businesses, and financial institutions could create an FIDC to issue revenue bonds for economic development projects. It appears that only two FIDCs have been created, and both have dissolved, according to the state Division of Corporations. Specifically repealed are ss. 289.011, 289.021, 289.031, 289.041, 289.051, 289.061, 289.071, 289.081, 289.091, 289.101, 289.111, 289.121, 289.131, 289.141, 289.151, 289.161, 289.171, 289.181, 289.191, and 289.201, F.S. Also, ss. 212.08, 220.183, 220.62, 440.491, and 658.67, F.S., are revised to remove ch. 289, F.S., cross-references. ▪

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**EDUCATION AND WORKFORCE DEVELOPMENT**



**EDUCATION AND WORKFORCE DEVELOPMENT**

▪ **CS/SB 84**  
**Community College Names**

After a community college has been authorized to grant baccalaureate degrees and the district board of trustees changes the institution’s name by using the designation “college” or “state college,” the board of trustees must seek codification of the name change in the next regular session of the Legislature. In accordance with that requirement, this bill codifies the names of Gulf Coast State College, Pensacola State College, St. Johns River State College, and Valencia College.

▪ **SB 228**  
**Code of Student Conduct**

Popularly known as the “Droopy Drawers” bill, this bill requires student conduct codes to include provisions on student dress and style of wearing clothing. District school boards are specifically required to adopt a dress code policy that prohibits students from wearing clothing in a revealing manner or in a way that is disruptive to learning. This bill provides sanctions for violators, which range from a verbal warning and parental notice to in-school suspension.

To maintain eligibility to participate in interscholastic extracurricular activities, students are required to comply with the district school board student conduct code, including the section on dress code policy.

This bill substantially amends sections 1006.07 and 1006.15, and reenacts section 1002.23(7), Florida Statutes.

▪ **CS/CS/SB 736**  
**Educational Personnel**

This bill (Chapter 2011-1, L.O.F.) revises the evaluation, compensation, and employment practices for classroom teachers, other instructional personnel, and school administrators to refocus the education system on what is best for students. The bill aligns with Florida’s successful Race to the Top application to which 62 of the 67 school districts and 53 local unions have supported and agreed to implement.

❖ *Performance Evaluations*

The Legislature found the current evaluation system for classroom teachers, other instructional personnel, and school administrators relies on a completely subjective review and does not sufficiently, if at all, take the performance of students into consideration in determining the effectiveness of instructional staff and school leaders. The bill revises the evaluation system to focus on student performance. For instructional personnel who are not classroom teachers, a school district may include specific job-performance expectations related to student support and use growth data and other measurable student outcomes specific to the individual’s assignment, as long as the growth accounts for at least 30 percent of the evaluation.

❖ *Performance of Students*

The bill reinforces Race to the Top, which requires 50 percent of the evaluation for classroom teachers and other instructional personnel to be based on student performance for students assigned to them over a 3-year period. The bill specifies that 50 percent of a school administrator’s evaluation is based upon the

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performance of the students assigned to the school over a 3-year period. If less than 3 years of student growth data is available for an evaluation, the district must include the years for which data is available and may reduce the percentage of the evaluation based on student growth to not less than 40 percent for classroom teachers and school administrators and not less than 20 percent for other instructional personnel.

### ❖ *Learning Growth Model*

The Commissioner of Education would establish a learning growth model for the Florida Comprehensive Assessment (FCAT) and other statewide assessments to measure the effectiveness of a classroom teacher or school administrator based on what a student learns. The model would use the student's prior performance, while considering factors that may be outside a teacher's control, such as a student's attendance, disability, or English language proficiency. However, the model may not take into consideration a student's gender, race, ethnicity, or socioeconomic status. School districts are required to measure student learning growth based on the performance of students on the state-required assessments for classroom teachers, other instructional personnel, and school administrator evaluations. School districts would be required to use the state's learning growth model for FCAT-related courses beginning in the 2011-2012 school year. School districts must use comparable measures of student growth for other grades and subjects with the department's assistance, if needed. Additionally, districts would be permitted to request alternatives to the growth measure if justified.

### ❖ *Evaluation Criteria*

The remainder of a classroom teacher's evaluation is based on

instructional practice and professional responsibilities. School districts may use peer review as part of the evaluation. The evaluation system must differentiate among four levels: highly effective; effective; needs improvement or, for instructional personnel in the first three years of employment who need improvement, developing; and unsatisfactory.

The Commissioner of Education would be required to consult with instructional personnel, school administrators, education stakeholders, and experts in developing the performance levels for the evaluation system. For instructional personnel who are not classroom teachers, the remainder of the evaluation would consist of instructional practice and professional responsibilities, and may include specific job expectations related to student support. The remainder of a school administrator's evaluation would include the recruitment and retention of effective or highly effective teachers, improvement in the percentage of classroom teachers evaluated at the effective or highly effective level, other leadership practices that result in improved student outcomes, and professional responsibilities. School districts, beginning with the 2014-2015 school year, must administer local assessments that are aligned to the standards and measure student mastery of the content. The school district can use statewide assessments, other standardized assessments, industry certification examinations, or district-developed or selected end-of-course assessments. Until July 1, 2015, a district that has not implemented an assessment for a course or has not adopted a comparable measure of student growth may use two alternative growth measures to determine a classroom teacher's student performance: student growth

on statewide assessments or measurable learning targets in the school improvement plan. Additionally, a district school superintendent may assign to an instructional team, the student learning growth of the team's students on statewide assessments. The bill requires newly hired teachers to be evaluated at least twice in the first year of teaching.

❖ *Performance Pay*

The current salary system is divorced from the effectiveness of the classroom teacher, other instructional personnel, or school administrators. Instead, salary decisions are made on the basis of longevity. The bill comports with Race to the Top by tying the most significant gains in salary to effectiveness demonstrated under the evaluation. Beginning with instructional personnel or school administrators hired on or after July 1, 2014, the evaluation will determine an individual's eligibility for a salary increase. The salaries of quality teachers, other instructional personnel, and school administrators would grow more quickly, while those of poor performing employees would not. The new salary schedule would require a base salary schedule for classroom teachers, other instructional personnel, and school administrators with the following salary increases:

- An employee who is highly effective, as determined by his or her evaluation, would receive a salary increase that must be greater than the highest annual salary adjustment available to that individual through any other salary schedule adopted by the school district.
- An employee who is effective, as determined by his or her evaluation, would receive a salary increase between 50 and 75 percent of the annual salary

increase provided to a highly effective employee.

- An employee under any other performance rating would not be eligible for a salary increase. Current instructional personnel and school administrators could remain on their existing salary schedule, as long as they remain employed by the school district or have an authorized leave of absence. They may also opt to participate in the new performance salary schedule, but the option is irrevocable. Current instructional personnel who want to move to the new performance salary schedule would relinquish their professional service contract. The bill is consistent with Race to the Top by requiring school districts to provide opportunities for instructional personnel and school administrators to earn additional salary supplements for assignment to a high priority location (e.g., an eligible Title I school or low-performing school), certification and teaching in critical teacher shortage areas, or assignment of additional academic responsibilities. Beginning with instructional personnel hired on or after July 1, 2011, a district school board may not use advanced degrees in setting the salary schedule unless the advanced degree is held in the individual's areas of certification. When budget constraints limit a school board's ability to fully fund all adopted salary schedules, the bill prohibits the school board from disproportionately reducing performance pay schedules.

❖ *Employment*

The current system requires school districts to award tenure to a teacher after as little as three years of teaching. This employment is



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automatically renewed unless the teacher is “charged” with unsatisfactory performance. It takes two or more years to terminate an ineffective teacher. The Legislature believed tenure protects ineffective instructional personnel at the expense of students. The bill furthers the goals of Race to the Top by basing employment decisions on the evaluation of instructional personnel. The bill eliminates tenure with the exception for those instructional personnel who already possess a professional service contract or continuing contract. Instead, instructional personnel without tenure would be employed on an annual contract, subject to renewal by the district school board. This provision is designed to give school districts greater flexibility in meeting student instructional needs by retaining effective employees and quickly removing poor performing employees. The probationary contract is extended from 97 days to one year. An employee on a probationary contract may resign or be dismissed without creating a breach of the contract. Upon successful completion of a probationary contract, a classroom teacher may receive an annual contract. This includes instructional personnel who move from another state or district. Instructional personnel may receive an annual contract if he or she:

- Holds a temporary or professional certificate as prescribed by s. 1012.56, F.S., and State Board of Education rules; and
- Is recommended by the superintendent for the contract and approved by the district school board. A school district may renew an annual contract; however, a district would be prohibited from renewing an annual contract if the individual receives:

- Two consecutive unsatisfactory evaluations;
- Two unsatisfactory evaluations within a 3-year period; or
- Three consecutive needs improvement or a combination of unsatisfactory and needs improvement evaluations. Instructional personnel with an annual contract may be suspended or dismissed for just cause. If charges against an employee are not sustained, he or she would be immediately reinstated with back pay. Instructional personnel who are currently on professional service or continuing contracts would retain their status unless the individual receives two consecutive unsatisfactory evaluations, two unsatisfactory evaluations within a 3-year period, or three consecutive needs improvement evaluations or a combination of unsatisfactory and needs improvement evaluations. In that situation, a school district is not required to automatically renew the professional service contract or continuing contract.

Likewise, the above evaluation results would constitute just cause for terminating a professional service or continuing contract. Performance evaluation results would also be used in making decisions related to the transfer and placement of employees and workforce reductions. Specifically, the bill repeals last in, first out (LIFO) policies that base retention decisions on seniority. Instead, the individual’s evaluation will inform the school district’s retention decisions. Finally, each school district must annually report to the parent of a student who is assigned to a classroom teacher or school administrator with two consecutive unsatisfactory

evaluations, two unsatisfactory evaluations within a 3-year period, or three consecutive needs improvement or a combination of unsatisfactory or needs improvement.

❖ *Other*

The bill holds charter schools to the same standard as other public schools with respect to performance evaluations for instructional personnel and school administrators, assessments, performance pay and salary schedules, and workforce reductions. For school districts that received an exemption under Race to the Top, the bill grants an annual renewable exemption to the requirements for performance pay and the weight given to student growth in performance evaluations, provided specific criteria are met. The exemption sunsets August 1, 2017, unless reenacted by the Legislature. In conformance with the bill's new contracting provisions, the bill repeals certain special laws or general laws of local application regarding contracting provisions for instructional personnel and school administrators in public schools.

▪ **HB 797**  
**Interscholastic and Intrascholastic Sports**

This bill expands statewide the pilot program currently available in three counties to students enrolled at non-Florida High School Athletic Association (FHSAA) member private schools. This bill enables these students to participate in interscholastic and intrascholastic sports at public schools. Eligibility is limited to those students attending private schools with a total student body of 125 or less. This bill requires participating public schools to maintain student records, and private schools to provide student records upon request of the FHSAA.

▪ **CS/CS/HB 1255**  
**Public School Accountability**

The bill is a comprehensive public school accountability package which will implement reforms in the following areas:

- Virtual Education—The bill requires school districts to provide students access to Florida Virtual School (FLVS) courses during and after the normal school day to provide uniformity among school districts and increase student access to the FLVS.
- Gift Ban—The bill prohibits school board members and their relatives from soliciting or accepting any gift in excess of \$50 from any person, vendor, potential vendor, or other entity doing business with the school district.
- Voluntary Prekindergarten Program (VPK) and kindergarten screening—The bill requires a VPK provider that is on probation and who seeks a good cause exemption to administer the statewide VPK enrollment screening, which the Department of Education (DOE) must adopt, to newly admitted VPK students. The provider must pay for the screening. The bill also repeals a numeric limitation on providers who fail to meet the kindergarten readiness rate.
- Digital Curriculum—The bill authorizes school districts to implement a digital curriculum for students in grades 6-12. DOE would develop a model curriculum to serve as a guide.
- Career and Professional Academies—The bill specifies criteria for middle school career and professional academies relating to alignment to high school career and professional academies, an opportunity to earn an industry certification and

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- partnerships with the business community.
  - Student Assessment and School Accountability—The bill:
    - Repeals the requirement for certain middle school students to take the Algebra I end-of-course assessment (EOC) in 2010-2011;
    - Revises the middle school grading formula to add the performance of students in high school courses with statewide standardized assessments and students who earn designated industry certifications;
    - Requires passage of civics for middle school promotion;
    - Provides that a determination of school grades for the Opportunity Scholarship Program (OSP) will be based on statewide assessments alone;
    - Provides that for purposes of calculating the performance category under differentiated accountability, the statewide assessments' portion of a school grade would be used in determining the appropriate performance category;
    - Provides for the assignment of scores from hospital/homebound students to be assigned to their home school;
    - Authorizes the Commissioner of Education to revise statewide testing dates; and
    - Provides for postsecondary preparatory courses for high school students with designated academic deficiencies.
  - Supplemental Education Services (SES)—The bill authorizes school districts to select pre and post methods for measuring student learning gains.
- Students with Disabilities—The bill:
    - Authorizes the waiver of certain EOC assessment requirements for students with disabilities;
    - Establishes training, accountability and reporting requirements for students who are restrained and secluded;
    - Provides that a McKay scholarship student who enters a Department of Juvenile Justice detention center for less than 21 days would not lose the scholarship;
    - Allows a parent of a child who is deaf or hard of hearing to enroll an eligible child in an auditory-oral education program and adds listening and spoken language specialists to eligible instructional services for exceptional students; and
    - Requires the Department of Education to revise the matrix of services for students with disabilities, which is used to determine exceptional education cost factors, beginning with the 2012-2013 school year.
  - Budget Transparency—The bill requires school districts to post each proposed, tentative, and official budget on their websites and encourages school districts to provide additional information on their websites.
  - Accelerated High School Graduation Options—The bill authorizes students to choose the 18 credit accelerated graduation option at any time during grades 9 through 12, rather than requiring a student to choose this option no later than grade 9.

▪ **CS/CS/SB 1312**  
**School Nutrition Programs**

This bill creates the “Healthy Schools for Healthy Lives Act.” It provides for a transfer of the administration of school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS). The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill authorizes the DACS to conduct, supervise, and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources, and to coordinate with the federal government to take advantage of any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the administration of the school food and nutrition programs, including the distribution of funds provided by the federal government in support of the school food and nutrition programs.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, must provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA. The bill requires the DOE, in consultation with the DACS, to develop and submit a

waiver request to the U.S. Department of Agriculture to transfer administration of the school food service and nutrition programs from the DOE to the DACS within 30 days of the bill becoming law. It also requires the DOE to provide notice of the USDA’s response to certain officials. The bill also creates the Healthy Schools for Healthy Lives Council to advise DACS on matters relating to nutritional standards and the prevention of childhood obesity, nutrition education, anaphylaxis, and other needs to further the development of the various school nutrition programs. The bill provides multiple effective dates. The provision requiring the DOE to submit a waiver request and the section providing the effective dates are effective upon becoming law. The effective date for all other provisions is January 1, 2012, and is contingent upon the USDA granting the waiver request on or before November 1, 2011.

▪ **CS/HB 1329**  
**McKay Scholarships/Students With Disabilities**

The bill allows a student with a disability to be eligible for a John M. McKay Scholarship for Students with Disabilities if he or she has an accommodation plan under section 504 of the federal Rehabilitation Act of 1973 (504 accommodation plan). However, the student would be ineligible if his or her plan was for six months or less. The bill requires school districts to notify the parent of a student with a 504 accommodation plan about available school choice options by April 1 of each year and within ten days after a 504 accommodation plan is issued. The bill allows parents of a student with a 504 accommodation plan to enroll their children in a public school in an adjacent school district which has available space, if the school has a program with the services agreed to in the 504 accommodation plan. Parents would be responsible for

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transportation. The scholarship amount for the student would be based on the current student program cost factor generated by the student under the Florida Education Finance Program (FEFP).

### ▪ **CS/HB 1331** **Opportunity Scholarship Program**

The bill revises the eligibility criteria for participation in the Opportunity Scholarship Program (OSP) public school choice option to allow parents of students in failing schools the opportunity to send their children to another public school that is performing satisfactorily. Under the bill, a failing public school is a school that has received a "D" or an "F" grade and is designated as a low performing school. A parent would be able to enroll his or her child in a higher performing school in another district with available space. If a parent chooses another district, the receiving district must accept the student and report him or her for funding. The parent is still responsible for transportation. A student would have the opportunity to continue to attend a higher performing public school feeder pattern within the district until he or she graduates from high school. Under the bill, a student could remain in the feeder pattern of the school chosen under the OSP. Finally, the bill repeals the provisions related to the OSP private school option to comport with existing case law.

### ▪ **SB 1430** **School Regulation of Smoking**

The bill provides an exception to the state's preemption of smoking regulation to authorize district school boards to restrict smoking by persons on school district property.

### ▪ **CS/CS/CS/SB 1546** **School Choice**

This legislation creates and facilitates the development and expansion of

high-performing charter schools and high-performing charter school systems. To qualify as high-performing, a school must have received:

- At least two "A" school grades and no grades below a "B" for the last three years; and
- Unqualified opinions and no financial audits indicating a state of financial emergency for the last three fiscal years. Once a school or a system has met the requirements for a high-performing designation, it is authorized to replicate at the rate of one school per year. High-performing schools will also have greater flexibility to expand grade levels, enrollment capacity, and charter terms, and to consolidate with other high-performing charter schools. To qualify as a high-performing system, the entity must:
  - Operate at least three high-performing charter schools in the state;
  - Operate a system of charter schools of which at least 50 percent are high-performing; and
  - Not operate a charter school that has received a financial audit indicating a state of financial emergency. High-performing systems are authorized to replicate at the rate of one charter school per year. Charter virtual schools are ineligible for high-performing status. This law encourages systems to work with disadvantaged students by authorizing charter schools in these situations more time to turn around a low-performing school. This legislation limits the ability of a sponsor to deny a charter school application submitted by a high-performing charter school, by increasing the standard of proof to that of a clear and convincing standard. Sponsors who immediately terminate a

charter must assume operation of the school pending completion of the appeal process or be liable for attorney's fees and costs if the charter school prevails. The charter school governing board is required to appoint a parental contact representative residing in the district, which replaces the residency requirement for the charter school governing board. The Charter School Review Panel is abolished. The Department of Education is required to conduct a study which examines various issues relating to charter schools, including the capital improvement millage fee distributed in comparison to other public schools and the 5-percent administrative fee, and provide findings to the Governor and Legislature.

▪ **CS/SM 1654**  
**Memorial to the U.S.**  
**Department of Education**  
**Regarding Postsecondary**  
**Programs**

This Senate Memorial provides the United States Department of Education with a list of the private postsecondary institutions that are exempt from licensure and are authorized to operate postsecondary education programs in Florida. The memorial complies with 34 CFR s. 600.9, by providing documentation necessary for the listed institutions and their students to remain eligible for federal student financial aid programs. The effective date of the new regulations is July 1, 2011, and state affirmation of these institutions must be completed by then in order to remain eligible for federal financial aid programs.

▪ **SB 2120**  
**PreK-12 Education**  
**Appropriations Conforming**  
**Issues**

- Authorizes Department of Revenue (DOR) to provide certain information regarding the gross receipts tax to the State Board of Education, the Division of Bond Finance, and the Office of Economic and Demographic Research. In making the determination of the amount of bonds that can be serviced by the gross receipts tax, the State Board of Education is to disregard the effects of a 2010 nonrecurring refund.
- Expands the class size reduction lottery bond program to include other educational facilities.
- Authorizes a regional educational consortium service organization to generate revenue to support its activities. A consortium may establish ownership of patents, copyrights, trademarks and licenses. Revenues generated must be used to support each organization's marketing and research and development activities in order to increase services to its member school districts.
- Provides that the allocation of state funds for a regional education consortium shall be determined based on funds provided in the General Appropriations Act.
- Adjusts the charter school enrollment process such that students living in a development that provides the facility and related property with an appraised value of at least \$10 million for a charter school in the development shall be entitled to 50 percent of the enrollment in the charter school.

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- Provides that charter school systems may be designated as local education agencies for the purpose of receiving federal funds.
- Limits the administrative fee that school districts withhold from high performing charter schools, as defined by SB 1546, to 2 percent for up to 250 students and to 2 percent for up to 500 students for high performing charter school systems as defined in s. 1002.33(20)(a)3.
- Clarifies prior legislation and authorizes the expenditure of PECO funds by a charter-school-in-the-workplace prior to July 1, 2010.
- Increases the number of students assigned to an instructor in the school year prekindergarten program from 11 to 12, and from 18 to 20 for an instructor plus an assistant. Reduces the administrative allowance for early learning coalitions from 4.5 to 4.0 percent.
- Redefines the term “core curricula courses” for the purpose of designating classes subject to the maximum class size requirements and requires the Department of Education (DOE) to maintain a list of such courses.
- Provides flexibility for school districts to implement class size requirements when additional students enroll in a school after the October survey and for grades 4 to 8 students who take high school courses. Clarifies the use of class size reduction funds.
- Authorizes school districts to establish pilot digital instructional materials schools. Participating districts will be required to have a local instructional improvement system and rely heavily on electronic instructional materials. Pilot schools will not have to purchase the required instructional materials adoption within the first two years and will not have to purchase materials from the depository. Districts will provide a plan and report on the outcomes.
- Revises statutes related to instructional materials for public schools, including revising naming conventions, using “instructional materials” as the generic rather than “textbooks”; modifying and expanding the description and requirements for local instructional improvement systems; revising the instructional materials review process by replacing committees with three national expert reviewers; clarifying and expanding bid advertisement specifications for electronic and digital content; revising the term for instructional materials adoption from 6 to 5 years; requiring that by 2015-2016, all adopted instructional materials for K-12 students are to be in electronic or digital format and districts are to use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials on the state adopted list.
- Provides recurring flexibility, after March 1 of each year, for instructional materials funds to be used to purchase hardware for student instruction after required instructional materials purchases have been made.
- Revises the definition of adult education and provisions relating to the coenrollment of high school students in adult education courses.
- Adjusts industry certified bonus weights based on rigor and the employment value of the certification with revised weights remaining within existing funding levels, and provides for middle school student eligibility for industry certification and bonus weights;
- Requires school districts to provide to the DOE by October

- 1, copies of contracts and amounts paid to providers of virtual instruction. Also requires districts to spend the difference between funds received for the virtual instruction program and amounts paid to providers of virtual instruction on local instructional improvement systems and electronic and digital instructional materials.
- Removes the additional FTE provision for the Florida Virtual School.
  - Creates a virtual education contribution categorical in the FEFP.
  - Authorizes an interdistrict transfer of FEFP funds when students in Department of Juvenile Justice facilities are transferred between student membership surveys.
  - Allows 16 districts that passed a referendum in the 2010 general election to levy 0.25 mills for the authorized two years and eligible districts to receive state compression adjustment funds for two more years. Provides for the expiration of the authorization for school boards to levy by supermajority vote, following referendum, an additional 0.25 mills for critical operations or capital outlay on June 30, 2011.
  - Defines casualty insurance for educational and ancillary facilities for purposes of school district expenditure of capital improvement millage revenues.
  - Waives the equal dollar reduction penalty in the FEFP for school district audit findings for property and casualty insurance expenditures for the 2009-2010 fiscal year and the 2010-2011 fiscal year prior to January 1, 2011.
  - Provides that state funding for the Merit Award Program will be discontinued after 2011-2012 payment of the 2010-2011 awards.

- Provides the DOE with flexibility to provide Florida Knowledge Network materials and other educational services online or by other electronic media, instead of primarily through television broadcast.
- Updates and clarifies DOE responsibilities for the Florida Information Resource Network.
- Extends an exemption from state educational facilities requirements for the demolition and replacement of school buildings for certain school districts.
- Adopts by reference, the alternative compliance calculation amounts to the class size reduction operating categorical allocation for the 2010-2011 fiscal year.

▪ **SB 2150**  
**Postsecondary Education Funding**

The bill relating to Higher Education Appropriations Issues provides for the following:

- Authorizes the Department of Revenue to provide information regarding gross receipts taxes to the State Board of Education, the Division of Bond Finance and the Office of Economic and Demographic Research. In making the determination of the amount of bonds that can be serviced by gross receipts tax the State Board of Education is to disregard the effects of a 2010 nonrecurring refund.
- Expands the class size reduction lottery bond program to include other educational facilities.
- Repeals certain responsibilities of the Department of Education for monitoring rehabilitation providers and services; repeals rehabilitation provider qualifications.
- Authorizes the implementation of a transient student admission application process through the



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- Florida Academic Counseling Tracking for Students system to include admissions, readmissions, financial aid, and transfer of credit functions. Authorizes a fee of \$5 to support the system.
  - Designates the Northwest Regional Data Center as a primary data center.
  - Requires an annual report on cost savings from collaborative licensing of electronic library resources.
  - Authorizes the Florida Fund for Minority Teachers, Inc. to use other available funds for administration.
  - Authorizes a spring and summer term student enrollment pilot program at the University of Florida for the purpose of aligning student enrollment and the availability of instructional facilities. Authorizes Bright Futures scholarships in the summer for these students.
  - Updates the provisions related to tuition and out-of-state fees for postsecondary students in workforce, college, and university programs to include 2011-2012 tuition.
  - Requires a block tuition and corresponding out-of-state fee for students enrolled in adult general education courses. Removes fee exemptions for certain students and requires residency of students to be documented.
  - Authorizes college and school district workforce programs to use capital improvement fee revenue for the acquisition of improved real property.
  - Authorizes college and school district workforce programs to charge a convenience fee for processing automated or online credit card payments.
  - Authorizes the Board of Trustees of Santa Fe College to establish a transportation access fee of up to \$6 if approved by a referendum held by student government.
- Provides an exemption from the 30 percent need-based expenditure requirement from the tuition differential fee if the university has covered the entire tuition and fee costs of all resident students who are eligible for need-based aid.
  - Authorizes alternative documentation for tuition fee waivers for Purple Heart veterans.
  - Increases the Florida Medallion Scholarship test scores in 2013-2014, from 1050 to 1170 for SAT, including the applicable home school test scores. Increases or establishes required community service hours for Bright Futures applicants.
  - Requires applicants for Bright Futures, FRAG, and ABLE programs to submit the Free Application for Federal Student Aid prior to disbursement of funds.
  - Increases the tuition surcharge for excess hours to 100 percent in excess of 115 percent of the credit hours required for a degree.
  - Provides that funding for student financial aid and tuition assistance programs shall be as provided in the General Appropriations Act.
  - Streamlines library operations through consolidation and joint purchasing. Requires creation of a union catalog for higher education.
  - Prioritizes state student financial aid to the neediest (Pell eligible) students for the Florida Work Experience Program and the First Generation in College Program.
  - Prohibits funding for coenrollment in public schools and adult general education programs, except that for the 2011-2012 fiscal year students may enroll in core courses for credit recovery or dropout prevention for up to two courses. High school students are exempt from the payment of

- block tuition for general adult education programs.
- Prohibits the use of state workforce education and Florida College funding for prison inmate education.
- Temporarily suspends the state match for facilities and operating challenge grant programs for colleges and universities, effective July 1, 2011. Existing eligible donations will remain eligible for future match. The suspension may be removed once \$200 million of the grant backlog has been matched.
- Allows a university board of trustees to expend carry-forward balances from prior year operational appropriations on legislatively approved fixed capital outlay projects authorized for the establishment of a new campus.
- Requires the Florida College System Council of Presidents to develop and recommend an equitable funding formula for the distribution of PECO funds to the college system institutions.
- Provides for the use of a funding formula to ensure equitable distribution of district workforce funds.
- Provides a \$200,000 limit on the amount of state funds that may be paid for salaries of college and university presidents and administrative employees.
- Allows the Division of Blind Services to lease donated property.
- Provides that funds received from community events or festivals are not eligible for state match under the Dr. Philip Benjamin Matching Grant Program.
- Terminates the University Concurrency Trust Fund.

▪ **CS/HB 7087  
Education Law Repeals**

The bill repeals the requirement for students who took Algebra I in the middle grades from 2007- 2008 through 2009-2010 to take the Algebra I end-of-course assessment in the 2010-2011 school year. Approximately, 39,600 students will not be required to take the Algebra I assessment, in some instances, several years after completion of the Algebra I course. The bill also repeals programs that are not funded or are obsolete. The programs are:

- Digital Divide Council and the associated Pilot Project for Discounted Computers and Internet Access for Low-Income Students;
- Institute on Urban Policy and Commerce;
- Community and Faith-based Organizations Initiative;
- Community and Library Technology Access Partnership;
- Community computer access grant program;
- Adult Literacy Centers; Florida Literacy Corps;
- Preteacher and Teacher Education Pilot programs;
- Teacher Education Pilot Programs for High-Achieving Students;
- Merit Award Program; and
- Critical Teacher Shortage Program, which includes—Florida Teacher Scholarship and Forgivable Loan Program, Critical Teacher Shortage Tuition Reimbursement Program, and the Critical Teacher Shortage Student Loan Forgiveness Program. The bill repeals obsolete provisions of law governing the criteria for awarding continuing contracts and professional service contracts. The bill also repeals a section of law found unconstitutional that prohibits any person in the state of Florida from falsely claiming to possess an academic degree, or the title

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associated with that degree, unless the person has been awarded the degree from an accredited institution.

### ▪ **CS/HB 7151** **Postsecondary Education**

This bill addresses aspects of the public postsecondary education system relating to efficiency, access and quality. *Duties Assigned to the Higher Education Coordinating Council* The Higher Education Coordinating Council must produce a report by December 31, 2011, to address:

- The primary core missions of public and non-public postsecondary education institutions in terms of the student access to education and the state's economic development goals;
- Performance measures across sectors relating to student preparedness, retention, transfer, and completion;
- The state's articulation policies to maximize cost benefits without jeopardizing quality and to ensure institutional compliance with the policies; and
- Workforce development education to align school district and Florida College System programs to ensure cost efficiency and mission delineation.

#### ❖ *Articulation*

The Department of Education (DOE) must use student performance data from postsecondary courses to determine the scores for which credit is to be granted for acceleration courses including the College Level Examination Program subject examination, the College Board Advanced Placement Program examination, the Advanced International Certificate of Education examination, and the International

Baccalaureate examination. The scores may vary by subject area based on the student performance data. The bill codifies the 11-member Articulation Coordinating Committee, which must be appointed by the Commissioner of Education, in consultation with the Chancellor of the State University System. The committee must review the statewide course numbering system, articulation agreements and articulation data; monitor the alignment between institutional requirements; and make recommendations relating to statewide articulation policies to the Higher Education Coordinating Council, the State Board of Education, and the Board of Governors. The bill provides access to postsecondary education for individuals with intellectual disabilities by allowing reasonable substitutions for entry, admission to a program of study, and graduation requirements, as is currently provided to other students with disabilities. Students with intellectual disabilities are those with mental retardation or a cognitive impairment characterized by significant limitation in intellectual and cognitive functioning who are or were provided a free and appropriate public education under the Individuals with Disabilities Education Act. The proposed changes will align Florida statutes with the provisions of the Higher Education Opportunities Act and facilitate activities to help these students prepare for gainful employment. Statewide consistency is established in postsecondary remediation policies by:

- Requiring the State Board of Education to establish by rule provisions for alternative remediation opportunities and retesting policies; and
- Requiring Florida College System institutions to advise students who have accumulated 12 college credit hours but who have not yet

- o demonstrated proficiency in the basic competency areas regarding —
- o The requirements for associate degree completion and state university admission;
- o Information about future financial aid eligibility; and
- o The potential financial cost of accumulating excess college credit.

❖ *Florida College System and State University System Management*

The bill makes the following changes regarding the management of public postsecondary institutions:

- A community college board of trustees may request an investigation of the college president’s actions by the DOE Inspector General who must provide a detailed report on the investigation and must refer potential legal violations to the appropriate authority;
- A college or university president may dispose of abandoned personal property without having to sell the items at an auction;
- The State Board of Education must review Florida College System institution budgets but is not required to approve them, leaving approval to the college boards of trustees; and
- The Board of Governors is authorized to adopt regulations instead of rules for six designated areas: building names, patents, contractor’s bonds, lease agreements, delinquent accounts, and purchasing.

❖ *Repealed Statutes*

The bill repeals the following statutory provisions:

- Obsolete statutory references to the College Level Academic Skills Test (CLAST);
- The University Concurrency Trust Fund which last was funded in

2007 and no longer contains funds;

- The Florida Business and Education Collaborative, which was never appointed; and
- The prohibition against a public college or university requiring a student who earns 9 or more credit hours through an acceleration mechanism to enroll in a summer term, thus permitting a state university or Florida College System institution to require summer term attendance by students.

▪ **CS/CS/HB 7197  
Digital Learning Virtual Education Framework**

The bill revises the current framework and funding for virtual instruction in Florida. Beginning with the 2011-2012 school year, the bill expands the virtual instruction program by requiring school districts to provide at least three part-time and full-time virtual instruction program options, with the exception of certain smaller school districts that are required to provide one option to participate in part-time and full-time virtual instruction. Under the bill, a school district may fulfill the requirements through agreements with more than one school district, multidistrict contractual arrangements, and a school district operated program, as well as through a contract with the Florida Virtual School (FLVS) or an approved provider.

❖ *Charter Schools*

Under the bill, a charter school would be permitted to operate a virtual charter school to provide full-time online instruction to eligible students in kindergarten through grade 12, subject to approval under s.

1002.33, F.S. The virtual charter school would contract with the FLVS or an approved provider or enter into an agreement with a school district. Full-time virtual charter schools would

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be established by amending the existing charter or submitting a new application. They are subject to the same application process as are other charter schools. Virtual charter schools would be subject to all charter school requirements, with the exception of the provisions related to facilities, capital outlay, class size, administrative fees, and transportation. The bill requires a charter school governing board to appoint a representative who resides in the same district where the charter school is located to resolve disputes and work with parents and the public. However, a single representative would be permitted to serve multiple charter schools if the board oversees multiple schools in the same district. The bill prohibits a sponsor from requiring board members to reside in the same district in which the charter school is located, if the school complies with the requirements for representation. The bill also permits "blended-learning charter schools," which combine traditional classroom instruction with online instruction; however, the schools may only offer this instruction to their full-time students in a classroom at the charter school.

### ❖ *Providers*

The bill revises the criteria for approving providers. To be approved, all providers must have courses that meet the standards of the International Association for K-12 Online Learning or the Southern Regional Education Board, have the requisite plan for the curriculum and student performance accountability, have a method for determining if a student has satisfied grade level promotion and high school graduation requirements, and have instructional content and services that measure student proficiency in the Next Generation Sunshine State Standards. Providers would also be required to disclose to the public

information that includes certification and physical location of instructional personnel, the curriculum, student-teacher ratios, student completion and promotion rates, and performance accountability outcomes for students, instructors, and schools.

### ❖ *Assessments*

The bill requires the online administration of all statewide end-of-course assessments, beginning in the 2014-2015 school year. Part-time FLVS public school students who take courses requiring statewide end-of-course assessments must take these assessments. Districts must provide access to the district's testing facilities for FLVS full-time public school students in kindergarten through grade 12.

### ❖ *Funding*

The bill revises the manner in which virtual instruction is funded. All virtual instruction options (the FLVS, school district operated virtual instruction programs, and virtual charter schools) would be funded through the Florida Education Finance Program (FEFP), as provided in the General Appropriations Act, but would not include funding for class size requirements. The FLVS would serve and receive funding for students in grades kindergarten through five. Additionally, students in full-time programs could not be reported for more than 1.0 Full Time Equivalent (FTE). Beginning in the 2014-2015 fiscal year, the reported FTE and associated funding of students enrolled in courses requiring passage of an end-of-course assessment would be adjusted after the student completes the assessment. School districts would be required to expend the difference between the amount funded for students participating in the program and the price paid for contractual services on the district's local instructional improvement system or other technological tools that are required to access electronic

and digital instructional materials. Districts would also be required to report to the DOE the amount paid for contractual services and an itemized list of the purchases.

❖ *Accountability*

Under the bill, the FLVS would receive a school grade for students receiving full-time instruction. Additionally, the bill requires the DOE to develop an evaluation system for part-time providers of virtual instruction, which must include the percentage of students making learning gains, successfully passing end-of-course assessments, and taking and scoring a three or higher on Advanced Placement course exams.

❖ *Instructional Personnel*

The bill specifically permits a school district to issue adjunct certificates to qualified individuals. A district may renew an adjunct certificate and award another annual contract only if the individual is rated as effective or highly effective. The bill also specifies the certification requirements for instructional personnel providing direct instruction to students through a virtual environment or through a blended virtual and physical environment.

❖ *High School Graduation*

Students entering the ninth grade in 2011-2012 and thereafter would be required to take at least one online course in order to meet high school graduation requirements. The requirement is also deemed met if the student has taken an online course in grades six through eight or participates as a dually enrolled student in an online course offered by a postsecondary institution.

❖ *Student Eligibility and Access*

The bill authorizes the FLVS to directly offer virtual education in kindergarten through grade five and part-time education to students in

grades four through 12. However, part-time instruction for fourth and fifth grade students is limited to public school students taking grade 6-8 courses for acceleration purposes. The FTE generated by the FLVS for fourth and fifth grade students must be part of the total FTE of 1.0 reported for the student for the fiscal year. To receive full-time instruction, a student in grades two through five must meet at least one of the statutory eligibility requirements. The bill revises the eligibility requirements for students. Under the bill, students who were enrolled full-time in an FLVS program during the prior school year would be eligible for virtual instruction. Students entering kindergarten or first grade would be eligible without having to meet the requirement for prior year enrollment in a public school. ■



# CARLTON FIELDS

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ATTORNEYS AT LAW

## **2011 Florida Legislature Post-Session Report**

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### **GENERAL GOVERNMENT**

*Including legislation relating to:*

- *Agriculture*
- *Disasters and Emergencies*
- *Consumer Services and Protection*
- *Ethics and Elections*
- *Government Operations, Powers and Budget*
- *Procurement*
- *Security*





**GENERAL GOVERNMENT**

▪ **HB 19**  
**Compensation of County Officials**

This bill allows certain county officials to reduce their salary on a voluntary basis. The county officers include each: member of a board of county commissioners, clerk of the circuit court, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector.

▪ **CS/CS/CS/HB 45**  
**Regulation of Firearms and Ammunition**

This bill expands and clarifies state preemption of the regulation of firearms and ammunition. Section 790.33, F.S., is also reorganized.

The bill expands “the whole field of regulation of firearms and ammunition” (including administrative regulations or rules adopted by local or state governments) to include the storage of those items.

Subsection (2) of s. 790.33, F.S., is stricken by the bill. This is the subsection of the Joe Carlucci Act that allows a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun. It pre-dates the constitutional amendment and constitutionally required statutory enactment. Eliminating this subsection of the Act merely clarifies the current state of the law regarding the three-day waiting period, which is found in the Florida Constitution and s. 790.0655, F.S.

The bill retains the policy and intent language from the original Act, currently found in subsection (3) of s. 790.33, F.S. It also adds language setting forth the 2011 Legislature’s intent to deter and prevent the violation of the preemption law.

Any person, county, agency, municipality, district, or other entity that enacts or causes to be enforced any local ordinance or administrative rule or regulation faces a civil fine of up to \$5,000 if the violation is knowing and willful. Any such violation is cause for termination of employment or contract or for removal from office by the Governor.

Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have committed a knowing and willful violation of this section.

Civil actions are also provided for in the bill. A person or organization whose membership is adversely affected by an alleged violation of the preemption law may seek declaratory and injunctive relief. The bill also provides for the assessment of actual damages up to \$100,000. The court is required to award a prevailing plaintiff’s attorney fees, including a contingency fee multiplier, as well as related costs. Additionally, the bill provides that interest shall accrue on the fees, costs, and damages awarded the plaintiff, retroactive to the date the suit is filed.

In subsection (4) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed in paragraphs (2)(a)-(i) from regulating or

## 2011 LEGISLATIVE REPORT

prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;

- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction; or
- The Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

### ▪ **CS/CS/CS/SB 88** **Public Employee Compensation**

This bill prohibits bonuses paid to public employees unless the bonus is awarded to the employee of a public hospital from private funds or is awarded to government employees based on statutorily specified bonus criteria. Specifically, under the bill, any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

This bill prohibits severance pay unless the severance pay is:

- Paid to the employee of a public hospital from private funds;
- Paid in an amount not greater than 20 weeks of compensation; or
- Paid as the result of a settlement agreement in an amount not to

exceed 6 weeks of compensation.

Contracts for severance pay must include a provision stating that severance pay is not paid in cases of employee misconduct.

The bill defines severance pay as actual or constructive compensation including salary, benefits, or perquisites for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for leave time, early retirement, or insurance subsidies.

The bill prohibits confidentiality clauses in agreements for extra compensation entered into after July 1, 2011.

The bill deletes provisions of law that are inconsistent with the provisions created in the bill.

### ▪ **HB 95** **State Parks** **Lifetime Family Annual** **Entrance Passes to State Parks**

The bill expands the eligibility for certain persons to receive a lifetime family annual entrance pass to Florida state parks at no charge. Current law allows for the surviving spouse of a deceased member of the United States Armed Forces, National Guard, or any of their reserve components who has fallen in combat to obtain a lifetime family annual entrance pass to Florida state parks at no charge. The bill extends this benefit to include:

- Parents of a deceased member of the United States Armed Forces, National Guard, or any of their reserve components who has fallen in combat; and
- Surviving spouse and parents of a law enforcement officer or a firefighter who has died in the line of duty.

❖ *State Park Surcharge Fees*

The bill amends s. 380.0685, F.S., to expand the use of surcharge fees collected at state parks in areas of critical concern to allow municipalities the option of using the funds for beach renourishment and restoration activities. The bill prohibits the use of such fees for the purpose of providing state matching funds.

❖ *Livestock Owner Liability*

The bill exempts the state from the livestock owner liability provisions of s. 588.15, F.S., with respect to free-roaming animal populations within the state park system. This provision in the bill was incorporated to address the American bison presence at the Payne's Prairie Preserve State Park in Alachua County, in which the Department of Environmental Protection has classified as livestock rather than wildlife.

▪ **CS/CS/HB 155  
Privacy of Firearm Owners**

This highly publicized bill creates s. 790.338, F.S., entitled "Medical privacy concerning firearms" and initially fined a pediatrician \$5 million dollars for asking questions about guns in a child's house. The violation of certain provisions of the new law constitute grounds for disciplinary actions. The new law prohibits a licensed health care practitioner or licensed health care facility from intentionally entering any disclosed information concerning firearm ownership into a patient's health record if the information is not relevant to the patient's medical care or safety, or the safety of others. Additionally, licensed health care providers and health care facilities are:

- Prohibited from inquiring, whether oral or written, about the ownership of firearms or ammunition unless the information is relevant to the patient's

medical care or safety, or the safety of others;

- Prohibited from discriminating against a patient based upon whether a patient exercises his or her constitutional right to own and possess firearms or ammunition; and;
- Mandated to respect a patient's right to own or possess a firearm and refrain from harassing a patient about firearm ownership during an examination.

Patients are permitted to decline to answer or provide any information concerning the ownership of a firearm and a decision not to answer does not alter existing law regarding a physician's authority to choose patients.

The bill provides an emergency medical technician (EMT) or paramedic the authority to inquire in good faith, about the possession or presence of a firearm if they believe that it is relevant to the treatment of a patient during the course and scope of a medical emergency or if the presence or possession of a firearm poses a threat of imminent danger to the patient or others.

The bill provides for certain patient's rights concerning the ownership of firearms or ammunition under the Florida Patient's Bill of Rights and Responsibilities. The bill provides for disciplinary action for non-compliance by licensed health care practitioners and health care facilities.

The bill provides that insurers issuing the types of policies regulated pursuant to ch. 627, F.S., are prohibited from discriminating, denying coverage, or increasing premiums on the basis that an insured or applicant possesses or owns a firearm or ammunition. However, insurers are allowed to consider the fair market value of firearms or ammunition when setting

## 2011 LEGISLATIVE REPORT

premiums for scheduled personal property coverage.

### ▪ **SB 218** **Deepwater Horizon Oil Disaster/Penalties**

On April 20, 2010, the Transocean drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers. An estimated 4.2 million barrels of crude oil spilled from the well into the Gulf waters before it was capped on July 15, 2010. The federal government sued nine companies asking that the companies be held liable without limitation under OPA for all removal costs and damages caused by the spill, including damages to natural resources. The lawsuit also seeks civil penalties under the Clean Water Act.

SM 218 urges Congress to enact legislation that permits any civil penalties recovered under the Clean Water Act due to the Deepwater Horizon oil disaster to be distributed in the following manner:

(1) Deposited into a newly created Gulf Coast Recovery Fund, managed by a Gulf Coast Recovery Council to provide long-term environmental and economic recovery in the Gulf;

(2) Directed to the five Gulf States to enable each state to pursue their own recovery efforts; and

(3) Remaining funds deposited into the Oil Spill Liability Trust Fund for future recovery efforts.

### ▪ **CS/SB 224** **Local Government Accountability**

This bill provides minimum budgeting standards for counties, county officers, municipalities, and special districts. The bill requires the budget of each county, municipality, special district, water management district, school district, and certain county officers to be posted on the

government entity's website. The bill requires certain counties, municipalities, and special districts to file their annual financial report and annual financial audit report with the Department of Financial Services and the annual financial audit report with the Office of the Auditor General within nine months of the end of the fiscal year. This bill also amends the reporting process used by the Legislative Auditing Committee and the Department of Community Affairs or its successor agency to compel special districts to file certain required financial reports.

The bill further allows certain municipalities to levy and collect special assessments in order to fund certain special security and crime prevention services and facilities. If the costs of such services and facilities are funded by ad valorem taxes prior to the levy of the assessment, the bill requires the taxes to be abated annually thereafter in an amount equal to the full amount of the special assessment.

### ▪ **CS/HB 227** **Federal Write-In Absentee Ballot (FWAB)**

This bill allows absent uniformed services or overseas electors to use the federal write-in absentee ballot (FWAB) in any federal, state, or local election involving two or more candidates. The bill maintains that the FWAB may only be used by eligible electors as a last resort, that is, when the elector has timely requested but has not received an official state absentee ballot. The bill adopts specific procedures to duplicate an FWAB when canvassed, similar to when an absentee ballot is duplicated when received physically damaged. It allows the voter to designate candidate choices for offices by name or, except for a primary or nonpartisan race, by political party preference. It requires the Department of State to adopt

rules to determine voter intent on an FWAB. Finally, the bill requires that all races on each FWAB received by a county supervisor of elections by 7 p.m. on election day be canvassed, unless an elector's official absentee ballot is received by that time — in which case the official absentee ballot is counted in lieu of the FWAB.

▪ **CS/HB 279**  
**Training/Certification/Child Welfare Personnel**

The bill amends legislative intent relating to the training and certification of child welfare personnel by eliminating the responsibility of the Department of Children and Families (DCF or department) to establish, maintain, and oversee child welfare training academies and by requiring that persons providing child welfare services earn and maintain a certification from a third party credentialing entity that is approved by the department. The bill creates definitions for the terms "child welfare certification," "core competency," "preservice curriculum," and "third-party credentialing entity." The bill requires the department to approve one or more third-party credentialing entities for the purpose of developing and administering child welfare certification programs for persons who provide child welfare services and provides the criteria for a credentialing entity to secure DCF approval. The bill requires the department to approve core competencies and related pre-service curricula. The bill allows community-based care agencies, sheriffs' offices, and the department to contract for training and requires department approved credentialing entities to grant reciprocity and award a child welfare certification to individuals who hold certificates issued by the department for a specified period of time. No cost will be incurred by the department or the certificate holder.

The use of the Child Welfare Training Trust Fund is amended by the bill, and the child welfare training academies are eliminated. The bill also eliminates the ability of the department to develop certification programs.

▪ **CS/CS/HB 287**  
**Economic Development**

Article VII, section 3(c) of the Florida Constitution, allows counties and municipalities to grant economic development ad valorem tax exemptions to new businesses and expansions of existing businesses as defined by general law. Under current law, the economic development exemption may only be granted through a county or municipal ordinance that is previously approved by the electors of the participating county or municipality.

This bill provides greater flexibility for counties and municipalities and may promote job creation by revising the definitions of "new business" and "expansion of an existing business" to include qualifying organizations and by requiring eligible businesses and organizations to pay a wage above the average wage of the locality.

The bill expands eligibility for the economic development exemption to include target industry businesses and allows the board of county commissioners of a charter county to hold a referendum to grant such exemption upon receiving a petition in a charter county signed by the requisite number of electors prescribed in the county charter, including charters that require the signatures of less than 10 percent of the electors.

The current ballot language required in a referendum that determines whether an entity may grant an economic development exemption is modified to address whether the new

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or existing business is expected to create new, full-time jobs in a county or municipality and additional criteria is provided for counties and municipalities to consider when reviewing applications for such exemption.

The bill also allows local governments to enter into a written agreement with an applicant applying for an economic development exemption which may include performance criteria consistent with applicable laws and must require the applicant to report the actual number of new, full-time jobs created and their actual average wage.

The provisions in this bill only apply to exemptions from ad valorem taxation granted pursuant to referenda held on or after July 1, 2011, under section 196.1995(1), F.S.

### ▪ **SB 298** **Municipal Governing Body Meetings**

The bill authorizes the governing bodies of municipalities with fewer than 500 residents to hold meetings within five miles of their exterior jurisdictional boundary.

Presently, the Florida Constitution grants local governments broad home rule authority. Specifically, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>1</sup> However, the Florida Constitution states that annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.<sup>2</sup> Similarly, s. 166.021, F.S., gives municipalities home rule

powers with the following exceptions: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitution or law.

A number of situations have arisen where small municipalities have not had the proper facilities available to act as a temporary city hall where the local government can hold public meetings. Statutory and constitutional analyses, along with multiple attorney general opinions, indicate that there is no statutory authorization to hold public meetings outside of the jurisdiction. "[I]n the absence of such statutory authorization, acts and proceedings at meetings held outside the municipal jurisdiction are void unless such actions are statutorily authorized."

### ▪ **SB 330** **Violations of the Florida Election Code**

Bill 330 subjects candidates to a civil fine of up to \$5,000 for falsely representing in an election that they have served, or are serving, in the nation's military. It provides for the expedited hearing of complaints by the Florida Elections Commission or an Administrative Law Judge (ALJ) at the Division of Administrative Hearings (DOAH), as appropriate, and further authorizes the Commission to adopt rules to provide for such expedited hearing. The bill authorizes any person to file a complaint with the Florida Elections Commission, and any fine assessed is deposited in the State's General Revenue Fund. The bill grants specific penalty power to the ALJ at DOAH to account for the recent First District Court of Appeals decision in *Davis v. Florida Elections Commission*.<sup>1</sup>

### ▪ **HB 331** **Fire safety**

The bill substantially amends the following sections of the Florida Statutes: 633.01, 633.021,

633.081, 1013.12, 1013.371, and 1013.38.

❖ *Additional Clarification of Duties of the State Fire Marshal*

The bill requires the State Fire Marshal to consult with the Department of Education regarding the adoption of rules pertaining to safety and health standards at educational facilities. In the event that a county does not employ or appoint a certified fire safety inspector, the bill provides that the State Fire Marshal shall take the place of the local county, municipality, or independent special fire control district regarding fire safety inspections of educational property.

❖ *Elimination of Special Fire Safety Inspector*

As of July 1, 2013, the classification of "special state fire safety inspector" is abolished. Special state fire safety inspectors may, however, be grandfathered in as full fire safety inspectors provided that the following conditions are met:

- The inspector has at least five years of experience as of July 1, 2011, and passes the fire safety inspection examination prior to July 1, 2013;
- The inspector does not have five years of experience as a special state fire safety inspector but takes an additional 80 hours of courses and passes the examination; or
- The inspector has at least five years of experience, fails the examination, but takes 80 additional hours of courses, retakes, and passes the examination. The bill redefines the term "fire safety inspector" as a person who is certified by the State Fire Marshal, pursuant to s. 633.081, F.S.

❖ *Streamlining of Process*

The bill requires all administration and enforcement of uniform fire safety standards and the alternate evaluation system to be conducted by certified fire officials. Effective July 1, 2013, all fire safety inspectors are subject to the same certification process. The bill also reduces the number of mandatory annual inspections from two to one and the report generated remains at the local level. The bill deletes the requirement for the State Fire Marshal to compile each local report into one document for submission to the Legislature, the Governor, the Commissioner of Education, the State Board of Education, and the Board of Governors.

❖ *School District Fire Safety Inspections (Including Charter and Postsecondary Schools)*

The bill establishes parity for fire safety inspections for district schools, other public secondary schools (charter schools), and postsecondary institutions.

❖ *Inspection of Property by District School Boards*

Boards are responsible for appointing certified fire safety inspectors to conduct annual inspections on educational and ancillary plant property. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. The applicable board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within 10 business days after the inspection, unless immediate corrective action is required, due to life-threatening deficiencies. The entity conducting the fire safety inspection is required to certify to the State Fire Marshal that the annual inspection has occurred.



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### ❖ *Inspection of Educational Property by Other Public Agencies*

Annual fire safety inspections must be conducted on educational and ancillary plant property operated by a school board or public college. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. Immediate corrective action is required by the county, municipality, or independent special fire control district in conjunction with the appointed fire official where life-threatening deficiencies are noted.

### ❖ *Inspection of Charter Schools Not Located on Board-owned or Leased Property, or Otherwise Operated by a School Board*

The bill creates a new subsection 5 in s. 1013.12, F.S., to require a fire safety inspection to be conducted each fiscal year on educational facilities not owned or leased by the board or a public college, in accordance with State Fire Marshal standards. The bill clarifies that the inspection report is to be submitted to the charter school sponsor. The inspector must include a corrective plan of action in the report, with prompt response for life-threatening deficiencies. If corrective action is not taken, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor. The bill also expressly extends the State Fire Marshal's enforcement authority to charter school educational facilities and property.

### ❖ *Inspections of Public Postsecondary Education Facilities*

The bill requires inspections of public college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards, to comply with the Florida Fire

Prevention Code, without exception via local amendment. Both an annual inspection by a certified inspector and a corrective plan of action are required by this bill. The public college must provide a copy of the report to the appropriate county, municipality, or independent special fire control district. Fire safety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board, public college board, or charter school does not take corrective action, the bill requires the inspecting authority to immediately report the deficiency to the State Fire Marshal.

### ❖ *Approval of New Construction/Site Plans*

Each board must provide for a periodic inspection of proposed educational or ancillary plants to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the currently mandated State Requirements for Educational Facilities. The bill requires local boards to submit for approval new facility site plans to the local county, municipality, or independent special fire control district, and outlines the process for compliance and informal appeal. Site plans must also be submitted for new facility additions that exceed 2,500 feet in size. The State Fire Marshal has final administrative authority to resolve disputes pertaining to the requirements or application of the Florida Fire Prevention Code.

### ▪ **CS/CS/CS/CS/HB 353 Drug Screening/Beneficiaries of Temporary Assistance to Needy Families**

The bill creates s. 414.0652, F.S., requiring the Department of Children and Families (DCF) to perform a drug screening for temporary cash assistance applicants as a condition of eligibility. The bill provides the following:

- DCF shall require a drug test consistent with s. 112.0455, F.S.
- All applicants for Temporary Assistance to Needy Families (TANF) shall be drug screened as a condition of eligibility to receive cash assistance benefits.
- Applicants who test positive for controlled substances will be disqualified from receiving temporary cash assistance for 1 year, unless the individual chooses to seek substance abuse treatment. If the individual chooses to seek treatment, he or she can reapply for TANF funds within a 6-month time frame. This is a one-time option.
- DCF must inform applicants who test positive of the ability to apply again one year from the date of the positive test, or within 6 months upon completion of a substance abuse program. Applicants who test positive again will be ineligible to receive TANF benefits for 3 years from the date of the second positive test.
- If a parent tests positive for controlled substances, DCF may designate a "protective payee" to receive the cash assistance benefits on behalf of a dependent child. Alternatively, the parent may choose an immediate family member to receive benefits on behalf of the child or DCF may approve another individual to receive the benefits; a person so designated by the parent or approved by DCF also must undergo drug testing.
- The cost of drug testing will be paid by the individual applicant.
- DCF will be required to provide any individual who tests positive for controlled substances with information concerning drug abuse and treatment programs in the area in which he or she resides. The bill specifies that neither DCF nor the state is responsible for providing or

paying for substance abuse treatment as part of screening under this section.

▪ **CS/CS/HB 369  
Faith- and Character-Based  
Correctional Programs**

This bill amends s. 944.803, F.S., which governs faith-based programs in state correctional institutions. Because some existing programs are not based on religious principles, the bill adds references to "character-based programs" and "secular institutions." The bill also clarifies that the statute's requirements are applicable to institution-wide programs as well as dormitory-based programs. Additionally, the bill: (1) removes the requirement that 80 percent of the inmates in a dormitory-based program must be within 36 months of release; (2) eliminates the statutory preference for admitting inmates who have a substance abuse issue; and (3) provides that peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, must be allowed within faith and character-based institutions of the state correctional system. The bill also expresses legislative intent for the Department of Corrections to expand the use of faith- and character-based institutions and encourages the phasing-out of dormitory-based programs.

▪ **HB 431  
Driver's Licenses and  
Identification Cards**

The bill amends s. 320.08, F.S., to add a voluntary contribution check-off option of \$1 on driver's license and identification card applications. Individuals applying for an original, renewal, or replacement driver's license or identification card will have the option to make a \$1 donation to the Disabled American Veterans, Department of Florida (DAV), a not-for-profit organization. The Department of Highway Safety

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and Motor Vehicles (DHSMV) will collect the voluntary contributions and transfer those funds quarterly to the DAV. According to DHSMV, the DAV has met the requirements set forth in s. 322.081, F.S., and is exempt from the moratorium established in ch. 2010-223, L.O.F.

### ▪ **CS/HB 437** **Motor Vehicle Licenses**

The bill amends s. 320.6992, which deals with motor vehicle sales, F.S., to provide that the application of ss. 320.60-320.70, F.S., "including any amendments to ss. 320.60-320.70, F.S.," apply to all existing or subsequently-established motor vehicle distribution systems in Florida, unless such application would impair valid contractual agreements in violation of the State or Federal Constitution.

The bill also amends s. 320.6992, F.S., to provide that ss. 320.60-320.70, F.S., "including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise," shall govern all agreements renewed, amended, or entered into subsequent to October 1, 1988.

The bill amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when:

- They are included in single franchise agreement; and
- Every motor vehicle dealer in Florida authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement.

The definition provides that such multiple brand names or marks shall be considered individual franchises

for purposes of s. 320.64(36), F.S., relating to licensee "buy-backs" of dealer equipment upon termination of a franchise contract.

### ▪ **SB 462** **Beverage Law**

The bill revises the alcoholic beverage license qualification requirements for performing arts centers by providing an exemption from the requirement that all persons with an interest, directly or indirectly, in an alcoholic beverage license must obtain the approval of the Division of Alcoholic Beverage and Tobacco within the Department of Business and Professional Regulation. The exemption applies to the performing arts center's volunteer officers or directors or any change of such positions or interests.

The bill would permit volunteer officers or directors of a performing arts center to continue to serve without having to submit a separate, personal application and be fingerprinted as part of the alcoholic beverage license application process. The bill does not affect the requirement that the performing arts center must disclose the identity of the volunteer officers or directors.

### ▪ **HB 465** **Florida Veterans' Hall of Fame**

The bill establishes the Florida Veterans Hall of Fame (Hall of Fame) in an effort to recognize and honor military veterans who, through their works and lives during or after military service, have made a significant contribution to the State of Florida. The bill requires the Department of Management Services to set aside an area on the Plaza Level of the Capitol Building for the placement of the Hall of Fame.

In addition, the bill directs the Florida Department of Veterans' Affairs to annually accept nominations of persons to be considered for induction in the Hall of Fame and

transmit its recommendations to the Governor and Cabinet who will select the nominees to be inducted.

▪ **HB 469**  
**Individual Retirement Accounts**

The bill amends s. 222.21(2)(c), F.S., to provide that an Individual Retirement Account (IRA) exempt from creditors under s. 222.21(2)(a), F.S., would continue to be exempt if the original IRA were transferred into an Inherited IRA. The bill contains "whereas" clauses to express the Legislature's intent that an Inherited IRA, as defined in the Internal Revenue Code of 1986, was intended to be exempt from the claims of creditors and that the decisions in *Robertson v. Deeb* and *In re: Ard* are contrary to the Legislature's intent in 2005. The bill amends s. 222.21(2)(c), F.S., to provide that an IRA exempt from creditors under s. 222.21(2)(a), F.S., would continue to be exempt if the original IRA were transferred into an Inherited IRA. Under the proposed changes, when an owner of an IRA passes away, his or her named beneficiary would continue to enjoy the protection from creditors that the original owner enjoyed under s. 222.21(2)(a), F.S. This protection would most likely extend to protection in bankruptcy proceedings, as well. The bill contains language indicating the provisions are clarifying and shall apply retroactively to all Inherited IRA's regardless of when an Inherited IRA was created.

▪ **CS/CS/HB 689**  
**Driver Education and Testing**

This bill amends ss. 318.1451 and 322.095, F.S., relating to Driver Improvement Schools and Traffic Law and Substance Abuse Education Programs for driver's license applicants. The bill amends these sections to include course content regarding the risks associated with the use of handheld electronic communication devices while

operating a motor vehicle. The Department of Highway Safety and Motor Vehicles (Department) is required to consider whether such information is included in a provider's curriculum, when determining whether to approve the courses.

The bill amends s. 322.12, F.S., to require driver's license exams and commercial driver's license exams to include one question testing the applicant's knowledge of traffic regulations to assist blind persons. The questions developed by the Department must emphasize pedestrian right-of-way when a driver is making a right turn at an intersection. The bill amends s. 322.56, F.S., to provide that learner's driver's license applicants must have the opportunity to take written examinations with third-party providers; however, the Department is not precluded from continuing to provide written examinations. The bill requires the Department to contract with providers of approved traffic law and substance abuse education courses to serve as third-party administrators to conduct online knowledge tests for learner's driver's license applicants. The on-line testing program must require, prior to administering the examination, the applicant's parent, guardian or other responsible adult to provide the third-party administrator his or her driver's license number. In addition, before the issuance of the learner's driver's license, the parent, guardian, or other responsible adult must provide to the Department a signed and dated affidavit acknowledging he or she was aware of and allowed the applicant to take the examination online.

▪ **SB 722**  
**Modification of Dangerous Dogs**

This bill repeals s. 767.11(1)(c), F.S., which automatically designates dogs

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used primarily, or in part, for dog fighting as “dangerous dogs” within the meaning of ch. 767, F.S. Repealing this designation will mean that animal shelters will have discretion in determining whether or not a dog is dangerous on a case by case basis and, because a dangerous dog designation was a nearly impermeable barrier to adopting out a dog, animal shelters will now also have a much greater capacity to adopt out dogs that have been rescued from dog fighting rings.

### ▪ **HB 767** **Local Government**

This bill authorizes the board of county commissioners to negotiate the lease of real property for a term not to exceed five years rather than go through the competitive bidding process. The bill also allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located.

### ▪ **CS/CS/HB 879** **Targeted Economic Development**

This bill modifies two state economic development incentives and extends eligibility for 11 different state incentives to eligible businesses in the two pilot Energy Economic Zones. Specifically, the bill:

- Gives businesses participating in the Capital Investment Tax Credit program, pursuant to s. 220.191, F.S., an additional 10 years to claim their unused tax credits against their corporate tax liabilities.
- Renames one of the criteria for determining a “target industry business” for clarity purposes in the Qualified Target Industry (QTI) tax refund program, and specifies that special consideration should be given to applicant businesses that enhance trade opportunities and

global logistics – which is one of the new additions to the 2011 Target Industry Sector List compiled by Enterprise Florida, Inc.

- Adds input from municipal governing bodies to recommend to the state on which private-sector wage calculation should be used as the baseline for calculating the QTI business’s required 115-percent annual average wage for the business’ new employees. Effective July 1, 2011, through June 30, 2014, specifies that the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla, and Walton may provide only a 10 percent local match – rather than the currently required 20 percent – to state funding for the QTI refund program.
- Augments the existing Energy Economic Zone (EEZ) Pilot Program language in s. 377.809, F.S., to:
- Make all the sales and corporate tax incentives and benefits provided to businesses within ch. 290, F.S., enterprise zones pursuant to state law also will be available to businesses within EEZs, effective July 1, 2012. The two pilot EEZs are in Sarasota County and the City of Miami Beach;
- Extend eligibility to EEZ businesses to receive higher tax refund subsidies, as do businesses in enterprise zones, and waives the minimum wage requirement of at least 115 percent of the average area private sector wage for EEZ businesses;
- Specify that EEZ projects will have priority consideration for economic development transportation funding, pursuant to s. 288.063, F.S.;
- Make EEZ projects eligible for Quick Response Training and

- Incumbent Worker Training incentive funds;
- Cap the total amount of incentives at \$300,000 annually in each EEZ;
- Specify that the EEZ ordinances to be approved by the two local governing boards will include business criteria and other information; and
- Exempts a development in an EEZ from the DRI requirements of s. 380.06, F.S.

▪ **SB 898**  
**Executive Office of the Governor**

This bill saves from repeal the Florida Faith-based and Community-based Advisory Council.

▪ **CS/HB 901**  
**Household Moving Services**

The bill preempts local government ordinances regulating movers of household goods or moving brokers that were enacted after January 1, 2011. Therefore, local government ordinances enacted prior to January 1, 2011, may remain in effect, provided that such ordinances levy "reasonable" registration fees that do not exceed the cost of administering the ordinances. However, these existing ordinances only apply to a mover or moving broker if the mover or moving broker's principal place of business is located in the jurisdiction having such an ordinance. The bill further clarifies that the preemption does not apply to a local government's authority to levy local business taxes. In addition, the bill:

- Requires movers to register biennially, rather than annually, with the Department of Agriculture and Consumer Services; and
- Clarifies the definition of storage.

▪ **SB 916**  
**Official Florida Statutes**

This bill is drafted by the Division of Statutory Revision of the Office of Legislative Services to adopt the Florida Statutes 2011 and designate the portions thereof that are to constitute the official statutory law of the state. This adoption act amends ss. 11.2421, 11.2422, 11.2424, and 11.2425, Florida Statutes, and provides a 1-year window for finding errors and making changes before statutory material becomes the best evidence of the law.

This bill substantially amends the following sections of the Florida Statutes: amends ss. 11.2421, 11.2422, 11.2424, and 11.2425, F.S.

▪ **SBs 924, 944 & 946**  
**Florida Statutes**

The Division of Statutory Revision of the Office of Legislative Services is required, by statute, to conduct a systematic and continuing study of the Florida Statutes. The purpose of this study is to recommend to the Legislature changes that will remove inconsistencies, redundancies, and unnecessary repetition from the statutes; improve clarity and facilitate correct interpretation; correct grammatical and typographical errors; and delete obsolete, repealed, or superseded provisions. These recommendations are submitted to the Legislature in the form of technical, nonsubstantive reviser's bills. A reviser's bill cannot be amended except to delete a bill section.

▪ **CS/CS/CS/HB 949**  
**Pest Control**

This bill makes changes to the Florida Structural Pest Control Act. It authorizes the Department of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the sole purpose of soliciting pest

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control business and to provide more efficient services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department and establishes a licensing fee, biennial renewal fee, and authorizes a late filing fee. The bill establishes a limited certification for a commercial wildlife management personnel category within the department authorizing persons to use nonchemical methods for controlling rodents. The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees, continuing education classes and proof of a certificate of insurance for minimum financial responsibility. The bill specifies that persons licensed or certified by the department under ch. 482, F.S., and who practice accepted pest control methods are immune from liability under the animal cruelty provisions. Also, persons licensed or certified under ch. 482, F.S., must abide by the rules, regulations, or orders of the Fish and Wildlife Conservation Commission. The bill increases the minimum requirements for insurance coverage to conduct pest control businesses. In addition, the bill expands the methods by which a pest control licensee may contact the department regarding the location where fumigation will be taking place to include notification by facsimile or other forms of electronic communication.

### ▪ **HB 993 Rulemaking**

The bill revises portions of Chapter 120, the Administrative Procedures Act (APA).

#### ❖ *Rulemaking Process:*

The bill amends agency rulemaking procedures under the APA.

- Requires agencies to include in each notice of rulemaking whether the proposed rule requires legislative ratification.
- Conforms certain rulemaking timeframes to other periods required in the statutory rulemaking process by restoring certain time deadlines as provided before the 2010 amendments.

#### ❖ *Legislative Ratification:*

The bill revises various provisions of the APA to align with the legislative ratification requirements enacted in HB 1565, passed in 2010.

- Provides a procedure for agencies to withdraw rules prior to becoming effective if the rule is invalidated by a final order or is timely submitted to the Legislature but not ratified in the regular session.
- Provides for withdrawal of rules that are not effective because they are not ratified by the Legislature.
- Expressly includes legislative ratification in the description of factors controlling when an adopted rule takes effect.

#### ❖ *Exemptions to Economic Analysis and Ratification Requirements:*

The bill clarifies and revises portions of the APA to exempt specific types of rulemaking from the requirements for economic analysis or ratification.

- Exempts emergency rulemaking, rules adopting federal standards, rules adjusting certain tolls, and rules implementing the 2011 Student Success Act from the requirements to prepare a statement of estimated regulatory costs and submission for legislative ratification.
- Excludes from the ratification requirement the amendments and triennial updates of both the Florida Building Code and the Florida Fire Prevention Code.

❖ *Burden of Ultimate Persuasion in Administrative Licensing Proceedings under Chs. 373, 378, 403:*

The bill amends the APA to clarify the burden of proof for non-applicant petitioners in administrative proceedings opposing the issuance of a license, permit, or conceptual approval under Ch. 373, 378, or 403, F.S., all environmental statutes. The bill clarifies such interveners have the burden of ultimate persuasion, meaning they are required to prove the agency should not grant the application based on their objection(s).

❖ *Review of Existing Rules with Significant Economic Effect:*

The bill creates a one-time process in the APA requiring all agencies to undertake a comprehensive review of the economic impact of their respective rules effective on or before November 16, 2010. This follows the pattern for the review of statutory authority conducted after the 1996 substantive amendments to the APA. Additionally, the bill requires each agency to identify all revenue rules and all rules under which the agency requires data reporting from external sources. The report will include the statutes authorizing the data collection, how the data is used by the agency, and the policies advanced by the program.

▪ **HB 1047**  
**Nonresident Alien Accounts**

All residents of the United States are required to report and pay taxes on interest earned from deposit accounts such as savings accounts and certificates of deposit. However, except for Canadians, residents of foreign countries with deposits in U.S. financial institutions are not subject to the same reporting requirements. The United States Treasury Department has proposed regulations which would extend the earned interest reporting

requirements to Nonresident Aliens (NRA) from any foreign country.

This memorial urges the United States Treasury Department to withdraw the proposed Internal Revenue Service Regulation (REG-146097-09). It also calls on Congress to hold hearings in order to examine the potential effects of the proposed regulations on the economies of the U.S. and Florida, as well as their financial institutions.

▪ **SB 1128**  
**Public Retirement Plans**

This bill increases the transparency of local pension plan data, and specifies other actions to address the sustainability of local pension plans. The bill does the following:

- Local plans' actuarial reports are required to include the present value of all benefits using a standard rate of return, to promote comparisons between plans;
- Department of Management Services is required to post on their website a five-year history of each plan's funded ratio, and local plans are required to link to this DMS website;
- Actuarial or cash surpluses in a local plan may not be used outside the plan;
- Local plans may not reduce contributions required to fund normal cost;
- For all local plans, accrued sick or annual leave may not be included in calculations of retirement benefits; overtime may be included, but is capped at 300 hours;
- With approval of the members, firefighter and police plans are allowed to increase member contributions without increasing member benefits;
- The bill changes the date in 1939 by which local law plans are deemed to be in compliance with Chapters 175 and 185;



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- The bill creates a Task Force on Public Employee Disability Presumptions to study and make recommendations on statutory disability presumptions;
- The Department of Management Services is required to create a plan for providing standardized ratings for the financial strength of all local government defined benefit plans in Florida, and provide recommendations to the Legislature in January 2012.

### ▪ **HB 1165** **Driver's Licenses and Identification Cards**

The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to provide a veteran of the United States Armed Forces the option to receive a capital "V" to be displayed on his or her driver's license or identification card to signify veteran status. In order to receive a capital "V" on either of these documents, a veteran must present his or her DD Form 214 (a "Certificate of Release or Discharge from Active Duty," promulgated by the United States Department of Defense) to the DHSMV, along with an additional \$1 fee.

### ▪ **SB 1314** **State Financial Matters**

This bill makes agencies more accountable in their contracting practices, and the Legislature more informed about the agencies' actions. Specifically, the bill:

- Defines a new budget category "Lease or lease/purchase of equipment." in s. 216.011, Florida Statutes for the Legislature to better track expenditures.
- Requires each state agency to provide certain contract information in its Legislative Budget Request when granting a concession contract.
- Requires state agencies to identify the specific appropriation in the

contract that will be used to make payment for the first year of the contract with a \$5 million threshold, unless the Legislature specifically authorizes otherwise.

- The Act applies to contracts, contract amendments, contract extensions, or contract renewals which are executed on or after July 1, 2011.

### ▪ **CS/CS/HB 1355** **Elections**

CS/CS/HB 1355 is an omnibus elections bill consisting primarily of the Secretary of State's election administration and campaign finance packages, along with numerous other significant changes to the Florida Election Code that include:

- **Joint Resolutions:** providing for alternative ballot summaries and/or the full text of a constitutional amendment proposed by joint resolution to be placed on the ballot; providing lead-time until the end of 2013 for voting systems to be modified to accommodate the full text of an amendment; creating a presumption that placing the full text on the ballot provides electors adequate notice of what they're voting on; containing procedures for curing defective ballot summaries; making the provisions of this section retroactive to joint resolutions passed during the 2011 legislative session.
- **Early Voting:** providing for a more compressed, 8-day early voting period that's closer to election day — from the 10th to the 3rd day before the election — while maintaining the current 96 *total* hours of early voting should supervisors deem it necessary in their counties; requiring early voting at each site to be open for a minimum of 6 hours and a maximum of 12 hours per day.

- **Third-Party Voter Registration Organizations:** requiring such groups to submit voter registration applications within 48 hours of receipt instead of 10 days, identify registration agents collecting applications, and act as a fiduciary to voters whose applications have been collected; requiring registration forms to contain certain identifying information; mandating that the Florida Division of Elections maintain a database of forms issued to third-party voter registration groups; applying the provisions of this section retroactively to existing third-party voter registration groups.
- **Address Changes at the Polls:** allowing voters to change their addresses on election day and still vote a *regular ballot*, provided the elector is: 1) voting in the same county in which they originally registered to vote; or, 2) an active military member or in the same family with an active military member. Other electors making inter-county address changes at the polls would be required to vote a provisional ballot.
- **Citizen Initiative Petitions:** reducing the shelf-life of initiative petition signatures proposing constitutional amendments from 4 years to 2 years.
- **Reporting Election Results:** requiring county canvassing boards to report all early voting and tabulated absentee ballots to the Department of State within 30 minutes after the polls close, and to subsequently report all results (other than provisional ballots) every 45 minutes until complete.
- **Presidential Preference Primary (PPP) Date:** eliminating the current date for the Presidential Preference Primary (last Tuesday in January) and creating a 10-member PPP Date Selection Committee, which will establish the PPP date every four years to fall between the beginning of January and the beginning of March; the date must be selected by October 1 of the year preceding the presidential election.
- **State Primary Date:** moving the State's primary election from 10 weeks to 12 weeks before the general election (i.e., August 14, 2012).
- **Party Switching:** prohibiting would-be candidates from seeking a party's nomination to an office if the person was a member of any other political party for a year preceding qualifying.
- **Binding Directives:** empowering the Secretary of State to provide *written* direction to supervisors of elections on matters relating to their official duties under the Florida Election Code or department rule.
- **Absentee Ballots:** standardizing the time frames during which absentee ballots are mailed to military, overseas, and other voters; allowing county canvassing boards to begin canvassing absentee ballots at 7 a.m. on the 15th day before an election instead of the 6th day.
- **Election Law Violations:** correcting an oversight in current law by providing that an administrative law judge in the Division of Administrative Hearings has the same authority as the Florida Elections Commission to impose civil penalties for election law violations.
- **Voter Information Cards:** adding the polling place address to voter information cards, and requiring supervisors of elections to comply with this requirement with respect to all voter information cards issued after August 1, 2012.

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- **Poll Watchers:** bringing greater flexibility to poll watcher procedures by providing for “at-large” poll watchers.
- **Random Audits:** specifying that if a manual recount was conducted, a post-election, random audit of the voting system is not required.
- **Campaign Finance Automatic Fines:** increasing the penalty for committees of continuous existence that late-file their *final* campaign finance report due before a primary or general election for the first three days the report is late, from \$50 per day to \$500 per day (to conform to current law regarding political committee and candidate filings).
- **County Candidates Reapportionment:** allowing county candidates who are seeking to qualify by petition in an apportionment year to obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries.

### ▪ **CS/SB 1738** **State Financial Information**

This bill would ensure that all state financial matters and business functions are standardized. This bill was vetoed by the Governor on May 26, 2011.

### ▪ **SB 2002** **Implementing the 2011-2012** **General Appropriations Act**

- ❖ *Intent.* This bill provides legislative intent that the implementing and administering provisions of this act apply to the General Appropriations Act for Fiscal Year 2011-12. Most issues are tied to spending; however, there are a few points of general interest

- ❖ *Department of Health/Nitrogen.* Provides requirements to govern the completion of Phases 2 and 3 of the Department of Health's Florida Onsite Sewage Nitrogen Strategies Study. Prohibits state agencies from implementing regulations with higher standards than those currently in place until Phase 2 and Phase 3 of the department's Florida Onsite Sewage Nitrogen Reduction Strategies Study is completed.
- ❖ *Onsite Sewage Disposal Systems.* Prohibits the Department of Health from implementing the onsite sewage treatment and disposal program described in s. 381.0065, Florida Statutes, until the department submits a plan to the Legislative Budget Commission and the plan is approved.
- ❖ *State Owned Lands.* Provides that the acquisition and disposition of state-owned lands are exempt from appraisal requirements if the proceeds of such conveyance will be used to purchase state-owned lands for preservation, conservation, and recreation purposes. Requires agencies to submit a list of state-owned lands to Board of Trustees of the Internal Improvement Trust Fund that are available for lease or are surplus lands. Proceeds from the sale of such lands will be deposited into the Florida Forever Trust Fund and used to acquire state-owned lands for preservation, conservation, or recreation purposes.
- ❖ *State Employee Travel.* Provides that funds appropriated for travel by state employees shall be limited to travel for activities that are critical to each state agency's mission. Prohibits funds from being used to travel to foreign countries, other states,

- conferences, staff-training or other administrative functions unless agency head approves in writing. Requires agency head to consider use of teleconferencing and electronic communication to meet needs of activity before approving travel.
- ❖ *Multiple Agency Leases.* Requires the Department of Management Services to use the services of a tenant broker to renegotiate all private lease agreements more than 150,000 square feet and authorizes the use of savings to generate additional savings.
  - ❖ *Renegotiation of Private Lease Agreements.* Requires the Department of Management Services and state agencies to seek to renegotiate private lease agreements of more than 2,000 square feet expiring before June 30, 2013.

▪ **SB 2100  
Retirement**

Effective July 1, 2011, requires 3% employee contribution for all Florida Retirement System members. DROP participants are not required to pay employee contributions.

For employees initially enrolled on or after July 1, 2011, the definition of "average final compensation" means the average of the 8 highest fiscal years of compensation for creditable service prior to retirement, for purposes of calculation of retirement benefits. For employees initially enrolled prior to July 1, 2011, the definition of "average final compensation" continues to be the average of the 5 highest fiscal years of compensation.

For employees initially enrolled in the pension plan on or after July 1, 2011, such members will vest in 100% of employer contributions upon completion of 8 years of

creditable service. For existing employees, vesting will remain at 6 years of creditable service.

For employees, initially enrolled on or after July 1, 2011, increases the normal retirement age and years of service requirements, as follows:

- For Special Risk Class: Increases the age from 55 to 60 years of age; and increases the years of creditable service from 25 to 30.
- For all other classes: Increases the age from 62 to 65 years of age; and increases the years of creditable service from 30 to 33 years.

Maintains DROP; however, employees entering DROP on or after July 1, 2011 will earn interest at a reduced accrual rate of 1.3%. For employees currently in DROP or entering before July 1, 2011, the interest rate remains 6.5%.

Eliminates the cost-of-living adjustment (COLA) for service earned on or after July 1, 2011. Subject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the reinstatement of the COLA, the new COLA formula will expire effective June 30, 2016, and the current 3% cost-of-living adjustment will be reinstated.

To implement the bill for the 2011-12 fiscal year, funds the Division of Retirement with four positions and \$207,070 in recurring funds and 31,184 in non-recurring funds.

▪ **SB 2106  
Florida Energy and Climate  
Commission**

Provides for a transfer of the Florida Energy and Climate Commission within the Governor's Office to the Department of Agriculture and Consumer Services. This abolishes the Commission but gives its duties to

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the department. This bill was vetoed by the Governor on May 26, 2011.

### ▪ **SB 2122** **Department of Agriculture and Consumer Services and the Citrus Commission**

Within the Department of Agriculture and Consumer Services (DACCS), consolidates the Division of Dairy Industry within the Division of Food Safety.

Transfers authority for the regulation and enforcement of the state Lemon Law and the price gouging program entirely to the Department of Legal Affairs.

Renames the Division of Forestry within the DACCS as the Florida Forest Service.

Reduces the membership of the Citrus Commission from twelve members to nine, reduces the number of citrus districts from four to three, and reassigns counties to those three districts.

Provides that the Executive Director of the Department of Citrus be appointed by a majority vote of the commission and serve a four-year term, except for the initial term, which expires on June 30, 2011, and shall be subject to confirmation by the Senate in the legislative session following appointment.

Imposes limits on the tax per box of grapefruit, oranges, and tangerines. The tax on grapefruit, tangerines, and fresh oranges is capped at the rate in effect on May 1, 2011, and the tax rate on oranges in processed form cannot exceed 25 cents per box.

Requires employees of the Department of Citrus to work a five-day, 40-hour work week, except when on approved leave.

### ▪ **SB 2128** **Public Employees Relations Commission**

Requires the Public Employees' Relations Commission to be comprised of a chair and two part-time commissioners.

The part-time members are prohibited from engaging in any other business, vocation, or employment that conflicts with their duties while serving as a commissioner.

### ▪ **SB 2156** **Creation of Department of Economic Opportunity and Government Reorganization**

#### **1. Reorganization**

a. Creates the Department of Economic Opportunity (DEO):

- Agency head, known as the "executive director," appointed by the Governor and confirmed by the Senate.
- Transfers the Office of Tourism, Trade and Economic Development (OTTED), portions of the Department of Community Affairs (DCA), and portions of the Agency for Workforce Innovation (AWI) workforce functions to the new agency, effective October 1, 2011.
- The Ready to Work program is transferred from the Department of Education (DOE) to the Department of Economic Opportunity.

b. Transfers the AWI Office of Early Learning to the Department of Education as a separate entity:

- Director of the office appointed by the Governor, and confirmed by the Senate.
- DOE may not impose requirements or standards on early learning programs beyond those authorized in law for voluntary prekindergarten (VPK).
- Auditor General to review programs and delivery systems

- (including early learning coalitions) by December 31, 2011.
- c. Consolidates public-private economic development partnerships:
- Enterprise Florida, Inc., (EFI) President, known as the “Secretary of Commerce,” is appointed by and serves at the pleasure of the Governor.
  - EFI board remains largely as it is under current law, however new language requires certain private-sector representation (e.g., space, tourism, etc).
  - Space Florida retains special district status under the direction of appointed EFI board members.
  - VISIT Florida direct support organization is retained under contract with the EFI Board.
  - Black Business Investment Board (BBIB) and Florida Sports Foundation are merged into EFI, and related divisions are created in EFI.
  - Matching requirements for EFI and VISIT Florida (1-to-1 match) remain as required under current law.
  - Workforce Florida, Inc., maintains independent status as currently provided in law.
- d. Other transfers:
- Florida Communities Trust and Stan Mayfield Working Waterfronts programs are transferred from DCA to the Department of Environmental Protection.
  - Florida Building Commission is transferred from DCA to the Department of Business and Professional Regulation.
  - Division of Emergency Management is transferred from DCA to the Executive Office of the Governor.
  - Florida Energy and Climate Commission within the Executive Office of the Governor is transferred to the Department of

Agriculture and Consumer Services.

- e. Repeals DCA, AWI, and OTTED.

**2. Purpose and Functions of The Department of Economic Opportunity**

- a. Responsibilities of the department:
- Oversight and coordination of economic development, housing, growth management, community development programs, and unemployment compensation.
  - Develop a single, statewide 5-year strategic plan to address the promotion of business formation, expansion, recruitment, and retention in order to create jobs for all regions of the state. The plan must address economic development, marketing and infrastructure development for rural communities.
  - Submit an annual report on the condition of the business climate and economic development in the state, with assistance from EFI and WFI.
  - Manage the activities of the public-private partnerships.
  - Establish annual performance standards for Enterprise Florida, Inc., Workforce Florida, Inc., VISIT Florida, and Space Florida and report annually on how these performance measures are being met.
- b. Streamlined incentive process:
- Incentives for economic development projects must be approved or denied within 10 days of submitting an application to the department.
  - The release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program.
  - Quick Action Closing Fund projects require recommendation to the Governor in 7 days. In addition, the Governor can

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approve projects under \$2 million. Projects ranging from \$2 million - \$5 million require notification to the chairs and vice chairs of the Legislative Budget Commission (LBC). Projects totaling more than \$5 million must be approved by the LBC.

c. Business plan required by September 1, 2011, in conjunction with EFI, must outline:

- Strategies to be used by department and EFI for business recruitment and expansion.
- Benchmarks related to: business recruitment, business expansion, number of jobs created or retained.
- By Jan. 1, 2012, the department must make recommendations for any further reorganization and streamlining of economic development and workforce functions.

### 3. Purpose and Functions of Enterprise Florida, Inc.

a. Responsibilities of EFI:

- Must enter a performance-based contract with the Department of Economic Opportunity.
- Acts as primary economic agency for the state; chief negotiator for business recruitment and business expansion.
- Increase private investment in Florida.
- Advance international and domestic trade opportunities.
- Market the state as a pro-business location for new investment and as a tourist destination.
- Revitalize Florida's space and aerospace industries.
- Promote opportunities for minority-owned businesses.
- Assist and market professional and amateur sports teams and sporting events.
- Assist and promote economic opportunities in rural and urban communities.

b. Annual incentive report must include:

- Description of incentive programs.
- Amount of awards granted, by year, since inception.
- Economic benefits including actual amount of private capital invested, actual number of jobs created, actual wages paid for incentive agreements, annual average wage.
- The number of applications submitted, and the number of projects approved and denied by the department.
- Federal and local incentives provided.
- The number of projects that did not fulfill the terms of their agreements and consequently did not receive incentives.
- Trends related to usage of the various incentives, including the number of minority-owned businesses receiving incentives.

### 4. Deepwater Horizon Oil Spill

a. To address the negative economic impacts of the Deepwater Horizon oil spill:

- Defines the following counties as "disproportionally affected counties" and waives job, wage, and other requirements for businesses seeking economic development incentives in these counties: Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, and Wakulla.
- Provides that during a state of emergency permits are tolled and an additional 6 months is added to existing permits.
- Creates the Commission on Oil Spill Response Coordination (expires Sept. 2012).
- Appropriates \$10 million per year for three fiscal years to develop and implement an economic strategic plan in

counties designated as disproportionately affected.

Directs how funds received by the state for damages caused by the Deepwater Horizon oil spill may be directed.

▪ **SB 2160**  
**Relating to the Department of Highway Safety and Motor Vehicles**

Creates the Division of Motorist Services within the department;

Transfers the Office of Motor Carrier Compliance sworn law enforcement officers and administrative personnel from the Florida Department of Transportation (FDOT);

Allows the department to contract with a vendor to outsource the online sale of crash records;

Authorizes revenue sharing with county tax collectors on the issuance of driver's license replacement and identification cards, beginning July 1, 2015, when the those services are provided by the tax collector;

Creates a Law Enforcement Consolidation Task Force to evaluate the duplication of law enforcement functions throughout state government;

Directs the department to contract with providers for online traffic law and substance abuse education courses to serve as third party provider for online examinations for Class E learner's driver's license.

▪ **HB 4009**  
**Outdoor Theaters**

The bill repeals ch. 555, F.S., relating to outdoor theaters. The repeal removes the statutory requirements concerning access to and from outdoor theaters from public roads and other requirements that specifically apply to outdoor theaters.

▪ **CS/HB 4013**  
**Television Picture Tubes**

The bill repeals s. 817.559, F.S., which requires cathode ray tubes (CRT, or television picture tubes) be correctly labeled to indicate the new and used components and materials in such picture tubes. The bill also repeals s. 817.56, F.S., which prohibits activities related to the sale or servicing of cathode ray tubes.

▪ **CS/CS/HB 7005**  
**Unemployment Compensation**

This bill reforms the unemployment compensation (UC) law in the following manner:

The bill changes qualifying requirements by (effective August 1, 2011):

- Requiring claimants to participate in an initial skills review using an online education or training program as part of reporting for benefits;
- Requiring claimants to make a systematic and sustained effort to find work, and to contact at least five prospective employers each week or report in person to a One-Stop Career Center to meet with a representative for reemployment services each week; and
- Requiring claimants to file continuing claims by Internet, rather than by phone or mail.
- The bill changes the criteria by which claimants are disqualified from receiving benefits by:
  - Changing the standard to show misconduct from "willful" (a high standard) to "conscious" (a lower standard);
  - Changes the definition of misconduct to specify certain acts of misconduct that would disqualify an individual from benefits, such as absenteeism;



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- Adds a disqualification for any weeks in which an individual receives severance pay from an employer (effective August 1, 2011);
- Expands disqualification to include being fired for all crimes committed in connection with work (rather than only those punishable by imprisonment) (effective August 1, 2011); and
- Adds a specific disqualification for individuals who are incarcerated or imprisoned (effective August 1, 2011).
- The bill creates a sliding scale for benefits beginning in 2012 by correlating the maximum weeks of benefits available with the rate of unemployment. The maximum amount of benefits available is 23 weeks when the unemployment rate is 10.5 percent or greater, and this scales down to 12 weeks of benefits when the unemployment rate is 5 percent or less.
- The bill codifies the executive order extending the temporary state extended benefits program and amends the program to conform to new federal law.
- The bill eliminates the payment of benefits by mail (effective August 1, 2011).
- Related to unemployment taxes, the bill:
  - Allows employers to continue to have the option to pay their taxes in installments over 2012, 2013, and 2014;
  - Provides tax relief for employers beginning in 2012 by adjusting the tax calculation;
  - Increases the number of employee leasing companies who may obtain tax information for their clients by filing a memorandum of understanding, instead of filing a power of attorney for each client, with the Department of Revenue.
- The bill allows appeals of orders by the Unemployment Appeals Commission to be filed in district courts of appeal where the claimant resides, where the business was located, or where the order was issued (effective August 1, 2011).
- The bill codifies certain agency rules related to the exclusion of evidence that is irrelevant or repetitious, and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances (effective August 1, 2011).
- The bill creates a rebuttable presumption that the date on a document mailed by AWI or DOR is the date that the document was mailed.
- The bill amends law related to statutory construction to repeal language which requires that unemployment laws be liberally construed in favor of a claimant.
- The bill permits AWI to contract with consumer reporting agencies to access wage records and requires that any revenues from the contract be used for administration of the unemployment system.
- **HB 7105  
Campaign Financing/H 1207  
New Effective Date**

Establishes new effective date for CS/CS/HB 1207, an act relating to campaign financing, which bill was passed by both houses of Legislature during 2010 Regular Session of Legislature & thereafter vetoed by Governor.

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

- Redefine “electioneering communication” by removing references to issue elections and the number of persons in a geographic area who must be “targeted,” specifying the distribution media subject to regulation, regulating advocacy that is the functional equivalent of express advocacy, and providing limited timeframes for when communications can be regulated.
- Redefine “electioneering communications organization” to clarify that it includes only those organizations with “election-related activities” that are limited to electioneering communications and that its activities would not require the group to register as a political party, political committee, or committee of continuous existence.
- Require an organization to register as an ECO upon receipt or expenditure of an aggregate amount exceeding \$5,000.
- Increase the amount an *individual* can expend before being subject to electioneering (and independent expenditure) disclosure requirements from \$100 to \$5,000, to conform.
- Remove prohibitions against an ECO accepting contributions from certain 527 and 501(c)(4) organizations, and restrictions against ECOs using contributions received proximate to an election.
- Move the registration and reporting requirements for ECOs from a definitional section to the substantive provisions of Chapter 106.

Also, the bill authorizes the “leader” of each political party conference of the state Senate and House of Representatives to establish a separate, affiliated party committee (“APC”) to support the election of candidates of the leader's political

party. “Leader” means the President of the Senate, Speaker of the House of Representatives, and the minority leader of either house of the Legislature, until a person is designated by a political party conference of members of either house to succeed to the position – at which time the designee becomes the leader for purposes of the APC.

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

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

▪ **CS/HB 7209**  
**Regulatory Authority of the Department of Agriculture and Consumer Services**

This bill addresses a number of issues regarding the Department of Agriculture and Consumer Services’ (department) responsibilities related to consumer services, professional licenses, and inspection of oil and gas operations. The bill deletes the authority for the department to:

- Enforce the prohibition against unconscionable prices relating to the rental or sale of essential commodities during a declared state of emergency (also known as the statutory “Price Gouging” restriction); and
- Bring actions for injunctive relief under the Bedding Act.

The bill transfers department responsibilities under the Motor Vehicle Warranty Enforcement Act

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(or "Lemon Law") to the Attorney General. The bill creates a regulatory system for Cottage Food Operations, to exempt from permitting by the department a cottage food operation that sells less than \$15,000 annually, and provides for labeling requirements of cottage food products. As to department responsibilities relating to the inspection of oil and gas, and consistent with requirements imposed by the Department of Revenue, this bill adds terminal suppliers and importers to the list of those who must supply the affidavits currently required of manufacturers and wholesalers. The bill also deletes obsolete provisions relating to the transition to the sale of ethanol gasoline.

The bill requires applicants for certain licenses to meet the following citizenship and residency qualifications:

- Applicants for an armed security guard or firearms instructor license must be a U.S. citizen or permanent legal resident alien. An applicant who is a permanent resident alien must also provide proof that the applicant has resided in the state of residence shown on the application for at least 90 consecutive days before the date the application is submitted; and
- Applicants for a security guard, private investigator, or recovery agent license must be a U.S. citizen or permanent resident

alien or submit proof of current employment authorization issued by the U.S. Citizenship and Immigration Services. As to other issues relating to licensees, the bill:

- Extends the Class "K" firearms instructor license period from 2 to 3 years.
- Amends current law effective January 1, 2012, to require applicants for a security guard or private investigator intern licenses to have completed 40 hours of professional training before they apply for their license;
- Provides that an armed security officer or firearms instructor is subject to discipline if he is prohibited from purchasing or possessing a firearm by state of federal law;
- Deletes the requirement that an application be notarized and requires that it be verified by the applicant under oath as provided in s. 92.525, F.S.;
- Allows for payment of application fees by electronic funds transfer and removes the option to pay by certified check;
- Provides for a more thorough review of an applicants' criminal history; and
- Streamlines current processes, and makes technical and conforming changes to current law.▪

# CARLTON FIELDS

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ATTORNEYS AT LAW

**2011  
Florida Legislature  
Post-Session Report**

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



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

▪ **HB 283**  
**Seaports**

❖ *Port Citrus*

The bill amends s. 311.09, F.S., to include a representative of Port Citrus as a member of the Florida Seaport Transportation and Economic Development Council (council). The bill also permits Citrus County to apply for a grant through the council to perform a feasibility study regarding the establishment of a port in Citrus County. The bill further provides that the membership of Port Citrus on the council shall terminate if the study determines that a port in Citrus County is not feasible.

❖ *Seaport Security*

The bill also makes substantial changes to existing Florida law relating to security requirements for Florida's deepwater public ports. Florida is believed to be the only state with its own seaport security standards in addition to the federal standards. In broad terms, the bill amends s. 311.12, F.S., to address the duplicative security requirements mandated by both the state and federal government by: repealing the statewide minimum security standards; eliminating the Florida Department of Law Enforcement's (FDLE) role in the security of the seaports; and prohibiting seaports from charging a fee for a seaport specific access credential issued in addition to the federal Transportation Worker Identification Credential (TWIC).

Specifically, the bill makes the following changes to the state's seaport security laws:

- Repeals the statewide minimum security standards.

- Provides that seaports may implement security standards more stringent than the federal standards.
- Removes the authority for FDLE to exempt all or part of a seaport from the state's seaport security requirements, if FDLE determines that it is not vulnerable to criminal activity or terrorism.
- Revises the requirements for seaports to update their security plans, consistent with federal requirements.
- Deletes FDLE's Access Eligibility Reporting System.
- Prohibits seaports from charging a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the TWIC.
- Provides that beginning July 1, 2013, a seaport may not charge a fee for a seaport specific access credential issued in addition to the federal TWIC, except under certain circumstances.
- Deletes the requirement for a TWIC holder to execute an affidavit when seeking authorization for unescorted access to secure and restricted areas of a seaport.
- Removes the state criminal history screening and the state specific disqualifying offenses for working in a seaport.
- Removes the requirement for FDLE to conduct at least one annual unannounced inspection of each seaport to determine whether the seaport is meeting the statewide minimum security standards.
- Repeals the Seaport Security Standards Advisory Council established in s. 311.115, F.S.

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### ▪ **CS/CS/CS/HB 399** **Infrastructure Investment**

This bill makes a number of changes to the permitting and planning for Florida's 14 deepwater public seaports. Specifically, the bill:

- Authorizes the Florida Department of Transportation (FDOT) secretary to designate an assistant secretary as an economic development liaison to the Governor's Office;
- Requires the Florida Seaport Transportation and Economic Development (FSTED) Council to annually develop a project priority list and submit it to FDOT;
- Requires each seaport to develop a 10-year strategic plan that includes:
  - o Potential business opportunities;
  - o Proposed infrastructure and intermodal projects;
  - o Any physical, environmental and regulatory hurdles facing port projects; and
- Proposals to coordinate the port plan goals with other governmental entities.
- Modifies the existing State Transportation Plan to include information on methods to expand Florida as a hub for trade and investment;
- Directs FDOT to identify within the state's transportation system those facilities significant for trade opportunities;
- Exempts overwater piers, docks and similar structure at a seaport from its stormwater management system if the seaport has a Stormwater Pollution Prevention Plan;
- Directs the Department of Environmental Protection (DEP) to approve or deny a port conceptual permit application within 60 days of receipt;
- Provides that DEP may only request additional information on a port conceptual permit application twice, unless the

applicant waives this limitation in writing;

- Provides that if a third party petitions to challenge DEP's issuance of a port conceptual permit, the petitioner has the burden of ultimate persuasion and the burden of going forward with the evidence;
- Specifies that the 14 seaports are not required to obtain permits for maintenance dredging of previously dredged areas if specified conditions are met;
- Clarifies the dimensions of the turbidity mixing zones where the return water from port dredging projects is discharged;
- Provides that ditches, pipes, and other linear conveyances are not considered receiving waters for the purpose of requiring permits;
- Grants consent for the seaports to use any sovereignty submerged lands for maintenance dredging; and
- Provides that the spoil material from seaport dredging may be deposited in a self-contained, upland disposal site without needing a permit, if certain conditions are met.

### ▪ **HB 407** **Residential Building Permits**

This bill prohibits a local enforcement agency, and any local building code administrator, inspector, or other official or entity from requiring the inspection of any portion of a building, structure, or real property that is not directly related to the activity for which a permit is sought as a condition for issuance of a one- or two-family residential building permit.

The provisions of this bill do not apply to a building permit that is sought for: substantial improvements, a change in occupancy, conversions from residential with nonresidential or mixed use, and historic buildings.

The bill does not prohibit a local enforcement agency, or any local building code administrator, inspector, or other official or entity from:

- Citing a violation that was inadvertently observed in plain view during the course of an inspection conducted in accordance to this act;
- Inspecting a physically nonadjacent portion of the building, structure, or real property that is directly impacted by the activity for which the permit is sought;
- Inspecting any portion of the building, structure, or real property in which the owner or person having control has voluntarily consented to such inspection;
- Inspecting any portion of the building, structure, or real property pursuant to an inspection warrant issued in accordance to ss. 933.20-933.30, F.S.

▪ **SB 410**  
**Impact Fees**

In response to ongoing litigation, this bill reenacts the section of law created by Chapter 2009-49, Laws of Florida, (HB 227 (2009 Regular Session)) that created the “preponderance of the evidence” standard of review for the government in cases challenging the imposition or amount of an impact fee. The bill also provides a finding of important state interest.

▪ **CS/CS/HB 421**  
**Agricultural-related Exemptions to Water Management Requirements**

This bill revises a current agricultural-related exemption from obtaining a permit from a water management district (WMD) to alter topography to provide that certain agricultural activities, consistent with the normal

and customary practice in the area, may impede or divert the flow of surface waters or adversely impact wetlands, as long as it is not the sole or predominant purpose of the agricultural activity or alteration. It specifies that the exemption is retroactive to July 1, 1984 and the exemption applies to lands classified as agricultural and activities requiring an environmental resource permit but does not apply to those activities previously authorized by certain permits. The bill gives rule making authority and the exclusive right to the Department of Agriculture and Consumer Services (DACS) to make a binding determination at the request of a landowner or a WMD as to whether the proposed activity qualifies for an agricultural-related exemption. It requires DACS and each WMD to enter into or amend a memorandum of agreement regarding the process and procedure that DACS will follow in making its determination.

The bill provides that land converted from agricultural uses will not be subject to mitigation to offset any adverse effects caused by agricultural activities if the adverse effects occurred on the land in the last 4 years preceding the conversion.

The bill expands the definition of “agricultural activities” to include cultivating, fallowing, and leveling as well as best management practices adopted by the DACS or the United States Department of Agriculture’s Natural Resources and Conservation Services provided such operations are not for the sole and predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

▪ **HB 639**  
**Affordable Housing**

This bill removes the statutory limitation on documentary stamp tax revenues that go into the State and Local Government Housing Trust



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Funds and prohibits the use of affordable housing funds for new construction activities until July 1, 2012. The bill also provides targeted assistance for persons with special needs.

The bill allows the Florida Housing and Finance Corporation (FHFC) to receive federal funds for which no corresponding program has been created in statute and empowers local housing authorities to invest surplus funds.

The bill provides preference for general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing and deletes current preference language.

The bill also authorizes an inspector general position within the FHFC and deletes the requirement that the inspector general of the Department of Community Affairs serve that function on behalf of the FHFC.

### ▪ **HB 663** **State Forests**

The bill directs the Division of Forestry within the Department of Agriculture and Consumer Services to designate one or more areas on state forest lands as a "Wounded Warrior Special Hunt Area" to provide special outdoor recreational opportunities exclusively for disabled veterans and service members. The bill limits admittance to these designated areas to: an active duty member of any branch of the United States Armed Forces who has a combat-related injury; a veteran who served during a period of wartime or peacetime service and has a service-connected disability; and an individual accompanying an eligible veteran or service member to assist him or her in using such designated areas.

The Friends of State Forests Program created under s. 589.012, F.S., will

fund the required specialized accommodations needed to establish the "Wounded Warrior Special Hunt Areas."

### ▪ **CS/CS/CS/HB 849** **Building Construction and Inspection**

This bill exempts the Florida Building Code (Code) and the Florida Fire Prevention Code from being required to provide a statement of estimated regulatory costs and requires that proposed amendments to the foundation of the Code demonstrate a need for incorporation. Code amendments or modifications relating to the wind-resistance design of buildings and structures in the high-velocity hurricane zone of Miami-Dade and Broward Counties shall not expire and shall be carried forward to the next edition of the Code.

The bill redefines the term "sustainable building rating or national model building code" to include the International Green Construction Code and amends the membership composition requirements for the Florida Building Commission (Commission). The bill also expands the categories of persons who may be certified as qualified for licensure by endorsement as a home inspector and requires at least 2 hours of hurricane mitigation training to be included as part of a home inspector's continuing education requirements.

The bill repeals the exemption that permits Division I contractors to perform both the inspection and repairs on a home and authorizes individuals who are licensed as a landscape architect to submit landscape design plans to government agencies for approval.

This bill replaces one of the public lodging industry seats on the Department of Health advisory review board with a county or local

building official and clarifies that the Habitat for Humanity exemption also applies to the rehabilitation of certain family residences.

Part II of ch. 533, F.S., relating to the accessibility requirements for handicapped persons is amended in order to revise references to the current 2010 ADA Standards for Accessible Design standards and to conform the Florida-specific provisions to those standards. A license classification for "glass and glazing contractor" is created.

The bill provides for state agency compliance with the 2011 version of the National Fire Protection Association standard (NFPA 58) for LP gas tank separation and replaces specific references to energy efficiency requirements with a reference to the Florida Energy Efficiency Code for Building Construction.

As a result of this bill, products advertised as hurricane windstorm or impact protection from wind-borne debris are required to be approved as such under Florida's product approval program and the Commission is prohibited from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements.

The bill repeals current statutory provisions relating to requirements for scheduled increases in the energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction and requires certain public swimming pools and spas to be equipped with specified safety features.

▪ **HB 951**  
**Recording of Real Property Documents**

Instruments affecting title to real property are recorded in the public records in order to provide a public record of the chain of title to the

property, together with a record of encumbrances against the title. Prior law only allowed original papers, properly signed, to be presented for recording. Recently, state law was amended to allow for electronic recording of real property instruments. However, several of the clerks of the court and county recorders were accepting electronic recordings relating to real property prior to the 2007 adoption of the Uniform Real Property Electronic Recording Act. Others began accepting electronic documents for recording before rules contemplated in the Act were formally adopted. The bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, whether or not the electronic documents were in strict compliance with the statutory or regulatory framework in effect at that time. This bill provides that all such recorded documents are deemed to provide constructive notice of ownership and encumbrances. The bill also clarifies that changes made by the bill do not alter the duty of a clerk or county recorder to comply with the Uniform Real Property Electronic Recording Act or rules adopted by the Department of State pursuant to that act.

▪ **SB 1142**  
**Adverse Possession**

Under the statute governing adverse possession, a person who occupies land continuously without color of title (i.e., without any legal document to support a claim for title) may seek title to the property. The person must file a return with the county property appraiser's office within one year of entry onto the property and pay all property taxes and any assessed liens during the possession of the property for seven consecutive years. The adverse possessor may demonstrate possession of the property by showing that he or she

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protected the property by a substantial enclosure (typically a fence) or cultivated or improved the property.

The bill amends the current statutory process for gaining title to real property via an adverse possession claim without color of title.

Specifically, the bill:

- Includes occupation and maintenance as one of the forms of proof of possession of property subject to an adverse possession claim;
- Requires the property appraiser to provide notice to the owner of record that an adverse possession claim was made;
- Specifies that the Department of Revenue must develop a uniform adverse possession return;
- Requires the adverse possessor to provide a "full and complete" legal description of the property on the return;
- Requires the adverse possessor to attest to the truthfulness of the information provided in the return under penalty of perjury;
- Requires an adverse possessor to describe, on the return, how he or she is using the property subject to the adverse possession claim;
- Includes emergency rulemaking authority for the Department of Revenue related to the adverse possession return;
- Prescribes procedures governing an adverse possession claim against a portion of an identified parcel of property, or against property that does not currently have a unique parcel identification number;
- Specifies when the property appraiser may add and remove the adverse possessor to and from the parcel information on the tax roll;
- Requires property appraisers to include a notation of an adverse possession claim in any

searchable property database maintained by the property appraiser;

- Provides for priority of property tax payments made by owners of record by allowing for refunds of tax payments made by adverse possessors who submit a payment prior to the owner of record; and
- Provides that tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

If approved by the Governor, these provisions take effect July 1, 2011. The provisions apply to adverse possession claims in which the return was submitted on or after that date, except for the procedural provisions governing the property appraiser's administration of the adverse possession claims included in proposed s. 95.18(4)(c) and (d) (requiring the property appraiser to add a notation of the adverse possession filing and maintain a copy of the return) and (7), F.S. (delineating when the property appraiser shall remove the adverse possession notation). These latter provisions will apply to adverse possession claims in which the return was submitted before, on, or after July 1, 2011.

### ▪ **HB 1195 Condominium, Cooperative, and Homeowners' Associations**

The bill clarifies existing law relating to the installation of manual fire alarm systems for condominiums, cooperatives, or multifamily residential buildings that are less than four stories. It revises laws related to condominium, homeowner, and cooperative associations (community associations). The bill amends

provisions that are applicable to each type of community association. The bill makes the following changes for all community associations:

- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation and for failure to comply with the association's governing documents;
- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation; and
- In regards to the association's collection of unpaid monetary obligations from a unit or parcel owner's tenant, the bill specifies the statutory form for the written notice that the association must provide to the tenant if the association demands that the tenant make rental payments to the community association rather than to the unit or parcel owner.

For condominium and homeowners' associations the bill provides that an association that acquires title to a unit through the foreclosure of its lien for assessment is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the acquisition of title in favor of any other condominium association or homeowners' association which holds superior lien interest on the unit or parcel.

Regarding condominium associations, the bill:

- Includes unit owner facsimile numbers as a record to be maintained by the association;
- Permits condominium unit owners to consent to the disclosure of protected information, e.g., name

- and telephone numbers for a membership directory;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Permits condominium associations to hold closed meetings to discuss personnel matters;
- Authorizes condominium association boards to install impact glass or other code-compliant windows;
- Provides that the newly elected or appointed board members may, in lieu of the written certification, submit a certificate of having satisfactorily completed an educational curriculum on condominium law within one year before or 90 days after the date of election or appointment;
- Requires a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities;
- Provides for the partial termination of a condominium property;
- Provides for the termination of a condominium property by a unit owner upon filing a petition seeking equitable relief in instances in which the condominium includes units and timeshare estates where improvements have been totally destroyed or demolished; and
- Revises provisions related to bulk assignees and bulk buyers.

Regarding homeowners' associations, the bill:

- Clarifies the definition of "declaration of covenants";
- Permits parcel owners to consent to the disclosure of protected information, e.g., names and

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- telephone numbers for a membership directory;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Provides limitations on who may serve on the board of directors of a homeowners' association; and
- Authorizes and provides procedures for homeowners' associations to contract for communications, information, or Internet services on a bulk rate basis.

### ▪ **SB 1196** **Construction Liens**

This bill revises the procedures for protecting a leased property from a construction lien when the improvement is contracted for by a tenant of the property. The bill provides that a lessor may file a memorandum of the lease, in lieu of a copy of the lease, in the official records of the county where the leased property is located. In the alternative, a lessor may file a notice advising that leases for property located on a parcel of land prohibit liens in the official records of the county where the land is located. The notice must contain the name of the lessor, legal description of the parcel of land, the specific language contained in the lease or leases, and a statement that all or a majority of the leases expressly prohibit these types of liens. The bill requires the notice to be filed prior to the filing of any Notice of Commencement for work on the leased property. The bill provides that a contractor may file a demand on the lessor for a verified copy of the terms in the lease. Failure of the lessor to comply with a demand may result in a contractor being able to file a lien against the lessor's property. In addition, the bill provides that the lessor must be listed

on the Notice of Commencement as the owner of the property.

### ▪ **SB 2142** **Relating to Water Management Districts**

For the first time, requires the Legislature to annually review the preliminary budget for each water management district and set the maximum amount of revenue a district may raise through its ad valorem tax.

Provides that, if the annual maximum amount of property tax revenue is not set by the Legislature on or before July 1 of each year, the maximum property tax revenue that may be raised reverts to the amount authorized in the prior year.

Requires each water management district to provide a monthly financial statement to its governing board and make such information available to the public through the district's website.

Revises provisions relating to the review of district budgets to allow the Executive Office of the Governor and the Legislative Budget Commission to disapprove, in whole or in part, the budget of each water management district.

### ▪ **HB 4129** **Residential Property/Evaluation Grant Program (Chapter 2011-12, L.O.F.)**

The bill (Chapter 2011-12, L.O.F.) deletes s. 627.0629(8), F.S., relating to a grant program for the evaluation of residential property structural soundness. The program was established in 1997 for homeowners insured by the Florida Windstorm Underwriting Association (FWUA) to obtain evaluations of the wind resistance of their homes. The Department of Community Affairs was required by statute to establish by rule standards to govern

evaluation, recommendations for retrofitting, the eligibility of those who would perform the evaluations, and the selection of the applicants to obtain the grants. In 2002, the Florida Legislature combined the FWUA with the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and thereby created Citizens Property Insurance Corporation (Citizens). At that point, Citizens assumed the responsibility to administer the program. When the program was established, it was to be effected "to the extent that funds are provided for this purpose in the General Appropriations Act (GAA)." Representatives of the Division of Emergency Management within the Department of Community Affairs report that the agency has not promulgated rules to establish the grant program because funds have not been provided by the GAA. Representatives for Citizens state that no grants have been awarded since its inception in 2002 because funds have not been provided by the GAA. Because the program has never been activated, the bill deletes the language that created the program.

▪ **HB 7001**  
**Growth Management**

In response to ongoing litigation, this bill (Chapter 2011-14, L.O.F.) reenacts sections of law amended by the parts of ch. 2009-96, Laws of Florida, (SB 360 from 2009) most closely related to the subject of growth management to eliminate any possible question that any of these provisions could be subjected to a single subject challenge. Additionally, since the bill passed by a 2/3 majority of each house, it could remove the argument that these provisions violate the mandates provision of the Florida Constitution. The bill does not change the law but reaffirms the changes to the law made in 2009 related to growth management.

▪ **HB 7003**  
**Affordable Housing**

This bill (Chapter 2011-15, L.O.F.) reenacts certain sections of law created by ch. 2009-96, Laws of Florida, (SB 360 from 2009) that are most closely related to the subject of affordable housing in order to eliminate any possible question that it could be subjected to a single subject challenge or struck down as an unconstitutional unfunded mandate. The bill does not change the law, but reaffirms the changes to the law made in 2009 by SB 360 relating to affordable housing.

▪ **HB 7103**  
**Agriculture/H 7103 New Effective Date**

Establishes new effective date for CS/HB 7103, an act relating to agriculture, which bill was passed by both houses of Legislature during 2010 Regular Session of Legislature & thereafter vetoed by Governor.

This bill prohibits counties from enforcing any regulation on land classified as agricultural if the activity is regulated by best management practices, interim measures, or regulations adopted as rules under chapter 120, Florida Statutes. It also prohibits counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the operation has a National Pollutant Discharge Elimination System permit, an environmental resource permit, a works-of-the-district permit, or implements best management practices. The bill provides an exception under specified circumstances for counties that adopted a stormwater ordinance before March 1, 2009, provided credits are given. It allows a county to enforce its wetland protection acts adopted before July 1, 2003.

The bill creates the Agricultural Land Acknowledgement Act to ensure that

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

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

### ▪ **HB 7205** **State Economic Enhancement and Development Trust Fund**

This bill creates the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. Moneys deposited in the trust fund shall be used for infrastructure and job creation opportunities and for the following purposes or programs:

- Transportation facilities that meet a strategic and essential state

interest with respect to the economic development of the state;

- Affordable housing programs and projects in accordance with chapter 420, Florida Statutes;
- Economic development incentives for job creation and capital investment;
- Workforce training associated with locating a new business or expanding an existing business; and
- Tourism promotion and marketing services, functions, and programs.

The trust fund is established for use as a depository for funds credited to the trust fund, to consist of documentary stamp tax proceeds as specified in law, local financial support funds, interest earnings, and cash advances from other trust funds.

In accordance with s. 19(f)(2), Article III of the State Constitution, the trust fund shall, unless terminated sooner, be terminated on July 1, 2015. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

### ▪ **HB 7207** **Growth Management**

HB 7207, designated as "The Community Planning Act", substantially amends part II of ch. 163, F.S. This bill focuses the State's role in the growth management process to one of protecting important State resources and facilities, and provides local governments with greater local control over planning decisions that affect the growth of their communities. This bill preserves part II of ch. 163, F.S., as the minimum standards for Florida's comprehensive growth management system. The opportunities in current law are also preserved for public participation in the local planning process, and the broad standing for affected persons to challenge a local

government's adoption of plans and plan amendments is maintained.

❖ **Contents of a Comprehensive Plan**

This bill maintains the required comprehensive plan elements in current law but no longer mandates a public school facilities element. This bill removes many of the state specifications and requirements for optional elements in the comprehensive plan, but specifically states that a local government's comprehensive plan may continue to include optional element.

❖ **Rule 9J-5**

This bill repeals rule 9J-5, FAC, and incorporates into the law important and relevant definitions and provisions of the rule relating to the contents of and requirements for elements within a comprehensive plan.

❖ **Capital Improvements Element**

This bill requires the local government to review its capital improvements element on an annual basis. Modifications to the capital improvements schedule may be accomplished by ordinance and are not deemed to be amendments to the local comprehensive plan. This bill also removes the requirement that the capital improvements element be financially feasible. These changes are a return to the pre-2005 standard. However, this bill provides that projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5 year period must be listed and identified as either funded or unfunded and given a level of priority for funding.

❖ **Future Land Use Plan Element**

This bill addresses population

projections, the issue of identified need for future development and highlights the need to address outdated land uses, such as antiquated subdivisions. In addition, this bill: Requires the comprehensive plan to be based upon permanent and seasonal population estimates and projections. This bill requires, as a minimum standard, that the comprehensive plan must accommodate at least the amount of land required to accommodate the medium projections of the University of Florida, Bureau of Economic and Business Research for at least a 10-year planning period. However, areas of critical state concern that are limited in their population growth under s. 380.05, F.S., including related rules of the Administration Commission are not required to plan based on the medium projections of the Bureau of Economic and Business Research;

- Provides a definition of urban sprawl and incorporates, from rule 9J-5, FAC, the 13 primary indicators that a plan or plan amendment does not discourage urban sprawl. In addition, this bill adds eight indicators that a plan or plan amendment discourages urban sprawl. If a plan amendment achieves four of these eight indicators within its development pattern or urban form it will be determined to discourage the proliferation of urban sprawl; and
- Requires a local government to consider outdated subdivisions such as antiquated subdivisions when developing its future land use plan and plan amendments, but it does not require any specific action by a local government in regards to outdated subdivisions.

❖ **Other Elements**

The major changes to other required elements including the Transportation



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Element; General Sanitary Sewer, Solid Waste, Drainage, Potable Water, and Natural Groundwater Aquifer Recharge Element; Conservation Element; Recreation and Open Space Element; Housing Element; Coastal Management Element; and Intergovernmental Coordination Element, involved the incorporation of rule 9J-5, FAC, provisions into the statutes and the removal of outdated and unnecessary language.

### ❖ **Process**

This bill makes the following changes to the process for review and adoption of local government comprehensive plans and plan amendments:

- Removes the twice a year limit for the adoption of any plan amendments allowing local governments to determine when and if their plans should be amended;
- Continues to require local governments to hold two public hearings on most proposed changes to its comprehensive plan;
- Streamlines the review of plans and plan amendments into one of three processes:
- The alternative state review pilot program is renamed the *expedited state review process*, expanded to statewide application, and designed for most plan amendments;
- The *state coordinated review process* is designed for new comprehensive plans and plan amendments that require a more comprehensive review. The state land planning agency under the state-coordinated review process issues an objections, recommendations, and comments report, notice of intent, and may broadly challenge plans and plan amendments based on whether they are in compliance; and

- Maintains and streamlines the *small-scale amendment review process*.
- Maintains the same state, regional, and local reviewing agencies and focuses state agency review on important state resources and facilities within the agency's jurisdiction that will be adversely impacted by a proposed plan or plan amendment;
- Requires commanding officers of military installations that will be affected by a proposed plan or plan amendment to submit comments along with other reviewing agencies under the expedited and state coordinated review processes;
- Changes the standard of review to fairly debatable for challenges initiated by an affected person and removes the state land planning agency's ability to intervene in a challenge initiated by an affected person;
- Maintains the ability of parties to a challenge to enter into compliance agreements;
- Maintains the ability of an affected person or the state land planning agency, after filing a petition challenging a plan or plan amendment, to demand mediation or expeditious resolution; and
- Limits the Administration Commission's authority to impose sanctions to when the local government elects to make an amendment effective notwithstanding a determination of noncompliance or if a local government adopts a plan amendment that amends a plan that has not been finally determined to be in compliance.

### ❖ **Concurrency**

This bill maintains the state concurrency requirements for sanitary sewer, solid waste, drainage and potable water. This bill removes the

state concurrency requirements for parks and recreation, schools, and transportation facilities. If concurrency is applied, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application.

This bill specifies that in order for a local government to remove any optional concurrency provisions from its comprehensive plan, an amendment is required. An amendment removing any optional concurrency is not subject to state review. Further, local governments should consider the number of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels-of-service, and the schedule of facilities that are necessary to meet the adopted level-of-service must be reflected in the capital improvements element. Infrastructure needed to ensure that adopted level-of-service standards are achieved and maintained for the five-year period of the capital improvement schedule must be identified as either funded or unfunded.

❖ **Transportation Concurrency**

This bill removes the state mandated requirement for transportation concurrency, but allows local governments the option of continuing to apply transportation concurrency locally within their jurisdictional boundaries without having to take any action. Local governments may identify transportation concurrency exception areas and may continue to utilize existing areas as an exception to locally required transportation concurrency. For local governments that choose to continue to apply transportation concurrency, this bill provides the minimum requirements and guidelines for doing so. This bill specifically provides that if a local government wishes to remove

transportation concurrency, it must adopt a comprehensive plan amendment. However, that amendment is not subject to state review.

❖ **Proportionate Fair-Share Mitigation and Proportionate Share Mitigation**

This bill modifies proportionate share to clarify that when an applicant for a development permit contributes or constructs its proportionate share mitigation of impacts, a local government cannot require payment or construction of transportation facilities whose costs are greater than the development's proportionate share necessary to mitigate its transportation impacts. This bill provides a specific formula for calculating proportionate share contribution and specifies that when a development's proportionate share has been satisfied for a particular stage or phase of development, all of the transportation impacts from that stage or phase will be deemed fully mitigated in any cumulative transportation analysis for a subsequent stage or phase of development. This bill also provides that applicants are not responsible for funding "transportation backlog" or the cost of reducing or eliminating transportation deficits that existed prior to the filing of an application. Further, if an applicant is required to pay transportation impact fees in the future on the development, the local government is required to provide the applicant with a dollar-for-dollar credit on the transportation impact fees for the proportionate share already paid.

The Department of Transportation is directed to develop and submit a report by December 15, 2011, to the Senate President and House Speaker with recommendations for changes or alternatives to the proportionate share calculation.

❖ **School Concurrency**

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This bill removes the state requirement for school concurrency, but allows local governments the option of continuing to apply school concurrency locally without having to take any action. This bill provides the minimum requirements and guidelines for doing so. This bill specifically provides that if a local government wishes to remove school concurrency, it must adopt a comprehensive plan amendment. However, that amendment is not subject to state review.

If a county and one or more municipalities within the county have adopted school concurrency into its comprehensive plan and interlocal agreement that represents at least 80 percent of the total countywide population, the failure of one or more municipalities within the county to adopt school concurrency and enter into the interlocal agreement does not prevent school concurrency from occurring in those jurisdictions that have opted to implement it.

### ❖ **Public Schools Interlocal Agreement**

Interlocal agreements between a county, the municipalities within, and a school board are maintained in this bill in order to coordinate plans and processes of the local governments and school boards. However, this bill removes state oversight and review of the interlocal agreements while maintaining certain minimum issues that the interlocal agreement must address. If a local government chooses to maintain optional school concurrency within its jurisdiction, this bill specifies that the interlocal agreement must also meet additional requirements.

### ❖ **Evaluation and Appraisal Report**

This bill removes the state requirement for local governments to adopt an evaluation and appraisal report once every seven years along

with the specific requirements regarding the preparation, adoption, submittal, and review of the evaluation and appraisal report.

This bill continues to direct each local government, at least once every seven years, to evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan. The local government must notify the state land planning agency by letter as to its determination. If changes are necessary, a local government must amend its plan and transmit the amendments updating the plan to the reviewing agencies within one year. If the local government fails to submit a letter to the state land planning agency regarding its need to amend its plan or update the plan as needed, it may not adopt any new plan amendments until the necessary amendments to update its plan are adopted.

This bill provides that all local governments that are due or overdue for the submittal of its Evaluation and Appraisal Report or Evaluation and Appraisal Report-based amendments are to follow the revised provisions of s. 163.3191, F.S.

### ❖ **Sector Plans**

This bill amends s. 163.3245, F.S., to remove the pilot status of the optional sector plan program and increase the minimum acreage for a sector plan to 15,000 acres, which includes all existing approved sector plans. Sector plans continue to be prohibited in designated areas of critical State concern. This bill specifies that the sector planning process encompass two levels:

- 1) Adoption of a long-term master plan (formerly a "conceptual long-term build out overlay") for the entire planning area as an amendment to the local comprehensive plan

adopted pursuant to the State-coordinated review process in s. 163.3184(4), F.S.; and  
2) Adoption by a local development order of two or more detailed specific area plans that implement the long-term master plan and within which development of regional impact requirements are waived. The two level planning process in this bill provides that a long-term master plan and a detailed specific area plan may be based upon a planning period longer than the planning period of the local comprehensive plan and are not required to demonstrate need based upon projected population growth or on any other basis.

A property owner, developer, or the state land planning agency may appeal any local government order approving a detailed specific area plan as being inconsistent with the long-term master plan or comprehensive plan by filing a petition with the Florida Land and Water Adjudicatory Commission (Governor and Cabinet) for an administrative proceeding conducted according to s. 380.07(6), F.S. An aggrieved and adversely affected party may challenge a development order in a judicial proceeding pursuant to s. 163.3215, F.S., and the state land planning agency must dismiss its appeal to the commission and has the right to intervene in the pending judicial proceeding.

Because the sector plan pilot program was limited to five areas, this bill allows large scale plan amendments that were adopted by local governments on or before July 1, 2011, that meet the requirements for a long-term master plan, following a public hearing, to be subject to the sector plan provisions in statute notwithstanding any provision related to Developments of Regional Impact or planning agreement or plan policy to the contrary. Further, any detailed specific area plan to implement a

conceptual long-term build out overlay, adopted by a local government and found in compliance before July 1, 2011, will be governed by the sector plan provisions in this bill.

❖ **Rural Land Stewardship Areas**

This bill creates s. 163.3248, F.S., transfers current provisions of law relating to rural land stewardship areas into the section, and makes certain modifications.

Rural land stewardship areas must be at least 10,000 acres and are to be located outside of municipalities and established urban service areas. A rural land stewardship area is not required to demonstrate need based on population or any other factor. A local government or property owner may request assistance and participation in the development of a rural land stewardship area from the state land planning agency and other State agencies, the appropriate regional planning council, private land owners, and stakeholders.

Plan amendments proposing a rural land stewardship area are subject to the State-coordinated review process in s. 163.3184(4), F.S., and each local government with jurisdiction over a rural land stewardship area must designate the area through a plan amendment. This bill specifies that the local government voting requirements for designating a receiving area within a rural land stewardship area must be by resolution with a simple majority vote.

Upon the adoption of a plan amendment creating a rural land stewardship area, the local government must pass an ordinance establishing a rural land stewardship overlay zoning district, which provides the methodology for the creation, conveyance, and use of stewardship credits.

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### ❖ **Developments of Regional Impact**

#### **Four-year Extension for Current Developments of Regional Impact**

This bill, in recognition of the slowed economy and its effects on real estate market conditions, grants a four-year extension, in addition to any other extension granted, to all commencement, phase, build out, and expiration dates for projects that are currently valid Developments of Regional Impact. This extension is not a substantial deviation. In order to receive the four-year extension, a developer must notify the local government in writing by December 31, 2011. Associated mitigation requirements are extended for the same period unless, prior to December 1, 2011, the governmental entity notifies the developer that a contract has been entered into for construction of a facility that relies on the development's mitigation funds for that phase.

### ❖ **Exemptions**

This bill exempts movie theaters, industrial plants, industrial parks and distribution, warehousing or wholesaling facilities, and hotel or motel development from Development of Regional Impact review. This bill also exempts from Development of Regional Impact review any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine. In order for mineral mines to be exempt from Development of Regional Impact review, the mine owner must enter into a binding agreement with the Department of Transportation to mitigate impacts to strategic intermodal system facilities. This bill exempts projects from Development of Regional Impact review that no longer meet the criteria for review based on revisions to the statutory

threshold levels. The exemption applies notwithstanding any provisions in an agreement with or among a local government, regional agency, or the state land planning agency, and notwithstanding any provision in a local government's comprehensive plan to the contrary.

### ❖ **Substantial Deviation Increases**

This bill targets and increases the substantial deviation standards by approximately 20 to 30 percent for attraction or recreational facilities, office development and commercial development. This bill does not affect any substantial deviation standards for residential development.

### ❖ **Other Changes**

The bill:

- Clarifies that local governments may deny a proposed change to a Development of Regional Impact based on local issues such as plat restrictions on the underlying land;
- Provides that changes in a development order resulting from the recalculation of proportionate share contribution is presumed not to create a substantial deviation and shall not be considered an additional regional transportation impact;
- Removes the requirement for the Department of Community Affairs to submit a report to the Senate President and the Speaker of the House regarding the certification of local governments; and Removes the "voluntary sharing of infrastructure" from factors to be considered for aggregation purposes and increases the total number of factors that must be met from two to three.

### ❖ **Dense Urban Land Area Exemption from Development of Regional Impact Review**

This bill removes the definition of a

Dense Urban Land Area from s. 163.3164(34), F.S., and incorporates the same population and density requirements from that definition into s. 380.06(29)(a), F.S., for Development of Regional Impact exemption purposes. The Office of Economic and Demographic Research continues to be required to calculate the population and density criteria to help determine which jurisdictions meet the criteria necessary to be exempt from Development of Regional Impact review. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research must determine the population density using the new jurisdictional boundaries. The Office of Economic and Demographic Research is required to submit to the state land planning agency, by July 1st of every year, a list of jurisdictions that meet the total population and density criteria. The state land planning agency must publish the list on its website within seven days of receipt.

This bill specifically changes current law by providing that:

- Any jurisdiction that was placed on the Dense Urban Land Area list before the effective date of this bill must remain on the list;
- Any county that meets the criteria must remain on the list; and If a municipality that has previously met the criteria no longer meets the criteria, the state land planning agency must maintain the municipality on the list and indicate the year the jurisdiction last met the criteria; however, any proposed Development of Regional Impact not within the established boundaries of a municipality at the time the municipality last met the criteria must meet the Development of Regional Impact requirements until such time as the municipality

as a whole meets the criteria for exemption.

This bill provides that a development located partially outside of an area that is exempt from Development of Regional Impact review must still undergo Development of Regional Impact review for the entire development. However, if the total acreage within the Development of Regional Impact exempt area exceeds 85 percent of the total acreage and square footage of the approved Development of Regional Impact, the development order may be rescinded by both local governments pursuant to s. 380.115(1), F.S., unless the portion of the development outside the exempt area meets the threshold criteria of a Development of Regional Impact.

❖ ***Planning Innovations and Technical Assistance***

This bill creates s. 163.3168, F.S., which encourages local governments to apply innovative planning tools to address future new development areas, urban service area designations, urban growth boundaries, and mixed-use, high-density development in urban areas. Section 163.3168, F.S., requires the state land planning agency to provide direct and indirect technical assistance to help local governments find creative solutions to foster vibrant, healthy communities, while protecting the functions of important State resources and facilities. If a plan amendment may adversely impact an important State resource or facility, upon request by the local government, the state land planning agency must coordinate multi-agency assistance, if needed, to develop an amendment to minimize any adverse impacts. The state land planning agency is required to provide guidance on its website for the submission and adoption of comprehensive plans, plan

## 2011 LEGISLATIVE REPORT

amendments, and land development regulations. This guidance must not be adopted as an agency rule.

### ❖ **Development Agreements**

This bill specifies that a development agreement may not exceed 30 years unless the local government and the developer agree to an extension and a public hearing is held. This bill removes the requirement to send a copy of a recorded development agreement between a local government and a developer to the state land planning agency. This bill maintains the requirement for the local government to review land subject to a development agreement once every year, but the requirement to send a written report to the state land planning agency and all parties to the agreement for years 6-10 of a development agreement is removed. This bill also removes the state land planning agency's ability to file an action in circuit court to enforce the terms of a development agreement or to challenge compliance of the agreement with the provisions of ss. 163.3220-163.3243, F.S.

### ❖ **Century Commission for a Sustainable Florida**

This bill repeals s. 163.3247, F.S., and abolishes the Century Commission on June 30, 2013.

### ❖ **Comprehensive Plan Referenda**

This bill prohibits a local government from adopting any initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment. This bill provides that a plan amendment adopted according to s. 163.32465, F.S., subject to voter referendum by local charter, and found in compliance prior to this bill becoming law, may be readopted by ordinance and will become effective upon approval by the local government. Further, the readopted

amendment is not subject to review or challenge pursuant to ss. 163.3184 or 163.32465, F.S.

### ❖ **Military Issues**

This bill amends s. 163.3175(6), F.S., to provide that local governments, when reviewing military installation comments, must be sensitive to private property rights and not be unduly restrictive on those rights. This bill further clarifies that the commanding officer's comments, underlying studies, and reports are not binding on the local government. This bill also clarifies that a local government that amended its comprehensive plan to address military installation compatibility requirements after 2004 and was found to be in compliance is not required to amend its plan again to meet new statutory requirements until required to do so after its seven-year evaluation and appraisal of the comprehensive plan according to s. 163.3191, F.S.

### ❖ **Permit Extensions**

This bill provides a two-year permit extension with conditions for certain permits, unless the permit has already been extended for four years based on Legislative extensions granted in 2009, 2010, and under this bill for the following:

- Any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of ch. 373, F.S., which has an expiration date from January 1, 2012, through January 1, 2014. This extension includes any local government-issued development order or building permit including certificates of levels of service and is in addition to any existing permit extension; and
- Any permit or any authorization that was extended by ch. 2009-96, s. 14, L.O.F., as

reauthorized by ch. 2010-147, s. 47, L.O.F.

❖ **Amendments to Implement New Statutory Requirements**

This bill clarifies existing law that local governments are not required to adopt amendments to their comprehensive plan in order to implement new statutory requirements until required by the evaluation and appraisal in s. 163.3191, F.S. However, any new comprehensive plan amendments adopted must comply with the current statutory requirements.

❖ **Adaptation Action Area**

This bill defines "adaptation action area" or "adaptation area" and allows local governments to designate an area in low-lying coastal zones that experience coastal flooding as well as adopt policies and criteria to address issues related to flooding.

❖ **Definition of "Urban Service Area"**

This bill modifies the definition of "urban service area" to mean areas identified in the comprehensive plan where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are identified in the capital improvements element. The definition also provides that the term includes any areas identified in the comprehensive plan as urban service areas, regardless of local government limitation.

❖ **Definition of "In Compliance"**

This bill adds s. 163.3248, F.S., the newly created section dealing with rural land stewardship areas, to the definition of "in compliance." This bill no longer requires a plan or plan amendment to be consistent with the requirements of the state comprehensive plan and rule 9J-5,

FAC, in order to be "in compliance."

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

▪ **CS/CS/HB 7215  
Department of Agriculture and Consumer Services**

This bill addresses issues relating to agriculture and the powers and duties of the Department of Agriculture and Consumer Services. The bill:

- Transfers the regulation of dairy products to the Division of Food Safety;
- Repeals ch. 503, F.S., relating to frozen desserts and transfers statutory authority regarding frozen desserts to ch. 502, F.S.
- Exempts certain Direct Service Organizations within the department from annual audits;
- Deletes provisions allowing department advisory committee members to claim per diem and travel expenses;
- Increases current levels of insurance for pest control businesses;
- Provides for the establishment, monitoring, and regulation of centralized pest control customer contact centers in lieu of licensure as pest control businesses;
- Establishes a limited certification category authorizing persons to use nonchemical methods for controlling rodents in lieu of licensure;
- Requires registered pesticide brand products that undergo label revision during the biennial registration period to provide the department with a copy of the revised label;
- Allows a lead land manager, instead of the Department of Environmental Protection, to receive the proceeds from the sale of easements for the



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- construction of electric transmission and distribution facilities on Board of Trustees-owned lands;
  - Grants the department with the exclusive authority to enforce the Florida Building Code as it relates to wildfire and law enforcement facilities;
  - Establishes a Certified Pile Burner program in statute;
  - Authorizes monies received from the sale of surplus state-owned wildland firefighting equipment and vehicles to be used to exchange, maintain or purchase wildland firefighting equipment;
  - Authorizes the department to dispose of surplus firefighting equipment and vehicles as it sees fit;
  - Authorizes the department to delegate authority to local governments to issue authorizations for open burning;
  - Requires anyone who produces, harvests, packs or repacks tomatoes that are not permitted under ch. 500, F.S., to register each location annually and to pay a registration fee;
  - Renames the Office of Water Coordination as the Office of Energy and Water;
- Provides fair associations with immunity from liability for damages resulting from certain exhibits and concessions at public fairs; provides exceptions to immunity;
  - Adds the appointment of a (non-voting) youth member who is active in the Future Farmers of America or a 4-H Club to the Florida State Fair Authority;
  - Provides criminal charges for the theft of bee colonies owned by registered beekeepers;
  - Authorizes the Commissioner of Agriculture to discontinue a soil and water conservation district if the district fails to comply with reporting and auditing requirements of Florida Statutes;
  - Appropriates \$744,000 to the department from the Florida Forever Trust Fund;
  - Renames the Division of Forestry as the Florida Forest Service; and Directs the Division of Statutory Revision to provide drafting assistance to committees needing to resolve reference conflicts in the Florida Statutes with any other legislation that has been enacted during the 2011 Regular Session or an extension thereof.▪

# CARLTON FIELDS

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ATTORNEYS AT LAW

**2011  
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Post-Session Report**

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**HEALTH CARE & HEALTH INSURANCE**



**HEALTH CARE AND HEALTH INSURANCE**

▪ **CS/HB 97  
Health Insurance**

The bill prohibits any individual, group, or out-of-state group health insurance policy or health maintenance contract, purchased with any amount of state or federal funds through an exchange, from providing coverage for an abortion unless the pregnancy is the result of an act of rape or incest or in cases where a woman suffers from a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death.

The federal Patient Protection and Affordable Care Act (PPACA), which was signed into law on March 23, 2010, is designed to, among other provisions, create a health insurance "exchange" in each state for individuals and employers to obtain health coverage. The PPACA sets minimum standards for health coverage offered in the exchanges and provides premium tax credits and cost-sharing subsidies for eligible, low-income individuals who obtain coverage through exchanges. An exchange is not an insurer; however, it is designed to provide eligible individuals and businesses with access to health insurance coverage.

Under the PPACA, exchanges must be self-sufficient by 2015 and may charge assessments or user fees. If the U.S. Department of Health and Human Services (HHS) determines by January 1, 2013, that a state has opted-out of operating an exchange or that it will not have an exchange operational by January 1, 2014, the HHS shall operate an exchange in

that state, either directly or through agreement with a non-profit entity.

This bill provides that such coverage in Florida is deemed to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied to the cost of the policy. The bill does not prohibit the purchase of separate coverage for abortion if that separate coverage is not purchased with any state or federal funds. The bill defines "state" to mean the State of Florida or any political subdivision of the state.

The bill's exceptions for abortion coverage in cases of rape or incest or in cases where the pregnant woman's life is certified by a physician to be in danger, are modeled after the federal "Hyde Amendment," which is the common name for a provision in the annual federal appropriations act for the HHS, the U.S. Department of Labor, and the U.S. Department of Education, which prevents Medicaid and any other programs under these departments from funding abortions, except for such cases described above. Provisions of the Hyde Amendment have been enacted into federal law in various forms since 1976.

▪ **CS/CS/HB 137  
Prostate Cancer Awareness Program**

The bill expands the purpose of the Prostate Cancer Awareness Program and transfers all duties and responsibilities for implementing the Prostate Cancer Awareness Program from the Department of Health and the Florida Public Health Institute, Inc., to the University of Florida, Prostate Disease Center (UFPDC) to:

- Promote prostate cancer awareness;

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- Communicate the advantages of early detection;
- Report recent progress in prostate cancer research and the availability of clinical trials;
- Minimize health disparities through outreach and education;
- Communicate best practices principles to physicians involved in the care of prostate cancer patients; and
- Establish a communication platform for patients and their advocates.

The bill changes the name of the Prostate Cancer Advisory Committee to the UFPDC Prostate Cancer Advisory Council (Council) and substantially expands the duties of the Council. The UFPDC is directed to lead the Council in developing and implementing strategies to improve outreach and education to reduce the number of patients who develop prostate cancer. The bill amends the membership, appointment terms, duties, and deletes per diem and travel reimbursement provisions for the Council.

The bill provides that the UFPDC and the Council are to be funded within existing resources of the university.

### ▪ **CS/CS/HB 395** **University of Florida J. Hillis Miller Health Center**

The bill provides that Shands Teaching Hospital and Clinics, Inc.; Shands Jacksonville Medical Center, Inc.; and Shands Jacksonville HealthCare, Inc.; and any not-for-profit subsidiary of those entities that directly delivers health care services “shall be conclusively deemed corporations primarily acting as instrumentalities of the state” for purposes of sovereign immunity.

The bill codifies the authority of the University of Florida Board of Trustees (UFBOT), acting through the president of the University or his or her designee, to control Shands

Jacksonville Medical Center, Inc.; Shands Jacksonville HealthCare, Inc.; Shands Teaching Hospital and Clinics, Inc.; and those not-for-profit subsidiaries that qualify for sovereign immunity. The bill conforms the provisions that apply to Shands Teaching Hospital and Clinics, Inc., (in Gainesville) to Shands Jacksonville Medical Center, Inc., and Shands Jacksonville HealthCare, Inc. These provisions include, but are not limited to, approval of the articles of incorporation and the appointment of board members. These entities are also required to provide their audited financial statements to the UFBOT, to be attached to the UFBOT financial statements that are submitted to the Auditor General.

The bill identifies the not-for-profit corporations that operate the teaching hospitals at Gainesville and Jacksonville: Shands Teaching Hospital and Clinics, Inc.; Shands Jacksonville Medical Center, Inc.; and Shands Jacksonville HealthCare, Inc., and establishes that the primary purpose of these entities is to support the UFBOT’s health affairs mission. The UFBOT is authorized to provide general and professional liability insurance to affiliates of Shands Teaching Hospital and Clinics, Inc.; any successor corporation that acts in support of the UFBOT; Shands Jacksonville Medical Center, Inc.; and to any of the not-for-profit subsidiaries, affiliates, and successor corporation of Shands Jacksonville Medical Center, Inc.

### ▪ **CS/CS/HB 445** **Wellness or Health Improvement Programs**

The bill specifies that an insurer or health maintenance organization (HMO) issuing a group or individual health benefit plan may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing

rewards or incentives. Such rewards or incentives may include, but are not limited to, merchandise, gift cards, debit cards, premium discounts, contributions to a member's health savings account, or modifications to copayment, deductible, or coinsurance amounts.

The bill authorizes insurers and HMOs to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program in order for that nonparticipant to receive the reward or incentive.

The bill requires that the reward or incentive must be disclosed in the insurance policy or certificate. The bill does not prohibit insurers or HMOs from offering other incentives or rewards for adherence to a wellness or health improvement program otherwise authorized by state or federal law.

▪ **CS/CS/CS/CS/HB 479  
Medical Malpractice and  
Regulation**

The bill requires a physician, osteopathic physician, or dentist who provides expert testimony concerning the prevailing professional standard of care of a physician, osteopathic physician, or dentist to be licensed in this state or possess an expert witness certificate issued by the Department of Health. Florida licensed physicians and dentists and practitioners with an expert witness certificate will be subject to disciplinary action for offering false or misleading information as an expert witness.

The Board of Medicine is required to create by rule a standardized informed consent form setting forth the risks of cataract surgery. An executed informed consent form creates a rebuttable presumption that the physician properly disclosed the risks of cataract surgery in a civil action or administrative proceeding.

Risks described in the signed informed consent form may not be classified as an "adverse incident" pursuant to s. 395.0197, F.S.

The bill requires an insurance policy or self-insurance policy for medical malpractice coverage to clearly state whether or not the insured has the exclusive right of veto of any admission of liability or offer of judgment. The bill repeals the requirement that a self-insurance policy or insurance policy for medical malpractice must authorize the insurer to make this decision without the permission of the insured medical provider if the action is within the policy limits.

The bill makes inadmissible all evidence related to an insurer's reimbursement policies or reimbursement determination regarding medical care provided to a plaintiff. The bill also prohibits the introduction of federal standards and regulations into evidence to establish that the medical provider breached the prevailing professional standard of care.

The bill requires a claimant to submit, along with the other required information, an executed authorization form as set forth in the bill, for the release of protected health information that is potentially relevant to the claim of personal injury or wrongful death when he or she notifies each prospective defendant of his or her intent to initiate litigation for medical negligence. If the court finds that the authorization is not completed in good faith by the claimant, the court shall dismiss the claim and assess attorney's fees and costs.

A volunteer team physician at a sporting event sponsored by an elementary or secondary school, or a licensed practitioner who gratuitously conducts a medical evaluation of a student prior to the student participating on an interscholastic

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athletic team, is not liable for civil damages for the care, treatment, or evaluation unless it was conducted in a wrongful manner.

If approved by the Governor, these provisions take effect October 1, 2011, and apply to causes of action accruing on or after that date.

### ▪ **HB 699** **Southeast Volusia Hospital District, Volusia County**

The Southeast Volusia Hospital District, an independent special district, was created in 1947 and was subsequently amended by special acts. In 2003, the Legislature codified all prior special acts relating to the Southeast Volusia Hospital District (District) into a single act and repealed all prior special acts relating to the District's charter.

Each hospital and clinic established in the District must be for the use and benefit of the indigent sick. These residents must be admitted to said hospital and clinic and are entitled to medical care and treatment without charge, subject to the rules and regulations prescribed by the District's governing body (Board). The Board is authorized to collect from patients who are financially able to pay.

The Board must consist of seven commissioners, all of whom must be qualified electors and freeholders residing in the District. Two commissioners must be residents of New Smyrna Beach, two commissioners must be residents of the City of Edgewater, one commissioner must be a resident of Oak Hill, and two commissioners must be residents of the unincorporated area of the District. Commissioners are required to have business, professional, or personal experience useful for service as a commissioner.

This bill provides that two of the seven commissioners of the District's

Board must be residents of the unincorporated area of the district or residents of the City of Port Orange.

### ▪ **SB 702** **Umbilical Cord Blood Banking**

This bill requires the Department of Health (DOH) to post on its Internet website resources and an electronic link to materials relating to umbilical cord blood which have been developed by the Parent's Guide to Cord Blood Foundation, Inc., including:

- An explanation of the potential value and uses of umbilical cord blood;
- An explanation of the differences between using one's own cord blood cells or another's in the treatment of disease;
- An explanation of the differences between public and private umbilical cord blood banking;
- The options available to a mother relating to stem cells that are contained in the umbilical cord blood after the delivery of her newborn, including donating, storing, or discarding the stem cells;
- The medical processes involved in the collection of cord blood;
- Criteria for medical or family history that can affect a family's consideration of umbilical cord blood banking;
- Options for ownership and future use of donated umbilical cord blood;
- The average cost of public and private umbilical cord blood banking;
- The availability of public and private cord blood banks to residents of Florida; and
- An explanation of which racial and ethnic groups are in particular need of publicly donated cord blood samples based on certain medical data.

This bill requires the DOH to encourage health care providers,

who provide health care services directly related to a woman's pregnancy, to make available to the pregnant woman before her third trimester, or at the woman's next scheduled appointment with the provider during her third trimester, the information required under the bill to be posted by the DOH on its Internet website. This bill also absolves any health care provider or health care facility, including any employee or agent of the provider or facility, of any liability from a civil action, any criminal prosecution, or any disciplinary action if the provider or facility acted in good faith to comply with the provisions of the bill.

▪ **CS/HB 843**  
**Teaching Agency for Home and Community-based Care**

This bill creates s. 430.81, F.S., which authorizes the Department of Elderly Affairs to designate a home health agency as a teaching agency for home and community-based care if the home health agency:

- Has been a not-for-profit, designated community care for the elderly lead agency for home and community-based services for more than 10 consecutive years;
- Participates in a nationally recognized accreditation program and holds valid accreditation;
- Has been in business in Florida for a minimum of 20 consecutive years;
- Demonstrates an active program in multidisciplinary education and research that relates to gerontology;
- Has a formalized affiliation agreement with at least one established academic research university with a nationally accredited health professions program in Florida;
- Has salaried academic faculty from a nationally accredited health professions program;

- Is a Medicare and Medicaid certified home health agency that has participated in the nursing home diversion program for a minimum of five consecutive years; and
- Maintains insurance coverage or proof of financial responsibility. The bill defines the term "teaching agency for home and community-based care" as "a home health agency that is licensed under part III of chapter 400 and has access to a resident population of sufficient size to support education, training, and research related to geriatric care."

The bill also authorizes a teaching agency for home and community-based care to be affiliated with an academic health center in the state in order to foster the development of methods for improving and expanding the capabilities of home health agencies to respond to the medical, health care, psychological, and social needs of frail and elderly persons. A teaching agency for home and community-based care is to serve as a resource for research and for training health care professionals in providing health care services in homes and community-based settings to frail and elderly persons.

▪ **CS/CS/HB 935**  
**Health Care Price Publishing**

The bill addresses posting, in the reception area of certain medical offices, urgent care centers, and clinics, a schedule of prices charged for the 50 most common services provided to an uninsured person paying by cash, check, credit card or debit card. The bill specifies the size of the posting and parameters for its contents.

Primary care providers are encouraged to publish, in the reception area of his or her medical office, the schedule of charges. A primary care provider who publishes



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and maintains the schedule of charges is exempt from the professional license fee requirements for a single renewal period and continuing education requirements for a single 2-year period. For purposes of this provision, a primary care provider includes a physician, osteopathic physician, a podiatrist, or a health care provider licensed under the nurse practice act, who provides medical services which are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.

Urgent care centers, clinics required to be licensed as a health care clinic under ch. 400, part X, F.S., and a clinic that seeks a certificate of exemption from licensure as a health care clinic under ch. 400, part X, F.S., are required to publish, in a conspicuous place in the reception area of the urgent care center or health care clinic, a similar schedule of charges for the medical services offered to patients.

If an urgent care center or health care clinic that is required to be licensed fails to post the schedule of charges as required, a fine shall be imposed of not more than \$1,000, per day, until the schedule is published and posted. A clinic seeking a certificate of exemption from licensure as a health care clinic must provide documentation of compliance with the posting requirement to the Agency for Health Care Administration prior to receiving the certificate of exemption.

### ▪ **CS/CS/HB 1037** **Continuing Care Retirement Communities**

This bill authorizes the use of continuing care at-home contracts in order to allow individuals to receive services offered by a continuing care retirement community (CCRCs) in their own homes while reserving the

right to shelter to be provided by the CCRC at a later date.

The bill defines the term “continuing care at-home” to mean “pursuant to a contract other than a contract described in subsection (2) [relating to continuing care], furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee.”

The bill creates s. 651.057, F.S., to govern continuing care at-home (CCAH) contracts and provides requirements for providers offering CCAH contracts. Section 651.021, F.S., is amended to require written approval from the Office of Insurance Regulation (OIR) before constructing a new facility or marketing the expansion of an existing facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of CCAH contracts.

The bill amends s. 651.023, F.S., to provide that if a feasibility study is prepared by an independent certified public accountant, it must contain an examination opinion for the first three years of operations and financial projections having a compilation opinion for the next three years. If the feasibility study is prepared by an independent consulting actuary, it must contain mortality and morbidity data and an actuary’s signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries. A certificate of authority may not be issued until the CCRC project has a minimum of 50 percent of the units reserved and proof is provided to OIR.

The bill provides that if a provider offering CCAH contracts is applying for a certificate of authority or approval of an expansion, then the same minimum reservation requirements must be met for the continuing care and CCAH contracts, independently of each other.

The bill further provides that for an expansion of a continuing care facility or CCAH contracts, a minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee for continuing care and 50 percent of the moneys paid for all or any part of the initial fee collected for CCAH shall be placed in an escrow account or on deposit with the department.

Additionally, a provider is entitled to secure release of moneys held in escrow if, among other things, the consultant who prepared the feasibility study (or an approved substitute) certifies *within 12 months before the date of filing for office approval* that there has been no material adverse change in status with regard to the study.

The bill amends s. 651.055, F.S., to provide that a prospective resident, resident, or resident's estate is not entitled to interest of any kind on a deposit or entrance fee unless specifically provided for in the continuing care contract. The bill permits contracts for continuing care and CCAH to include agreements to provide care for any duration.

The bill also requires a provider to file a new residency contract for approval within 30 days after receipt of a letter from OIR notifying the provider of a noncompliant residency contract.

The bill provides that pending review and approval of the new residency contract, the provider may continue to use the previously approved contract. The bill amends s. 651.118, F.S., to provide that the

Agency for Health Care Administration (AHCA) does not need to approve sheltered nursing home beds for the residences of residents living outside the facility pursuant to a CCAH contract.

▪ **HB 1043**  
**Citrus County Hospital**

CS/CS/HB 1043 codifies the special acts relating to the Citrus County Hospital Board, an independent special district. This local bill deletes obsolete provisions, updates language and makes technical revisions. The issue is very contentious and is currently subject of many lawsuits. Additionally, the bill amends the board's charter to:

- clarify the powers and authority of the board;
- provide the board with specific authority to enter into a lease with a not-for-profit corporation for the purpose of operating and managing its hospital; and
- provide additional oversight and accountability provisions relating to the board and the not-for-profit corporation.

The bill also requires that the board request an operational audit from the auditor general in three years, and provides for severability of the act's provisions.

▪ **CS/HB 1085**  
**Women's Health**

The bill creates the Kelly Smith Gynecologic and Ovarian Cancer Education and Awareness Act within the Department of Health (DOH). The bill adds one member from the Florida Ovarian Cancer Alliance Speaks organization to the Florida Cancer Control and Research Advisory Council, increasing the membership from 34 to 35.

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The bill directs the DOH to encourage women to discuss the risks of gynecological cancers with their health care providers. Furthermore, the DOH is directed to encourage health care providers and certain entities to disseminate and display information about gynecological cancers, including signs and symptoms, risk factors, benefits of early detection, and treatment options. The DOH is encouraged to seek any available federal or private grants to promote gynecological cancer awareness and to collaborate with other entities to create a systematic approach to increasing public awareness. The State Surgeon General is required to post on the DOH website a link to the Centers for Disease Control and Prevention website for gynecological cancer information.

### ▪ **CS/HB 1125** **Florida Health Choices Program**

In 2008, the Florida Legislature created the Florida Health Choices Program (program). The program was designed to provide a centralized marketplace for the sale and purchase of health care products. These products would include, but are not limited to, health insurance plans, health maintenance organizations (HMOs) plans, prepaid services, service contracts, and flexible spending accounts. The bill makes the following changes to the program:

- Expands the products, vendors, employers, and individuals that may participate in the program;
- Streamlines and clarifies the process by which new products are approved and offered; and
- Requires the Office of Insurance Regulation (OIR) to approve risk-bearing products offered by the program. The bill also contains the following provisions:

- Exempts specified Medicaid psychiatric facilities and Level III neonatal intensive care units from the certificate-of-need provisions if certain conditions are met;
- Revises the eligibility requirements for health flex plans by eliminating the requirement that an enrollee must be 64 years of age or younger; and
- Adds licensed orthotists and prosthetists to the current definition of "health care provider," under s. 766.202, F.S., for purposes of medical malpractice actions pursuant to ch. 766, F.S.

### ▪ **CS/HB 1127** **Abortions/Mandatory Ultrasounds**

Except in a medical emergency, this bill provides that consent to a termination of pregnancy is voluntary and informed if, among other things, a woman seeking an abortion has the gestational age of the fetus verified by an ultrasound, regardless of the woman's stage of pregnancy. The bill prescribes who is authorized to perform the ultrasound.

The person performing the ultrasound must offer the woman the opportunity to view the live ultrasound images and hear an explanation of them before she gives informed consent to having the abortion procedure, unless the woman presents certain documentation evidencing that the woman is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking or the delay in the abortion procedure would cause substantial and irreversible impairment of a major bodily function of the woman.

The bill provides that a woman has a right to decline to view the ultrasound images and hear an explanation of the images after she has been offered an opportunity to view and hear an explanation of the images. However,

if the woman declines to view and hear an explanation of the ultrasound images, she is required to complete a form acknowledging that she was offered an opportunity to view the images and hear the explanation of the images, that she has declined that opportunity, and that her refusal to view and hear an explanation of the images was of her own free will.

The bill provides that consent to a termination of pregnancy is voluntary and informed if, among other things, a description of the fetus, including a description of the various stages of development, has been provided to the woman.

The bill provides that the failure of a health care practitioner to comply with the requirements under s. 390.0111, F.S., is grounds for disciplinary action and authorizes the DOH, or the appropriate board, to adopt rules necessary to implement the provisions under s. 390.0111, F.S.

The bill requires the Agency for Health Care Administration (AHCA) to adopt rules requiring an abortion clinic that performs abortions after the first trimester of pregnancy to take a urine or blood test, regardless of whether the woman seeking an abortion will have an ultrasound performed. The AHCA must also adopt rules requiring clinics to be in compliance with the provisions of s. 390.0111, F.S.

The bill also includes a severability clause, which severs any provision of the bill that is held invalid.

▪ **CS/HB 1193**  
**Health Insurance**

The bill provides that a person may not be compelled to purchase health insurance, except as a condition of: public employment; voluntary participation in a state or local benefit; operating a dangerous instrumentality; undertaking an occupation having a risk of

occupational injury or illness; an order of child support; or an activity between private persons. The bill also provides that this would not prohibit the collection of debts lawfully incurred for health insurance. (This bill essentially amends Florida Statutes in similar manner as 2011 SJR 2 proposes to amend the Florida Constitution.)

▪ **HB 1247**  
**Parental Notice of Abortion**

This bill amends s. 390.01114, F.S., relating to parental notification of an abortion to be performed on a minor. This bill amends the law as it relates to parental notification of an abortion by:

- Redefining “constructive notice” to include notice by writing that must be mailed to a minor’s parent or legal guardian prior to the abortion by first-class mail and by certified mail, return receipt requested, with restricted delivery to the parent or legal guardian.
- Requiring notice that is given by telephone to a parent or legal guardian to be confirmed in writing, signed by the physician, and mailed to the parent or legal guardian of the minor by first-class mail and by certified mail, return receipt requested, with restricted delivery to the parent or legal guardian.
- Requiring a physician to make reasonable attempts to contact the parent or legal guardian, whenever possible, during a medical emergency that renders the abortion medically necessary, without endangering the minor.
- Requiring the physician to provide notice directly to a parent or legal guardian of the medical emergency requiring an abortion and any additional risks to the minor and if no notice is directly provided, then notice is required in writing to the parent or legal

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- guardian, which must be mailed by first-class and certified mail.
- Providing that a parent or guardian's legal right to be noticed can only be waived if the written waiver is notarized, dated not more than 30 days before the abortion, and contains a specific waiver of the parent or legal guardian's right to notice of the minor's abortion.
- Reducing the number of courts in which a minor is able to file a petition for waiver of parental notice.
- Extending the time within which a court must rule on a minor's petition for a waiver of parental notice from 48 hours to 3 business days.
- Removing the automatic grant of a petition when a court fails to rule within a certain time.
- Providing that a minor may have her petition heard by a chief judge of the circuit within 48 hours of filing the petition when a circuit court has not ruled within 3 business days.
- Providing the minor with the right to appeal a court decision that does not grant judicial waiver of parental notice, providing the timeline within which the appellate court must rule, and providing the standard of review the appellate court must use.
- Requiring the court to consider specific factors when determining whether the minor is sufficiently mature to decide whether to terminate her pregnancy.
- Changing the standard upon which a court must find that the notification of a parent or guardian of the abortion is not in the best interest of the minor, from preponderance of the evidence to clear and convincing evidence.
- Providing that when the court considers what is in the best-interest of the minor, the court is not to consider financial

implications for the minor or the minor's family.

- Requiring the final written order by the court to include its factual findings determining the maturity of the minor.
- Requiring the Office of State Courts Administrator to include in its annual report to the Governor and Legislature the number of petitions filed for a waiver of parental notice and the reason for each waiver of notice granted.

The bill also includes a severability clause, which severs any provision of the bill that is held invalid and saves the remaining provisions.

If approved by the Governor, these provisions take effect October 1, 2011, or upon the adoption of rules and forms by the Supreme Court, whichever occurs earlier.

### ▪ **CS/CS/CS/HB 1319 Certificates/Licenses/Health Care Practitioners**

The bill authorizes the Department of Health (DOH) to issue a temporary license to a healthcare practitioner whose spouse is stationed in Florida on active duty with the Armed Forces if the applicant meets the eligibility requirements for a full license and is qualified to take the licensure examination. The healthcare practitioner is required to meet certain criteria to obtain the 12-month non-renewable, temporary license. The bill requires the applicable board, or the DOH if there is no board, to deny applications under certain circumstances. The bill requires the applicant for a temporary license to pay the cost for fingerprint processing for a criminal history check, and an application fee.

The bill generally expands the scope and area of practice of dental hygienists by authorizing dental hygienists to perform certain duties

unsupervised in health access settings, which includes school-based prevention programs and accredited dental hygiene programs. The bill allows dental hygienists to apply fluorides, instruct on the oral hygiene of a patient, and supervise the oral hygiene of a patient, without the supervision of a dentist.

The bill requires dental hygienists, who perform remediable tasks without supervision, to provide a dental referral in compliance with federal and state patient referral, anti-kickback, and patient brokering laws; encourages the establishment of a dental home; and requires the dental hygienists to maintain a certain amount of professional malpractice insurance coverage.

The bill clarifies that the authorization for dental hygienists to perform some duties does not prevent a program operated by one of the health access settings or a nonprofit organization from billing and obtaining reimbursement for the services provided by a dental hygienist.

The bill replaces the current dental exam, administered through the DOH, with a national exam, the American Dental Licensing Examination (ADLEX). The bill provides that if an individual who is relocating to Florida took the ADLEX exam more than a year ago, he or she must meet additional criteria for licensure, including engaging in the full-time practice of dentistry in the 5 years preceding the date of application to practice dentistry in Florida or since initial licensure, if he or she has practiced less than 5 years. However, this provision only applies to individuals who took the ADLEX exam after October 1, 2011.

Additionally, the bill provides that an individual who is relocating to Florida to practice dentistry must engage in the full-time practice of dentistry within one year of receiving a dental license. The bill requires the

Board of Dentistry to develop rules for the full-time dentistry requirements, and recoup costs for verification of full-time practice. The bill provides for the expiration of licenses if the full-time practice requirements are not fulfilled and requires the Board of Dentistry to provide notice of the impending expiration of the license. The bill makes it a third degree felony to use or attempt to use a license that is expired or has been revoked.

The bill amends statutory requirements related to athletic trainers. It defines "Board of Certification" and requires members of the Board of Athletic Training to be certified by the Board of Certification. The bill includes colleges, universities, and education programs recognized by the Board of Certification in the qualifying colleges, universities, and programs for licensure as an athletic trainer. The bill also requires athletic trainers to be certified in the use of automated external defibrillators (AED's), and meet additional continuing education requirements in the use of AED's. The bill deletes the requirement that each licensee must complete a continuing education course on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure.

The bill also includes a severability clause.

▪ **CS/SB 1676**  
**Sovereign Immunity**

The bill establishes legislative findings that nonprofit independent private colleges and universities located and chartered in Florida, which own or operate medical schools, and which permit their employees or agents to provide patient services in teaching hospitals pursuant to an affiliation agreement or other contract, should be afforded sovereign immunity protections under

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s. 768.28, F.S. Additionally, the Legislature declares that there is an overwhelming public necessity for extending the state's sovereign immunity to such entities and that there is no alternative method of meeting such public necessity.

Under the bill, any nonprofit independent college or university located and chartered in Florida, which owns or operates an accredited medical school, or any of its employees or agents, and which has agreed by affiliation agreement or other contract to provide, or to permit its employees or agents to provide, patient services as agents of a teaching hospital, is considered an agent of the teaching hospital while acting within the scope of and pursuant to guidelines established in the contract.

The contract must provide for the indemnification of the teaching hospital, up to certain limits, by the agent for any liability incurred which was caused by the negligence of the college or university or its employees or agents. The contract must also provide that those limited portions of the college, university, or medical school which are directly providing services pursuant to the contract and which are considered an agent of the teaching hospital, are deemed to be acting on behalf of a public agency for purposes of public records laws.

Notice must be provided to each patient, or the patient's legal representative, that the exclusive remedy for injury or damage suffered as the result of any act or omission of the teaching hospital, the college or university, or the employees or agents of the college or university, while acting within the scope of duties pursuant to the contract with the teaching hospital, is by commencement of an action under the state's limited waiver of sovereign immunity pursuant to s. 768.28, F.S.

This notice requirement may be met by posting the notice in a place conspicuous to all persons.

The bill does not designate any employee providing contracted patient services in a teaching hospital as an employee or agent of the state for purposes of workers' compensation insurance.

If approved by the Governor, these provisions take effect upon becoming law and apply to all claims accruing on or after that date.

### ▪ **CS/SB 1992** **Background Screening for Some Public Employers**

The bill makes a number of changes to background screening requirements, primarily pertaining to individuals who work with Florida's vulnerable populations. Those changes include:

- Exempting from fingerprinting and screening requirements, mental health personnel working in a facility licensed under ch. 395, F.S., who work on an intermittent basis for less than 15 hours a week of direct, face-to-face contact with patients, except that individuals working in a mental health facility where the primary purpose is the mental health treatment of minors must be fingerprinted and meet screening requirements;
- Revising the list of professionals to include law enforcement officers so that officers are not required to be refinger printed or rescreened if they are working or volunteering in a capacity that would otherwise require them to be screened;
- Exempting, from the definition of "direct service provider;" individuals who are related to the client, the client's spouse, and volunteers who assist on an intermittent basis for less than 20

- hours of direct, face-to-face contact with a client per month;
- Exempting, from any additional Level 2 background screening requirements, an individual who was background screened pursuant to an Agency for Health Care Administration (AHCA) licensure requirement if they are providing a service within the scope of their licensed practice;
- Allowing the Department of Elderly Affairs (DOEA) to adopt rules to implement a schedule to phase in the background screening of individuals serving as direct service providers on July 31, 2010. The phase in must be completed by July 1, 2012;
- Specifying that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained and monitored by the Department of Law Enforcement (FDLE);
- Removing a provision relating to criminal offenses that was inadvertently applied to the DOEA;
- Requiring fingerprint vendors to meet certain technology requirements;
- Establishing a July 1, 2013, date for retention of prints for persons screened under ch. 435, F.S.;
- Allowing an employer to hire an employee for the purpose of training and orientation before the employee completes the screening process. The employee may not have direct contact with vulnerable persons until the screening process is complete;
- Providing personnel of a qualified entity, as defined in ch. 943, F.S., with the ability to apply for an exemption from

- disqualification from being employed;
- Establishing a rescreening schedule for individuals required by the AHCA to be screened;
- Requiring the Board of Nursing to waive background screening requirements for certain certified nursing assistants; and
- Requiring the Department of Children and Family Services, the Department of Juvenile Justice, the AHCA, the DOEA, the Department of Health, the Agency for Persons with Disabilities, and the Department of Law Enforcement to establish a statewide background screening workgroup, providing duties of the workgroup, and requiring a report to the Legislature by November 1, 2011.

▪ **CS/SB 2144  
Medicaid**

- Modifies the nursing home staffing requirements to allow for a combined direct care staffing requirement of 3.6 hours per resident per day and modifies the formula for calculating the direct care subcomponent of the nursing home reimbursement.
- Modifies the requirements for the Agency for Health Care Administration to deny licensure and renewal requests.
- Repeals the sunset of the Medically Needy for adults and the Medicaid Aged and Disabled (MEDS-AD) waiver, which will sunset June 30, 2011.
- Eliminates a requirement for a hospitalist program in nonteaching hospitals.
- Modifies the formula used for calculating reimbursements to providers of prescribed drugs.
- Repeals the sunset date for the freeze on Medicaid institutional unit cost; and deletes obsolete workgroups and reporting requirements.



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- Provides for the allowed aggregated amount of assessments for all nursing home facilities to increase to conform to federal regulations and revises the criteria for exempting qualified public, nonstate-owned or operated nursing home facilities from quality assessments.
  - Repeals the sunset of the quality assessment on privately operated intermediate care facilities for the developmentally disabled.
  - Revises the years of audited data used in determining Medicaid and charity care days for hospitals in the Disproportionate Share Hospital (DSH) Program; and changes the distribution criteria for Medicaid DSH payments to implement funding decisions for the DSH program.
  - Eliminates the requirement to implement a wireless handheld clinical pharmacology drug information database for practitioners; and allowing electronic access to certain pharmacology drug information.
  - Authorizes the implementation of a home delivery of pharmacy products program; establishes the requirements for the procurement and the program; and eliminates the requirement for the expansion of the mail-order-pharmacy diabetes-supply program.
  - Eliminates certain specific components of the prescription drug management system program.
  - Authorizes an additional Program of All-inclusive Care for the Elderly (PACE) site in Palm Beach County and approves up to 150 initial enrollees, subject to a specific appropriation.
  - Authorizes the agency in conjunction with the specialty behavioral health plan to develop a clinically effective, evidence-based alternatives as downward substitution for the statewide inpatient psychiatric program and similar residential care and institutional services.
  - Deletes a provision that sunsets the ability of tobacco companies to deposit a limited amount of security with the Florida Supreme Court.
  - Authorizes the use of a managing entity in the Medipass program in certain counties to implement program initiatives to improve care coordination, patient outcomes, and reduce costs.
  - Assigns Medicaid program recipients diagnosed with HIV/AIDS residing in Broward, Miami-Dade, or Palm Beach counties to an HIV/AIDS specialty plan.
  - Exempts from Insurance Premiums Tax the premiums, contributions, and assessments received under a contract with Medicaid to solely provide services to Medicaid recipients by a prepaid limited health service organization (PLHSO) licensed under chapter 636, Florida Statute. Provides that the provisions within the bill will operate prospectively and does not provide a basis for an assessment of taxes not paid, or a basis for determining any right to a refund of taxes paid, prior to the effective date.
- **HB 4027**  
**Repeal of Obsolete Health Care Provisions**
- The bill repeals Florida Statutes relating to the designation of separate restrooms and separate dressing rooms for males and females, the Florida Healthy People 2010 program, and the MedAccess program.
- ❖ *Separate Restrooms and Separate Dressing Rooms for Males and Females*
- In 1977 the Legislature provided that any business may designate separate restrooms and separate dressing

rooms for males and females and may prohibit the use of such designated restrooms or dressing rooms by persons of the opposite gender. In buildings or facilities owned or operated by the state or any political subdivision of the state that contain more than one restroom, the restrooms for males must be separate from those for females and each restroom that has capacity for more than one occupant must be designated by appropriate signage as a restroom for males or for females. All these statutory provisions are eliminated under the bill.

❖ *Florida Healthy People 2010*

In 2004 the Legislature created the Florida Healthy People 2010 program. Under the program, the Department of Health (DOH) is directed to monitor and report Florida's status regarding the federal Healthy People 2010 program's goals and objectives that were being tracked and were available to the DOH on July 1, 2004. The goals and objectives of the federal program are described in Florida Statutes as being designed to measure and help improve the health of all Americans by increasing the quality and years of healthy life and eliminating health disparities among different segments of the population. In December 2010, the federal government replaced the Healthy People 2010 program with the Healthy People 2020 program, the new purpose of which is for health promotion and disease prevention. This bill repeals statutory provisions for the creation and administration of the Florida Healthy People 2010 program.

❖ *MedAccess*

In 1993 the Legislature created the MedAccess program, designed for the state to provide certain health care benefits to uninsured Floridians with a gross family income equal to or less than 250 percent of the federal poverty level who also meet

other eligibility requirements. The state is authorized to pay health care providers under the program at the same reimbursement rates and fees as those under the Medicaid program. Despite being statutorily authorized, the MedAccess program has never been funded and therefore has never been implemented. This bill repeals statutory provisions for the creation and administration of the MedAccess program.

▪ **CS/HB 4045**  
**Assisted Living Facilities**

This bill makes several changes to provisions of law relating to assisted living facilities (ALFs). The bill amends s. 429.19, F.S., to remove the requirement that the Agency for Health Care Administration (AHCA or agency) develop and disseminate an annual list of ALFs sanctioned or fined for violations of state standards.

The bill also eliminates language providing that AHCA may provide the information electronically or on its website. While the bill eliminates the requirement that AHCA publish this annual list, the agency would still have the discretion to do so if it wished.

The bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

This bill also amends s. 429.35, F.S., to remove the requirement that the AHCA distribute, within 60 days after the date of the biennial inspection visit or within 30 days after the date of any interim visit, all biennial and interim visit reports of ALFs to the local ombudsman council, at least one public library or to the county seat in which the inspected ALF is located if there is no library, and to the district Adult Services and Mental Health Program Offices. Section 429.41, F.S., is amended to

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remove the requirement that the Department of Elderly Affairs (DOEA) submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to enactment.

The bill also removes the requirement that rules promulgated by DOEA encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decision-making ability of residents. Section 429.54, F.S., relating to the collection of information and local subsidies for ALFs, provides that DOEA may conduct field visits and audits of ALFs in order to collection information regarding the actual cost of providing room, board, and personal care to residents.

Additionally, the law provides that local governments or organizations may contribute to the cost of care of residents in local ALFs by subsidizing the rate of state-authorized payment to such facilities. This bill repeals s. 429.54, F.S.

### ▪ **HB 5303** **Biomedical Research Slake Out From Budget**

Revises provisions of s. 216.5602, F.S. (12) as follows:

- Modifies the amount of revenue from the cigarette surcharge deposited in the Health Care Trust Fund to be reserved and subsequently transferred to the Biomedical Research Trust Fund within the Department of Health from \$50 million to \$25 million beginning in the 2011-2012 fiscal year.
- Decreases the amount of funding provided to the James and Esther King Biomedical Research Program from \$20 to \$5 million subject to an annual

appropriation in the General Appropriations Act.

- Decreases the amount of funding provided to the William G. "Bill" Bankhead Coley Cancer Research Program from \$20 to \$5 million subject to an annual appropriation in the General Appropriations Act.
- Decreases the amount of funding provided to the H. Lee Moffitt Cancer Center and Research Program from \$10 to \$5 million subject to an annual appropriation in the General Appropriations Act.
- Provides \$5 million for the Sylvester Cancer Center at the University of Miami subject to an annual appropriation in the General Appropriations Act.
- Provides \$5 million for the Shands Cancer Hospital at the University of Florida subject to an annual appropriation in the General Appropriations Act.

### ▪ **HB 5305** **Correctional Medical Authority**

This bill was enacted to repeal the Correctional Medical Authority. The Governor vetoed it on May 26, 2011.

### ▪ **CS/CS/HB 7095** **Prescription Drugs /Pill Mill Bill**

This bill provides a more comprehensive approach to address the epidemic of prescription drug abuse and the untimely deaths that result from such abuse in this state. The approach includes the regulation of activities by physicians, pain management clinics, pharmacies, and wholesale drug distributors. The bill also provides minor revisions to the prescription drug monitoring program.

#### ❖ *Physicians Generally*

On July 1, 2011, practitioners will no longer be authorized to dispense controlled substances. However,

there are exceptions. These include dispensing:

- Complimentary or sample controlled substances.
- In the health care system of the Department of Corrections.
- In connection with certain surgical procedures within certain timeframes.
- Pursuant to participation in an approved clinical trial.
- Methadone in a licensed treatment program.
- For hospice patients. On July 1, 2011, when this law goes into effect, the State Health Officer will declare a public health emergency concerning the possession of controlled substances for dispensing by practitioners who are no longer authorized to dispense controlled substances. Any controlled substance inventory that was acquired for dispensing that is still in the possession of a practitioner who will no longer be authorized to dispense controlled substances once this act goes into effect, must be disposed of by July 11, 2011. The drugs can be disposed of by returning them to the wholesale distributor or turning the inventory in to a local law enforcement agency and abandoning them. If this does not happen by August 2, the controlled substances are deemed contraband and are subject to seizure by law enforcement agencies. Wholesale distributors are required to buy back the inventory of controlled substances listed in Schedule II or Schedule III which are in the manufacturer's original packaging, unopened, and in date, in accordance with the established policies of the wholesale distributor or the contractual terms between the wholesale distributor and the physician concerning returns. In addition, using actual purchasing

records from wholesalers and other information, the Department of Health (department) will identify those practitioners who pose the greatest threat to the public health and risk that the controlled substances may not be disposed of in accordance with this act. Beginning on the 3rd day after this act goes into effect, law enforcement agencies will enter the business premises of the identified dispensing practitioners and quarantine the inventory on site. A \$3 million appropriation is available for law enforcement for this effort, to maintain the security of the quarantined inventory until final disposition, and to investigate and prosecute crimes related to prescribed controlled substances.

- Effective January 1, 2012, each medical physician, osteopathic physician, podiatrist, or dentist who prescribes controlled substances for the treatment of chronic nonmalignant pain must designate on his or her practitioner profile that he or she is a controlled substance prescribing practitioner. The standards of practice for a controlled substance prescribing practitioner are spelled out in the law. These standards of practice do not supersede the level of care, skill, and treatment recognized in general law.

The standards of practice in this bill include, among other things:

- A complete medical history and physical examination, the exact components of the exam are left to the judgment of the clinician;
- Development of a written individualized treatment plan for each patient, with objectives for treatment success and other treatment modalities;
- Discussion with the patient concerning the risks and benefits

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- of the use of controlled substances;
- A written controlled substance agreement between the physician and the patient that includes reasons for which drug therapy may be discontinued and that controlled substances shall be prescribed by a single treating physician, unless otherwise authorized and documented in the medical record;
- Regular follow-up appointments at least every 3 months to assess the efficacy and appropriateness of treatment;
- Referrals to specialists when indicated; and
- Maintenance of accurate and complete records on each patient. Certain specialists and surgeons are exempted from these standards of practice.

Additional disciplinary or criminal sanctions are established for physicians who violate the controlled substances laws, including:

- Failing to comply with the controlled substance prescribing and dispensing requirements.
- If a physician violates the standard of practice for prescribing or dispensing a controlled substance as set forth in the bill, then the physician will be suspended for at least 6 months and pay a fine of at least \$10,000. Repeat offenses result in increased penalties. The department will approve vendors of counterfeit-proof prescription pads. The approved vendors will report monthly to the department on the number of pads sold and the purchasers of the pads. The counterfeit-resistant prescription blanks must be used by practitioners for the purpose of prescribing any controlled substance.

### ❖ *Pain Management Clinics*

The bill revises the criteria for required registration as a pain management clinic. Registration is required if the clinic advertises in any medium for any type of pain management services or where, in any month, a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain (pain unrelated to cancer or rheumatoid arthritis which persists beyond the usual period or more than 90 days after surgery). The bill includes additional exemptions from registration. Physicians practicing in pain management clinics must:

- Notify the applicable board within 10 days after beginning or ending practice at a pain management clinic.
- Ensure compliance with facility and physical operations of the clinic, infection control requirements, and health and safety requirements. The designated physician is also responsible for certain additional functions, including quality assurance requirements to evaluate the quality and appropriateness of patient care and reporting aggregated patient statistics. Provisions and requirements under the regulation of pain management clinics do not supersede the level of care, skill, and treatment recognized in general law related to healthcare licensure. The amendment authorizes a physician assistant or advanced registered nurse practitioner under both the medical practice act and the osteopathic practice act to perform the physician examination of a patient in a pain management clinic. The amendment strikes the requirement that passed last year requiring physicians practicing in

pain management clinics after July 1, 2012 to meet certain training and education requirements. The laws pertaining to the regulation of pain management clinics are set to expire on January 1, 2016. A pain management clinic which has been used on more than two occasions within a 6-month period as a site in which certain criminal violations occur may be declared a public nuisance.

❖ *Pharmacies / Pharmacists*

Community pharmacies must be re-licensed under the provisions of this act and rules adopted thereunder by July 1, 2012. Additional licensure requirements are intended to prevent felons and other nefarious persons from owning or operating pharmacies. In addition, pharmacies will be required to develop policies and procedures to minimize dispensing based on fraudulent representations or invalid practitioner-patient relationships. A pharmacist must report to a local law enforcement officer any person who obtains or attempts to obtain a controlled substance through fraudulent methods or representations. The failure to report is a misdemeanor of the first degree. Principals associated with a pharmacy must undergo annual criminal background screening. The department must forward the results to wholesale distributors permitted under ch. 499, F.S., for purposes of complying with the requirements related to due diligence of purchasers. The amendment includes additional requirements and disciplinary action related to activities in pharmacies and by pharmacists.

❖ *Drug Wholesalers*

Licensed drug wholesalers are required to:

- Credential and understand the normal business transactions of their customers who purchase certain controlled substances.
- Report to the department on wholesale distributions of unusual quantities of controlled substances. Unusual purchasing levels for the purchasing entity's clinical needs will be investigated by law enforcement.
- Abstain from distributing controlled substances to an entity if any person associated with that entity meets certain disqualifying conditions in the criminal history record check. The department is required to identify the national average of distributions per pharmacy of certain controlled substances and report to the Governor and Legislature by November 1, 2012. The amendment provides for stiffer criminal penalties and administrative sanctions for unlawfully distributing controlled substances or submitting false reports pertaining to controlled substance distributions.

❖ *Prescription Drug Monitoring Program*

The bill reduces the timeframe for dispensers to report to the prescription drug monitoring program database from 15 days to 7 days. The bill also requires persons who have access to the database to submit fingerprints for background screening. Department staff are prohibited from having direct access to information in the database. Funds provided by prescription drug manufacturers may not be used to implement the prescription drug monitoring program. References to the department and State Surgeon General are substituted for the Office of Drug Control and the director of the Office of Drug Control.

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### ❖ *Other Provisions*

The bill specifies that law enforcement officers may obtain access to or copy records that are required to be maintained under ch. 893, F.S., without a subpoena, court order, or search warrant. Upon the discovery of the theft or significant loss of controlled substances, a manufacturer, importer, distributor, or dispenser must report the theft or significant loss to a law enforcement officer. The failure to report is a misdemeanor. Fraudulently obtaining, attempting to obtain, or providing a prescription for a controlled substance by concealment of a material fact (the existence of another prescription for a controlled substance for the same time period) when the controlled substance is not medically necessary for the patient is a third degree felony. The bill enhances criminal offenses relating to theft and burglary involving controlled substances.

#### ▪ **CS/HB 7107** **Medicaid Managed Care**

The bill establishes the Medicaid program as a statewide, integrated managed care program for all covered services, including long-term care services. The Agency for Health Care Administration (AHCA) is directed to apply for and implement amendments to the Medicaid state plan or waivers of applicable federal laws and regulations by August 1, 2011, necessary to implement the program. The AHCA is directed to provide public notice and seek public comment before applying for such waivers and is required to include public feedback in waiver applications. The new Medicaid program consists of two components:

#### ❖ *Managed Medical Assistance*

- Provides medically-necessary primary and acute health care services such as doctor's visits, hospitalization, pregnancy care,

prescription drugs, etc.

#### ❖ *Managed Long-Term Care*

- Provides individuals who are aged and/or disabled, and who meet additional acuity levels, with additional services beyond routine health care needs such as adult day care, home delivered meals, personal care, case management, etc. All Medicaid recipients will be enrolled in managed care plans unless specifically exempt. Recipients who are exempted include persons with limited eligibility or benefits and persons with developmental disabilities. A variety of managed care plans may participate in the program. A recipient has a choice of plans and plan types that are contracted by the AHCA in the recipient's region of residence. Recipients may choose between insurers, exclusive provider organizations, health maintenance organizations (HMOs), and other managed care plans run by health care providers or groups of providers, such as provider service networks (PSNs) or accountable care organizations (ACOs). Recipients may also choose specialty plans with expertise in specific medical conditions. Plans will compete for Medicaid contracts via an invitation-to-negotiate process based on specified qualifications, such as price, provider network adequacy, accreditation, community partnerships, additional benefit offerings, and performance history.
- Specific factors are identified for the AHCA to use in selecting bidders to participate in negotiations. Critical factors include:
  - Accreditation and experience
  - Sufficient primary and specialty physicians in the network

- Community partnerships
- Commitment to quality improvement
- Coverage of additional benefits including dental care and disease management
- Evidence of established relationships with providers o
- Input from providers
- Documentation of policies to prevent fraud and abuse.
- Plans must reveal their business relationships so that one company cannot dominate a region and prevent Medicaid recipients from having a real choice among plans.
- Preference will be given to plans that demonstrate:
- Signed contracts with primary and specialty physicians and with essential providers;
- Well-defined programs for recognizing patient-centered medical homes and accountable care organizations;
- Ability to produce a greater economic benefit by being headquartered in Florida and employing Floridians to meet contract terms;
- Provider networks in which over 10 percent of providers use electronic health records;
- A contract with AHCA to provide managed long-term care services in the same region;
- Contracts or other arrangements for cancer disease management programs;
- Contracts or other arrangements for diabetes disease management programs;
- A process for prompt payment of claims. There will be a limited number of plans in each of eleven regions to promote plan stability but also provide choices to recipients. Insurers and HMOs will be prepaid on a full-risk basis via a monthly capitated rate designed to represent the costs needed to provide all medically necessary services in the

aggregate during any month-long period. Capitation rates will be risk-adjusted based on patient encounter data. Risk-adjusted rates will ensure plans are paid more for sicker patients in order to allocate resources appropriately. Provider service networks will have the option of assuming risk immediately or being paid on a fee-for-service basis for the first 2 years of operation, after which a PSN that initially opted to be paid via fee-for-service must convert to a full-risk capitation payment. During the first year of the first contract term, managed care plans, including prepaid plans and PSNs paid via fee-for-service, must guarantee a savings of at least 5 percent from the amount they would have been paid in the previous year based on service area and population. Managed care plans will be held accountable:

- Payment to physicians must be equal to or exceed Medicare rates after 2 years of continuous plan operation.
- Prescription drug formularies or preferred drug lists must be accessible on the plan's website.
- Prior authorization requests must be accepted electronically.
- Provider networks must meet specific adequacy standards, and plans must maintain an online database of network providers that can be used by consumers and the AHCA.
- Valid encounter data must be submitted on time.
- Plans must provide quality data measures on their websites to allow recipients to compare plans.
- Plans must be accredited by a nationally recognized accrediting body or seek accreditation by such a body within one year of plan operation.



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- Performance must continuously improve based on specific standards that are raised over the term of the contract.
- Active systems must be used to reduce the incidence of fraud and abuse.
- All recipients must have access to a grievance process.
- Financial penalties will be imposed and contracts will be terminated for reducing enrollment or withdrawing prior to the end of a contract term.
- Financial penalties will be imposed on plans that fail to comply with encounter data reporting requirements. If the plan does not comply within 90 days, its contract will be terminated. Limits will be placed on how much profit can be earned by managed care plans to ensure that plans are not overspending on administration or earning profit at the expense of patient care. This system of “achieved savings rebates” will require plans that exceed an appropriate profit threshold to pay dollars back to the state, thereby eliminating an incentive to withhold appropriate spending on health care services:
  - Administrative fees are restricted to actuarially appropriate levels.
  - Effective management of care will achieve savings that will be shared with the state.
  - Plans may retain a reasonable profit of up to a 5 percent margin. Plans must pay back a portion of profits above that threshold and must pay back all profits above a 10 percent margin.
  - Plans can earn an additional one percent profit if they demonstrate exceptional performance.
  - Plans will be required to perform and submit detailed audits to verify the achieved savings rebates. Intergovernmental Transfer Process:
- Local funding sources may contribute funds to the state Medicaid program.
- Specific conditions apply to the local contributions.
- The Low Income Pool is restructured to function within a managed care environment.
- The Access to Care Partnership is created as a single organization representing all providers designated by local funding sources as eligible to receive support through the Low Income Pool.
- Any additional resources generated by the local contributions may be used to enhance hospital payment rates through a specific formula for hospitals classified in three tiers. All hospitals will receive some benefit from tiered rate increases. Medicaid recipients will have an opportunity to choose among plans in their region. Those who do not choose a plan will be automatically enrolled, with a preference for enrollment in specialty plans if there is one available to serve their particular condition. This will ensure recipients are served by plans with expertise in their specific disease states. The AHCA is directed to develop a process to enable a recipient with access to employer- sponsored coverage to opt-out of all Medicaid managed care plans and use Medicaid financial assistance to pay the recipient’s share of the cost for the employer-sponsored coverage, and the AHCA is directed to seek federal approval to require such recipients to opt-out of Medicaid managed care in favor of their employer-sponsored coverage. The AHCA is also directed to seek federal approval to enable recipients with access to other insurance or related products that provide access to health care services, including

products available under the Florida Health Choices program or any health exchange, to opt-out. The amount of financial assistance provided for any such recipient may not exceed the amount the Medicaid program would have paid to a Medicaid managed care plan for that recipient. Participation in the Medicaid managed care medical assistance component by the Children's Medical Services Network will be under a single, statewide contract with the AHCA that is not subject to the program's procurement process or the regional limitation on the number of plans. However, the Children's Medical Services Network must meet all other plan requirements for the managed medical assistance component.

❖ *Managed Medical Assistance*

- The bill creates the managed medical assistance component for primary and acute care services. Implementation of the medical assistance component begins January 1, 2013, and is scheduled to be fully implemented by October 1, 2014. All mandatory and optional primary and acute care services are covered in the program, and plans can offer additional benefits. Plans contracted for the medical assistance component must:
  - Maintain adequate provider networks
  - Monitor quality and performance standards of their providers
  - Contract with Healthy Start Coalitions to improve outcomes for pregnant women and infants.
  - Ensure at least 80 percent of their enrolled children receive their well-child screening by the end of the second year in pursuit of proper preventive care and treatment. The bill requires

medical assistance plans to contract with certain "essential providers," which include:

- Federally qualified health centers;
    - Statutory teaching hospitals;
    - Hospitals that are trauma centers;
    - Hospitals located at least 25 miles from any other hospital with similar services;
    - Faculty plans of Florida medical schools;
    - Regional perinatal intensive care centers;
    - Specialty children's hospitals;
    - Accredited and integrated systems serving medically complex children that comprise separately licensed, but commonly owned, health care providers delivering at least the following services: medical group home, in-home and outpatient nursing care and therapies, pharmacy services, durable medical equipment, and prescribed pediatric extended care.
  - The bill sets reimbursement mandates for plans that are unable to contract with essential providers.
  - The bill brings the Medically Needy population into managed care under certain conditions that are contingent on federal approval. After being deemed eligible for the Medically Needy program, recipients will be enrolled in managed care plans and pay a portion of the managed care plan premium, based on their income and share of cost as determined by the Department of Children and Families. The state will pay the remaining portion of the premium to the managed care plan.
- ❖ *Managed Long-term Care*
- The bill creates the managed long-term care component for

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- Medicaid recipients eligible for long-term care services. Implementation of the long-term care component will begin July 1, 2012, and is scheduled to be fully implemented in all regions by October 1, 2013. The managed long-term care component covers:
- Medicaid recipients who are age 65 or older, or age 18 or older and eligible for Medicaid by reason of a disability; and
  - Determined by the Comprehensive Assessment Review and Evaluation for Long-term Care Services (CARES) program to require nursing facility care. Medicaid recipients who, on the date long-term care plans become available in their region, reside in a nursing home facility or are enrolled in certain long-term care Medicaid waiver programs, are eligible to participate in the long-term care component for up to 12 months without being reevaluated for their need for nursing facility care. There will be two types of long-term care plans:
    - Comprehensive long-term care plans that combine medical assistance and long-term care services
    - Long-term care plans that provide only long-term care servicesSelection preference will be given to comprehensive plans so seniors can receive all services from one plan. Plans will provide residential care in nursing facilities or assisting living facilities. The plans also must offer a comprehensive range of home and community based services for the care of seniors or the disabled who need assistance but not round-the-clock nursing care. Eligible plans must have specialized staffing with experience in serving elders and the disabled. Long-term care plans must provide a complete

range of services throughout their regions and must have needed providers such as nursing homes, assisting living facilities, and hospices in their networks. A long-term care plan's network must include all of the following:

- Adult Day Center Centers
- Adult Family Care Homes
- Assisted Living Facilities
- Health Care Services Pools
- Home Health Agencies
- Homemaker and Companion Services
- Hospices
- Lead Agencies
- Nurse Registries
- Nursing Homes

Long-term care recipients who are referred to nursing homes or assisted living facilities will be informed of facilities within the plans that are associated with specific religious or cultural affiliations, and a reasonable effort must be made to place the recipient in the facility of their choice.

- The bill provides an additional choice for hospice patients. When a senior is referred for hospice services, the senior will have a 30-day period in which to change plans if a preferred hospice provider is only available through another plan. When a recipient does not choose a long-term care plan, auto-assignment will be based on the quality measures of plans in the region. Members of certain Medicare Advantage plans who are also Medicaid-eligible and who do not choose a Medicaid plan will be assigned to their Medicare Advantage plan for applicable Medicaid services if their Medicare Advantage plan has contracted with the AHCA for the Medicaid long-term care component. Medicare Advantage plans that serve only individuals who are dually eligible (qualify for both Medicare and Medicaid)

may enter into a contract with the AHCA and will not be subject to the procurement requirements contained in the bill. All other Medicare plans will be subject to competitive procurement. Program for All Inclusive Care for the Elderly (PACE) plans are eligible plans and are not subject to the procurement process or region limits. They may continue to serve recipients at the enrollment caps set by the Legislature. The bill focuses on keeping seniors in their homes as long as possible. Home and community based care is both required and rewarded. Payment rates for long-term care plans will be adjusted to create incentives for keeping individuals out of nursing homes when in-home accommodations and care can be arranged instead of nursing home care. Long-term care plans are required to pay nursing homes and hospices at payment levels established by the AHCA.

▪ **CS/HB 7109  
Medicaid Conforming Bill**

The bill is designed to conform certain provisions of existing Medicaid law to CS/HB 7107, 3rd Engrossed, and authorizes a number of immediate changes to the Medicaid program. The bill also repeals numerous provisions on future dates to conform general Medicaid provisions to the full implementation of the Medicaid managed care program.

- ❖ *Persons with Developmental Disabilities*
- The bill expands eligibility for the home and community-based waiver program for persons with developmental disabilities to include individuals diagnosed with Down Syndrome.
- If the Agency for Persons with Disabilities continues a deficit

during fiscal year 2012-2013, the agency must submit a plan to the Legislature for a redesigned waiver program as an alternative to current waiver models. The new program model must include specific elements (e.g., budget predictability and redesigned support coordination services) and be approved by the Legislature before implementation on July 1, 2014.

❖ *Medicaid Program*

- The bill expands the disqualification for receiving Medicaid benefits from 5 to 10 years for a person found to have committed Medicaid fraud.
- The Agency for Health Care Administration (AHCA) is directed to request federal approval to develop a system to require parents with household incomes greater than 100 percent of the federal poverty level to pay premiums or other cost sharing methods for home and community-based services for their developmentally disabled children.
- AHCA is directed to request federal approval to require Medicaid recipients to pay \$100 co-payments for nonemergency services provided in a hospital emergency department.
- The bill provides that Medicaid shall not pay for psychotropic medications for a child unless specifically authorized by the parent or guardian.

AHCA is directed to develop a process to enable a recipient with access to employer-sponsored coverage to opt-out of all Medicaid managed care plans and use Medicaid financial assistance to pay the recipient's share of the cost for the employer-sponsored coverage. The AHCA is also directed to seek federal approval to enable recipients

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with access to other insurance or related products that provide access to health care services, including products available under the Florida Health Choices program or any health exchange, to opt-out. The amount of financial assistance provided for any such recipient may not exceed the amount the Medicaid program would have paid to a Medicaid managed care plan for that recipient.

### ❖ *Medicaid Managed Care*

- AHCA is required to develop uniform accounting and reporting requirements for Medicaid managed care plans. The plans must begin reporting their medical and non-medical costs to AHCA. This information must be made public will help ensure that plans are providing adequately managed, patient-centered care.
- Plans will be given advance notice and an opportunity to comment on any potential rate adjustments. AHCA will perform a simulated rate-setting exercise prior to making rate adjustments, the results of which must be posted on the AHCA's website for 45 days.
- The current option for Medicaid recipients in one of the five Medicaid Reform pilot counties to use their Medicaid premium to purchase employer-sponsored insurance is permitted statewide. This option is further expanded (subject to federal approval) by allowing recipients to use their Medicaid dollars to pay for other insurance or products that may be available to them.
- AHCA is authorized to exempt recipients from managed care on a case-by-case basis for specialized or unique, time-limited, and ongoing care that patients may be receiving at the time they enroll in Medicaid.

- AHCA is required to contract with prepaid dental plans until Medicaid managed care is fully implemented in all regions under CS/HB 7107.

### ❖ *Hospital Rates*

- AHCA is directed to implement a methodology for establishing Medicaid reimbursement rates for each hospital based on allowable costs. The rates will be set once annually and the reconciliation period is limited. This process is designed to provide budgetary certainty and administrative simplification.
- AHCA is directed to develop a plan to convert inpatient hospital rates to a prospective payment system that uses diagnosis related groups (DRG) and assigns a payment weight.
- AHCA must submit the Medicaid DGR plan to the Governor and Legislature by January 1, 2013.

### ❖ *Provider Service Networks*

- The same payment requirements applicable to provider service networks (PSNs) in the five Medicaid Reform pilot counties are applied to all PSNs statewide in order to prepare them for expansion of managed care under CS/HB 7107, 3rd Engrossed.
- PSNs may still be fee-for-service for a period of time, but specific requirements are established for shared savings and guidelines are defined for a reconciliation process that determines shared savings.
- A prepaid PSN that applies for and obtains a health care provider certificate from AHCA, meets the surplus requirements for health maintenance organizations (HMOs) under the Insurance Code, and meets all other

applicable requirements relating to the regulation of health maintenance organizations (HMOs), may obtain a certificate of authority under the Insurance Code relating to HMOs. A certified PSN is granted the same rights and responsibilities as a certified HMO. The bill creates an exception in the Insurance Code's solvency requirements for PSNs to specify that a PSN seeking a certificate of authority must meet the bill's surplus requirements instead of those under existing law.

❖ *MediPass*

AHCA is directed to contract with a single PSN to function as a third party administrator and managing entity for the MediPass program in all counties with fewer than two prepaid plans. The contract will expire when the managed care program is fully implemented under the provisions of CS/HB 7107.

❖ *Medically Needy Program*

- The AHCA is directed to immediately contract with a PSN to coordinate and manage the care of the Medically Needy. Such recipients will be continuously enrolled for a period of 6 months. The enrollees will pay their share of costs as a monthly premium and enrollees will be given a 90 day grace period for late payments of their share of costs.
- The Medically Needy contract with the PSN will expire when the managed medical assistance program is effective statewide under CS/SB 7107.
- Additionally the AHCA is directed to develop a plan for transitioning Medically Needy recipients into the managed medical assistance program. The

AHCA is to immediately seek any federal authorization needed for the implementation.

❖ *Tort Reform for Medicaid Providers*

- To encourage greater participation by medical practitioners in the Medicaid program, the bill creates limitations on noneconomic damages for negligence of a practitioner providing services and care to a Medicaid recipient.
- Noneconomic damages may not exceed \$300,000 per claimant unless the claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner, defined as acting in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- An individual practitioner is not liable for more than \$200,000 in noneconomic damages, regardless of the number of claimants, unless a claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner.
- For the bill's limitations on noneconomic damages, the term "practitioner," in addition to practitioners included in the definition under s. 766.118(1), F.S., includes hospitals, ambulatory surgical centers, and mobile surgical facilities.

❖ *The Department of Elder Affairs*

- The Department of Elder Affairs (DOEA), which currently manages waivers related to elder care, will no longer manage the waiver programs once managed care is implemented statewide under CS/HB 7107. However, the DOEA will still play key roles

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- in transitioning their clients to managed care plans as the plans are available in each region.
  - This bill recognizes that continued support of the DOEA is important to the Medicaid program and will still play a role in assessing or assisting recipients. CARES staff at the DOEA will continue to assist with initial assessments of an enrollee's level of care and will be responsible for assisting clients to interact with plans.
  - Aging Resource Centers (ARCs) will provide enrollment and coverage information about the Medicaid managed care long-term care program under CS/HB 7107.
  - ARCs can assist elders with information about services and long-term care managed care; help recipients resolve complaints; and make initial assessments about elders' needs.
  - ❖ *Nursing Home Certificate of Need*
    - The bill extends the moratorium on certificates of need (CONs) for additional nursing home beds until the Medicaid managed care program under CS/HB 7107, is implemented statewide or October 1, 2016, whichever is earlier.
- Effective July 1, 2012, the bill prohibits AHCA from imposing a sanction on a nursing home for failure to meet the Medicaid patient-day utilization conditions for that nursing home.
  - ❖ *AHCA Reorganization*
    - AHCA is directed to develop a reorganization plan for realignment of administrative resources of the Medicaid program to respond to changes in functional responsibilities and priorities necessary for implementation of CS/HB 7107.
    - The reorganization plan must assess AHCA's current capabilities, identify shifts in staffing and other resources necessary to strengthen procurement and contract monitoring functions, and establish an implementation timeline.
    - The plan must be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate by August 1, 2011.
    - If approved by the Governor, except as otherwise expressly provided in the bill, these provisions take effect July 1, 2011, if CS/HB 7107, 3rd Engrossed, becomes law.▪

# CARLTON FIELDS

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ATTORNEYS AT LAW

**2011  
Florida Legislature  
Post-Session Report**

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**INSURANCE & FINANCIAL SERVICES**





**INSURANCE AND FINANCIAL SERVICES**

▪ **CS/CS/HB 99**

**Commercial Insurance Rates**

The bill amends the insurance “Rating Law,” to expand the number of specified types of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S. The bill adds the following types of insurance to be exempt:

- General liability insurance;
- Nonresidential property insurance, except collateral protection insurance;
- Nonresidential multiperil insurance;
- Excess property insurance; and
- Burglary and theft insurance.

The bill further specifies that the current statutory exemption for directors and officers, employment practices and management liability coverage is also to include fiduciary liability coverage. The bill expands the commercial motor vehicle insurance coverage that is exempt from specified rate filing and review requirements. Currently, commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings. The bill expands this exemption to apply to all commercial motor vehicle insurance, regardless of the size of the fleet being covered. An insurer or rating organization that implements a rate change under any of these exemptions must notify the Office of Insurance Regulation (OIR) of any changes to rates for these exempted

types of insurance within 30 days after the effective date of the change.

The bill requires that actuarial data with regard to the rates must be maintained by the insurer or rating organization for two years, instead of the current statutory requirement that an insurer must keep underwriting files, premiums, losses, and expense statistics, and a rating organization must keep loss and exposure statistics applicable to loss costs.

The bill deletes current law which allows the OIR to require information to be submitted at the insurer’s or rating organization’s expense, but the bill replaces that provision with the requirement that the insurer or rating organization must incur the cost of any examination required by the OIR.

The bill also removes the current statutory requirement that for insurers, the 30-day notice must include the total premium written on the product during the immediately preceding year.

▪ **CS/CS/CS/SB 408**  
**Property and Casualty Insurance**

CS/CS/CS for SB 408 makes numerous changes to laws related to property insurance, primarily residential property insurance.

❖ *Time Limits for Claims and Statute of Limitations*

The bill places time limits for bringing a hurricane or sinkhole claim and also creates a statute of limitations for bringing a breach of contract property insurance action in court. A claim, supplemental claim, or reopened windstorm or hurricane claim must be given to the insurer within 3 years after the hurricane first

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makes landfall or the windstorm causes covered damage. An initial, supplemental or reopened sinkhole claim must be given to the insurer within 2 years after the policyholder knew or reasonably should have known about the sinkhole loss. The bill also enacts a 5 year statute of limitations for bringing an action for the breach of a property insurance contract that runs from the date of loss.

### ❖ *Florida Hurricane Catastrophe Fund*

The bill requires the Florida Hurricane Catastrophe Fund (Cat Fund) to provide reimbursement for all incurred losses, including amounts paid as fees on behalf of the policyholder. However, the bill also specifies a number of losses that are excluded from payment.

### ❖ *Insurance Capital Build-Up Incentive Program*

The bill authorizes the State Board of Administration (Board) and private market insurers to renegotiate the terms of a surplus note issued pursuant to the Insurance Capital Build-Up Incentive Program before January 1, 2011. If the insurer agrees to accelerate the payment period of the note by at least 5 years, the Board must agree to exempt the insurer from the premium-to-surplus ratios required by statute. If the insurer agrees to accelerate the payment period for less than 5 years, the Board may agree to an appropriate revision of the premium-to-surplus ratios after consulting with the Office of Insurance Regulation, subject to a minimum writing ratio of net premium to surplus of at least 1 to 1 or of gross premium to surplus of at least 3 to 1.

### ❖ *Surplus Requirements*

The bill raises the surplus requirements for insurers transacting residential property insurance that are not a wholly owned subsidiary of

an insurer domiciled in another state. For a new insurer, the bill raises the surplus requirement from \$5 million to \$15 million. An existing insurer that holds a certificate of authority before July 1, 2011, must have a surplus of at least \$5 million until June 30, 2016; from July 1, 2016 until June 30, 2021, a surplus of at least \$10 million; and on or after July 1, 2021, a surplus of at least \$15 million.

### ❖ *Public Adjusters*

The bill limits public adjuster fees related to reopened or supplemental claims to a maximum of 20 percent of the reopened or supplemental claim payment. The bill also limits public adjuster fees to 20 percent of an insurance claim payment made by the insurer more than one year after events that are the subject of a declaration of a state of emergency by the governor. A public adjuster fee related to a policy issued by Citizens Property Insurance Corporation may not exceed 10 percent of the additional amount actually paid in excess of the amount originally offered by Citizens on the claim. Public adjusters are prohibited from making deceptive or misleading advertisements or solicitations. Written solicitations must include a disclaimer notifying the consumer that a solicitation is being made. A public adjuster contract related to a property and casualty insurance claim must contain the full name of the public adjuster and public adjusting firm, the business address, license number, and other specified information. Public adjusters must give prompt notice of a property loss claim to the insurer and include with the notice the public adjuster's employment contract. The public adjuster must also ensure that the insurer has access to inspect the property, can interview the insured directly about the loss and claim, and allow the insurer to obtain information necessary to investigate

and respond to the claim. The insurance company's adjuster or other persons acting on the insurer's behalf must provide at least 48 hours notice before scheduling an inspection of the property or a meeting with the claimant. The insurer also must allow the public adjuster to be present during the insurer's in-person meetings with the insured. The bill requires licensed contractors to be licensed as a public adjuster in order to adjust a claim on behalf of the insured.

❖ *Rate Standards*

The bill requires property insurance rate filings to be submitted via the "file and use" method until May 1, 2012. In a "file and use" rate filing the insurer must receive approval from the Office of Insurance Regulation before implementing the insurer's proposed rate. Residential property insurers are authorized to make a separate rate filing limited solely to an adjustment of its rates for reinsurance and financing products used as a replacement for reinsurance. The rate filing may not result in a premium increase of more than 15 percent for an individual policyholder and must be approved or disapproved by the Office of Insurance Regulation within 45 days. The OIR retains the authority to deny the filing if the proposed rate is excessive, inadequate, or unfairly discriminatory. An insurer may make only one such filing per 12-month period. The procedure created by the bill expands a provision in current law that authorizes a 10 percent rate increase per policyholder that is solely based on reinsurance that replaces Temporary Increase in Coverage Limits reinsurance from the Florida Hurricane Catastrophe Fund. The bill specifies that that the sworn certification of a property insurance rate filing is not rendered false if the insurer provides the Office of Insurance Regulation with additional information pursuant to a request

from the Office. The insurer's actuary responsible for providing the additional information must provide an additional sworn certification.

❖ *Citizens Property Insurance Corporation*

The bill renames the Citizens "high risk" account the "coastal" account. Under current law, Citizens is authorized to offer policies that provide coverage only for the peril of wind for risks located within the coastal account. The high risk area of the coastal account consists of areas that were eligible for coverage in the Florida Windstorm Underwriting Association, essentially coastal areas at high risk for a hurricane. The bill repeals the requirement to reduce the high-risk area after December 1, 2010, if necessary to reduce the probable maximum loss attributable to wind-only coverages to 25 percent below the "benchmark" for the high-risk area, which is defined in statute as the 100-year probable maximum loss for the Florida Windstorm Underwriting Association based on its November 30, 2000 exposures. The bill also repeals a requirement to reduce the high-risk area after February 1, 2015, by 50 percent below the benchmark. The requirement that the Citizens board issue an annual report showing the reduction or increase in the 100-year probable maximum loss attributable to wind only coverages and the quote share program is also repealed. The bill specifies that Citizens may not levy regular assessments until the full Citizens policyholder surcharge has been levied. The bill also specifies that the Citizens policyholder surcharge must be paid upon cancellation, termination, or renewal of an existing policy or upon issuance of every new policy issued within 12 months after the surcharge is levied or the time needed to fully collect the policyholder surcharge. As of January 1, 2012, Citizens must

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require agents to obtain from applicants for coverage a signed Acknowledgment of Potential Surcharge and Assessment Liability form. The form details that Citizens policyholders are subject to a Citizens policyholder surcharge of up to 45 percent of premium and emergency assessments. Citizens policies issued or renewed on or after January 1, 2012, which cover sinkhole loss may not include coverage for losses to appurtenant structures, sidewalks, decks, or patios that are caused by sinkhole activity. Citizens must exclude such coverage using a notice of coverage change, which may be included with the policy renewal. Citizens Board of Governors must commission an independent third-party consultant with insurance company management expertise to prepare a report and make recommendations on the costs and benefits of outsourcing policy issuance and service functions to private servicing carriers. The report must be completed and submitted to the Citizens board by July 1, 2012. The board must subsequently develop a plan to implement the consultant's report and submit the plan to the Financial Services Commission for review, modification, and approval. Upon the commission's approval of the plan, the Citizens board must begin implementing the plan by January 1, 2013. Members of the Citizens Board of Governors with insurance experience are deemed to be within the exception in s. 112.313(7)(b), F.S., that allows a public officer to practice a particular profession or occupation when required or permitted by law or ordinance. The bill also provides procedures for board members who have a conflict of interest regarding a particular matter. A Citizens board member may not vote on any measure that would inure to the gain or loss of the board member; the board member's corporate principal

or the parent or subsidiary of the corporate principal; or the relative or business associate of the board member. A board member with a conflict must publicly state his or her interest in the matter prior to the vote being taken. The board member must also provide written disclosure of the conflict within 15 days after the vote, and the disclosure must be included in the minutes of the board meeting and available as a public record.

### ❖ *Notice of Cancellation*

The bill revises the notice of cancellation, nonrenewal or termination requirements for personal lines and commercial lines residential property insurance policies. At least 120 days notice must be given to a named insured whose residential structure has been insured by the insurer or its affiliate for at least 5-years. Under current law 180 days notice must be provided for the cancellation, nonrenewal, or termination of such policies. The bill authorizes the nonrenewal of a policy that covers both a home and a motor vehicle for any reason applicable to either the property or motor vehicle insurance, so long as the insurer provides 90 days notice of the nonrenewal. The notice of cancellation requirement for a Citizens policy that has been assumed by an authorized "take out" insurer is reduced to 45 days. The bill also authorizes an insurer to cancel or nonrenew a property insurance policy if the Office of Insurance Regulation finds that the early cancellation is necessary to protect the best interests of the public or policyholders. The Office may base its finding upon the financial condition of the insurer, the insurer's lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The nonrenewal may be conditioned upon the insurer being placed under administrative supervision or to the appointment of a receiver.

❖ *Notice of Change in Policy Terms*

The bill authorizes insurers to renew a property and casualty insurance policy under different policy terms by providing to the policyholder a written "Notice of Change in Policy Terms" instead of a written "Notice of Non-Renewal." The Notice must be titled "Notice of Change in Policy Terms," give the insured written notice of the change, and be enclosed with the written notice of renewal premium. The insured is deemed to have accepted the change in policy terms upon the insurer's receipt of the premium payment for the renewal policy. If the insurer fails to provide the Notice of Change in Policy Terms the original policy terms remain in effect.

❖ *Replacement Cost Coverage*

The bill modifies how insurers must pay dwelling or personal property losses on a replacement cost basis. For a dwelling loss, the insurer must initially pay the actual cash value, minus the deductible. Subsequently the insurer must pay any amounts necessary to perform repairs as work is performed. If a total loss of a dwelling occurs, the insurer must pay the entire replacement cost coverage without holdback of depreciation in value pursuant to the Valued Policy Law. For personal property losses insured on a replacement cost basis, the insurer must offer two claim payment options. The first option requires the insurer to pay the replacement cost without holdback of depreciation, regardless of whether the insured replaces the property. The second option allows the insurer to limit the initial payment to the actual cash value of the personal property to be replaced. To receive payment from the insurer for the full replacement value of the personal property, the insured must provide a receipt for the replaced property to the insurer. A policy authorizing the insurer to require replacement of

personal property prior to paying the full replacement cost must provide the policyholder with a premium credit or discount and the insurer must provide clear notice of the payment process before the policy is bound.

❖ *Sinkhole and Catastrophic Ground Cover Collapse Insurance*

The bill enacts numerous revisions and clarifications to ss. 627.706-627.7074, F.S., governing sinkhole and catastrophic ground cover collapse insurance. The bill authorizes insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy. The bill also allows an insurer to require a property inspection prior to issuing sinkhole loss coverage. The bill clarifies that additional living expense coverage is only available pursuant to a sinkhole loss if there is structural damage to the covered building. The bill changes the definition of "sinkhole loss," primarily by creating a statutory definition of "structural damage." A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. The bill creates a detailed definition of "structural damage" for purposes of determining whether a sinkhole loss has occurred. The definition specifies five distinct types of damage that constitute structural damage. Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity.

❖ *Investigation of Sinkhole Claims*

The bill creates a substantially new process for an insurer's investigation of a sinkhole claim. The process requires the insurer to determine

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whether: (1) the building has incurred structural damage that (2) has been caused by sinkhole activity.

Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. The new process is as follows:

- *Initial Inspection & Structural Damage Determination:* Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder's premises to determine if there has been structural damage which may be the result of sinkhole activity. This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.
- *Sinkhole Testing Initiated by the Insurer:* The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss. If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing.
- *Notice to the Policyholder:* The bill maintains the requirement that the insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made) and a statement of the circumstances under which the insurer must conduct sinkhole testing. The policyholder must also be notified of his or her right to demand sinkhole testing and

the circumstances under which the policyholder may incur costs associated with testing.

- *Authorization to Deny Sinkhole Claim:* Insurers may continue to deny the claim upon a determination that there is no sinkhole loss.
- *Policyholder Demand for Sinkhole Testing:* The bill specifies that the policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denies the claim without performing sinkhole testing and coverage would be available if a sinkhole loss is confirmed (i.e. the claim denial was not issued due to policy conditions or exclusions of coverage and instead was based the failure of the loss to meet the definition of sinkhole loss). However, if the policyholder requests such testing, it must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500. If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.

### ❖ *Payment of Sinkhole Claims*

The insurer continues to be required to pay to stabilize the land and building and repair the foundation upon the verification of a sinkhole loss. Payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer under s. 627.707(2), F.S. The bill also clarifies that the insurer is required to give notice to the policyholder regarding payment of the claim. The bill revises the statutory authorization specifying that the insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization

repairs. The bill requires the contract for below-ground repairs to be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S., and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss. The time period is tolled if either party invokes neutral evaluation. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in litigation, or the claim is in neutral evaluation, appraisal or mediation. The bill specifies that if a covered building suffers a sinkhole loss or catastrophic ground cover collapse, the insured must repair such damage in accordance with the insurer's professional engineer's recommended repairs. However, if repairs cannot be completed within policy limits, the insurer has the option to either pay to complete the recommended repairs or tender policy limits.

❖ *Prohibition Against Rebates*

The policyholder is prohibited from accepting a rebate from a person performing sinkhole repairs. If the policyholder does receive a rebate, coverage under the insurance policy is rendered void and the policyholder must refund the amount of the rebate to the insurer. Furthermore, a person who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, F.S. (up to 5 years imprisonment), s. 775.083, F.S. (up to a \$5,000 fine), and s. 775.084, F.S. (for a habitual felony offender up to 10 years imprisonment with no eligibility for release for 5 years).

❖ *Nonrenewal of Policy Due to Sinkhole Claims*

The circumstances that allow an insurer to nonrenew a policy on the basis of filing a sinkhole claim are modified. The policy may only be nonrenewed if the insurer makes payments for sinkhole loss that equal or exceed policy limits for damage to the covered building or the policyholder does not repair the structure in accordance with the engineering recommendations.

❖ *Sinkhole Testing Reports*

The bill requires a sinkhole testing report to verify whether the structural damage to the covered building has been identified within a reasonable professional probability.

❖ *Filing of Reports With The Clerk of Courts*

In addition to filing the sinkhole testing report with the Clerk of Court after paying a sinkhole loss claim, the bill requires the insurer to also file the neutral evaluator's report (if any), a copy of the certification indicating that stabilization has been completed (if applicable), and the amount of the claim payment. The policyholder must file a copy of any sinkhole report prepared on behalf of the policyholder as a precondition to accepting a sinkhole loss payment.

❖ *Certification of Proper Completion of Sinkhole Repairs*

Once building stabilization or foundation repairs of a sinkhole loss are completed, the professional engineer responsible for monitoring the repairs must issue a report to the property owner detailing the repairs performed and certifying that the repairs were performed properly. The professional engineer must file with the Clerk of Court a copy of the report and certification, the legal description of the real property, and the name of the county clerk of court.



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### ❖ *Neutral Evaluation of Disputed Sinkhole Claims*

The bill specifies that neutral evaluation must determine causation (whether a sinkhole loss has occurred and, if so, whether the observed damage was caused by sinkhole activity); all methods of stabilization and repair both above and below ground; the costs for stabilization and all repairs; and all information needed to determine whether a sinkhole loss has been verified and render an opinion on all matters at dispute in the neutral evaluation. The neutral evaluator must be provided with information necessary to perform his or her duties. The bill requires that the neutral evaluator must be allowed reasonable access to the interior and exterior of the insured structures to be evaluated or for which a claim has been made. The policyholder must provide the neutral evaluator with all reports initiated on behalf of the policyholder that confirm a sinkhole loss or dispute the insurer's sinkhole testing report.

Such materials must be provided prior to the neutral evaluator's physical inspection of the property. The bill revises the procedures and time frames for conducting the neutral evaluation. The parties are provided 14 business days to agree to a neutral evaluator. If an agreement cannot be reached, the Department of Financial Services (DFS) shall appoint a certified neutral evaluator. Each party may disqualify two neutral evaluators without cause; a reduction from 3 disqualifications under current law. The neutral evaluator has 14 business days after the referral to notify the parties of the date, time and place of the neutral evaluation conference; an increase from 5 business days in current law. The neutral evaluator must make a reasonable effort to hold the conference within 90 days after the DFS has received the request for neutral evaluation. Failure to conduct

the conference within 90 days does not invalidate either party's right to neutral evaluation. Current law requires that the neutral evaluation conference be held within 45 days.

The neutral evaluator's report must be provided to the parties within 14 days after the completion of the neutral evaluation conference. A court proceeding related to the neutral evaluation must be stayed until 5 days after the filing of the neutral evaluator's report with the court. If the neutral evaluator is not qualified to determine a disputed issue, he or she may enlist the assistance of another certified neutral evaluator, a professional engineer or professional geologist who is not a certified neutral evaluator, or a licensed general contractor to provide an opinion on that issue. Such person may be disqualified for cause in the same fashion as a neutral evaluator. The neutral evaluator may also request that the entity that performed the sinkhole investigation perform additional and reasonable testing that the neutral evaluator deems necessary. If the insurer agrees to comply with the neutral evaluator's report, payments shall be made in accordance with the terms of the applicable insurance policy and s. 627.707(5), F.S. The bill also makes the following changes related to the neutral evaluation process: Specifies that neutral evaluation does not invalidate an insurance policy's appraisal clause. Allows the parties to disqualify a neutral evaluator for cause based on specified familial or professional relationships. Requires admission of the neutral evaluator's oral testimony and full report in any action, litigation or proceeding related to the claim. Specifies that the actions of the insurer in neutral evaluation are not a confession of judgment or an admission of liability. Deems neutral evaluators agents of the Department of Financial Services and grants them

immunity from suit pursuant to s. 44.107, F.S.

❖ *Legislative Intent*

The bill states that the clarifications and revisions to ss. 627.706-627.7074, F.S., are intended to reduce the number and cost of sinkhole claims and disputes, increase reliance on scientific or technical determinations relating to sinkhole claims, and ensure that repairs are made in accordance with scientific and technical determinations and insurance claims payments.

❖ *Other Provisions*

The bill:

- Repeals the consumer advocate report card for property insurers.
- Repeals an obsolete requirement that the Office of Insurance Regulation develop a standard rating territory plan for residential property insurance by January 15, 2006.
- Authorizes the public hurricane loss projection model to charge a private market insurer fees for use of the model related to the reasonable costs associated with the operation and maintenance of the model.
- Repeals a requirement that the Office of Insurance Regulation develop a method to directly correlate property insurance hurricane mitigation discounts and credits with the Uniform Home Grading Scale.
- Clarifies that the requirement that an insurer must pay property insurance claim within 90 days of receiving notice of the claim applies to reopened and supplemental claims.
- Clarifies that inquiries about coverage on a property insurance contract are not claim activity unless a claim is filed by the policyholder which results in an insurer investigation of the claim.

Repeals the electronic database of sinkhole activity.

- Specifies that the insurer may request at its own expense the verification a uniform hurricane mitigation verification provided to the insurer by the policyholder or policyholder's agent in addition to forms provided by an authorized mitigation inspector.
- Provides that all provisions of the act are severable from any provision that is held invalid.

▪ **CS/HB 723  
Reciprocity of Workers'  
Compensation Claims**

In Florida, the workers' compensation process is governed by ch. 440, F.S., which provides a detailed framework for coverage and benefit issues, as well as the process for resolving disputes. These provisions are specific to Florida and may be substantially different than those in other states. Section 440.09(1)(d), F.S., provides that if a Florida employee is injured while employed outside of Florida, and the injury would entitle the employee or dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation. If, however, the employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in ch. 440, F.S. Recently, however, a number of Florida employees, most notably former professional athletes, have begun to file for benefits under the workers' compensation laws of other states, particularly California. The claims are based on the premise that, although the employer and primary employment is in Florida, the injury was sustained in the other state.

The bill creates a process for reciprocity designed to ensure that if a Florida employee is injured in the course of employment while

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temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state. To accomplish this purpose, the bill creates s. 440.094, F.S., to provide the following:

- If a Florida employee temporarily leaves the state incidental to his or her employment and is injured in the course of employment, that employee, or beneficiaries if the injury results in death, is entitled to the benefits as if the employee were injured in Florida.
- If an employee from another state is injured incidental to employment while temporarily in Florida, that employee and his or her employer are exempt from Florida law if: (1) the employer has workers' compensation insurance coverage under its own state laws; (2) the extraterritorial provisions of Florida law are recognized in the employer's state and; (3) employers and employees covered in Florida are exempted from the workers' compensation laws of the other state.
- If an employee from another state is injured incidental to employment while temporarily in Florida, the exclusive remedy against the employer are the workers' compensation laws of the other state.
- A certificate from the appropriate office of another state is prima facie evidence that an employer carries workers' compensation coverage in the other state.
- For any litigation in Florida that involves a question of construction of laws in another state, the Florida court shall take judicial notice of the laws of the other state.
- When an employee has a claim under workers' compensation in another jurisdiction for the same

injury or occupational disease as a claim filed in Florida, the total amount of compensation derived from the other jurisdiction shall be credited against the compensation due under Florida Workers' Compensation Law.

- An employee is considered to be temporarily working in another state if the duration of that work does not exceed 10 consecutive days or 25 days during a calendar year.
- The provisions of s. 440.094, F.S., apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

### ▪ **CS/HB 1007** **Insurer Insolvency**

The bill contains numerous provisions relating to insurers:

#### ❖ *Relating to the State Board of Administration*

- The bill allows an insurer to request that the State Board of Administration renegotiate the terms of a surplus note issued before January 1, 2011 under the Insurance Capital Build-Up Incentive Program.
- The bill increases the surplus requirements from \$100 million to \$250 million for foreign insurers in order to receive credit for reinsurance ceded to these foreign insurers.
- The bill expands the list of nationally recognized statistical rating organizations that may be utilized to provide a secure financial rating.

#### ❖ *Relating to Title Insurers*

- The bill requires that after an order of rehabilitation has been entered, the receiver shall review the condition of the title insurer and file a plan of rehabilitation for approval with the court.

- The bill requires that policies on real property in this state issued by the title insurer in rehabilitation shall remain in force unless the receiver determines the assessment capacity provided by this section is insufficient to pay claims in the ordinary course of business.
- The bill allows policies on real property located outside the this state may be canceled as of a date provided by the receiver and approved by the court, if the state in which the property is located does not have statutory provisions to pay future losses on those policies.
- The bill requires the establishment of a claims filing deadline for policies on real property located outside this state that have been canceled.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims when policies have been canceled, with any unused funds being returned to the general assets of the estate.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- The bill requires that funds allocated to pay claims on policies located outside of this state shall be based on the pro rata share of premiums written in each state over each of the 5 calendar years preceding the date of an order of rehabilitation.
- The bill requires each title insurer shall be liable for an assessment to pay all unpaid title insurance claims and expenses of administering and settling those claims on real property in this state for any title insurer that is ordered into rehabilitation.
- The bill states that the Office of Insurance Regulation (office) shall order an assessment if requested by the receiver on an annual basis in an amount that the receiver deems sufficient for the payment of known claims, loss adjustment expenses, and the cost of administration of the rehabilitation expenses. The receiver shall consider the remaining assets of the insurer in receivership when making its request to the office. Annual assessments may be made until no more policies of the title insurer in rehabilitation are in force or the potential future liability has been satisfied. The office may exempt or limit the assessment of a title insurer if such assessment would result in a reduction to surplus as to policyholders below the minimum required to maintain the insurer's certificate of authority in any state.
- The bill requires that the assessments shall be based on the total of the direct title insurance premiums written in this state as reported to the office for the most recent calendar year. Each title insurer doing business in this state shall be assessed on a pro rata share basis of the total direct title insurance premiums written in this state.
- The bill requires that assessments be paid to the receiver within 90 days after notice of the assessment or pursuant to a quarterly installment plan approved by the receiver. Any insurer that elects to pay an assessment on an installment plan shall also pay a financing charge to be determined by the receiver.
- The bill requires that the office shall order an emergency assessment if requested by the receiver. The total of any emergency assessment, when added to any annual assessment in a single calendar year, may not exceed 3 percent of an

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- insurer's surplus to policyholders as of the end of the previous calendar year or more than 10 percent of its surplus to policyholders over any consecutive 5-year period. The 10 percent limitation shall be calculated as the sum of the percentages of surplus to policyholders assessed in each of those 5 years.
- The bill allows the receiver to use the proceeds of an assessment to acquire reinsurance or otherwise provide for the assumption of policy obligations by another insurer.
  - The bill requires that the receiver shall make available information regarding unpaid claims on a quarterly basis.
  - The bill requires a title insurer in rehabilitation may not be released from rehabilitation until all of the assessed insurers have recovered the amount assessed either through surcharges collected or payments from the insurer in rehabilitation.
  - The bill prohibits a title insurer in rehabilitation, for which an assessment has been ordered, from issuing any new policies until the insurer has been released from rehabilitation and has received approval from the office to resume issuing policies.
  - The bill prohibits officers, directors, and shareholders of a title insurer ordered into rehabilitation or liquidation from serving as an officer, director, or shareholder of another insurer authorized in this state unless the officer, director, or shareholder demonstrates to the office for a 2-year period immediately preceding the receivership that: his or her personal actions or omissions were not a significant contributing cause to the receivership; he or she did not willfully violate any order of the office; he or she did not receive directly or indirectly any distribution of funds from the insurer in excess of amounts authorized in writing by the office; the financial statements filed with the office were true and correct statements of the title insurer's financial contrition; he or she did not engage in any business practices which were hazardous to the policyholders, creditors, or the public; and he or she at all times acted in the best interests of the title insurer.
- The bill requires upon the making of any assessment, the office shall order a surcharge on each title insurance policy issued thereafter, which insures an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate sufficient funds to recover the amount assessed over a period of not more than 7 years. The amount of the surcharge ordered under this section may not exceed \$25 per transaction for each impaired title insurer. If additional surcharges are occasioned by additional title insurers becoming impaired, the office shall order an increase in the amount of the surcharge to reflect the aggregate surcharge.
  - The bill states the party responsible for payment of title insurance premium, unless otherwise agreed between the parties, shall be responsible for the payment of the surcharge. No surcharge will be due or owing as to any policy of title insurance issued at the simultaneous issue rate. For all other purposes, the surcharge will be considered a governmental assessment to be separately stated on any settlement statement. The surcharge is not subject to premium tax or reserve requirements.
  - The bill requires that a title insurer doing business in this state which

- wrote no premiums in the prior calendar year shall collect the same per transaction surcharge. Such surcharge collected shall be paid to the receiver within 60 days after receipt from the title agent or agency.
- The bill states that each title insurance agent, agency, or direct title operation shall collect the surcharge as to each title insurance policy written and remit those surcharges along with the policies and premiums within 60 days to the title insurer on whom the policy was written.
  - The bill prohibits a title insurer from retaining more in surcharges for an ordered assessment than the amount of assessment that title insurer paid.
  - The bill requires each title insurer collecting surcharges to promptly notify the office when it has collected surcharges equal to the amount of the assessments paid. The office shall notify all companies, including those collecting surcharges to cease collecting surcharges when notified that all assessments have been recovered.
  - The bill requires that when filing each quarterly financial statement, a title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period. Any surcharges collected in excess of the amount assessed shall be paid to the Insurance Regulatory Trust Fund.
- ❖ *Relating to the Department of Financial Services*
- The bill allows the Department of Financial Services to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.
- The bill provides for the State Risk Management Trust Fund to cover employees, officers, and agents at the department for liability under 31 U.S.C. s. 3713, relating to priority of claims paid by the department while acting as a receiver.
  - The bill requires the Insurance Regulation Trust Fund to cover all unreimbursed costs when opening ancillary delinquency proceedings for the purposes of obtaining records.
  - The bill further clarifies the department's power to obtain records from third-party administrators.
- ❖ *Relating to Florida's Insurance Guaranty Associations*
- The bill makes changes to the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) statutes relating to the definition of "covered claims" rejected by another state's guaranty fund.
  - The bill amends qualifications of FIGA and FWCIGA board members representing, or employed by, an insurer in receivership.
  - The bill clarifies FIGA's obligation to pay valid claims after an independent review of policies and claims has been presented to it.
  - This bill substantially amends the following sections of the Florida Statutes: 215.5595, 624.610, 631.152, 631.2715, 631.391, 631.400, 631.401, 631.54, 631.56, 631.717, 631.904, and 631.912.
  - The bill creates section 631.2715, Florida Statutes.

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### ▪ **CS/HB 1087** **Insurance**

In Florida, the Office of Insurance Regulation (OIR) regulates insurers and other risk-bearing entities. The Department of Financial Services (DFS) has regulatory authority over many insurance-related activities, including, but not limited to, insurance agents and agencies, investigation of insurance fraud, and the administration of the Workers' Compensation Law. The bill provides the following changes to these insurance-related activities:

#### ❖ *Notification of the Cancellation, Nonrenewal, or Renewal of a Policy*

The bill revises the policyholder notification requirements for an insurer in transactions involving the nonrenewal, renewal, or cancellation of workers compensation, employer liability, commercial liability, motor vehicle, or other property and casualty insurance coverage. The bill changes the designated person or persons an insurer is required to notify from the "named insured" to the "first-named insured" in transactions involving the nonrenewal, renewal, or cancellation of such.

#### ❖ *Workers' Compensation Insurance*

The bill allows for the use of a prepaid card for the provision of workers' compensation benefits to an injured employee if certain conditions are met. Currently, such benefits are payable by check or by direct deposit into the employee's account. The bill permits flexibility for insurers regarding the frequency of premium audits by providing that such audits are not required for coverage, except as provided by the insurance policy, by an order of the OIR, or at least once each policy period at the request of the insured. The bill provides that assessments for the

Special Disability Trust Fund are determined on a calendar year basis rather than a fiscal year basis.

#### ❖ *Certificate of Authority Requirements for Insurers*

The bill allows insurers domiciled outside of the U.S., that cover only persons who are nonresidents of the U.S., to be exempt from the certificate of authority provisions if certain conditions are met. Currently, life insurers are provided an exemption if certain conditions are met.

#### ❖ *Licensure of Agents and Agencies*

The bill revises the requirements for disqualification of applicants convicted of certain crimes from agent and adjuster licensure by the DFS. The bill bars persons who commit specified felonies from applying for licensure and revises license waiting periods for other persons.

#### ❖ *Motor Vehicle Insurance*

The bill creates a civil penalty for motor vehicle insurance fraud authorizing civil fines of up to \$5,000 for the first offense, \$10,000 for the second offense, and \$15,000 for third and subsequent offenses.

#### ❖ *Service Warranty Associations*

The bill exempts a service warranty company from licensure requirements if the service warranties are only offered, marketed, or sold to nonresidents of Florida, and meets other requirements.

#### ❖ *Surplus Lines Insurance*

The bill allows surplus lines insurance agents to place commercial insurance directly in the surplus lines market without requiring the agent to make a diligent effort to procure such coverage from an authorized insurer. The bill also requires the insured to sign a disclosure regarding surplus lines coverage.

▪ **CS/HB 1121**  
**State Financial Institutions and**  
**Wall Street Reform Act**

The bill permits the Office of Financial Regulation to approve special stock offering plans if the capital stock of a state financial institution falls below par value and it cannot reasonably issue capital stock to restore the value of the shares.

The bill permits the Office to approve a plan by a state financial institution that may call for stock splits, change voting rights, dividends, and the addition of new classes of stock. However, the plan must be approved by a majority vote of the financial institution's board of directors and holders of two-thirds of outstanding shares of capital stock. Nevertheless, the Office is required to assess the fairness of benefits of the plan, and disallow a plan that would not effectively restore capital stock prices to sufficient levels. In emergency situations, a failing financial institution does not have to perform a vote for the plan to be approved by the Office.

The bill creates s. 658.4185(3), F.S., to expand the prior approval privilege of charters from only officers to business entities. The bill allows holding companies to apply for prior approval to merge or acquire control of a failing financial institution. The bill mandates that an entity must file an application for prior approval and submit the \$7,500 filing fee.

The bill creates s. 655.03855, F.S., which allows the Office to temporarily place a provisional director, for reasonable compensation by the financial institution, onto a state financial institution's board.

Additionally, the bill allows the appointment of a provisional director if the director(s) are not equipped to

operate the financial institution in a safe and sound manner.

Nevertheless, prior to the placement of a provisional director, the Office must allow the financial institution 30 days to acquire the minimum amount of directors.

The bill eliminates the required examination of state financial institutions by the Office every 36 months. The bill requires that the Office perform examinations every 18 months, but the Office may accept examinations conducted by the appropriate federal regulatory agency. The bill moves the definition of "related interest" to s.

655.005, F.S., and expands the definition of "related interest" to include relatives and those who reside in the same household of one who is in control of a financial institution. The bill specifies the types of capital and liabilities that a financial institution must use in order to calculate total amounts of capital and liability.

The bill makes the following conforming changes to comply with the Wall Street Reform Act: The Wall Street Reform Act requires that state regulators allow for de novo banking for out-of-state financial institutions. To conform, the bill allows an out-of-state financial institution to establish a de novo bank without merging or acquiring a state financial institution.

The bill also allows for the creation of additional branches in accordance with state law as if the out-of-state financial institution was chartered in Florida. The bill removes restrictions on the ability of out-of-state financial institutions to establish remote financial service units within Florida.

The Wall Street Reform Act prohibits state regulatory agencies from accepting the conversion of a charter of a federal financial institution when the converting financial institution is subject to regulatory action or a



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cease and desist order. To conform, the bill amends s. 655.411, F.S., by requiring the applicant to prove that the resulting financial institution will comply with all regulatory actions in effect before the date of conversion and that the appropriate federal regulatory agency does not object to the conversion.

The Wall Street Reform Act requires that in order to participate in the derivatives market, a state financial institution must consider borrower exposure in the evaluation of its risk. To conform, the bill adds the evaluation exposure to risk in derivative transactions.

The Wall Street Reform Act disallows the use of credit ratings in determining investment risk by requiring financial institutions to develop their own risk evaluations. To conform, the bill requires that all financial institutions develop and use internal policies and procedures to determine risk of investments, and prohibits the financial institution from using credit ratings as the sole means of determining investment risk.

The bill makes other technical conforming changes.

### ▪ **CS/CS/SB 1292** **Chief Financial Officer** **(CFO)/Uniform Chart of** **Accounts**

This bill dictates a process the CFO will use to establish a "uniform chart of accounts" across governmental agencies. A uniform chart of accounts creates a standard by which government revenues and expenses are coded and reported in the same fashion. It is used for fiscal analysis of government operations and budgeting.

Beginning October 1, 2011, the CFO will begin conducting workshops with state agencies, local governments, educational entities and entities of higher education to gather information for the

development of a uniform chart of accounts.

The CFO will provide to the state agencies, local governments, educational entities and entities of higher education a draft chart of accounts by July 1, 2013.

The CFO shall accept comments and input from state agencies, local governments, educational entities and entities of higher education regarding the draft chart of accounts through November 1, 2013.

By January 15, 2014, the CFO will present a report to the Governor, President of the Senate and the Speaker of the House of Representatives recommending a uniform chart of accounts which requires specific enterprise-wide information related to revenues and expenditures of state agencies, local governments, educational entities and entities of higher education. The report will include the estimated cost of adopting and implementing a uniform enterprise-wide chart of accounts.

### ▪ **SB 1316** **Loan Processing**

This bill includes the following provisions relating to mortgage loan originators whose scope of work includes loan processing:

- Defines loan processing as it relates to mortgage lending.
- Allows licensed loan originators to work as contract loan processors or in-house loan processors.
- Authorizes the Nationwide Mortgage Licensing System and Registry to obtain independent credit reports on each of a mortgage lender's control persons and share those reports with the Office of Financial Regulation (office).
- Makes technical conforming changes to chapter 494, Florida Statutes, required by the federal

- Secure and Fair Enforcement Mortgage Licensing Act (SAFE) of 2008.
- The bill also creates an exemption to allow real estate brokerage activities to be exempt from Parts II and III of Chapter 494.

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0011, 494.00255, 494.00331, 494.0038, 494.00421, 494.00612 and 494.0067.

▪ **CS/CS/CS/SB 1816  
Surplus Lines Insurance**

Surplus lines insurance is an alternative type of insurance coverage by which consumers can buy property-liability insurance from unauthorized (non-admitted) insurers when they are unable to purchase needed coverage from admitted insurers. The premiums charged for surplus line coverages are subject to a 5 percent tax on premiums and a service fee of up to 0.3 percent. The Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) was included within the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRAA (ss. 15 USC-8201- 8206) limits regulatory authority over nonadmitted (surplus lines insurance to the home state of the insured (policyholder). Under the NRRRA, Florida will no longer have jurisdiction to collect taxes and fees on surplus lines policies that cover risks over Florida and other states unless Florida is the home state of the insured, potentially resulting in significant loss of tax revenue. However, the NRRRA authorizes states to enter into agreements with one another for home states to collect taxes on multi-state risks and then allocate tax revenue to the state where the insured risks are located. Senate Bill 1816 applies the surplus lines tax to the entire premium of a surplus lines

policy covering risks over multiple states when Florida is the home state of the insured as defined in the NRAA. The bill also authorizes the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted surplus lines insurance taxes for multi-state risks pursuant to the NRRRA.

The bill authorizes the creation of a clearinghouse to receive the surplus lines premium tax collected by the home state of the insured and disburse the appropriate tax amount to the states where the risks are located. The clearinghouse is also authorized to collect a service fee of 0.3 percent of the gross premium. The tax rate collected on a multi-state surplus lines policy is limited to the tax rate where the insured risk is located. The Legislature is authorized to review any such agreement and may instruct the Chief Financial Officer to withdraw from an agreement if it determines that the agreement is not in the best interest of the state. The DFS must issue a report to the President of the Senate and Speaker of the House of Representatives about the terms and conditions of the agreement. The bill also creates requirements governing the reporting and payment of surplus lines premium tax revenue and fees for policies covering multi-state risks. Surplus lines agents and insureds that do not use a surplus lines agent to procure coverage, have 45 days after the end of the calendar quarter to file an affidavit describing transactions handled during the last quarter and pay the required premium tax and fees.

▪ **SB 2132  
Relating to the Department of  
Financial Services**

- Requires that the Department of Financial Services (department)

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- and all state agencies with more than 3,000 full-time employees that are provided insurance coverage from the Division of Risk Management, within the department, establish and maintain return-to-work programs for injured state workers. This provision is anticipated to result in an estimated annual cost savings of \$1 million to the Division of Risk Management's self-insurance program.
- Requires the Division of Risk Management to utilize agency loss prevention results in addition to claims history as criteria for calculating state agency risk management premiums.
  - Requires the Division of Risk Management to evaluate each agency's risk management programs at least once every five years and to produce reports recommending improvements. In addition, the amendment outlines a process for each agency's response to the division's evaluation and recommendations.
  - Eliminates the Chief Financial Officer's authority to operate a check cashing service at the state capitol, which will eliminate three full-time positions and provide a savings of \$129,022.
  - Requires that unencumbered and undisbursed funds that are transferred from the Workers' Compensation Administration Trust Fund within the department revert back to the fund each year.
  - Revises the responsibilities of the Division of Consumer Services within the department to reflect organizational changes related to the Office of Insurance Regulation and the Office of Financial Regulation.
  - Authorizes the department to accept donations, grants of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation for its anti-fraud efforts in the Division of Insurance Fraud within the department. The amendment authorizes the department to request annual appropriations from these funds.
  - Provides for the vesting of certain rights in the Division of Insurance Fraud upon donation.
  - Requires that all donations or grants of monies to the Division of Insurance Fraud be deposited immediately into the Insurance Regulatory Trust Fund within the department, to be separately accounted for. The amendment authorizes the use of these funds by the Division of Insurance Fraud to carry out its duties and responsibilities or for the sub-granting of funds to the state attorneys for funding or defraying the cost of dedicated fraud prosecutors.
- **HB 4081**  
**Repeal of Obsolete Insurance Provisions (Chapter 2011-11)**
- The bill (Chapter 2011-11, L.O.F.) repeals outdated or obsolete language relating to a refund to Citizens Property Insurance Corporation of funds not committed or reserved for insurers in the Insurance Capital Build-Up Incentive Program; requirements of pre-suit notice for suits brought against the Florida Automobile Joint Underwriting Association (FAJUA); form filings for compliance with the mandatory catastrophic ground cover collapse coverage; report on the development of a sinkhole database; feasibility study for Florida sinkhole coverage facility; and effective date of insurers' mandatory windstorm and contents coverage in property insurance policies. The bill deletes s. 215.5595(11), F.S., which requires the State Board of Administration to refund to Citizens all uncommitted Insurance Capital Build-Up Incentive Program funds that were to have been transferred from Citizens to the

Program in 2009 through SB 2860. The transfer of funds was never performed due to the Governor's veto of SB 2860; thus, the bill repeals this obsolete language from the statute. The bill deletes s. 627.311(3)(k)2., F.S., which contains a 90 day pre-suit notice requirement for suits brought against FAJUA under s. 624.155, F.S. By its own terms, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. Because the Legislature did not reinstate s. 627.311(3)(k)2., F.S., prior to October 1, 2007, that subparagraph expired and is obsolete. Therefore, the bill deletes obsolete language from the statute. The bill deletes s. 627.706(3), F.S., which requires insurers to file a form implementing the mandated coverage of catastrophic ground cover collapse and the optional sinkhole coverage with the Office of Insurance Regulation (OIR) by June 1, 2007. Since the time for filing has passed, and all insurers have filed with OIR, the bill deletes the obsolete language from the statute. The bill deletes s. 627.7065(5), F.S., which requires the Department of Environmental Protection, in consultation with the Department of Financial Services, to submit a report of sinkhole database recommendations and other similar matters by December 31, 2005, to the Governor, the Chief Financial Officer, and the legislative presiding officers. The report of sinkhole database recommendations was filed by the Department of Environmental Protection before the deadline of December 31, 2005. The bill repeals s. 627.7077, F.S., which requires the Florida State University College of Business Department of Risk Management and Insurance (Department of Risk Management) was directed by the Legislature to perform a feasibility and cost-benefit study of a Florida Sinkhole Insurance Facility. The Department of Risk

Management submitted the report, required by the statute, to the Legislature on April 1, 2005. The bill deletes s. 627.712(7), F.S., which provides an effective date of June 1, 2007, or at the latest, October 1, 2007, of the statute requiring residential property insurers to offer windstorm coverage for property insurance policies. This date has passed and insurance companies are now required to offer windstorm coverage.

▪ **HB 4181**  
**Prohibited Activities of**  
**Citizens Property Insurance**  
**Corporation**

The bill repeals s. 215.55951, F.S., which currently prohibits Citizens Property Insurance Corporation (Citizens) from justifying a rate or assessment increase based on amendments enacted in Chapter 2008-66, L.O.F., to the Insurance Capital Build-Up Incentive Program (the "Program"). Chapter 2008-66, L.O.F., funded the Program by requiring Citizens to transfer \$250 million to the General Revenue Fund for transfer to the State Board of Administration to fund the Program. No loans were issued using Citizens monies because the transfer was vetoed by the Governor. ▪



# CARLTON FIELDS

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ATTORNEYS AT LAW

**2011  
Florida Legislature  
Post-Session Report**

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**LEGAL, CRIMINAL JUSTICE & THE JUDICIARY**  
*Including legislation relating to:*

- *Courts*
- *Criminal Justice*
- *Law Enforcement*



**LEGAL, CRIMINAL JUSTICE AND THE JUDICIARY**

▪ **CS/HB 3  
Assault or Battery of a Law  
Enforcement Officer/Blue  
Alerts**

The bill creates s. 784.071, F.S., which codifies an existing alert program that was created by executive order in 2008. This type of program often goes by the name “blue alert,” though the precise name of the current Florida program is the Florida Law Enforcement Officer (LEO) Alert Plan.

The bill provides that, at the request of an authorized person employed at a law enforcement agency, the Florida Department of Law Enforcement, in cooperation with the Department of Highway Safety and Motor Vehicles and the Department of Transportation, shall activate the emergency alert system and issue a blue alert if:

- A law enforcement officer has been killed, has suffered serious bodily injury, or has been assaulted with a deadly weapon; or a law enforcement officer is missing while in the line of duty evidencing concern for the officer’s safety.
- The suspect has fled the scene of the offense.
- The law enforcement agency investigating the offense determines that the suspect poses an imminent threat to the public or to other law enforcement officers.
- A detailed description of the suspect’s vehicle, or other means of escape, or the license plate of the suspect’s vehicle is available for broadcasting.
- Dissemination of available information to the public may help avert further harm or assist

in the apprehension of the suspect.

- If the law enforcement officer is missing, there is sufficient information available relating to the officer’s last known location and physical description, and the description of any vehicle involved, including the license plate number or other identifying information, to be broadcast to the public and other law enforcement agencies, which could assist in locating the missing officer.

The bill also requires that a blue alert be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the dynamic message signs that are located along the state’s highways. If a traffic emergency arises requiring that information pertaining to the traffic emergency be displayed on a highway message sign in lieu of the blue alert information, the agency responsible for displaying information on the highway message sign is not in violation of this new section.

▪ **CS/CS/HB 39  
Controlled Substances**

The bill amends ss. 893.02, 893.03, and 893.13, F.S., in order to schedule several synthetic cannabinoids or synthetic cannabinoid-mimicking compounds in Schedule I of Florida’s controlled substance schedules. Because of this scheduling, Florida law enforcement officials and prosecutors will be able arrest and prosecute the possession and sale of these substances under Florida law. Possession of 3 grams or less of the scheduled substances, which is not in powdered form, is a first degree misdemeanor.



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### ▪ **CS/HB 59** **Service of Process**

The bill authorizes sheriffs to charge a \$40 fee for processing a writ of execution (current law authorizes sheriffs to charge a \$40 fee for docketing and indexing a writ of execution) to reflect the modernization of the current practice for processing of the writs of execution.

The bill allows the party requesting service to furnish the sheriff with an electronic copy of the process, which must be signed and certified by the clerk of court. Currently, each process server must document on the copy served the date and time of service and the process server's identification number and initials.

The bill specifies that the process server must place this information *on the front page* of the copy served. In addition, the person serving process must list on the return-of-service form all initial pleadings delivered and served along with the process. The return-of-service form must be filed with the court.

The bill provides that a gated residential community, including a condominium association or a cooperative, must grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community. The bill revises procedures for serving a corporation's registered agent under the alternative method in s. 48.081(3)(a), F.S. In addition, the bill imposes additional requirements on the return of execution of process to include a server's signature on the return.

The bill reduces the number of copies of process from two to one copy that must be served on a public officer,

board, agency, or commission, as the agent for service of process on any person, firm, or corporation. The public officer, board, agency, or commission so served must retain a record of the process and promptly send the copy, by registered mail or certified mail, to the person to be served as shown by his or her or its records. The service of process records may be retained in a paper or an electronic copy.

The bill reduces from three to one the number of copies that must be served on the Chief Financial Officer as the process agent of an insurer. The Chief Financial Officer must retain a record of the process. The service of process records may be retained in a paper copy or an electronic copy.

### ▪ **CS/CS/HB 75** **Offense of Sexting**

The bill provides a lesser-penalty alternative to punish "sexting" committed by a minor. Under the bill, a minor commits the offense of "sexting" if the minor knowingly:

- Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors; or
- Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

A first sexting violation is a noncriminal violation punishable as provided in the bill. A sexting violation committed after a non criminal violation is a first degree misdemeanor. A sexting violation committed after a first degree misdemeanor violation is a third degree felony. The bill also specifies conditions in which the sexting offense does not apply.

The new section does not prohibit the prosecution of a minor for a violation of any law of this state if the photograph or video that depicts nudity also includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking.

▪ **HB 105**  
**Open House Parties**

The bill enhances the penalty for a second or subsequent violation of the prohibition against knowingly hosting an open house party where alcohol or drugs are possessed or consumed by a minor without having taken reasonable steps to prevent such possession or consumption. The penalty increases from a second degree misdemeanor (punishable by up to 60 days in jail and/or a fine not exceeding \$500) to a first degree misdemeanor (punishable by up to one year in jail and/or a fine not exceeding \$1,000).

The bill creates a misdemeanor of the first degree for a violation of the open house party law that causes or contributes to causing serious bodily injury or death to a minor, or when a minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party.

▪ **CS/SB 142**  
**Negligence/Crashworthiness**

The bill reverses *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001), a Florida Supreme Court decision that barred Florida juries from apportioning fault to a negligent driver and also prevented juries from hearing all the evidence surrounding the details of automobile accidents when an auto manufacturer is sued in an action challenging a vehicle's crashworthiness.

*D'Amario* resulted in Florida being in the minority of states on this issue in direct contravention of Florida's

comparative fault principles. In other words, drivers who are drunk, underage, without a license or under the influence of any manner of illegal substances, are not allocated fault in such cases because their condition is never shared with the jury.

The bill requires the trial judge to instruct the jury on the apportionment of fault in these cases and specifies that the rules of evidence apply to these actions. The bill contains intent language and legislative findings that the provisions in the bill are intended to be applied retroactively.

The bill reorganizes the comparative fault statute by moving the definition of "negligence action" to the definitions subsection in the current comparative fault statute, and it also adds definitions of the terms "accident" and "products liability action."

▪ **SB 146**  
**Removal of Bar For  
Employment and Licensure of  
Ex-Offenders**

This bill creates the "Jim King Keep Florida Working Act," which requires state agencies and regulatory boards to submit to the Governor and certain legislative officers a report that outlines current disqualifying policies on the employment or licensure of ex-offenders and possible alternatives that are compatible with protecting public safety. The bill also provides that a state agency may not deny an application for a license, permit, certificate, or employment based solely on the applicant's lack of civil rights.

▪ **CS/CS/SB 170**  
**Electronic Filing and Receipt of  
Legal Documents**

This bill requires each state attorney and public defender to electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the

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court. The bill defines the term “court documents.”

The bill further expresses the expectation of the Legislature that the state attorneys and public defenders consult with specified entities in implementing the electronic filing and receipt process. The Florida Prosecuting Attorneys Association and the Florida Public Defender Association are required to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made in implementing electronic filing through the Florida Courts E-Portal (statewide portal) or other portal for case types not yet approved for filing through the statewide portal. The bill also provides for electronic procedures in administrative proceedings.

The bill requires parties represented by attorneys in hearings held under the Division of Administrative Hearings and in the Workers’ Compensation Appeals Program to file all documents electronically.

### ▪ **CS/CS/SB 234** **Open Carry of Firearms**

Referred to as the “Open Carry” bill, it modifies s. 790.053, F.S., the provision that prohibits carrying a firearm openly, to eliminate the violation of this law for persons who are lawfully carrying a concealed firearm which is briefly displayed, openly, to the ordinary sight of another person.

However, if the firearm is displayed in an angry or threatening manner, not in necessary self-defense, this would still constitute a violation of s. 790.053, F.S., which is a second degree misdemeanor.

The bill allows the Division of Licensing of the Department of Agriculture to administer the fingerprinting of applicants for licenses to carry concealed weapons or firearms.

The bill also clarifies s. 790.06, F.S., by stating that persons licensed to carry a concealed firearm are not prohibited from carrying or storing a firearm in a vehicle for lawful purposes. The bill specifies that the section of law that allows the prohibition of firearms on the properties listed in s. 790.251(7), F.S., is not modified by s. 790.06, F.S. These properties are listed in s. 790.251(7)(a)-(g), F.S., as follows:

- Any school property as defined and regulated under s. 790.115, F.S.
- Any correctional institution regulated under s. 944.47, F.S., or chapter 957, F.S.
- Any property where a nuclear-powered electricity generation facility is located.
- Property owned or leased by a public or private employer or the landlord of a public or private employer upon which are conducted substantial activities involving national defense, aerospace, or homeland security.
- Property owned or leased by a public or private employer or the landlord of a public or private employer upon which the primary business conducted is 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.
- A motor vehicle owned, leased, or rented by a public or private employer or the landlord of a public or private employer.
- Any other property owned or leased by a public or private employer or the landlord of a public or private employer upon which possession of a firearm or

other legal product by a customer, employee, or invitee is prohibited pursuant to any federal law, contract with a federal government entity, or general law of this state.

Finally, the bill amends s. 790.065, F.S., to clarify that residents of Florida can lawfully purchase, trade, or transfer a rifle or shotgun in another state. Florida residents have been limited to the purchase, trade, or transfer of those types of firearms in states that are contiguous to Florida.

▪ **SB 240**  
**Violations of Injunctions for Protection**

This bill creates additional ways a person can violate an injunction for protection against repeat violence, sexual violence, or dating violence by making it identical to the ways a person can violate an injunction for protection against domestic violence. Specifically, the bill provides the following additional violations:

- Being within 500 feet of the petitioner’s residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member (currently there is no distance limitation; rather the violation is based solely on going to those places);
- Knowingly and intentionally coming within 100 feet of the petitioner’s motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner’s personal property, including the petitioner’s motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

▪ **CS/CS/CS/HB 251**  
**Sexual Offenses**

This bill addresses several issues relating to sexual violence and the legal proceedings relating to such offenses.

The bill amends the Evidence Code to expand the admissibility of collateral crime or “similar fact” evidence in criminal prosecutions of child molestation. It creates admissibility for similar fact evidence in the Evidence Code in the prosecution of sexual offenses. The definition of child molestation is expanded and sexual offense is defined.

The bill provides that the court may set any appropriate conditions on the taking of testimony by children, including the use of a registered service or therapy animal in any proceeding involving a sexual offense.

The bill prohibits a court from granting a request of a defendant in a criminal proceeding for permission to duplicate or copy material depicting sexual performance by a child or child pornography as long as the state attorney makes the material reasonably available to the defendant for inspection.

The bill requires licensed facilities providing emergency room services to gather forensic medical evidence from victims who have reported a sexual battery to a law enforcement agency or upon their request for purposes of filing a report in the future. It requires law enforcement to provide transportation for the victim of an alleged sexual battery to medical treatment, a forensic examination, and a certified rape crisis center, as appropriate. The bill provides that, prior to the investigating officer filing his or her final report, the victim shall be permitted to review it and provide a

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statement as to the accuracy of the report.

The bill also extends the statute of limitations for video voyeurism beyond the applicable two- and three-year limits to authorize commencement of prosecutions within one year from either the date upon which the victim learns of the existence of the video recording or from the date the recording is confiscated by law enforcement, whichever occurs first.

The bill adds crimes to the list of offenses for which an additional \$151 dollar surcharge will be assessed against a defendant in order to fund the Rape Crisis Program Trust Fund.

Further, the bill requires the court, upon a victim's request, to order a defendant to undergo HIV and hepatitis testing within 48 hours of the filing of an indictment or information or, if later, within 48 hours after the victim's request. The court is required to order testing pursuant to the victim's request under this provision when the defendant is charged with: 1) a specified sexual offense and the victim is a minor, or an elderly person or disabled adult, regardless of whether it involved the transmission of body fluids; or 2) a specified crime that involves the transmission of body fluids from one person to another. Follow-up testing is also required as determined by a physician.

The bill extends the prohibitions against child pornography to include controlling or intentionally viewing child pornography. The bill specifically adds an "image," "data," and "computer depiction" to the enumeration of the items that cannot be possessed, controlled, or viewed.

The bill defines "intentionally view" to mean to deliberately, purposefully, and voluntarily view. It specifies that proof of intentional viewing requires

establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time. The bill amends the level-five offenses in the offense severity ranking chart to add the offenses of controlling or intentionally viewing child pornography to that list.

Finally, the bill authorizes the Department of Legal Affairs to fund a nonprofit organization to educate adults and children about sexual abuse and provide other services, with a nonrecurring sum of \$1.5 million in fiscal year 2011-2012 from the General Revenue Fund.

### ▪ **CS/CS/HB 277** **Sovereign Immunity**

A statute of limitations bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered. Currently, claims against the state or its subdivisions for a negligent or wrongful act are subject to a four-year statute of limitations. However, there is an exception for medical malpractice claims against the state or its subdivisions, which are subject to a two-year limitations period. The bill adds "wrongful death" to the list of exceptions governed by the two-year statute of limitations. Thus, the bill reduces the statute of limitations for wrongful death actions against the state or its subdivisions from four years to two years.

The bill conforms other portions of the statute governing tort claims against the government with the new statute of limitations. Currently, claimants have three years to give notice of their claim to an agency. The agency then has six months, or 90 days for medical malpractice claims, to dispose of the claim. Suit cannot be brought before notice has been given and a final disposition of the claim has been rendered; except that, if no agency action occurs for six months,

or 90 days for medical malpractice claims, it is considered an automatic denial of the claim. Currently, the statute of limitations still runs during the period that the agency has to dispose of the claim.

The bill reduces the period that a claimant has to give notice to an agency of its wrongful death claim, mandating that a claimant give notice to the agency within two years of the claim accruing. Additionally, the bill adds wrongful death claims to the 90-day period for agency action already in place for medical malpractice claims. Thus, if no agency action occurred on a wrongful death claim for 90 days, such inaction would result in an automatic final denial of the claim.

Finally, the bill tolls the statute of limitations for wrongful death and medical malpractice claims during the time period provided for agency action.

▪ **CS/HB 325**  
**Estates**

The bill establishes standards for privilege of communications between a lawyer and a client acting as a fiduciary. The bill provides that a client acts as a fiduciary when serving as a personal representative, a trustee, an administrator ad litem, a conservator, or an attorney in fact.

The bill provides that the notice of administration sent by the personal representative of the estate must include a statement that the fiduciary lawyer-client privilege applies with respect to the personal representative and the attorney employed by the personal representative.

The bill provides that the notice a trustee provides to qualified beneficiaries must include a statement that the fiduciary lawyer-client privilege applies with respect to the trustee and the attorney employed by the trustee.

Effective October 1, 2011, the bill increases the share a decedent's surviving spouse will receive in an intestate estate to the entire intestate estate when all of the decedent's descendants are also descendants of the surviving spouse and the surviving spouse does not have any other descendants.

Effective July 1, 2011, the bill:

- Permits wills to be reformed for mistake, which would be comparable to an existing provision applicable to testamentary trusts, revocable trusts, and other trusts.
- Allows wills to be modified to achieve the testator's tax objectives where it is not contrary to the testator's probable intent.
- Authorizes a court to award taxable costs, including attorney's fees and guardian ad litem fees, in a proceeding arising to reform a will for mistake or a proceeding for modifications to achieve the testator's tax objectives.

The bill authorizes a challenge to the revocation of a will or trust on the grounds of fraud, duress, mistake, or undue influence after the death of the testator or settlor.

The bill limits powers of a guardian to prosecute or defend certain proceedings, to provide that there is a rebuttable presumption that an action challenging the ward's revocation of all or part of a trust is not in the ward's best interest if the revocation relates solely to a devise. This limitation does not preclude a challenge after the ward's death.

The bill provides that Florida Rule of Civil Procedure 1.525 applies to clarify when and under what circumstances a trustee or beneficiary of a trust or attorney must file a motion for attorney's fees and costs incurred in a judicial proceeding concerning a trust, with exceptions. Florida Rule of Civil Procedure 1.525

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requires a party seeking costs or attorney's fees to serve a motion within the 30 days that follow the filing of a judgment. If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided in the bill.

The bill applies to all proceedings pending before such date and all cases commenced on or after the effective date.

### ▪ **CS/CS/HB 339** **Possession of Stolen Credit or Debit Cards**

The bill amends s. 817.60, F.S., to create a new offense relating to credit cards: A person commits unlawful possession of a stolen credit or debit card when the person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another person without the cardholder's consent and with the intent to impede recovery of the card by the cardholder.

The new possession offense is a third degree felony (pursuant to s. 817.67(2), F.S.).

The new possession offense does not apply to a retailer or retail employee who, in the ordinary course of business, possesses, receives, or returns a credit card or debit card that the retailer or retail employee does not know was stolen or possesses, receives, or retains a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

### ▪ **SB 344** **Animal Cruelty/Bestiality**

The bill prohibits, as a first-degree misdemeanor, knowingly engaging in sexual conduct or contact with an animal. Sexual conduct and sexual

contact are defined in the bill. It also prohibits, with the same penalty, knowingly:

- aiding or abetting another in committing the conduct or contact;
- permitting the acts to be conducted on one's premises; or
- organizing, promoting, participating as an observer in, or performing services to facilitate the acts for commercial or recreational purposes.

Accepted animal husbandry practices, conformation judging practices, and accepted veterinary medical practices are specifically exempted from prosecution under the bill.

### ▪ **HB 347** **Vehicle Crashes Involving Death**

The bill provides that a person who is arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of leaving the scene of an accident, racing on highways, driving under the influence, or felony driving while license suspended, revoked, canceled, or disqualified must be held in custody until first appearance for a bail determination. This change prevents judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. It also prevents local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

### ▪ **CS/SB 400** **Treatment-based Drug Court Programs**

This bill provides for additional sentencing options for a statutorily restricted population of defendants and community supervision offenders who might successfully, and safely,

be diverted from the prison system into existing post-adjudicatory drug court programs. The target population consists of offenders who have a substance abuse or addiction problem that is amenable to treatment and who are currently in the criminal justice system because of a nonviolent felony offense.

Entry into the post-adjudicatory drug court program is also expanded to include offenders who violate their probation or community control for any reason.

Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a post-adjudicatory drug court program may not score more than 60 sentencing points, shall be before the court for sentencing on a nonviolent felony, and must show by a drug screening and the court's assessment that he or she is amenable to substance abuse or addiction treatment. The defendant or offender must agree to enter the program. The state attorney and victim, if any, must be consulted. Successful completion of the program is a condition of a probation or community control sentence.

▪ **SB 404**  
**Transition to Adulthood Services**

The bill makes changes to ch. 985, F.S., relating to juvenile justice, to provide transition-to-adulthood services to older youth who are in the custody of, or under the supervision of, the Department of Juvenile Justice (DJJ). The bill requires that transition-to-adulthood services for a youth be part of an overall plan leading to the total independence of the child from DJJ's supervision. Specifically, the plan must include:

- A description of the child's skills and a plan for learning additional identified skills;

- The behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities;
- The provision for future educational, vocational, and training skills;
- Present financial and budgeting capabilities and a plan for improving resources and abilities;
- A description of the proposed residence;
- Documentation that the child understands the specific consequences of his or her conduct in such a program;
- Documentation of proposed services to be provided by DJJ and other agencies, including the type of services and the nature and frequency of contact; and
- A plan for maintaining or developing relationships with family, other adults, friends, and the community.

The bill also provides that youth who are adjudicated delinquent and are in the legal custody of the Department of Children and Family Services (DCF) may, if eligible, receive DCF's independent living transition services pursuant to s. 409.1451, F.S. Adjudication of delinquency may not be considered, by itself, as disqualifying criteria for eligibility in DCF's Independent Living Program.

The bill also permits a court to retain jurisdiction for a year beyond the child's 19th birthday if he or she is participating in the transition-to-adulthood program.

The bill provides that the transition services created in s. 985.461, F.S., require voluntary participation by affected youth and are not intended to create an extension of involuntary court-sanctioned residential commitment.

Additionally, the bill creates the College-Preparatory Boarding



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Academy Pilot Program (Academy) for at-risk students. The bill defines the key elements of the program and establishes “at-risk” student eligibility criteria consistent with eligibility standards for a range of non-educational federal and state programs that support needy families, children, and youth.

Specifically, the bill provides that an “eligible student” is a student who is a resident of the state and entitled to attend school, is at risk of academic failure, is currently enrolled in grade 5 or 6, is from a family whose income is below 200 percent of the federal poverty guidelines, and who meet at least two additional risk factors, which are specified in the bill.

The bill outlines a process for the State Board of Education (SBE) to select an experienced, qualified operator (through a request for proposals process) and prescribes the qualifications and obligations of the operator. The bill also stipulates the contract requirements between the SBE and the selected operator.

The bill authorizes the program to receive funding from non-education sources and requires the SBE to coordinate, streamline, and simplify requirements to eliminate duplicate, redundant, or conflicting requirements to which the academy is subjected.

The bill authorizes the operator of the Academy to bill Medicaid for services rendered to eligible students.

The bill directs the Academy to enroll up to 80 students beginning in August 2012, and to grow to a student capacity of 400 students. It also requires the SBE to issue an annual report for each college-preparatory boarding academy. Finally, the bill authorizes the SBE to adopt rules to administer the pilot program.

### ▪ **SB 450** **Emergency Management Immunity**

The bill creates the “Post-disaster Relief Assistance Act” to provide immunity from civil damages to persons who gratuitously and in good faith, supply temporary housing, food, water, or electricity to emergency first responders or their immediate family members in response to a declared emergency or public health emergency.

The immunity provided to persons under the bill does not apply to damages as a result of any act or omission:

- That occurs more than 6 months after the declaration of an emergency, unless the declared emergency is extended, in which case the immunity continues to apply for the duration of the extension; or
- That is unrelated to the original declared emergency or any extension thereof.

In addition, the immunity granted to providers of temporary housing, food, water, or electricity does not apply in situations in which the provider acts in a manner that demonstrates reckless disregard for the consequences of another. The bill defines reckless disregard as “conduct that a reasonable person knew or should have known at the time such services were provided would likely result in injury so as to affect the life or health of another, taking into account the extent or serious nature of the prevailing circumstances.”

Finally, the bill provides that a person who registers with a county emergency management agency as a temporary provider of temporary housing, food, water, or electricity for emergency first responders or their immediate family members is presumed to have acted in good faith

in providing such housing, food, water, or electricity.

▪ **CS/SB 504**  
**Child Visitation**

This bill amends Florida's Keeping Children Safe Act (Act) to require probable cause of sexual abuse by a parent or caregiver in order to create a presumption of detriment to a child.

The bill further provides that persons meeting specified criteria may not visit or have contact with a child without a hearing and order by the court. If visitation or contact is denied and the person wishes to begin or resume contact with the child victim, there must be an evidentiary hearing to determine whether contact is appropriate.

The bill clarifies that *prior* to the hearing, the court shall appoint a guardian ad litem or attorney ad litem for the child.

The bill also provides that at the hearing, the court may receive evidence, to the extent of its probative value, such as recommendations from the child protective team, the child's therapist, or the child's guardian ad litem or attorney ad litem, even if the evidence may not be admissible under the rules of evidence. The bill provides that once a rebuttable presumption of detriment has arisen or if visitation has already been ordered and a party or participant informs the court that a person is attempting to influence the testimony of the child, the court must hold a hearing within seven business days to determine whether it is in the best interests of the child to prohibit or restrict visitation with the person who is alleged to have influenced the testimony of the child.

This bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by

placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding pursuant to ch. 39, F.S.

▪ **CS/CS/SB 512**  
**Vessels/Navigation Safety Rules**

The bill reduces a second degree misdemeanor to a noncriminal infraction for individuals who violate a navigation rule that results in a boating accident but does not cause serious injury or death or rise to the level of reckless operation. The civil penalties are increased up to \$500 for a first offense, up to \$750 for a second offense, and up to \$1000 for a third or subsequent offense.

The bill also provides boaters who can present proof of boater safety course completion and photo identification to operate a motor vessel without waiting to receive the Florida Fish and Wildlife Conservation Commission Boating Identification card in the mail. The Boater Education Certificate must include the student's first and last name, date of birth, and the date he or she passed the course examination.

▪ **CS/CS/HB 563**  
**Injunctions for Protection Against Violence**

This bill requires (in addition to the notice requirements on law enforcement for serving an injunction for protection) that the Florida Association of Court Clerks and Comptrollers, subject to available funding, develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, as well as other court actions related to the injunction. The association may apply for any

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available grants to help fund the notification system. Notification must be made within 12 hours after the sheriff or other law enforcement officer has served the protective injunction. The notification must include, at a minimum, the location, date, and time that the protective injunction was served.

### ▪ **CS/HB 567** **Judgment Interest**

This bill requires the Chief Financial Officer (CFO) to adjust the statutory rate of interest payable on judgments or decrees on a quarterly basis by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate. The bill also provides that the interest rate at the time the judgment is obtained will be adjusted annually on January 1 of each year in accordance with the interest rate in effect on that date as set by the CFO until the judgment is paid, with the exception of certain judgments entered by the clerk of court.

### ▪ **CS/SB 618** **Juvenile Justice**

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes include the following:

- Serious or habitual juvenile offender programs and intensive residential treatment programs for offenders under 13 which are underutilized and not needed anymore;
- Sheriff's Training and Respect programs which have not been operational since 2008;
- Inspectors within the Inspector General's Office being sworn law enforcement officers when

deemed necessary by the Secretary of DJJ (DJJ has never had sworn law enforcement officers); and

- Juvenile Justice Standards and Training Commission which provided staff development and training, except that since it expired in 2001, the department has taken over its training duties.

### ▪ **CS/HB 621** **Child Custody**

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of a permanent time-sharing agreement. The bill adds to previously existing law prohibiting a court from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child, by including a specific provision stating that military service cannot be the sole factor in granting a petition for modification.

### ▪ **SB 652** **Liability of Spaceflight Entities**

The bill saves from repeals. 331.501, F.S., which provides spaceflight entities with immunity from liability for the loss, damage, or death of a participant resulting from the inherent risks of spaceflight activities. Section 331.501, F.S., was created in 2008 in an effort to provide additional incentives to encourage private spaceflight companies to locate in Florida. The bill also extends the existing liability protections to include space-related manufactures and suppliers that have been approved by the Federal Aviation Administration.

▪ **CS/SB 664**  
**Missing Person**  
**Investigations/Silver Alert**

The bill amends ss. 937.0201, 937.02, and 937.022, F.S., to codify Florida's Silver Alert Plan, which was created by a 2008 executive order. This plan provides for alerts regarding a missing person age 60 or older where there is a clear indication that the person has an irreversible deterioration of intellectual faculties and a missing person age 18 to 59 who has irreversible deterioration of intellectual faculties and law enforcement has determined the person lacks the capacity to consent.

Under the bill, upon receiving a request from the law enforcement agency having jurisdiction over the missing person, the Florida Department of Law Enforcement, other agencies, and specified entities who are responsible for complying with the request are immune from civil liability for damages for complying in good faith with the request and are presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert information pertaining to the missing person.

The bill also makes clarifying definitional and referencing changes to effectuate Florida's Silver Alert Plan and specifies that only a law enforcement agency having jurisdiction over the case may make a request to the Missing Endangered Persons Information Clearinghouse for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation.

▪ **CS/SB 670**  
**Powers of Attorney**

The bill seeks to conform Florida's power of attorney law under ch. 709, F.S., to the Uniform Power of

Attorney Act adopted by the National Conference of Commissioners on Uniform State Laws, with some modifications to achieve greater consistency among state laws. The bill creates ch. 709, part I, F.S., consisting of ss. 709.02-709.07, F.S., titled "Powers of Appointment." The bill creates ch. 709, part II, F.S., consisting of ss. 709.2101-709.2402, F.S., titled "Powers of Attorney." The revised power of attorney law applies only to powers of attorney created by an individual. Powers of attorney validly executed under Florida law before the effective date of this bill will remain valid. If the power of attorney is durable (a power of attorney that is not terminated by the principal's incapacity) or springing (a power of attorney that does not take effect until the principal loses capacity), it will remain durable or springing under the new law. To be effective in Florida, powers created on or after the effective date of this bill must be exercisable as of the time they are executed.

The meaning and effectiveness of a power of attorney are governed by ch. 709, part II, F.S. A power of attorney executed in another state that does not comply with the execution requirement of this part (ch. 709, part II, F.S.) is valid in Florida only if the execution of the power of attorney complied with the law of the state of execution. Powers of attorney that are executed after the effective date of ch. 709, part II, F.S., may not create springing powers, with an exception for military powers. Qualified agents as defined in the bill are entitled to reasonable compensation. The revised power of attorney law provides requirements for written notice with special notice for financial institutions, and special rules for banking and investment transactions; provides default duties for the agent; creates co-agents and successor agents; prohibits blanket or

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default powers granted to an agent; prescribes requirements for the rejection by a third person of a power of attorney; prescribes requirements for an agent's liability under a power of attorney; and provides grounds for judicial relief and dealing with conflicts of interest.

### ▪ **CS/CS/HB 701** **Property Rights/Amendments to Bert Harris Act**

The bill amends the Bert Harris Act to make the following changes to Florida's statutory protections on real property rights. The bill:

- Specifies that a temporary impact on development that is in effect for longer than one year may, depending upon the circumstances, constitute an "inordinate burden;"
- Clarifies that circumstances leading to the time elapsed between enactment of the law or regulation and its first application to the property are relevant to determining whether the investment-backed expectations were inordinately burdened;
- Changes the required notification periods from 180 days to 150 days.
- Changes the term "ripeness decision" to "statement of allowable uses" and revises language specifying when the prerequisites for judicial review are met for property owners;
- Clarifies that the one-year statute of limitations begins to run when:
  - a law or regulation is first applied upon enactment and notice mailed to the property owner, or
  - there is a formal denial of a written request for development or variance; and
- Specifies that sovereign immunity is waived for purposes of the Bert Harris Act.

### ▪ **CS/SB 844** **Violations/Probation/Community Control/Widman Act**

The bill provides that a First Appearance court may reach beyond the matter of pretrial release or detention on a new law violation arrest under certain circumstances.

If the court has reasonable grounds to believe that the offender appearing before the court at First Appearance on the new law violation is under community supervision and has violated the terms of supervision in a material respect by committing the new law violation, the court may order the arrest of the offender for the violation at that time. It is named after a law enforcement officer who was killed by one of those offenders.

The bill, therefore, should allow the court to expedite the arrest of an offender whose terms of community supervision have been violated due to the alleged new law violation, if he or she has not already been arrested on the violation by law enforcement under the provisions of s. 948.06(1)(a), F.S.

The court must inform the offender of the violation of community supervision. If he or she admits the violation, the court may order that the offender be brought before the court that granted the community supervision.

If the offender does not admit the violation of community supervision, the court may either commit the offender or release him or her with or without bail to await further hearing on the matter, or simply order that the offender be brought before the court that granted the community supervision.

Should the court reach the question of releasing the offender on the violation of community supervision, the court may consider, specifically, whether it is more likely than not that

a prison sanction would be handed down by the original sentencing court for a violation of community supervision based upon the new arrest.

The bill does not apply to those offenders who are subject to the "danger to the community" hearings required by s. 948.06(4), F.S., or the "violent felony offender of special concern" hearings required by s. 948.06(8)(e), F.S.

▪ **CS/HB 997**  
**Juvenile Civil Citations**

This bill requires juvenile civil citation programs or other similar diversion programs to be established at the local level. Currently, these local diversion programs are discretionary.

The bill specifies that they may be operated by any number of entities, including law enforcement, the Department of Juvenile Justice (DJJ), a juvenile assessment center, the county or city, or an entity selected by the county or city. Unlike current law, only first-time juvenile misdemeanants will be eligible to participate in a civil citation program. (Current law allows second-time juvenile misdemeanants to participate.)

The bill also provides that intervention services will be required during the civil citation program if a needs assessment determines such services are necessary.

Finally, the DJJ is required to encourage and assist with the implementation and improvement of civil citation programs or other similar diversion programs around the state. The DJJ must also develop guidelines for the civil citation program which include intervention services. The guidelines must be based on proven civil citation programs or other similar diversion programs within Florida.

▪ **HB 1029**  
**Interstate Compact for Juveniles**

The bill reenacts the statutes relating to the Interstate Compact for Juveniles (compact) and the State Council for Interstate Juvenile Offender Supervision (council) that expired by operation of law on August 26, 2010. The compact governs interstate movement of juveniles on probation and parole as well as extradition across state lines of runaways, escapees, absconders, and juveniles charged as delinquent. The bill reenacts the compact to do the following:

- Creates the Interstate Commission, which is an independent compact administrative agency with the authority to administer ongoing compact activity;
- Provides rule making authority for the Interstate Commission;
- Establishes a mechanism for all states to collect standardized information and information systems;
- Provides for sanctions against states that do not follow compact rules and regulations;
- Provides for gubernatorial appointments of representatives from member states to the Interstate Commission;
- Provides a mandatory funding mechanism sufficient to support essential compact operations;
- Provides for coordination and cooperation with other interstate compacts; and
- Requires the creation of state councils.

The bill also reenacts the Interstate Juvenile Offender Supervision Council (council) to do the following:

- Requires that the council consist of seven members comprised of the Secretary of the Department of Juvenile Justice (DJJ), the

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- compact administrator or his or her designee, the Executive Director of the Florida Department of Law Enforcement (FDLE) or his or her designee, and four remaining members to be appointed by the Governor, who may delegate this appointment power to the Secretary of DJJ in writing on an individual basis;
- Provides that appointees may include one victim's advocate, employees of the Department of Children and Family Services, employees of the FDLE who work with missing or exploited children, and a parent;
  - Applies provisions of public records/open meetings requirements to the council's proceedings and records;
  - Supplies terms of office, record storage, property transfer, and reimbursement for travel and per diem expenses; and
  - Creates additional duties and responsibilities for the compact administrator.
- **CS/HB 1039**  
**Controlled Substances/Bath Salts**

The bill amends s. 893.13(1)(c), F.S., to schedule in Schedule I of Florida's controlled substance schedules several psychoactive substances or "designer drugs" that have been sold in Florida as "bath salts" but are actually drugs much abused. These substances are:

- 3,4-Methylenedioxymethcathinone.
- 3,4-Methylenedioxypropylvalerone (MDPV).
- Methylenedioxymethcathinone.
- Methoxymethcathinone.
- Fluoromethcathinone.
- Methylethcathinone.

The effect of the scheduling of these substances is that offenses relating to possession, sale, etc., of Schedule I controlled substances will apply to these substances.

▪ **CS/CS/CS/HB 1111**  
**Family Law**

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and for which implementing legislation is pending approval by Congress, to be eventually adopted in each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Maintenance Convention). The 2008 UIFSA amendments affect existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Maintenance Convention. The bill builds on previously existing Florida law providing uniform standards for interstate enforcement of support orders to include enforcement procedures internationally. The bill designates the Department of Revenue as the support enforcement agency of the state, and it directs the department to apply for a waiver from the Federal Office of Child Support Enforcement pursuant to the state plan requirement under the Social Security Act upon passage of the bill.

In addition, the bill revises Florida law relating to alimony to:

- Provide that the court determine the proper type and amount of alimony or maintenance pursuant to statutory provisions that contain descriptions of the different types of alimony;

- Specify that durational alimony can be awarded following a long-term marriage if there is no need for permanent support;
- Require a showing of clear-and-convincing evidence to award permanent alimony in the case of a marriage of moderate duration;
- Require written findings of exceptional circumstances to award permanent alimony after a short-term marriage;
- Require the court to find that no other form of alimony is fair and reasonable before awarding permanent alimony;
- Specify that an alimony award may not leave the paying party with significantly less income than the receiving party unless there are written findings of exceptional circumstances;
- Specify that these provisions apply to all initial awards of alimony and modifications of awards of alimony entered after the effective date, but do not serve as a basis to modify awards entered before the effective date. The provisions are applicable to all cases pending on or filed after the effective date.

If the bill is approved by the Governor, the support provisions take effect upon the earlier of 90 days following Congress amending federal law to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under the Social Security Act. The provisions in the bill amending guidelines for the determination of alimony awards take effect July 1, 2011.

▪ **SB 2112**  
**Juvenile Detention Facilities**

This bill amends the following sections 985.686 and 985.688, F. S., allowing counties to operate their own detention facility if they cover

the financial cost of detention care for pre-adjudicated juveniles and providing that a county is exempt from the provisions of these sections of Florida Statutes if they are in compliance with specific provisions. They consist of the following:

- Counties must fund the entire cost for pre-adjudication detention for juveniles;
- Counties must authorize the county sheriff, any other county jail operator, or contract provider that is located inside or outside of the county to operate the facility;
- County sheriffs or other county jail operators must be accredited by the Florida Corrections Accreditation Commission or the American Correctional Association;
- Detention facilities must be inspected annually and meet the Florida Model Jail Standards;
- Counties or county sheriffs may form regional detention facilities through interlocal agreements in order to meet the requirements of this section;
- County sheriffs or other county jail operators must follow the federal regulations requiring sight and sound separation of juvenile inmates from adult inmates;
- If counties or county sheriffs comply with the provisions of this new subsection, they will not be subject to any additional training, procedures, or inspections required in Chapter 985, Florida Statutes.

▪ **SB 2114**  
**Juvenile Justice**

The bill amends s. 985.441, 985.0301, 985.033, and 985.46, F.S., to provide that a juvenile judge may not commit an adjudicated delinquent youth whose underlying offense is a misdemeanor to a restrictiveness level other than minimum-risk nonresidential if the youth is adjudicated with a



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misdemeanor or probation violation for a misdemeanor, other than a new law violation constituting a felony.

### ▪ **SB 2116** **State Judicial System**

- Authorizes the regional conflict counsels to establish a Direct Support Organization to benefit the offices and further their mission.
- Makes property title and vehicle searches for indigency determination optional by the clerk of court.
- Requires that payments for attorney fees in criminal conflict cases ordered by the court to be first paid from funds appropriated to the Justice Administrative Commission. After those funds are exhausted, additional payments ordered by the court shall come from funds appropriated to the state court system.
- Requires an agreement between counties and the Statewide Guardian Ad Litem Office when counties provide staff to local Guardian Ad Litem programs.
- Requires the Clerks of Court Operations Corporation to collect and summarize reports to the Legislature on a local surcharge on traffic tickets used to fund court facilities

### ▪ **SB 2118** **Criminal Justice**

Removes permissive language making it a requirement for a judge to assess the defendant convicted of a crime the current \$100 crime lab services fee if state or county crime lab services were performed in the investigation of the crime.

Eliminates the Department of Correction's authority to operate the Basic Training Program for youthful offenders ("boot camps").

Transfers all powers, duties and responsibilities relating to the operation of private correctional facilities (Private Prison Monitoring Bureau) from the Department of Management Services to the Department of Corrections.

This amendment has an effective date of July 1, 2011.

### ▪ **HB 4019** **Traffic Offenses**

The bill (Chapter 2011-9, L.O.F.) repeals a prohibition on coasting in a motor vehicle, with the gears of the vehicle in neutral or the clutch disengaged, while traveling on a downgrade.

### ▪ **HB 4067** **Repeal of Residence of the Clerk of the Circuit Court Act**

State Constitution provides for there to be an elected clerk of the circuit court in each county. The constitution also requires, in every county, that there be a county seat at which the principal offices and permanent records of the county are located. Section 28.08, F.S., requires the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat. The Legislature enacted the law in 1871. The act creating the requirement included the same requirement applicable to the county sheriff. The original act required compliance within three months, and it allowed the court to fine the clerk between \$100 and \$500 for noncompliance. This bill (Chapter 2011-10, L.O.F.) repeals the statutory requirement for the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat.

### ▪ **HB 4121** **Repeal of Prohibition of Clove Cigarettes**

The bill repeals the statutory prohibition against the sale, use, possession, transfer, or otherwise

disposing of clove cigarettes or similar products, which was enacted in 1985.

Despite a 1985 judicial injunction prohibiting the enforcement of the clove cigarette ban, the statute was never amended or repealed. This bill repeals the ban and aligns Florida Statutes with the injunction prohibiting enforcement of the ban.

▪ **HB 4159**  
**State Attorneys**

The bill eliminates the current reporting required of state attorneys in "10-20-Life" cases, prison releasee reoffender cases, habitual felony offender and habitual violent felony offender cases, and juvenile direct-file cases.

The bill further eliminates the requirement that the state attorney submit quarterly reports to the Legislature and the Governor regarding the prosecution and sentencing of offenders under the 10-20-Life law, with a copy being retained for 10 years by the Florida Prosecuting Attorneys Association, Inc. (FPAA), and made available to the public upon request. The prosecutor will maintain an explanation of the sentencing deviation in the prosecutor's file.

For those cases in which the defendant meets the criteria for being sentenced as a "prison releasee reoffender" but does not receive the mandatory minimum sentence, the bill eliminates the requirement for the state attorney to transmit these memoranda to the FPAA. The prosecutor will maintain an explanation of the sentencing deviation in the prosecutor's file.

The bill repeals the statute requiring the state attorney in each judicial circuit to adopt uniform criteria for determining when to pursue habitual felony offender and habitual violent felony offender sanctions. The requirement that any deviation from

the criteria must be explained in writing and placed in the court file is also eliminated in the repeal.

The bill repeals the requirement that the state attorneys in each judicial circuit develop policies and guidelines for filing juvenile cases in adult court, as well as the requirement that these policies and guidelines be submitted to the Legislature and the Governor no later than January 1 of each year.

The bill deletes a cross-reference to s. 775.08401, F.S., relating to the establishment of criteria for prosecution of habitual offenders and habitual violent felony offenders, which is repealed under the bill.

▪ **HB 5011**  
**Commission on Capital Cases**

- Repeals the Commission of Capital Cases from section 27.709, Florida Statutes.
- Requires the executive director of the Justice Administrative Commission to maintain the registry of capital collateral qualified attorneys.
- Requires the executive director of the Justice Administrative Commission to request additional attorneys to add to the registry when fewer than 50 attorneys are listed statewide on the registry.

▪ **HB 5401**  
**Cybercrime Office**

The amendment repeals s. 16.61, F.S., and creates s. 943.0415, F.S., transferring the Cybercrime Office from the Department of Legal Affairs to the Department of Law Enforcement. ▪



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**PUBLIC RECORDS**

*Including legislation relating to:*

- *New Exemptions*
- *Open Government Sunset Reviews (OSGR)*



**PUBLIC RECORDS**

▪ **CS/HB 409  
Public Records/Intelligence/  
Investigative Information**

The bill amends s. 119.071, F.S., to expand the current public-records exemption in that section 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, regardless of whether it identifies the victim. Specifically, the bill expands the exemption to include that same information in the case of a victim of the sexual offense of video voyeurism under s. 810.145, F.S.

The bill provides that the exemption stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the expansion of the exemption as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill, thereby ensuring the exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

▪ **CS/HB 411  
Public Records/Photos and  
Recordings/Killing of Person**

This bill creates an exemption from public records requirements for photographs and video and audio recordings that depict or record the killing of a person. (The exemption is comparable to the public records exemption in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.) The exemption is subject to the Open

Government Sunset Review Act and as such, will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.

The exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings that depict or record the killing of a person. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain the exempted records.

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order. Knowingly violating these provisions is a third degree felony.

The public records exemption created in the bill is given retroactive application, with exceptions. The public records exemption created in the bill does not apply to any order in effect on July 1, 2011, which was duly entered by a court of this state and which restricts or limits access to any photograph or video or audio recording that depicts or records the killing of a person.

▪ **CS/HB 579  
Public Records for Regional  
Autism Centers**

This bill creates a public-records exemption for all records that relate to a client of a regional autism center

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who receives the services of a center or participates in center activities, and for all the records that relate to the client's family. The bill specifies circumstances under which the records may be released. Additionally, the bill creates a public-records exemption for the personal identifying information of a donor or prospective donor to a regional autism center who desires to remain anonymous. The bill provides a statement of public necessity for the public-records exemptions as required by the Florida Constitution and the bill provides that the exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.

▪ **HB 597**  
**Public Records/Agency  
Emergency Notification  
Information**

This bill creates an exemption from public records requirements for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address. The bill provides for retroactive application of the exemption and for legislative review and repeal under the provisions of the Open Government Sunset Review Act.

The bill provides a statement of public necessity as required by the State Constitution.

▪ **CS/HB 667**  
**Public Records/Local  
Government Inspector General**

This bill creates an exemption from statutory and constitutional public records requirements for information received as part of active investigations of the inspector general

on behalf of a unit of local government.

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.

▪ **CS/HB 677**  
**Public Records/Office of  
Financial Regulation**

This bill makes information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law and information that is received or developed by the Office of Financial Regulation (OFR) as part of a joint or multiagency investigation or examination confidential and exempt from s. 119.07(1), F.S., and s. 24(1), Art. I of the State Constitution.

The bill authorizes OFR to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation of financial institutions. The bill provides for retroactive application of the exemption. In accordance with the Open Government Sunset Review Act, the exemption will be repealed on October 2, 2016, unless reviewed and saved from repeal by the Legislature, and a statement of public necessity, as required by the State Constitution, is provided.

▪ **CS/HB 913**  
**Public Records/Records Held  
by Public Airports**

This bill creates public records exemptions for:

- Proprietary confidential business information held by a public airport. The exemption expires when the confidential and exempt information is otherwise publicly available or is no longer treated

- by the proprietor as proprietary confidential business information.
- Trade secrets held by a public airport.
  - A proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities. The public records exemption expires upon approval by the governing body of a public airport. If a proposal or counterproposal is not submitted to the governing body for approval, then the public records exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill creates definitions for terms used in the exemptions.

The bill provides for repeal of the exemptions pursuant to the Open Government Sunset Review Act unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

▪ **CS/HB 1473**  
**Public Records/Florida Health Choices Program**

The bill creates exemptions from the state's public records requirements for specified types of information relating to enrollment or participation in the Florida Health Choices program.

The Florida Health Choices program is a single, centralized marketplace for the sale and purchase of health care coverage, including, but not limited to, health insurance plans, health maintenance organization (HMO) plans, prepaid health services, and flexible spending accounts. Policies sold under the program are exempt from regulation under the Florida Insurance Code and laws governing HMOs. Current

law specifies entities eligible to purchase products through, and participate in, the program; vendors eligible to participate in the program; and individuals eligible to enroll in the program.

The bill creates a public record exemption for the following information held by the program:

- Personal identifying information of an enrollee or participant who has applied for or participates in the program;
- Client lists and customer lists of a buyer's representative; and
- Proprietary confidential business information.

The bill provides for retroactive application of the public record exemptions to cover information held by the program before, on, or after the effective date of the exemptions. It provides exceptions to the exemptions and provides criminal penalties for violation of the public record exemptions.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

▪ **SB 1970**  
**Public Records/OPPAGA**

The Auditor General, of which the Office of Program Policy Analysis and Government Accountability (OPPAGA), has a public-records exemption for audit workpapers and notes.

Because SB 1204 establishes OPPAGA as an entity separate from the Auditor General, this bill creates a public-records exemption for work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product. The exemption applies to



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workpapers held by OPPAGA before, on, or after the effective date of the exemption.

### ▪ **HB 7075** **OGSR/DJJ Employees and Family Members**

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the Department of Juvenile Justice, their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The personal information covers home addresses, telephone numbers, photographs, spouse's places of employment, and children's schools and daycare locations.

The covered direct care employees include the following: juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, social service counselors, and rehabilitation therapists.

### ▪ **HB 7077** **OGSR/Biometric Identification Information (Fingerprints)**

The bill reenacts s. 119.071(5)(g), F.S., which exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of the exemption. Biometric identification information consists of any record of friction

ridge detail, fingerprints, palm prints, and footprints.

### ▪ **HB 7079** **OGSR/Florida Center for Brain Tumor Research**

This bill modifies and reenacts the public records exemption for the Florida Center for Brain Tumor Research under s. 381.8531, F.S. The public records exemption is modified by making confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I of the Florida Constitution all personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry.

The bill authorizes the disclosure of such personal identifying information for bona fide research purposes, if the researcher submits a research plan that has been approved by an institutional review board, signs a confidentiality agreement, maintains the confidentiality of the information received, and destroys the confidential information after the research has concluded.

This bill extends the repeal date from October 2, 2011, to October 2, 2016, and provides a public necessity statement.

### ▪ **HB 7081** **Open Government Sunset Review/Statewide Public Guardianship Office**

The bill saves from repeal the public-records exemption under s. 744.7082(6), F.S., for the identity of donors or potential donors to the direct-support organization affiliated with the Statewide Public Guardianship Office. The exemption currently is scheduled for repeal on October 2, 2011, unless retained by the Legislature following a review under the Open Government Sunset Review Act.

▪ **HB 7083**  
**Open Government Sunset Review/Interference with Custody**

This bill is the result of the Legislature's Open Government Sunset Review of a public-records exemption for information submitted to the sheriff or state attorney for the purpose of obtaining immunity from prosecution for the offense of interference with custody. Under the offense of interference with custody, it is a third-degree felony for any person – without legal authority – to knowingly or recklessly take a minor or any incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian. It is also a third-degree felony – in the absence of a court order determining custody or visitation rights – for a parent, stepparent, legal guardian, or relative who has custody of a minor or incompetent person to take or conceal the minor or incompetent person with a malicious intent to deprive another person of his or her right to custody. There is an exception, however, in cases in which a person is the victim of domestic violence, has reasonable cause to believe he or she is about to become the victim of domestic violence, or believes that the action was necessary to preserve the minor or the incompetent person from danger. For the exception to apply, a person who takes a minor or incompetent person must, within 10 days of the taking, make a report to the sheriff or state attorney for the county in which the minor or incompetent person resided. The report must include the name of the person taking the minor or incompetent person, the current address and telephone number of the person and the minor or incompetent person, and the reasons the minor or incompetent person was taken.

Currently, the public-records exemption protects from disclosure the current address and telephone number of the person who takes a minor or incompetent person, as well as the address and telephone number of the minor or incompetent person, contained in the report to the sheriff or state attorney. The bill retains the public-records exemption by deleting language providing for the scheduled repeal of the exemption. The exemption will expire on October 2, 2011, unless the reenactment by the Legislature becomes law.

▪ **HB 7085**  
**Open Government Sunset Review/Court Monitors in Guardianship Cases**

Court monitoring is a mechanism courts use to review a guardian's activities, assess the well-being of the ward, and ensure that the ward's assets are being protected. Court monitors may be appointed by a court, on a nonemergency or an emergency basis, upon inquiry by an interested person or upon its own motion. A court monitor has the authority to investigate, seek information, examine documents, and interview the ward. The court monitor's findings must be reported to the court, and if it appears from the monitor's report that further action by the court is necessary to protect the ward's interests, the court must hold a hearing and enter any order necessary to protect the ward. In conjunction with the creation of the court monitor system in guardianship proceedings, the Legislature created exemptions from public access to judicial records related to court monitors. This bill is the result of the Legislature's Open Government Sunset Review of the public-records exemptions for orders appointing nonemergency and emergency court monitors, monitors' reports, and orders finding no probable cause in guardianship proceedings. The bill retains the public-records exemptions

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and makes organizational changes for clarity. The bill also removes the confidential status of court orders appointing nonemergency court monitors and makes these orders exempt rather than confidential and exempt. In addition, the bill eliminates a reference to “court determinations” in the public-records exemption relating to determinations and orders finding no probable cause for further court action because, in practice, the probable cause determination is typically contained in a written order included in the guardianship file. These public-records exemptions stand repealed on October 2, 2011, unless the reenactment by the Legislature becomes law.

### ▪ **HB 7159** **OGSR/Commission on Ethics** **Audits and Investigations**

House Bill 7159 is the result of an Open Government Sunset Review of an existing exemption for records and meetings relating to an audit or investigation of lobbyists, principals of lobbyists, and lobbying firms who lobby the executive branch or the Constitution Revision Commission. The exemption applies only until either the Commission determines whether probable cause exists to believe a violation of the executive branch lobbying and reporting provisions occurred or until the subject of the audit or investigation waives confidentiality in writing. The bill permanently reenacts the existing exemption but clarifies that only portions of meetings conducted pursuant to such an audit or investigation are confidential. The clarification prevents the Commission from hearing otherwise public matters in a confidential or executive session.

### ▪ **HB 7161** **OGSR/Concealed Weapons or** **Firearms**

Current law provides that personal identifying information of an

individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Division of Licensing of the Department of Agriculture and Consumer Services, is confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution. There is no other governmental agency that collects this particular information from applicants, and it cannot be obtained by the public from another source. The information is not protected by another exemption, nor do multiple exemptions for the same type of information exist. An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant’s completion of a firearms course, and a full frontal view color photograph of the applicant. The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and,
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense. The exemption applies to such information held by the division before, on, or after the effective date of the exemption. Such information may be released only:

- With the express written consent of the applicant or licensee or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services. Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature. This bill reenacts the public records exemption in s. 790.0601, F.S.

▪ **HB 7223**  
**OGSR/Competitive Solicitations**

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Agency procurements of commodities or contractual services exceeding \$35,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).

Current law provides general public record and public meeting exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an ITB, RFP, or ITN, are exempt from public records requirements until a time certain. In addition, a meeting at which a negotiation with a vendor is

conducted pursuant to an ITN is exempt from public meetings requirements. A complete recording must be made of the exempt meeting. The recording is exempt from public records requirements until a time certain.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2011, if this bill does not become law.

The bill expands the public record exemption by extending the exemption for sealed bids and replies from 10 days to 30 days, and by extending the public record exemption for sealed responses from 20 days to 30 days. The change also makes the timeframes consistent.

The bill expands the public meeting exemption to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team meeting at which negotiation strategies are discussed.

The bill expands the public record exemption for recordings of exempt meetings to comport with the public record exemption for sealed bids, proposals, or replies. It extends the public record exemption from 20 days to 30 days. It also expands the public record exemption by including those records presented by a vendor at a closed meeting.

The bill extends the repeal date from October 2, 2011, to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.

The bill may have an insignificant fiscal impact on state and local governments.

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### ▪ **HB 7225** **OGSR/SBA Alternative** **Investments**

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for proprietary confidential business information held by the State Board of Administration (SBA) regarding alternative investments. The exemption expires 10 years after the termination of the alternative investment. It applies to proprietary confidential business information held by the SBA before, on, or after October 1, 2006.

Under current law, a request to inspect or copy a record that contains proprietary confidential business information must be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the SBA, to verify through a written declaration that a particular record contains certain information. Any person may petition a court of competent jurisdiction in Leon County, Florida, for an order for the public release of those portions of any record made confidential and exempt.

The bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law. The bill revises the definition of what does not constitute proprietary confidential business information. In addition, it requires the SBA to maintain a list and a description of the records covered by any verified, written declaration made by a proprietor. ■

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**TAXATION**



**TAXATION**

▪ **HB 143  
Economic Development/Tax  
Conforming Bill**

❖ *Emergency Excise Tax Repeal*

The bill repeals the Emergency Excise Tax, and allows taxpayers with unused credits related to the Emergency Excise Tax to take those credits against corporate income tax.

❖ *Entertainment Industry Financial Incentive Program*

The bill increases the credit limit from \$38 million to \$42 million per year for fiscal years 2012-13, 2013-14, 2014-15. The bill grants three types of credit bonuses: productions that use “underutilized” areas of the state receive an additional 5 percent credit; productions receive an additional 15 percent credit for payroll expenses paid to full-time Florida film school students or recent Florida film school graduates; and productions receive an additional 5 percent credit for conducting at least 50 percent of their photography or digital media production in Florida.

The bill removes television series and television pilots from the general production queue if more than 25 percent of credits for the life of the program have been issued to television series.

The bill moves digital media production to the first queue slot if less than 20 percent of credits have been awarded to digital media production.

The bill limits high-impact television series to applying for a maximum of two initial seasons, and then the series may only add an additional season as it finishes each season.

The bill limits total combined credits for a project to 30 percent of production expenses.

❖ *Enterprise Zone Provisions*

The bill provides local governments the ability to apply to the Office of Tourism, Trade, and Economic Development for expansion of rural enterprise zones by up to 3 square miles. The bill provides authority for Martin County and Lake County to apply for designation of an Enterprise Zone of up to 10 square miles, and for the City of Palm Bay to apply for designation of an Enterprise Zone of up to 5 square miles.

❖ *Single Sales Factor Apportionment*

The bill permits companies that make \$250 million in qualified expenditures within Florida over a two-year period, beginning no earlier than July 1, 2011, to use a single sales factor formula in order to apportion their taxable income for Florida corporate income tax purposes. In order to qualify, the company must notify the Office of Tourism, Trade, and Economic Development of the company’s intent to begin making qualifying expenditures, and the company must complete its expenditures and apply for approval within 2 years.

❖ *Spaceflight Tax Credits*

The bill creates corporate income tax incentives for businesses engaged in spaceflight activities within Florida. The program creates two corporate tax credits and is time-limited – no credit may be approved after October 1, 2017. In order to qualify for a credit, the business must engage in:



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- the design, manufacture, testing, or assembly of space vehicles;
- providing services related to spaceflight launch, payload processing, or reentry;
- providing spaceflight payload;
- providing launch or reentry vehicles for space tourists; or
- providing the administrative support for such businesses. In order to obtain a credit, a qualifying company must apply to the Office of Tourism, Trade, and Economic Development and be approved. The total amount that may be approved for all credits, for all years is \$10 million. The first incentive is a corporate tax credit equal to 50 percent of the business's corporate income tax liability in a given year. This credit cannot be transferred and is limited to \$3 million for all years. The second incentive allows a business with a net operating loss to convert the net operating loss into a credit that can be sold to third parties. The total credit amount is limited to \$7 million for all years. A certified spaceflight business may be approved for both incentives, but not in the same year.

### ❖ *Research and Development Credits*

The bill provides an annual corporate income tax credit for expenses related to research and development in Florida. The taxpayer must have also received the related federal credit for research and development on the same expenses. The Florida credit is equal to 10 percent of the excess of the current year's expenses over the corporation's average

research and development expenses for the prior 4 years. The total annual amount of credit authorized is \$9 million.

### ❖ *Sales Tax Holiday*

The bill provides that no sales and use tax will be collected on the sale of books, clothing, wallets, or certain bags having a selling price of \$75 or less during the 3-day period beginning 12:01 a.m., Friday, August 12, 2011, through 11:59 p.m., Sunday, August 14, 2011. The bill also provides that no sales and use tax shall be collected on sales of certain school supplies having a selling price of \$15 or less per item during that same period of time. The temporary exemption does not apply to sales within theme parks, public lodgings or airports, as defined by statute.

### ❖ *Special Impact Estimating Conferences*

The bill provides for the creation of special impact estimating conferences, which will require the appointment of 4 principals each time a special impact session is requested by the President of the Senate or the Speaker of the House of Representatives. These principals would be one each from the Executive Office of the Governor, the Office of Economic and Demographic Research, Senate professional staff, and House of Representatives professional staff and will be appointed based on their appropriate fiscal expertise in the subject matter of the proposal to be evaluated.

### ❖ *Brownfield Rehabilitation Tax Credits*

The bill increases from \$2 million to \$5 million the corporate income tax credits that are annually available to partially compensate taxpayers that voluntarily clean up dry-cleaning solvent-contaminated or brownfield sites.

❖ *Florida Defense Support Task Force*

The bill creates the Florida Defense Support Task Force. The task force's mission is to prepare the state to compete in any federal base realignment and closure action, to support the state's position in militarily-related research and development, and to improve the state's military-friendly environment.

❖ *Appropriations*

The bill contains four appropriations of nonrecurring General Revenue to the Office of Tourism, Trade and Economic Development for the following purposes:

- \$5 million for the Florida Defense Support Task Force;
- \$15 million for the Innovation Incentive Fund program;
- \$42 million for the Quick Action Closing Fund program; and
- \$10 million for the Institute for the Commercialization of Public Research.

The bill also provides an appropriation to the Department of Revenue for administration of the Sales Tax Holiday.

▪ **SB 270**  
**Property Tax Discounts for Early Payment**

This bill increases the discount rates for early payment of property taxes. Lowers the percentage of certified taxable value to be used by taxing authorities in preparing tentative budgets. Increases the discount rates for prepayment of property tax by the installment method.

▪ **CS/CS/CS HB 281**  
**Value Adjustment Boards**

This bill requires a value adjustment board petitioner that is challenging an assessment to pay all non-ad valorem assessments and make a partial payment of at least 75

percent of taxes due before the taxes become delinquent on April 1.

Taxpayers that challenge the denial of a classification or exemption, or argue that the property was not substantially complete on the date of assessment must pay the non-ad valorem assessments and must make a "good faith" payment of the tax. If the value adjustment board determines that the payment was grossly disproportionate to what was owed and was not made in good faith, the tax collector is to collect a 10 percent penalty. The bill requires the value adjustment board to deny the petition by April 20, if the required payment is not timely made.

If the value adjustment board determines that the petitioner owes taxes in excess of the amounts paid, the unpaid amount shall accrue interest at 12 percent per year from the date the payment was due. If the value adjustment board determines that the amount paid is more than what is ultimately due, the excess amount paid accrues interest at the rate of 12 percent per year from the date the taxes became delinquent.

The provisions of the bill do not apply to petitions for tax deferrals.

This bill further provides that the current 4 percent property tax discount for early payment shall apply, but only if the corrected tax notice is mailed prior to the date the taxes become delinquent.

▪ **CS/CS/CS/HB 311**  
**Local Business Taxes**

Under the bill, employees are not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax. For local business tax purposes, the bill defines independent contractors by reference to the current statutory definition in s. 440.02(15)(d)1. a. and b., F.S. Under the bill, independent contractors are not

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employees, but individuals licensed and operating as a real estate broker or sales associate are employees.

The bill specifies that employees may not be held liable for failure of their employer to apply for an exemption or pay the tax. Local governments may not require exempt individuals to apply for an exemption or pay the tax. Employers may not be required to provide personal or contact information for exempt individuals in order to obtain a local business tax receipt.

The newly-created employee exemption is retroactive to October 13, 2010, but the bill states that the exemption does not apply to business taxes imposed before that date.

The bill removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

The bill adds language to expand the types of professions that must prove active certification to include any profession regulated by the Florida Supreme Court or any state regulatory agency.

The bill explicitly allows certification renewals to be completed online.

### ▪ **CS/SB 478** **Property Taxation**

This bill revises, updates and consolidates provisions of chapter 197 of the Florida Statutes relating to tax collections, sales and liens in order to conform to present day collection technology methods. The bill tolls the statute of limitations relating to proceedings involving tax

lien certificates or tax deeds to the period of intervening bankruptcy. The bill amends requirements for tax deed applications and the purchase of tax certificates to provide definitions and include interest, fees, and costs in the face value of the certificate. The bill provides for electronic notice, programs, sales, and fees. The bill also authorizes tax collectors to issue certificates of correction to the tax rolls for uncollectable personal property accounts. The bill consolidates provisions relating to the payment of deferred taxes.

### ▪ **SB 484** **Discriminatory** **Taxes/Reinsurance**

The Memorial urges the 112th Congress to refrain from imposing new taxation on foreign companies that sell reinsurance in the United States.

### ▪ **CS/HB 641** **Tax Administration**

#### ❖ *Estate Tax Filing Requirement*

The bill extends until December 31, 2012, a provision that relieves an estate with a zero Florida tax liability from the requirement to file an estate tax return.

#### ❖ *Beverage and Tobacco* *Wholesaler Reports*

The bill requires alcohol and tobacco wholesalers to annually provide information to the Department of Revenue regarding sales to retailers. The information will assist in the Department's enforcement of the state sales tax.

### ▪ **CS/CS/CS/HB 887** **Communications Services Tax**

The bill requires that each provider of communications services compute the tax due on the sale using a rounding algorithm that carries to the third decimal place and rounds up to a whole cent whenever the third

decimal place is greater than four. A provider may calculate the tax on individual taxable items on an invoice or on all taxable items on the invoice; however, the total tax amount must be at least the amount that would have been obtained if the rounding algorithm had been applied to the aggregate tax amount computed on all taxable items on the invoice. The local and state tax must be calculated separately. The bill is intended to be remedial in nature and to apply retroactively. It does not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before July 1, 2011.

▪ **CS/CS/HB 965**  
**Florida Tax Credit Scholarship Program**

The bill makes three changes to the Florida Tax Credit Scholarship Program, which allows private, voluntary contributions from corporate donors to a nonprofit scholarship-funding organization (SFO). Under the bill, a corporation that contributes to the scholarship program for eligible economically disadvantaged students may claim the tax credit for donations to an eligible SFO up to the full amount of its state corporate income tax and insurance premium tax, instead of up to 75 percent of its tax. Taxpayers are permitted to carry forward an unused tax credit for up to five years. Additionally, the bill removes the prohibition against taxpayers rescinding tax credits unless the taxpayer has rescinded the credit less than once in the previous three tax years.

▪ **HB 1141**  
**Ad Valorem Tax Exemption for Deployed Service Members**

The bill implements an amendment (Amendment 2) to s. 3, Art. VII of the State Constitution, which was approved by voters in the November 2010 General Election. The

constitutional amendment provides an additional homestead property tax exemption for a member or former member of the United State military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard who receives a homestead exemption and was deployed in the previous year on active duty outside the continental United States, Alaska, or Hawaii in support of a designated military operation. The exempt amount is based upon the taxable value of the homestead of the service member on January 1 of the year in which the exemption is sought multiplied by the number of days that the service member was on a qualifying deployment in the preceding calendar year and divided by the number of days in that year.

The bill designates that service members who were deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn are eligible for the exemption.

The bill requires the Department of Military Affairs to annually submit to the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which service members based in the continental United States have been deployed during the previous calendar year.

The bill also provides procedures to claim the exemption, in which a service member, or a qualified designee, must file an application for exemption with the property appraiser on or before March 1 of the year following the year of the qualifying deployment. The bill requires the Department of Revenue (DOR) to prescribe a form for the application of the exemption and also permits DOR to adopt

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emergency rules to administer the provisions in the bill.

In addition, the bill provides procedures for property appraisers to apply or deny the partial ad valorem tax exemption.

Finally, the bill provides special provisions relating to the implementation of the tax exemption for the 2010 calendar year, in which the exemption will be applied to the ad valorem tax rolls for 2011. The deadline for eligible service members to claim the additional tax exemption for a qualifying deployment during the 2010 calendar year is June 1, 2011.

If approved by the Governor, these provisions take effect upon becoming law, and first apply to ad valorem tax rolls for 2011.

### ▪ **CS/CS/CS/HB 1163 Ad Valorem Taxation**

This bill provides statutory implementation of House Joint Resolution (HJR) 381 should the joint resolution be approved by the voters in November of 2012. The bill reduces the limitation on annual assessment increases applicable to non-homestead property and certain residential and nonresidential property from 10 percent to 5 percent, except that changes, additions, and improvements begin being assessed at just value.

The bill also provides an additional homestead exemption for specified "first-time Florida homesteaders," who have established the right to receive a homestead exemption as provided in s. 196.031, F.S., within one year after purchasing homestead property and who have not owned property and received a homestead exemption in the past three calendar years. The bill allows a "first-time Florida homesteader" to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property, not to

exceed the median just value of all homestead property within the county. The additional exemption applies for a period of five years or until the property is sold and shall be reduced by 20 percent of the initial exemption on January 1 of each succeeding year until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies.

The bill grants the Florida Department of Revenue emergency rulemaking authority in order to implement the provisions of this bill and requires an annual appropriation, beginning in the 2012-2013 fiscal year, to offset ad valorem revenue reductions experienced by fiscally constrained counties, as defined in s. 218.67(1), F.S., due to the constitutional revisions contained in HJR 381.

This bill shall take effect upon becoming law. If provisions of this bill take effect upon approval of HJR 381 at the 2012 presidential preference primary, the provisions shall apply retroactively to the 2012 tax roll. If provisions of this bill take effect upon approval of HJR 381 at the November 2012 general election, the provisions shall apply to the 2013 tax roll.

### ▪ **HB 7185 Corporate Income Tax**

The bill updates the Florida Income Tax Code to adopt the federal Internal Revenue Code in effect on January 1, 2011, but expressly excludes the increases in depreciation and expensing deductions provided in federal legislation adopted in 2010. For the increased deductions, the bill allows Florida corporations to get the benefit by spreading the deductions over a 7-year period.

The bill also increases the corporate income tax exemption from \$5,000 to \$25,000.▪

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**PROPOSED CONSTITUTIONAL AMENDMENTS**



**FLORIDA PROPOSED CONSTITUTIONAL AMENDMENTS: 2012**

The following proposed amendments to the Florida Constitution have passed the 2011 Florida Legislature. These proposals are not subject to gubernatorial review, but each are now subject to approval by Florida voters in November of 2012. Proposed constitutional amendments require a 60 percent voter approval to be adopted.

▪ **SJR 2**  
**Health Care Services**

The proposal prohibits any laws or rules from compelling any person or employer to purchase, obtain, or otherwise provide for health care coverage. The proposal permits a person or an employer to purchase lawful health care services directly from a health care provider, and permits a health care provider to accept direct payment from a person or an employer for lawful health care services. The proposal shall be submitted to the voters at the 2012 General Election, or at an earlier special election specifically authorized by law for that purpose.

▪ **HJR 381**  
**Property Taxation**

The comprehensive proposal:

1. Provides that the Legislature may, by general law, provide that the assessment of homestead and specified non-homestead property may not increase if the just value of the property is less than the just value of the property on the preceding January 1, subject to any adjustment in the assessed value due to changes, additions, reductions, or improvements to such property which are assessed as provided for by general law. This amendment takes effect upon approval by the voters. If approved at a special election

- held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, shall take effect January 1, 2013.
2. Reduces from 10 percent to five percent the limitation on annual changes in assessments of non-homestead real property. The proposal takes effect upon approval of the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, takes effect January 1, 2013.
3. Authorizes an additional homestead exemption to every person qualified to receive a homestead exemption within one year after purchasing the homestead property, and who has not owned property in the previous three calendar years to which the Florida homestead exemption applied. The additional homestead exemption shall apply to all levies except school district levies. The additional exemption is an amount equal to 50 percent of the homestead property's just value on January 1 of the year the homestead is established. The additional homestead exemption may not exceed an amount equal to the median just value of all homestead property within the county where the property at issue is located for the calendar year immediately preceding January 1 of the year the homestead is established. The additional exemption shall apply for the shorter of five years or the year of sale of the property. The amount of the



- additional exemption shall be reduced in each subsequent year by an amount equal to 20 percent of the amount of the additional exemption received in the year the homestead was established, or by an amount equal to the difference between the just value of the property and the assessed value of the property determined under Article VII, Section 4(d), whichever is greater. Not more than one such exemption shall be allowed per homestead property at one time. The additional exemption applies to property purchased on or after January 1, 2011, if approved by the voters at a special election held on the date of the 2012 presidential preference primary, or to property purchased on or after January 1, 2012, if approved by the voters at the 2012 General Election. The additional exemption is not available in the sixth and subsequent years after it is first received. The amendment shall take effect upon approval by the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, takes effect January 1, 2013.
4. Delays until 2023, the repeal (currently scheduled to take effect in 2019) of constitutional amendments adopted in 2008 that limit annual assessment increases for specified non-homestead real property. This amendment delays until 2022 the submission of an amendment proposing the abrogation of such repeal to the voters.

### ▪ **SJR 592** **Veterans Disabled Due to Combat Property Tax Discount**

The proposal expands the availability of the property discount on the homesteads of veterans who became disabled as the result of a combat injury to include those who were not Florida residents when they entered the military and schedule the amendment to take effect January 1, 2013.

### ▪ **SJR 958** **State Revenue Limitation**

The proposal replaces the existing state revenue limitation based on Florida personal income growth with a new state revenue limitation based on inflation and population changes. Under the proposal state revenues collected in excess of the revenue limitation must be deposited into the budget stabilization fund ("Rainy Day Fund") until the fund reaches its maximum balance, and thereafter shall be used for the support and maintenance of public schools by reducing the minimum financial effort required from school districts, or, if the minimum financial effort is no longer required, returned to the taxpayers.

The Legislature may increase the state revenue limitation through a bill approved by a super majority vote of each house of the Legislature. The Legislature may also submit a proposed increase in the state revenue limitation to the voters. The amendment, if approved by the voters, will apply to the 2014-2015 state fiscal year.

### ▪ **HJR 1179** **Prohibition of Public Funding for Abortion**

The proposal prohibits the use of public funds for any abortion or for health benefits coverage that includes coverage of abortion. This prohibition does not apply to an

expenditure required by federal law, a case in which a woman suffers from a physical disorder, physical injury, or physical illness that would place her in danger of death unless an abortion is performed, or a case of rape or incest. The proposal provides that the State Constitution may not be interpreted to create broader rights to an abortion than those contained in the United States Constitution. With respect to abortion, the proposal overrules court decisions that conclude that the right of privacy under Article I, Section 23 of the State Constitution is broader in scope than that of the United States Constitution.

▪ **HJR 1471**  
**Religious Freedom**

The proposal makes the State Constitution consistent with the United States Constitution and provides that no individual or entity may be denied, on the basis of religious identity or belief, governmental benefits, funding, or other support, and to delete the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution. The proposal essentially eliminates Florida's "Blaine Amendment" originally adopted in 1895.

▪ **HJR 7111**  
**Supreme Court and State Courts**

The proposal revises Article V of the State Constitution relating to the judiciary. It changes the authority of the Legislature to repeal a court rule by 2/3 vote of the membership of each house to a simple majority of each house. The proposal limits the Supreme Court's ability to readopt a rule repealed by the Legislature. It also requires Senate confirmation before a justice may take office, but provides that if the Senate does not act within 90 days the nominee is

deemed confirmed as a justice. The Senate is permitted to meet outside of regular session without having the House of Representatives convene at the same time. The proposal requires the Judicial Qualifications Commission to provide the House of Representatives access to records and it provides for the confidentiality of records. This proposal will take effect January 7, 2013, if approved by the electors. ▪



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