1998 SESSION SUMMARY

Major Legislation Passed

Compiled and Edited by
Office of the Senate Secretary

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AGRICULTURE

SB 1010 — Agriculture Emergency Eradication Trust Fund
by Senator Bronson

This bill creates the Agricultural Emergency Eradication Trust Fund through the office of the Commissioner of the Department of Agriculture and Consumer Services. When the commissioner certifies that an agricultural emergency exists and that funds specifically appropriated for the emergency's purpose are exhausted or insufficient to eliminate the emergency, funds would be provided from the Agricultural Emergency Eradication Trust Fund. The bill defines agricultural emergency as an animal or plant disease, insect infestation, or plant or pest endangering or threatening the horticultural, aquacultural, and agricultural interests of the state. For FY 1998-99, up to $10 million collected in the Agricultural Emergency Eradication Trust Fund is to be transferred to the Plant Industry Trust Fund to provide for any existing or future declared agricultural emergencies.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 114-1

CS/SB 1088 — Agriculture Emergencies
by Agriculture Committee and Senator Bronson

This bill provides funding sources for the Agricultural Emergency Eradication Trust Fund (AEETF), which was created upon adoption of SB 1010. It transfers 0.65 percent of both highway fuel sales tax and State Comprehensive Enhanced Transportation Systems tax net proceeds on motor fuel from the State Transportation Trust Fund (STTF) to the AEETF.

The bill provides that the transfer of funds to the AEETF pursuant to ss. 206.606 and 206.608, F.S., are subject to the following provisions:

- If the unobligated balance of the AEETF exceeds $20 million, the transfers shall be discontinued until the unobligated balance of the trust fund falls below $10 million, at which time such transfers shall be reinstated to return the balance to $20 million;

- A change in transfers shall take effect on the first day of the month after 30 days' notification to the Department of Revenue by the Department of Agriculture and Consumer Services when the unobligated balance of the trust fund exceeds or falls below the set limit; and

- Any refunds of the tax imposed under s. 206.41(1)(f), F.S., claimed under s. 206.41(4)(c)1., F.S., in excess of such refunds claimed during the fiscal year preceding the effective date of the act shall be deducted from the amount transferred pursuant to s. 206.608(1), F.S., during the year the claims are made, to the AEETF. Any refunds of the tax imposed under s. 206.41(1)(g), F.S., claimed under s. 206.41(4)(c)1, F.S., in excess of such refunds claimed during the fiscal year preceding the effective date of the act shall be deducted from the amount transferred pursuant to s. 206.606(1)(d), F.S., during the year the claims are made, to the AEETF.

The bill requires the Commissioner of Agriculture to notify the Governor, the President of the Senate, and the Speaker of the House of Representatives when he certifies that an agricultural emergency exists and that funds from the Agricultural Emergency Eradication Trust Fund will be used.

The bill also appropriates $1 million from the General Revenue Fund to the AEETF in FY 1998-99, and, in subsequent fiscal years appropriates an amount equal to the previous year's transfers into the AEETF from the above mentioned motor fuel taxes.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 113-1

CS/HB 489 — Ad Valorem Tax/Agricultural Crops

by Agriculture Committee, Reps. Minton, Putnam and others (SB 410 by Senator Bronson)

This bill addresses the problem of extreme fluctuations in the year-to-year property tax assessments of agricultural lands. It requires county property appraisers to rely on the 5-year moving average data for property used for all agricultural commodities. Factors included in the equation are all averaged over a 5-year period, including the factors that make up the capitalization rate. This method would prevent periodic spikes in agricultural land assessments which occur due to the current annual appraisal process.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 115-0

CS/HB 3671 — Timber Management

by Agriculture Committee and Rep. Sembler (CS/SB 840 by Agriculture Committee and Senator Bronson)

This bill authorizes the Division of Forestry of the Department of Agriculture and Consumer Services to manage timber on state-owned lands if the lead management agency determines that timber management is not in conflict with primary management objectives. All agency land management plans must include a section prepared by a qualified professional forester which assesses the feasibility of managing the timber on a parcel for resource conservation and revenue generation purposes through a stewardship ethic that embraces sustainable forest management practices. The bill defines "sustainable forest management" as meeting the needs of the present without compromising the ability of future generations to meet their own needs by practicing a land stewardship ethic which integrates reforestation, managing, growing, nurturing, and harvesting trees for useful products while conserving soil, air and water quality, wildlife and fish habitat.

The Legislature intends that each lead management agency, whenever practicable and cost effective, use the services of the Division of Forestry or other qualified private sector professional forester in completing such feasibility assessments and implementing timber resource management. The lead management agency must develop a memorandum of agreement with the Division of Forestry to provide for full reimbursement for any services it provides and all additional revenues generated shall be returned to the lead agency. It directs the Land Acquisition and Management Advisory Council to consider timber management as a feasible multiple-use strategy in conformance with a timber resource management component prepared by the Division of Forestry or other qualified professional forester. In addition, it requires land managing agencies to provide a written explanation to the management review team concerning lands that are not being managed in accordance with their management plan. The Division of Forestry is directed to immediately begin an aggressive program to reforest and afforest the land over which it has forest resource management responsibility. The Department of Agriculture and Consumer Services is provided with four positions and $159,461 to carry out the provisions of the bill.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 110-6

CS/HB 4051 — Florida Agricultural Development Act

by Agriculture Committee and Reps. Ziebarth and Silver (CS/CS/SB 1994 by Governmental Reform & Oversight Committee; Agriculture Committee; and Senator Cowin)

This bill creates the Florida Agricultural Development Act to provide assistance to citizens who have been detrimentally affected by NAFTA (North American Free Trade Agreement), the elimination of federal crop subsidies, and environmental protection mandates. The Florida Agricultural Development Authority (FADA) is created to manage programs which assist farmers, beginning farmers, and agribusinesses in acquiring land, improvements, technology, and depreciable agricultural property for the purpose of farming, soil and water conservation practices, and to manage programs which provide financial support to farmers who have transitioned out of existing agricultural activities into new or alternative agricultural crops or that emphasize value-added commodity ventures.

The FADA would act as a facilitator between farmers and financial institutions. It could issue tax exempt bonds to lending institutions to fund agricultural loans and to participate in any federal programs designed to assist beginning farmers. In effect, the FADA will identify and coordinate the mechanisms by which beginning farmers and agribusinesses may obtain financing necessary to fund agricultural endeavors and enter into any agreements necessary to accomplish these purposes.

The bill directs the authority to function as a public entity and requires that it be composed of nine members, including the Commissioner of Agriculture or a designee who will be acting in an ex officio, non-voting capacity. Five standing members would have 4-year terms and three *commissioner-appointed* members will have 3-year terms. The authority must prepare an annual report to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General.

If approved by the Governor, these provisions take effect July 1, 1998, or upon becoming law, whichever is earlier.
Vote: Senate 39-0; House 115-0

SB 1944 — Department of Agriculture and Consumer Services

by Senator Thomas

This bill makes the following changes pertaining to the powers and duties of the Department of Agriculture and Consumer Services (department):

- Prohibits the administration of medications to thoroughbred horses prior to a sale except from a licensed veterinarian who administers medication that is therapeutic or necessary for the treatment or prevention of an illness or injury;

- Requires a permit to transport or haul any dead, dying, disabled, or diseased animal, any product of an animal that died other than by slaughter, or any inedible animal product not meant for human consumption;

- Authorizes the department's food and residue laboratories to perform certain analytical services relating to food safety and to collect reasonable fees for such services;

- Authorizes the department to post a closed-for-operation sign on any food establishment operating without a permit or with a suspended or revoked permit;

- Creates an employees' benefit fund to be generated by voluntary employee donations;

- Revises the membership of the Florida Agriculture Center and Horse Park Authority;

- Changes the registration date for membership in the Florida Agricultural Promotional Campaign from July 1 to the anniversary date of the original membership;

- Authorizes the department to conduct, assist, or cooperate with others in conducting a commercial citrus inventory;

- Authorizes the department to deem an animal product misbranded if it is not labeled with the official USDA inspection legend;

- Authorizes funding for the Citrus Budwood Registration Program in the event that it cannot be funded from the Citrus Inspection Trust Fund;

- Prohibits a fee or fine to be assessed against the owner of a shopping cart found on public property, with certain exceptions;

- Exempts nonresidential farm buildings from the Florida Building Code and any county or municipal building code; and

- Reenacts sections concerning the permitting processes and disciplinary procedures for violations of the Food Safety Act.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

AQUACULTURE

CS/HB 3673 — Aquaculture

by Agriculture Committee and Rep. Bronson (CS/SB 1924 by Natural Resources Committee and Senators Bronson and Hargrett)

In 1996, the Legislature passed legislation which required the Department of Environmental Protection to streamline complex and duplicative state regulations and permitting procedures for aquaculture activities. This bill corrects oversights and "fine-tunes" that legislation and in addition transfers program responsibilities for aquaculture to the Department of Agriculture and Consumer Services, with the exception of those areas required by federal law, rule, or cooperative agreement to be regulated by another agency.

The bill provides added protection for aquaculture products produced on submerged land leases by establishing a zone outside the lease where harvesting is prohibited. It authorizes the department to issue a special activity license for use of special gear or equipment in harvesting saltwater species for scientific and governmental purposes, and where allowable, for innovative fisheries. It requires the special activity license to provide for "specific" management practices, rather than "best" management practices to prevent release and escape. The department is authorized to issue special activity licenses for the harvest or cultivation of oysters, clams, mussels, and crabs when such activities relate to quality control, sanitation, public health regulations, innovative technologies for aquaculture activities, or the protection of aquaculture and shellfish resources. The department may also authorize any properly accredited person to harvest or possess indigenous or nonindigenous saltwater species for experimental, scientific, education, and exhibition purposes. It clarifies jurisdiction over aquaculture activities and provisions relating to aquaculture general permits, and also provides for the streamlining of permit consolidation procedures. The bill provides for the delegation of regulatory authority for certain aquaculture facilities and requires the Aquaculture Review Council to develop a list of prioritized research needs that are critical to the development of the aquaculture industry.

The bill provides that a portion of the fees assessed on the alligator egg collection permit and the hide validation tag be transferred to the General Inspection Trust Fund, administered by the Department of Agriculture and Consumer Services, for providing marketing and education services with respect to alligator products produced in this state.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 114-1

AMUSEMENT RIDE SAFETY

CS/SB 1460 — Amusement Rides

by Agriculture Committee and Senators Forman and Geller

This bill is a reorganization and substantial revision of s. 616.242, F.S., concerning public fairs and expositions. The Department of Agriculture and Consumer Services (department) administers the Amusement Device Safety Inspection Program to ensure that fair rides and other attractions are safe for public use. The bill modifies the phrase "amusement devices and amusement attractions" to "amusement rides," removes obsolete and duplicative language, and makes the following substantive changes:

- Strengthens safety standards for amusement rides;
- Strengthens requirements for nondestructive testing of amusement rides;
- Changes accident reporting requirements to strengthen the department's ability to investigate accidents and to impound unsafe amusement rides;
- Requires the department to adopt rules to establish fees that cover 100 percent of all costs and expenditures associated with the Bureau of Fair Rides Inspection;
- Provides insurance requirements; and
- Prohibits certain bungy operations.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 40-0; House 117-0

PROPERTY INSURANCE

CS/SB 1108 — Insurance

by Banking & Insurance Committee and Senator Williams

This bill amends and creates various provisions within the Florida Insurance Code, primarily affecting property insurance and creation of the Holocaust Victims Insurance Act. The bill provides:

- Extending the moratorium limiting the number of residential property insurance policies that an insurer may cancel and nonrenew for the purpose of reducing hurricane exposure for a period of 2 years (from June 1, 1999, to June 1, 2001) under ss. 627.7013 and 627.7014, F.S. Since 1993, the Legislature has restricted the ability of insurers to cancel or nonrenew personal lines residential policies (i.e., homeowners, mobile home owners, condominium unit owners, and similar policies) for the purpose of reducing an insurer's potential hurricane losses. The current versions of the moratorium on hurricane-related cancellations and nonrenewals (i.e., one version covers personal lines residential policies, and the other covers condominium association policies) expire on June 1, 1999. (This provision is the substance of CS/SB 2054 by Banking and Insurance Committee and Senator Diaz-Balart.)

- A prohibition on expanding the current geographical boundaries of the Florida Windstorm Underwriting Association (FWUA) pursuant to s. 627.351, F.S. The FWUA is a state-created insurer which provides windstorm (hurricane) coverage in areas within 29 of Florida's 35 coastal counties. Prohibiting further expansion of the FWUA mitigates the growth in the number of policies and exposure insured by the FWUA and reduces the potential for unfunded liability. In 1997, the Legislature passed a law (ch. 97-55, L.O.F.) which temporarily suspended the expansion of areas eligible for windstorm coverage from the FWUA until October 1, 1998. This year's bill provides for an indefinite prohibition on future expansion. (This provision is the substance of SB 232 by Banking and Insurance Committee.)

- The creation of the "Holocaust Victims Insurance Act" under s. 626.9543, F.S., to provide that the potential and actual insurance claims of Holocaust victims and their heirs and beneficiaries be expeditiously identified and properly paid and that such victims and their families receive appropriate assistance in filing and payment of their rightful claims. The bill requires insurers

doing business in this state that receive a claim from a Holocaust victim or their beneficiaries, descendants, or heirs to investigate the claim, allow the claimant to meet a reasonable standard of proof as established by the Department of Insurance, and permit claims, regardless of any statute of limitations imposed either by statute or contract, under the policy. Claimants would have until 10 years after the effective date of the bill to submit their claims. (This provision is the substance of SB 2540 by Senator Geller and others.)

The bill would impose an affirmative duty upon insurance companies to ascertain and report to the department, within 90 days of the effective date of the bill and on an annual basis, any legal relationship it might have with an international insurer that issued a policy to a Holocaust victim between 1920 and 1945, as well as the number and total value of such policies, attempts made to locate beneficiaries of such policies, any claims filed by such victims, beneficiary, heir, or descendent which was paid, denied, or is pending and an explanation of such denial or pending claim. The department in turn would annually report to the Legislature certain prescribed information relating to the above. Furthermore, the department would be required to establish a toll-free number to assist Holocaust victims or their beneficiaries, descendants, or heirs in filing claims for life, property, and education insurance policies.

Insurers or persons who violate provisions contained in the bill are subject to a $1,000 per day administrative penalty. Additionally, a private cause of action to recover damages caused by a violation of the provisions of the act is authorized and persons who sustain damages shall recover three times the actual damages sustained as well as costs up to $50,000, plus attorneys' fees.

- The exemption of commercial inland marine insurance policies from rate and form approval by the Department of Insurance under ss. 627.021, 627.0651, and 627.410, F.S. Commercial inland marine insurance covers property of a business that is portable or movable in nature or an instrumentality of transportation or communication. Examples of commercial inland marine risks are cellular towers, bridges, commercial goods in transit, and tunnels.

- The revision of the composition of the Board of Governors of the Workers' Compensation Joint Underwriting Association (JUA) pursuant to s. 27.311, F.S. The composition shall include representatives of five of the 20 domestic insurers and five of the 20 foreign insurers, with the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected, respectively, by the 20 domestic and 20 foreign insurers, eliminating the requirement that a certain number be representative of assessable mutual insurers, commercial self-insurance funds, and group self-insurance funds. The term "domestic insurer," as defined in s. 624.06(1), F.S., means an insurer formed under

the laws of this state, which includes authorized insurers, assessable mutual insurers, commercial self-insurance funds, and group self-insurance funds, formed under Florida law. One person, appointed by the Insurance Commissioner would serve as the chair, and the bill maintains board membership for the Insurance Consumer Advocate and one representative of the largest property and casualty insurance agents' association in the state. The bill allows members of the board to serve consecutive terms. Additionally, the bill prohibits insurers in the voluntary market from providing workers' compensation insurance and employer liability insurance to persons who are delinquent in their payment of premiums to the JUA.

- Exemption of payroll deduction plans or automatic electronic funds transfer payment plans from the requirement under the private passenger motor vehicle insurance provision that policies may be initially issued only if the insurer has collected from the insured an amount equal to 2 months premium under s. 627.7295, F.S.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 36-0; House 113-0

HB 3597 — Family Day Care Homes/Insurance

by Financial Services Committee, Rep. Safley and others (CS/SB 226 by Banking & Insurance Committee)

This bill (Chapter 98-6) creates s. 627.70161, F.S., to prohibit insurance carriers from denying, canceling, or nonrenewing residential property insurance policies solely on the basis that a family day care home is operated on the property, except in limited circumstances. Insurers would be able to deny, cancel, or nonrenew policies if the homeowner provided day care for more children than allowed by law, if the homeowner failed to maintain separate liability coverage for the day care activities, if the homeowner failed to comply with the applicable licensing and registration laws, or if certain wilful or grossly negligent acts or violations of law or rule were discovered.

The bill also provides that a residential property insurance policy must exclude coverage for claims arising out of the operation of a family day care home, unless such liability coverage was specifically provided in the policy or in a rider or endorsement attached to the policy.

These provisions were approved by the Governor and take effect October 1, 1998.
Vote: Senate 31-0; House 117-0

WORKERS' COMPENSATION

CS/CS/SB 1406 — Workers' Compensation Compliance and Fraud

by Ways & Means Committee; Banking & Insurance Committee; and Senator Clary

During the past several years various groups have reviewed the issues of workers' compensation compliance and fraud. Both the Workers' Compensation Oversight Board and the Fourteenth Statewide Grand Jury issued reports suggesting ways to strengthen the compliance and enforcement provisions of the workers' compensation law and various constituent groups, including insurers, employer and employee representatives, trade associations, and governmental entities, have also focused on these issues.

This bill amends ch. 440, F.S., to incorporate many of the recommendations offered by these interested parties to provide:

- For the Division of Workers' Compensation, Department of Labor and Employment Security, to enter any place of business and inspect records to ascertain employer compliance with the workers' compensation coverage requirements under ch. 440, F.S. Employers are required to keep true and accurate records, to maintain such records within this state and make them available for review by the division. The enforcement powers of the division are broadened to include subpoena authority to compel the attendance of witnesses and production of records. (CS/SB 1408 by Banking and Insurance Committee and Senator Clary, which also passed, provides a public records exemption specifically related to this provision.)

- For the Division of Workers' Compensation to disapprove or revoke the certificate of exemption of a sole proprietor, partner or corporate officer if such exemption is based on invalid information. The bill provides that sole proprietors, partners, and corporate officers in the construction industry who file notices of election to be exempt from workers' compensation coverage requirements must file such notices every 2 years. The fee for filing a notice is a mandatory $50 fee. Persons not involved in the construction industry who file notices of election to be exempt and persons filing notices to be included for workers' compensation coverage are not affected by the fee provisions of this bill. Certain documentation is required to be submitted with the exemption notice to the division by the person seeking the exemption and the bill provides that knowingly making false statements on an exemption notice is a third-degree felony and mandates a warning on every exemption notice to this effect.

- That an independent contractor who provides the general contractor with both an affidavit stating that he/she meets the requirements of an independent contractor and a certificate of exemption is not an employee and may not recover benefits under this chapter. It also clarifies

that the certificate of exemption for an independent contractor must be as a sole proprietor, corporate officer, or partner. The bill specifies that for purposes of determining the appropriate premium for workers' compensation coverage, that carriers may not consider any person who meets the requirements of these provisions to be an employee.

- For an increase in liquidated damages awarded to a prevailing plaintiff who loses a bid on a construction contract to a person who knew or should have known that he/she violated certain workers' compensation requirements. The words "minimum premium policy" or the equivalent thereof must be placed on insurance policies.

- That the Division of Workers' Compensation must notify the workers' compensation carrier identified in the request for exemption when the division revokes the exemption. The bill mandates the division to notify a certificate holder with notice of the expiration date of his/her exemption and an application for renewal of the exemption within 60 days prior to the expiration date of a construction industry certificate of exemption.

- For the revision of penalties for various offenses relating to workers' compensation fraud depending on the value of the money or property involved in the offense. If the amount is less than $20,000, the current third-degree felony penalties would apply. If the amount is $20,000 or more, but less than $100,000, the offense would be a second-degree felony. If the amount is $100,000 or more, the offense would be a first-degree felony. The statute of limitations provision, currently 3 years, is lengthened to 5 years.

- That a judge of compensation claims and an administrative law judge may deny workers' compensation benefits if the employee has intentionally committee fraud.

- For the expiration of the term of office for members of the Statewide Nominating Commission which nominates persons to the Governor for appointment as Judges of Compensation Claims, as well as staggered terms for new appointments. The bill bifurcates the nomination process of judges by requiring that the nominating commission first determine if a current judge's performance is satisfactory, then, if the Governor does not reappoint the judge, the commission would submit a list of three nominees. The bill also revises the term of office, qualifications, and method of nomination for the Chief Judge of the Office of the Judge of Compensation Claims.

- That insurance carriers, as a condition to issuance of a policy, may require the employer to release certain employment and wage information maintained by the Division of Unemployment Compensation. This will allow insurance carriers to compare the employment information provided by the employer with the data provided to the Unemployment Compensation Division.

- That the Division of Workers' Compensation and the Division of Fraud prepare and submit a "joint performance report" as to the results obtained in achieving compliance with workers' compensation coverage requirements and reducing the incidence of fraud to the Senate President and House Speaker by November 1 of each year for the next 2 years, and then every 3 years.

- An appropriation of $1.1 million from the Workers' Compensation Administration Trust Fund and 15 FTE's to the Department of Labor and Employment Security to carry out the provisions of the act.

If approved by the Governor, these provisions take effect January 1, 1999, except as otherwise provided.
Vote: Senate 40-0; House 118-0

SB 1972 — Workers' Compensation/Employee's Injury

by Senator Lee

This bill amends s. 440.09, F.S., to revise the standard for rebutting a presumption that an employee's injury was caused by intoxication or influence of drugs. It provides that if the employer has implemented a drug-free workplace, the presumption may be rebutted only by evidence that there is no reasonable hypothesis that the intoxication or drug influence contributed to the injury. This revision is in response to the Florida Supreme Court opinion in *Recchi America v. Hall*, 692 So.2d 153 (Fla. 1997) which reviewed the standard for rebutting a presumption as it related to a drug-free workplace and struck down the provision stating that it created an irrebuttable presumption which constituted a violation of an employee's constitutional right to due process.

The workers' compensation drug-free workplace provisions under ch. 440, F.S., were designed to accomplish the twin goals of discouraging drug abuse and maximizing a business's productivity by eliminating the costs and delays associated with work-related accidents resulting from drug abuse by employees.

The current (former) provisions as to drug-free workplaces state that if an employee is injured and is tested positive for drugs or alcohol, it is *presumed that the injury was occasioned primarily* by the drugs or alcohol, resulting in no workers' compensation benefits being paid. In a work-place which does not have a drug-free policy, the current law remains unchanged, providing that the presumption may be rebutted by *clear and convincing evidence* that the drugs or alcohol did *not* contribute to the injury.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 37-0; House 111-0

HEALTH INSURANCE

CS/SB 1584 — HMO Claims

by Banking & Insurance Committee and Senators Campbell, Forman and Silver

This bill creates s. 641.3155, F.S., and requires a health maintenance organization (HMO) to reimburse all claims or any portion of any claim made by a contract provider for services or goods provided under a contract with the HMO within 35 days after receipt of the claim by the HMO, unless the HMO contests or denies the claim. If the claim or a portion of a claim is contested by the HMO, the HMO is required to formally notify the contract provider within 35 days after receipt of the claim. Such notification must identify the contested portion of the claim and the specific reason for contesting or denying the claim, and may include a request for additional information.

If the HMO requests additional information, the provider must provide the information within 35 days of the receipt of such request. Upon receipt of the additional information requested from the contract provider, the HMO must pay or deny the contested claim or portion of the contested claim within 45 days after receipt of the information.

In any event, an insurer must pay or deny any claim no later than 120 days after receiving the claim. Payment of the claim is considered made on the date the payment was received or electronically transmitted or otherwise delivered. An overdue payment of a claim bears simple interest at the rate of 10 percent per year.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 39-0; House 117-0

CS/CS/SB 1800 — Health Insurance

by Health Care Committee; Banking & Insurance Committee; and Senator Diaz-Balart

The committee substitute makes various changes to health insurance and HMO coverage requirements, as follows:

Persons Eligible for Guaranteed Availability of Individual Coverage

The bill expands eligibility for guaranteed availability of individual coverage to include persons with 18 months of prior coverage under an individual plan, if the prior insurance coverage is

terminated due to the insurer or health maintenance organization (HMO) becoming insolvent or discontinuing all policies in the state, or due to the individual no longer living in the service area of the insurer or HMO. (This is in addition to persons with 18 months of prior coverage, the most recent of which was under a group plan.)

The prior law provided that an individual is not eligible for guaranteed availability of individual coverage if the individual is eligible for a conversion policy under Florida law (since the conversion policy serves as the alternative mechanism for providing individual coverage). The bill provides that this alternative mechanism applies to an individual who is eligible for a conversion policy or contract offered to an individual who is no longer eligible for coverage under either an insured or self-insured plan. However, the conversion policy must be issued by an authorized Florida insurer or HMO and must conform to the requirements of s. 627.6675, F.S., (for group insurers) or s. 641.3921, F.S., (for HMOs), which requires the insurer or HMO to offer the standard benefit plan that must be offered to small employers and limits premiums for the conversion policy to 200 percent of the standard risk rate, as determined by the department.

Solvency Requirements for Health Maintenance Organizations (HMOs)

The bill increases the minimum surplus requirements for both new and existing HMOs. Under prior law, in order to obtain a certificate of authority as an HMO, an applicant was required to have a minimum surplus equal to the greater of: (a) $1.5 million, (b) 10 percent of total projected liabilities, or (c) $500,000 plus all startup losses projected to be incurred for 12 months. The bill increases the minimum requirement for certificates issued after October 1, 1998, to be the greater of: (a) 10 percent of total projected liabilities, (b) 2 percent of total projected premiums, or (c) $1.5 million plus all startup losses projected to be incurred for 12 months.

After an HMO obtains a certificate of authority, the prior law required the HMO to maintain a minimum surplus equal to $500,000 or 10 percent of total liabilities, whichever is greater. For HMOs obtaining a certificate of authority on or after October 1, 1998, the bill increases the minimum surplus requirement to the greater of $1.5 million, 10 percent of total liabilities, or 2 percent of total annualized premium. For HMOs that already have a certificate of authority as of October 1, 1998, the bill requires a scheduled increase in the minimum surplus requirement, as follows: by September 30, 1998, $800,000, 10 percent of liabilities, or 1 percent of annualized premium, whichever is greatest; by September 30, 1999, $1.15 million, 10 percent of liabilities, or 1.25 percent of annualized premium, whichever is greatest; and by September 30, 2000, the full requirement of $1.5 million, 10 percent of total liabilities, or 2 percent of annualized premium, whichever is greatest.

The bill amends s. 641.285, F.S., to increase the minimum deposit of cash or securities that HMOs must file with the Department of Insurance, from $100,000 or twice the HMO's estimated average monthly uncovered expenditures, whichever is greater, to a flat $300,000 deposit requirement. The bill eliminates all of the various exceptions to the deposit requirement that previously applied and authorizes the department to require additional deposits ranging from $100,000 to a maximum of $2 million, under certain conditions.

The bill amends s. 641.26, F.S., relating to annual reports that must be filed by HMOs. The bill requires that the annual audited financial statements filed by a certified public accountant (CPA) must include any material weaknesses in the HMO's internal control structure as noted by the CPA and a description of remedial actions taken by the HMO. The required annual filing of a certification by an actuary as to the actuarial soundness of the HMO. The bill authorizes the department to require updates of the annual actuarial certification of the HMO's actuarial soundness under certain conditions. The bill further authorizes the department to require an HMO, upon written request, to furnish such additional information as to its material transactions which, in the department's opinion, may have a material adverse effect on the HMO's financial condition.

Establishment of Standard Risk Rate

The bill requires the Department of Insurance, rather than the Florida Comprehensive Health Association (FCHA), to annually establish the standard risk premium which serves as the benchmark for establishing maximum premiums for the FCHA and for individual conversion policies that must be offered by group insurers and HMOs.

Notice of Conversion Policy Options

The bill requires insurers and HMOs to mail to individuals who are eligible for a conversion policy or contract, an election and premium notice form, including an outline of coverage, within 14 days of request or notice to the insurer that an individual is considering applying for a conversion policy.

Required Bonds for Fiscal Intermediary Organizations

The bill amends s. 641.316, F.S., to replace the $10 million fidelity bond requirement for all persons or entities engaged in the business of providing fiduciary or fiscal intermediary services to any contracted health care provider or provider panel. The bill deletes the $10 million fidelity bond requirement and replaces it with two separate, but lower, bond requirements. The fiscal intermediary service organization is required to obtain a fidelity bond in the minimum amount of 10 percent of the funds handled by the intermediary in connection with its fiscal services during the prior year, or $1 million, whichever is less, subject to a minimum bond amount of $50,000.

This fidelity bond must protect the intermediary from loss caused by the dishonesty of its employees. The organization is also required to maintain a surety bond on file with the department, with a penal sum of not less than 5 percent of the funds handled by the intermediary in connection with its fiscal services during the prior year, or $250,000, whichever is less, subject to a minimum bond amount of $10,000. The condition of the bond must be that the intermediary register with the department and not misappropriate funds within its control or custody.

Other Provisions

The bill makes the following additional changes: (1) conforming Florida law to the federal Mental Health Parity Act of 1996, thereby authorizing the Florida Department of Insurance to enforce such provisions under state law, which requires that lifetime and annual dollar limitations on mental health benefits (if provided) under group policies be the same as for other medical and surgical benefits under the policy, subject to certain exemptions; (2) providing that moneys paid into a Roth individual retirement account (IRA) or Medical Savings Account are protected from creditors; (3) revising minimum standards for Medicare supplement policies, to conform to federal law; (4) excluding supplemental plans provided under a separate policy or contract, designed to fill gaps in the underlying health plan, from the definition of "health benefit plan" as used in s. 627.6699, F.S., thereby exempting such plans from the guaranty-issue and modified community rating requirements of that section; (5) revising the requirements for an HMO to provide a 12-month extension of benefits for persons who are totally disabled, to apply the requirement to any termination of an HMO contract, including termination by a group contract holder, but limiting such requirement to group HMO contracts; (6) exempting disability income and accidental death policies from certain prohibited rating practices that apply to health insurance policies; (7) clarifying that in those situations where an insurer or HMO is discontinuing offering a particular policy form or is discontinuing all coverage in the state for a particular market, that the notice requirements must be provided to policyholders prior to *nonrenewal*, thereby eliminating a possible interpretation that an insurer may cancel policies mid-term, with appropriate notice; and (8) providing that if notice is given to an insurer or HMO by an insured within 60 days of the birth of a child (or placement, in the case of an adopted child), the insurer or HMO may not deny coverage of the child due to failure to timely notify the insurer (i.e., within 30 days).

If approved by the Governor, these provisions take effect January 1, 1999.
Vote: Senate 37-0; House 114-0

AUTO INSURANCE

HB 3889 — Motor Vehicle Insurance

by Financial Services Committee, Rep. Safley and others (CS/SB 2052 by Banking & Insurance Committee and Senator Diaz-Balart)

This bill amends provisions in the Florida Motor Vehicle No-Fault Law, primarily affecting personal injury protection (PIP) benefits. In general, every owner or registrant of a four-wheeled motor vehicle is required to maintain $10,000 of PIP insurance, also known as no-fault insurance. Subject to copayments and other restrictions, PIP insurance provides compensation for injuries to the insured driver and passengers regardless of who is at fault in an accident. In particular, this legislation:

- Allows an insurance agent to charge an applicant a fee to cover the agent's actual costs of obtaining motor vehicle records, to the extent that those costs are not otherwise compensated pursuant to s. 627.7295, F.S. Defines the term "actual costs" to be the cost of obtaining the report or the pro rata cost per driver when the report is obtained on more than one driver.

- Requires health care providers to submit medical bills directly to the insurer within 30 days of treatment or service under s. 627.736, F.S. Alternatively, if the provider furnishes the insurer with 21 days notice of initiation of treatment, the provider may submit medical bills within 60 days of the service date. Neither the insurer nor the injured person is required to pay medical bills untimely submitted and any agreement to the contrary is unenforceable. The bill provides for an exception for medical services billed by a hospital for services rendered at a hospital-owned facility, for emergency services rendered by a hospital emergency department, or for the transport and treatment rendered by an ambulance provider.

- Specifies a method to determine who is the "prevailing party" entitled to attorneys fees and costs when a dispute between an insurer and a medical provider is arbitrated. Requires that the amount of the offer or claim at arbitration is the amount of the last written offer made up to 30 days before arbitration. Issues to be considered are to be submitted up to 30 days prior to arbitration.

- Provides that all statements and bills for medical services are to be submitted to the insurer on specified forms with specified procedural codes.

- Extends the time period within which payment is due for a claim for PIP insurance benefits under circumstances when an insurer makes a discovery request to a provider.

- Provides that an insurer's independent medical examination may be conducted within the municipality where the injured person is being treated, within the municipality where the injured person resides, or within 10 miles of the injured person's home, provided the location is within the insured's county of residence.

If approved by the Governor, these provisions take effect on October 1, 1998, except as otherwise provided.
Vote: Senate 30-1; House 116-0

BANKING

HB 4501 — Credit Unions/Conversions

by Financial Services Committee, Rep. Safley and others (CS/SB 2300 by Banking & Insurance Committee and Senator Laurent)

The bill provides that the Department of Banking and Finance may not approve an application by a federally-chartered credit union for conversion to a state charter unless a completed application for conversion is on file with the department on February 25, 1998. The prohibition on conversion will terminate on July 1, 1999, unless the Comptroller determines before such date by an order of general application that it is in the public interest to accept and approve such conversion applications and identifies a procedure for the acceptance and processing of such conversion applications. The Comptroller will consider certain specified factors and such other factors deemed relevant to the maintenance of a fair and competitive financial system in this state in making such a determination.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 115-0

OTHER

CS/SB 1372 — Insurance

by Banking & Insurance Committee and Senators Williams and Grant

This bill contains various insurance law changes, some of which were the substance of other bills, as noted below. The bill makes the following changes:

Insurance Agents and Related Provisions

The bill makes various changes to the laws affecting insurance agents and other individuals licensed by the Department of Insurance. In particular, the bill: (1) conforms various provisions to the requirement that agents be appointed (rather than licensed) by each insurer that they represent; (2) applies various requirements that currently apply to agents to customer representatives; (3) increases maximum administrative fines from $2,500 to $3,500 for agents and other licensees for each willful violation, specifies that fines may be in addition to probation or suspension, and authorizes the department to require an agent to make restitution to an injured party in addition to other penalties; (4) authorizes individuals holding a limited license for credit insurance to hold certain additional licenses; (5) requires life agents to pass an examination relating to variable annuity contracts in order to sell such contracts; (6) eliminates references to "claims investigators" which is a licensure classification no longer provided; (7) authorizes nonresidents to be licensed as a customer representative under certain conditions; (8) requires individuals holding a Florida nonresident agent's license to become licensed as a resident agent with 90 days after the individual becomes a resident of Florida; (9) expands the options for applicants for a title insurance agent's license to meet prior education or experience requirements; (10) applies certain requirements for individual title insurance agents to title insurance agencies; (11) specifies the purpose of the deposit or bond for title agents; (12) requires law enforcement agencies and the state attorney's office to notify the department of any insurance agent or other licensee who has been found guilty of a felony; (13) increases the required surety bond for surplus lines agents from $5,000 to $50,000; (14) specifies conditions under which a surplus lines agent may delegate to a producing agent the requirement to provide documentation of coverage to an insured; (15) requires insurance agencies to notify the department of a re-designation of the primary agent; (16) provides for the licensure of non-resident public adjuster and non-resident independent adjusters; (17) provides for responsibility and accountability of sales representatives of warranty associations; and (18) repeals obsolete statutes relating to the licensing of claims investigators and insurance vending machine licenses.

Workers' Compensation for Employee Leasing Firms

The bill includes provisions originally contained in SB 1946 by Senator Williams, which requires employers and employee leasing companies to obtain workers' compensation coverage for leased employees and pay premiums commensurate with the exposure and claims experience of the employer. The bill requires employee leasing companies to provide certain information to the insurer or the residual market when obtaining workers' compensation coverage. Insurers are required to conduct annual audits of payroll and classifications of employee leasing companies and may conduct more frequent audits. The bill: (1) defines the terms, employee leasing, experience rating modification, leased employee, lessee, lessor, and premium subject to dispute;

(2) authorizes an employee leasing company/lessor to obtain coverage in the voluntary market on leased employees through a workers' compensation policy issued to the lessor; (3) authorizes the insurer of the lessor to request specific information from the lessor to ascertain the exposure under the policy and to collect the appropriate premium; (4) requires the lessor that applies for coverage or is covered through the voluntary market to furnish certain information to the insurer, on an annual basis, to permit the calculation of an experience modification for each lessee upon termination of the leasing arrangement; (5) requires the information accrued during the term of a leasing arrangement which is used to calculate the experience modification rating for a lessee upon the termination of the arrangement to be used in the future experience ratings of the employee leasing company; (6) provides for the cancellation or nonrenewal of an employee leasing company's policy if there is an uncured violation of this section; (7) requires the insurer to assign an experience modification factor to a lessee/employer after a leasing arrangement is terminated, including the experience incurred for any leased employees during the leasing arrangement; (8) requires the employee leasing company to notify its insurer within 5 working days following actual termination of the leasing arrangement; (9) provides that this section does not affect the requirement that a lessee provide workers' compensation coverage for a non-leased employee; (10) provides that an employer shall not enter into an employee leasing relationship or be eligible for workers' compensation coverage in the voluntary market, if the employer owes its current or previous insurer any premium or if the lessee owes any amounts under a current or previous employee leasing arrangement; and (11) requires an insurer to conduct annual audits of payroll and classifications of employee leasing companies.

Privatization of the Special Disability Trust Fund

The bill provides a mechanism to create a financing corporation for the purpose of transferring and privatizing the liabilities of the Workers' Compensation Special Disability Trust Fund to a qualified entity. This financing mechanism would be used if the Special Disability Trust Fund Commission determined that the state could realize savings by privatizing the responsibilities and liabilities of the fund. The bill would create a Special Disability Trust Fund Privatization Commission comprised of the following officials or their designees: Governor, Insurance Commissioner, and the Comptroller that would be charged with the responsibility of evaluating the feasibility of privatizing the fund as well as selecting and contracting with an administrator to review, allow, deny, compromise, controvert, and litigate claims, if it is determined to be more cost efficient than the current administration of the fund. The commission may adopt rules necessary for the performance of its assigned duties and responsibilities. If the fund is privatized, a financing corporation would be created to issue the debt in order to use the proceeds to privatize the fund. The corporation (but not the commission) is exempt from the provisions of ch. 287, F.S., relating to procurement of goods and services. The corporation, under the control of a three-member board comprised of the following officials or their designees: Governor, Treasurer, and

Comptroller, is authorized to issue notes, bonds, and other forms of indebtedness and has all of the powers of a corporation authorized by law.

Florida Hurricane Catastrophe Fund

The bill provides that the board of the Florida Hurricane Catastrophe Fund may reimburse a limited apportionment company in advance if the board determines that the fund's assets are sufficiently liquid to permit an advance. A limited apportionment company is defined as an insurer having a surplus of $20 million or less and writing 25 percent or more of its premiums in Florida. The Florida Hurricane Catastrophe Fund (Cat Fund) normally reimburses insurers after the end of the calendar year when an accounting is made of all claims for that year. However, the law previously provided that the Cat Fund may reimburse a limited apportionment company (same definition) the lesser of 90 percent of the board's estimate of the reimbursement due, or 90 percent of the company's share of the total fund premiums applied to the fund's currently available liquid assets, if the company demonstrates immediate receipt is essential to permit it to pay claims and the board determines that the fund's assets are sufficiently liquid to permit an advance.

Premium Tax and Assessment Exemption for Minority-Owned Insurers

The bill provides a 5-year exemption from premium taxation and regular assessments from the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association for residential property insurance policies issued by a minority-owned insurer that obtains its certificate of authority after May 1, 1998. The bill requires that the insurer write at least 10 percent of its policies in enterprise zones designated pursuant to s. 290.0065, F.S.

Reinsurance

The bill revises s. 624.610, F.S., which specifies the types of reinsurance for which an insurer may obtain credit under its financial statements. Currently, three of the types of approved or permissible reinsurance arrangement require the establishment of a trust fund that meets certain requirements: a group of individual alien insurers which maintains at least $50 million in trust, such as Lloyds of London (fund for a specific contract (s. 624.610(2)(b)2., F.S.); and an individual reinsurer that maintains a trust fund covering its U.S. obligations plus a $20 million surplus, such as Zurich Re or CNA Re (s. 624.610(2)(b)4., F.S.). The current law applies additional trust fund requirements to the last two of these three types of reinsurance, including a requirement that the assets of the trust be distributed in accordance with the insurance laws of the state in which the trust is domiciled and requiring the reinsurer to waive any right otherwise available to it under U.S. (bankruptcy) law. The bill changes the cross-reference to the types of reinsurance trust fund arrangements that must meet these additional conditions. By doing so, the amendment applies

these additional requirements to the type of reinsurance provided by a group of alien insurers with $50 million in trust (Lloyds), but deletes the requirements for reinsurance obtained from an individual reinsurer that maintains a trust fund covering its U.S. obligations. (It appears that this deletion is an inadvertent error.) The bill also repeals s. 624.22, F.S., related to the purpose of ch. 624, F.S., which provides legislative intent to ensure adequate regulation of reinsurers, to require adequate security to fund U.S. obligations of a non-U.S. reinsurer, and that the assets be distributed in accordance with the insurance laws of the state in which the trust is domiciled. This language is transferred to the reinsurance statute, s. 624.610, F.S.

Financial Requirements for Surplus Lines Insurers

The bill includes provisions originally contained in SB 1316 by Senator Holzendorf which provides that only those surplus lines insurers that have an application on file with the Department of Insurance before February 28, 1998, may elect to be subject to the lower, alternative surplus requirements previously authorized by 1997 legislation. The 1997 legislation authorized surplus lines insurers meeting certain criteria to have and maintain a $4 million surplus, rather than be subject to the general requirement of having a $15 million surplus or, for insurers licensed on or before December 31, 1993, a $4.5 million surplus at the end of 1997 and specified annual increases reaching $15 million at the end of 2004. The 1997 act applied only to those surplus lines insurers that (1) are a member of an insurance holding company that also owns a Florida domestic insurer and (2) are in compliance with the requirements of ch. 625, F.S., relating to accounting and investment restrictions of authorized insurers. The department reports that one surplus lines insurer has filed an application for election of the lower surplus requirements by the date specified in the bill, February 28, 1998.

Health Insurance Sold to Foreigners in Airports

The bill includes the provisions originally contained in SB 1416 by Senator Gutman (which also passed) which provides that health insurance policies delivered or issued for delivery in Florida to residents of foreign countries would not be subject to regulation by the Department of Insurance as to policy terms or premiums.

Other Provisions

The bill includes the provisions of CS/SB 994 by Banking and Insurance Committee and Senator Grant, which: (1) deletes the requirement that the Department of Insurance promulgate rules to establish criteria for determining if an insurer has demonstrated sufficient compliance with the various provisions of the Insurance Code; (2) allows insurers to provide motor vehicle policyholders credit for prepaid premiums that they may otherwise lose under certain

circumstances; (3) removes the countersignature requirement by the agent of record when an insurance policy is transferred from one company in an insurance company group to another company in the same group; (4) provides that the Department of Insurance may, rather than shall, annually conduct a sampling of claims or actions for damages as to personal injury or property damage reports which are maintained by liability insurers; and (5) provides that the Department of Insurance may, rather than shall, annually require that an insurer report certain information relating to product liability insurance.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 36-0; House 117-0

CS/HB 1575 — Certified Capital Companies

by Financial Services Committee, Rep. Feeney and others (CS/CS/SB 1512 by Ways & Means Committee; Banking & Insurance Committee; and Senators Latvala and Forman)

Venture capital is typically the major source of funding for start-up companies. In recent years, there have been concerns regarding the availability of venture capital for such companies in Florida. This bill establishes a mechanism to provide financing, via certified capital companies, for qualified small businesses. Insurance companies are provided a premium tax credit to invest in certified capital companies which, in turn, will make investments in qualified small businesses.

A corporation, partnership, or limited liability company may file for certification as a certified capital company (CAPCO) under the bill on or before December 1, 1998. CAPCOs certified by the Department of Banking and Finance may receive contributions of capital from insurers (and other investors), and the insurers receive a credit against state premium taxes for each dollar contributed to a certified capital company, at the rate of 10 percent a year for 10 years, beginning with premium tax filings for the year 2000. The total amount of tax credits may not exceed $15 million annually, subject to an aggregate cap of $150 million. To be certified, a CAPCO must have net capital of at least $500,000 and at least two of its principals must demonstrate 5 years experience in making venture capital investments.

To remain certified, CAPCOs are required to meet investment benchmarks. At least 50 percent of CAPCO funds must be invested in "qualified businesses" by December 31, 2003, defined as small businesses (determined by rules of the U.S. Small Business Administration) headquartered in Florida and with their principal business operations in Florida. A qualified business must certify that it is unable to obtain conventional financing and that it has fewer than 200 employees, at least 75 percent of whom are employed in Florida. At least 50 percent of the CAPCO's investments in qualified businesses must be in "early stage technology businesses" involved in activities related to developing initial product or service offerings. A qualified business does not include a business

predominantly engaged in retail sales, real estate development, insurance, banking, lending, oil and gas exploration or engaged in professional services provided by accountants, lawyers, or physicians.

Before a CAPCO may make any distribution to its equity holders, other than a "qualified distribution," the CAPCO must have invested 100 percent of its certified capital in qualified investments. A "qualified distribution" of up to 2.5 percent of the CAPCO's capital may be made to equity holders for the costs and expenses of forming, managing, and operating the company, plus reasonable and necessary fees for professional services, such as legal and accounting services. Payments of principal and interest to debt holders may be made without restriction.

A CAPCO is required to pay to the Department of Revenue 10 percent of the portion of distributions to all certified investors (insurers) and equity holders that exceeds the sum of the CAPCO's original certified capital (which includes both equity and debt investments) and any additional capital contributions to the CAPCO.

The Office of Tourism, Trade, and Economic Development is responsible for allocating premium tax credits to insurers who apply and submit specified documentation. A CAPCO must annually file a report with the Office and the Department of Banking and Finance detailing the investments the CAPCO has received from insurers and the investments it has made in qualified businesses, including the number of jobs created or retained and the average wages of such jobs. The Department of Banking and Finance must conduct an annual review of each CAPCO to determine if it is abiding by the requirements of certification and the Department of Revenue may audit and examine the records of CAPCOs and insurer investors.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 39-0; House 118-1

CHILD/ADULT PROTECTIVE SERVICES AND FOSTER CARE

CS/HB 1433 — Public Records

by Governmental Operations Committee and Rep. Brennan (CS/SB 506 by Children, Families & Seniors Committee and Senator Rossin)

CS/HB1433 amends subsection (7) of 119.07, F.S., removing the public records exemption, in cases involving the death of a child, a disabled adult, or an elderly person as a result of abuse, neglect, abandonment, or exploitation. The language of the law regarding the court's approach to cases involving death is deleted; the language is unchanged with regard to cases involving serious bodily injury.

Section 415.107, F.S., regarding confidentiality of records and reports in cases involving the death of a disabled adult or elderly person, is amended to include language enabling any person to have access to all records, excluding the name of the reporter or information otherwise made confidential or exempt by law.

Section 415.51, F.S., regarding confidentiality of records and reports in cases involving the death of a child due to abuse or neglect, is amended to provide that any person shall have access to all records, excluding the name of the reporter or information otherwise made confidential or exempt by law.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 118-0

CS/CS/SB 1024 — Abuse False Reports

by Criminal Justice Committee; Children, Families & Seniors Committee; and Senator Hargrett

This legislation enhances the tools that can be used to penalize persons who file false reports of child abuse, neglect or abandonment and adult aging abuse, neglect or exploitation by:

- Directing the Department of Children and Family Services (the department) to refer reports determined to be false to law enforcement for an investigation and directing the law

enforcement agency to refer reports to the state attorney when sufficient evidence is found to pursue prosecution for filing a false report;

- Directing the department and each state attorney to report annually to the Legislature information regarding the handling of false reports;

- Elevating the penalty for knowingly and willfully making a false report from a second degree misdemeanor to a third degree felony; and

- Increasing the cap on the civil penalty that can be imposed for making a false report from $1,000 to $10,000.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 119-0

HB 4167 — Adult Abuse, Neglect, and Exploitation

by Elder Affairs & Long Term Care Committee and Rep. Brooks (SB 1188 by Senator Rossin)

This bill amends the Adult Protective Services Act found in ss. 415.101-415.113, F. S., and removes from the statute references to the term "self-neglect." Definitions of "disabled adult in need of services" and "elderly person in need of services" are created. Onsite adult protective services investigators are required to determine whether a subject of a report is a disabled adult in need of services or an elderly person in need of services. Referral processes for a disabled adult in need of services to the community care for disabled adults program or for the referral of an elderly person in need of services to the community care for the elderly program (under the Department of Elderly Affairs) are specified. This bill provides that, in cases determined to be either a disabled adult in need of services or an elderly person in need of services, no classification of the report shall be made in the Department of Children and Family Services' central abuse registry and tracking system and no notification pursuant to s. 415.1055, F.S., shall be required. The Department of Children and Family Services may retain the records of such reports for up to one year. The bill provides that, with a Department of Children and Family Services referral to the Department of Elderly Affairs, primary consideration shall be given by the community care for the elderly program; the term "primary consideration" is defined. The Office of Program Policy Analysis and Governmental Accountability is ordered to do a study on the referral process of the population referred from the Department of Children and Family Services to the Department of Elderly Affairs.

This bill also enhances the tools that can be used to penalize persons who file false reports of adult and aging abuse, neglect, or exploitation by directing the Department of Children and Family Services to refer reports determined to be false to law enforcement for an investigation and

directing the law enforcement agency to refer reports to the state attorney when sufficient evidence is found to pursue prosecution. The Department of Children and Family Services and each state attorney are directed to report annually to the Legislature information regarding the handling of false reports. The penalty for knowingly and willfully making a false report is elevated from a second degree misdemeanor to a third degree felony. The cap on the civil penalty is increased from $1000 to $10,000.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 35-0; House 116-0

CS/SB 1646 — Protection of Children

by Health Care Committee, Senator Myers and others

CS/SB 1646 transfers, by a type two transfer as defined in s. 20.06, F.S., from the Department of Children and Family Services to the Department of Health, Division of Children's Medical Services, the responsibility for services to abused and neglected children provided through the child protection teams and the sexual abuse treatment program.

Rulemaking authority is delineated for the Department of Health for these added functions.

If approved by the Governor, these provisions take effect January 1, 1999.
Vote: Senate 38-0; House 118-0

CS/CS/SB 1660 — Healthy Families Florida Program

by Governmental Reform & Oversight Committee; Children, Families & Seniors Committee; Senator Kurth and others

CS/CS/SB 1660 directs the Department of Children and Family Services to contract with a private nonprofit corporation to implement the Healthy Families Florida Program. The corporation shall be incorporated for the purpose of identifying, funding, supporting, and evaluating programs and community initiatives to improve the development and life outcomes of children and to preserve and strengthen families with a primary emphasis on the prevention of child abuse. The Healthy Families Florida program must work in partnership with existing community-based visitation and family support resources to provide assistance to these families. The program is voluntary for all participants and requires informed consent at the initial contact. The Kempe Family Stress Checklist may not be used in the program.

The legislation includes an appropriation of $10 million to the Department of Children and Family Services from tobacco settlement receipts in the department's Grants and Donations Trust Fund for the implementation of the Healthy Families Florida Program.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 115-0

CS/CS/HB 1849 — Public Records/Child-care Facilities

by Governmental Operations Committee; Children & Family Empowerment Committee; and Reps. Murman and Lacasa (SB 108 by Senator Hargrett)

CS/CS/HB 1849 (Chapter 98-29) provides for the exemption of certain specified information in the foster parent licensure file from the open government provisions in s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution. The information that will be exempt includes such things as the home, work, and school addresses of licensees and other family and household members; the home's floor plan; telephone numbers; photographs; identifying information in neighbor references; and identifying information in sensitive, personal details about the licensee, his or her spouse, children, or other household members. This provision will apply to all licensed foster parents including but not limited to those who became adoptive parents.

The exemption for foster care records is repealed, subject to prior legislative review, on October 2, 2003.

These provisions became law without the Governor's signature on April 29, 1998.
Vote: Senate 38-0; House 115-0

HB 3217 — Privatization of Foster Care Services

by Rep. Murman and others (CS/CS/SB 352 by Ways & Means Committee; Children, Families & Seniors Committee; and Senators Brown-Waite, Hargrett, Cowin, Latvala and Crist)

Privatization of Foster Care and Related Services

HB 3217 defines "privatize" as contracting with competent, community-based agencies. The Department of Children and Family Services is directed to develop a strategic plan to accomplish privatization statewide through a competitive process over a 3-year period beginning on January 1, 2000. The plan must include input from community-based providers currently under contract with the department and must include a methodology for determining and transferring all available funds including federal funds that the provider agrees to earn and general revenue funds associated with the contract. The methodology must include expected workload and the 3 previous years' experience in expenses and workload. The plan must specify those service districts or portion of a district in which privatization cannot be accomplished within the 3 years' time frame, the reasons

the time frame cannot be met, and the efforts that should be made to remediate the obstacles which may include alternatives to total privatization such as private/public partnerships. The plan must be submitted to the Governor and the Legislature by July 1, 1999.

Beginning in FY 1999-2000, the State Attorney or the Office of the Attorney General must provide child welfare legal services required under ch. 39, F.S., in Sarasota, Pinellas, Pasco, and Manatee counties unless otherwise indicated. The provision of these legal services will begin as soon as determined reasonably feasible by the respective State Attorney or the Office of the Attorney General after the privatization of associated programs and child protective investigations has occurred.

A private, nonprofit agency with case management responsibilities for a child who is sheltered or found to be dependent may: 1) act as the child's guardian for registering the child in school if a parent or guardian is unavailable and his or her whereabouts cannot be reasonably ascertained, and 2) seek emergency medical attention under certain circumstances specified in the bill. However, the agency may not consent to sterilization, abortion, or termination of life support.

The term "eligible lead community-based provider" is defined as a single agency under contract with the Department of Children and Family Services for the provision of child protective services in a community that is no smaller than a county. The legislation specifies that the agency must have the following qualities:

1. Ability to coordinate, integrate, and manage all child protective services in cooperation with child protective investigations.

2. Ability to ensure continuity of care from entry to exit for all children referred from the protective investigation and court system.

3. Ability to provide directly or contract for through a local network of providers all necessary child protective services.

4. Willingness to accept accountability for meeting the outcomes and performance standards related to child protective services established by the Legislature and the federal government.

5. Capability and willingness to serve all children referred from the protective investigation and court systems regardless of the level of funding allocated by the state, provided all related funding is transferred.

6. Willingness to ensure that each person who provides child protective services completes the training required of child protective service workers by the Department of Children and Family Services.

Beginning January 1, 1999, and continuing at least through December 31, 1999, the department must privatize all foster care and related services in District 5 (Pinellas and Pasco), to continue contracting with the current model programs in Districts 1, 4, and 13 and in Subdistrict 8A, and to expand the Subdistrict 8A pilot to incorporate Manatee County. The lead provider of the District 5 program will be competitively selected and must demonstrate the ability to provide necessary comprehensive services through a local network of providers and must meet criteria established in the legislation.

A quality assurance program may be performed by a national accrediting organization and the legislation directs the department to develop a request for proposals for selecting the organization. For delivering statewide quality assurance services, the department is authorized to transfer up to 0.125 percent of the total funds from categories used to pay for contractually provided services but no more than $300,000 in any fiscal year. Under the authority of s. 216.177, F.S., additional positions may be established for quality assurance purposes.

Transfer of Child Protective Investigations to Sheriffs in Pasco, Pinellas, and Manatee Counties

By the end of FY 1999-2000, the department must transfer responsibility for all child protective investigations to the sheriffs of Pinellas, Pasco, and Manatee counties. All persons who provide these services must complete the training that is provided to and required of the department's protective investigators.

During FY 1998-99, the department and each sheriff's office must enter into a contract with the department. The department must transfer to the respective sheriffs for the duration of FY 1998-99, funding for the investigative responsibilities assumed by the sheriffs and federal funds and general revenue funds for all investigative, supervisory, and clerical positions; training; all associated equipment; furnishings; and other fixed capital items. Other directives are specified for the department during the initial year.

The legislation specifies that during the first year of FY 1998-99, the department must identify any barriers to transferring the entire responsibility for child protective services to the sheriffs' offices and must pursue avenues for removing barriers such as applying for federal waivers. By January 15, 1999, the department must submit a report to the Legislature that describes those remaining barriers pertaining to funding and related administrative issues. The entire responsibility for child protective investigations shall be transferred to the sheriffs' offices through grants from

the Department of Children and Family Services beginning in FY 1999-2000 unless otherwise directed by the Legislature.

The sheriffs must operate at a minimum in accordance with the performance standards established by the Legislature for protective investigations conducted by the department. The sheriffs in these counties will receive grants from the department from funds appropriated by the Legislature. Funds may not be integrated into the sheriffs regular budgets and all budgetary and other data must be maintained separately from all other records of the sheriffs' offices.

Program performance evaluation will be based on criteria mutually agreed upon by the sheriffs and a committee of seven persons appointed by the Governor and selected from persons who serve on the department's health and human services boards in Districts 5 and 6. The committee must submit an annual report regarding quality performance, outcome-measure attainment, and cost efficiency to the Legislature and Governor no later than January 31 of each year that these sheriffs are receiving general appropriations to provide child protective investigations.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 36-0; House 64-49

CS/SB 1540 — Relative-Caregiver Program

by Children, Families & Seniors Committee and Senators Turner Casas, Hargrett, Meadows and Forman

CS/SB 1540 creates s. 39.5085, F.S., and directs the department to establish and operate a Relative-Caregiver Program for relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child. The relative will act as a substitute parent as a result of a departmental determination of child abuse, neglect or abandonment and placement with the relative pursuant to ch. 39, F.S. Relative caregivers who receive assistance under this program must be capable, as determined by a home study, of providing a physically safe environment and a stable supportive home for the children under their care assuring that the children's well-being is met including immunizations, education, and mental health services as needed.

Relatives who qualify for the Relative-Caregiver Program will be exempt from foster care licensing requirements under s. 409.175, F.S., but would receive a special monthly relative-caregiver benefit payment. The department is directed to promulgate an administrative rule for the special benefit payment schedule that is based on the child's age. The statewide average monthly rate for children placed with relatives who are not licensed as foster homes may be no more than 82 percent of the statewide average foster care rate, although a relative-caregiver may be reimbursed up to the foster care rate if the needs of the child are extensive. Children who receive

cash benefits under the relative-caregiver program may not receive WAGES cash benefits under ch. 414, F.S.

Within available funds, services that the Relative-Caregiver Program will provide to the caregivers must support the child's safety, growth, and healthy development. These services include subsidized child care and other family support and family preservation services available to children in foster care. Children living with relative caregivers who are receiving assistance under the Relative-Caregiver Program will be eligible for Medicaid coverage.

The new service center building for the Department of Children and Family Services at the Lee Davis Complex in Tampa, Florida, is designated as the "James T. Hargrett, Jr. Building."

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 38-0; House 119-0

CHILD CARE

CS/SB 2092 — Child Care Facilities

by Children, Families & Seniors Committee and Senator Dyer

This bill amends ss. 402.302, 402.305, and 409.178, F. S., and excludes from the definition of "child care facility" operators of "transient establishments," as defined in s. 509.013, F.S. Child care personnel of such a facility, however, must still meet level two screening requirements pursuant to s. 435.04, F.S., which includes, but is not limited to, employment history checks, fingerprinting for all purposes, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation. Level two screening may include local criminal records checks through local law enforcement agencies. These security background investigations must ensure that no person subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense as listed under s. 435.04(2), F.S. The person may not have a confirmed report of abuse, neglect, or exploitation as defined in s. 415.102(5), F.S., which has been uncontested or upheld under s. 415.103, F.S. The person may not have committed an act that constitutes domestic violence as defined in s. 741.30, F.S. Under penalty of perjury, all employees subject to a level two screening shall attest to meeting the requirements for qualifying for employment and agree to inform the employer immediately if convicted of any of the disqualifying offenses while employed by the employer. Each employer with employees subject to a level two screening, such employer being licensed or registered by a state agency, shall submit to the licensing agency annually, under penalty of perjury, an affidavit of compliance with the provisions of s. 415.04, F.S.

This bill also provides for the Department of Children and Family Services to adopt different licensing standards for child care facilities that serve children of different ages, including those serving school-age children. With respect to standards for physical facilities operated in a public school facility, the department shall adopt the State Uniform Building Code for Public Education Facilities Construction as the minimum standard. The bill further requires that parents be informed of the impending transfer of a child care facility's ownership. This bill also renames the "Child Care Partnership Program" as the "Child Care Executive Partnership Program." To ensure seamless service delivery, the community coordinated child care agencies or the state resource and referral agency are authorized to administer the child care purchasing pool funds. The Department of Children and Family Services, in conjunction with the Child Care Executive Partnership, shall develop procedures for disbursement of funds through the child care purchasing pools. In order to be considered for funding, the community coordinated child care agency or the statewide resource and referral agency must commit to requiring parent fees to be at least equal to the amounts on the subsidized child care sliding fee scale. References to the "pilot" child care purchasing pools are removed from statute and are replaced by purchasing pools.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 115-0

DOMESTIC VIOLENCE

CS/CS/HB 1639 — Domestic Violence Address Confidentiality/Public Records Exception

by Law Enforcement & Public Safety Committee; Governmental Operations Committee; and Rep. Hill (SB 116 by Senator Holzendorf)

This bill creates a public records exemption for certain personal information about program participants in the address confidentiality program for victims of domestic violence. This bill provides that the residential, school, and work addresses; corresponding telephone numbers; and social security numbers of program participants under the address confidentiality program are exempt from disclosure. These exemptions are subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2002, unless otherwise reviewed and reenacted by the Legislature. This bill provides a public necessity statement for the exemption, as is required by s. 24, Art. I, State Constitution.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 37-0; House 112-0

CS/CS/HB 1637 — Domestic Violence Address Confidentiality

by Law Enforcement & Public Safety Committee; Governmental Operations Committee; Rep. Hill and others (CS/SB 118 by Children, Families & Seniors Committee and Senator Holzendorf)

This bill amends ss. 741.401-741.409, F. S., to establish an address confidentiality program for victims of domestic violence. An application process for participation in a program to provide address confidentiality for victims of domestic violence is described. Upon receipt of a properly and completely filed application, and to the extent possible under the budget, the Attorney General shall certify applicants as participants in the program and will serve as the agent for purposes of service of process and receipt of mail. The bill specifies instances when a participant may be eliminated from the program. A program participant may request that state and local agencies or other governmental entities use the designated address; those agencies must use that address unless the Attorney General determines there is adequate reason for the agency to use the individual's actual physical address. Criteria for this determination are specified as is the agency's right to appeal the decision of the Attorney General pursuant to ch. 120, F.S. This bill also allows a program participant to vote by absentee ballot and prohibits the supervisor of elections from making the participant's name, address, or telephone number available for public inspection except in certain specified instances. The prohibition against disclosure of a participant's address also applies to the Attorney General except under certain circumstances. A provision for assistance and counseling for program applicants is also stated in this bill. The program is to be implemented only to the extent that it is funded; the general revenue appropriation may not exceed $150,000 for FY 1998-99. Furthermore, the percentage by which the appropriation may be increased in future years is specified.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 37-0; House 118-0

AGING

SB 756 — Alzheimer's Disease Clinic
by Senator Klein

This bill provides for the establishment of memory disorder clinics at St. Mary's Medical Center in Palm Beach County, Tallahassee Memorial Regional Medical Center, and Lee Memorial Hospital. This bill also authorizes, rather than requires, the Department of Elderly Affairs to contract for the provision of specialized model day care programs in conjunction with memory disorder clinics.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 114-0

CS/CS/HB 3387 — Health Care
by Health Care Services Committee; Elder Affairs & Long Term Care Committee; Rep. Frankel and others (SB 1962 by Senator Rossin)

This bill provides for the establishment of memory disorder clinics at St. Mary's Medical Center in Palm Beach County and at the Tallahassee Memorial Regional Medical Center. This bill also provides the Department of Elderly Affairs discretion in the number of specialized model day care programs created in conjunction with memory disorder clinics. This bill provides that the Department of Elderly Affairs, together with the Agency for Health Care Administration, may contract with entities which have submitted an application as a community nursing home diversion project to provide benefits pursuant to the "Program for All-Inclusive Care for the Elderly." Finally, this bill creates a Panel for the Study of End of Life Care. This panel shall be located in the Pepper Institute for Aging and Public Policy. Membership on the 22-member panel is specified. The Pepper Institute shall provide support staff to the panel at the request of the panel. Expenses of the panel, including travel and per diem, will be paid by the entity appointing the member.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 116-0

CS/HB 4035 — Adult Family-Care Homes
by Elder Affairs & Long Term Care Committee and Rep. Roberts-Burke (CS/SB 1872 by Children, Families & Seniors Committee and Senators Turner, Casas and Klein)

This bill amends ch. 400, part VII, F.S., which governs adult family-care homes, to clarify that an adult family-care home provides housing and personal care in a private home with an individual or family and allows for assistance with the self-administration of medication along with other personal services. The Department of Elderly Affairs' rules regulating the adult family-care home

are to be as minimal and flexible as possible. The definition of "adult family-care home" is significantly amended to specify that a provider caring for one or two residents need not be licensed, and to delete the provision that an unlicensed home cannot hold itself out to the public as a place that provides personal care. The definition of the term "relative" is amended to add grandparents and great-grandparents. Providers must meet the requirements of level one background screening as provided in s. 435.03, F.S., which includes, but is not limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement and may include local criminal records checks through local law enforcement agencies. Any person for whom employment screening is required must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense as listed under s. 435.03(2), F.S. The person may not have a confirmed report of abuse, neglect, or exploitation, as defined in s. 415.102(5), F.S., which has been uncontested or upheld under s. 415.103, F.S. The person may not have committed an act that constitutes domestic violence as defined in s. 741.30, F.S. A hospice resident may remain in an adult family care home even though he or she requires 24-hour nursing supervision if continued residency is acceptable to the resident and to the provider.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 39-0; House 117-0

CS/SB 1960 — Assisted Living Facilities and Adult Family-Care Homes

by Children, Families & Seniors Committee and Senator Rossin

This bill substantially amends ss. 400.402, 400.404, 400.407, 400.408, 400.411, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.418, 400.419, 400.4195, 400.422, 400.4256, 400.428, 400.442, 400.452, 400.474, 400.618, and 408.036, F.S., to tighten up regulations for unlicensed facilities as a whole. Provisions relating to unlawful facilities are reorganized and revised. Requirements for licensure renewal are revised. Some fines are increased, and fines for the operation of an unlicensed facility, as well as the failure to apply for change of ownership license, are stated. This bill also facilitates assistance with the self-administration of medication to include bringing the resident the medication, reading the label, opening the container, removing the medication from the container, and closing the container; placing the dosage in the hand of the resident and helping the resident lift it to her or his mouth; applying topical medications; returning the medicine container to its proper place of storage; and keeping a record of assistance with medication. Assistance with the self-administration of medication is not to include anything above or beyond that just described. Licensure as an adult family care home is not required when a person has one or two non-optional state supplementation recipients residing in that person's own home.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 37-0; House 120-0

WELFARE REFORM

CS/HB 4147 — WAGES/Relocation Program

by Children & Family Empowerment Committee, Rep. Littlefield and others (CS/SB 2014 by Commerce & Economic Opportunities Committee and Senators Bankhead and Hargrett)

This bill establishes a relocation assistance program to assist WAGES participants in relocating within the state when there is a basis to believe that the relocation will contribute to the applicant's ability to achieve self-sufficiency. Provisions are made for restrictions upon future assistance unless the purpose of receipt of the relocation assistance involves domestic violence. The Department of Labor and Employment Security Services is given authority to adopt rules regarding the determination that a community has the capacity to provide services. The Department of Children and Family Services is given authority to restrict families from applying for temporary cash assistance within 6 months after receiving a relocation assistance payment. This bill requires that the Office of Tourism, Trade, and Economic Development certify to the Legislature the total number of WAGES participants employed in the food and beverage industry in the prior calendar year for the purpose of reducing alcoholic beverage tax surcharges. Finally, the Office of Tourism, Trade, and Economic Development shall designate a state enterprise zone; criteria for this pilot area are stated. No more than four businesses located within the pilot area are eligible for a tax credit; such credit is stated. The Office of Program Policy Analysis and Government Accountability shall review the effectiveness and viability of the pilot project area.

Vetoed by Governor on May 1, 1998.
Vote: Senate 40-0; House 114-1

CS/CS/HB 271 — WAGES/Drug Screening and Testing Program

by Health & Human Services Appropriations Committee; Children & Family Empowerment Committee; Rep. Arnall and others (CS/SB 2172 by Children, Families & Seniors Committee and Senator Holzendorf)

This bill creates a new section of law and requires the Department of Children and Family Services (the department) to implement demonstration projects in local WAGES coalitions 3 (Holmes, Washington, Jackson, Calhoun, and Liberty Counties) and 8 (Nassau, Duval, Clay, St. Johns, and Putnam Counties) for the purpose of drug screening each person applying for public assistance or services under the WAGES program. The department will test applicants whom the department has reasonable cause to believe, based on the screening, engage in the illegal use of

controlled substances. Provisions are made for establishing a protective payee for children of parents deemed ineligible to receive benefits due to the failure of a drug test. Requirements are provided for the implementation of the demonstration project as well as departmental action for substance abuse treatment. The department is given authority to develop rules regarding the disclosure of information and the assessment of persons formerly treated under this act. The department, in conjunction with the two local WAGES coalitions, will evaluate the demonstration projects, with the final report due to the State WAGES Board and the Legislature by January 1, 2001. In the event of a federal/state conflict in this area, federal requirements and regulations will control. The appropriation from which the pilot project is funded is specified.

This bill also substantially amends ss. 61.13, 61.1301, 61.181, 61.30, 69.041, 319.24, 319.32, 372.561, 372.57, 382.008, 382.013, 409.2557, 409.2561, 409.2564, 409.25641, 409.2567, 409.2572, 409.2575, 409.2576, 409.2578, 409.2579, 414.095, 414.32, 443.051, 443.1715, 455.213, 742.032, and 61.14. F. S.; creates ss. 409.2558, 409.2559, and 409.25658, F. S.; and repeals subsection 382.013(1) and paragraph 382.013(2)(b), F. S., to meet federal welfare reform requirements, to address technical problems with WAGES and with ch. 97-170, L.O.F., and to address current concerns with child support enforcement unrelated to prior legislation. Included among the latter category is a limit on retroactive child support awards to 2 calendar years, a re-enactment of the requirement for a separate income deduction order (deleted in 1997), and a requirement that the Office of Program Policy Analysis and Government Accountability evaluate the Dade County Child Support Enforcement demonstration project administered by the state attorney for the eleventh judicial circuit and the Manatee County Child Support Enforcement demonstration project administered by the clerk of the circuit court; these findings will be reported to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 1999. This bill also creates a process by which the Department of Revenue can place a claim against the unclaimed property in the possession of the Department of Banking and Finance for past due child support. A provision that the child support enforcement program is not required to file an Answer to the Complaint to Foreclose or other response in a foreclosure action in which the program has an interest under a lien arising from a judgment, order, or decree for child support in order to retain the right to participate in the disbursement of funds remaining in the registry is included. Finally, this bill deletes the authority of the Department of Revenue to issue an administrative fine of not more than $500 for failure to comply with an administrative subpoena for financial information necessary to establish, modify, or enforce a child support order.

If approved by the Governor, these provisions take effect July 1, 1998, regarding child support enforcement, and provisions regarding drug screening and testing take effect October 1, 1998.
Vote: Senate 39-0; House 100-17

MENTAL HEALTH AND SUBSTANCE ABUSE

HB 1991 — Child and Adolescent Mental Health Services

by Children & Family Empowerment Committee, Reps. Lacasa and Eggelletion (CS/SB 236 by Children, Families & Seniors Committee and Senator Cowin)

Comprehensive Child and Adolescent Mental Health Services Act

This legislation (Chapter 98-5) creates the "Comprehensive Child and Adolescent Mental Health Services Act" in ss. 394.490-394.497, F.S., to be implemented statewide. Obsolete provisions in ch. 394, part III, F.S., Children's Residential and Day Treatment Centers, that are no longer applicable to the current child and adolescent mental health system of care are repealed.

Guiding principles are delineated for the publicly funded child and adolescent mental health treatment and support system. These principles enhance the child and adolescent mental health system by placing greater emphasis on such things as: individualized needs and strengths of the child or adolescent and his family; involvement of the families or surrogate families in planning, selecting, and delivering services; provision of services in the least restrictive setting based on the clinical needs of the child or adolescent; and integrating and linking treatment services with schools, residential child-caring agencies, and other child-related agencies.

Four target population groups are defined for child and adolescent mental health services funded through the Department of Children and Family Services. Children and adolescents who reside with their parents or legal guardians or who are placed in state custody are served to the extent that resources are available. General performance outcomes for the child and adolescent mental health treatment and support system are delineated in four broad performance expectations for the system to be further defined in the department's annual performance outcomes and performance measures.

Mental health providers under contract with the department will collect fees from the parents or legal guardians whose net family income is between 100 and 200 percent of the Federal Poverty Income Guidelines, and the amount collected is determined by a sliding fee scale developed by the department in administrative rule. Families whose net family income is 200 percent or more above the Federal Poverty Income Guidelines are responsible for paying the cost of services.

The Department of Children and Family Services is directed to establish within available resources the array of services to meet the individualized service and treatment needs of the children, adolescents and their families who are included in the target populations. State mental health

facilities may not be included within the array of services because the Legislature does not intend for children and adolescents to be admitted to those facilities.

The array of services to be provided to the target population groups must include assessment services (physical and mental health, psychological functioning, intelligence and academic achievement, social and behavioral functioning, and family functioning). Other services that may be included are: prevention services, home-based services, school-based services, family therapy, family support, respite services, outpatient treatment, day treatment, crisis stabilization, therapeutic foster care, residential treatment, inpatient hospitalization, case management, child sex offender victim services, and transitional services.

The service planning process must focus on individualized treatment and service needs of the child or adolescent, concentrate on the service needs of the family and individual family members, enhance family independence by building on the strengths and assets of the family, and involve appropriate family members and pertinent community-based health, education, and social agencies in the service planning process. The legislation specifies the major elements of a services plan and provides that a mental health professional must be included among those persons developing the service plan.

The legislation directs the Department of Children and Family Services to develop standards for case management services and procedures for appointing case managers. Legislative intent specifies that case management service must not be duplicated or fragmented but must promote continuity and stability of a case manager.

Child and Adolescent Interagency System of Care Demonstration Models

The legislation creates child and adolescent interagency system of care demonstration models for children and adolescents and their families who: have serious emotional disturbances, have had multiple out-of-home placements, have monthly mental health treatment costs that exceed $3,000 per month, and the current case planning efforts and traditional services have not resulted in satisfactory outcomes. The models will operate for 3 years and be established within existing funds. Each distinct model will be evaluated, and based upon the findings and conclusions of the evaluation, the financial strategies and best practice models proven to be effective will be implemented throughout Florida.

In order to be a demonstration model, at least three agencies (Mental Health Program and Family Safety and Preservation Program of the Department of Children and Family Services, Medicaid program of the Agency for Health Care Administration, local school district, or the Department of Juvenile Justice) and other interested public or private entities must enter into a partnership

agreement to provide a locally organized system of care for children and adolescents who meet the criteria.

The legislation specifies the essential elements for a child and adolescent interagency system of care demonstration model. These elements include requirements such as: establishing a pooled funding plan that allocates proportionate costs to the purchasers; identifying a care management entity that is responsible for the organization, planning, purchasing, and management of mental health treatment services to the target population; measuring compliance with the goals of the demonstration models that includes qualitative and quantitative performance outcomes; training staff involved in all aspects of the project; and identifying and managing the basic provider network responsible for serving the target population.

The legislation anticipates that the demonstration models will enhance the delivery of mental health services by uniting local purchasers to work toward the same service goals for the defined population; assuring greater involvement of the family in service planning, in the treatment process, and statewide system planning; strengthening the network of providers by including natural community supports in the treatment process; blending all funds into a single pool; and increasing accountability by making the case manager the single point of accountability for the development and implementation of a single unified service plan.

The Louis de la Parte Florida Mental Health Institute will identify and evaluate each distinct demonstration model and submit a report to the Legislature by December 31, 2001, that includes findings and conclusions for each distinct model and recommendations for statewide implementation. The financial strategies and best-practice models proven effective shall be implemented statewide.

Comprehensive Child and Adolescent Mental Health Information and Referral Network

Each service district of the department must develop an implementation plan for establishing a district-wide comprehensive child and adolescent mental health information and referral network to be operational by July 1, 1999. The plan must be submitted by the department to the Legislature by October 1, 1998. The network must use existing district information and referral providers if, in the development of the plan, it is concluded that existing providers will deliver information and referral services in a more efficient and effective manner when compared to other alternatives.

These provisions were approved by the Governor and take effect July 1, 1998.
Vote: Senate 38-0; House 115-0

CS/CS/SB 442 — Forensic Client Services

by Criminal Justice Committee; Children, Families & Seniors Committee; and Senators Campbell and Forman

CS/CS/SB 442 amends and reorganizes ch. 916, F.S., into three distinct parts. Part I includes general provisions that pertain to all forensic clients, Part II relates specifically to forensic services for adult defendants found incompetent to proceed due to mental illness, and Part III relates specifically to forensic services for adult defendants found incompetent to proceed due to retardation or autism.

The major new provisions in CS/CS/SB 442 are as follows:

- Commitment to the Department of Children and Family Services is restricted to defendants charged with a felony who have been found to be incompetent to proceed due to mental illness, retardation, or autism or who have been acquitted of felonies by reason of insanity.

- The right for clients to contact and receive communication from their attorney at any reasonable time is specified.

- The authority of a facility administrator is broadened to allow release of sufficient information to provide adequate warning to the person being threatened with harm by a client and to the committing court, the state attorney, and the client's attorney rather than being limited to disclosure of the threat to the client's statement or declaration only.

- Reports and testimony by experts are required to be completed in accordance with ch. 916, F.S., and the Florida Rules of Criminal Procedure before payment is rendered for their professional services.

- The committing court is authorized to order conditional release of a defendant instead of involuntary commitment to a forensic facility.

- Charges against a defendant adjudicated incompetent to proceed due to mental illness are dismissed without prejudice to the state if the defendant remains incompetent to proceed for 5 years unless the court specifies otherwise.

- Charges against a defendant adjudicated incompetent to proceed due to retardation or autism are dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after that determination but may not exceed 2 years unless the court specifies otherwise.

- The Department of Children and Family Services is required to provide the court on an annual basis with a list of qualified professionals who may perform evaluations on defendants alleged to have retardation or autism.

- A social service professional is added to the experts responsible for providing a social and developmental history of the defendant suspected of having retardation or autism.

- The court is authorized to appoint one additional expert to independently evaluate the defendant who is suspected of having retardation or autism for determination of competency if requested by any party.

- Persons who can petition for involuntary admission to residential services under s. 393.11, F.S., arising out of ch. 916, F.S., are expanded to include the department, the state attorney, and the defendant's attorney.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 38-0; House 119-0

CS/HB 3227 — Substance Abuse Services

by Family Law & Children Committee, Rep. Wise and others (SB 392 by Senators Holzendorf and Forman)

CS/HB 3227 amends s. 397.311(25), F.S., the definition of "qualified professional." The definition changes in the following ways:

Professionals licensed under ch. 490 or ch. 491, F.S., are added.

Persons certified through a department-recognized certification process for substance abuse services must have at least a bachelors' degree.

Persons certified in substance abuse treatment services by a state-recognized certification process in another state may function as a qualified professional under ch. 397, F.S., for 1 year after employment by a Florida licensed substance abuse provider but must meet Florida's certification requirements after the 1 year expires.

Persons with a master's degree in a social or behavioral science in a human services discipline with a minimum of 2 years experience in assessment or treatment of substance abuse may perform the duties of a qualified professional under ch. 397, F.S., until January 1, 2001, but must be certified after that date.

Persons may perform the duties of a "qualified professional" under ch. 397, F.S., without meeting the certification requirements in s. 397.311(25), F.S., if certified before January 1, 1995, through a certification process recognized by the former Department of Health and Rehabilitative Services.

If approved by the Governor, these provisions take effect January 1, 1999.
Vote: Senate 38-0; House 115-0

SB 892 — Substance Abuse Services

by Senator Rossin

SB 892 clarifies that medication and methadone maintenance treatment, using methadone or other medication as authorized by state and federal law, are used in conjunction with medical, rehabilitative, and counseling services in the treatment of clients who are dependent upon opioid drugs.

The client's right to quality services, is amended requiring that substance abuse services licensed under ch. 397, F.S., must use methods and techniques to control aggressive client behavior as specified in the Florida Administrative Code. SB 892 specifies that staff who use these methods and techniques must be trained in their application. The department is directed to develop administrative rules pertaining to physical facility requirements for seclusion rooms that include dimensions, safety features, methods of observation and contents.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 120-0

Senate Committee on Commerce and Economic Opportunities

BUSINESS FORMATIONS

SB 704 — Business Entities

by Senator Klein

Business Entity Mergers

The bill provides for publicly-held Florida corporations to reorganize themselves as a holding company with one or more operating subsidiaries through a merger with a wholly-owned subsidiary in which the securities to be issued to the corporation's shareholders in the merger are identical in terms of value and governing provisions to the shares of the public company which are exchanged in the merger.

The bill amends chs. 607, 608, and 620, F.S., to specifically allow corporations, not-for-profit corporations, limited liability companies, and limited partnerships to merge with each other and with other business entities, both domestics and foreign, to form a "surviving entity" that can be either a corporation, limited liability company, limited partnership, or other business entity. Generally, the process set forth in the bill should streamline the merger process and enhance the flexibility of business structures.

The bill allows mergers of domestic corporations, not-for-profit corporations, limited liability companies, and limited partnerships with each other or other business entities, in accordance with procedures that are generally consistent with those currently provided for the merger of two or more corporations in ch. 607, F.S. The merger may occur upon the adoption of a plan of merger, which must include, among other things: the names of all business entities that are a party to the merger; the name of the surviving entity, all general partners if the surviving entity is a partnership, and all managers if the surviving entity is a limited liability company with management vested in one or more managers; the terms and conditions of the merger; and the manner and basis of converting shares, partnership interests, and the like of business entities into similar interests in the surviving entity.

The bill establishes the voting rights of members and managers of limited liability companies and general and limited partners in limited partnerships. The voting rights of shareholders are set forth in s. 607.1103, F.S. If the surviving entity is to be a partnership, all shareholders, general partners,

and the members of a limited liability company must consent in writing to becoming a general partner, with the resulting exposure to joint and several liability. If a shareholder, general partner, or member refuses to consent to becoming a general partner, the merger does not take place. All business entities involved must approve the plan for merger.

The bill references current procedures in s. 607.1103, F.S., as applicable to a corporation merging with other business entities. The bill provides for notice of a meeting to consider a merger plan to all limited liability company members and managers and all limited partnership general and limited partners. Information that must appear in the notice includes an explanation of dissenters' rights and a mechanism for establishing the "fair value" of a dissenting member's or partner's interest. Additionally, the bill provides the ability for limited liability companies and limited partnerships to amend or abandon a merger plan after approval, similar to that provided for corporations.

The bill requires a surviving entity to file articles of merger with the Secretary of State. The merger is effective on the date indicated in the articles or on the date of filing if no effective date is specified.

The bill provides that, on the effective date of the merger: only the surviving entity exists and all other entities cease to exist; title to all real estate and other property owned by a domestic party to the merger is vested in the surviving entity; the surviving entity is liable for all liabilities of all business entities which are a party to the merger; all claims, actions, or proceedings against a party to the merger may be continued against the surviving entity; creditors' rights are not affected by the merger; and shares, partnership interests, and the like are converted into a similar interest in the surviving entity.

The bill recognizes dissenters' rights for shareholders as provided in ss. 607.1301, 607.1302, and 607.1320, F.S., and establishes such rights for members and managers of limited liability companies and partners of limited partnerships. It also provides a procedure to establish the fair value of a member's or partner's interest in a business entity, similar to the procedure provided for shareholders, except for certain differences which reflect the types of entities involved.

Limited Liability Companies -- Taxation and Formation

This bill provides that a limited liability company (LLC) classified as a partnership for federal income tax purposes and formed under ch. 608, F.S., or qualified to do business in this state as a foreign LLC is not subject to Florida's corporate income tax. In particular, the bill:

- Amends s. 220.02(1), F.S., relating to the legislative intent for the Florida corporate income tax code, to specify the intent that such LLCs not be subject to the tax and to specify that the

code is not intended to tax any natural person who engages in business in this state as a member or manager of an LLC that is classified as a partnership for federal income tax purposes;
- Amends s. 220.03(1), F.S., relating to definitions under the corporate income tax code, to exclude LLCs that are taxable as partnerships for federal income tax purposes from the definition of the term "corporation";
- Amends s. 220.13(2), F.S., relating to the definition of "taxable income" under the corporate income tax code, to exclude the income of specified LLCs from such definition; and
- Amends s. 608.471, F.S., relating to the tax on income of LLCs, to provide that an eligible LLC's income is not subject to Florida's corporate income tax. This section is further amended to provide that an eligible LLC shall be classified as a partnership for purposes of the state corporate income tax code or shall be classified identically to its classification for federal income tax purposes.

The bill also amends s. 608.406, F.S., relating to an LLC's name, to provide that the words "limited liability company," or the abbreviation "L.L.C.," may be used at the end of an LLC's name as an alternative to the words "limited company" or the abbreviation "L.C."

This bill also amends ss. 608.405 and 608.407, F.S., to reduce the number of members necessary to form a limited liability company from two to one.

Miscellaneous Provisions

The bill amends s. 607.0730, F.S., to remove the 10-year limit on voting trusts.

The legislative intent section of Florida's corporate income tax code, s. 220.02, F.S., is amended to specify the intent that, except as otherwise provided under the Internal Revenue Code (I.R.C.), a qualified subchapter "S" subsidiary shall not be treated, for the purposes of state income taxes, as a separate corporation or entity from the "S" corporation parent to which the subsidiary's assets, liabilities, income, deductions, and credits are attributed under the I.R.C. The bill, however, does require a qualified subchapter "S" subsidiary to file an informational return to the Department of Revenue for the year in which the election is made to organize under such status.

The bill repeals multiple provisions from chs. 607, 617, and 620, F.S., relating to the reservation of business entity names, which is an inactive function of the Department of State.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 108-0

DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

CS/SB 1626 — Occupational Safety and Health

by Commerce & Economic Opportunities Committee and Senator Harris

This bill eliminates various duties and powers prescribed to the Department of Labor and Employment Security's Division of Safety (division), including: mandated employee health and safety programs for employers with a high frequency or severity of work related injuries and penalties for failure to implement such programs; division authority to enter and inspect private employers; and private sector employer penalties for refusal to admit for inspection.

This bill additionally authorizes the division to provide safety consultations to employers who are insured pursuant to the joint underwriting plan approved by the Department of Insurance.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 35-1; House 67-47

SB 1724 — Unemployment Compensation

by Senators Holzendorf and Clary

This bill revises the definition of employment to exclude from unemployment compensation coverage certain election workers and inmates of penal institutions and revises the definition of wages to exclude employer-provided educational assistance payments. This bill further conforms benefit eligibility conditions to federal law and specifies limited use of Reed Act distributions in certain years.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 33-0; House 116-0

ECONOMIC DEVELOPMENT

CS/CS/HB 3351 — Corporate Income Tax/Sponsored Research Contracts

by Finance & Taxation Committee; Colleges & Universities Committee; Rep. Fasano and others (CS/CS/SB 742 by Education Committee; Commerce & Economic Opportunities Committee; and Senators Clary and Diaz-Balart)

This bill amends s. 220.15, F.S., relating to the adjusted federal income that must be apportioned to Florida under the state's corporate income tax code by a taxpayer doing business within and without the state. The bill provides that a taxpayer's real or tangible property in Florida that is certified to be dedicated exclusively to research and development activities under a sponsored research contract conducted in conjunction with and through an eligible university shall not be counted in the formula to determine how much of that taxpayer's federal income will be apportioned to Florida. In addition, compensation that is certified as paid to employees in Florida dedicated exclusively to such research and development activities shall not be counted in the apportionment formula. The bill defines the term "sponsored research contract" so that it must be an agreement between the university and the taxpayer, with funding provided from public or private sources.

Eligible universities include the 10 members of the State University System and non-public universities that are chartered in Florida and conduct professional programs or graduate programs at the doctoral level. According to the State Board of Independent Colleges and Universities, only three non-public universities currently fall into this category: the University of Miami, Nova Southeastern University, and the Florida Institute of Technology.

The Board of Regents and the president of the non-public university must make the respective certifications to the Department of Revenue. The bill specifies that certified research and development activities shall not cause a corporation to become subject to Florida corporate income taxes if the corporation would not otherwise be subject to such taxes. The property and payroll eliminated from the apportionment formula may be eliminated only for the duration of the contractual period for the sponsored research. In addition, the tax reduction caused by the elimination of eligible property and payroll from the apportionment formula may not exceed the amount paid to the university for the conduct of the sponsored research. Further, the provisions of the bill do not apply to sponsored research contracts in existence prior to July 1, 1998.

The bill authorizes the department to adopt rules, pursuant to the Administrative Procedure Act, to implement the provisions of the measure. The Board of Regents and the president of each participating non-public university must monitor the contracts and report to the Legislature by

February 1, 2000, on the effect of these provisions in attracting additional sponsored research contracts.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 119-0

SB 1262 — Small Business Technology Growth Program
by Senator Harris

This bill creates s. 288.95155, F. S., to create the Florida Small Business Technology Growth Program to be administered by the Technology Development Board of Enterprise Florida, Inc. The program is established to provide financial assistance to businesses having high job growth and emerging technology potential and fewer than 100 employees. A separate small business technology growth account is established by the board within the Florida Technology Research Investment Fund for the purpose of funding the provisions of this bill. This bill also specifies the sources and the use of funds in the account and provides criteria for awards of assistance from the program. The criteria includes giving priority to moderate risk and high risk ventures that offer the greatest opportunity for economic development.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

ECONOMIC DEVELOPMENT FINANCE AND TAX

HB 3113 — Community Contribution Tax Credits
by Reps. Fuller, Murman and others (CS/SB 192 by Ways & Means Committee and Senator Horne)

This bill raises the annual cap to $5 million from $2 million on the combined total amount of credits that may be claimed against corporate income tax, franchise tax, and insurance premium tax under the Community Contribution Tax Credit Program. The program was created to encourage businesses to make donations toward revitalization projects undertaken by redevelopment organizations (ch. 80-249, L.O.F). Eligible projects include those designed to construct or rehabilitate housing and commercial facilities or to promote entrepreneurial or job-development opportunities for low-income persons (s. 220.03(1)(t), F.S.). All projects, except for those related to housing for low-income persons, must be located in an enterprise zone (ss. 220.183(4)(d) and 624.5105(4)(d), F.S.).

The program authorizes corporations that make donations to approved redevelopment organizations to claim a credit equal to 50 percent of the donation against corporate income tax, franchise tax, or insurance premium tax. Under ss. 220.183 and 624.5105, F.S., an individual business may receive no more than $200,000 in tax credits per year (ss. 220.183(3)(b) and 624.5105(3)(b), F.S.).

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 120-0

CS/SB 280 — Motor Vehicle and Truck Repair Parts

by Judiciary Committee and Senator Williams

This bill creates s. 686.30, F. S. to prohibit a manufacturer of repair parts for motor vehicles or trucks from terminating, canceling, or failing to renew a contract between the manufacturer and a distributor of such parts where the distributor agrees to maintain a stock of parts unless the manufacturer has good cause, as defined by the bill. The bill provides for liability when there is no good cause. The bill prohibits manufacturers of motor vehicle and truck repair parts from engaging in specified acts.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 33-0; House 118-0

SB 712 — Municipalities

by Senator Bronson

This bill (Chapter 98-37) amends s. 166.021, F. S., to authorize municipal governing bodies to expend public funds to attract and retain business enterprises.

The bill specifies that such use of public funds constitutes a public purpose, and the bill defines economic development activities as including but not limited to the following:

- Developing or improving local infrastructure;
- Issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants;
- Leasing or conveying real property; and
- Making grants to private enterprises for the expansion of businesses to the community.

These provisions were approved by the Governor, without his signature, and take effect April 30, 1998.
Vote: Senate 35-0; House 113-1

CS/HB 3681 — Capital Investment Tax Credits

by Finance & Taxation Committee, Rep. Ball and others (CS/CS/SB 1314 by Ways & Means Committee; Commerce & Economic Opportunities Committee; and Senators Bronson and Grant)

This bill creates a capital investment tax credit program, codified in s. 220.191, F.S., under which a qualified business may claim an annual credit against corporate income taxes equal to 5 percent of the eligible capital costs generated by a new or expanding facility in Florida that creates 100 new jobs in the state and is in one of the high-impact sectors identified by Enterprise Florida, Inc. (EFI). The bill prescribes the following additional conditions and requirements:

- The credit may be claimed for no more than 20 years, beginning with the commencement of operations of the qualifying project.
- The credit is granted only against the corporate income tax liability generated by or arising from the project itself.
- The sum of all credits may not exceed 100 percent of the eligible capital costs of the project.
- The annual credit may not exceed a specified percentage of the annual corporate income tax liability generated by the project. Those percentages are:

  – 100 percent, for a project with a cumulative capital investment of $100 million or more;
  – 75 percent, for a project with a cumulative capital investment of at least $50 million but less than $100 million; and
  – 50 percent, for a project with a cumulative capital investment of at least $25 million but less than $50 million.

  A project that results in a cumulative capital investment of less than $25 million is not eligible for the program.

- The high-impact sectors to which a facility must belong are those identified by EFI as part of the high-impact grant program under s. 288.108(6), F.S., and include, but are not limited to: aviation, aerospace, automotive, and silicon technology industries.
- Prior to receiving the credits, a business must achieve and maintain the minimum employment goals beginning with commencement of operations at the qualifying project and continuing each year thereafter during which the credits are available.
- The credit may not be carried forward or backward.

The measure provides that the Office of Tourism, Trade, and Economic Development (OTTED), based upon a recommendation from EFI, shall certify a business as eligible to receive the credits, prior to the commencement of project operations, and shall forward the certification to the Department of Revenue. The department is required to enter into a written agreement with the business that, at a minimum, sets out the method by which income generated by or arising out of the qualifying project will be determined.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 115-0

WAGES

CS/SB 1114 — WAGES Program

by Ways & Means Committee and Senators McKay and Latvala

This bill makes various revisions to the Work and Gain Economic Self-sufficiency (WAGES) Program, provides for WAGES Program Employment Projects, enhances certain economic development incentive programs, and provides appropriations for programs.

WAGES Program State Board of Directors

This bill requires the WAGES Program State Board of Directors to approve the WAGES State Plan, operating budget, amendments thereto, as well as any WAGES related proposed rules. In addition, the Workforce Development Board of Enterprise Florida, Inc., or a state agency charged by law to implement the WAGES Program must collaborate with the staff of the WAGES Program State Board of Directors on any WAGES related policies, requests for proposals, and related directives. Furthermore, the Secretary of the Department of Transportation, or the Secretary's designee, is added to the WAGES Program State Board of Directors.

This bill further extends the life of the WAGES Program State Board of Directors to the year 2002.

Local WAGES Coalitions

This bill allows a person to be a member of a local WAGES coalition or a combined WAGES coalition/regional workforce development board regardless of whether the member, or an organization represented by a member, could benefit financially from transactions of the coalition. However, if the coalition enters into a contract with an organization or individual represented on

the coalition, the contract must be approved by a two-thirds vote of the entire board, and the board member who could benefit financially from the transaction must abstain from voting.

This bill adds to the membership of local WAGES coalitions a representative of a county health department or a representative of a healthy start coalition to serve as an ex officio, nonvoting member of the coalition.

This bill requires local WAGES coalitions to deliver the full continuum of services provided under the WAGES Program, including services that are provided at the point of application, by October 1, 1998. However, a local WAGES coalition may not determine an individual's eligibility for temporary cash assistance and all education and training must be provided through agreements with regional workforce development boards. Local WAGES coalitions must develop a transition plan to be approved by the WAGES Program State Board of Directors. This plan must provide for the utilization of space leased by the Department of Labor and Employment Security for WAGES service functions. By October 1, 1998, local WAGES coalitions may have negotiated and entered into new lease agreements or subleased for said space from the department. In the event a local WAGES coalition does not utilize the department's space, the department is not obligated to pay under any lease agreement for WAGES services entered into by the department since July 1, 1996. Career service employees of the Department of Labor and Employment Security who are subject to layoff due to the transfer of services, must be given priority consideration for employment by the local WAGES coalitions.

Domestic Violence and WAGES

This bill requires that local WAGES coalitions, in conjunction with their planning, coordination, and oversight functions specified in the statewide implementation plan, include in the local plan provisions for providing services to victims of domestic violence. This bill further contains the following provisions relating to domestic violence:

- Certain persons at risk of domestic violence will receive an exception from work requirement noncompliance penalties and an exception will be available for noncompliance related to treatment or remediation of the past effects of domestic violence;

- Provides that a victim of domestic violence may be granted a hardship exemption from time limitations if the effects of such domestic violence delay, interrupt, or otherwise adversely affect the individual's participation in WAGES;

- A person who has been battered or subject to extreme cruelty in the United States by a spouse or parent is a "qualified noncitizen" under specific circumstances;

- Program applicants or participants will receive information regarding services available from domestic violence centers or organizations;

- The risk of domestic violence will constitute good cause for a parent or caretaker relative's failure to cooperate with the establishment of paternity or the establishment, modification, or enforcement of certain child support orders; and

- Victims of domestic violence are excepted from the limitation on cash assistance for children born to families receiving temporary cash assistance.

WAGES Program Employment Projects

This bill creates a process to identify and develop WAGES Program Employment Projects. Every year, each local city and county economic development organization in consultation with the local WAGES coalitions, must identify economic development projects that can have the greatest impact on employing WAGES participants in their areas. These projects will be reviewed and prioritized by Enterprise Florida, Inc., in consultation with the WAGES Program State Board of Directors for approval by the Governor. The Governor is authorized to issue an executive order directing certain agencies to use identified resources for project completion. Local WAGES coalitions are required to enter into contracts with the appropriate state and local entities to implement such projects.

Employer Incentives

This bill removes repayment provisions for WAGES Program subsidizes including work supplementation, on-the-job-training, and incentive payments, however, these incentives may not be continued with any employer who exhibits a pattern of failing to provide participants with continued employment after the incentive payment period ends.

This bill creates the WAGES training bonus whereby an employer who hires a WAGES participant who has less than 6 months of eligibility for temporary cash assistance remaining and who pays the participant a wage that precludes the participant's eligibility for temporary cash assistance can receive $240 for each full month of employment for a period that may not exceed 3 months. An employer who receives a WAGES training bonus for an employee may not receive a work supplementation subsidy for the same employee. Employment is defined as 35 hours per week at a wage of no less than minimum wage.

This bill prohibits the displacement of current employees with WAGES participants.

This bill expands the enterprise zone sales tax and corporate tax credit to JTPA or WAGES Program participants not residing in an enterprise zone.

This bill creates a Quick-response Training Program for WAGES participants. Enterprise Florida Inc., is given the authority to, at the discretion of the State WAGES Emergency Response Team, to award quick-response training grants and develop applicable guidelines for the training of participants in the WAGES Program.

WAGES Transportation

This bill expands the number of options available to local WAGES coalitions to assist WAGES participants in obtaining cost-effective and sustainable transportation. The Department of Transportation is required to assist transit operators in the planning, development, and coordination of transit services for WAGES participants. Transit providers receiving public transit block grant funds administered by the department are required to coordinate their planning and development activities with local WAGES coalitions. WAGES support services funds and funds appropriated to assist persons eligible under the Job Training Partnership Act are exempt from the definition of transportation disadvantaged funds. Entities responsible for the planning and delivery of transportation disadvantaged services are required to assist local WAGES coalitions in the development of innovative transportation services for local WAGES coalitions.

This bill authorizes transitional transportation assistance for a period of up to 1 year after a WAGES participant is no longer eligible to participate in the WAGES Program due to earnings. This bill stipulates that transitional transportation must be employment related and declares that this provision does not constitute an entitlement to transportation services.

WAGES Program Participants

This bill provides a work "credit" for WAGES participants. WAGES participants who are not exempt from work activity requirements can earn 1 month of eligibility for extended temporary cash assistance, up to a maximum of 12 additional months, for each month in which the participant is fully complying with work activity requirements of the WAGES Program through unsubsidized private sector employment. However, a participant may not receive temporary cash assistance under the work credit provision, in combination with other periods of temporary cash assistance, for longer than 48 months.

This bill provides an exemption from the ten percent reduction in benefits under a hardship exemption if recommended by the local WAGES coalition and provides an exemption to time limits for individuals who are totally responsible for the personal care of a disabled family member

when such care is verified and alternate care is not available. This exemption must be evaluated annually.

This bill establishes a voluntary relocation assistance program to assist WAGES participants in relocating within the state when there is a basis to believe that the relocation will contribute to the applicant's ability to achieve self-sufficiency. Provisions are made for restrictions upon future assistance unless the purpose of receipt of the relocation assistance involves domestic violence. Criteria must be developed by the WAGES State Board of Directors to determine if a community receiving a relocated family has the capacity to provide needed services and employment opportunities.

Department of Labor and Employment Security/Department of Children and Family Services

This bill exempts the Department of Labor and Employment Security and Department of Children and Family Services from the requirements of ss. 255.25(2)(b) and 255.25(3)(a), F.S., relating to the requirement of advertisement for and receipt of competitive bids for the procurement of leased real property until June 30, 1999.

Appropriations

This bill provides a $32 million appropriation from TANF funds to support the activities of local WAGES coalitions in the preparing, placement, and supporting of WAGES Program participants in jobs or other approved work activities.

This bill provides a $1.9 million appropriation to the National Guard to establish a life preparation program for children of WAGES participants and economically disadvantaged youths in concert with neighborhood revitalization efforts.

This bill provides for two specific appropriations for support of WAGES Program Employment Projects including:

- Up to $25 million of funds designated for WAGES reserve; and

- Up to $7.5 million from funds associated with the Welfare-to-Work grant in the Employment Security Administration Trust Fund. Of this $7.5 million, $2.5 million is to be provided to the Institute of Food and Agricultural Sciences of the University of Florida for WAGES job opportunities, and $1 million is to be provided to the Department of Military Affairs to provide job readiness services for WAGES Program participants as approved by the WAGES Program State Board of Directors.

If approved by the Governor, these provisions take effect June 30, 1998.
Vote: Senate 38-0; House 112-0

STATE AIR CARRIERS

CS/HB 3393 — Air Carriers

by Business Development and International Trade Committee, Rep. Turnbull and others (CS/CS/SB 1846 by Governmental Reform & Oversight Committee; Commerce & Economic Opportunities Committee; and Senator Williams)

This bill directs the Department of Management Services to evaluate the state contract for air carrier service for state employees to determine how to improve the quality, availability, and cost of air service to state employees and other citizens. The department is to then undertake a 3-year pilot program based on its analysis in lieu of the current state contracting provisions, and then evaluate the pilot program.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to review the effects and fiscal impact of the program and provide the legislature with a preliminary report prior to the 1999 Session. The report is to contain information on and analyses of additional costs incurred and savings realized by state agencies, including per diem, subsistence, productivity and time to the travelers, and cost of airfare.

Enterprise Florida, Inc., is directed, as well, to undertake and complete a review on the impact of regional airports on economic development in the State of Florida.

This bill does not increase the rulemaking authority of a state agency.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 115-0

Senate Committee on Community Affairs

LOCAL GOVERNMENT

CS/CS/SB 1704 — Telecommunications Rights-of-Way

by Regulated Industries Committee; Community Affairs Committee; and Senators Bronson, Silver, Holzendorf, Meadows, Turner, Gutman, Harris and Myers

This bill amends s. 337.401, F.S., relating to the fees that local governments may assess telecommunications companies for the use of public roads and rights-of-way, or franchise fees, as they are commonly known. The bill clarifies that the fee cap of one percent of gross receipts applies to all telecommunications companies providing local service and includes any "in-kind" contributions by a telecommunications provider. The bill prospectively prohibits municipalities from requiring or soliciting in-kind contributions from telecommunications companies, but "grandfathers" existing ordinances providing for these contributions. In addition, the bill further clarifies local government authority over public roads and rights-of-way.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 36-0; House 113-0

SB 2222 — Property Appraisers/Duties

by Senators McKay and Forman

This bill amends s. 197.122, F.S., to specify that "material mistakes of fact" by the property appraiser may be corrected within a 1-year period after the tax roll is approved by the Department of Revenue, rather than within 60 days after the tax roll is certified by the County Value Adjustment Board, thereby extending the opportunity for corrections of assessments. Beginning in 1999, if such a correction results in a refund of taxes paid because of the erroneous assessment, the property appraiser may ask the Department of Revenue to approve the refund request as provided in s. 197.182, F.S., or submit the correction and refund order directly to the tax collector for action. If this bill is approved by the Governor, this provision is effective January 1, 1999.

This bill creates s. 197.4155, F.S., to permit county tax collectors to implement an installment program for the payment of delinquent personal property taxes. If implemented, the program must be available to each delinquent personal property taxpayer whose delinquent personal property taxes exceed $1,000.

This bill amends s. 197.432, F.S., to revise the requirements for calculating the rate of interest on void tax certificates and to prohibit holders of tax certificates from directly initiating contact with the owner of property upon which they hold a tax certificate to encourage or demand payment.

This bill amends s. 170.201, F.S., to allow municipalities to exempt certain charitable housing facilities used for elderly or disabled persons from special assessments for emergency medical services.

This bill amends s. 200.069, F.S., to change the current TRIM Notice to allow local governments to include *proposed* non ad valorem assessments, as opposed to only *adopted* non ad valorem assessments as provided in current law.

This bill amends s. 213.68, F.S., to grant garnishment authority to counties that self-administer the local option tourist development tax.

If approved by the Governor, these provisions take effect October 1, 1998, except as otherwise provided.
Vote: Senate 39-0; House 117-0

CS/SB 2474 — Growth Management, Land Use Planning and School Concurrency

by Community Affairs Committee and Senator Lee

This bill makes numerous revisions to ch. 163, part II, F.S., the Local Government Comprehensive Planning and Land Development Regulation Act, or growth management act as it is commonly known; ch. 380, part I, F.S., the Florida Environmental Land and Water Management Act; and ch. 186, F.S., the Florida State Comprehensive Planning Act.

The bill implements most of the recommendations of the Public Schools Construction Study Commission on planning and siting of public schools, as well as the extension of concurrency requirements to public schools. The bill provides incentives and disincentives to promote cooperation between school boards and local governments in the siting of new public schools, clarifies the prerequisites for a local government to extend concurrency requirements to public schools, and sets the parameters for adoption of school concurrency. The bill provides an exemption from the requirement for an interlocal agreement for municipalities which are found to have no significant impact on school attendance. Further, the bill clarifies that any county whose public school facilities element is the subject of a final order by the Administration Commission prior to the effective date of this act may implement that element consistent with the general law in effect at the time the final order was entered.

The bill also amends ss. 163.3187 and 163.3191, F.S., implementing the recommendations of the Evaluation and Appraisal Report (EAR) Technical Committee regarding streamlining the EAR review process and authorizing amendment of a local government's comprehensive plan after the EAR due date has passed.

The bill amends numerous sections of ch. 186, F.S., to clarify the role of the Governor's Office in reviewing and approving Strategic Regional Policy Plans, as well as to clarify the legal effect of the State Land Development Plan and delete references thereto. The bill further directs the Governor to establish a committee to review and make recommendations for changes to the State Comprehensive Plan and for future use of the State Land Development Plan.

The bill amends ss. 280.975 and 280.980, F.S, revising procedures relating to review of and resolution of disputes regarding proposed military base reuse plans.

Further, the bill defines the term "optional sector plan" and creates s. 163.3245, F.S., which provides an optional process for addressing the extra-jurisdictional impacts of large-scale developments. The bill authorizes the department to enter into agreements with local governments to designate areas appropriate for optional sector plans and requires that sector plans be adopted as plan amendments to the local government comprehensive plan.

Finally, the bill creates the Transportation and Land Use Study Committee, the members of which are to be appointed jointly by the secretaries of DCA and DOT. The committee must review statutes relating to coordination of transportation and land use and report to the Governor and the Legislature by January 15, 1999.

If approved by the Governor, these provisions take effect upon becoming law, except the provisions relating to school concurrency and school siting become effective July 1, 1998, and the provisions relating to streamlining EAR requirements become effective October 1, 1998.
Vote: Senate 40-0; House 113-1

CS/CS/CS/HB 3075 — Firefighters and Police Pension Trust Funds

by Finance & Taxation Committee; Governmental Operations Committee; Law Enforcement & Public Safety Committee; Rep. K. Pruitt and others (CS/SB 270 by Community Affairs Committee, Senator Childers and others)

The bill substantially revises the administration of local pension plans for firefighters (ch. 175, F.S.) and police officers (ch. 185, F.S.) to standardize benefit administration for plans enacted by local ordinance and special act of the Legislature (local law plans), and to clarify the responsibilities of the Division of Retirement in its oversight role on such plans as required by ch. 112, part VII, F.S., in accordance with 1996 revisions to the Administrative Procedures Act, ch. 120, F.S. The bill requires significant changes in the benefits offered by many local law plans by requiring compliance with the minimum benefits for chapter law plans. The most significant requirements include compliance with the definition of salary, for purposes of determining the monthly retirement benefit, which includes many forms of compensation other than the base rate of pay; and compliance with a definition of disability which prevents the transfer of the police officer or firefighter to useful service other than as a police officer or firefighter.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 36-1; House 104-11

HB 1555 — Property Owners/Assessment Notice

by Rep. Harrington (CS/SB 492 by Community Affairs Committee and Senator McKay)

This bill amends s. 170.07, F.S., to require 30 days' written notice, rather than 10 days' notice, as to the time and place for a public hearing to discuss the imposition of a special assessment upon property.

This bill amends s. 194.032, F.S., to extend the deadline of the initial hearing of the county Value Adjustment Board from 45 to 60 days after the TRIM notice is sent. In addition, the deadline for noticing a petitioner of their scheduled appearance before the value adjustment board is extended from 5 to 15 calendar days.

If approved by the Governor, these provisions take effect January 1, 1999.
Vote: Senate 37-0; House 117-0

SB 830 — Homestead Tax Exemptions/Social Security Numbers

by Senators Cowin, Brown-Waite and Grant

This bill amends s. 196.011, F.S., to delete a requirement that an applicant for homestead tax exemption must provide his or her social security number as a condition of receiving the exemption. In addition, this section is amended to delete a provision which requires county property appraisers submit social security numbers from homestead exemption applications, for the 2000 tax year and thereafter, to the Department of Revenue.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 31-7; House 95-16

CS/CS/HB 4181 — Statewide Unified Building Code

by Transportation & Economic Development Appropriations Committee; Community Affairs Committee; Rep. Constantine and others (CS/CS/SB 1190 & 868 by Governmental Reform & Oversight Committee; Community Affairs Committee; and Senators Clary and Meadows)

This bill establishes the Florida Building Code (FBC), a single statewide building code and codifies many of the recommendations of the Governor's Building Codes Study Commission. This committee substitute for committee substitute provides that:

- The Board of Building Codes and Standards is reconstituted as the Florida Building Commission (FBC);
- The Department of Insurance is required to adopt the Florida Fire Prevention Code and the Life Safety Code;
- Before the 2000 Regular Session, the FBC must submit for review and approval or rejection, the Florida Building Code adopted by the FBC and prepare a list of recommendations of revisions to the Florida Statutes necessitated by adoption of the Florida Building Code if the Legislature approves the Florida Building Code;
- Upon initial adoption, the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are deemed adopted by all local jurisdictions; with some restrictions, local governments may adopt more stringent requirements to the codes;
- Beginning in 2001, local governments shall assume expanded responsibilities for permitting, plans review and inspection of facilities that are currently reviewed by state agencies;
- The Florida Building Commission will create and administer a statewide product evaluation system;
- There will be a building code training program developed which will become part of current continuing education requirements for occupations related to construction and construction regulation;

- There will be disciplinary consequences related to material code violations for state-certified and registered contractors; and
- The Department of Business and Professional Regulation is required to implement an automated information system which tracks disciplinary actions taken against construction-related occupations on a statewide basis.

If approved by the Governor, these provisions take effect July 1, 1998, or upon becoming law, whichever is later.
Vote: Senate 37-0; House 115-0

HB 3863 — Coastal Zone Protection Act

by Reps. Argenziano and Stabins (SB 1404 by Senators Brown-Waite, Dudley, Williams and Clary)

This bill amends s. 161.54, F.S., to modify the definition of the term "substantial improvement," for purposes of the Coastal Zone Protection Act, to specify what constitutes nonstructural interior finishings.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

VETERANS

SB 142 — Veterans/Employment Preference

by Senator Brown-Waite and others

This bill (Chapter 98-33) amends a number of "veterans' preference" provisions of ch. 295, F.S. In addition to several clarifications of the law, the bill requires state residency in order to declare veterans' preference, provides that military retirees are eligible for veterans' preference in appointments and retention, allows veterans from other states to benefit from Florida's Veteran's Preference law after they have established residency in Florida, and authorizes the Public Employees Relations Commission discretion to award reasonable attorney's fees, up to a maximum of $10,000, where the public employer is found to have violated the veteran's preference statute.

These provisions were approved by the Governor and take effect April 29, 1998.
Vote: Senate 37-0; House 117-0

SB 1260 — Veteran/Term Redefined

by Senator Harris

This bill amends s. 1.01, F.S., to redefine the "Vietnam Era," thus increasing the number of military veterans eligible for state "wartime" benefits. The Vietnam Era is redefined as the time period of February 28, 1961, to May 7, 1975, rather than the time period of August 5, 1964, to May 7, 1975.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 36-0; House 120-0

SPECIAL DISTRICTS

CS/HB 3269 — Special Districts

by Community Affairs Committee and Rep. Gay (SB 1032 by Senators Rossin and Myers)

This bill revises ch. 189, F.S., the Uniform Special District Accountability Act, and other laws governing special districts in Florida. The bill amends s. 189.4042, F.S., by requiring referendum approval to dissolve or merge a county or municipally created independent district with ad valorem taxing powers. The bill amends s. 189.405, F.S., to require a candidate for a special district seat to pay a filing fee or submit a required number of signatures consistent with existing requirements for other candidates. The bill further modifies s. 15 of ch. 97-256, L.O.F., which requires all special districts to codify all special acts relating to that special district. The bill extends the deadline for codification to the year 2004, depending upon the number of special acts governing the district, and eliminates the prohibition against including substantive changes in codifying special acts. The bill also eliminates a requirement that a special district codify its special acts at the time it requests substantive amendments to its enabling legislation. Finally, this bill authorizes special districts to grant merit pay bonuses to employees.

If approved by the Governor, these provisions take effect upon becoming law, except for the provisions relating to candidate qualification, which become effective on January 1, 1999.
Vote: Senate 40-0; House 118-0

MISCELLANEOUS

HJR 3151 — Homestead Exemption/Age 65 or Older

by Rep. Villalobos and others (SJR 246 by Senators Diaz-Balart, Gutman and others)

This joint resolution amends s. 6, Art. VII, State Constitution, to authorize counties and municipalities to grant an additional homestead tax exemption of up to $25,000 to persons at least 65 years old whose household income does not exceed $20,000. The joint resolution must be implemented by general law, which must define household income, must require counties and municipalities to grant the additional exemption by ordinance, and must provide for the periodic adjustment of the income limitation for changes in the cost of living.

These provisions must be submitted to the electors at the general election to be held in November 1998.
Vote: Senate 34-5; House 113-2

CS/HB 1739 — Regional Poison Control Center

by Health Care Standards & Regulatory Reform Committee, Rep. Saunders and others
(CS/SB 302 by Community Affairs Committee and Senator Lee)

The committee substitute (Chapter 98-7) amends s. 395.1027, F.S., and creates s. 401.268, F.S., to require, by October 1, 1999, regional poison control centers (RPCC) and life support service licensees to develop and implement, respectively, a prehospital emergency dispatch protocol that defines toxic substances and describes the procedure by which the designated RPCC may be consulted by the life support service licensee.

These provisions were approved by the Governor, without his signature, and take effect July 1, 1998.
Vote: Senate 37-0; House 114-0

HB 627 — Community Policing Innovations

by Rep. Goode and others (SB 474 by Senator Dyer)

This bill amends ch. 163, parts III and IV, F.S., to grant additional authority to local governments to include community policing programs and techniques within community redevelopment areas and neighborhood improvement districts. The bill also allows a county, municipality, or community redevelopment agency, subject to specified conditions, to acquire and dispose of certain properties immediately adjacent to existing projects without complying with existing statutory procedures. Finally, the bill authorizes the Criminal Justice Standards and Training

Commission to incorporate community policing concepts into required course curriculum and continuing education programs required of law enforcement officers.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 118-0

CS/CS/HB 3193 — Homeowners' Associations

by Community Affairs Committee; Real Property & Probate Committee; Reps. Starks, Tobin, and Silver (CS/SB 544 by Judiciary Committee, Senators Dyer and Forman)

This bill revises ch. 617, F.S., governing mandatory homeowners' associations, and ch. 689, F.S., governing the disclosures which must be made to prospective purchasers of property within an association. The bill amends s. 617.303, F.S., by providing that reserve and operating funds of the association must be held separately by the developer and prohibiting commingling of association funds with the developer's funds or with those of another association. The bill amends s. 617.307, F.S., to provide for the delivery of specified documents by the developer to the association members at the time the members are entitled to assume control of the association. The bill also creates s. 617.3075, F.S., to prohibit certain clauses in homeowners' association governing documents. Finally, the bill revises s. 689.26, F.S., to require notice that certain documents are available in the record office in the county where the property is located, and to require that a contract for sale refer to and include the disclosure summary and must also include a statement that the potential buyer should not execute the contract until they have received and read the disclosure summary.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 38-0; House 117-0

CS/HB 3287 — Affordable Housing

by Community Affairs Committee and Reps. Gay and Lynn (CS/SB 1156 by Governmental Reform & Oversight and Senator Dyer)

This is a "glitch bill" which clarifies language and updates the 1997 action by the Legislature which reconstituted the Florida Housing Finance Agency (FHFA) as the Florida Housing Finance Corporation (FHFC). The bill amends several provisions of ch. 420, F.S., governing the FHFC and its relationship to the Department of Community Affairs (department) and other state agencies. The bill addresses concerns of State Comptroller by providing, in s. 420.0006, F.S., that, in the event that the FHFC does not comply with performance measures outlined in its contract with the department, the Governor must direct the inspector general to investigate the non-performance. During such time, the Governor may request that the Office of the State Comptroller continue advances sufficient to meet the debt service requirements of the FHFC.

The bill amends s. 420.504, F.S., authorizing the FHFC to provide notice by mail or facsimile, rather than publication, for internal review committee meetings for competitive proposals or procurement. This section is also amended to provide that the FHFC is an instrumentality of the State of Florida. The bill amends s. 420.507, F.S., governing the powers of the corporation, authorizing the FHFC to mortgage any real or personal property owned by it, to establish its fiscal year, to prevent participation in its programs by applicants that have been involved in fraudulent actions, and to provide for the development of infrastructure improvements and rehabilitation.

Finally, the bill amends several provisions to distinguish between the fiscal year of the department and the FHFC and between the State Housing Trust Fund and the State Housing Fund to clarify the disposition of moneys to and from those funds.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 35-0; House 117-0

CS/CS/HB 1589 — Counties

by Community Affairs Committee; General Government Appropriations Committee; Rep. Westbrook and others (CS/SB 2086 by Community Affairs Committee and Senator Williams)

This bill changes the population requirement from 50,000 or less to 75,000 or less for a county to be designated or considered a "small county" in numerous chapters of the Florida Statutes which provide benefits, exemptions or special consideration to small counties. Presently, there are 29 counties in Florida with populations of 50,000 or less. The committee substitute would add three more counties (Columbia, pop. 53,684; Nassau, pop. 52,740; and Putnam, pop. 70,243) to a list of small counties.

The bill further amends s. 34.191, F.S., to authorize counties to use a collection agency or attorney to collect past due fines and fees.

Finally, the bill creates s. 218.076, F.S., requiring the Department of Environmental Protection to waive processing fees for renewals of specified exemptions issued to any county, municipality or special district.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 108-0

HB 4143 — Emergency Telephone Services/911

by Rep. Edwards and others (CS/SB 2164 by Judiciary Committee and Senator Latvala)

This bill amends s. 365.171, F.S., to add commercial mobile radio service providers, also known as wireless/cellular telephone service providers, to the existing provisions on limitation of liability in connection with the provision of "911" services. As such, a commercial mobile radio service provider will not be liable for damages resulting from or in connection with "911" service or identification of the telephone number, address, or name associated with any person accessing "911" service, unless the commercial mobile radio service provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property in providing such services. Additionally, a commercial mobile radio service provider will not be liable for damages to any person resulting from or in connection with the commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer unless the commercial mobile radio service provider acted in a wanton and willful manner.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 112-0

CRIMINAL PROCEDURE

CS/SB 1328 — Capital Collateral Proceedings

by Criminal Justice Committee and Senator Burt

The Division of Statutory Revision is directed to designate ch. 27, part IV, F.S., as "Capital Collateral Representation."

The statutory section dealing with the recently restructured Capital Collateral Regional Counsel is amended to create a statewide registry of attorneys who will be eligible and available to represent death row inmates in capital collateral proceedings. The executive director of the Commission on Justice in Capital Cases will compile and maintain the registry. The bill sets forth the procedure to be used by the executive director for maintaining the registry. The registry must have at least 50 qualified names on it and, if that number drops below 50, the executive director must notify the chief judge of each judicial circuit by letter and request the prompt submission of the names of at least three private attorneys. The executive director must then send an application to those attorneys so that the attorney may register for appointment. If necessary, the executive director is authorized to advertise in legal publications and other appropriate media. By September 1 of each year, and as necessary thereafter, the executive director shall provide to the Chief Justice of the Supreme Court, the chief judge and state attorney in each judicial circuit, and the Attorney General a current copy of the registry.

To be eligible for the registry, an attorney must meet the qualifications specified in s. 27.704(2), F.S., for private counsel who represent death-sentenced defendants in capital collateral proceedings. That is, the attorney must have at least 3 years' experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of such proceedings. The judge who appoints private counsel must make specific findings that the attorney "has high ethical standards."

Furthermore, the attorney who applies for inclusion on the registry must certify that he is currently counsel of record in not more that four such proceedings and that he "intends to continue such representation under the terms and conditions set forth in s. 27.711 until the sentence is reversed, reduced, or carried out."

Immediately after appointment by the trial court that sentenced the defendant to death, the attorney must file a notice of appearance with the trial court indicating acceptance of the appointment. Additionally, the attorney must specify that he will represent the defendant throughout all postconviction capital collateral proceedings or until released by order of the trial court.

Certain limitations are placed on private counsel who are appointed pursuant to this section. An attorney may not represent more than five capital defendants at any one time; an attorney may not file repetitive or frivolous pleadings that are not supported by law or facts; an attorney may not claim ineffective assistance of counsel in these proceedings; an attorney may not represent the death-sentenced defendant during a retrial, a resentencing proceeding, a proceeding commenced under ch. 940, F.S. (executive clemency), a proceeding challenging a conviction or sentence other than the conviction and sentence of death for which the appointment was made, or any civil litigation other than habeas corpus proceedings.

The attorney will be paid by the Justice Administrative Commission in stages upon full performance of the duties as follows:

- $100 per hour, up to a maximum of $2,500, upon accepting the appointment and filing the notice of appearance;
- $100 per hour, up to a maximum of $20,000, after timely filing in the trial court the capital defendant's complete original motion for postconviction relief and upon submitting to the Justice Administrative Commission an affidavit stating that such a motion fully raises all issues to be addressed by the trial court;
- $100 per hour, up to a maximum of $10,000, after the trial court issues a final order granting or denying the defendant's motion for postconviction relief;
- $100 per hour, up to a maximum of $4,000, after timely filing in the Supreme Court the defendant's brief(s) that address the trial court's final order granting or denying the defendant's motion for postconviction relief and the state petition for writ of habeas corpus;
- $100 per hour, up to a maximum of $20,000, after the appeal of the trial court's denial of the defendant's motion for postconviction relief and the defendant's state petition for writ of habeas corpus become final in the Supreme Court;
- $100 per hour, up to a maximum $2,500, at the conclusion of the defendant's postconviction capital collateral proceeding in state court and after filing a petition for writ of certiorari in the U.S. Supreme Court; and
- $100 per hour, up to a maximum $5,000, if the U.S. Supreme Court accepts for review the defendant's collateral challenge of the conviction and sentence of death. This payment shall be full compensation for representing the defendant throughout the certiorari proceedings before the U.S. Supreme Court.

The attorney may hire an investigator for $40 per hour, up a maximum of $15,000 to assist in the appeal.

Additionally, the attorney is entitled to a maximum of $5,000 for miscellaneous expenses, such as transcript preparation, expert witnesses, and copying.

It is the intent of this legislation to alleviate the backload of the CCRC's capital cases which are ripe for the appellate process to begin yet do not have an attorney assigned to them. A private attorney will be appointed by the trial court that sentenced the defendant if the Attorney General notifies the executive director of the Commission on the Administration of Justice in Capital Cases of one of the following events:

- 91 days have lapsed since the Supreme Court issued a mandate on a direct appeal;

- The U.S. Supreme Court has denied a petition for certiorari (whichever of these two is later); *or*

- A person under sentence of death who was previously represented by private counsel is currently unrepresented in a postconviction capital collateral proceeding.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 115-0

DEATH PENALTY

CS/SB 1330 — Capital Postconviction Public Records Proceedings

by Criminal Justice Committee and Senator Burt

The bill requires the Secretary of State to establish and maintain a records repository for the purpose of archiving capital postconviction records. The bill requires the state attorney, local law enforcement agencies, and the Department of Corrections to submit to the repository all relevant public records produced in a death penalty case. Other agencies are to submit records to the repository when they have public records relevant to the case. Agencies are to submit records upon notification that a death sentence has been affirmed on direct appeal. The intended effect is to collect all relevant records while the case is "fresh" in everyone's mind.

The bill requires postconviction counsel to review the records in the repository and file a written demand for additional agency records within 90 days of appointment. If the agency objects to the demand, the trial court must resolve the dispute within 30 days. The trial court may only order

additional records production if it makes specific findings. After that one request, postconviction counsel is prohibited from making any further public records requests. However, in the event postconviction counsel can, through an affidavit, establish that the agency still possesses relevant public records, the trial court may order them produced upon specific findings.

The bill provides that postconviction counsel must give written notification of each pleading filed and the name of the person filing the pleading to the Commission on the Administration of Justice in Capital Cases and to the trial court assigned to the case. It also provides that a notice of hearing must be filed with each pleading with the court in a capital case.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 37-0; House 109-0

CS/HB 3033 — Execution by Lethal Injection

by Crime & Punishment Committee, Rep. Stafford and others (CS/SBs 360 & 350 by Criminal Justice Committee and Senators Burt, Klein, Bronson, Campbell, Crist, Gutman, Horne, Turner and Silver)

This act (Chapter 98-3) creates s. 922.105, F.S. This section provides that a death sentence shall be executed by electrocution pursuant to s. 922.10, F.S. If electrocution is held to be unconstitutional by the Florida Supreme Court under the State Constitution, or held to be unconstitutional by the United States Supreme Court under the United States Constitution, or if the United States Supreme Court declines to review any such judgment holding electrocution to be unconstitutional under the United States Constitution made by the Florida Supreme Court or the United States Court of Appeals that has jurisdiction over Florida, all persons sentenced to death for a capital crime shall be executed by lethal injection.

The Legislature adopts as statutory law of this state a specified decision of the United States Supreme Court finding that the federal ex post facto is not violated by a legislatively enacted change in the method of execution for a sentence of death validly imposed for previously committed capital murders.

A change in the method of execution does not increase the punishment or modify the penalty of death for capital murder. Any legislative change to the method of execution for the crime of capital murder does not violate s. 10, Art. I or s. 9, Art. X, State Constitution, relating respectively to the prohibition of ex post facto laws and application of the repeal or amendment of a criminal statute that affects prosecution or punishment for any crime previously committed.

Prescribing, preparing, compounding, dispensing, or administering, a lethal injection does not constitute the practice of medicine, nursing, or pharmacy. A physician, nurse, pharmacist, or DOC employee, or any other person, is not required to assist in any aspect of an execution which is contrary to the person's moral or ethical beliefs.

The DOC's execution protocol are exempt from ch. 120, F.S., rulemaking procedures.

Notwithstanding any other law, no sentence of death shall be reduced as a result of a court's determination that a method of execution is unconstitutional under the state or federal constitutions. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

These provisions were approved by the Governor and take effect March 26, 1998.
Vote: Senate 38-0; House 109-1

HJR 3505 — Death Penalty/Execution Method

by Reps. Crist, Feeney and others (CS/SJR 964 by Criminal Justice Committee and Senator Lee)

This joint resolution provides for a proposed constitutional amendment to s. 17, Art. I, State Constitution, which prohibits cruel or unusual punishment.

The proposed constitutional amendment provides that the death penalty is an authorized punishment for capital crimes designated by the Legislature. The prohibition against cruel and/or unusual punishment shall be construed in conformity with U.S. Supreme Court decisions interpreting the cruel and unusual prohibition of the Eighth Amendment. Any method of execution is allowed, unless prohibited by the U.S. Constitution. Methods of execution may be designated by the Legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid and, in any case in which a method of execution is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

The proposed amendment shall be submitted to the Florida electors at the general election to be held in November 1998.
Vote: Senate 40-0; House 115-0

JUVENILE JUSTICE

CS/CS/SB 2288 — Juvenile Justice

by Children, Families & Seniors Committee; Criminal Justice Committee; and Senator Gutman

This legislation makes the following changes to the juvenile justice system:

- Permits the Department of Juvenile Justice (DJJ) to provide Florida criminal history records checks to its providers;
- Renames " intake counselors" and "case managers" to "juvenile probation officers";
- Codifies the current practices of juvenile assessment centers (JACs) and more clearly defines their role;
- Provides guidelines for the operation of JACs by authorizing participating agencies to govern JACs through an advisory committee and interagency agreements;
- Reinserts the provision that was inadvertently deleted last session which expressly provides that the escape statute applies to maximum-risk programs;
- Removes the option of placing youths held in contempt in secure residential commitment facilities;
- Clarifies that a youth sentenced to detention post-commitment must meet detention screening criteria;
- Increases the time period that a board member can serve on a district juvenile justice board from two consecutive 2-year terms to three consecutive 2-year terms;
- Requires the agencies applying for a juvenile justice partnership grant to enter into a written interagency agreement only with the agencies that are needed to implement the project for which the applicant is applying;
- Provides procedural requirements and further defines the roles of the court, the DJJ, and the Department of Children and Family Services in evaluating, placing, and discharging youth determined to be mentally incompetent to proceed in the judicial system;
- Extends the sunset date for assignment centers for 2 years and requires that the centers have the capacity to perform pre-disposition assessments within one year of the effective date;
- Provides for the quality assurance review to be performed on department operated programs, as well as on contracted programs;
- Provides that the statutorily authorized $3 assessment against specified civil traffic violators and criminal defendants can continue to be collected for the purpose of funding local teen courts, if the county has approved the assessment by ordinance; and
- Requires the Juvenile Justice Advisory Board (JJAB), in consultation with the DJJ, the Division of Economic and Demographic Research, and providers, to develop standard methodology for interpreting its outcome-evaluation report;
- Requires a report to the Legislature by the board which specifies this standard methodology;

- Provides that the standard methodology be integrated into the currently required cost-effectiveness model which is applied to each commitment program;
- Provides that the DJJ can terminate a program operated by a provider or by the department if the program has failed to achieve a minimum threshold of program effectiveness, based on required JJAB reports and on the cost-effectiveness rankings; and
- Requires contracted juvenile justice providers as well as the DJJ to request a determination from local governments as to whether a proposed site for a facility is appropriate for public use under local government plans and ordinances.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 117-0

SENTENCING

CS/SB 1522 — Sentencing/Criminal Punishment Code
by Criminal Justice Committee

Section 1 clarifies that capital felonies are excluded from the Criminal Punishment Code.

Section 2
- Clarifies that the code applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.

- Clarifies the actual time to be served by an offender may not be less than 85 percent of the offender's court-imposed sentence as provided in s. 944.275(4)(b)3., F.S.

- Provides technical changes by deleting references to "sentencing range" which was terminology used in the "former" sentencing guidelines and replaces those references with "lowest permissible sentence."

- Clarifies that departures below the lowest permissible sentence must be provided in writing by the trial court judge.

- Deletes unnecessary references to aggravating factors as a reason for departure sentences because the code gives sentencing judges the discretion to sentence any convicted felony offender up to the maximum statutory penalty under s. 775.082, F.S.

- Clarifies that a trial court judge may sentence an offender up to the statutory maximum for any offense before the court for sentencing, including an offense that is before the court because of a violation of community control.

- Beginning in 1999, requires the Department of Corrections to report by October 1 of each year on trends in sentencing practices and sentencing score thresholds and provide analyses on sentencing factors considered by courts.

- Requires the Criminal Justice Estimating Conference, with the aid of the Department of Corrections, to estimate the impact of any proposed change to the Criminal Punishment Code on future rates of incarceration and on the prison population. The Conference would be required to base its projections on historical data concerning sentencing practices which have been accumulated by the Department of Corrections and on records of the department that reflect the average time served for offenses that are changed by the Criminal Punishment Code and provide its projections by October 1 of each year.

- Authorizes the Department of Corrections to collect and evaluate code scoresheets generated from each judicial circuit to produce projections that would assist in making future modifications to the Criminal Punishment Code.

- Beginning in 1999, requires the Department of Corrections to provide an annual report by October 1 of each year to the Legislature showing the rate of compliance in the provision and completeness of scoresheets by each judicial circuit.

Section 3 clarifies that the definitions that apply to the code apply to any felony offense, except capital felonies, committed on or after October 1, 1998.

Section 4

- Clarifies that s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, applies to offenses committed on or after October 1, 1998.

- Clarifies that the least severe ranking of an offense is in level 1 of the offense severity ranking chart and the most severe ranking of an offense is in level 10 of the offense severity ranking chart.

- Clarifies that the reclassification of any other law that provides an enhanced penalty for a felony offense to any offense listed in the offense severity ranking chart does not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023, F.S., which pertains to the default ranking of unranked offenses.

- Provides that the following changes are proposed to the offense severity ranking chart of the Criminal Punishment Code:

Level 1
- Adds the description of possession of simulated identification under s. 322.212(1), F.S.
- Adds the description of supplying or aiding in supplying an unauthorized identification card under s. 322.212(4), F.S.
- Adds the description and the clarification of paragraph (a) for false application for an identification card.

Level 3
- Deletes escapes from juvenile facility under s. 39.061, F.S.
- Adds the description of possession of instruments for counterfeiting identification cards under s. 831.29, F.S.
- Adds escapes from a juvenile facility under s. 944.401, F.S.

Level 5
- Adds the description of selling, manufacturing, or delivering cannabis within 1,000 feet of a child care facility under s. 893.13(1)(c)2., F.S.
- Adds selling, manufacturing, or delivering cannabis or other drugs prohibited under specified sections, within 1,000 feet of property used for religious services or a specified business site under s. 893.13(1)(e), F.S.

Level 6
- Adds failure to register or failure to renew driver's license or identification card by sexual predators under s. 775.21(9), F.S.
- Adds felony battery under s. 784.041, F.S.
- Adds aggravated stalking of a person under 16 years of age under s. 784.048(5), F.S.
- Deletes reference to the property-value qualification of $100 or more for exploiting an elderly person or disabled adult under s. 825.103(2)(c), F.S.
- Adds solicitation of a child, via computer service, to commit an illegal sex act under s. 847.0135 (3), F.S.
- Adds failure to comply with the reporting requirements of sex offenders under s. 943.0435(6), F.S.

Level 7
- Adds attempted felony murder of a person, by a person other than the perpetrator or the perpetrator of an attempted felony, under s. 782.051(3), F.S.
- Adds giving false information about an alleged capital felony to a law enforcement officer under s. 837.05(2), F.S.

- Adds the description of selling, manufacturing, or delivering cocaine or other drugs prohibited under the specified sections within 1,000 feet of a child care facility under s. 893.13(1)(e), F.S.
- Adds selling, manufacturing, or delivering cocaine or other drugs prohibited under specified sections within 1,000 feet of property used for religious services or a specified business site.
- Adds trafficking in flunitrazepam (roofies) of the amount of 4 grams or more but less than 14 grams under s. 893.135(1)(g)1.a., F.S.

Level 8

- Adds attempted felony murder while perpetrating or attempting to perpetrate a felony other than a felony enumerated in s. 782.04(3), F.S., under s. 782.051(2), F.S.
- Adds perjury in official proceedings relating to prosecution of a capital felony under s. 837.02(2), F.S.
- Adds making contradictory statements in official proceedings relating to prosecution of a capital felony under s. 837.021(2), F.S.
- Adds trafficking in flunitrazepam (roofies) of the amount of 14 grams or more but less than 28 grams under s. 893.135(1)(g)1.b., F.S.

Level 9

- Adds attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 82.04(3), F.S., under s. 782.051(1), F.S.

Section 5

- Clarifies that s. 921.0023, F.S., pertaining to unranked offenses, would apply to offenses committed on or after October 1, 1998.

- Deletes redundant language that is contained in s. 921.0022(2), F.S.

Section 6

- Modifies the code's worksheet by moving the entries "moderate" and "slight" and places them underneath the entries of "death" and "severe" relating to victim injury rather than sexual penetration or sexual contact.

- Provides a line entry on the worksheet to indicate whether an offender being sentenced is a "prison releasee reoffender."

- Switches the order of words on the line for violent habitual offender to read "habitual violent offender."

- Provides a line entry on the worksheet and a description in the worksheet key for the multiplier of crimes of domestic violence in the presence of a child under 16 years of age who is a "household member" as defined in s. 741.28(2), F.S., of the victim or the perpetrator to multiply subtotal sentence points by 1.5, which is consistent with the changes made to the sentencing guidelines in 1997.

- Clarifies in the worksheet key that prior capital felonies are those that are indicated in an offender's prior record, which include those capital felonies for which the offender has entered a plea of nolo contendere or guilty to or has been found guilty of.

- Clarifies that the lowest permissible sentence is the minimum sentence that a trial court may impose upon a defendant if no valid reasons to depart are found by the court.

- Provides for the method of calculating an offender's lowest permissible sentence is by first totaling the points of the scoresheet.

- Provides that if an offender's total sentence points are equal to or less than 44 points, the lowest permissible sentence for that offender is a non-state prison sanction, unless that court decides within its discretion that a prison sentence, up to the statutory maximum for all of the offenses the offender committed, is appropriate.

- Provides that if an offender's total sentence points are more than 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing that sum by 25 percent.

- Clarifies that the permissible "range" for sentencing an offender is between the lowest permissible sentence calculated by utilizing the scoresheet to calculate the total sentence points, subtracting 28 points, then decreasing that sum by 25 percent, and up to and including the statutory maximum for the primary offense and any additional offenses that are before the court for sentencing.

- Reiterates current law which authorizes the sentencing court to impose the sentences for each of the offenses before the court on sentencing either concurrently or consecutively, which is stated elsewhere in the code, and in the Florida Statutes, and is also the current practice under the sentencing guidelines.

- Reiterates that any sentence to state prison must be longer than 1 year.

- Requires a scoresheet to be prepared and submitted to the court for every felony defendant to determine the permissible range, which is the lowest permissible sentence up to the statutory

maximums for the offenses committed, for the sentence the court is authorized to impose pursuant to the code.

- Clarifies that if the lowest permissible sentence under the code exceeds the statutory maximum sentence for the offenses committed, the sentence under the code must be imposed.

- Provides that if the total sentence points are equal to or more than 363 points, an offender may be sentenced to life imprisonment, and prohibits any form of early release for such offenders except clemency or conditional medical release.

- Requires the Department of Corrections to consult with the Office of the State Courts Administrator, the state attorneys, and the public defenders, to develop and submit the revised Criminal Punishment Code scoresheet to the Supreme Court for approval by June 15 of each year, as deemed necessary.

- Requires the Department of Corrections to produce and provide enough copies of the revised scoresheets by September 30 of each year upon the approval of the Supreme Court of the revised scoresheet.

- Deletes involvement of the clerks of the circuit courts in the provision and distribution of sufficient copies of the scoresheet.

- Requires scoresheets to include item entries for whether any prison sentence imposed includes a mandatory minimum sentence or the sentence imposed was a downward departure from the lowest permissible sentence under the Criminal Punishment Code.

- Requires the Department of Corrections to collect and evaluate data on sentencing practices in the state from each of the judicial circuits and provide technical assistance to the Legislature.

- Requires the Department of Corrections to provide an annual report to the Legislature by October 1 of each year, beginning in 1999, which shows the rate of compliance of each judicial circuit in providing scoresheets to the department.

- Requires a sentencing scoresheet to be prepared for every felony defendant who is sentenced except for offenders who score 44 points or less.

- Provides references to Rules 3.702 and 3.703, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets.

Section 7

- Adopts and implements, in accordance with ch. 921, F.S., Rules 3.701, 3.702, 3.703, and 3.988, Florida Rules of Criminal Procedure, and any other rules adopted by the Supreme Court pertaining to the preparation and submission of scoresheets for application to the Criminal Punishment Code.

Section 8

- Clarifies that mitigating circumstances under s. 921.0026, F.S., apply to felony offenses, other than capital felonies, committed on or after October 1, 1998.

- Prohibits expressly, rather than "discourages," a court to impose a sentence that is less than an offender's lowest permissible sentence, as calculated pursuant to s. 921.0024, F.S., unless there are factors or circumstances present, as provided in s. 921.0026, F.S., which would reasonably justify a downward departure.

Section 9

- Clarifies that the code applies to non-capital felony offenses committed on or after October 1, 1998.

- Provides the assumption that an offender's lowest appropriate sentence is the lowest permissible sentence that is calculated from the total sentence points pursuant to s. 921.0024(2), F.S.

- Prohibits departures from the lowest permissible sentence unless there are mitigating circumstances as provided in s. 921.0026, F.S., that reasonably justify a departure below the lowest permissible sentence.

- Requires departure sentences below the lowest permissible sentences be accompanied by a written statement by the sentencing court providing the reasons for departure within 7 days after the date of sentencing.

- Authorizes a written transcription of orally stated reasons for departure from the lowest permissible sentence within 7 days after the date of sentencing in lieu of a written statement of the court.

- Requires all departure sentences and minimum mandatory sentences to be provided on the sentencing scoresheets that are submitted to the court and ultimately the Department of Corrections.

Section 10

- Provides express guidelines for the applicability of the appropriate sentencing structure depending on the date the offense was committed by the defendant.

- Clarifies that all felonies with continuing dates of enterprise are to be sentenced under the version of the sentencing guidelines or Criminal Punishment Code in effect on the date the criminal activity began.

Section 11

- Clarifies that the habitual felony offender and the habitual violent felony offender statutes may be applied to offenders who were placed on community control without an adjudication of guilt to count as a "prior conviction" if the subsequent offense for which the offender is to be sentenced for was committed during the period of community control and the offender otherwise qualifies to have penalties enhanced under these statutes.

- Requires the court, on a monthly basis, to submit to the Office of Economic and Demographic Research the written reasons or transcripts in each case in which the court did not sentence a defendant as a habitual felony offender or a habitual violent felony offender.

- Requires the court, on a monthly basis, to submit to the Office of Economic and Demographic Research the written reasons or transcripts in each case in which the court did not sentence a defendant as a violent career criminal.

Section 12

- Creates the offense of attempted felony murder under s. 782.051, F.S., to narrowly provide instances in which a person can be held responsible for attempted murder where the offender committed an intentional act that is not an essential element of the underlying felony and that intentional act could, but does not, cause the death of another person and provides for the ranking of the offense in levels 7, 8, or 9, depending on the circumstances of the offense.

Section 13

- Provides for an appeal by a defendant of a sentence imposed under the Criminal Punishment Code that exceeds the consecutive statutory maximum penalty permitted for the offenses committed as provided under s. 775.082, F.S., or the consecutive statutory maximums for offenses at conviction, unless it is otherwise provided by law that a sentencing court may exceed the statutory maximum, which is consistent with current law under the guidelines.

Section 14

- Provides that the state may appeal a sentence where the sentence imposed by the court is below the lowest permissible sentence and no mitigating factors or circumstances existed and the court did not provide those factors in writing within 7 days after the date of sentencing.

Section 15

- Authorizes the Department of Corrections to refuse to accept offenders into the state correctional system unless provided a copy of the code scoresheet and any attachments pursuant to Rules 3.702 and 3.703, as well as Rule 3.701, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets.

Section 16

- Reiterates current law pertaining to the conditions or circumstances in which an offender can be released from incarceration by resurrecting language that was codified in former s. 921.001(10), F.S., which would otherwise be repealed effective October 1, 1998, but this bill would move the language to ch. 944, F.S.

Section 17

- Makes technical changes to correct statutory cross-references.

Section 18

- Makes a technical change to use the terminology associated with the Criminal Punishment Code, such as "lowest permissible sentence" instead of "recommended sentence."

Section 19

- Deletes obsolete chapter references to ch. 396, F.S., and changes references to the Department of Health and Rehabilitative Services to the Department of Children and Family Services, relating to terms and conditions of probation and residential drug punishment centers.

Section 20

- Corrects cross-references relating to juveniles from ch. 39, F.S., to ch. 985, F.S., and deletes reference to the sentencing guidelines discretionary range of 40 to 52 points with regard to the Community Corrections Partnership Act.

Section 21

- Makes a technical change to use the terminology associated with the Criminal Punishment Code, such as "permissible sentence range," which is the lowest permissible sentence up to the statutory maximum for each offense committed, instead of "maximum recommended sentence range," which is used under the sentencing guidelines.

- Provides a statutory cross-reference to a defendant's right to appeal a sentence under the Criminal Punishment Code relating to the judicial disposition of youthful offenders.

Section 22
If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 38-0; House 94-1

SEXUAL OFFENDERS/PREDATORS

CS/HB 3327 — Sexually Violent Predators

by Family Law & Children Committee, Reps. Villalobos, Murman and others (CS/CS/SB 646 by Children, Families & Seniors Committee; Criminal Justice Committee; and Senators Gutman, Horne, Klein, Diaz-Balart and Cowin)

This act directs that the name of ch. 916, F.S., shall be changed to "Mentally Deficient and Mentally Ill Defendants; Civil Confinement of Sexually Violent Predators." Sections 916.10-916.20, F.S., may be cited as the "Forensic Client Services Act." Sections 916.30-916.40, F.S., which are new sections created by this bill, may be cited as "The Jimmy Ryce Act of 1998."

Section 916.33, F.S., is created. This section provides that the agency with jurisdiction over a person who has been convicted of a sexually violent offense shall give written notice to the multidisciplinary team, and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense, 180 days or, in the case of an adjudicated committed delinquent, 90 days before: the anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who have been returned to confinement for no more than 90 days, written notice must be given as soon as practicable following the person's return to confinement; or the anticipated hearing regarding the possible release of a person who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense.

The secretary of the Department of Children and Family Services (DCFS) is required to establish a multidisciplinary team, which shall include two licensed psychiatrists or psychologists, or one licensed psychiatrist and one licensed psychologist, designated by the secretary of the DCFS. The Attorney General's Office shall serve as legal counsel to the multidisciplinary team. The team, within 45 days after receiving notice, shall assess whether the person meets the definition of a sexually violent predator and provide the state attorney with its written assessment and recommendation.

Section 916.34, F.S., is created. This section provides that, following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney in the judicial circuit where the person committed the sexually violent offense may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support this allegation.

Section 916.35, F.S., is created. This section provides that, when the petition for civil commitment is filed, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the judge makes a determination of probable cause, the judge shall direct that the person be taken into custody and held in an appropriate secure facility.

Before the release from custody of a person whom the multidisciplinary team recommends for civil confinement, but after the state attorney files a civil commitment petition, the state attorney may further petition the court for an adversarial probable cause hearing. The person shall be provided with notice of, and an opportunity to appear in person at, an adversary hearing. At this hearing, the judge shall receive evidence and hear arguments from the person and the state attorney, and determine whether probable cause exists to believe that the person is a sexually violent predator.

At the adversary probable cause hearing, the person shall have the right to be represented by counsel, to present evidence, to cross-examine any witness testifying against the person, and to view and copy all petitions and reports in the court file. If the court again concludes that there is probable cause, the court shall direct that the person be held in an appropriate secure facility in the county where the petition was filed for an evaluation by a mental health professional. The person so held does not have the opportunity for pretrial release or release during the trial proceedings.

Section 916.36, F.S., is created. This section provides that, within 30 days after the determination of probable cause, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced. The person is entitled to assistance of counsel at all adversarial proceedings and, if the respondent is indigent, the court shall appoint the public defender or, if a conflict exists, other counsel to assist the person. If the person is subjected to a mental health examination, the person also may retain experts or mental health professionals to perform an examination. If a person wishes to be examined by a professional of the person’s own choice, the examiner must be provided reasonable access to the person, as well as to all relevant medical and mental health records and reports. If the respondent is indigent, the court, upon the persons

request, shall determine if an examination is necessary; if the court determines an examination is necessary, the court shall appoint a mental health professional and determine reasonable compensation for the professional's services. The person or the state attorney has the right to demand that the trial be before a jury. A demand for a jury trial must be filed, in writing, at least 5 days before the trial. If no demand is made, the trial shall be to the court.

Section 916.37, F.S., is created. This section provides that the court or jury shall determine, by clear and convincing evidence, that the person is a sexually violent predator. If the jury determines the person is a sexually violent predator, the decision must be unanimous. If a majority of the jury finds the person is a sexually violent predator, but the decision is not unanimous, the state attorney may refile the petition and proceed according to the provisions of the act. Any retrial must occur within 90 days after the previous trial, unless the subsequent proceeding is continued. The determination that a person is a sexually violent predator is appealable.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the DCFS for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. Predators committed for control, care, and treatment by the DCFS shall be kept in a secure facility segregated from patients who are not committed as sexually violent predators.

Section 916.38, FS., is created. This section provides that a person committed as a sexually violent predator shall have an examination of the person's mental condition once every year or more frequently at the court's discretion. The DCFS shall provide the person with annual written notice of the person's right to petition the court for release over the objection of the director of the facility where the person is housed. The notice must contain a waiver of rights. The director of the facility shall forward the notice and waiver form to the court.

The court shall hold a limited hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged. The person has the right to be represented by counsel at the hearing, but not to be present. If the court finds that probable cause exists, the court shall set a trial, and the person is entitled to be present and to the benefit of all constitutional protections afforded the person at the initial trial, except trial by jury. The state attorney shall represent the state and has the right to have the person examined by professionals chosen by the state. The state must prove, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

Section 916.39, F.S., is created. This section provides that the secretary of the DCFS or the secretary's designee may petition the court for the release of a person committed as a sexually violent predator, if the secretary or the secretary's designee determines that the person is not likely to commit acts of sexual violence if conditionally discharged. The petition shall be served upon the court and the state attorney.

Section 916.40, F.S., is created. This section provides that the act shall not prohibit a person from filing a petition for discharge at any time. However, if the person has previously filed a petition, without approval of the secretary of the DCFS or the secretary's designee and the court determined that the petition was without merit, a subsequent petition shall be denied unless there are new facts warranting a probable cause hearing.

Section 916.41, F.S., is created. This section authorizes the release of relevant information and records that are otherwise confidential or privileged to the agency having jurisdiction or to the state attorney for the purpose of meeting the notice requirements under the act and determining whether a person is or continues to be a sexually violent predator. Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, or victim impact statements submitted to the court or admitted into evidence shall be part of the record but sealed and may be opened only pursuant to a court order.

Section 916.45, F.S., is created. This section provides that the act applies to all persons currently in custody who have been convicted of a "sexually violent offense," as that term is defined in the act, as well as to all persons convicted of a sexually violent offense in the future.

Section 916.46, F.S., is created. This section provides that, as soon as practicable, the DCFS shall give written notice of the release of a sexually violent predator to any victim of the predator who is alive and whose address is known by the DCFS or, if the victim is deceased, to the victim's family, if the family's address is known by the DCFS. Failure to notify is not a reason for postponement of release. Further, this section does not create a cause of action against the state or a state employee acting within the scope of the employee's employment as a result of the failure to notify pursuant to this act.

Section 916.47, F.S., is created. This section provides that it is a second-degree felony for a person to escape or attempt to escape from lawful custody pursuant to the act.

Section 916.48, F.S., is created. This section provides that a person committed as a sexually violent predator shall disclose all of the person's revenues and assets to the DCFS. The person shall also pay from such income and assets, except where such income is exempt by state or

federal law, all or a fair portion of the person's daily subsistence and treatment costs, based upon the person's ability to pay, liability or potential liability to the victim or the guardian or the estate of the victim, and the needs of the person's dependents. The person directed to pay subsistence and treatment costs is entitled to reasonable advance notice of the assessment and shall be afforded an opportunity to present reasons for opposition to the assessment. An order directing payment of the person's subsistence and treatment costs may survive against the person's estate.

Section 916.49, F.S., is created. This section provides that the DCFS is responsible for all costs relating to the evaluation and treatment of persons committed to the department's custody as sexually violent predators. A county is not obligated to fund costs for psychological evaluations, expert witnesses, court-appointed counsel, or other costs required by the act; those costs shall be paid from state funds appropriated by general law.

The act also provides that the DCFS may contract with a private entity or state agency for use of and operations of facilities to comply with the requirements of the act. The DCFS may also contract with the Correctional Privatization Commission to issue a request for proposals and monitor contract compliance for these services.

The act also provides for an appropriation from the General Revenue Fund in a lump sum to the DCFS the sum of $4.9 million dollars, of which $1.5 million is from nonrecurring funds, and 50 full-time equivalent positions, and from the Grants and Donations Trust Fund, $1.5 million dollars to the DOC for the purpose of carrying out the provisions of this act. From the funds appropriated to the DCFS, the department shall, at the counties' request, reimburse counties for the costs of no more than one examination of each person subject to this act, provided that the department's reimbursement for each examination shall not exceed the costs to the department for examinations it conducts of such persons.

If approved by the Governor, these provisions take effect January 1, 1999.
Vote: Senate 38-0; House 118-0

WEAPONS AND FIREARMS

CS/CS/HB 679 — Weapons and Firearms/Domestic Violence

by Law Enforcement & Public Safety Committee; Crime & Punishment Committee; Rep. Lynn and others (SB 1582 by Senators Kurth, Grant and Klein)

The bill amends Florida laws to conform to federal law, which prohibits the possession of firearms and ammunition by persons under a domestic violence injunction, or a person who has a conviction, withhold of adjudication of guilt, or suspended sentence for a violent misdemeanor. The bill states "that it is the intent of the Legislature that the disabilities regarding possession of firearms and ammunition are consistent with federal law." As such, state and local law enforcement officers, as defined in s. 943.10(14), F.S., holding an active certification, are exempt from the provisions of the law when the officer's employing agency authorizes the possession for use in the performance of the officer's official duties.

The bill creates a first-degree misdemeanor for a person who is subject to a final injunction that is in force and effect, restraining that person from committing acts of domestic violence, from having in his or her care, custody, possession, or control a firearm or ammunition. The final injunction for protection against domestic violence *must*, on its face, inform the respondent of this law.

This misdemeanor is restated in s. 741.31, F.S., which statutorily lists what constitutes a violation of an injunction for protection against domestic violence and provides for a first-degree misdemeanor for such violation.

Further, the bill specifically states that a person who has been convicted of a misdemeanor crime of domestic violence may not purchase a firearm. Likewise, a person who has had adjudication of guilt withheld or imposition of sentence suspended may not purchase a firearm.

The bill expands the reasons that an application for a license shall be denied or a license revoked to include:

- The applicant or licensee is a respondent of a temporary or final domestic violence injunction or a temporary or final injunction that prohibits acts of repeat violence; or
- The applicant or licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for a misdemeanor crime of domestic violence or a crime of violence constituting a misdemeanor. After 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged, the person may be eligible for a concealed weapon or firearm license.

The bill expands the criteria in s. 790.065, F.S., which prohibits the sale or transfer of a firearm to include a person who has had adjudication of guilt withheld or imposition of sentence suspended for a *misdemeanor crime of domestic violence,* unless 3 years have elapsed since the completion of the sentence. A person who is convicted of a *misdemeanor crime of domestic violence* may not currently purchase or transfer a firearm under federal law. Prior to the sale or delivery of a firearm and at the request of a licensed importer, licensed manufacturer, or licensed dealer, the Florida Department of Law Enforcement must review the criminal history of the potential buyer to determine if the buyer has been convicted, had adjudication of guilt withheld, or a suspended sentence imposed for a misdemeanor crime of domestic violence, and 3 years have not elapsed since the fulfillment of all court imposed sanctions.

Generally, an officer may not make a warrantless arrest for a misdemeanor unless the misdemeanor occurs in the officer's presence. s. 901.15, F.S. However, if the officer has probable cause to believe that the person has committed a criminal act which violates an injunction for protection against domestic violence, a warrantless arrest is authorized. Senate Bill 1582 expands this authorization to include an arrest when a officer has probable cause to believe that a person, who is subject to a domestic violence injunction, possesses or did possess a firearm or ammunition.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 32-4; House 78-38

HB 909 — Concealed Weapons/Nonresidents

by Rep. Crady and others (CS/SB 366 by Criminal Justice Committee and Senators Williams, Crist and Cowin)

This bill permits a U.S. resident who is a Florida nonresident to carry a concealed weapon or firearm in this state, provided the nonresident:

- Is at least 21 years of age; and
- Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

This bill provides that the nonresident's license shall remain in effect in Florida for 90 days following the date on which the license holder establishes legal state residence. Under the bill, a nonresident establishes legal residence in Florida when he or she does one of the following acts:

- Registers to vote;
- Makes a statement of domicile pursuant to s. 222.12, F.S.; or
- Files for homestead tax exemption on Florida property.

This bill contains a provision specifying that it is limited to states which have reciprocity with Florida with respect to the issuance of a concealed weapon or concealed firearm permit.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 32-6; House 77-40

Senate Committee on Education

TEACHERS/SCHOOL REGULATION

HB 4837 — District School System Personnel, Funding, and Operations

by Education Appropriations Committee, Rep. Sublette and others (CS/CS/SB 2258 by Ways & Means Committee; Education Committee; and Senator Cowin)

This bill makes changes to the statutes governing district school system personnel, funding and operations to provide flexibility to school districts. Changes to current laws providing for the certification and professional development of public school instructional personnel include: deleting the school districts' authority to use alternate services to complete a background check of prospective employees, and requiring all employee fingerprints to be submitted to FDLE and the FBI; providing for the certification of prospective teachers graduating from institutions seeking accreditation; and creating the Florida Educator Hall of Fame.

The bill clarifies that the Education Practices Commission has specific rule making authority to establish procedures, operations and administration of the commission, the disciplinary proceedings it conducts, indexing, the implementation of commission orders and the retention of records. The commission is also empowered to establish disciplinary guidelines.

Three new divisions are created in the Department of Education, the Division of Administration, the Division of Financial Services, and the Division of Support Services.

The bill repeals subsection (8) of s. 236.081, F.S., the caps adjustment supplement of the Florida Education Finance Program (FEFP). Changes to s. 236.081, F.S., relating to calculation of maximum student enrollments, add a supplemental calculation for those districts that are over their weighted enrollment ceiling. If, beginning with the third calculation of the FEFP (in late November 1998, following actual enrollment counts in October), the total *unweighted* enrollment for all Group 2 programs that a district *reports* for funding is greater than the district's *projected* Group 2 enrollment used to calculate that district's enrollment ceiling, the amount of the reported enrollment above the enrollment ceiling will be funded at a weight of 1.0. (1.0 multiplied by the base student allocation and by the district cost differential for the district). The maximum full-time-equivalent (FTE) student enrollment funded at the weight of 1.0 will be limited to the number of FTE students moved from Group 2 to Group 1 by the membership of the Public School FTE Estimating Conference to implement a policy limiting districts' Group 2 enrollment requests

for 1998-99 to a level that would maintain the ratio of weighted to unweighted students for which the district was funded in 1997-98.

The Commissioner of Education is authorized to establish criteria to enable students who show proficiency in reading or mathematics to exempt the corresponding section of the high school competency test or the college placement test.

The bill amends the law governing the composition of school advisory councils to remove the requirement that vocational technical centers and adult education centers have parents as members.

The bill creates Deregulated Public Schools which will have the same regulatory freedom as charter schools while continuing to operated under the supervision of the school district. Deregulated Public Schools are authorized in six counties: Palm Beach, Pinellas, Leon, Seminole, Citrus, and Walton for the 1998-99 school year. In each county up to six schools--two high schools, two middle schools, and two elementary schools can submit proposals to become deregulated schools. The school principal and the school advisory council (SAC) must develop a proposal, at least 50 percent of the teachers must approve it, and parental support must be indicated by a survey. In order to maintain their status as deregulated public schools, the school would have to achieve their established goals for student performance.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 112-3

CS/HB 3389 — Excellent Teaching/Nonpublic Postsecondary Institutions

by Colleges & Universities Committee, Rep. Trovillion and others (CS/CS/SBs 2156 & 1910 by Ways & Means Committee; Education Committee; and Senators Horne, Dyer, and Crist; and CS/SB 924 by Education Committee and Senator Sullivan)

The bill combines the provisions of two measures that had been moving independently: the creation of the Excellent Teaching Program, which provides bonus payments to classroom teachers who attain certification by the National Board of Professional Teaching Standards, and the revision of several statutory provisions relating to the State Board of Independent Colleges and Universities. The bill also amends s. 110.1099, F.S., to provide that student credit hours generated by state employee fee waivers at state universities are to be considered fundable credit hours.

Excellent Teaching Program

The Excellent Teaching Program is created as a categorical program within the Florida Education Finance Program. Features of the new program include: state payment of 90 percent of the application fee and $150 for portfolio development for teachers seeking National Board of Professional Teaching Standards (NBPTS) certification, monetary rewards for teachers who achieve NBPTS certification, additional salary if the national board certified teachers agree to mentor other teachers, and money to school districts to be used for professional development programs for teachers with priority given to teachers working in low performing schools. Additional provisions would: exempt teachers with NBPTS certification from the college course work and in-service requirements for Florida certificate renewal for as long as their national certification was valid, and grant a Florida teaching certificate to teachers coming from out-of-state who hold national board certification and a valid license in another state.

Nonpublic Postsecondary Education Institutions

The bill alters membership on the State Board of Independent Colleges and Universities so that a representative of each type of independent college will serve on the board. It increases the requirements for institutions that are neither licensed nor accredited. It adds branch campuses of out-of-state colleges to the definition of colleges that are licensed by the board. Finally, it adds to the list of those eligible for training funded by the Institutional Assessment Trust Fund and makes technical changes to correct obsolete references.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 119-0

CS/CS/SBs 1996 & 1182 — Charter Schools

by Ways & Means Committee; Education Committee; Senators Grant, Latvala, and Scott

This bill amends ss. 228.056 and 235.42, and creates s. 228.0561 F.S., all relating to charter schools, contains a 1-year $5 million appropriation from the Public Education Capital Outlay and Debt Service Trust Fund (PECO) for charter school capital outlay, appropriates $13.2 million from PECO to the Columbia County School District for the Ft. White High School, provides for the release of funds in the 1998-99 General Appropriations Act for the operation of the Commission on Education Reform and Accountability throughout FY 1998-99, and dissolves the Governor's Commission on Education effective October 31, 1998.

Section 228. 0561, F.S., is created to provide a charter school capital outlay program. Charter schools qualify for PECO money if they have their sponsors' approval for the upcoming school year, have already been in operation for 2 consecutive years, and are using facilities that have not

been provided by their sponsoring school boards. The Commissioner of Education is to establish the process for receiving and approving requests for the money from the charter schools, and for distributing the funds to the approved schools. The amount of PECO money a school may receive is determined through a formula based on the school's enrollment and the cost-per-student station as specified in s. 235.435, F.S. The money may be spent on any capital outlay purpose directly related to the charter school's operation. Before a charter school may receive PECO funds it must have a written lien agreement with the Department of Education (DOE) that applies to property improved by the capital outlay funds. The agreement is to be activated in the event the school closes. Also, if a charter school ceases operations, any property or equipment purchased with the PECO money reverts to the school's sponsoring school board.

Other changes to the charter school law (s. 228.056, F.S.) include a procedure for resolving disputes between charter schools and their sponsors that provides for DOE mediation and appeal to an administrative law judge. All charter schools are to be recognized as public schools. School boards are added to the list of groups that can apply for a charter, and the number of schools they may charter is doubled. The length of an initial charter may be from 3 to 5 years and may be renewed every 5 years, if it meets program review criteria. In order for a public school to convert to a charter school a majority of the parents eligible to vote must participate in the election, and at least 50 percent of them must show support for the conversion. Employees in a conversion charter school will remain public employees unless they elect not to do so. Also, school boards cannot require the resignation of teachers taking a leave of absence to teach in a charter school. Sponsoring school boards will be required to provide additional administrative and educational services to charter schools at no additional fee. Charter schools must also be allowed to participate in sponsors' bulk purchasing programs. Finally, the bill creates charter schools-in-the-workplace. These are schools established by business partners in a facility owned by the business. Enrollment is to be selected by random lottery from a student pool that includes, among others, all the children of employees of the business who wish to attend the school. The portion of the business facility devoted to the school will be exempt from ad valorem taxation.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-2; House 93-23

WORKFORCE DEVELOPMENT

CS/CS/SBs 1124, 2048 & 1120 — Workforce Development Education

by Ways & Means Committee; Education Committee; Senators Grant, Horne, Diaz-Balart, and Turner

This bill provides for full implementation of the workforce development system designed last year in CS/CS/SB 1688, ch. 97-302, L.O.F. In general, this bill carries out the recommendations of the Commissioner's Task Force on Workforce Development.

Specifically, the bill:

Creates a workforce development capitalization grant program as an incentive for new and expanding programs.

Requires the State Board of Education to adopt an implementation schedule that establishes standard student fees for workforce development programs. The fee schedule is to allow a systematic transition to the fee levels required by ss. 239.117 and 240.35, F.S. Fee waivers are authorized for up to 8 percent of the total enrollment hours; fee exemptions continue as authorized in current law.

Creates the Employment Task Force for Adults with Disabilities with members appointed by the Commissioner of Education and the State Board of Community Colleges. The task force will report on the programs that use funds provided by Specific Appropriations 119-A and 157-A for community colleges and school districts that conduct programs for adult disabled students.

Delays implementation of the workforce development funding formula until July 1, 1999, and amends it so that funding is based on the amount generated in the previous year rather than on the length and cost of a program.

Clarifies issues of articulation from vocational certificate programs to vocational degree programs:

1. It creates the Applied Technology Diploma, to substitute for the Associate in Applied Technology Degree (ATD).
2. It authorizes a school district technical center to offer the ATD for vocational credit and a community college to offer it for college credit. The statewide articulation agreement will assure that a student who earns an ATD at a technical center will be granted the same amount of credit toward an associate-in-science degree upon enrollment in any community

college. The articulation agreement will also assure that an institution's accreditation will not be jeopardized because of accepting the credit.

Provides extra funding for adults with disabilities in two ways:

1. In regular workforce development programs, the funding formula must reward an educational agency for the successful completion and placement of adults with disabilities.
2. In special programs for adults with disabilities, most students with disabilities will generate funds both from the workforce development fund and from funds authorized in Specific Appropriation 119-A or 157-A.

Creates a program for elderly students in school districts that serve large numbers (over 10,000) in adult education and have at least a 2-year history of such programs. The program will take effect in 1999.

Provides for funding apprenticeship programs that are required to be longer than other programs.

Provides for funding from the FEFP for high school students who attend community colleges' adult education programs for high school credits rather than postsecondary education credits.

Authorizes nonpublic colleges to participate in the common course numbering system and have their credits transfer automatically to state universities and community colleges if they meet certain requirements essential to the accreditation of the receiving institution. For-profit colleges must pay for the expense of review of courses, while not-for-profit colleges receive the service for free. *(Text of CS/SB 2160 by Education Committee and Senator Campbell.)*

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 116-0

CS/HB 4135 — Charter Technical Career Centers

by Community Colleges & Career Preparation Committee, Rep. Lynn and others (CS/SB 2074 by Education Committee and Senator Burt)

This bill authorizes a school district or community college to sponsor a charter technical career center. The provisions in the bill are similar to those in s. 228.056, F.S., that govern the authority to operate a charter school. It also appropriates $3 million to Daytona Beach Community College to establish a charter technical career center to serve Volusia and Flagler Counties.

A charter technical career center may be operated by a school district or community college, or a consortium of one or more of each. The center may be for secondary or postsecondary vocational education or both.

An existing public technical center or community college site is eligible for a charter, but not an existing independent school. The charter must be approved by both the school district and community college in whose district the center is located.

A charter technical career center must organize as a nonprofit organization. It may be either a public or private employer. If public, its employees may participate in the Florida Retirement System or in the state community college system optional retirement plan, if the charter is sponsored by a community college that participates in that plan. Employees may collectively bargain.

The school district or community college in which the charter technical career center is located will pay directly to the center an amount specified in the charter. The center is eligible for all other state and federal revenue available to public schools. The center may not levy taxes or issue bonds, but it may charge postsecondary students the same fees allowed in its charter and permitted by law.

A charter technical career center is exempt from the Florida School Code, except those statutes pertaining to anti-discrimination, civil rights and student health, safety, and welfare.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 117-0

STATE UNIVERSITY SYSTEM

HB 755 — State University System/Board of Regents

by Reps. Constantine, Turnbull, and Lynn (CS/CS/SBs 1358 & 160 by Ways & Means Committee; Education Committee; Senators Grant, Kirkpatrick and others)

This bill provides more independence and management flexibility for the Board of Regents and the universities in the State University System. It also creates a sixth regional autism center to be housed at the University of Central Florida, creates the Leadership Board for Applied Research and Public Service at the Florida State University, appropriates $450,000 from General Revenue for the board in 1998-99, and appropriates $200,000 from General Revenue for the State Agency Dispute Resolution Demonstration Project at FSU.

The university presidents gain additional independence through the decentralization of certain record keeping, reporting, and decision making responsibilities. This independence includes authorization to approve general construction contracts. The purchasing authority of presidents is raised from $500,000 to $1 million, and the Board of Regents will contract for purchases of over $1 million. The Board of Regents is authorized to independently acquire property without the need for competitive selection, under certain circumstances. The Board of Regents and the state universities will no longer be included in the definition of a state agency under ch. 287, F.S.

The bill states circumstances under which certain members of the Canadian military will be classified as Florida residents for tuition purposes.

The bill amends the definition of equity in employment of women and minorities in community colleges and state universities so that Florida's definition reflects federal guidelines.

Several obsolete or redundant rule making requirements are repealed, as are the laws that delegate certain functions of the Department of Management Services to the State University System, require a report on gender equity and salary discrimination, and require the Board of Regents to adopt rules regarding the Theodore R. and Vivian M. Johnson Scholarship Foundation and Trust Fund.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 114-0

EDUCATION IN GENERAL

HB 4259 — Postsecondary Education

by Community Colleges and Career Preparation Committee, Rep. Sindler and others (CS/SB 2100 by Education Committee and Senator Forman)

The bill amends s. 232.2466, F.S., to allow the Board of Regents and the State Board of Community Colleges to determine criteria for receipt of the college-ready diploma.

The bill amends s. 233.061, F.S., to require that public schools teach the study of Hispanic and Women's contributions to the United States.

The bill provides postsecondary education fee exemptions for persons who have been at least 50 percent negatively financially impacted by the Lake Apopka restoration land buy-out. Students who wish to take advantage of the fee exemption cannot have received compensation because of

the buy-out, must be Florida residents for tuition purposes, and must have been denied financial aid that would have otherwise paid for tuition. Such students must begin course work by fall semester 2000. The exemption is valid for 4 years.

The bill amends s. 240.1163, F.S., to require that college-level dual enrollment courses be weighted the same as honors and advanced placement classes in determining grade point averages. Alternative grade point calculation or weighting systems that discriminate against dual enrollment courses are prohibited.

The bill amends s. 240.311, F.S., to specify that local distance learning classes are exempt from a required annual administrative review to be submitted to the State Board of Community Colleges, provided that the classes are not marketed outside the district. Otherwise, the classes are subject to review.

The bill amends s. 240.321, F.S., to require community colleges to post or provide notification of alternative remedial options to traditional college-preparatory instruction. The information must be made available to students who score below college level in any area on the common placement test. Students who chose a private provider for remedial instruction may enroll in up to 12 credits of college-level courses in skill areas other than those for which they are being remediated. Such students are prohibited from enrolling in additional college-level courses until they score above the cut-score on all sections of the common placement test.

The bill amends s. 240.36, F.S., regarding the Dr. Phillip Benjamin Academic Improvement Trust Fund for Community Colleges, to put scholarships on par with other uses and to make the qualifications for the scholarship less tied to academic achievement. It also authorizes use of the fund for loans and need-based grants.

The bill revises various sections of statutes concerned with non-public career education schools to address fair consumer practices, in addition to minimum educational standards.

The bill amends s. 232.246, F.S., to require that high school graduation requirements include an additional one-half credit of physical education. Students participating in two seasons of an interscholastic sport at the varsity or junior varsity level may use such participation to satisfy the physical education requirement if they pass a competency test on personal fitness. The bill creates s. 233.0616, F.S., regarding personal fitness programs in elementary and middle schools. Specifically, these schools are encouraged to implement personal fitness programs that comply with American Heart Association guidelines.

The bill amends s. 240.61, F.S., to revise provisions relating to the College Reach-Out Program. The requirement that participating institutions also be participating in a federal program is removed.

The bill repeals ss. 240.521, 240.522, 240.523, and 240.525, F.S., thereby rescinding obsolete language concerning authorization to establish universities or university branches in East Central Florida or Southwest Florida, a 4-year college in Dade County, and a state university, or branch of an existing university or state college in Duval County, respectively. These universities now exist.

The bill provides for decentralization of certain financial aid programs such that postsecondary institutions are charged with award distribution and eligibility determination responsibilities.

The bill includes provisions regarding the Florida Pre-paid College Program. Specifically, the bill authorizes the Florida Prepaid Postsecondary Education Expense Program to provide contracts that cover local fees at community colleges and universities. It renames the program and its board and trust fund to the *Florida Prepaid College Program, Board,* and *Trust Fund.*

The bill revises provisions relating to Board of Regents to increase the membership from 12 to 13 and to reduce terms from 6 to 4 years. It removes a prohibition on providing a tenured faculty appointment to a university president who is terminated by the board or who resigns at the request of the board.

The bill creates a new section of statutes to provide for suspension and removal from office of elected student government officials.

If approved by the Governor, these provisions take effect July 1, 1998, except as otherwise provided.
Vote: Senate 38-0; House 113-1.

CS/SB 706 — High School Graduation Credit Requirements

by Education Committee and Senator Sullivan

This bill:

- Requires a school district to allow a student over the age of 16 to graduate from high school as soon as the student earns the 24 credits required by the state;

- Authorizes a school district to increase the number of academic courses required to graduate, if the district reduces the number of electives proportionately;

- Provides the school district with a financial incentive of 0.25 of a full-time-equivalent student funding appropriation for each student who graduates early; and

- Requires a student to pass a test and complete two seasons in an interscholastic sport to exempt the requirement to earn half a credit in physical education.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate37-0; House 87-28

Senate Committee on Executive Business, Ethics and Elections

CS/SB 1402 — Election Integrity; Absentee Voting

by Executive Business, Ethics & Elections Committee and Senators Latvala, Silver, Lee, Clary, Bronson, Childers and Meadows

This bill is an election reform bill which strengthens Florida's current voter registration requirements and modifies the absentee ballot voting process. Some of the specific provisions of this bill include:

Voter Registration

- **Voter Registration Card; mailing** — Requires supervisors of elections to send a voter registration card to a voter's residence address by non-forwardable mail; provides exceptions.

- **Residency; homestead exemption** — Requires voter to list the address where he or she has been granted a homestead exemption, if any; requires the supervisor to forward to the property appraiser the name of each person who registers to vote at an address other than where homestead is claimed; requires the property appraiser to examine each such referral and if the person is not entitled to the exemption, to terminate the homestead exemption and assess back taxes.

- **Photo Identification** — Requires a photo identification for voting. If the elector does not have a photo identification, he or she must fill out an affidavit attesting to the elector's identity and eligibility to vote.

- **Central Voter File; database comparison** — Requires the Division of Elections to annually cross-reference the Central Voter File against other databases to identify ineligible voters.

- **Voter Registration Form; drivers license number or identification number from Florida Identification card** — *Requests* this information on the voter registration application.

- **Voter Registration Form; Social Security Number** — *Requires* the voter to submit the last four digits of his or her Social Security Number on the voter registration application.

Absentee Voting Procedures

- **Elector Qualifications** — Narrows the categories of persons eligible to vote absentee:
  1. Reverts to pre-1996 "for cause" restrictions in Florida law for absentees not voting in person.
  2. Allows persons to vote by absentee ballot *in person* if "unable to attend the polls on election day" (current law).

- **Third Party Ballot Requests; telephone requests** — Limits telephone and written requests for absentee ballots to the elector, the elector's immediate family, or the elector's legal guardian. Requires certain information regarding the voter and the requester.

- **Ballot envelope; voter's certificate; instructions** — Includes a notice of the potential for felony penalties.

- **Identification of Absent Elector** — Requires the absent elector to include the last four digits of his or her Social Security Number on the Voter's Certificate.

- **Ballots; delivery to voters** — Authorizes the following four delivery methods:
  1. Mail absentee ballots non-forwardable to mailing address on file with the supervisor, unless the elector is:
     a) absent from county and not planning to return before election,
     b) temporarily unable to occupy the residence due to natural disaster or emergency,
     c) in a hospital, assisted living facility, nursing home, short-term medical or rehab. facility, or correctional facility,

     in which case, the supervisor must mail the ballot to any other address designated by the elector.
  2. Mail ballots forwardable mail to military and overseas voters.
  3. By personal delivery to the elector.
  4. By delivery to a third-party designee up to 4 days before the day of an election (Friday before the general election).

- **Ballot; marking** — Requires elector to personally vote the ballot, except electors requiring assistance due to blindness, disability, or inability to read or write.

- **Ballots; witnessing requirements** — Requires witnessing by either:
  1. One notary or other officer authorized to administer oaths; or
  2. One registered Florida voter,
     - limited to witnessing 5 ballots per election (excluding absentee ballot coordinators)
     - required to include signature, printed name, address, voter registration identification number, and county of registration on ballot envelope.

- **Absentee Ballot Coordinators** — Each state executive committee of a political party with a candidate running in a general or special election may designate a certain number of absentee ballot coordinators: 10 for a special election for the Florida Senate or Florida House of Representatives; 40 for any other general or special election not exclusively involving municipal or nonpartisan races. The Division of Elections must investigate each designee and may certify only those designees who have not been convicted of an election-related crime. Absentee ballot coordinators may witness an unlimited number of absentee ballots.

- **Ballots; return** — Restricts the return of absentee ballots to personal delivery by the elector or mail, except an elector unable to mail or personally deliver the ballot may designate someone in writing to return their ballot. Designees are limited to returning 2 ballots for electors other than themselves or immediate family members.

Crimes/Penalties

- **Penalties; enhanced penalties for existing crimes** — Increases the penalty for several existing election law crimes from a misdemeanor to a 3rd degree felony (and, in some cases, a 2nd degree felony for multiple offenders).

- **Penalties; new crimes** — Creates three new third-degree felonies for: vote brokering; requesting a ballot on behalf of another without permission; and marking the ballot of another. Creates two new first-degree misdemeanors for: witnessing more than five ballots in an election (other than a notary, other officer entitled to administer oaths, or a certified absentee ballot coordinator; and persons returning more than two voted absentee ballots per election to supervisors (other than for themselves or immediate family members).

- **Penalties; administrative fines** — In addition to criminal penalties for election law violations, the bill extends Chapter 104 jurisdiction to the Florida Elections Commission.

Miscellaneous Provisions

- **Voter Fraud Hotline; provide election fraud education** — Requires the Division of Elections to maintain a voter fraud hotline and to provide voter fraud education (i.e., public service announcements; voter fraud handbooks, etc.).

- **Supervisors; expanded authority** — Provides supervisors of elections with statutory authority to investigate election fraud.

- **Electors; mandatory personal appearance before election officials** — Requires a person who registers by mail and has not previously voted in the county to vote in person at the polls or the supervisor's office, except:
  - military & overseas voters
  - elderly and handicapped
  - out-of-county folks

- **Poll Workers** — Allows persons who are 17 years of age and who have preregistered to vote to work at the polls.

- **Charter County Commissioners; terms of office** — Allows the governing board of a charter county by ordinance, approved by referendum, to prescribe the date for the commencement of the terms of its members.

If approved by the Governor, these provisions take effect July 1, 1998, except as otherwise provided.
Vote: Senate 30-9; House 73-42

Senate Committee on Governmental Reform and Oversight

CONTRACTING

HB 2019 — Service Contract Administration

by Children and Family Empowerment Committee, Rep. Lacasa and others (CS/SB 156 by Committee on Governmental Reform and Oversight)

This bill (Chapter 98-25) provides a series of systemic changes to the methods and expectations to be achieved by the service contracting procedures employed by the Department of Children and Family Services. It implements recommendations of a 1997 Senate report entitled *Service Contracting in the Department of Health and Rehabilitative Services*.

The bill provides for annual reporting on the effectiveness of agency contracting and its ability at achieving performance goals using delivery systems different from those involving traditional state employment. A presumption in favor of purchased client services is created whenever a series of conditions affecting vendor performance, new program authorization, or market-based price or resource availability is established. The state agency may overcome these presumptions only upon a material demonstration of public necessity or service endangerment.

The department shall annually evaluate each of the service districts and its programs to ensure fiscal accountability. Additionally, the department may establish performance standards and alternative procurement means to those provided in the conventional request-for-proposal and invitation-to-bid formats. These means shall stress multi-year contracts and shall provide for the maintenance of rigorous quality review of contract vendor applicants. Contract performance failures may subject the vendor to financial penalties which themselves may not be offset by reduced client services. The department must also develop standards of conduct for its own employees which are to be incorporated in its agency employee handbook by the end of 1998.

The department is required to place in its standard contract document a provision for the filing of a lien to protect the state's pro-rata share of interest in any fixed asset for which it has provided funds. The lien may be vacated at the end of twenty years, as adjusted for depreciation.

Further refinement of internal financial integrity systems is required by the agency to be accompanied by outside review by the Auditor General and the Office of Program Policy Analysis and Governmental Accountability. The department is required to establish contract management

units in each of the service districts with subsequent reports due to the Legislature by the end of 1999 on their operation and configuration as centralized or decentralized entities. A total of five separate reports are due to legislative branch agencies in fulfillment of the revised contracting and quality assurance activities contained in the bill.

These provisions became law without the Governor's signature on April 28, 1998.
Vote: Senate: 36-0; House 106-0

RETIREMENT

SB 1462 — Retirement Funds/Municipalities

by Senator Gutman

SB 1462 gives greater latitude to the boards of trustees of the independently constituted firefighter and police retirement plans organized under chs. 175 and 185, F.S., for the investment of their pension trust monies in foreign securities. The authorization granted is permissive and is made subject to approval of the board of trustees. Additionally, the bill requires a majority vote of the members of the boards on all official business coming before it and permits an allocaton of up to ten percent of plan assets in foreign securities.

Each board secretary shall keep an accurate record of all pension-eligible members with their current addresses. The existing triennial requirement for the evaluation of money managers is further modified to require that such a person must be professionally qualified with reference to four enumerated criteria. Each board is given the authority to employ its own attorney, actuary, or professionally qualified adviser, or may use those provided by the municipality or special fire control district, under terms each board finds acceptable.

The bill amends ss. 175.071 and 185.06, F.S.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate: 39-0; House 115-0.

CS/CS/HB 3131 — Deferred Retirement Option Program

by General Government Appropriations Committee; Reps. Feeney and others (CS/SB 216 by Govermental Reform & Oversight Committee and Senator Gutman and SB 1950 by Senator Burt)

The bill (Chapter 98-18) amends s. 121.091, F.S., and clarifies member eligibility for participation in the Deferred Retirement Option Program (DROP). The bill includes a grandfather provision for members exceeding the normal retirement date or for members exceeding the 60 month limitation period. The provision allows for a maximum five-year, sixty-month participation period in the DROP unless the member is a Special Risk Class member and has reached normal retirement date with a total accrued value exceeding 75 percent of average final compensation (AFC). Special Risk Class members may participate in DROP for no more than 36 calendar months immediately following the effective date of the DROP in the event the limitation is exceeded.

The bill also allows purchase of retirement credit in the Florida Retirement System for persons who possess in-state service in accredited nonpublic, nonsectarian schools and colleges.

These provisions became law without the Governor's signature on April 22, 1998.
Vote: Senate 34-0; House 118-0

CS/CS/HB 3491 — Florida Retirement System

by Finance and Taxation & Governmental Operations Committees; Reps. Boyd and others (SB 1950 by Senator Burt)

The committee substitute for committee substitute amends and clarifies the calculation of retirement benefits under the existing system for dual normal retirement ages and post retirement service class upgrades.

The bill addresses the nullification of a member's joint annuitant designation in the event of a dissolution of marriage and stipulates that if a member dies before his or her effective date of retirement on or after January 1, 1999, the deceased member's spouse shall automatically be the member's beneficiary unless otherwise stipulated by the member. The bill also provides that if a member dies before vesting and qualifying for retirement benefits, the deceased members designated annuitant may purchase additional service in order to qualify and vest retirement benefits in the retirement system.

The bill allows Florida Retirement System (FRS) members to purchase up to 5 years of retirement credit for in-state service with an accredited nonpublic sectarian school or college.

The bill provides that any uncashed state retirement warrant issued by the Comptroller and not presented for payment within 1 year after the last day of the month in which the warrant was originally issued, shall be canceled and credited to the FRS Trust Fund or other pension trust fund, as appropriate.

The bill directs the Executive Director of the State Board of Administration and the Director of the Division of Retirement with oversight from legislative members, to undertake a comprehensive review of the assumptions and contribution rate structure underpinning the operations of the FRS and to submit a report by March 1, 1999, concluding their findings.

The bill increases the health insurance subsidy contribution rate from $3 to $5. Members wil receive a minimum monthly benefit payment of $50 to a maximum monthly benefit payment of $150 depending upon the members vested retirement years of service. The bill will act as the implementation bill for the health insurance subsidy contribution rate changes and the retirement contribution rate changes to take effect on July 1, 1998, and resulting from the 1997 Biennial Actuarial Valuation of the FRS.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

PERSONNEL

HB 3205 — National Guard

by Rep. Wiles (SB 534 by Senator Kirkpatrick)

HB 3205 corrects changes made by the 1997 Legislature to the Florida National Guard tuition assistance program. Under the 1998 amendments contained in this bill, the National Guard will have preserved its former partial tuition assistance program should the full assistance expansion enacted last year not be fully funded by subsequent legislatures.

The bill amends s. 250.10, F.S.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 32-0; House 114-0

HB 3261 — State Employee Telecommuting
by Rep. Culp and others (SB 496 by Senator Kirkpatrick)

HB 3261 (Chapter 98-31) removes the mandatory expiration date for the state employee telecommuting program enacted by the 1994 Legislature. This program authorization will now have a continuing existence and will not be subject to any automatic statutory repeal.

The bill repeals s. 3 of ch. 94-113, L.O.F.

These provisions became law without the Governor's signature on April 29, 1998.
Vote: Senate: 39-0; House 118-0

FINANCIAL MANAGEMENT

SB 222 — Bond Requirements
by Senator Burt

The bill (Chapter 98-34) is based upon an interim project entitled *A Review of the Necessity for Performance (Surety) Bonds for Public Officers and Public Employees* completed by staff of the Joint Legislative Auditing Committee in 1995. The bill repeals and amends many provisions of law that require the procurement of performance bonds by specified state officers, county officers, constitutional officers, clerks of the courts, other officers of the courts, local government officials, and other specific public employees. Instead, in most cases, an agency head, at his or her discretion, is authorized to require a surety or performance bond of any employee, should the need arise.

These provisions became law without the Governor's signature on April 30, 1998.
Vote: Senate 39-0; House 110-1

SB 400 — Florida Single Audit Act
by Senator Burt

The bill creates s. 216.3491, F.S., "The Florida Single Audit Act" and establishes audit and accountability requirements for units of local government and non-profit organizations which function as contract vendors to public agencies and to which monies from the General Appropriations Act are channeled each year. It implements findings and recommendations of the Auditor General to bring the State into compliance with federal legislation of the same name enacted in 1991.

This bill repeals s. 216.349, F.S., relating to tiered audit requirements for contract awards in excess of $100,000.

If approved by the Governor, these provisions take effect July 1, 2000.
Vote: Senate 38-0; House 120-0

CS/HB 823 — State Moneys/Investments

by Finance and Taxation Committee and Reps. Gay and Feeney (CS/SB 1056 by Governmental Reform & Oversight Committee and Senator Kurth)

This committee substitute amends ss. 18.10, 626.8473 and 766.315, F.S., and revises investment guidelines for the State Treasurer with respect to state moneys, broadening the availability of investment vehicles now restricted under current law. The bill authorizes the board of the Florida Birth-Related Neurological Injury Compensation Association (NICA) to invest plan funds only in the investment and securities described in s. 215.47, F.S., for the State Board of Administration.

The committee substitute directs title insurance agents to place immediately all funds received for escrow or trust in a financial institution located within this state and insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. The fund must also be invested in accordance with the investment requirements and standards established for deposits and investments of state funds in s. 18.10, F.S.

The committee substitute also provides conforming and clarifying changes to authorize a financial institution that has a branch or principal place of business in Florida, as defined in s. 658.12, F.S., to act as a qualified public depository.

The committee substitute requires a public depositor to assume greater responsibility in the protection of its public deposits. Qualified public depositories will have greater accountability in classifying, reporting, and the collateralization of public deposits and must provide annual confirmation of public deposits accounts. The bill requires the Treasurer to compare public deposits information reported annually by qualified public depositories and public depositors, only for those qualified public depositories ranked in the lowest category based on established financial condition criteria. Lastly, the two advisory committees and the two respective separate contingent liability pools for banks and savings and loans associations are consolidated.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 117-0

CS/HB 3661 — State Board of Administration/Public Funds

by Governmental Operations Committee and Reps. Garcia and Ritchie (CS/SB 1352 by Governmental Reform and Oversight Committee and Senators Rossin and Sullivan)

The committee substitute authorizes the State Board of Administration [SBA], at its discretion, to enter into a trust agreement as investment manager with the head of a state agency or a governing body of a unit of local government. The funds and earnings pursuant to the trust agreement will be exempt from service charges. The bill also clarifies and expands the existing investment authority of the SBA. The SBA is now authorized to increase its total foreign market holdings for any one fund from 10 percent to 20 percent and its total internally managed common stock holding from 50 percent to 75 percent.

The bill removes the authority of the Department of Management Services to review service charges imposed upon other agencies and the judicial branch by the SBA for investment management services. The committee substitute authorizes the Office of Program Policy Analysis and Government Accountability to conduct performance audits regarding the management of the SBA every 2 years.

The bill authorizes the SBA to manage the investment portfolio of the Division of Blind Services. The bill provides that bond maturities for lottery revenue bonds issued pursuant to ch. 97-384, L.O.F., shall not exceed 20 years and that any additional funds received as a result of new lottery gaming activities will be made available first for the payment of "Classrooms First Program" and "1997 School Capital Outlay Bond Program" bonds pursuant to s. 24.121(2), F.S.

If approved by the Governor, these provision take effect upon becoming law.
Vote: Senate 38-0; House 119-0

TECHNOLOGY

CS/SB 832 — State Planning and Budgeting

by Governmental Reform & Oversight Committee and Senators Kirkpatrick, Sullivan and Forman

The 1997 Legislature passed ch. 97-286, L. O. F., which set forth comprehensive changes to the State's use and management of its information technology resources. This committee substitute provides a few necessary, statutory revisions, technical in nature, to increase the overall effectiveness of the original legislation. The committee substitute exempts from inclusion in the agency strategic plan, and from the mandatory review for budget amendments, certain information resources management projects that are a continuation of hardware or software maintenance or

software licensing agreements, or certain desktop replacement. The bill clarifies that members of the State Technology Council may appoint a designee to serve on the member's behalf and requires that coordinating councils and boards, like agencies, provide annual performance reports. The committee substitute changes the due dates for the agency annual information resources management performance report and the state annual report on information resources management and requires project monitors to report quarterly. The Office of Program Policy and Governmental Accountability is added as a designated recipient of project monitor reports. The bill also modifies the statutory responsibilities of the Geographic Information Board.

The committee substitute describes in greater detail and by definition what "incentives" and "disincentives" are regarding the performance-based budgeting process. The committee substitute also creates definitions for "performance-based program appropriation" and "performance ledger." Additional documentation supporting performance measures is required by the committee substitute. Time-frames are changed to allow submission to the Legislature of programs and measures in advance of developing a performance-based program budget request. Reliance on large programs is reduced by repealing the prohibition against agencies using existing 5 percent budget transfer authority between programs.

The committee substitute also provides that all remaining programs within the Department of Education must convert to performance-based budgeting by September 1, 1999. State attorneys, public defenders, the Justice Administrative Commission, and capital collateral counsel, are added to the performance-based budgeting schedule. Agencies created after September 1, 2000, are required to submit performance-based budgets within a specified period. The committee substitute also establishes in statute the constitutionally-created Budget Stabilization Fund.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 119-0

CS/HB 3619 — Computer Problems/Year 2000

by Governmental Operations Committee, Reps. Culp and others (CS/SB 1162 by Judiciary Committee and Senators Kirkpatrick, Sullivan and Forman)

The committee substitute establishes newly authorized executive powers for the Governor and Cabinet in order to avert or mitigate computer date calculation failures with regard to the year 2000 problem dilemma. The bill gives the Governor and the Cabinet the flexibility to assign and reassign both fiscal and personnel resources to more efficiently resolve projected or actual computer failures between agencies and instrumentalities of the state and units of local government.The emergency powers granted to the Governor relating to year 2000 computer problems are repealed July 1, 2000.

The bill protects the state and its legal subdivisions from civil and administrative legal actions resulting from year 2000 computer date calculation failures. Private and public university schools of medicine providing clinical patient care services to the public that are funded in whole or in part by the state are also partially protected from civil and administrative legal actions resulting from such problems.

The committee substitute provides that no new technology projects will be funded unless the agency plan for Year 2000 projects is on schedule for the last two reporting periods.

If approved by the Governor, these provisions take effect upon becoming a law.
Vote: Senate 39-0; House 118-0

GOVERNMENTAL EFFICIENCY

SB 200 — County Court Assessments

by Senator Klein

The bill creates s. 938.35, F.S., which provides that a county may assign to an attorney or collection agency the collection of fines, court costs, and other costs imposed by the court which remain unpaid after a certain period. The county must determine that collection is cost-effective and must follow applicable procurement practices. The costs of collection may be recovered but the fees and costs of collection may not exceed 40 percent of the total fines and costs owed.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 37-0; House 118-0

SB 498 — Certified Audits Program

by Ways & Means Committee, Senator Sullivan and others

The bill creates s. 213.285, F.S. and amends ss. 213.053 and 213.21, F.S., to authorize the Department of Revenue (DOR) to initiate a certified audits program under which taxpayers may hire qualified practitioners to review and report on their tax compliance. The bill specifies the requirements for participation by such practitioners and also provides authority for DOR to compromise penalties or abate interest for taxpayers who participate in the project.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 33-0; House 118-0

CS/SB 1574 — Legislative Services/JLMC

by Governmental Reform & Oversight Committee and Senator Grant

The committee substitute abolishes the six-member Joint Legislative Management Committee (JLMC) which provided administrative services to six of the seven operating entities of the legislative branch. The functional operations and support services of the committee which were organized and coordinated under the Executive Director's Office included six divisions: Administrative Services, Statutory Revision, Legislative Information, Library Services, Economic and Demographic Research, and Systems and Data Processing.

In place of JLMC, the bill creates the Office of Legislative Services and reorganizes and transfers the functional operations and support services of the committee under a single coordinator who may be selected by the Senate President and the Speaker of the House of Representatives. Five of the six divisions are included in the transfer; however, one is retitled from "Division" to "Office" and the Division of Library Services is transferred to the Department of State on July 1, 1998.

The Juvenile Justice Advisory Board is retitled the Juvenile Justice Accountability Board but remains assigned to the Joint Legislative Auditing Committee.

Both the Senate and the House have passed Senate Concurrent Resolution 2536 to properly conform their joint rules of procedure to the provisions of the bill.

This bill also repeals s. 11.39, F.S., creating the Joint Legislative Information Technology Resource Committee.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 107-0

PUBLIC RECORDS

SB 112 — Public Records/Employee Assistance

by Senator Latvala

This bill (Chapter 98-8) creates public records exemptions for sensitive information relating to public employees who participate in employee assistance programs at the state, county, and municipal levels. Although several public records exemptions are created by the bill, each exemption protects the same types of records, i.e., information relating to state, county, and municipal employees who participate in employee assistance programs.

The bill amends s. 110.1091, F.S. The bill creates ss. 125.585 and 166.0444, F.S.

These provisions became law without the Governor's signature on April 11, 1998.
Vote: Senate 34-0; House 117-0

SB 348 — Public Records/Minor's Statements

by Senator Cowin and others

This bill (Chapter 98-9) provides that identifying information in a videotaped statement of a minor who is the victim of a specified sexual crime is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution, provided that the videotaped statement relates to one of the sexual offenses specified. Notwithstanding the exemption, any governmental agency that is authorized to have access to such statements by any provision of law must be granted access to the videotaped statement in furtherance of that agency's statutory duties. The videotaped statement retains its confidential and exempt status regardless of whether the agency creates the videotaped statement or receives the videotape from another agency.

The bill amends s. 119.07(3)(s), F.S.

These provisions became law without the Governor's signature on April 11, 1998.
Vote: Senate 33-0; House 115-0

CS/SB 1230 — Public Records/Kids Health Program

by Health Care Committee and Senator Brown-Waite

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. Committee Substitute for Senate Bill 1230 exempts identifying information contained in an application for determination of eligibility for the Florida Kids Health program. The exemption includes medical information, family financial information, and any information obtained through quality assurance

activities and patient satisfaction surveys that identifies program participants. A statement of public necessity for the exemption is included.

The bill takes effect upon the effective date of CS/SB 4415, which is July 1, 1998, if approved by the Governor.
Vote: Senate 38-0; House 116-0

CS/SB 1408 — Public Records/Workers' Compensation

by Banking and Insurance Committee & Senator Clary

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, records of public bodies are open to the public unless made exempt. Committee Substitute for Senate Bill 1408 exempts investigatory records of the Division of Workers' Compensation, Department of Labor and Employment Security, which are received from employers pursuant to its authority to enter work sites and inspect business records to ascertain compliance with workers' compensation coverage requirements, as provided by CS/SB 1406. This bill provides that the investigation or business records become public and are disclosed when the division's investigation is completed or ceases to be active. Under limited circumstances, certain business records remain confidential. This public records exemption provision is similar to current law for other state agencies which obtain records through their compliance-type activities, such as the Department of Insurance and the Agency for Health Care Administration.

The bill takes effect on the effective date of Senate Bill 1406, or similar legislation relating to the powers of the Division of Workers' Compensation. If approved by the Governor, CS/SB 1406 becomes law January 1, 1999.
Vote: Senate 40-0; House 119-0

CS/HB 1433 — Public Records/Investigations by Department of Children and Families

by Governmental Operations Committee and Rep. Brennan (CS/SB 506 by Children, Families and Seniors Committee and Senator Rossin)

This bill changes references in ch. 119, F.S., the Public Records Law, from the Department of Health and Rehabilitative Services to the Department of Children and Families. The affected provisions relate to public records exemptions in cases involving the death of a child, disabled adult, or elderly person as a result of abuse, neglect, abandonment, or exploitation.
Chapter 415, F.S., is amended to allow any person access to records involving the death of a disabled adult or elderly person determined to be a result of abuse, neglect, or exploitation, unless that information is otherwise confidential or exempt. Access to records of a child who dies as the result of abuse, abandonment, or neglect is also provided, with the exception of confidential

information contained therein or information identifying the person reporting the abuse, neglect, or exploitation.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 118-0

CS/HB 1437 — Public Records/Managed Care

by Health Care Standards Committee, Regulatory Reform Committee and Rep. Saunders (SB 166 by Senator Brown-Waite)

This bill creates a Public Records Law exemption for certain identifying information in a document, report, or record prepared or reviewed by the Statewide Provider and Subscriber Assistance Program panel or obtained by the Agency for Health Care Administration pursuant to s. 408.7056, F.S. The bill also provides a Public Meetings Law exemption for information of a sensitive or personal nature specifically regarding the subscriber's medical treatment or medical history, and for trade secret information, and internal risk management programs. The bill provides legislative findings as to the public necessity for the Public Records Law and Public Meetings Law exemptions. The bill amends s. 408.7056, F.S., and creates an undesignated section of law.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 111-0

CS/CS/HB 1849 — Public Records/Child-Care Facilities

by Governmental Operations & Children Committee and Family Empowerment Committee (SB 108 by Senator Hargrett)

This bill (Chapter 98-29) exempts certain personal information contained in a foster care licensure file regarding foster parents, their families, and homes from the public access required by ch. 119, F.S., and Art. I, s. 24 of the State Constitution, unless otherwise ordered by the court. The bill substantially amends s. 409.175, F.S.

These provisions became law without the Governor's signature on April 29, 1998.
Vote: Senate 38-0; House 115-0

CS/HB 1887 — Public Records/Florida Automobile Joint Underwriting Association

by Governmental Operations Committee and Rep. Ball (SB 746 by Senator Williams)

Under Article I, s. 24 of the State Constitution, ch. 119, F.S., the Public Records Law, and ss. 286.011- 286.012, F.S., the Government in the Sunshine Law, records and meetings of public bodies must be open to the public. This bill, which amends s. 627.311, F.S., clarifies that the Florida Automobile Joint Underwriting Association (FAJUA) is subject to the Public Records and Government in the Sunshine laws.

The bill also exempts from disclosure certain records relating to open claims files, underwriting files, open internal audits, privileged attorney-client communications, proprietary information, employee medical records, ongoing negotiations, and minutes of closed meetings. The bill also exempts portions of meetings relating to open claims files and underwriting files from the Government in the Sunshine law. A court reporter must record all closed meetings and those notes must be retained by the FAJUA for 5 years. A copy of the transcript of closed portions of meetings, less any exempt matters during which claims are discussed, becomes public after the claim is settled.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 113-0

CS/HB 1903 — Public Records/Florida Land Sales

by Governmental Operations Committee, Real Property and Probate Committee, and Rep. Crow (SB 806 by Senator Dudley)

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, the records of governmental and other public entities must be open to the public unless made exempt. The bill creates a public records exemption for information relating to an active investigation by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business & Professional Regulation pursuant to ch. 498, F.S. Information relative to such an investigation is confidential until the investigation is complete or ceases to be active. Additionally, the bill provides that information that would jeopardize the integrity of another active investigation, information identifying a purchaser or complainant, and trade secrets remain confidential and exempt after the investigation is closed. The division, however, is authorized to provide confidential information to any law enforcement agency or administrative agency or regulatory organization. The bill amends s. 498.047, F.S.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 36-0; House 113-0

HB 1945 — Public Records/Graduate's Program

by Education Innovation Committee and Reps. Melvin and Wise (SB 1738 by Senator Horne)

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. This bill creates an exemption from existing public records requirements for the identity of donors to the Florida Endowment Foundation for Florida's Graduates who desire to remain anonymous. It provides for future review and exemption.

This bill takes effect on the date that HB 1901 takes effect. If approved by the Governor, HB 1901 takes effect July 1, 1998.
Vote: Senate 36-0; House 118-1

CS/CS/HB 3311 — Public Records/Health Care Facilities

by Governmental Operations & Health Care Standards and Regulatory Reform Committees & Rep. Saunders (SB by 316 Senator Brown-Waite)

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. This bill creates a public records exemption for information contained in a notice of adverse incident pursuant to s. 395.0197, F.S., and makes such information confidential. The bill provides that the information contained in the notice is not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the Agency for Health Care Administration or the appropriate regulatory board. Further, the information may not be made available to the public as part of the record of investigation or prosecution in a disciplinary proceeding which is made available to the Agency for Health Care Administration or a regulatory board. The bill creates two undesignated sections of law.

This bill will take effect if SB 314 becomes law. If approved by the Governor, SB 314 becomes law on July 1, 1998.
Vote: Senate 39-0; House 117-0

CS/HB 3585 — Public Records/Health Facilities

by Governmental Operations Committee and Rep. Peaden and others (CS/CS/SB 1044 by Governmental Reform & Oversight Committee, Health Care Committee and Senator Williams)

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, and ss. 286.011-286.012, F.S., the Government in the Sunshine Law, records and meetings of governmental and other public entities are open to the public unless made exempt. The bill exempts a private corporation that leases a public hospital or health care facility from public

records and meetings requirements if the public lessor complies with the public finance accountability provisions of s. 155.40(5), F.S., and if the public lessee meets at least three of five enumerated criteria. The exemptions apply retroactively to all existing leases and prospectively to all new leases. The bill creates s. 395.3036, F.S.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

OTHER

SB 150 — Journalist's Privilege

by Senator Sullivan

The bill creates s. 90.5015, F.S., providing a qualified privilege for professional journalists to refuse to be witnesses or to disclose specified information including the identity of any source. The privilege may be overcome upon a clear and specific showing that the information is relevant, cannot otherwise be obtained, and a compelling interest exists for disclosure. The bill limits circumstances constituting waiver of the privilege and provides for authentication of specified items for admission into evidence. The terms "professional journalist" and "news" are defined.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 31-8; House 105-7

CS/HB 945 — Environmental Equity and Justice

by Environmental Protection Committee and Reps. Eggelletion and Carlton (CS/SB 1516 by Governmental Reform & Oversight Committee, Senators Turner and Casas)

CS/HB 945 creates a Center for Environmental Equity and Justice at Florida Agricultural and Mechanical University. In addition to the Center, the bill creates a series of community environmental health projects in eight named counties, each of which will have a separately constituted advisory board of public and private sector professionals and citizens. The Department of Health is directed to provide assistance to each advisory group for securing supplemental assistance from other state and federal sources. That agency will also assist in the development of a registry to track environmental health problems affecting predominantly low-income individuals living in the vicinity of contaminated sites.

The bill appropriates $672,000 for operation of the university center and another $100,000 for the community environmental health program advisory boards.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 115-0

CS/HB 1125 — Notaries Public

by Governmental Operations Committee and Rep. Jones (CS/SB 1130 by Banking & Insurance Committee and Senator Grant)

This bill clarifies and reorganizes ch. 117, F.S., which relates to notaries public. The bill specifies that a notary public may perform official duties only in Florida and requires that applicant must be able to read, write, and understand the English language. As well, the bill requires submission of a letter of resignation from notaries who do not maintain legal residence in the state during their commission period or when the Governor requires their resignation. The bill places solemnization of marriage authority in a newly-created section of law. The bill increases the amount of the notary bond from $5,000 to $7,500. Notaries are required to make reasonable accommodations to provide services to persons with disabilities. The bill also modifies and makes uniform notary forms throughout the Florida Statutes.

If approved by the Governor, these provisions take effect January 1, 1999.
Vote: Senate 38-0; House 120-0

HB 1749 — Law Day/Law Week

by Rep. Crow (SB 928 by Senator Campbell)

The bill (Chapter 98-23) designates May 1 as “Law Day.” The days preceding May 1, beginning with Sunday and ending on the Saturday following May 1, are designated as “Law Week.” Law Day and Law Week are designed to commemorate the role of law in society. Each year the Supreme Court, with the support of The Florida Bar, decides the theme that is celebrated. The bill creates s. 683.22, F.S.

These provisions became law upon approval by the Governor on April 27, 1998.
Vote: Senate 38-0; House 116-3

CS/HB 3393 — Air Carriers

by Business Development & International Trade Committee, Rep. Turnbull and others (CS/CS/SB 1846 by Governmental Reform & Oversight Committee, Commerce & Economic Opportunities Committee and Senator Williams)

CS/HB 3393 directs the Department of Management Services to conduct a three-year pilot project on ways of encouraging improved air carrier service to the state capital on behalf of state employees and other citizens. The Department shall coordinate its efforts with the Department of Banking and Finance and shall adopt guidelines for good purchasing practices in such matter, regardless of the provisions of ss. 112.061 and 287.042, F.S., relating, respectively, to reimbursement for common carrier transport and purchasing.

The Legislature's Office of Program Policy Analysis and Governmental Accountability is directed to analyze the effects of the pilot program in separate six-month intervals. At the end of the first such interval if travel costs to the State of Florida have increased by more than 20% the state airfare contract shall be reinstated.

The bill further directs Enterprise Florida, Inc., to undertake a study of regional airports and their contribution to regional economies and industrial facilities. A report to each of the Legislature's presiding officers is required by February 1, 1999.

The bill does not amend any referenced sections of the Florida Statutes.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 115-0

HB 3689 — Historical Resources

by Tourism Committee, Rep. Barreiro and others

The bill repeals a statute that requires the Division of Historical Resources, Department of State, to maintain the Florida Folklife Archives. The Florida Folklife Archives (currently called the "Florida Folklife Collection," is housed in the Florida State Archives under the Division of Library and Information Services. Further, the bill repeals a statute that created the Florida Folklife Grant Program. As well, the bill amends the definition of "historic resource" so that it includes folklife resources.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 114-0

HB 3785 — Consumer Protection

by Business Regulation & Consumer Affairs Committee, Rep. Ogles and others (CS/SB 1620 by Governmental Reform & Oversight Committee and Senator Williams)

The Division of Consumer Services of the Department of Agriculture and Consumer Services (DACS), is responsible for enforcing many consumer protection laws. The bill revises a number of consumer protection statutes. The bill permits the Department of Revenue to share names, addresses, and sales tax registration information with the DACS. The committee substitute provides that charitable organizations raising less than $25,000 per year will be required to register with the DACS, instead of filing for an exemption.

Further, the bill requires applicants for a telemarketing license to disclose whether adjudication was withheld for a felony offense. The committee substitute requires sellers of business opportunities to include their advertisement identification number in all written materials. The committee substitute also imposes a $25 late fee for late filed renewals of motor vehicle repair shop registrations. The committee substitute requires advertising that includes free items must include a clear and conspicuous statement of any condition or obligation.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 40-0; House 114-0

CS/HB 3979 — Historic Pensacola Preservation Board

by Tourism Committee and Rep. Maygarden (CS/SB 2132 by Governmental Reform & Oversight Committee and Senator Clary)

This bill clarifies that the Division of Historical Resources of the Department of State may fix and collect charges for the rental of facilities and properties managed by the division. Further, it deletes a requirement that moneys received from admissions and rentals of facilities and properties managed by the Historic Pensacola Preservation Board of Trustees be deposited into the Historic Pensacola Preservation Board Operating Trust Fund. Funds instead will be deposited into an account of the direct-support organization of the board. The bill amends ss. 266.0018 and 267.17, F.S., and repeals s. 266.0015(2), F.S.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 116-0

HB 4039 — State Lands/Special Events

by Rep. Sanderson (CS/SB 2346 by Governmental Reform & Oversight Committee and Senator Campbell)

This bill amends s. 253.03, F.S., allowing any entity to apply for special events permits to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) whether or not they are riparian upland property owners and if the event customarily occurs at a specific site for a period not to exceed 30 days. Riparian owners of adjacent uplands not seeking a lease or a consent of use shall be notified by certified mail regarding individuals who request leases or consent of use from the Board of Trustees. The bill permits, upon issuance of consents of use or leases to riparian landowners or event promoters, the installation of temporary structures for special events, if the structures or activities do not damage natural resources and if motorboat racing, high-speed contests or displays do not occur in areas frequented by manatees.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 114-0

CS/HB 4283 — Long-Term Care

by Elder Affairs & Long Term Care Committee, Rep. Peaden and others (CS/SB 2342 by Governmental Reform & Oversight Committee and Senator Bankhead)

CS/HB 4283 directs the Department of Elder Affairs to design, market, and implement a program of long-term care for public employees and their dependents with the advice of the Division of State Group Insurance. The plan shall review self-insured as well as fully insured alternatives in preparation for the issuance of a request for proposal and the awarding of a third-party administrator contract. The bill creates a board of directors for the plan with representatives from several state agencies designated to assist in the planning process. The State Board of Administration is named the custodial agent for fund management although the State of Florida is required to be held financially harmless for losses incurred by the plan administrator for contractual noncompliance.

The bill creates s. 430.801, F.S.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 114-0

RULE AUTHORIZATION BILLS (RAB'S)

Section 120.536(2), F.S., required that all agencies identify to the Joint Administrative Procedures Committee (JAPC), by October 1, 1997, all rules or portions of rules adopted before October 1, 1996, which exceed the agency's statutory rulemaking authority. The statute also provides that the Legislature shall, during the 1998 Regular Session, consider whether the identified rules are necessary and whether authorizing legislation should be enacted.

JAPC reported that some 5,850 rules, or portions of rules, were identified as exceeding the reporting agency's statutory rulemaking authority. The following Rule Authorization Bills represent authorization for the bulk of the identified rules.

SB 734 Fuel Measuring Devices	This bill (Chapter 98-38) amends s. 525.07, F.S., to authorize rules pertaining to the repair and adjustment of fuel measuring devices by meter mechanics and provides for notification to the Department of Agriculture and Consumer Affairs.
SB 768 Sureties	This bill (Chapter 98-39) amends s. 648.442, F.S., to authorize rules pertaining to establishing a form for affidavits and statements regarding the amount and source of any security or consideration for the surety bond; and prescribing a statement to be included on indemnity agreements.
SB 770 Firefighters Training and Certification Program	This bill (Chapter 98-40) amends s. 633.35, F.S., to authorize rules pertaining to issuance of special certificates for administrative and command heads in firefighter and forestry firefighting training and certification programs, and provides guidelines for certain re-examinations.
CS/SB 1346 Occupational Safety	This bill amends ch. 442 and s. 627.0915, F.S., authorizing rules for Safety Division investigations of public sector employers, as well as rules for said division regarding record keeping responsibilities for public sector employers, for adoption of federal standards, and providing that specified references to federal officials in adopted federal standards refer to specified state officials for purpose of state law.

CS/SB 1342 Workers' Compensation	This bill amends ss. 440.05, 440.15, 440.16, 440.185, 440.191, 440.20, 440.40, 440.42, and 440.49, F.S., to authorize rules pertaining to worker's compensation forms and procedures, definitions, calculation methods, audit procedures and standards, and notice requirements, for specified programs.
SB 1350 Mortgage Lenders	This bill (Chapter 98-45) amends s. 494.0065, F.S., to authorize rules relating to one-time transfer of ownership, control, or certain voting power of a licensed mortgage lender by ultimate equitable owner under certain circumstances and documentation therefor; and providing exceptions for interfamilial transfers and denial of transfers under certain circumstances.
CS/SB 1706 Care of Elderly Persons	This bill amends ch. 400 and s. 409.212, F.S., to authorize rules providing requirements for contracts executed between licensees and residents of an assisted living facility; revising requirements for facilities regarding obtaining security bonds; creating provisions for provision of business records, and rules relating to pharmacy and dietary services, construction requirements, licensure, violations and penalties.
SB 1762 WAGES Program Eligibility	This bill amends s. 414.095, F.S., to authorize rules specifying beginning dates for benefits under the program and Medicaid coverage for program participants, and specifying that payee of temporary cash assistance may be caretaker with whom minor child resides.
CS/SB 1152 Disabled and Mentally Ill Persons Umbrella Trust Fund	This bill amends s. 402.175, F.S., to authorize rules pertaining to the Developmentally Disabled and Mentally Ill Persons' Umbrella Trust Fund providing for definitions, distinguishing between the main umbrella trust and individual trust funds, annual accounting practices, and designation of trustees.
SB 1720 Rulemaking Authority for Department of Children and Families	This bill amends ss. 393.066, 393.17, 394.4781, 394.78, 394.879, 397.321, 397.427, 409.212, and 409.285, F.S., to authorize rules pertaining to compliance with federal laws or regulations in rulemaking; providing for minimum standards in rules relating to certification programs; residential care for disturbed children; and developing standards for employee assistance programs. The bill also provides authorization for rules regarding Department administration and financial requirements, construction and design requirements.

CS/SB 1708 Agency Functions for Department of Labor and Employment Security	This bill amends numerous sections of the Florida Statutes to authorize rules relating to operation of vending stands by blind services, vocational rehabilitation for the blind, unemployment benefit eligibility, past due contributions to the unemployment compensation account, transfer of employee records, enforcement of child labor laws and farm labor contractors.
SB 1700 Manufactured Buildings	This bill amends ss. 553.37, 553.721, 553.907, and 553.992, F.S., to provide authority for rules relating to construction of manufactured buildings, collection of building permit surcharges, local reporting of compliance with thermal efficiency standards, and for radon-resistant passive building construction.
CS/SB 1702 Land and Water Adjudicatory Commission	This bill amends chs. 163 and 380 and ss. 20.255, 190.005, and 373.114, F.S., to provide rule authorization for growth management rules for the Department of Community Affairs relating to submission of and review of comprehensive plan amendments, sufficiency reviews, adoption of land development regulations, development of regional impact clearance letters and applications, compliance with the federal Coastal Zone Management Act, and Florida Quality Developments. The bill also provides authority for rules regarding the Florida Land and Water Adjudicatory Commission's procedures relating to community development districts, areas of critical state concern, and water management districts.
SB 2316 Operations and Functions of the State Board of Independent Colleges and Universities	This bill amends ss. 246.081, 246.085, 246.087, 246.091, and 246.095, F.S., and creates s. 246.093, F.S., to authorize rules pertaining to restricting certain activities of students of foreign medical schools, certificates of exemption, procedures for college licensing requirements, requiring certain colleges to obtain permission to operate, and rules for fair consumer practices.

CS/SB 2000 State Board of Education Teacher Certification and Personnel	This bill amends ch. 231 and ss. 240.116 and 240.233, F.S., to authorize rules granting the Education Commissioner to make decisions regarding granting certification to applicants in extenuating circumstances not otherwise provided, allowing the state board to approve rules for expanded use of training and certification for teaching students having limited English proficiency, allowing boards to adopt rules for certain dual-enrollment programs, and articulation of foreign language competency and equivalency.
SB 2314 Community Colleges: Powers and Duties of Board of Trustees	This bill amends s. 240.319, F.S., to provide additional powers and duties to Community College Boards of Trustees in order to authorize rules.
CS/SB 1722 Powers and Duties of Local School Boards	This bill amends s. 230.23, F.S., and creates s. 230.23005, F.S., to provide additional powers and duties to local school boards in order to authorize rules.
CS/SB 1144 Department of Management Services Personnel and Facilities Management	This bill amends chs. 110, 216, and 946, F.S., to authorize rules for an employee review and performance planning system, for annual review of state training programs and to provide technical assistance for said programs, to provide a grievance process, to prohibit positions from being filled before they have been classified, and for use and value of perquisites.
CS/SB 1684 Division of Retirement: Retirement Benefits and Policy	This bill amends ch. 121, F.S., to authorize rules regarding vesting and normal retirement dates, participation in the Florida Retirement System, members' rights following conviction for causing shortage in public accounts, provisions for Special Risk Class membership, and requirements for determining death benefits.
CS/SB 1332 State Board of Administration	Amends ss. 215.835, 159.825, 218.405, 218.407, 218 409, and 240.551, F.S., to authorize rules pertaining to terms of bonds, pool investment accounts, investment and administration of local government surplus funds, trust funds, and the Florida prepaid postsecondary expense board.

CS/SB 1410 Health Care Professionals	This bill amends chs. 402, 455, 466, 467, and 491, F.S., to authorize rules relating to registration of health care services pools, treatment programs for impaired practitioners, equipment and supplies in registered dental laboratories, and midwife licensure, record keeping and reporting, and continuing education requirements for certified master social workers.
CS/SB 1716 Agency Functions of Department of Health	This bill authorizes the Department of Health to adopt rules pertaining to the functions and mission of the department. Rule authorization also is provided for immunization of children, prevention and control programs for communicable diseases, reporting by hospitals and laboratories regarding the occurrence of certain diseases, and regulating suppliers of water.
SB 1348 Agency for Health Care Administration Workers' Compensation Managed Care Arrangements	This bill amends s. 440.134, F.S., to authorize rules relating to worker's compensation managed care arrangements.
SB 1232 Agency for Health Care Administration Health Care Facilities	This bill amends s. 408.08, F.S., to authorize rules pertaining to the circumstances under which health care facilities may be granted extensions of deadlines for filing certain reports.
SB 1334 Environmental Data for Quality Assurance	This bill (Chapter 98-43) creates s. 403.0623, F.S., authorizing the Department of Environmental Protection to establish by rule appropriate quality-assurance requirements for environmental data submitted to the department, as well as criteria for rejecting environmental data that has been submitted. These rules may be in addition to any laboratory certification provisions in ss. 403.0625 and 403.863, F.S.
SB 1336 Asbestos Removal	This bill (Chapter 98-44) amends s. 376.60, F.S., authorizing the Department of Environmental Protection to establish a fee schedule, by rule, for asbestos removal.

SB 1434 Coastal Construction	This bill amends s. 161.052, F.S., authorizing the Department of Environmental Protection to adopt rules for the implementation of provisions relating to coastal excavation and construction, setback requirements, waivers or variances, exemptions, the removal of unauthorized structures or refilling of unauthorized excavations, and violations and penalties. The bill also revises s. 161.053, F.S., authorizing the department to establish exemptions for minor activities determined by the department not to have adverse environmental impacts on the coastal system. The bill authorizes the department to adopt rules relating to the establishment of coastal construction control lines, activities seaward of the coastal construction control line, exemptions, property owner agreements, delegation of the program, permitting programs, and violations and penalties. The bill amends s. 403.813, F.S., to clarify certain rulemaking authority relating to removal of organic materials from lakes.
SB 1436 Wastewater Treatment Facilities	This bill amends s. 403.33, F.S., to authorize the Department of Environmental Protection to classify water and wastewater treatment plants by size, complexity, and level of treatments. It also authorizes the department to establish the levels of certification and the staffing requirements for water and wastewater operators certified under ss. 403.865-403.876, F.S.

CS/SB 1440 Administrative Procedures and Marine Resources Rulemaking Authority; Uniform Rules of Procedure	Section 11.60(4), F.S., requires the Joint Administrative Procedures Committee (JAPC) to undertake and maintain a systematic, continuous review of statutes authorizing agencies to adopt rules and to make recommendations to the appropriate standing committees of the Legislature to address needed changes in rulemaking authority. This bill contains JAPC's recommendations in the more than 200 sections specifically addressing a general grant of rulemaking authority, although a few sections correct cross-references. Grants of authority may be categorized as specific or general. General grants of rulemaking authority relate to an agency's mission or the stated purpose of the enabling legislation. These sections standardize general grants of rulemaking authority to the greatest extent possible given the vast array of powers and duties granted to numerous agencies that are subject to ch. 120, F.S. This bill amends s. 120.54, F.S., enumerating requirements the uniform rules of procedure must include for filing petitions for administrative hearings pursuant to s. 120.569 or s. 120.57, F.S. It amends s. 120.569, F.S., providing requirements for agency action following receipt of a petition or request for a hearing. The bill amends s. 120.57, F.S., providing for motions for a summary final order in administrative hearings under certain circumstances. This bill also amends s. 370.06, F.S., to modify and clarify rulemaking authority for the Department of Environmental Protection relating to the issuance of special saltwater activity licenses. The bill amends s. 370.12, F.S., to modify and clarify the department's rulemaking authority for possession of marine turtles, or its nests, eggs, or hatchlings. Also, the bill amends s. 370.092, F.S., establishing prohibitions for possession of certain size gill or entangling nets on certain size vessels. It requires the Marine Fisheries Commission to adopt rules prohibiting the possession and sale of mullet taken in illegal gill or entangling nets. The bill amends s. 370.093, F.S., clarifying the Marine Fisheries Commission's authority to adopt rules relating to the illegal use of nets.

	This bill amends s. 334.044, F.S., authorizing the Department of Transportation to regulate and prescribe conditions for the transfer of storm water resulting from man-made changes to adjacent properties, to the state right-of-way. It stipulates the regulation shall be through a permitting process designed to ensure the safety of department facilities and to prevent an unreasonable burden on lower properties. It provides specific authority to the department to adopt rules relating to the process for obtaining a drainage permit. The department is also authorized to adopt rules relating to suspension or revocation of a drainage permit and provides for department recovery of fines, penalties, and costs incurred as a result of permittee actions. Requires the department to accept a permit issued by a delegated local government or a permit issued pursuant to an approved Stormwater Management Plan or Master Drainage Plan, providing the issuance is based on requirements equal to or more stringent than those of the department. In addition, the bill repeals Section 1 of CS/SB 846 which contained similar but conflicting amendments to s. 334.044, F.S.
CS/SB 1164 Professional Regulation	This bill amends ss. 475.17, 475.25, 489.115, 489.1195, and 492.105, F.S., to authorize the Florida Real Estate Commission to adopt rules relating to an applicant's good character, advertising, time limits for licensees on probation, and requirements for continuing education and "financially responsible officers."

CS/SB 1054 DBPR: Condominiums	This bill amends ch. 718, F.S., to authorize rules relating to condominium association meetings, notice requirements, transition to condominiums, filing and recording of certain information, requirements for certain contracts for sale or lease, and rules for requirements relating to condominium conversion.
CS/SB 1052 Florida Public Service Commission	This bill (Chapter 98-42) creates a new section in the Florida Statutes to authorize the Public Service Commission to adopt rules relating to purchasing and procurement, ensuring adequate ownership of real property upon which water and wastewater treatment facilities are located, and notice requirements in the case of a name change.
CS/SB 846 Department of Transportation Agency Functions	This bill amends ss. 334.044, 337.105, 337.18, and 339.0805, F.S., to authorize rules regulating the transfer of storm water to right-of-way as a result of man-made changes to adjacent property, suspending consultants from awards of department contracts for specified good cause, and providing incentives or damages for contracts for early completion of projects.
CS/SB 1710 Regional Transportation Authority	This bill amends s. 343.64, F.S., to authorize rules pertaining to qualification, compensation and employment of personnel and consultants to authorize a personnel system, and to delegate authority.

Senate Committee on Health Care

REGULATION OF HEALTH CARE FACILITIES/SERVICES/BUSINESSES

CS/SB 188 — Regulation of Transitional Living Facilities

by Health Care Committee and Senator Brown-Waite

This bill (Chapter 98-12) amends ss. 400.805, 413.49, and 413.605, F.S., relating to the regulation of transitional living facilities (TLF) for brain-injured and spinal-cord-injured persons and the care provided such persons in transitional living facilities. The bill expressly authorizes the Agency for Health Care Administration (agency or AHCA), the state fire marshal, or a local fire marshal to enter the premises of a licensed TLF to determine compliance with TLF licensure rules and standards. The agency may pursue a temporary or permanent injunction against a licensee or an operator of an unlicensed facility to: 1) enforce licensure requirements, 2) terminate the operation of a facility found in violation of such requirements, or 3) protect facility residents from immediately life-threatening situations. Upon determination that conditions in a facility threaten the health, safety, or welfare of residents, AHCA is authorized to impose a moratorium on admissions to the offending TLF. The law relating to vocational rehabilitation is amended to provide guidelines that: 1) require TLFs to provide, at a minimum, physical, occupational, speech, neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured persons, health education, and recreation therapies; 2) require TLFs to develop an initial treatment plan for each resident within 3 days after the resident's admission and develop a comprehensive plan of treatment and discharge plan no later than 30 days after the resident's admission; 3) require discharge of TLF residents to appropriate discharge sites that are the least restrictive environment in which an individual's health, well-being, and safety are preserved; and 4) provide for appointment of a committee by the Advisory Council on Brain and Spinal Cord Injuries, located administratively under the Division of Vocational Rehabilitation of the Department of Labor and Employment Security, that is to conduct on-site investigations as follow-up to AHCA findings of possible violations relating to the quality of the care that a TLF is giving its residents.

These provisions were approved by the Governor, without his signature, and take effect October 1, 1998.
Vote: Senate 33-0; House 117-0

CS/SB 250 — Certificate of Need/Medicaid Conditions on Nursing Home Beds
by Health Care Committee

This bill amends the certificate-of-need (CON) law to modify the procedure for imposing conditions on a CON for a nursing home that was issued in reliance on the applicant's statements to provide a specified number of nursing home beds to Medicaid recipients. The law relating to CON conditions and monitoring is amended to explicitly clarify that a nursing home CON issued in reliance upon an applicant's statement to provide Medicaid nursing home beds must include a statement of such commitment. The CON program is required to notify the Medicaid program and the Department of Elderly Affairs when it imposes Medicaid conditions on a CON for a nursing home that will operate in an area in which a community diversion pilot project is implemented. Additionally, explicit authority is provided for a holder of a CON to apply to the Agency for Health Care Administration for a modification of conditions imposed on its CON. The bill creates an interagency workgroup with participation from private-sector interested parties to study and monitor issues pertaining to ensuring a sufficient supply of Medicaid nursing home beds. The workgroup is required to submit two reports and it is abolished effective January 1, 2000.

The bill revises a provision in the nursing home licensure law by deleting language that pertains to CON regulation. Additionally, the bill exempts certain state veterans' nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs from CON review when specified conditions are met.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 31-0; House 119-0

SB 288 — Rural Hospitals
by Senators Thomas and Myers

This act (Chapter 98-14) modifies the definition of the term "rural hospital" to increase the allowable number of licensed beds that a hospital that is designated as a rural hospital may have from 85 to 100. The act revises provisions relating to Medicaid rural hospital disproportionate share funding to provide that any rural hospital designated after July 1, 1998, may not receive disproportionate share or financial assistance payments unless each year additional appropriations are made to prevent any reduction in payments to existing rural hospitals or their successor-in-interest hospitals with respect to the level of funding that the existing rural hospitals currently receive from the disproportionate share program or the financial assistance program for rural hospitals. The act corrects a glitch in the law that inadvertently left out a provision exempting

rural hospitals from certificate-of-need review when such hospitals decide to offer home health services.

These provisions were approved by the Governor, without his signature, and take effect July 1, 1998.
Vote: Senate 37-0; House 112-0

SB 304 — Organ and Tissue Donation

by Senator Childers

This bill relates to anatomical gifts, and revises ch. 732, part X, F.S., as follows:

- Adds a definition for the term "death" in the context of organ and tissue donation;
- Specifies persons who may make an anatomical gift, if the decedent has not done so;
- Clarifies the ways by which an anatomical gift may be revoked;
- Revises language which provides immunity from civil and criminal liability for any hospital, or hospital administrator or designee to include any organ procurement organization, eye bank, or tissue bank, when performing organ or tissue donation recovery;
- Modifies the duties of a hospital administrator or his or her designee and organ procurement organizations with regard to organ procurement activities; and
- Authorizes the use of funds in the Florida Organ and Tissue Donor Education and Procurement Trust Fund to establish a statewide organ donor registry and to help develop the statewide organ donor education program.

In addition, the bill modifies several statutory provisions relating to organ and tissue-related trust fund revenue sources to expand the uses of such revenue for purposes of the maintenance of the organ and tissue donor registry and the organ and tissue donor education program.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 35-0; House 116-0

CS/SB 314 — Health Care Deregulation and Regulation

by Health Care Committee and Senator Brown-Waite

The Committee Substitute for Senate Bill 314 abolishes the Health Care Board within the Agency for Health Care Administration (agency or AHCA), revises the duties of the Division of Health Policy and Cost Control within the agency to abolish its duties relating to hospital budget review, abolishes the hospital budget review process, repeals the authority for the Health Care Board to conduct data-based studies and evaluations relating to certain business practices of health care providers, transfers certain duties delegated to the Health Care Board to the agency, authorizes the agency to conduct data-based studies and evaluations relating to certain business practices of health care providers, and retroactively applies the repeal of hospital budget review to hospital budgets for fiscal years that ended during the 1996 calendar year. Additionally, the bill:

- Deregulates certain detached outpatient facilities from state construction and plan review under the hospital and ambulatory surgical center licensure law;

- Limits rulemaking authority relating to hospital and nursing home facility emergency preparedness guidelines for hurricanes and other disasters to facilities constructed after July 1, 1999, and to new wings or floors added to existing facilities after July 1, 1999; additionally, AHCA is required to work with persons affected by the emergency preparedness guidelines and to report to the Governor and Legislature its recommendations for cost-effective renovation standards for existing facilities;

- Amends the Florida Patient's Bill of Rights and Responsibilities to include a requirement that health care providers give patients information on how to file a complaint with the appropriate state agency; clarifies that the Patient's Bill of Rights and Responsibilities applies to, in addition to health care providers treating a patient in an office, hospitals and ambulatory surgical centers that offer emergency and outpatient services, as well as inpatient services; and establishes administrative fines against health care providers for failure to advise patients of their rights and responsibilities;

- Amends peer review procedures that are applicable to hospitals and ambulatory surgical centers to require reporting of any disciplinary actions taken against a health care practitioner within 30 days after its occurrence, to require corrective action by facilities that fail to report, and to authorize fines in cases where facilities fail to take corrective action;

- Amends the internal risk management program requirements applicable to hospitals and ambulatory surgical centers, to require reporting of adverse incidents to a facility's risk manager within 3 days of the occurrence of the incident, to establish requirements for facilities

to report to the agency various categories of adverse incidents, to require corrective action by facilities that fail to report, to authorize fines in cases where facilities fail to take corrective action, and to revise pertinent definitions;

- Provides for transfer of the health care risk manager licensure program from the Department of Insurance to the Agency for Health Care Administration;

- Amends the statutory definition of "medical review committee" or "committee" to include physician-hospital organizations, provider-sponsored organizations, and integrated delivery systems; and

- Appropriates $100,281 from the Health Care Trust Fund and allocates one full-time position to AHCA for the administration of the health care risk manager licensure program.

If approved by the Governor, these provisions take effect July 1, 1998, except as otherwise provided.
Vote: Senate 38-0; House 117-0

CS/SB 570 — Radiation Therapy Services/Assessments on Health Care Entities

by Ways & Means Committee and Senator Dudley

The bill repeals the annual Public Medical Assistance Trust Fund assessment on certain freestanding radiation therapy centers and exempts outpatient radiation therapy services provided by hospitals from the assessment. The bill directs legislative staff to analyze the short and long term public policy and cost implications of implementing an Adult Heart Transplant Program either through the Medicaid program or on a non-Medicaid basis. The report completed by staff based on its analysis of the public policy and cost implications of implementing an Adult Heart Transplant Program must consider all costs for providing the comprehensive array of transplant-related services, and any alternatives for program implementation. The report must be presented to the Social Services Estimating Conference, which must review and certify the cost estimates. The report and the findings of the estimating conference must be presented to the President of the Senate and the Speaker of the House of Representatives leadership by September 1, 1998. The bill authorizes the Agency for Health Care Administration to submit a budget amendment to implement an Adult Heart Transplant Program during FY 1998-99.

If approved by the Governor, these provisions take effect July 1, 1998, except as otherwise provided.
Vote: Senate 39-0; House 111-0

CS/CS/SB 714 — Health Quality Assurance/HIV Testing

by Ways & Means Committee, Health Care Committee, and Senators Forman and Klein

The bill revises various provisions of statute relating to human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS). It expands HIV/AIDS course requirements for employees and clients of specific health care facilities and for certain licensed health care professionals. Addressed in the bill are the following issues related to various aspects of HIV testing: (1) streamlining of requirements relating to HIV testing, specifically relating to pre- and post-test counseling requirements; (2) sharing of preliminary test results under certain circumstances; (3) disclosure of test results; (4) informed consent for testing; (5) confidentiality of test results; (6) release of test results under specific, limited circumstances; (7) significant exposure situations involving medical and non-medical personnel; (8) registration of test sites with the Department of Health (DOH); and (9) DOH's model HIV testing protocol.

Employees of health care facilities and facilities that provide services to persons with developmental disabilities or that offer community alcohol, drug abuse, mental health or substance abuse services must be instructed in any protocols and procedures applicable to HIV counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues in accordance with law. Informed consent requirements are augmented with a requirement that prior to testing, a person be told that, when a positive HIV test result occurs, such results will be reported to the county health department with sufficient information to identify the test subject and also be told of the location of sites at which anonymous testing is performed. Provision is made for the release of preliminary results from an HIV test to health care providers and the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing. However, positive preliminary HIV test results may not be characterized to the patient as a diagnosis of HIV nor may such information be released for purposes of routine identification of HIV-infected individuals or when HIV testing is incidental to the preliminary diagnosis or care of a patient. The use of preliminary HIV test results must be documented in the medical record by the health care provider who ordered the test. Corroborating or confirmatory testing must be conducted as follow-up to a positive preliminary HIV test. A court order may be sought by medical personnel or the employer of such personnel that would direct a person who will not voluntarily submit to HIV testing, when a blood sample is not available, and who was the source of a *significant exposure* of such personnel to submit to HIV testing. The petition for a court order must include a physician's sworn statement attesting that a significant exposure has occurred and that testing is medically necessary to determine the course of treatment, if any. Results of a court-ordered HIV test must be released to the source of the exposure and to the person who experienced the exposure.

Other provisions of the bill provide: background screening requirements for persons (natural and corporate persons) applying to the Agency for Health Care Administration (AHCA) for licensure to operate a health care facility or to register as a utilization review agent; requirements for certain health care entities to conduct employment background screening for all direct-care employees; and requirements for abuse registry screening of certain administrative employees. The background screening requirements take effect July 1, 1998, for initial *and* renewal licenses. The screening requirements are applicable to persons applying to operate: (1) a laboratory used for drug specimen analysis under the Drug-Free Workplace Act; (2) an organ procurement organization, a tissue bank, or an eye bank; (3) a birth center; (4) an abortion clinic; (5) a prescribed pediatric extended care center; (6) an intermediate care facility for the developmentally disabled; (7) a crisis stabilization unit or residential treatment facility that provides community alcohol, drug abuse, or mental health services; (8) a hospital, ambulatory surgical center, or mobile surgical unit; (9) a nursing home facility; (10) an assisted living facility; (11) a home health agency or nurse registry; (12) an adult day care center; (13) a hospice; (14) an adult-family-care home; (15) a home for special services; (16) a transitional living facility; (17) a clinical laboratory; or (18) a multiphasic health testing center. Background screening requirements for operators of adult-family-care homes are revised. Additionally, as pertains to other regulatory requirements, the bill:

- Amends the Drug-Free Workplace Act to authorize use of body hair, excluding hair from the pubic area, as specimens for purposes of drug testing, as provided under the act. This modification of law is applicable to public sector and private sector workplaces;

- Lowers the threshold that triggers the disclosure requirement of a person holding an ownership interest in a corporation that is applying for licensure to operate a mental health facility, nursing home, or assisted living facility from a 10 percent ownership interest to 5 percent;

- Conforms references to reflect the transfer of regulatory authority of mental health facilities and other similar facilities regulated under ch. 394, F.S., from the defunct Department of Health and Rehabilitative Services to AHCA;

- Provides for AHCA to consult with the Department of Children and Family Services, as relates to mental health facilities, crisis stabilization units, residential treatment facilities, or community mental health centers, to: set initial licensure and renewal licensure fees, adopting rules, inspect facilities and records, develop guidelines for the approval of accreditation organizations, petition the court (independently or in conjunction with the department) for receivership of a crisis stabilization unit or a residential treatment facility, and to change the trust fund designated for receipt of moneys AHCA receives through regulation of entities

offering community alcohol, drug abuse, and mental health services in accordance with the requirements of ch. 394, F.S.;

- Provides additional grounds, relating to compliance with background screening requirements, for denial, revocation, or suspension of an assisted living facility, hospice, adult day care center, or adult family care home license;

- Requires the Department of Elderly Affairs to take disciplinary action against an area agency on aging for failure to implement and maintain a department-approved client grievance resolution procedure;

- Repeals licensure of designated health care services providers under s. 455.661, F.S.;

- Allocates three full-time positions to AHCA for the implementation and administration of the exemption program related to the background screening requirements provided in the bill and appropriations $166,430 from the Health Care Trust Fund for the exemption program;

- Authorizes the Florida Department of Law Enforcement (FDLE) to establish additional job positions in excess of the total authorized positions (presumably, the reference to *authorized positions* is to positions allocated in other legislation or the General Appropriations Act because the bill makes no specific appropriation to FDLE); the additional positions are to be funded from FDLE's Law Enforcement Operating Trust Fund and the positions must be used to process the increased workload of conducting the criminal history records checks authorized by the bill; the positions are to be earmarked by FDLE, and when *no longer needed may be placed in a reserve status for future use*;

- The background screening requirements created in the bill are scheduled for repeal on June 30, 2001, unless reviewed and saved from repeal through reenactment by the Legislature; AHCA is required to convene a workgroup to evaluate the effectiveness of the background screening requirements in preventing persons with specified criminal backgrounds from operating health care programs, and in preventing or deterring health care fraud and abuse; the workgroup's report must be completed and a report submitted to the Legislature by January 1, 2001.

- Makes numerous cross reference, conforming, and other technical revisions.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 118-0

CS/HBs 3089 & 171 — Nursing Homes/Employee Background Screening

by Elder Affairs & Long Term Care Committee, Reps. Brooks, Diaz de la Portilla, Littlefield and others (CS/CS/SB 208 by Ways & Means Committee, Health Care Committee and Senators Brown-Waite, Latvala, Bronson, McKay and Grant)

The Committee Substitute for House Bills 3089 & 171 provides for expedited administrative hearings relating to certain disciplinary actions against a nursing home facility license, background screening of certain nursing home employees, and notification about screening results for employees of certain other specified health care facilities. The bill requires a Division of Administrative Hearings law judge to schedule a hearing within 120 days, unless both parties waive that time period, for consideration of an action by the Agency for Health Care Administration (AHCA or agency) against a nursing home facility's license relating to the health, safety, or welfare of nursing home residents. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order. Licensure actions relating to the suspension of a facility's license are excluded from the 120-day time frame to preserve a requirement that hearings relating to suspensions be held within 90 days.

The bill requires AHCA to establish and maintain a database of screened employees which includes giving AHCA electronic access to the Central Abuse Registry and Tracking System in the Department of Children and Family Services. The database is to maintain background screening information obtained through level 1 and level 2 screening and abuse registry screening. Level 2 screening is performed by the Florida Department of Law Enforcement and includes a criminal history check of the FBI's databases. The agency is required to establish a fee schedule of charges to cover the costs of level 1 and level 2 screening and abuse registry screening. Nursing homes may reimburse job applicants and employees for their screening costs. The Agency for Health Care Administration is *required*, as allowable, to reimburse nursing facilities for the cost of background screening; the reimbursements are explicitly excluded from the Medicaid reimbursement rate ceilings and payment targets. A nursing home employer or other employer authorized to obtain screening information from the AHCA database is absolved of liability for terminating an employee's employment because of disqualification following screening, even when the employee has applied for an exemption from disqualification. Nursing home facility administrators are authorized to acknowledge to other such administrators receipt of a qualifying or disqualifying screening subject to a requirement of providing the date of the screening report referenced. Also, an employer is authorized to obtain written verification of qualifying screening results for an employee or prospective employee from the previous employer or other entity which caused such screening to be performed.

The Agency for Health Care Administration is authorized to exempt from disqualification from employment an employee or prospective employee who is subject to the bill's screening

requirements and who is not a professional licensed or certified by the Department of Health. Similarly, the Department of Health is authorized to exempt from disqualification from employment an employee or prospective employee who is subject to the bill's screening requirements and who is a professional licensed or certified by the department. Employees and prospective employees who have been screened and qualified for employment, who have not been unemployed for more than 180 days after qualification, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of screening may not be required to be rescreened. Current law relating to the screening of certified nursing assistants is repealed, as they are subject to the screening requirements of this bill.

If approved by the Governor, these provisions take effect July 1, 1998, except as otherwise provided.
Vote: Senate 39-0; House 117-0

HB 3231 — Rural Hospitals

by Reps. Burroughs, Horan, and Melvin (SB 170 by Senator Childers)

This act (Chapter 98-21) modifies the statutory definition of the term "rural hospital" to require population densities used in the definition of that term to be based upon the most recently completed United States census. The act requires a study to be performed by the Agency for Health Care Administration, in consultation with the Department of Health and representatives of the hospital industry, regarding the adequacy of the statutory definition of the term "rural hospital." The Agency for Health Care Administration must submit its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate no later than December 31, 1999.

These provisions became law without the Governor's signature on April 22, 1998.
Vote: Senate 36-0; House 116-0

CS/HB 3585 — Public Records/Private Corporations Leasing Public Health Care Facilities

by Governmental Operations Committee, Rep. Peaden and others (CS/CS/SB 1044 by Governmental Reform & Oversight Committee, Health Care Committee, and Senator Williams)

The bill provides for the confidentiality of the records of private corporate entities that lease public hospitals or other public health care facilities. Such records and the meetings of the governing board of the private corporation are also made exempt from the constitutional and statutory Public Records Law and Public Meetings Law requirements when the public lessor complies with certain public finance accountability guidelines relating to the transfer of any public funds to the private lessee (requiring that payments in excess of $100,000 from the public entity that owns the facility

to its private lessee is subject to the governmental entity's appropriations process) and when the private lessee meets at least three of five criteria. The five criteria are: 1) the public lessor was not the incorporator of the private corporation that leases the public hospital or other health care facility; 2) the public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, except as specifically authorized for administrative purposes; 3) the private lessee is not allowed to participate in the decision-making process of the public lessor, except as a member of the public or as otherwise provided in law; 4) the lease agreement does not expressly require the lessee to comply with the requirements of the Public Records Law or the Public Meetings Law; or 5) the public lessor is not entitled to receive any revenues from the lessee, except rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee. Clarifying language, contained in the bill, provides that the Florida Rules of Civil Procedure and statutory provisions relating to civil actions apply to all records and information made confidential and exempt by enactment of the bill. The provisions of the bill are made to apply retroactively to all existing lease arrangements of public hospitals and other public health care facilities and prospectively to all new lease arrangements that meet the requirements of the bill. A statement of public necessity is provided in conformity with the requirements of s. 24, Art. I, State Constitution.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

HB 3971 — Health Facilities Authorities/Accounts Receivables

by Reps. Gay and others (CS/SB 1060 by Health Care Committee and Senator Silver)

The bill empowers health facilities authorities established under ch. 154, F.S., to issue bonds and incur other forms of indebtedness on behalf of a health facility (private, not-for-profit corporations organized as hospitals, nursing homes, developmental disabilities facilities, mental health facilities, or providers of life care services under continuing care contracts) or a group of health facilities to use in financing the purchase of accounts receivables acquired from other not-for-profit health facilities, whether or not affiliated with the authority, including out-of-state, not-for-profit health facilities.

The bill amends s. 212.08(7)(o), F.S., to provide a sales tax exemption for a not-for-profit health system foundation which applied for such an exemption from the Department of Revenue in an application filed prior to November 15, 1997, and which application is subsequently approved. The exemption would apply retroactively to any unpaid taxes on purchases made during the period November 14, 1990 to December 31, 1997.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 119-0

CS/HB 4455 — Mobile Surgical Facilities/Licensure

by Corrections Committee and Reps. Brooks and Trovillion

The bill authorizes mobile surgical facilities to contract with the Department of Corrections to provide elective surgical services to inmates of the Department of Corrections or private correctional facilities. A descriptive definition of "mobile surgical facility" is added to ch. 395, F.S., which also provides for the regulation of hospitals and ambulatory surgical centers. Mobile surgical facilities are placed under the regulatory jurisdiction of the Agency for Health Care Administration. These facilities are exempted from certificate-of-need requirements. Mobile surgical facilities that operate under contracts entered into on or after July 1, 1998, are made subject to the Public Medical Assistance Trust Fund assessment.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 116-0

HB 4515 — Health Care Practitioner/Credentials

by Health Care Standards & Regulatory Reform Committee, Rep. Jones and others (SB 1940 by Senator Myers)

The bill requires the Department of Health, for the purpose of eliminating duplication in the verification of credentials of health care practitioners, to develop standardized forms necessary for the creation of a standardized system as well as guidelines for collecting, verifying, maintaining, storing, and providing core credentials data on health care practitioners through credentials verification entities. The bill requires the department, in consultation with the applicable practitioner licensure board to adopt rules necessary to develop and implement a standardized credentials-verification program. The department must appoint a 13-member Credentials-Verification Advisory Council to assist with development of guidelines for the establishment of the standardized credentials-verification program. The department in consultation with the Credentials Verification Advisory Council must establish the minimum liability insurance requirements for each credentials verification entity doing business in Florida.

The bill requires persons applying for licensure as a medical physician, osteopathic physician, physician assistant, chiropractic physician, or podiatric physician to submit individual initial core credentials data to a credentials verification entity, if the information has not already been submitted to the Department of Health, the appropriate licensing board, or to any other credentials verification entity. The department must maintain all core credentials data. The bill defines "core credentials data" to mean: professional education; professional training; peer references; licensure;

social security number; foreign medical graduate information; board certification; hospital and managed care affiliations; practitioner profiling data; professional liability insurance, claims, suits, judgments, or settlements; Medicare or Medicaid sanctions; civil or criminal law violations; regulatory exemptions not previously reported to the Department of Health; and special conditions of impairment. Before releasing a health care practitioner's core credentials data from its data bank, a designated credentials verification entity other than the Department of Health must provide health care practitioners up to 30 days to review the core credentials data and to make any corrections of fact. Health care entities are prohibited from attempting to collect duplicate core credentials data from individual health care practitioners or from originating sources. Any health care entity that employs, contracts with, or allows health care practitioners to treat its patients must use the credentials verification entity that is designated by a health care practitioner applying for privileges with that entity to obtain core credentials data for the health care practitioner.

The bill requires any credentials verification entity that does business in Florida to meet national standards, as outlined by national accrediting organizations, and to register with the department. Any credentials verification entity that fails to meet the required standards, fails to register with the department, or fails to provide data collected on a health care practitioner may not be selected as the designated credentials verification entity for any health care practitioner. The bill provides that any health care entity will not be liable for any civil, criminal, or administrative actions, if it relies on data obtained from a certified credentials verification entity.

The Secretary of Health must reappoint the health care credentials task force created by s. 103 of ch. 97-261, L.O.F. The task force must develop procedures to expand the standardized credentials verification program and its activities may include site visits.

The bill appropriates $5,560,000 from the Medical Quality Assurance Trust Fund and seven positions to the Department of Health to implement the standardized credentials verification program.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 110-0

REGULATION OF HEALTH CARE PRACTITIONERS

CS/SB 290 — Paramedics & Emergency Medical Technicians

by Health Care Committee and Senator Klein

The bill authorizes a paramedic or emergency medical technician to perform health promotion and wellness activities and blood pressure screening in a nonemergency environment within the scope of training of the paramedic or emergency medical technician and under the direction of an emergency medical service's medical director. The bill defines "health promotion and wellness." Under the direction of an emergency medical service's medical director, a paramedic may administer immunizations in a nonemergency environment that is in accord with the protocols, policies, and procedures in a written agreement between the medical director and the county health department located where the paramedic administers immunizations. The bill makes an emergency medical service's medical director liable for any act or omission of any paramedic or emergency medical technician acting under his or her supervision and control when performing blood pressure screening, health promotion and wellness activities or administering immunizations, which is not in the provision of emergency care. The bill modifies the ground for which a paramedic or emergency medical technician may be subject to discipline for unprofessional conduct to include the undertaking of activities that the emergency medical technician or paramedic is not qualified by experience or training to perform. The bill grants rulemaking authority to the Department of Health to enforce the provisions relating to a paramedic's administration of immunizations and the performance of health promotion and wellness activities and blood pressure screening by a paramedic or emergency medical technician in a nonemergency environment.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 119-0

CS/SB 776 — Physician Assistant Certification

by Health Care Committee and Senator Clary

The bill revises alternate physician assistant certification requirements for certain unlicensed physicians who are foreign medical school graduates. The bill exempts the applicants under the alternate physician assistant certification requirements from a practical component of the certification examination. The Department of Health must incorporate any practice competencies into the written physician assistant examination. The bill revises the frequency of the department's administration of the examination so that there is a 1-year interval between the reporting of the scores of the first and subsequent examinations and the administration of the next examination. The bill revises the time frame for requests for the examination to be translated into a foreign language and specifies procedures for applicants to demonstrate their competency to communicate

in basic English. The bill revises the procedures for a supervisory physician to notify the Department of Health of his or her intent to delegate prescriptive authority to a physician assistant and requires the physician to notify the department regarding any change in the prescriptive privileges delegated to a physician assistant. The bill makes conforming changes to reflect the supervision of physician assistants by both medical and osteopathic physicians. The bill changes references to "certified physician assistant" throughout the Florida Statutes to "licensed physician assistant."

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 113-3

CS/SB 2128 — Regulation of Professions

by Health Care Committee and Senator Myers

The bill makes a number of minor substantive changes to ch. 455, F.S., and the various practice acts for professions under the Department of Health and the Department of Business and Professional Regulation, to correct statutory cross-references, references to the appropriate department, and inadvertent substantive glitches in the law resulting from the 1997 division of statutory provisions for the departments into parts I and II of ch. 455, F.S. The bill changes references to "podiatry" to "podiatric medicine" and references to "podiatrist" to "podiatric physician" throughout the Florida Statutes. The bill changes references to "chiropractor" to "chiropractic physician" and references to "chiropractic" to "chiropractic medicine" throughout the Florida Statutes.

The bill revises the disclosure requirements for medical physicians and osteopathic physicians who do not carry medical malpractice insurance so that such physicians must provide their patients with *either* a notice in the form of a prominently displayed sign *or* provide a written statement to any person to whom medical services are being provided. The bill deletes the requirement that a physician obtain a written statement from the patient acknowledging receipt of the disclosure that the physician has no medical malpractice insurance. The bill requires the Department of Health to notify health maintenance organizations of any disciplinary action taken by a licensed health care facility or professional standards review organization against a licensed medical physician or a licensed osteopathic physician.

The bill authorizes the Board of Medicine and the Board of Osteopathic Medicine, respectively, to establish by rule, standards of practice and standards of care for particular practice settings to include but not be limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals. The bill revises requirements for a hospital's submission of reports on resident physicians, interns, and fellows so that the reports may be submitted on dates

designated by the Board of Medicine and the Board of Osteopathic Medicine, respectively, in consultation with the Department of Health rather than on January 1 or July 1 of each year.

The bill specifies physical requirements for any license issued by the Department of Health to health care professionals so that the license must consist of: a wallet-size identification card; a 3-inch by 5-inch certificate; and an 8½-inch by 13-inch wall certificate, and a wall certificate which may not be smaller than 8½ inches by 14 inches suitable for conspicuous display. The bill requires licensed health care professionals whose licenses are revoked or suspended to surrender the wallet-size identification card and wall certificate to the department and specifies a mechanism for their return to the licensee upon reinstatement of the revoked or suspended license. The bill grants rulemaking authority to the Department of Health or the appropriate board within the department to approve alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which a licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member's term. The bill grants rulemaking authority to the Department of Health to adopt rules to administer and develop examinations for health care professions and for establishing requirements for a written protocol between athletic trainers and their supervising physicians. The bill extends exemptions to the fictitious name registration requirements to persons licensed by the Department of Health, for the purpose of practicing their licensed profession and the transaction of business ancillary to the practice of the profession. The bill revises health insurance coverage of massage services.

The bill adds dentists and dental hygienists to the definition of health care provider for purposes of extending sovereign immunity to their practice under certain circumstances. The bill allows physicians who hold limited licenses to practice medicine, to work for any approved employer in an area of critical need approved by the Board of Medicine. The physicians holding limited licenses must within 30 days after accepting employment, notify the Board of Medicine of all approved institutions in which the limited license holders practice and of all approved institutions where practice privileges have been denied. The bill allows an individual who is licensed to prescribe medicinal drugs in Florida to dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II institutional pharmacy, if the physician treating the patient in such hospital's emergency department determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient.

The bill deletes the requirement that the chiropractor member of the Council of Athletic Training be certified in the specialty of sports medicine by the Chiropractic Council on Sports Medicine. The bill revises the requirements for the chiropractor member of the Advisory Council of Medical Physicists under the Department of Health to only require the chiropractor member to practice

radiology instead of requiring the chiropractor member to hold board certification from the American Chiropractic Radiology Board or its equivalent.

The bill authorizes the Department of Health to issue a physicist-in-training certificate to a person qualified to practice medical physics under direct supervision and to establish, by rule, requirements for initial certification and renewal of a physicist-in-training certificate. The bill extends the grandfather clause for persons who would be subject to licensure as a medical physicist from October 1, 1997 until October 1, 1998 to allow certain persons who meet specified educational and experience requirements to become licensed as medical physicists.

The bill requires any independent special hospital district with taxing authority which owns two or more hospitals to provide requested medical records within 20 days of the request for the records relevant to any litigation of medical negligence claim or defense, rather than 10 days of the request for the records. The bill repeals s. 455.661, F.S., that subjects entities that furnish clinical laboratory services, diagnostic-imaging services, physical therapy services, comprehensive rehabilitative services, or radiation therapy services to licensure by the Agency for Health Care Administration.

The bill revises alternate medical licensing requirements for certain foreign-trained physicians to become licensed in Florida by deleting a requirement that the licensing examination required for these applicants be in the same form and content and administered in the same manner as the FLEX, a national medical licensing examination. The bill revises the date that the Department of Health must develop an examination for the alternate medical licensing pathway from September 1, 1998 to December 31, 1998. The bill provides an appropriation of $1.2 million from the Medical Quality Assurance Trust Fund to the Department of Health to have the examination required under the alternate medical licensing pathway developed by contract with the University of South Florida and authorizes the department to charge examinees a fee that, in the aggregate, will reimburse the Medical Quality Assurance Trust Fund for the amount advanced to the department.

The bill provides an alternate path to become a licensed psychologist for persons who have received and submitted to the Board of Psychology, before July 1, 2001, certification of a doctoral-level program that at the time the applicant was enrolled and graduated maintained a standard of education and training comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the U. S. Dept. of Education. The bill also limits the alternate psychology licensing path to persons who were enrolled in a program that the Board of Psychology determined was comparable to standards of education and training

comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the U. S. Dept. of Education before October 1, 1995.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 34-3; House 117-0

HB 4365 — Acupuncture/Oriental Medicine

by Rep. Kelly (CS/SB 2282 by Health Care Committee and Senator Gutman)

The bill redefines the term "acupuncture" to include "modern Oriental medical techniques" and defines "Oriental medicine." "Oriental medicine" means the use of acupuncture, electro-acupuncture, Qi Gong, oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies. The bill revises the licensing requirements for acupuncturists under both the 3-year course of study and the 4-year course of study to conform to the change in the definition of acupuncture as revised by the bill to include an academic course in Oriental medicine. The bill increases the five-member Board of Acupuncture to seven by adding two additional acupuncturists to the board. Effective July 1, 2001, applicants for acupuncturist licensure must complete a course on first aid and cardiopulmonary resuscitation. The bill revises continuing education requirements for acupuncturists and eliminates the Board of Acupuncture's authority to approve criteria for continuing education programs and courses. The bill provides additional prohibitions under the acupuncturist practice act in ch. 457, F.S.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 40-0; House 117-0

CHILDREN'S HEALTH CARE

CS/SB 228 — Health Insurance Coverage for Cleft Lip and Cleft Palate

by Health Care Committee, Senator Gutman and others

The bill requires an insurance policy that covers a child under age 18 to provide coverage for treatment of cleft lip and cleft palate for the child. Insurers must cover medical, dental, speech therapy, audiology, and nutrition services only if such services are prescribed by a treating physician or surgeon and such physician or surgeon certifies that such services are medically necessary and consequent to treatment of cleft lip or cleft palate. The bill specifies that terms and conditions applicable to other benefits apply to these coverage requirements, and specifies the inapplicability of the coverage requirement to specified-accident, specified disease, hospital indemnity, limited benefit disability income, or long-term care insurance policies. The bill applies

this coverage requirement to a policy of individual insurance (s. 627.64193, F.S.); group, blanket, or franchise accident or health insurance (s. 627.66911, F.S.), including an out-of-state group health insurance (s. 627.6515(2)(c), F.S.), and small group health insurance (s. 627.6699(12)(b), F.S.); and to a contract issued by a health maintenance organization (s. 641.31(34), F.S.).

The bill provides a statement of public necessity for the coverage requirements, in compliance with constitutional requirements regarding mandates on local governments.

If approved by the Governor, these provisions take effect October 1, 1998, and are applicable to policies and contracts issued or renewed on or after that date.
Vote: Senate 39-0; House 119-0

CS/HB 3145 — Targeted Outreach for Pregnant Women

by Health Care Services Committee, Rep. Heyman and others (CS/SB 1258 by Health Care Committee and Senator Harris)

This bill creates s. 381.0045, F.S., and entitles this section as the "Targeted Outreach for Pregnant Women Act of 1998." The bill establishes a 2-year targeted outreach pilot program for high-risk pregnant women who may not seek proper prenatal care, who suffer from substance abuse, or who are infected with HIV. The pilot counties are Dade, Broward, Palm Beach, Hillsborough, and Orange, and the program is to function through the county health departments in these counties.

The bill specifies duties of the Department of Health, and requires the Department of Health to coordinate the outreach programs through contracts with, grants to, or other working relationships with persons or entities where the target population is likely to be found, to provide services and information to high-risk pregnant women and their infants. The bill requires the Department of Health to compile reports and recommendations regarding the program, to include specific topics.

A series of "whereas" clauses provide background information as to the need for the pilot program.

The bill appropriates $15.6 million from the Tobacco Settlement Trust Fund and $1.4 million non-recurring general revenue, to be used in unspecified amounts, for:

- The implementation of the act;
- The replacement of the Department of Health's Tampa branch laboratory;

- The Healthy Moms and Healthy Babies facility at the University of South Florida;
- The construction/renovation of the Hendry County Health Department; and
- The Center for Urban Transportation Research at the University of South Florida.

The bill also repeals s. 206.606(1)(c), F.S., relating to $1.5 million per year from the Fuel Tax Collection Trust Fund for transfer to the Board of Regents for the Center for Urban Transportation Research, effective July 1, 1998.

If approved by the Governor, these provisions take effect October 1, 1998, except as otherwise provided.
Vote: Senate 39-0; House 119-0

HB 3999 — Termination of Pregnancy/Parental Notification

by Rep. Sindler and others (CS/SB 1814 by Health Care Committee, Senator Harris and others)

House Bill 3999 is designated the "Parental Notice of Abortion Act." The act requires that a physician who refers a minor for termination of her pregnancy or who plans to perform such a procedure on a minor must first give 48-hours *actual notice* prior to the procedure to one parent of the minor or her legal guardian. If actual notice is not possible after reasonable effort, 48 hours *constructive notice* (thus, certified mail to the last known address of the parent or legal guardian of the minor, with delivery deemed to have occurred 48 hours after the certified notice is mailed) must be given by person or his or her agent. Notice is not required: (1) in instances of a medical emergency, as provided in the bill; (2) when notice is waived in writing by the person who is *entitled* to notice; (3) if the minor is, or has been, married or has had the disability of nonage removed under a state law; (4) if the patient has a minor child dependent on her; or (5) when a court judicially waives notice based upon a petition filed by the minor seeking to terminate her pregnancy, as provided in the bill. A physician who violates the notice requirements established under the bill is subject to disciplinary action under either the medical practice act or the osteopathic medical practice act.

Judicial Waiver of the Parental Notification Requirement

The bill provides a procedure for the judicial waiver of parental notice. This procedure requires that a pregnant minor who wants to terminate her pregnancy without notifying at least one of her parents or her legal guardian before the procedure is performed or the termination of pregnancy is induced must file a petition with *any* circuit court for a waiver of the bill's notice requirements. She is authorized to participate in the proceedings on her own behalf. The petition shall include a

statement that the complainant is pregnant and notice has not been waived. The court may appoint a guardian ad litem for her. The court must advise the minor that she has a right to court-appointed counsel and must provide her with counsel upon her request. However, no county may be obligated to pay the fee, salary, costs, or expenses of any counsel appointed by the court.

The bill makes such court proceedings confidential and requires that the courts ensure the anonymity of the minor, including allowing the minor to use a pseudonym (such as "Jane Doe") or only her initials. Additionally, the court proceedings shall be sealed. All *documents* relating to the proceedings are given confidential status and are made unavailable to the public.

The courts are directed to give precedence to the proceedings relating to petitions for waiver of notice over *other pending matters to the extent necessary to ensure that the court reaches a decision promptly*. At the hearing on the petition, the court must receive evidence relating to the emotional development, maturity, intellect, and understanding of the minor, and must issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. The court must rule, and issue written findings of fact and conclusions of law, within 48 hours *of the time that the petition was filed unless an extension is requested by the minor who submitted the petition*. If the court that is petitioned fails to rule within the 48-hour period and an extension has not been requested, the petition *is deemed to have been granted and the notice requirement is waived*.

A circuit court may waive the notice requirement if it finds, using a clear and convincing evidence standard, that the minor *is sufficiently mature to decide whether to terminate her pregnancy or that there is a pattern of physical, sexual, or emotional abuse of the minor by a parent, guardian, or custodian or that the notification of the parent or guardian is not in the best interest of the complainant*. If the court makes any such finding, it must issue an order authorizing the minor to consent to the performance or inducement of a termination of pregnancy *without notification of a parent or guardian*. If the court does not make at least one of the specified findings, it is required to dismiss the petition, and either the referring physician or the physician to perform or induce the termination of pregnancy must notify at least one of her parents or her legal guardian.

Expedited Appeal of a Petition for Waiver of Notice that is Denied and Court Fees

If the petition for waiver of parental notification is denied by the circuit court, an *expedited confidential appeal must be available*, as provided by rule of the state Supreme Court. However, an order authorizing waiver of notice is not subject to appeal. No filing fees may be assessed against a minor petitioning for judicial waiver of parental notification at either the trial or appellate levels. The notice requirements and procedures, as provided in the bill, are made available to

minors *whether or not they are residents of Florida.* The state Supreme Court is requested to adopt rules to ensure that proceedings under s. 390.0111, F.S., are handled in an *expeditious and confidential* manner *and in a manner which will satisfy the requirements of federal courts.*

The provisions of the bill are explicitly made severable.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 31-9; House 92-25

CS/HB 4415 — Children's Health

by Health and Human Services Appropriations Committee, Health Care Services Committee, Rep. Albright and others (CS/CS/CS/SB 1228 by Ways & Means Committee, Banking & Insurance Committee, Health Care Committee, Senators Brown-Waite, Myers and others)

The bill implements, in Florida, a children's health insurance program in conformance with the State Children's Health Insurance Program provisions (Title XXI) of the federal Balanced Budget Act of 1997 (P.L. 105-33). The bill creates the "Florida Kidcare Act" as ss. 409.810-409.820, F.S., specifies the Florida Kidcare program's purpose, and defines 27 specific terms used in the act. The Florida Kidcare program is an umbrella children's health insurance program that includes the following components:

- Medicaid children's coverage;
- Florida Healthy Kids Program;
- A Medikids component (for children ages 0 to 5), a non-entitlement, Medicaid look-alike program;
- Employer-based health insurance plans (indemnity and HMOs); and
- The Children's Medical Services network (for children with special health care needs).

The bill indicates that, with the exception of Medicaid, program coverage is not an entitlement and stipulates that there is no cause of action against the state and its agencies for failure to make health care services available under the program.

The bill creates the Medikids program component and specifies: purpose; administration; insurance licensure not required; applicability of Medicaid laws; benefits; eligibility; periodic open enrollment; special enrollment periods; and penalties for voluntary cancellation.

The bill provides for annual enrollment and expenditure ceilings for the non-Medicaid components of the Florida Kidcare program.

The bill directs the Department of Health to contract with the Department of Children and Family Services to provide behavioral health services to non-Medicaid-eligible children with special health care needs. The bill authorizes the Department of Children and Family Services to establish behavioral health services' scope, clinical guidelines, standards, performance and outcome measures, practice guidelines, and rules.

The bill specifies health benefits coverage:

- For Medicaid and Medikids eligibles, the Medicaid benefits are to be provided.

- Establishes the existing Florida Healthy Kids program benefit package, with some modifications, as the benchmark for other coverage to be offered under the program.

The bill provides eligibility guidelines, targeting those children whose family income is at or below 200 percent of the federal poverty level, with no asset test:

- A Medicaid eligible child must be enrolled in Medicaid.

- A child not eligible for Medicaid is eligible for premium assistance for remaining program components to the extent coverage is available in the child's county of residence.

- A child with special health care needs is eligible for subsidized health benefits coverage under the Children's Medical Services network.

- Certain children excluded from eligibility under Title XXI of the Social Security Act are excluded.

The bill authorizes participation, without premium assistance, for children whose family income exceeds 200 percent of the federal poverty level.

The bill provides for a 6-month period of continuous eligibility for all program components, with the exception of children less than age 5 who are eligible for Medicaid, who are granted 12 months of eligibility without a redetermination or reverification of eligibility, effective January 1, 1999.

The bill provides limits on family premium contributions and other cost sharing specific to:

- Medicaid;
- Those with family income at or below 150 percent of the federal poverty level; and
- Those with family income above 150 percent of the federal poverty level.

The bill specifies requirements for health benefits coverage for purposes of such coverage qualifying for premium assistance under the program:

- Be certified by the Department of Insurance as meeting, exceeding, or being actuarially equivalent to the benchmark benefit plan;
- Be guarantee issued;
- Be community rated (for health insurance);
- Have no preexisting condition exclusion (with specific exceptions);
- Comply with applicable premium and cost-sharing limitations;
- Meet quality assurance and access standards; and
- Establish periodic open enrollment periods.

The bill specifies that a health maintenance organization or a health insurer may, at the provider's option, reimburse providers located in rural counties according to the Medicaid fee schedule for services rendered to enrollees in rural counties.

The bill provides for program evaluation, with a collaborative annual report to be submitted to the Legislature by January 1 of each year by the agencies involved in program administration. The evaluation must include as assessment of "crowd-out" and access to health care, as well as a series of additional specified issues.

The bill provides for administration, specifying agency functions for:

- **Department of Children and Family Services** - developing a simplified eligibility application form, establishing and maintaining the eligibility determination process, informing program applicants about eligibility determinations and informing program providers about eligibility, and adopting necessary rules.

- **Department of Health** - designing an eligibility intake process, designing and implementing program outreach activities, chairing a state-level coordinating council relating to program implementation and operation, establishing a toll-free telephone line for the program, and adopting necessary rules.

- **Agency for Health Care Administration** - calculating the premium assistance payment levels, calculating the annual program enrollment ceiling, making premium assistance payments, monitoring compliance with quality assurance and access standards, establishing a mechanism for investigating and resolving complaints and grievances, approving health benefits coverage for program participation, and adopting necessary rules. The agency is designated the lead state agency for Title XXI for purposes of receipt of federal funds, for reporting purposes, and for ensuring compliance with federal and state regulations and rules.

- **Department of Insurance** - certifying that plans (excluding those offered through the Florida Healthy Kids program and the Children's Medical Services network) meet, exceed, or are actuarially equivalent to the benchmark benefit plan, ensuring that such plans will be offered at an approved rate, and adopting necessary rules.

- **The Florida Healthy Kids Program** - maintaining current functions as authorized in s. 624.91, F.S.

The bill authorizes these implementing agencies, after consultation with and approval of the Legislature, to make program modifications necessary to overcome any objections of the federal Department of Health and Human Services in the plan approval process.

The bill gives the Department of Health lead responsibility for program outreach, in conjunction with other agencies, and in so doing specifies the activities to be included, with an emphasis on targeting minority children. (Transfers and renumbers s. 154.508, F.S., as s. 409.819, F.S., and amends that section.)

The bill provides for the development of a minimum set of quality assurance and access standards for the program.

The bill specifies detailed performance-based program budgeting performance measures and outcome standards for the program for FY 1998-99.

The bill directs the Agency for Health Care Administration to conduct a study of extending Medicaid presumptive eligibility to children, with a report to the Legislature no later than December 31, 1998.

The bill establishes an enrollment ceiling of 270,000 children for FY 1998-99 for the non-Medicaid portion of the program.

The bill amends s. 409.904, F.S., to extend optional Medicaid eligibility to children ages 15 to 19 with family income up to 100 percent of the federal poverty level, up from the current 28 percent of the federal poverty level for these children, and to specify 6 months of continuous eligibility for children under the Medicaid program and, effective January 1, 1999, 12 months of continuous eligibility for Medicaid children under age 5.

The bill amends s. 409.906, F.S., to establish as a new optional service under the Medicaid program Healthy Start services, if a federal waiver is approved. The bill directs the Agency for Health Care Administration, working jointly with the Department of Health and the Association of Healthy Start Coalitions, to seek a waiver to secure Medicaid matching funds for Healthy Start services.

The bill completely rewrites ch. 391, F.S., relating to Children's Medical Services. The rewrite addresses: the focus and mission of the program; applicability and scope or services; the insurance, managed care approach; eligibility; benefits; service delivery; program components; and Medicaid versus non-Medicaid issues. The bill transfers the provisions relating to pediatric extended care centers from ch. 391, F.S., to a new part IX of ch. 400, F.S.

The bill revises s. 409.9126, F.S., relating to the Children's Medical Services network, to: make the network available to children with special health care needs who are eligible for the Florida Kidcare program; make capitated reimbursement applicable only to Medicaid-eligible children with special health care needs, effective July 1, 1999; make the Agency for Health Care Administration responsible for determining the number of enrollment slots approved for a managed care plan based on the plan's network capacity to serve children with special health care needs; and delete from statute provisions relating to definitions (which are contained in the ch. 391, F.S., rewrite), provider gatekeeper roles, agency rules, network initiation, network contracting, and network evaluation.

The bill revises s. 624.91, F.S., relating to the Florida Healthy Kids Corporation, to: provide legislative intent; state the non-entitlement, no-cause-of-action nature of the program; and modify the duties of the program. The bill provides for the applicability of the provisions of this act to existing Florida Healthy Kids provider contracts.

The bill establishes thresholds for future legislative review and repeal of the Florida Kidcare program based on specified reductions in the federal matching funding percentage and the state's actual allocation of federal funding.

The bill repeals the following sections of statute:

- Section 391.031, F.S., relating to Children's Medical Services' patient care centers;
- Section 391.056, F.S., relating to the appointment of Children's medical Services district program supervisors; and
- Section 624.92, F.S., as created by s. 9 of ch. 97-260, L.O.F., relating to limitations on the Florida Healthy Kids Corporation enrollment and eligibility duration.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 113-0

MANAGED CARE CONSUMER PROTECTIONS

CS/HB 1005 — Managed Care/Subscriber Grievances

by Health Care Standards & Regulatory Reform Committee and Rep. Saunders (CS/SB 162 by Banking & Insurance Committee and Senator Brown-Waite)

The bill (Chapter 98-10) amends ss. 408.7056 and 641.511, F.S., to clarify the types of grievances filed by managed care entity subscribers and providers that are within the jurisdiction of the Statewide Provider and Subscriber Assistance Program. The bill establishes general, expedited, and emergency procedures for the review of grievances by the panel, and provides for one or more panels that meet as often as necessary to timely review, consider, and hear grievances and make recommendations to the Agency for Health Care Administration (agency or AHCA) or the Department of Insurance (department) regarding any actions concerning individual cases heard by the panel. The bill provides that the panel must make written findings of fact and written recommendations and establishes a set period of time for the agency or the department to consider the panel's recommendations and findings of fact. The agency or the department may adopt such recommendations or the findings of fact in a proposed order or an emergency order. The agency or department is authorized to issue a proposed order or an emergency order, as provided in ch. 120, F.S., imposing fines or sanctions. The agency and the department's actions are subject to ch. 120, F.S., the Administrative Procedure Act. The bill also provides that if an order only involves the panel's recommendations, the order shall be subject to a summary hearing under s. 120.574, F.S., unless both parties agree otherwise. If the managed care entity does not prevail at the hearing, it

must pay AHCA's or the department's reasonable costs and attorney's fees incurred because of the hearing. The bill appropriates six full-time-equivalent positions and $308,830 from the Health Care Trust Fund to AHCA for the implementation of the bill's provisions during FY 1998-99.

These provisions became law upon approval by the Governor on December 1, 1998.
Vote: Senate 38-0; House 107-0

PUBLIC HEALTH AND MEDICAID

CS/CS/SB 484 — Public Assistance/Medicaid and Public Health

by Ways & Means Committee and Health Care Committee

This bill was initiated as the product of an interim project by the Committee on Health Care relating to Medicaid reform, supervised by Senator Bankhead. The bill was subsequently amended to incorporate several additional issues, which are delineated below.

Medicaid-General Provisions

The bill amends s. 409.903, F.S., relating to mandatory payments for eligible persons, to reflect current policies and practices regarding Medicaid eligibility and to clarify the circumstances under which a low-income family with children is considered eligible for Medicaid. Specifically, such family:

- Must include a dependent child living with a caretaker relative.
- Must have an income that does not exceed the gross income test.
- Have a countable income that does not exceed the applicable AFDC or successor WAGES income requirements.

The bill amends s. 409.908, F.S., relating to Medicaid reimbursement, to direct the Agency for Health Care Administration (AHCA) to establish a case-mix reimbursement methodology for nursing homes no earlier than the rate-setting period beginning April 1, 1999, and to specify how AHCA is to develop the case-mix reimbursement methodology. The bill provides an option for AHCA to modify the patient care component of the current nursing home reimbursement methodology if sufficient data are not available to implement the planned case-mix reimbursement

methodology. The bill prescribes guidelines for Medicaid payment of Medicare deductibles and coinsurance for those Medicaid recipients who are dually eligible for both Medicare and Medicaid.

The bill amends s. 409.912, F.S., relating to cost-effective purchasing of services under Medicaid to:

- Authorize the district 6 prepaid mental health pilot project provider entity to be licensed by December 31, 1998, as a prepaid limited health service organization under ch. 636, F.S., in addition to existing licensure options as a health maintenance organization under ch. 641, F.S., or an insurer under ch. 624, F.S.

- Specifically authorize AHCA to include disease management initiatives in its health care utilization review strategies.

- Specifically authorize AHCA to competitively negotiate home health services, including seeking any needed federal waivers.

- Add a requirement that AHCA issue a request for proposals or intent to negotiate for a 3-year outpatient specialty services pilot project in a rural county and in an urban county. Project requirements and objectives are specified. Quality assurance review requirements are specified, as well as data reporting requirements for the projects. AHCA is required to report to the Legislature and the Governor its findings from the projects. The projects are not to conflict with the existing law requiring competitive negotiation of certain Medicaid services.

The bill further amends s. 409.912(3)(d), F.S., effective January 1, 1999, to delete a prohibition on federally qualified health center participation in the Medicaid provider service network demonstration project and eliminate a redundant provision relating to the demonstration project.

The bill amends s. 409.9122, F.S., relating to Medicaid managed care, to:

- Direct AHCA to reimburse county health departments the federal Medicaid share for school based services rendered to those Medicaid-eligible children enrolled in managed care plans or MediPass; and direct Medicaid managed-care contractors to attempt to enter agreements with county health departments for school based services. (This provides county health departments the same opportunity for Medicaid reimbursement for school-based services that local school

districts have when rendering services to comparable children under the certified school-match program.)

- Clarify which state agencies are involved in making Medicaid managed care or MediPass enrollees aware of their managed care enrollment options.

- Specify that Medicaid managed care recipients who do not choose a managed care plan or MediPass will be assigned to managed care plans or provider service networks until equal enrollment of 50 percent in MediPass and provider service networks and 50 percent in managed care plans is achieved, and subsequently such recipients will be assigned so as to maintain equal enrollment in MediPass and managed care plans for FY 1998-99.

- Increase from 60 days to 90 days the time period during which a Medicaid recipient may voluntarily change his or her mind about a selected managed care provider.

- Delete reference to any ratio of commercial enrollees to Medicaid enrollees in managed care plans.

Medicaid-Third-Party Recoveries

The bill amends s. 409.910, F.S., relating to Medicaid third-party liability, to specify the distribution of recoveries from third-party benefits resulting from recoupment of funds paid by Medicaid following a judgment, award, or settlement. After attorney's fees and taxable costs as defined by the Florida Rules of Civil Procedure, one-half of the remaining recovery shall be paid to AHCA up to the total amount of medical assistance provided by Medicaid, with the remaining recovery paid to the recipient. The fee for services of an attorney retained by the recipient or his or her legal representative is to be calculated at 25 percent of the judgment, award, or settlement. The bill requires that certain third-party benefits received by a Medicaid recipient be remitted to AHCA within 60 days after receipt of settlement proceeds.

The bill amends s. 414.28, F.S., relating to public assistance payments constituting debts of the recipient, to specify that claims made against the estate of a public assistance recipient be considered class 3 claims rather than class 7 claims under s. 733.707, F.S., relating to order of payment of claims under probate proceedings.

The bill amends s. 198.30, F.S., relating to the decedent information that circuit courts must furnish to the Department of Revenue, to require that this same information be submitted to AHCA by the circuit courts.

General Public Provisions Health

The bill amends s. 154.504, F.S., relating to eligibility and benefits under the "Primary Care for Children and Families Challenge Grant Act," to prohibit the use of copayments as compensation by health care providers. (This addresses a concern relating to sovereign immunity and patient provider compensation under the challenge grants.)

The bill creates ss. 381.0022 and 402.115, F.S., to authorize the Department of Health (DOH) and the Department of Children and Family Services to share otherwise confidential and exempt client information for a client served by both agencies.

The bill amends s. 414.028, F.S., relating to local WAGES coalitions, to provide for a representative of a county health department or Healthy Start Coalition to serve as an ex officio, nonvoting member of the local WAGES coalition.

The bill amends s. 766.101, F.S., relating to immunity from liability for medical review committees, to redefine the term "medical review committee" to include a committee of the Department of Health (DOH).

The bill amends s. 383.011, F.S., relating to the administration of maternal and child health programs by DOH, to designate the department as the state agency responsible for receiving federal funds for the federal Child and Adult Food Program, commonly referred to as the Child Care Food Program, and provide the department with rule-making authority for standards and procedures for the child care food program. These rules governing program participation must address: organization participation criteria; investigation of noncompliance; application and renewal requirements; audit requirements; meal pattern requirements; fund management requirements; participant eligibility; food storage and preparation; food service companies; reimbursements; use of commodities; administrative reviews and monitoring; training requirements; recordkeeping requirements; and criteria for imposing sanctions and penalties, including denial, termination, and appeal of program eligibility. (The program was transferred from the Department of Education to the Department of Health via the 1997-98 General Appropriations Act, with no statutory authority and no rules for the program.)

The bill amends s. 383.04, F.S., relating to the required use of a prophylactic for the eyes of infants, to require that the prophylactic used be one recommended by the Committee on Infectious Diseases of the American Academy of Pediatrics.

The bill repeals s. 383.05, F.S., to eliminate a requirement for the Department of Health to prepare the prophylactic solution and provide the solution for free distribution.

Penalties Relating to HIV and AIDS

The bill amends s. 381.004(6), F.S., relating to penalty provisions for HIV testing violations, to provide a penalty of a felony of the third degree for maliciously or for material gain sharing information that one knew or should have known identifies a person with a sexually transmissible disease (STD), HIV, or AIDS.

The bill amends s. 384.34, F.S., relating to penalties related to STDs, to: increase the penalty for the malicious dissemination of false information or reports concerning an STD from a misdemeanor of the second degree to a felony of the third degree; provide a penalty of a felony of the first degree for multiple violations relating to the unlawful transmission of HIV; provide a penalty of a felony of the third degree for maliciously or for material gain sharing information that one knew or should have known identifies a person with an STD, HIV, or AIDS.

Health Care Responsibility Act Revisions

The bill revises the provisions of ch. 154, part IV, F.S., consisting of ss. 154.301-154.316, F.S., relating to the Health Care Responsibility Act of 1988. The bill clarifies that the Agency for Health Care Administration is administratively responsible for the program; reduces by up to one-half the maximum amount a county may be required to pay to out-of-county hospitals for care provided to qualified indigent residents, provided that the amount not paid has or is being spent for in-county hospital care provided to qualified indigent residents; and incorporates numerous technical, clarifying, and conforming revisions.

Professional Liability Claims and Reports

The bill amends s. 627.912, F.S., relating to professional liability claims and actions and reports by insurers, to: no longer require insurers to report to the Department of Insurance claims with a final disposition not resulting in payment on behalf of the insured; and to correct a glitch in the law by requiring any self-insurance program authorized through the Board of Regents that covers professional liability claims for the board, students, and faculty of any university of the State University System, officers and employee, or agents of the board, professional practitioners practicing a profession within, or through their employment with any university of the State University System to report in duplicate to the Department of Insurance any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in

performance of professional services of a medical physician, osteopathic physician, podiatrist, or dentist as an agent of the board.

Transfer of Functions

The bill provides for a type 2 transfer of the Nursing Student Loan Forgiveness Program, the Nursing Student Loan Forgiveness Trust Fund, and the Nursing Scholarship program from the Department of Health to the Department of Education, and incorporates conforming amendments into ss. 240.4075 and 240.4076, F.S., to reflect this transfer of functions.

Building Designation

The bill provides for the naming of the Marion County Health Department building under construction for Carl S. Lytle, M.D.

Appropriations

The bill provides an appropriation of $2 million from the tobacco settlement revenues to the Grants and Donations Trust Fund of the Agency for Health Care Administration to be matched at an appropriate level with federal Medicaid funds to provide prosthetic and orthotic devices for Medicaid recipients when such devices are prescribed by licensed practitioners participating in the Medicaid program.

If approved by the Governor, these provisions take effect July 1, 1998, except as otherwise provided.
Vote: Senate 39-1; House 117-0

CS/HB 1213 — Breast and Prostrate Cancer

by Health Care Services Committee, Rep. Murman and others (CS/CS/SB 94 by Ways & Means Committee, Health Care Committee and Senators Grant, Clary, Sullivan, Casas, Meadows, Kirkpatrick, Campbell and Hargrett)

The bill creates an 18-member Prostate Cancer Task Force within the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida. The task force, which is to exist for 2 years, is directed to collect research and information on prostate cancer and prepare recommendations for reducing the incidence and the number of deaths related to prostate cancer in the state, and report its findings to the Governor and Legislature by January 15, 2000.

The bill amends s. 240.5121(4)(m), F.S., relating to the duties and functions of the Cancer Control and Research Advisory Council, or C-CRAB, to direct the C-CRAB, to the extent funds are

specifically appropriated, to develop or purchase a standardized, easy-to-understand, written statement regarding prostate cancer treatment alternatives, including the relative advantages, disadvantages, and associated risks of treatment. The pamphlet or booklet is to be made available to treating physicians, updated periodically, and targeted to prostate cancer patients and those men considering prostate cancer screening. The C-CRAB is directed to develop and implement an education program centered around the distribution of the pamphlet and the early detection and treatment of prostate cancer.

The C-CRAB's membership is increased from 32 to 35 members to include a representative of the Cancer Information Service, a member of the Florida A & M University Institute of Public Health, and a member of the Florida Society of Oncology Social Workers. The bill corrects reference to the Nova Southeastern College of Osteopathic Medicine for purposes of council membership.

The bill provides a $50,000 General Revenue appropriation for FY 1998-99 for the council to produce or purchase and to distribute pamphlets in English and Spanish regarding treatment alternatives for prostate cancer and to develop an educational program.

The bill also provides a $50,000 General Revenue appropriation for FY 1998-99 for the council to produce or purchase and to distribute pamphlets in English and Spanish regarding treatment alternatives for breast cancer and to develop an educational program.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 36-0; House 116-0

HB 3783 — Cigarette Tax Collection Trust Fund

by Reps. Tamargo, Bradley and others (CS/SB 1258 by Ways & Means Committee and Senator Harris)

The bill creates s. 210.20(2)(c), F.S., to specify that, beginning January 1, 1999, and continuing for 10 years thereafter, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall from month to month certify to the Comptroller the amount derived from the cigarette tax imposed under s. 215.20, F.S., less the general revenue service charge provided in s. 215.20, F.S., and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, F.S., which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 2.59 percent of the net collections be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute. These funds shall be used for financing the construction, furnishing, and equipping of a cancer research facility at the University of South Florida. The bill provides that in FY 1999-2000 and thereafter, with the exception of FY 2008-09, the appropriation to the institute shall not be less than the amount which

would have been paid to the institute for FY 1998-99 had payments been made for the entire fiscal year rather than for a 6-month period.

The bill directs the Board of Directors of the Institute to construct, furnish, equip, and covenant to complete the facility. The bill provides for the use of the transferred funds for securing financing to pay costs related to constructing, furnishing, and equipping the facility, including the issuance of tax-exempt bonds pursuant to ch. 159, parts II and III, F.S. The bill specifies that the cigarette tax dollars pledged for this facility shall be replaced annually by the Legislature from tobacco litigation settlement proceeds.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 118-0

Senate Committee on Judiciary

HJR 125 — Recording of Instruments/County Seat

by Rep. Gay and others (SJR 1610 by Senator Harris)

This bill proposes amending s. 1, Art. VIII, State Constitution, to provide that an instrument is deemed recorded if filed at a branch office designated by the governing body of the county for the recording of instruments.

These provisions must be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1998.
Vote: Senate 39-0; House 111-0

CS/HB 585 — Adoption/Sibling Communications

by Family Law & Children Committee, Rep. Murman and others (SB 264 by Senator Rossin)

This bill amends ss. 39.469 and 63.022, F.S., by adding siblings to the individuals who may have continuing contact pending adoption with a child whose parents' rights have been terminated. Communications as well as contact is provided for in the bill and that communication or contact may include, but is not limited to, visits, letters and cards, or telephone calls.

This bill creates s. 63.0427, F.S., providing statutory authority for continuing communication or contact after an adoption is final. Communication or contact may include, but is not limited to, visits, letters and cards, or telephone calls. Post-adoption contact may occur by court order in adoptions of foster children to allow post-adoption communication or contact among separated siblings who are not included in the adoption, if such communication or contact is found to be in the best interests of the children. This bill also provides criteria to be considered by the court in determining the best interests of the child and for review of the appropriateness of the ongoing communication or contact if necessary. The continuing validity of the adoption is not contingent upon the post-adoption communication or contact, nor shall the ability of the adoptive parents and child to relocate within or outside the State of Florida be impaired by the communications or contact.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

CS/HB 935 — Legal Process

by Civil Justice & Claims Committee and Rep. Warner (CS/SB 1244 by Judiciary Committee and Senator Burt)

This bill amends provisions governing the service of process, by:

- Allowing substitute service on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at his or her place of business;

- Deleting a cross reference to s. 83.59, F.S., from the provisions regarding service of process in an action for possession of residential premises or nonresidential premises, and thus making s. 48.183, F.S., apply to any action for possession of a residential premises rather than only to possession actions under the Florida Residential Landlord and Tenant Act;

- Directing the chief judge of each circuit to develop application forms for natural persons desiring to have their names added to the list of certified process servers;

- Allowing certified process servers to serve process on a person within that certified processor's circuit when a civil action has been filed against the person to be served in any one of the state's circuit or county courts;

- Allowing an individual who files an action anywhere in the state to choose one or more certified process servers, listed in the circuit where process is to be served, to serve process in that process server's circuit;

- Requiring that the interest payable on a judgment for money damages appear on the face of the order for judicial sale, process, or writ directed to a sheriff;

- Providing that the interest stated on the judgment accrues until the judgment is paid and does not fluctuate, but remains the same until the judgment is paid;

- Providing that a sheriff not be required to docket and index, or collect a process, writ, judgment, or decree if the rate of interest on the judgment is not stated;

- Providing that any surplus from the sale of property sold under execution be paid either to the defendant or to a junior writ if one has been docketed and indexed with the sheriff; and

- Providing that an officer who fails to pay over money which that officer has collected in an execution within 30 days of obtaining the money, or 10 days after the plaintiff has made a

written demand to the civil process bureau, is liable for the amount owed and 20 percent of the amount owed.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-1; House 116-0

HB 1019 — Marriage Preparation Act

by Rep. Bloom (CS/CS/SB 1576 by Judiciary Committee, Ways & Means Committee, Senator Rossin and others)

This bill adds a requirement to the high school life management curriculum that "marriage and relationship skill-based education" be added to the course.

The bill provides that couples who complete at least a 4-hour marriage preparation course will receive a $32.50 reduction in the initial marriage license fee. No marriage license may be issued by a county court judge or a clerk unless a couple attests that they have or have not taken the course. This requirement is intended to assist researchers in gathering statistical information regarding the efficacy of the program. The Florida State University Center for Marriage and Family shall review premarital preparation courses and prepare pilot programs based upon their findings about the efficacy of these programs. The Center is appropriated $75,000 for FY 1998-99.

Handbooks explaining the rights and responsibilities of the parties to a marriage to each other and to their children will be created by The Florida Bar and reviewed for accuracy by the Family Court Steering Committee of the Supreme Court. The handbooks will be funded by the Family Courts Trust Fund and will receive annual updates.

The marriage preparation course must be conducted by certain licensed professionals, a person approved by a judge, an "official representative of a religious institution with 'relevant training'," or any other provider designated by the circuit court, including school counselors who are qualified to teach the courses locally. Topics in the marriage preparation course are to include: conflict management; communication skills; financial responsibilities; and children and parenting responsibilities. Each circuit must compile a registry of course providers and sites for the marriage preparation. Any couple choosing not to take a course must wait three days to obtain their marriage license. This waiting period may be waived by a county judge for good cause.

Upon filing for dissolution of marriage, couples with minor children must complete a 4-hour parenting course. Parties attending a parenting course are not required to take the course together and may be prohibited from doing so. Courts may establish registries for the parenting courses. Both registries must contain at least one course provided in each county which will offer the

course on a sliding fee scale or for free. The fee for filing for dissolution of marriage is increased by $32.50.

Florida's Dependency Court Improvement Program (DCIP) was established in 1995 when the U.S. Department of Health and Human Services provided funding to the highest court in every state for a comprehensive research project designed to study judicial management of foster care and adoption proceedings involving dependent children. The bill incorporates the recommendations that evolved from this study.

The bill relocates relevant sections of ch. 415, F.S., into ch. 39, F.S., and reorganizes ch. 39, F.S., to reflect an orderly presentation of the dependency process from intake to case outcome. The bill provides attorneys for parents who qualify under indigency standards at shelter hearings, who will continue representation of those parents throughout the duration of the case. The time from the arraignment hearing to the disposition hearing is shortened from 30 to 15 days for those parents who admit or consent to dependency, and the time from the shelter hearing to the arraignment hearing is lengthened from 14 to 28 days to allow for adequate assessment, case planning, and trial preparation.

The bill limits the number of times a case may be reviewed by a citizen review panel and requires concurrent case planning for children and families under the jurisdiction of dependency court. The bill requires law enforcement checks of individuals residing in a home which is being considered for placement of a child and requires home studies of relatives who may become permanent custodians of a child.

The federal Adoption and Safe Families Act of 1997 was signed into law in November 1997, and the bill provides for the requirements of that legislation. The health and safety of children is required to be the paramount concern in decisions made at all stages of dependency proceedings. In addition, all children in foster care are required to have a permanency planning review hearing within 1 year from the date of their removal from home, and additional grounds for expediting termination of parental rights under certain circumstances are provided.

If approved by the Governor, these provisions take effect January 1, 1999.
Vote: Senate 39-0; House 91-21

CS/HB 1381 — Court Cost Collection

by Crime & Punishment Committee, Reps. Heyman, Crist and others (CS/SB 462 by Criminal Justice Committee and Senator Crist)

This bill creates the Comprehensive Court Enforcement Program Act and establishes legislative intent for the act. The enforcement program may be implemented as supplementary proceedings in any judicial circuit at the option of the chief judge. The bill provides that judges, presumably both circuit and county court judges, shall have jurisdiction to carry out the provisions of this act.

The bill provides that any person "ordered to pay any financial obligation in any criminal case" is subject to the newly created section. The bill does not define financial obligation. However, the legislative intent makes clear that the bill is directed at a collection of "court costs, fines, and fees against litigants pursuant to statutory law."

The bill authorizes a court to require a person ordered to pay an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. An order requiring a person's appearance at a hearing must be served a reasonable time before the hearing. Any person who fails to attend a hearing may be arrested on warrant or capias.

At the hearing, testimony may be taken regarding any subject relevant to the person's financial interests. Other witnesses may be examined; documents or other exhibits may be produced as evidence.

The court may reduce the obligation based on its determination of the person's ability to pay. It may order any nonexempt property of the person, "which is in the hands of another" to be applied toward satisfying the obligation. The court may also enter a judgment, if one has not been previously entered, and issue any writ necessary to enforce the judgment as allowed in civil cases. Any judgment issued constitutes a civil lien against the judgment debtor's presently owned or after-acquired property when recorded pursuant to s. 55.10, F.S.

The county commission may refer past due financial obligations to a collection agent or to a private attorney.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 114-0

HB 1403 — Molders

by Rep. Tobin (CS/SB 114 by Judiciary Committee and Senator Latvala)

This bill creates a process by which a molder can acquire title to an unclaimed mold, that is, a mold which has not been used to make a product for at least 3 years. These provisions repeal on January 1, 2001, and apply only to contracts entered into before January 1, 1999. The bill also creates a lien for unpaid amounts due for manufacturing or fabrication work and for materials used in such work, with the lien to be enforced by public sale of the mold.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 37-0; House 117-0

CS/SB 1466 — Liens

by Judiciary Committee and Senator Dudley

This bill amends s. 255.05, F.S., on public construction, to provide that a contractor may shorten the time period for enforcing a claim against a bond and for extinguishing a claim. The time period would be shortened to 60 days from the date of service of the notice. If an action was not brought in this time, the claim would be extinguished automatically. The bill also allows a contractor to demand that a claimant furnish a statement as to the services or materials to be furnished in the improvement.

The bill amends the definitions in the construction lien law to include provision of solid-waste collection or disposal within the improvements to real property for which a lien may be created.

The bill amends the provisions in s. 713.06, F.S., which provide for the general contractor's affidavit of payment to lienors upon final payment, to provide that the general contractor must state that all lienors who have timely served the notice to owner on both the owner and the contractor have been paid. The bill also provides that if a contractor makes a mistake in the affidavit which does not prejudice the owner, this does not constitute a default that operates to defeat an otherwise valid lien.

The bill amends s. 713.23, F.S., to provide that a contractor may shorten the current 1-year time period for instituting an action against the contractor and the surety based on a claim against a payment bond. The contractor could shorten the time period by serving on the affected lienor a notice of contest of a claim against the payment bond, a form for which is provided. Service would be by the clerk of the court mailing a copy of the notice to the claimant at the address shown on the claimant's notice of nonpayment. The clerk would certify the service on the face of the notice of contest and record the notice. Service would be complete upon mailing.

The time period would be shortened to 60 days from the date of service of the notice. If an action was not brought in this time, the claim would be extinguished automatically.

The bill creates s. 713.235, F.S., to create forms for a waiver of a right to a claim against a payment bond both for a progress payment and a final payment, with related provisions such as are contained in the existing waiver of lien statute, s. 713.20, F.S.

The bill amends s. 713.24, F.S., to provide for attorney's fees in actions to enforce a lien which has been transferred to other security and require a monetary deposit or bond to secure payment of such fees.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 37-0; House 117-0

CS/HB 3035 — Relief/Pitts & Lee

by Civil Justice & Claims Committee, Reps. Meek, Miller and others (CS/SB 68 by Judiciary Committee, Senators Holzendorf, Turner and others)

This bill directs the Division of Administrative Hearings to appoint an administrative law judge to conduct a hearing and determine whether a basis for equitable relief exists for the purpose of compensating claimants Freddie Lee Pitts and Wilbert Lee for any wrongful act or omission of the State of Florida which affected the fundamental fairness of the proceedings that resulted in their convictions. If the administrative law judge determines by a preponderance of the evidence that the State of Florida committed a wrongful act and that a basis for equitable relief exists, the judge is authorized to award Freddie Lee Pitts and Wilbert Lee the amount of $500,000 each.

This bill provides that if the claimants are prevailing parties, the administrative law judge is authorized to award a reasonable attorney's fee including all costs to the claimants in an amount not to exceed 25 percent of the compensation award.

These provisions became law upon approval by the Governor on May 1, 1998.
Vote: Senate 39-1; House 105-11

CS/HB 3201 — Religious Freedom Restoration Act

by Governmental Operations Committee, Rep. Starks and others (CS/SB 298 by Judiciary Committee and Senators Grant and Bronson)

This bill creates the "Religious Freedom Restoration Act of 1998." It provides that government may not substantially burden a person's exercise of religion, even if the burden results from a rule of facially neutral application. The bill addresses the standard by which the courts may judge an individual's claim alleging governmental interference with the free exercise of religion. Such alleged interference will be judged according to whether the state's action is in furtherance of a

compelling state interest, and, if so, whether that interest is met by the least intrusive means possible.

This bill provides an award of attorney's fees and costs paid by the government to the prevailing plaintiff in any action or proceeding to enforce a provision of this act.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 114-5

Senate Committee on Natural Resources

ENVIRONMENTAL PROTECTION

CS/SB 244 — Drycleaning Solvent Cleanup

by Natural Resources Committee

This bill addresses some of the concerns expressed regarding the dry-cleaning solvent contaminated site cleanup program. The bill provides for late fees for registration renewals, and provides intent regarding voluntary cleanup of dry-cleaning solvent contaminated sites.

A drycleaning facility or wholesale supply facility may be ineligible for the program if it was operated in a grossly negligent manner. In determining whether the owner or operator of the drycleaning facility or wholesale supply facility has operated in a grossly negligent manner, the facility owner or operator must have:

- Willfully discharged drycleaning solvents on the soils or into the waters of the state after November 19, 1980, with the knowledge, intent, and purpose that the discharge would result in harm to the environment, public health, or result in a violation of the law;

- Willfully concealed a discharge with the knowledge, intent, and purpose that the concealment would result in harm to the environment, public health, or result in a violation of the law; or

- Willfully violated a local, state, or federal law or rule concerning the operation of a drycleaning facility or a wholesale supply facility with knowledge, intent, and purpose that the act would result in harm to the environment, public health, or result in a violation of the law.

The provisions regarding the payment of deductibles are clarified. The bill also moves the deadline for applying for eligibility in the program from December 31, 2005 to December 31, 1998. The bill clarifies that the owner, operator, and *either* the real property owner or agent of the real property owner may apply jointly for the Drycleaning Contamination Cleanup Program.

A person whose property becomes contaminated due to geophysical or hydrologic reasons from the operation of a nearby drycleaning or wholesale supply facility and whose property has never been occupied by a business that utilized or stored drycleaning solvents or similar constituents is

afforded immunity from certain administrative and judicial actions under certain specified conditions.

The DEP must adopt, by rule, the rehabilitation program tasks that comprise a site rehabilitation program, and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the DEP shall incorporate, to the maximum extent feasible, risk-based corrective-action principles to achieve protection of human health and safety and the environment in a cost-effective manner. The rule shall also include protocols for the use of natural attenuation and the issuance of "no further action" letters. The cleanup criteria to be adopted by rule is specified.

The third-party liability insurance provisions for drycleaning facilities are clarified.

Persons who conduct voluntary cleanup are afforded immunity from liability to compel cleanup under certain conditions. This immunity shall continue to apply to any real property owner who transfers, conveys, leases, or sells property on which a drycleaning facility is located so long as the voluntary cleanup activities continue.

Upon completion of site rehabilitation, additional site rehabilitation is not required unless it can be demonstrated that:

1. Fraud was committed regarding completion of site rehabilitation;

2. New information confirms the existence of areas of previously unknown contamination which exceeds the site-specific rehabilitation levels, or which otherwise pose the threat of real and substantial harm to public health, safety, or the environment;

3. The remediation efforts failed to achieve the site rehabilitation criteria;

4. The level of risk is increased beyond the acceptable risk due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use; or

5. A new discharge occurs at the drycleaning site subsequent to a determination of eligibility for participation in the drycleaning program.

In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a drycleaning site, the DEP shall attempt to negotiate a memorandum of agreement or similar document with the U.S. Environmental Protection Agency (EPA), whereby the EPA agrees to forego enforcement of federal corrective action authority at drycleaning sites

that have received a site determination from the DEP or that are in the process of implementing a voluntary cleanup agreement.

Dry drop-off facilities are subject to the 2-percent gross receipts tax on drycleaning. The owner or operator of a dry drop-off facility is required to register with the Department of Revenue and pay a registration fee of $30.

Gross receipts arising from charges for services taxable pursuant to this section to persons who also impose charges to others for those same services are exempt from the gross receipts tax.

Provides that the $5 per-gallon tax on perchloroethylene is not subject to the sales and use tax levied pursuant to ch. 212, F.S.

The Department of Revenue is authorized to provide information relative to ss. 376.70 and 376.75, F.S., to the DEP in the conduct of its official business and to the facility owner, facility operator, and real property owners.

This bill also provides for tax credits for rehabilitating sites contaminated by drycleaning solvents or brownfield sites. Credits can be taken against the intangible personal property tax or corporate income tax. Credits are capped at $250,000 per site per year, and total credits authorized in a single year are capped at $2,000,000. The tax credits available pursuant to this bill may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner with the same limitations.

The DEP must approve applications from owners or operators for cleanup of eligible drycleaning or brownfield sites, or real-property owners who voluntarily undertake cleanup of ineligible drycleaning solvent contaminated sites, and receipt of any tax credit is contingent upon this approval.

In order to encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up and eligible for a tax credit, the taxpayer may claim an additional 10 percent of the total cleanup costs, not to exceed $50,000, in the final year of cleanup as evidenced by the DEP issuing a “No Further Action” order for that site.

The sum of $4 million appropriated from the General Revenue Fund Specific Appropriation 1727 for Brownfield Redevelopment in the Conference Report on HB 4201 is reduced by $1 million and the $1 million is to cover the cost of the tax credit provisions authorized in this bill.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 96-0

CS/SB 812 — Clean Air

by Natural Resources Committee and Senators Dyer, Latvala, Williams, Brown-Waite, Diaz-Balart and Forman

This bill establishes an Accidental Release Prevention and Risk Management Planning Program that will enable Florida to seek delegation from the EPA for the administration of this program which is established in Section 112(r) of the federal Clean Air Act. Chapter 252, part IV, F.S., is created to establish adequate state authorities to implement, fund, and enforce the requirements of the Accidental Release Prevention Program of Section 112(r) of the federal Clean Air Act and federal implementing regulations for specified sources. The legislative intent is to seek delegation of the 112(r) program from the EPA for specified sources and for duplication and redundancy to be avoided to the maximum extent practicable with no expansion or addition of the regulatory program.

Specifically excluded from this delegation is any stationary source whose only regulated substance subject to Section 112(4)(7) is liquefied petroleum gas.

The Department of Community Affairs (DCA) is empowered to seek delegation of the program from the EPA. The DCA is also authorized to adopt rules, make and execute certain contracts, coordinate its activities with its other emergency management responsibilities, establish a technical assistance and outreach program to assist owners and operators of specified stationary sources subject to Section 112(r) in complying with the reporting and fee requirements of this part, and make a quarterly report to the State Emergency Response Commission on income and expenses for the state's Accidental Release Prevention Program under this part.

Provides for an annual registration fee for any owners or operators of specified stationary sources which must submit a Risk Management Plan to the EPA. The program is intended to be self-sustaining.

The DCA is granted certain enforcement authority and civil remedies. Provides for penalties for certain prohibited acts. Authorizes the DCA to inspect and audit the records of regulated entities.

In the interim prior to the 2000 Regular Session, the appropriate substantive committees of the Senate and the House of Representatives shall conduct a review of the Florida Accidental Release Prevention and Risk Management Planning Act. The DCA, the State Emergency Response Commission, local emergency planning committees, the Department of Environmental Protection,

the Department of Labor and Employment Security, county emergency management agencies, and all other agencies or private entities providing regulatory, inspection, or technical assistance shall provide information as needed. The committees are to address what, if any, statutory provisions should be modified in order to improve the program. Legislation should be promulgated to effectuate the committees' recommendations.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 119-0

SB 1058 — Ash Residue/Recycling and Reuse

by Senator Lee

This bill amends s. 403.7045(5), F.S., to delete an obsolete provision, clarifies the Department of Environmental Protection's authority relating to ash residue, and authorizes the department to allow recycling or reuse by an applicant who demonstrates that no significant threat to public health will result and that applicable department standards and criteria will not be violated. The department's Division of Waste Management will direct the district offices and bureaus on matters relating to the interpretation and applicability of this subsection. The department is authorized to adopt rules necessary for administering this subsection, but the department is not required to amend its existing rules.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 118-0

CS/SB 1176 — Phosphogypsum Management

by Natural Resources Committee and Senator Lee

This bill directs the Department of Environmental Protection (DEP) to adopt rules by July 1, 1999, to ensure that impoundment structures and water conveyance piping systems used in the phosphogypsum industry are designed and maintained to meet critical safety standards. The bill provides for the content of the rules, which must require that impoundment structures and related equipment be constructed using sound engineering practices and operated safely. The rules must require that a phosphogypsum stack system owner maintain a log detailing the owner's operating inspection schedule, results, and any corrective action taken based on the inspection results and must also require phosphogypsum stack owners to maintain an emergency contingency plan and demonstrate the ability to mobilize equipment and manpower to respond to emergency situations at phosphogypsum stack systems. A reasonable time period must be established, not exceeding 12 months, to implement the rules.

This bill also permits the DEP to participate in joint enforcement with Hillsborough County and deposit moneys received from enforcement actions into the county's pollution recovery fund.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 118-0

CS/SB 1202 — Brownfields Redevelopment

by Natural Resources Committee and Senator Latvala

This bill addresses several glitches that have been identified since the passage of the 1997 Brownfields Redevelopment Act in addition to other changes intended to enhance the usage and success of the program.

- Adds "closed military bases" to the list of areas like enterprise zones where, if a brownfield is proposed for designation within such areas, special public hearings are not required.

- Provides that certain petroleum and drycleaning contaminated sites cannot receive funding assistance for the discharge under ch. 376, F.S., and any assistance available under the bonus refund program in s. 288.107, F.S.

- Requires the Director of the Governor's Office of Tourism, Trade, and Economic Development to approve requests to waive the wage level requirements for target industries in brownfield areas unless it can be demonstrated that such action is not in the public interest.

- Provides legislative findings regarding the reuse and redevelopment of brownfield areas.

- Creates a Brownfield Areas Loan Guarantee Program.

- Creates the Brownfield Areas Loan Guarantee Council to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. Provides council membership and duties. The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds maintained in the Nonmandatory land Reclamation Trust Fund. Limitations on the investment include not more than $5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund may be at risk at any time on loan guarantees or as loan loss reserves. Of the $5 million, 15 percent shall be reserved for investment agreements involving predominantly minority-owned

businesses. The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

- A lender seeking a limited state guaranty for a loan from the Brownfield Areas Loan Guaranty Council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield area and determined its feasibility in accordance with its standard procedures. A lender may not file a claim for loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted.

- Provides for an annual report to the Legislature. The provisions relating the Brownfield Areas Loan Guaranty Program shall be reviewed by the Legislature by October 1, 2003.

- Authorizes the Florida Development Finance Corporation to engage in activities benefiting brownfield areas.

- Requires the Board of Regents to establish a Center for Brownfield Rehabilitation Assistance in the Environmental Sciences and Policy Program in the College of Arts and Sciences at the University of South Florida.

- Provides an exemption for brownfield redevelopment amendments to the local comprehensive plans from the twice-a-year limitation on amendments to the comprehensive plan.

- Provides legislative intent regarding a Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund to assist in clearance of property title problems on brownfield sites resulting from contractor liens or tax certificates.

- Provides that certain municipalities and counties may apply to the Governor's Office of Tourism, Trade, and Economic Development for designation of a brownfield area as an Enterprise Zone.

The bill also contains the provisions of SB 146 which repealed the provision in ch. 86-159, L.O.F., which provided for the repeal of s. 376.313(4), F.S. Section 376.313(4), F.S., provides immunity from civil damages to owners or operators of petroleum storage systems who are in compliance with ch. 17-61, Florida Administrative Code, at the time of a discharge.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 38-0; House 113-1

CS/SB 1204 — Brownfield Property Ownership Trust Fund

by Natural Resources Committee and Senator Latvala

This bill creates the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund to be administered by the Governor's Office of Tourism, Trade, and Economic Development. The purpose of the trust fund is to provide low-interest loans for the purchase of outstanding, unresolved contractor liens, tax certificates, or other liens or claims on brownfield sites designated by a local government under s. 376.80, F.S. The loans may be used for a negotiated settlement of legally recognized liens or claims at a value less than their face value taking into account the overall feasibility of redevelopment of the brownfield area.

The trust fund may be used for the deposit of all moneys appropriated by the Legislature to fund this revolving loan program. All moneys in the fund that are not needed on an immediate basis for loans must be invested under s. 215.49, F.S. The principal and interest of all loans repaid and investment earnings must be deposited into the fund.

The Governor's Office of Tourism, Trade, and Economic Development may make loans to local governments, community redevelopment agencies created under s. 163.356 or s. 163.357, F.S., or persons or nonprofit corporations responsible for brownfield site rehabilitation designated under s. 376.80, F.S. The terms of loans may not exceed 5 years. The interest rate on loans may be no greater than that paid on the last bonds sold under s. 14, Art. VII, State Constitution. A loan to any brownfield area may not be more than 25 percent of the total funds available for making loans during that fiscal year.

The Office of Tourism, Trade, and Economic Development is authorized to adopt rules to implement this program.

If approved by the Governor, these provisions take effect July 1, 1998, provided SB 1202 becomes law.
Vote: Senate 38-0; House 116-1

CS/SB 1458 — Coastal Redevelopment

by Community Affairs Committee and Senators Latvala, Burt and Bankhead

This bill expands the scope of the Community Redevelopment Act to include redevelopment of coastal resort or tourist areas which meet specified guidelines, provides the scope of activities included in community redevelopment of coastal resort and tourist areas, and redefines terms associated with those activities. The bill authorizes the Department of Environmental Protection (DEP) to administer, and provides criteria for establishing, a coastal resort area redevelopment pilot project in the coastal areas of the Atlantic Coast between the St. Johns River entrance and Ponce de Leon Inlet. The authorization for the pilot project will expire December 31, 2002, with prior legislative review.

The bill also provides that where a continuous line of rigid coastal armoring structure exists on either side of unarmored property, not exceeding 100 feet, and the adjacent lines of rigid coastal armoring structures are having an adverse effect on or threaten the unarmored property, the DEP may grant the necessary permits to close the gap. The bill further requires the DEP to grant the necessary permits to replace gaps of non-viable rigid coastal armoring where there exists a continuous line of viable rigid coastal armoring on either side of the gap.

The bill appropriates $2.5 million from the Grants and Donations Trust Fund for the purposes of Specific Appropriations 1230 and 1258, and $1 million from the Coastal Protection Trust Fund to the DEP to be used for research grants to study factors that control harmful algae blooms, including red tide.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 118-0

HB 3125 — Solid Waste Disposal

by Rep. Smith (SB 376 by Senator Kirkpatrick)

The bill specifies that the Sewage Treatment Revolving Loan Fund is to be a *self-perpetuating* loan program to accelerate construction of sewage treatment facilities by local governmental agencies and to assist local governmental agencies.

In addition to making loans, the Department of Environmental Protection (DEP) may administer the resulting portfolio of loans, including the authority to sell or pledge the loans, or any portion of the loans, with the approval of the Governor, the Treasurer, and the Comptroller, acting as the State Board of Administration.

The cost of administering the loan program shall be paid from federal funds, from reasonable service fees that may be paid from federal funds, from reasonable service fees that may be imposed upon loans, and from proceeds from the sale of loans as permitted by federal law so as to enhance program perpetuity. Proceeds from the sale of loans must be deposited into the Sewage Treatment Revolving Loan Fund. All moneys available in the fund, including investment earnings, are designated to carry out the purposes of the loan program.

Because the Legislature has experienced revenue shortfalls in recent years and has been unable to provide enough funds to fully match available federal funds to help capitalize the Sewage Treatment Revolving Loan Fund, it is necessary for innovative approaches to be considered to help capitalize the revolving loan fund. The bill authorizes the DEP to adopt approaches that will help ensure the continuing viability of the Sewage Treatment Revolving Loan Fund.

This bill also revises and clarifies the conditions under which the disposal of household waste is exempt from the DEP's permit requirements. Specifically, the bill identifies white goods, automotive materials such as batteries and tires, petroleum products, pesticides, solvents, or hazardous materials as materials which could create a public nuisance or threaten the public health or environment and, therefore, are not covered under the statutory exemption.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 33-0; House 118-0

CS/HB 3427 — Beach Management Funding

by Environmental Protection Committee, Reps. Jones, Bloom and others (CS/CS/SB 882 by Ways & Means Committee, Natural Resources Committee, Senator Sullivan and others)

This bill provides legislative findings regarding the value of the state's beaches to the economy and their role in the protection of upland property from storm damage. The Department of Environmental Protection (DEP) is authorized to implement regional components of the beach management plan and enter into agreements with other governmental entities to cost-share and coordinate beach management activities. The bill revises criteria for establishing funding priorities for beach restoration projects and provides cost savings for local sponsors that coordinate erosion control projects. The bill requires the DEP to delegate the review of coastal construction building codes to local governments that have adopted the recommendations of the Governor's Building Codes Study Commission, once they have been implemented.

The bill provides funding from documentary stamp tax revenues for beach restoration projects: $10 million in FY 1998-99, $20 million in FY 1999-2000, and $30 million in FY 2000-01 and thereafter. The bill also appropriates $449,918 and authorizes six positions to implement the act.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 37-0; House 114-0

CS/HB 3701 — Pollution Control/Hazardous Waste Facilities

by Environmental Protection Committee, Rep. Fuller and others (CS/SB 1390 by Natural Resources Committee and Senator Horne)

This bill creates s. 403.7211, F.S., to provide restrictions on the siting of facilities managing hazardous waste generated off-site. This section does not apply to manufacturers, power generators, or other industrial operations that have received or apply for a permit or a modification to a permit from the DEP for the treatment, storage, or disposal of hazardous waste generated only on-site or from other sites owned or acquired by the permittee. This section shall apply to all federal facilities that manage hazardous waste.

The DEP shall not issue any permit under s. 403.722, F.S., for the construction, initial operation, or substantial modification of a facility for the disposal, storage, or treatment of hazardous waste generated off-site which is proposed to be located in any of the specified locations.

It shall be presumed that life-threatening concentrations of hazardous substances could accumulate in a catastrophic event in any area within a radius of 3 miles of a hazardous waste transfer, disposal, storage, or treatment facility. The bill provides that this presumption can be rebutted by certain demonstrations.

A concentration of hazardous substance is deemed to be life-threatening when the concentration could cause susceptible or sensitive individuals, excluding hypersensitive or hypersusceptible individuals, to experience irreversible or other serious, long-lasting effects or impaired ability to escape.

No person shall construct or operate a transfer facility for the management of hazardous waste unless the facility meets the siting requirements of s. 403.7211, F.S.

The bill would not prohibit the operation of existing transfer facilities that have commenced operation as of the effective date of the bill, if the transfer facility is not relocated or if there is no substantial modification in the structure or operation of the facility after the effective date of the bill.

Section 403.7211, F.S., which is created by this bill, would apply to any permit applications for the construction, initial operation, or substantial modification of a facility pending on the effective date of this act for which the DEP has not issued a final order and to any proposed transfer station which has not commenced operation as of the effective date of this act.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 113-0

WATER RESOURCE MANAGEMENT

CS/SBs 312 & 2298 — Water Resource Management/"Local Sources First"

by Natural Resources Committee, Senators Brown-Waite, Laurent and others

The bill provides legislative intent regarding the allocation of water resources and the use of water from sources nearest the area of need, and specifies the factors to be considered by the water management districts and the Department of Environmental Protection (DEP) in determining whether a proposed transport and use of water across county boundaries or outside the watershed is in the public interest. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the DEP and the water management districts (districts) to encourage the use of water from sources nearest the area of use or application whenever practicable. Such sources include all naturally occurring water sources and all alternative water sources including, but not limited to, desalination, conservation, reuse of non-potable reclaimed water and stormwater, and aquifer storage and recovery. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in s. 373.223(3)(a)-(g), F.S. However, this directive would not apply to the transport and use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. 500.03(1)(d), F.S., nor shall it apply to the transport and use of reclaimed water for electrical power production. The Legislature further recognizes that under certain circumstances the need to transport water from distant sources may be necessary for environmental, technical, or economic reasons.

This bill provides that where a water supply authority exists pursuant to s. 373.1962 or s. 373.1963, F.S., under a voluntary interlocal agreement which is consistent with the requirements in s. 373.1963(1), F.S., and receives or maintains consumptive use permits under this voluntary agreement consistent with the water supply plan, if any, adopted by the governing board, then such authorities shall be exempt from consideration by the governing board or the DEP of the factors specified in paragraphs (a)-(g) of s. 373.223(3), F.S., and the submissions

required by s. 373.229(3), F.S. The exemptions shall only apply to water sources within the jurisdictional areas of such voluntary water supply interlocal agreements.

In order to obtain a consumptive use permit, the applicant must meet the following three criteria, also known as the "three-prong test":

- The proposed use of water is a reasonable-beneficial use as defined in s. 373.019(4), F.S.;
- The proposed use of water will not interfere with any presently existing legal use of water; and
- The proposed use of water is consistent with the public interest.

In addition to the "three-prong test," the bill provides that, except for the transport and use of water supplied by the Central and Southern Florida Flood Control Project, and anywhere in the state when the transport and use of water is supplied exclusively for bottled water, any permit applications pending as of April 1, 1998, with the Northwest Florida Water Management District, and self suppliers of water for which the proposed water source and area of use or application are located on contiguous private properties, when evaluating whether a potential transport and use of ground or surface water across county boundaries or outside the watershed from which it is taken is consistent with the public interest, the district or the DEP shall consider:

- The proximity of the proposed water source to the area of use or application.
- All impoundments, streams, groundwater sources, or watercourses that are geographically closer to the area of use or application than the proposed source, and that are technically and economically feasible for the proposed transport and use.
- All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of non-potable reclaimed water and stormwater, and aquifer storage and recovery.
- The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from use of the other water sources identified in paragraphs (b) and (c) of s. 373.223(3), F.S.
- Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located.

- Consultations with local governments affected by the proposed transport and use.

- The value of the existing capital investment in water-related infrastructure made by the applicant.

Where districtwide water supply assessments and regional water supply plans have been prepared pursuant to ss. 373.036 and 373.0361, F.S., the governing board or the department shall use the applicable plans and assessments as the basis for its consideration of the applicable factors in s. 373.223(3), F.S.

The bill provides that in addition to the information currently required for water-use permit applications, all permit applications filed with the district or the DEP which propose the transport and use of water across county boundaries or outside the watershed from which it is taken, shall include information pertaining to factors to be considered, pursuant to s. 373.223(3), F.S., unless exempt under s. 373.1962(9), F.S.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 39-0; House 113-3

CS/SB 1506 — Marine Resources

by Natural Resources Committee and Senator Latvala

This bill revises several provisions regulating marine fisheries and creates new penalties for violations of marine fisheries laws and rules. The bill prohibits the harvesting of shellfish within 25 feet of lawfully marked shellfish lease boundaries, designates black drum and jack crevalle as food fish, and exempts a totally and permanently disabled person from the income requirements for a restricted species endorsement on a saltwater products license if the person has held a saltwater products license in at least three of the 5 license years prior to the disability. A minimum age of 16 is established for the issuance of a marine life fishing endorsement on a saltwater products license and, except for the reissuance of such endorsements to those active in FY 1997-98, the fishery is closed until July 1, 2002. A similar moratorium is established for the blue crab fishery until July 1, 2002, and the current moratorium on the issuance of new stone crab trap numbers is extended until July 1, 2000. The bill also prohibits, for the stone crab or blue crab fisheries, the use of more than five traps, harvesting in commercial quantities, or the sale of either species without the appropriate endorsement.

The bill also revises the distribution of recreational saltwater fishing license revenues to increase the Marine Fishery Commission's (MFC's) funding, deletes the repeal of the MFC which had been scheduled for October 1, 1999, authorizes the sharing of marine fisheries harvest information with other states, and provides for a surcharge on the transfer of crawfish trap certificates upon the initial transfer of the certificate outside the original holder's immediate family. Also, the leasing of crawfish trap tags and certificates is prohibited, beginning July 1, 2003.

The bill establishes a major penalty for the possession of a gill or entangling net or any seine net larger than 500 square feet in mesh area on any airboat or on any other vessel less than 22 feet in length and on any vessel less than 25 feet if primary power of the vessel is mounted forward of the vessel center point. The MFC is directed to initiate by July 1, 1998, rule making to adjust by rule the use of gear on vessels longer than 22 feet where the primary power of the vessel is mounted forward of the vessel center point in order to prevent the illegal use of gill and entangling nets in state waters and to provide reasonable opportunities for the use of legal net gear in adjacent federal waters, and is directed to adopt rules to prohibit the possession and sale of mullet taken in illegal gill or entangling nets.

The bill clarifies that both civil and criminal penalties shall be assessed for violation of crawfish regulations, including those relating to traps, by a commercial harvester and provides significant new penalties for violation of record-keeping requirements and the buying of saltwater products from unlicensed persons. Finally, certified aquaculture activities are exempted from permitting requirements of water management districts and the Department of Environmental Protection under specified circumstances.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

CS/CS/HB 3265 — Boating Safety

by General Government Appropriations Committee, Law Enforcement & Public Safety Committee, Reps. Ziebarth, Fischer and others (CS/CS/SBs 1794 & 2200 by Transportation Committee, Natural Resources Committee, Senators Burt, Clary, and Forman)

This bill revises several provisions relating to the operation of vessels, safety regulations and equipment, lighting requirements, and mandatory education for violators of boating regulations.

The bill provides a legislative declaration that the operation of a vessel is a privilege and establishes a $500 fine for refusal to submit to a lawfully-ordered chemical or physical breath or urine test to determine alcohol levels in blood or breath or the presence of chemical substances. A procedure is provided to request a hearing before a county court judge, which tolls the 30-day

period for payment of the fine. Failure to pay the $500 fine will result in the loss of one's vessel operation privilege; operation of a vessel by a person whose privilege is suspended for nonpayment of the fine is a first-degree misdemeanor. The Department of Highway Safety and Motor Vehicles will maintain records of vessel operation privilege suspensions, effective January 1, 1999.

The bill also prohibits the operation of a vessel by a person under the age of 21 who has a breath-alcohol level of 0.02 or higher; violation is a noncriminal infraction requiring the performance of 50 hours of public service and loss of one's vessel operation privilege until the service has been performed, and being detained for such a violation does not constitute an arrest. If a person under the age of 21 refuses to take a lawfully-ordered breath test, the penalty is 50 hours of public service and loss of one's vessel operation privilege until the service has been performed. Operation of a vessel while one's operating privilege is suspended is a first-degree misdemeanor. The bill provides that these penalties shall be imposed in addition to any other penalty for boating under the influence or for refusal to submit to testing.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 39-0; House 116-0

CS/HB 3369 — Inland Navigation Districts

by Community Affairs Committee and Rep. Gay (CS/SB 1256 by Natural Resources Committee and Senator Harris)

This bill authorizes inland navigation districts to enter into cooperative agreements with the Federal Government and participate with the U.S. Army Corps of Engineers in waterway maintenance projects and anchorage management programs. It authorizes districts to enter into ecosystem management agreements with the Department of Environmental Protection and provides matching funds exceptions to financial assistance provisions. The bill provides a supplemental process for the issuance of joint coastal permits and environmental resource permits.

The bill also repeals s.8 of ch. 90-264, L.O.F., which provided for the repeal of the West Coast Inland Navigation District on October 1, 2000, with prior review by the Legislature. This has the effect of continuing the district indefinitely.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 113-0

CS/CS/HB 3421 — Water Control Districts

by General Government Appropriations Committee, Water & Resource Management Committee, Reps. Putnam and Feeney (CS/SB 1596 by Natural Resources Committee and Senator Rossin)

This bill amends s. 298.005, F.S., deleting the definition of "water control district" and amending the definition of "water control plan." It amends s. 298.11, F.S., entitling landowners to one additional vote for any fraction of an acre greater than one-half acre, and allowing owners and proxy holders of district acreage who are present at a duly noticed landowner's meeting to constitute a quorum for the purposes of election.

The bill amends s. 298.12, F.S., removing the requirement that the Governor appoint the supervisor in a like manner as prescribed in s. 298.11, F.S. It allows the Governor to continue to appoint a supervisor upon failure of the landowners to elect a supervisor, but removes the written notice requirement. The bill eliminates the surety bond requirement for district engineers in s. 298.16, F.S.

The bill also amends s. 298.22, F.S., to provide criteria for awarding contracts for construction of district facilities. It also provides that land or property, within or without the district not acquired or condemned by the court, as identified in the engineer's report may be condemned or acquired by purchase or grant for the district's use.

The bill revises requirements for the development and amendment of water control plans in s. 298.225, F.S. A water control plan is no longer required to have the following: copies of any agreements between the water control district and other governmental entities, the engineer's report prepared for plan adoption or revision, or the water control district's budget and revenue sources for the current year. However, information from a district's facilities plan prepared pursuant to s. 189.415, F.S., may satisfy water control plan requirements. The bill requires the Board of Supervisors to submit a proposed plan or amendment to the water management district for review. Within 90 days after receipt, the water management district must review the proposed plan or amendment for consistency with applicable water plans and policies and recommend any changes, requesting any additional information as necessary.

Section 298.301(2)-(9), F.S., does not apply to the plan adoption process where the preparation of a water control plan or amendment does not require revising the current plan or increasing assessments or taxes beyond the maximum amount previously authorized by general law, special law, or judicial proceeding. Also, ss. 298.225 and 298.301(1)-(9), F.S., do not apply to minor, insubstantial amendments to district plans authorized by special law.

In addition, the bill revises s. 298.26, F.S., to prohibit the use of a district engineer's annual report as a plan for draining and reclaiming lands as part of a water control plan. It amends s. 298.301, F.S., providing for the determination of benefits and damages that will accrue to each subdivision of land (according to ownership) from carrying out and putting into effect the proposed plan or amendment. The bill allows districts existing solely by judicial decree to add or delete lands from these districts by decree of the circuit court of the county where the majority of the land within the district is located. It revises notice and report requirements. The bill provides that a water control plan and assessments are final unless an action for relief is brought in a court of competent jurisdiction within 30 days after the plan's approval and confirmation.

The bill corrects a statutory reference in s. 298.329, F.S. Also, where water control plans are applicable to one or more units but less than the entire district, the bill amends s. 298.353, F.S., requiring notice to landowners only within the affected unit or municipalities within whose boundaries the unit lands are located. It provides that bonds may be payable from assessments on more than one unit.

The bill repeals s. 298.337, F.S., requiring the water control districts to assess a parcel of land less than 1 acre as a full acre.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 115-0

CS/HB 3673 — Aquaculture

by Agriculture Committee and Rep. Bronson (CS/SB 1924 by Natural Resources Committee, Senators Bronson and Hargrett)

This bill amends s. 253.72, F.S., to prohibit the harvesting of shellfish within a distance of 25 feet surrounding lawfully marked lease boundaries or within setback and access corridors in specifically designated high-density aquaculture lease areas and use zones. The bill also amends s. 370.06, F.S., requiring a person to hold a special activity license to harvest saltwater species using gear or equipment not generally authorized. It authorizes the department to adopt, by rule, application requirements and terms, conditions, and restrictions for incorporation into each special activity license. The bill also authorizes the department to issue special activity licenses for the harvest of certain shellfish. In addition, the bill authorizes the department to issue special activity licenses to permit the capture and possession of saltwater species protected by law and used as stock for artificial cultivation and propagation. Special activity licenses issued pursuant to this section may not exceed a term of 20 years.

This bill revises s. 370.027, F.S., exempting marine aquaculture products produced by an individual certified under s. 597.004, F.S., from the Marine Fisheries Commission's rule-making

authority. This bill amends s. 370.081, F.S., deleting rabbitfishes from the list of marine animals not to be imported into the state. It amends s. 370.10, F.S., providing the department may authorize any properly accredited person to harvest or possess indigenous or nonindigenous saltwater species for experimental, scientific, education, or exhibition purposes.

The bill amends s. 370.16, F.S., requiring the Division of Marine Resources to protect shellfish aquaculture products produced on leased or granted reefs of lessees or grantees from the state. It amends s. 370.26, F.S., defining a "marine aquaculture facility" and revising the definition of "marine aquaculture product." Also, the bill authorizes a marine aquaculture producer possessing a valid saltwater products license with a restricted species endorsement to apply income from the sales of marine aquaculture products to licensed wholesale dealers when renewing an existing restricted species endorsement, but not when acquiring a new restricted species endorsement. It also requires the holder of an aquaculture certificate to purchase and possess a saltwater products license when possessing, transporting, or selling saltwater products not provided for in s. 597.004, F.S. In addition, it delegates regulatory authority for aquaculture facilities subject to temporary general permitting criteria to the water management districts.

Also, this bill amends s. 372.0225, F.S., reducing the responsibilities of the Division of Fisheries of the Game and Fresh Water Fish Commission relating to the regulation of aquaculture facilities. It amends s. 372.65, F.S., exempting any individual or business issued an aquaculture permit under s. 597.004, F.S., from a freshwater fish dealer's license with respect to aquaculture products authorized under such certificate.

This bill deletes obsolete language relating to the department's state-sanctioned sale of alligator hides in s. 372.6672, F.S. It amends s. 372.6673, F.S., providing $1 per egg from an egg collection permit may be transferred to the General Inspection Trust Fund to be used by the department for marketing and education services relating to Florida's alligator products. It also amends s. 372.6674, F.S., providing that $5 per validated alligator hide may be transferred to the General Inspection Trust Fund for the same purpose.

This bill amends s. 373.046, F.S., clarifying jurisdiction over aquaculture activities. It amends s. 403.814, F.S., clarifying that an aquaculture general permit shall be established for the cultivation of aquatic species, except alligators. The bill also amends s. 597.005, F.S., requiring the Aquaculture Review Council to provide a list of prioritized research needs critical to the aquaculture industry's development by August 1 of each year.

In addition, it amends s. 373.406, F.S., exempting aquaculture activities under s. 597.004, F.S. This bill amends s. 403.885, F.S., exempting certified aquaculture activities under s. 597.004, F.S., which have individual production units whose annual production and water discharge are less than the parameters established the National Pollutant Discharge Elimination

System (NPDES) program from wastewater management regulations. It amends s. 597.002, F.S., establishing the Department of Agriculture and Consumer Services (DACS) as the primary agency responsible for regulating aquaculture, notwithstanding any other law to the contrary. It provides the only exceptions are areas required by federal law, rule, or cooperative agreement to be regulated by another agency. Also, the bill amends s. 597.003, F.S., authorizing DACS to issue or deny any license or permit authorized or delegated to the department that furthers the intent of the Legislature to place the regulation of aquaculture in the department. It amends s. 597.004, F.S., providing certification procedures relating to aquaculture. The bill prohibits the Department of Environmental Protection from instituting proceedings against any person certified under s. 597.004, F.S., to recover costs or damages associated with groundwater or surface water contamination, providing the property owner or leaseholder meets listed requirements.

This bill amends s. 372.57, F.S., deleting a $10 fee for a 10-day saltwater fishing license. It also amends s. 372.57, F.S., deleting a lifetime sportsman's license for those 64 years of age or older, revising the age category for a lifetime sportsman's license, and reducing a 5-year hunting license fee. The bill revises ss. 372.672 and 372.674, F.S., authorizing the use of the Florida Panther Research and Management Trust Fund to be used for environmental education programs.

This bill amends ss. 372.921 and 372.922, F.S., requiring those engaged in the exhibition or personal possession of wildlife, upon conviction or finding of guilt of a criminal or noncriminal violation of ch. 372 or ch. 828, F.S., or a rule of the commission if such violation is disposed of under s. 921.187, F.S., to reimburse the commission for any expenses incurred relative to the animal's capture, transport, boarding and veterinary care, or other costs incurred due to seizure or custody of wildlife.

This bill amends s. 372.57, F.S., establishing a recreational user permit fee to hunt, fish, or otherwise use for outdoor recreational purposes, land leased by the commission from private nongovernmental owners except such fee is not available in one described area of the state. The commission will set the permit fee, by rule, on a per-acre basis considering the economic needs of the landowner, game population levels, desired hunter density, and administrative costs. The commission will remit all revenue derived from permit sales, less the $25 administrative fee, to the respective landowners. The bill exempts spouse and dependent children of a permittee from the permit fee when engaged in outdoor recreation activities other than hunting in the company of the permittee.

A resident 65 years of age or older is not required to purchase a fishing or hunting license, but a resident 64 years of age or older can now purchase a permanent hunting and fishing license for $12 which will enable Florida to receive more federal funds based on the number of license sales.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 114-1

CS/HB 4027 — Regional Water Supply Authorities

by Water & Resource Management Committee, Rep. Littlefield and others (CS/SB 1442 by Natural Resources Committee and Senator Latvala)

This bill would assist in the implementation of the governance restructuring of the West Coast Regional Water Supply Authority (authority.)

Provides that the definition of "party" does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, F.S., to the extent that an interlocal agreement under ss. 163.01 and 373.1962, F.S., exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

Authorizes the implementation of changes in governance recommended by the Authority. The interlocal agreement must comply with certain specified provisions. Among those provisions, in accordance with s. 4, Art. VIII, State Constitution, and notwithstanding s. 163.01, F.S., the interlocal agreement may include the following terms, which are considered approved by the parties without a vote of their electors, upon execution of the interlocal agreement by all member governments and upon satisfaction of all conditions precedent in the interlocal agreement:

1. All member governments shall relinquish to the authority their individual rights to develop potable water supply sources, except as otherwise provided in the interlocal agreement.

2. The authority shall be the sole and exclusive wholesale potable water supplier for all member governments.

3. The authority shall have the absolute and unequivocal obligation to meet the wholesale needs of the member governments for potable water.

4. A member government may not restrict or prohibit the use of land within a member's jurisdictional boundaries by the authority for water supply purposes through use of zoning land use, comprehensive planning, or other form of regulation.

5. A member government may not impose any tax, fee, or charge upon the authority in conjunction with the production or supply of water not otherwise provided for in the interlocal agreement.

6. The authority may use the powers provided in ch. 159, part II, F.S., for financing and refinancing water treatment, production, or transmission facilities, including, but not limited to, desalination facilities. All such water treatment, production, or transmission facilities are considered a "manufacturing plant" for purposes of s. 159.27(5), F.S., and serve a paramount public purpose by providing water to citizens of the state.

7. A member government and any governmental or quasi-judicial board or commission established by local ordinance or general or special law where the governing membership of such board or commission is shared, in whole or in part, or appointed by a member government agreeing to be bound by the interlocal agreement shall be limited to the procedures set forth therein regarding actions that directly or indirectly restrict or prohibit the use of lands or other activities related to the production or supply of water.

The interlocal agreement may include procedures for resolving their parties' differences regarding water management district proposed agency action in the water use permitting process within the authority. These procedures should minimize the potential for litigation and include alternative dispute resolution. Any governmental or quasi-judicial board or commission established by local ordinance or general or special law where the governing members of such board or commission is shared, in whole or in part, or appointed by a member government, may agree to be bound by the dispute resolution procedures set forth in the interlocal agreement.

The provisions of s. 373.1963, F.S., supersede any conflicting provisions contained in all other general or special laws or provisions thereof as they may apply directly or indirectly to the exclusivity of water supply or withdrawal of water, including provisions relating to the environmental effects, if any, in conjunction with the production and supply of potable water, and the provisions of s. 373.1963, F.S., are intended to be a complete revision of all laws related to a regional water supply authority created under ss. 373.1962 and 373.1963, F.S.

Provides that the parties which have entered into written interlocal agreements may arbitrate disputes between them concerning water-use permit applications and other matters, regardless of

whether or not the water management district with jurisdiction over the subject application is a party to the interlocal agreement or a participant in the arbitration.

Allows the authority to indemnify and assume the liabilities of its member governments for obligations arising from past acts or omissions at or with property acquired from a member government by the authority and arising from the acts or omissions of the authority in performing activities contemplated by an interlocal agreement. This indemnification may not be considered to increase or otherwise waive the limits of liability to third-party claimants as provided in this section.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 115-0

CS/HB 4071 — Environmental Mitigation

by Transportation Committee and Rep. Betancourt (CS/SB 986 by Natural Resources Committee and Senator Bronson)

This bill authorizes the Department of Transportation to include in its inventory the habitat impacts of any future transportation project identified in the adopted work program. The water management district may draw from the Ecosystem Management and Restoration Trust Fund funds needed to pay for activities associated with the development or implementation of the mitigation plan. Those activities include, but are not limited to, design, engineering, production, and staff support.

Prior to December 1 of each year, each water management district, in consultation with the DEP, the U.S. Army Corps of Engineers, other appropriate federal, state, and local governments, and permitted mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to ch. 373, part IV, F.S., and 33 U.S.C. s. 1344. In developing the plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the DEP and the water management districts, such as surface water improvement and management projects and lands identified for potential acquisition or restoration, to the extent such activities comply with the mitigation requirements adopted under ch. 373, part IV, F.S., and 33 U.S.C. s. 1344.

The bill further provides that preliminary approval of a mitigation plan by the water management district governing board does not constitute a decision that affects substantial interests as provided by the Administrative Procedures Act. This clarifies that affected parties objecting to a mitigation plan may only file for an administrative hearing after the plan receives final approval from the Secretary of the DEP.

Each mitigation plan shall include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option for each transportation project addressed in the plan, including an estimation and description of identifiable costs of the mitigation bank and nonmitigation bank option to the extent practicable.

The bill extends the time period that the DEP has to use the Department of Transportation's $12 million in wetlands mitigation funds to the year 2005 to allow the DEP enough time to supplant the funds that were not credited toward the mitigation of Department of Transportation projects.

Section 338.223, F.S., is amended to provide an exception from certain notice provisions for the purchase and acquisition of hardship and protective purchases of advance right-of-way by the Department of Transportation. Defines "hardship" and "protective purchase."

Section 86 of ch. 93-213, L.O.F., appropriated $3.2 million from the Pollution Recovery Trust Fund for NPDES program startup costs. These funds were to be repaid no later than July 1, 2000. This bill provides that those funds do not have to be repaid.

This bill also provides for the Dade County Lake Belt Mitigation Plan to mitigate for the loss of wetland resources lost to mining activities within the Dade County Lake Belt Area. Effective October 1, 1998, a fee of 5 cents on each ton of limerock and sand extracted is imposed on any person who engages in the business of extracting limerock or sand from within the Dade County Lake Belt Area. The fee will be assessed for each ton of limerock and sand sold, in raw, manufactured, or processed form, including, but not limited to, sized aggregate, cement, concrete, and concrete products from within the Lake Belt. The amount of the fee must be stated separately on the invoice provided to the purchaser. The proceeds of the fee must be paid to the Department of Revenue (DOR) on or before the 20th day of the month following the calendar month in which the sale occurs.

The fee must be reported to the DOR and payment of the fee must be accompanied by a form prescribed by the DOR. The proceeds of the fee, less administrative costs, must be transferred by the DOR to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. As used in this section, the term "proceeds of the fee" means all funds collected and received by the DOR under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs must not exceed 3 percent of the total revenues collected and may equal only those administrative costs reasonably attributable to the fee.

The bill also provides that beginning January 1, 2000, and each January 1 thereafter, the per-ton mitigation fee shall be increased by 1.9 percentage points, plus a cost growth index. The growth index is specified.

The proceeds of this fee must be used to conduct mitigation activities that are appropriate to offset the impact on fish and wildlife habitat resulting from mining activities in the Lake Belt and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Dade County Lake Belt Plan Implementation Committee under s. 373.4149, F.S. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Trust Fund and the Internal Improvement Trust Fund, for lands that were acquired in areas appropriate for rock mining mitigation and to reimburse those governmental agencies that exchanged land under s. 373.4149, F.S., for rock mining mitigation.

Expenditures must be approved by an interagency committee consisting of representatives from the Dade County Department of Environmental Resource Management, the DEP, the South Florida Water Management District (SFWMD), the Florida Game and Freshwater Fish Commission (GFWFC), and, at the discretion of the committee, additional members who represent federal regulatory, environmental, and fish and wildlife agencies. A representative of the limerock mining industry shall serve as a nonvoting member.

By January 31, 2010, and every 10 years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee to ensure that the revenue generated reflects the actual costs of the mitigation.

The bill also adds to the duties of the Dade County Lake Belt Implementation Committee and extends the existence of the committee to January 1, 2002. Certain specified parcels are excluded from the Dade County Lake Belt Area.

Section 373.421, F.S., is amended to provide that whenever the location of a wetland delineation, approved or performed by the DEP or the water management district is certified pursuant to ch. 471 or ch. 472, F.S., the delineation shall be accepted as a formal determination pursuant to s. 373.421(2), F.S., or shall be accepted as part of a permit.

The governing board of the South Florida Water Management District is empowered and authorized to acquire fee title or easement by eminent domain of real property for the limited purpose of implementing the Kissimmee River, Florida Project and the C-111 project. Through July 1, 2000, the South Florida Water Management District may disburse state or district funds to any agency or department of the Federal Government in any agreement or arrangement to take property or any interest therein by eminent domain, pursuant to federal law, unless such arrangement diminishes or deprives a person or entity of any right, privilege, or compensation that they would otherwise have if the property or interest was taken by eminent domain under Florida law.

Authorizes that suits may be brought against the Department of Transportation for the breach of an expressed provision or an implied covenant.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 34-3; House 111-4

LAND ACQUISITION AND MANAGEMENT

CS/HB 3771 — Greenways and Trails

by Environmental Protection Committee, Rep. Sembler and others (CS/SB 1396 by Natural Resources Committee, Senator Sullivan and others)

This bill revises the process by which private lands may be designated for use as part of the statewide system of greenways and trails, and provides incentives for private landowners who allow their lands to be designated as part of the system. The bill provides that mapping of lands does not constitute designation, that land use restrictions may not be placed on private lands as a result of the land's appearance on preliminary planning maps, and provides that a person violating rules establishing prohibited activities or restrictions on greenways activities may be fined up to $500 for a non-criminal infraction.

The bill delays by 1 fiscal year, to 1999-2000, the requirement that unencumbered balances of funds in the Preservation 2000 allocations to several agencies be redistributed to the Conservation and Recreation Lands Trust Fund and the Water Management Lands Trust Fund. Also, the bill allows the Division of State Lands to use appraisals provided by a public agency or nonprofit organization.

This bill requires the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to convey lands identified as the New Town, located in Walton County, to the county at a price not to exceed the price paid by the Trustees for the lands plus any applicable interest, provided this conveyance does not cause any portion of the interest on P-2000 revenue bonds to lose their gross-income exclusion from federal income tax.

The bill directs the Department of Environmental Protection to erect a suitable memorial on the Cross Florida Greenways State Recreation Area to recognize Marjorie Harris Carr for her efforts to stop the Cross Florida Barge Canal and to create the Cross Florida Greenway State Recreation and Conservation area. The bill also creates a new user permit fee to hunt, fish, or recreate on private lands leased to the Game and Fresh Water Fish Commission and exempts specified land from the program. The fee will be established by the commission on a per-acre basis, based on specified factors. Less an administrative fee of up to $25 per permit, the fee is retained by the landowner.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 37-0; House 113-0

Senate Committee on Regulated Industries

TELECOMMUNICATIONS

HB 4785 — Telecommunications Services

by Utilities & Communications Committee and Rep. Arnall (CS/SB 640 by Regulated Industries Committee)

During the 1997 interim, the Senate Regulated Industries Committee evaluated the status of local service competition, intrastate access charges, and universal service. Senate Interim Project Report No. 97-P-12 reflects the findings and recommendations of this review. The report discusses possible reasons why competition has not developed as quickly as was anticipated when the 1995 Florida Telecommunications Act and 1996 Federal Act were enacted. It considers the policy of universal service, its ties to access charges and implications for competition, and some possible alternatives for establishing a permanent universal service mechanism. The report also explores the effects of high access charges on competition, both in the long distance and local telecommunications markets. The report recommends several alternatives for addressing unresolved issues relating to competition, universal service, and intrastate access charges.

House Bill 4785 directs the Public Service Commission to conduct several studies to compile the data necessary for the Legislature to take informed action on these issues. In particular, the bill orders certain studies to provide a basis of information for legislation during the 1999 Session regarding: a permanent universal service mechanism; a "fair and reasonable rate" for basic residential local telecommunications services; and access to multi-tenant buildings to provide competitive telecommunications services.

The bill extends for an additional year the caps on residential basic telecommunications service and multi-line business service that otherwise were due to expire January 1, 1999. It also provides for accelerated reductions in intrastate network access charges (totaling an estimated $50 million) paid by long distance companies to GTE and Sprint. Long distance companies must pass the benefits of these reductions through to residential and business customers. In addition, the bill provides for new regulations relating to "slamming," telecommunications companies' billing procedures, and procedures to resolve disputes among competing providers of telecommunications services.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 111-4

PROFESSIONAL REGULATION

CS/CS/HB 3211 — Real Estate

by Community Affairs Committee, Real Property & Probate Committee, Business Regulation & Consumer Affairs Committee, Rep. Ogles and others (CS/SB 340 by Regulated Industries Committee and Senators Clary, Harris, McKay, Williams and Kurth)

This bill makes various changes to the regulation of real estate brokers and salespersons in the areas of business entity registration, licensure qualifications, inactive licenses, disciplinary violations and penalties, agency disclosure requirements, instructor qualifications, and the Real Estate Recovery Fund. Significant provisions include creating an exemption from the agency disclosure requirements for owners or their agents selling new construction and creating an exemption from contractor licensing requirements for real estate brokers or salespersons for repairs of $5,000 or less, if licensed contractors do the work. In addition, the bill allows a real estate broker to designate salespersons to represent different customers in the same commercial real estate transaction, if certain conditions are met.

The bill also amends several provisions relating to the regulation of real estate appraisers in the areas of licensure categories, licensure qualifications, and disciplinary procedures. Significantly, the bill amends experience and education requirements for the various categories of appraisers bringing state law into conformance with federal standards.

Finally, the bill amends the Florida Building Energy-Efficiency Rating Act to simplify notice requirements.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 112-0

CS/HB 4065 — Public Accountancy

by Financial Services Committee, Rep. Safley and others (CS/SB 1508 by Regulated Industries Committee and Senators Latvala and Horne)

This bill amends provisions in ch. 473, F.S., relating to the licensure of certified public accountants (CPAs), to allow individuals to practice as CPAs while working for nonlicensed firms, except when providing assurances as to the reliability of financial statements. All CPAs providing services involving assurances of reliability must be licensed as CPA firms or working for licensed CPA firms. These changes are in response to a recent federal case involving American Express

Tax and Business Services, Inc., against DBPR, in which the court held that the current law violates the First Amendment of the United States Constitution, relating to free speech. *See Miller v. Stuart*, 117 F.3d 1379 (11th Cir. 1997) *cert. denied*, 118 S. Ct. 852 (1998). The current definition of the practice of public accounting includes "holding out" as a CPA within the definition and requires that the practice of public accounting be in connection with a licensed CPA firm. (For a firm to be licensed, at least two-thirds of the partners, shareholders, or members of a firm must be certified public accountants in some state.) The district court held that it is unconstitutional to prevent licensed CPAs from truthfully informing the public of their licensure, regardless of whether they work for a licensed CPA firm.

The bill also exempts attorney CPAs from accounting standards that conflict with Florida Bar rules. In addition, the bill amends provisions in ch. 473, F.S., relating to probable cause panel membership, licensure by examination and endorsement, board advisory committees, and license reactivation.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 31-0; House 115-0

HB 3589 — Certified Public Accountants Education Minority Assistance Program

by Rep. Bitner and others (SB 1220 by Senators Crist and Holzendorf)

This bill creates the Certified Public Accountant Education Minority Assistance Program to provide scholarships to minority students in Florida enrolled in their fifth year of an accounting program. The scholarships are funded from a fee assessed as a portion of the existing license fee for all new and renewed CPA licenses. The fees must be deposited in a special account within the Professional Regulation Trust Fund earmarked for the scholarship. DBPR may spend up to $100,000 annually on the program, but is prohibited from allocating overhead charges to the account. The bill creates a five-member advisory council to assist the Board of Accountancy in administering the program. The advisory council consists of five Florida CPAs appointed by the board. Membership must be diverse and representative of gender, ethnic, and racial status. Funds for scholarships may be disbursed only upon recommendation of the advisory council and approval of the board.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 110-0

HB 4439 — Contracting

by Business Regulation & Consumer Affairs Committee, Reps. Ogles, Brown and others (CS/CS/SB 2336 by Community Affairs Committee, Regulated Industries Committee, and Senator Clary)

This bill relates to regulation of the construction industry. It amends provisions relating to the regulation of building code administrators, inspectors, and plans examiners by adding categories of licensure for building code personnel, revising examination and license fees, and allowing engineers and architects to perform building inspections and plan reviews without becoming certified as building inspectors or plans examiners. The bill also amends provisions relating to the regulation of asbestos contractors and consultants, conforming the licensure requirements with federal standards and clarifying licensure requirements relating to financial stability and insurance.

The bill amends provisions relating to the regulation of construction, electrical, and alarm contractors. Significant changes include: exempting the construction of portable sheds and Habitat for Humanity homes from licensure requirements for construction contractors under certain circumstances; establishing training requirements for medical gas installation; making the complaint and supporting documents available to a contractor under investigation by the Department of Business and Professional Regulation (DBPR); prospectively limiting DBPR's jurisdiction to investigate or pursue a complaint when a local enforcement board has initiated action against a contractor; exempting alarm monitoring from licensure requirements for alarm contractors under certain circumstances; extending the $4 fee to fund the Building Construction Industry Advisory Committee to electrical and alarm contractors (currently only construction contractors pay this fee); requiring locally licensed electrical contractors to have taken a licensing examination to qualify for state registration; and establishing training and criminal history check requirements for fire alarm agents.

The bill also requires industrial hygienists and safety professionals to accurately disclose their credentials and allows them to use specified titles only if they possess a certification from one of two specifically cited boards or from a program with substantially equivalent standards, as determined by DBPR. In addition, the bill amends various provisions relating to ch. 633, F.S., which governs the licensing and permitting by the State Fire Marshal of organizations and individuals who install and service fire safety equipment.

The bill provides that local governments may not assess pay telephone companies occupational license taxes on a per-instrument basis. It also clarifies that the statewide minimum building code to take effect in 2001 may not apply to electric utility generation, transmission, or distribution facilities.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 37-0; House 119-0

SB 1976 — Construction Industries Recovery Fund

by Senator Forman

To provide recourse for consumers who suffer monetary damages because of improper actions by contractors, s. 489.140, F.S., creates the Construction Industries Recovery Fund (CIRF) as a separate account within the Professional Regulation Trust Fund.

This bill revises the limits on payments of claims from the CIRF to cap them at $100,000 annually, up to a lifetime limit of $250,00 per licensee. The bill provides that, beginning January 1, 1998, if a claim is approved that would exceed a licensee's annual cap of $100,000, it is eligible for payment in succeeding years up to the lifetime limit, but only after all claims filed for the then-current calendar year are paid.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

CS/HB 3343 — Barbering and Cosmetology

by Governmental Rules & Regulation Committee and Rep. Chestnut (CS/SB 880 by Regulated Industries Committee and Senator Clary)

This bill amends provisions in the barbering practice act relating to examination procedures and criteria for issuing restricted licenses. It also amends provisions in the cosmetology practice act relating to: licensure; examinations; requirements for hair braiders, hair wrappers, and photography studio salons; continuing education requirements for renewal of cosmetology and specialty licenses; and authorization for mobile cosmetology salons.

The bill requires hair wrappers to be registered and to complete 6 hours of training approved by the Board of Cosmetology. Hair braiding and hair wrapping may be performed outside a licensed cosmetology salon, if specified sanitation requirements are met. The bill exempts photography studio salons from licensure as cosmetology salons, if hair arranging services are performed under the supervision of a licensed cosmetologist employed by the photography studio salon and specified sanitation requirements are met.

The bill also authorizes the board to require up to 16 hours of continuing education biennially, as a condition for renewing a cosmetology license. Hair braiders and hair wrappers are specifically exempt from the continuing education requirements. In addition, the board is authorized to adopt rules for the licensure and operation of mobile cosmetology salons, including rules relating to facilities, personnel, and safety and sanitary requirements.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 39-0; House 114-0

LAND SALES AND CONDOMINIUMS

CS/CS/SB 626 — Timeshare Plans/Timeshare Lien Foreclosure Act

by Judiciary Committee, Regulated Industries Committee and Senators Silver and Dyer

This bill (Chapter 98-36) revises ch. 721, F.S., relating to timeshare plans. The changes are in response to recommendations of a task force established by the Department of Business and Professional Regulation in 1996 to address the financial distress of some timeshare resorts in the state. The bill creates the "Timeshare Lien Foreclosure Act," which provides for an expedited judicial foreclosure proceeding for timeshare properties to allow consolidation of foreclosure proceedings under certain conditions, to allow the use of a registered agent for service of notices and process, and to permit service of process by registered agent or mail. The bill is intended to assist vacation ownership resort owners' associations and mortgagees, reduce court congestion, and minimize taxpayer costs by simplifying the foreclosure process. The bill also eliminates the surety bond requirement for a developer offering incidental benefits to purchasers and provides for a disclosure statement regarding the developer's option to renew or extend the availability of incidental benefits; revises language regarding reservation agreements; defines the term "regulated short term product" and provides for disclosure and cancellation provisions; authorizes the advertisement of such agreements subject to the division's approval; and allows developers greater flexibility in the allocation of common expenses. In addition, the bill amends provisions regarding the audit of financial statements and requires that the certified public accountants preparing such audits be licensed in the state of Florida.

The bill creates commissioners of deeds, appointed by the Governor for 4-year terms, to execute timeshare instruments outside the United States.

These provisions were approved by the Governor, without his signature, and take effect April 30, 1998. However, timeshare plan filings approved by the division before this date will not be subject to the amendment to s. 721.06(1)(f), F.S., relating to the required notice in contracts for purchase of a timeshare unit, until January 1, 1999.
Vote: Senate 38-0; ; House 113-0

CS/CS/HB 3321 — Condominiums

by Governmental Rules & Regulations Committee, Real Property & Probate Committee, and Rep. Crow (CS/SB 1624 by Regulated Industries Committee and Senator Dudley)

This bill provides a procedure for amending the declarations or bylaws of condominiums recorded prior to January 1, 1977, to consolidate financial operations of two or more residential condominiums under a single association. It allows for the commingling of reserve funds and operating funds, for investment purposes only. The bill requires minimum insurance coverage or fidelity bonding in the amount of the maximum funds in an association's accounts. The bill provides that the common expenses of a developer-controlled association that are not covered by insurance proceeds after a natural disaster be equally divided among the unit owners, including those units owned by the developer. It provides for the allocation of common expenses for master antenna services or bulk cable television service contracts.

The bill requires a signed agreement by the buyer of a cooperative waiving the buyer's right to void a sale within 15 days of the purchase. It requires financial disclosure of year-end information. The bill provides procedures and requirements related to cooperative committee meetings. It provides that a person convicted of a felony in the United States is ineligible for board of administration membership unless that person's right to vote has been restored and that action taken by a board is not affected if a member is later determined to be ineligible because of a prior conviction. The bill amends procedures relating to the filling of vacancies on a board and reporting requirements of annual budgets.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 115-0

PARI-MUTUEL WAGERING

HB 1747 — Pari-mutuel Wagering

by Reps. Fasano, Thrasher, Morrone and others

The 1993 Legislature enacted ch. 93-288, L.O.F., which lowered the tax rate on live and simulcast handle for harness horse track permitholders from 3.3 to 1.0 percent. The 1996 Legislature enacted ch. 96-364, L.O.F., which provided additional tax credits and exemptions for pari-mutuel permitholders, provided increased opportunities for full-card simulcasting and intertrack wagering, established minimum purse requirements to benefit greyhound breeders, and authorized card rooms at pari-mutuel facilities. The reduced tax rates on intertrack wagering and on live handle for thoroughbred, harness, and jai alai permitholders were subject to repeal on July 1, 1998.

House Bill 1747 revives and reenacts the reduced tax rates on intertrack wagering and on live handle for harness horse racing and jai alai, providing permitholders with tax savings of approximately $5.4 million, compared to letting the current rates repeal.

The bill also addresses issues that impact greyhound and thoroughbred breeders. It specifies a formula whereby greyhound purse supplements are prorated and distributed on a weekly basis. It requires a greyhound track to make additional purse payments on intertrack and simulcast wagers. It also requires greyhound permitholders to provide the division and kennel operators with certain documentation to insure that the proper purses are paid and to automatically deduct, at the request of a majority of kennel operators, at least 1 percent from purses paid as direct payment to local kennel associations. With respect to thoroughbred breeders, the bill allows a stallion standing in the state during a specified period of each year to be eligible for stallion awards.

The bill provides that the each of the three greyhound permitholders in the Florida panhandle, as well as the track with the lowest live handle in the prior state fiscal year, may transfer the unused portions of its tax credits on live handle to a host greyhound track for credits on intertrack wagering. The bill also allows a currently licensed facility that conducts public horse sales and meets certain qualifications (Ocala Breeders' Sales) to apply for a license that allows simulcast wagers on thoroughbred horse races during specified periods.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 37-1; House 116-0

CS/SB 440 — Pari-mutuel Wagering
by Regulated Industries Committee

The 1996 Legislature, in ch. 96-364, L.O.F., provided for lower tax rates for thoroughbred permitholders, a "double penalty" provision for thoroughbred permitholders conducting races in more than one racing period, and increased minimum purses for thoroughbred breeders. These tax provisions, penalties and additional purses were subject to repeal on July 1, 1998.

The bill retains all of the provisions in current law regarding thoroughbred taxes, dates, and purses. It provides thoroughbred track permitholders tax savings of $5.6 million, compared to letting the current rates repeal.

It also provides additional tax reductions, until July 1, 2001, to thoroughbred permitholders that conduct performances during certain periods. For the thoroughbred permitholder conducting performances beginning January 3 and ending March 16 (typically Gulfstream Park) the tax rate on live and simulcast handle was reduced from 2.25 to 2.0 percent. For the thoroughbred

permitholder conducting performances beginning March 17 and ending May 22 (typically Hialeah Park) the tax rate on live and simulcast was reduced from 0.7 to 0.2 percent. For this permitholder, the tax rates on intertrack wagering and rebroadcast of simulcast races also were reduced, from 3.3 and 2.4 percent, respectively, to 0.2 percent. For the thoroughbred permitholder conducting performances beginning May 23 and ending January 2 (typically Calder/Tropical Park) the tax rate on live and simulcast handle was reduced from 2.5 to 1.25 percent.

The bill provides that another provision of the 1996 act, which requires the permitholder conducting performances between May 23 and January 2 (Calder/Tropical) to send broadcasts of live and simulcast events to the permitholder conducting performances between March 17 and May 22 (Hialeah), will repeal on July 1, 2001. The bill also provides that the host facility sending these mandated signals (Calder/Tropical), will receive, for the next 3 years, a tax credit equal to the amount of taxes due, with at least half of that amount to be used as purse supplements.

The bill provides for a study of the feasibility of state or municipal ownership of Hialeah Race Park. The report is to be prepared by the Secretary of State in conjunction with the Office of the Mayor of Hialeah and submitted to the President, Speaker, and Governor by January 31, 1999.

The bill provides additional purses for the thoroughbred permitholder located outside of South Florida (Tampa Bay Downs). It lowers the tax rate on the rebroadcast of simulcast races from 2.4 to 0.5 percent with the host track paying the guest track the additional 1.9 percent, which is to be used to supplement purses.

The bill removes taxes on free admissions. It removes a limitation on the receipt of thoroughbred simulcasts after 10 p.m. It repeals requirements for racetrack laboratories and backside medical and health benefits. It also includes provisions identical to those in HB 1747 regarding stallion awards and the licensure of a facility to accept simulcast wagers on thoroughbred races during special periods.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 39-1; House 114-1

CS/HB 3663 — Pari-mutuel Wagering

by Regulated Services Committee, Rep. Westbrook and others (SB 1080 by Senators Silver, Gutman, Meadows, Forman and Turner)

This bill provides an additional tax credit to jai alai permitholders, equal to the amount of state taxes paid on handle and admissions taxes that exceed the permitholder's operating earnings. The tax credit will be applied to pari-mutuel taxes due during the permitholder's next ensuing meets. The bill also allows a jai alai permitholder to apply for or amend its license for FY 1998-99. The bill will result in approximately $6.5 million in tax savings for jai alai permitholders, and will have a corresponding negative impact on general revenue.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 34-3; House 113-1

LOTTERY

HB 3289 — Florida Lottery Instant Ticket Vending Machines

by Regulated Services Committee and Rep. Morroni (SB 836 by Senator Gutman)

In 1996, the Florida Department of Lottery was authorized to lease instant ticket vending machines (ITVMs) for an 18-month test period and was required to report results for the first 8 months. The report indicated that retailers with ITVMs experienced a 19 percent sales increase, while retailers without ITVMs experienced a 6 percent sales decrease. House Bill 3289 deletes language that would have limited the operation of ITVMs to an initial 18-month period and reduces the number of clerks on duty to monitor ITVMs from two to one, unless the retailer has violated provisions prohibiting sales to minors.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 20-13; House 112-0

CIVIL LITIGATION REFORM

CS/SB 874 — Civil Litigation Reform

by Conference Committee on Litigation Reform, Rules & Calendar Committee and Senators McKay, Dudley, Rossin, Ostalkiewicz, Lee, and Campbell

This bill is the product of the Senate and the House of Representatives Conference Committee on Civil Litigation Reform. The bill makes wide-ranging and substantial modifications to procedural and substantive components of the civil litigation system in Florida. The bill is summarized below by topics with reference to the corresponding bill sections.

Juror Bill of Rights

Section 1 creates s. 40.50, F.S., the Juror Bill of Rights, to provide for a series of jury reform measures to be implemented by the courts including, but not limited to, providing detailed preliminary and post-trial final instructions to the jurors, furnishing notebooks to jurors in trials likely to exceed 5 days, permitting jurors to take notes and allowing the jurors to submit written questions to witnesses (subject to approval by the court). This section also requires judges, attorneys, and court staff to provide detailed information to jurors and to assure certain things, such as proceeding according to trial schedules and providing fair compensation for jury service.

Mediation

Section 2 amends s. 44.102, F.S., relating to court-ordered mediation, to mandate that all civil actions for monetary damages be referred to mediation unless it falls within one of six exceptions. The exceptions are actions involving personal injury claims between landlord and tenant, actions for debt collection, actions for medical malpractice, actions governed by the Florida Small Claims Rules, actions the court determines should be referred to non-binding arbitration, and those actions which the parties have agreed to binding arbitration. In all cases for which mediation is not mandatory under the proposed changes, the court would retain the current statutory discretion to refer those cases to mediation under s. 44.102, F.S.

Voluntary Trial Resolution

Section 3 creates s. 44.1051, F.S., to allow two or more parties involved in a civil action, in which no constitutional issues are raised, to agree to a voluntary trial resolution. The parties are responsible for selecting and compensating the trial resolution judge. The trial resolution judge must be a member in good standing of the Florida for the preceding 5 years (the same qualifications needed for a circuit court or county court judge). Under current law, a retired Florida judge may be assigned on a temporary basis to conduct civil or criminal trials.

The trial resolution judge shall have the authority to administer oaths and conduct the proceedings in accordance with the Florida Rules of Civil Procedure, and issue enforceable subpoenas. A party may enforce a judgment obtained in a voluntary trial resolution by filing a petition for enforcement in circuit court. An appeal may be made to the appropriate appellate court but review of factual findings is not allowed on appeal. The "harmless error doctrine" applies in all appeals which is generally applied in all appellate cases under current law. The language does not clarify what the standard of review will be other than state that no further review will be allowed of a judgment unless a constitutional issue is raised. The presence of competent substantial evidence to support the findings is a standard of review for most appellate cases.

Voluntary trial resolution is not available to parties in actions involving child custody, visitation, child support or any dispute involving the rights of a party not participating in a voluntary trial resolution.

Frivolous Lawsuits

Section 4 amends s. 57.105, F.S., relating to award of attorney's fees in frivolous (or unfounded) lawsuits. This section replaces the existing standard for an award of attorney's fees based on a complete absence of a justiciable issue of law or fact in cases. The new standard for an award of attorney's fees, upon the court's initiative or motion of a party, will be based on whether the losing party or the losing party's attorney knew or should have known that the claim or defense at the time it was initially presented or at any time before trial, was not supported by material facts or by the application of then-existing law. This section retains the good faith exception (modified slightly to apply to the new standard) for the losing party's attorney if the attorney acted in good faith based on his or her client's representations as to material facts. In addition, sanctions for attorney's fees will not apply if the claim or defense is determined to have been made as a good-faith attempt with a reasonable probability of changing then-existing law.

This section expands the court's authority to impose sanctions of damages for protracted litigation if the moving party proves by a preponderance of evidence that any litigation activities were taken for the primary purpose of unreasonable delay.

This section also authorizes the court to impose additional sanctions as are just and warranted for either unsupported claims or defenses, or protracted litigation, including contempt of court, award of taxable costs, striking of a claim, or dismissal of the pleading.

Offer/Demand for Judgment

Section 5 amends s. 768.79, F.S., and requires an offer of judgment to specify to whom the offer is made and the terms of the offer in cases involving multi-parties. A subsequent offer to a party automatically voids a previous offer to that party. This section additionally requires the court to determine whether an offer was reasonable under the circumstances known at the time the offer was made before awarding costs and fees.

Expert Witness Costs

Section 6 amends s. 57.071, F.S., relating to taxable costs in civil proceedings, to condition the recovery of expert witness fees as taxable costs to a prevailing party. The prevailing party must file a written notice within 30 days after entry of an order setting the trial date, setting out the expertise and experience of the witness, the subjects upon which the expert is expected to testify, and an estimate of expert witness total fees by flat rate or hourly. The party retaining the expert witness must also furnish each opposing party a written report signed by the expert witness which summarizes the opinions expressed, the factual basis, the authorities relied upon for such opinions. The report must be filed at least 10 days prior to the discovery deadline, 45 days prior to trial, or as otherwise determined by the court. This section overlaps and may conflict with the Florida Rules of Civil Procedure governing procedures for disclosure and discovery of expert witnesses and the *Florida Supreme Court Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.*

Expedited Civil Trial

Section 7 creates an optional speedy civil trial procedure called an expedited trial. Upon joint motion of the parties with approval of the court, the court is authorized to conduct an expedited civil trial. For purposes of the expedited trial where two or more plaintiffs or defendants have a unity of interest such as a husband and wife, the parties shall be considered one party. Unless otherwise ordered by the court or agreed to by the parties, discovery must be completed within 60 days. This section does not specify when discovery must begin. The court must determine the number of depositions required. The trial, whether jury or non-jury, must be conducted within

30 days after discovery ends. Jury selection is limited to 1 hour. Case presentation by each party is limited to 3 hours each. The trial is limited to 1 day. Expert witness reports and excerpts from depositions, including video depositions, may be introduced in lieu of live testimony regardless of availability of expert witness or deponent (note: this may represent a departure from the current rule of evidence governing admissible evidence.) The trial must be tried within 30 days after the discovery cut-off.

Itemized Jury Verdicts

Section 8 amends s. 768.77, F.S., relating to itemized verdicts, to repeal the requirements that the trier of fact itemize and calculate on the verdict form economic damages before and after reduction to present value and to specify the period of time for which future damages are intended to provide compensation. This section may have the effect of simplifying the verdict form and reducing some of the confusion for jurors. The trier of fact would still be required to itemize damages as to economic and non-economic losses, and to itemize punitive damages when awarded.

Alternative Methods of Payment

Section 9 amends s. 768.78, F.S., relating to alternative methods of payment of damage awards, to conform the provisions of the alternative payment statute with the elimination of the itemization of future economic losses by the trier of fact as amended in s. 768.77, F.S. The term "trier of fact" is replaced with the term "the court" as the specific trier of fact to make the determination of whether an award includes future economic losses exceeding $250,000, for purposes of alternative methods of payment of damage awards.

Venue

Section 10 creates s. 47.025, F.S., providing that legal action against a resident contractor, subcontractor, or sub-subcontractor to be brought outside the state is void as a matter of public policy if enforcement would be unreasonable or unjust. In that event, such legal actions arising out of that contract may brought only in the State of Florida and only in either the county where the defendant resides, where the cause of action occurred, or where the property in litigation is located, unless the parties agree to the contrary after the defendant has been served.

Case Reporting

Section 11 requires the clerk of the court through the uniform state case reporting system to report to the Office of the State Court Administrator certain information from each settlement or jury verdict and final judgment in a negligence case as defined in s. 768.81(4), F.S. This reporting

requirement need be made only as deemed necessary from time to time by the President of the Senate and the Speaker of the House of Representatives.

Hearsay Testimony

Section 12 amends s. 90.803, F.S., to broaden substantially the hearsay exception for former testimony. This section allows the admission into evidence certain former testimony even if the witness is *available* to testify. In addition, the use of former testimony is no longer limited to retrials involving the same parties and facts. The former testimony exception will be applicable to testimony given as a witness at another hearing of the same or different proceeding, or in a deposition during the course of the same or another proceeding. However, use of the former testimony may be allowed only if the party against whom it is offered, a predecessor in interest, or a person with a similar interest "had an opportunity and similar motive to develop the testimony" by direct, cross, or redirect examination." However, if former testimony will not be admissible if the court finds that the testimony is not inadmissible under s. 90.402, F.S., relating to admissibility of relevant evidence, or s. 90.403, F.S., relating to exclusion of relevant evidence on grounds of prejudice or confusion.

The changes to this section bring it almost to conformity with exact language in s. 90.804, F.S., relating to an exception to the former testimony hearsay exception which allows certain former testimony into evidence provided the witness is *unavailable* to testify. Since this section expands the former hearsay exception in s. 90.803, F.S., it also may have the effect of expanding s. 90.804, F.S. Like s. 90.803, F.S., s. 90.804, F.S., as part of the Florida Evidence Code, was adopted by the Florida Supreme Court as rules of evidence to the extent that they concern court procedure.

[Note: This section incorporates verbatim the text of SB 1830, which passed as CS/HB 1597 during the 1997 Session and which the Governor subsequently vetoed. Veto notwithstanding, CS/HB 1597 became law on March 11, 1998 by veto override of the Senate and the House of Representatives. See ch. 98-2, L.O.F.]

Statute of Repose

Section 13 amends s. 95.031, F.S., to create a 12-year statute of repose applicable to product liability actions, regardless of the product. The new statute of repose requires that an action based on products liability be brought within 12 years from the date of delivery of the completed product to the original purchaser or lessee, regardless of the date on which the defect in the product was or should have been discovered. Otherwise, the action is forever barred. This provision would operate in conjunction with s. 95.11(3), F.S., relating to 4-year statute of limitations, to bar product liability actions. The 12-year statute of repose would not apply if the manufacturer knew

of a defect and concealed or attempted to conceal the defect. The 12-year statute of repose also would not apply in those product liability actions whereby the claimant's injury did not manifest itself until after the 12-year period has expired. The new statute of repose period only applies to products delivered on or after October 1, 1998.

Section 14 creates a grandfather clause to allow products liability actions that would not have otherwise been barred, but for the new statute of repose provisions, to be brought before July 1, 2003, or otherwise be subject to the new 12-year statute of repose limitation.

Governmental Rules Defense

Section 15 creates s. 768.1256, F.S., to provide for a "governmental rules defense" in product liability actions. This section provides that a manufacturer or seller could raise a rebuttable presumption that a product is not defective or unreasonably dangerous and thus, he or she would not be liable, if at the time the product was sold or delivered to the initial purchaser or user the aspect of the product that allegedly caused the harm was in compliance with applicable federal or state product design, construction, or safety standards and such standards were designed to prevent the type of harm that allegedly occurred. Non-compliance with the applicable standards or lack of agency approval, however, does not raise a presumption of liability. The term "product" is not defined and would presumably include drugs or medical devices approved by the Federal Food and Drug Administration (FDA).

Negligent Hiring

Section 16 creates s. 768.096, F.S., to provide for a rebuttable presumption that an employer was not negligent in hiring an employee if, before hiring such employee, the employer conducted a pre-employment background investigation and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the individual for the particular work to be performed or for the employment in general. The background investigation must consist of: 1) a criminal background investigation, 2) reasonable efforts to contact references and former employers, 3) completion of an employment application that elicits information on criminal convictions and civil actions for intentional tort, 4) a check of the prospective employee's driver's license record, if such a check is relevant to the type of work the employee will be conducting and the record can be reasonably obtained, and 5) an interview with the prospective employee.

Section 17 amends s. 768.095, F.S., to broaden the immunity from liability for information disclosed by an employer about a former employee to a prospective employer, to apply also to information disclosed about current employees. The bill also expands the immunity from liability to apply to information disclosed beyond information about an employee's job performance.

Further, this section narrows the grounds for subjecting the employer to liability by requiring a showing of clear and convincing evidence that the information disclosed by the employer was knowingly false or violated the person's civil rights. Under current law, the employer may also be subject to liability if the information was intentionally misleading or was disclosed with a malicious purpose. This section eliminates those two grounds.

Premises Liability

Section 18 creates s. 768.0705, F.S., providing that a person or organization owning or controlling an interest in a business premises ("business property owner") is not liable for civil damages sustained by invitees, guests, or other members of the public caused by the intentional criminal acts of third parties, other than employees or agents, if the business property owner maintains a reasonably safe premises in light of the foreseeability of the occurrence of the particular criminal act. This provision essentially restates current case law on premises liability for damages sustained by visitors from criminal acts by third parties.

Additionally, this section creates a "safe harbor" for business property owners from civil premises liability, by providing a presumption that adequate security existed for invitees, guests or other members of the public against criminal acts of third parties, other than employees or agents, that occurring in common areas, in parking areas, or on portions of the premises not occupied by buildings or structures. (Convenience stores are not included as business premises.) In order for the presumption to apply, the business property owner must have substantially complied or implemented at least six of nine statutory security measures enumerated in this section. This presumption would not be applicable in actions where criminal acts of third parties took place in the interior of buildings or structures.

Trespass

Section 19 amends s. 768.075, F.S., to expand the immunity from liability to trespassers on real property, to preclude *all* civil or criminal trespassers under the influence of drugs or alcohol from recovery of damages. The elements of trespass must still be proved by the property owner. This section also lowers the blood-alcohol threshold from 0.10 percent or higher to 0.08 percent or higher. The immunity does not apply if the property owner engaged in gross negligence or intentional misconduct.

This section defines the terms "implied invitation," "discovered trespasser," and "undiscovered trespasser." This section also delineates the duties owed by property owners to different categories of trespassers. Under this section, a property owner is not liable to an undiscovered trespasser if the property owner refrains from intentional misconduct. There is no duty to warn of dangerous

conditions. A property owner is not liable to a discovered trespasser if the property owner refrains from gross negligence or intentional misconduct and warns the discovered trespasser of dangerous conditions known to the property owner but were not readily observable by others. This section modifies the common law as it relates to constructive notice of the presence of trespassers.

This section expressly provides that it does not alter the common law doctrine of attractive nuisance which applies to children who are lured onto property by the structure or condition that injures them, and who, because of their age, are unable to appreciate the risks involved. Therefore, a property owner has a duty to protect children from dangerous conditions when he or she knows that children frequent the area, and the expense of eliminating the danger is slight compared to the risk.

This section also provides that a property owner is not liable for civil damages for negligent conduct resulting in death, injury or damage to a person attempting to commit or in the commission of a felony on the property.

Alcohol Defense

Section 20 creates s. 768.36, F.S., to prohibit recovery of any damages for injury or loss to person or property in any civil action by a plaintiff whose blood or breath alcohol level was at least 0.08 percent or whose faculties were impaired due to the influence of alcohol or drugs, at the time of injury, and, as a result was more than 50 percent at fault for his or her own harm. The section also defines the terms “alcoholic beverage” and “drug.”

Punitive Damages

Section 21 creates s. 768.725, F.S., to raise the common law burden of proof necessary in civil actions from “preponderance of evidence” to “clear and convincing evidence” to establish an entitlement to an award of punitive damages. The greater weight of the evidence burden of proof applies to the determination of the amount of punitive damages.

Section 22 amends s. 768.72, F.S., by adding subsection (2) which stiffens the common law standard of conduct necessary to hold a defendant liable for punitive damages. A defendant may only be liable for punitive damages if shown by clear and convincing evidence that the defendant was guilty of intentional misconduct or gross negligence. The term “intentional misconduct” is defined as conduct which the defendant had actual knowledge of its wrongfulness and of its high probability that it would result in injury to damage to the claimant but intentionally pursued anyway. The term “gross negligence” is defined as conduct so reckless or wanting in care that it

constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

This section also adds subsection (3) to revise substantially the common law threshold for holding an employer vicariously liable. This section specifies the criteria necessary to hold an employer, principal, corporation, or other legal entity liable for punitive damages based on the conduct of an employee or agent. The conduct must rise to the level of gross negligence or intentional misconduct, and either: a) the employer, principal, corporation or other legal actively and knowingly participated in such conduct, b) the officers, directors, or managers thereof knowingly condoned, ratified, or consented to such conduct; or c) the employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

Section 23 amends s. 768.73, F.S., relating to caps on punitive damages, to revise the current cap set at three times the amount of compensatory damages. This section imposes a cap of $250,000 in punitive damages for judgments of $50,000 or less in compensatory damages, and a cap of three times the amount of compensatory damages or $250,000, whichever is higher, for judgments of more $50,000 in compensatory damages. This section eliminates the presumption that an award exceeding the cap is excessive but adds that in order for an award of punitive damages to exceed the cap, the claimant must prove by clear and convincing evidence that the defendant engaged in intentional misconduct in addition to the existing requirement that the award would not be excessive in light of the facts and circumstances of the case.

This section also adds a limitation to multiple awards of punitive damages against the same defendant in any civil action if that defendant can establish that punitive damages have previously been awarded against the defendant in any state or federal civil for the alleged harm from the same act or single course of conduct for which claimant seeks damages and that the defendant's act or course of conduct has ceased. The defendant must establish the inapplicability of punitive damages before trial. A subsequent award of punitive damages may be made if the court determines by clear and convincing evidence that the amount of prior awards was insufficient to punish the defendant's behavior, with the subsequent award to be reduced by the amount of the earlier award or awards.

The amendments in this section apply to all civil actions pending on October 1, 1998, in which the initial trial or retrial of the action has not commenced and to all civil actions commenced on or after that date.

Section 24 creates s. 768.735, F.S., to exempt certain abuse actions or actions arising under ch. 400, F.S., relating to nursing homes and other health related facilities, from a number of the

new punitive damages provisions. Any civil action based upon child abuse, abuse of an elderly person, or abuse of a developmentally disabled, or any civil action arising under ch. 400, F.S., are exempt from the new provisions in s. 768.72(2)-(4), F.S. (relating to types of conduct necessary for an award of punitive damages, and vicarious liability by employers), s. 768.725, F.S., (relating to caps on punitive damages), and s. 768.73, F.S. (relating to the burden of proof required for an award of punitive damages).

The term "developmentally disabled" is not defined. A definition exists for the term "disabled adult" that is defined in ch. 415, F.S., to mean any person 18 years or older who suffers from physical or mental incapacitation due to a developmental disability organic brain damage, or mental illness, or who has one or more physical or mental limitations substantially affecting the performance of normal activities. In addition, actions based upon neglect or exploitation of a child, an elderly person, or a disabled adult (as defined in ch. 415, F.S.) would not likely be covered by the term "abuse" and thus, would not be exempt from the new limitations on punitive damages provisions.

Section 25 creates s. 768.736, F.S., to prohibit application of ss. 768.725 and 768.73, F.S., to preclude the recovery of punitive damages by any defendant who, at the time of the act or omission was under the influence of any alcoholic beverage or drug to the extent that the defendant's normal faculties were impaired, or who had a blood or breath alcohol level of 0.08 percent or higher. This would mean that the provisions on burden of proof and limitation of punitive damages would not apply.

Joint and Several Liability

Section 26 amends s. 768.81, F.S., relating to comparative fault and apportionment of damages by eliminating automatic application of joint and several liability for actions with total damages of $25,000 or less. This repeal has the effect of eliminating joint and several liability for all non-economic damages. Subsection (3) is amended to add that in order for joint and several liability to apply instead of comparative fault, the defendant's percentage fault must not only equal or exceed the claimant's percentage fault, but the defendant's percentage fault must also exceed 20 percent. Subsection (3) also provides a cap of $300,000, on that portion of the economic damages for which joint and several liability would only apply. It is clarified that the doctrine of comparative fault would be applied to the remainder of the economic damages, if any, based on the defendant's percentage fault, and that a claimant is not entitled to recover more from the defendant(s) than the total amount awarded to that claimant.

This section also codifies in part, *Fabre* and *Nash*, to require a defendant who alleges a non-party to be at fault, to affirmatively plead that defense, and absent a showing of good cause, identify that non-party or describe as specifically as practicable, in a motion or in an initial pleading, subject to amendment any time before trial in accordance with the rules of court. Additionally, in order to

include the non-party on the verdict form, the defendant must prove at trial the non-party's fault in causing the claimant's injuries by a preponderance of the evidence.

Vicarious Liability

Section 27 amends s. 324.021, F.S., relating to the financial responsibility of an operator or owner of a motor vehicle. This section limits the vicarious liability of a motor vehicle owner or a rental company that rents or leases motor vehicles. Subsection (9)(b)2. is added to provide that unless there is a showing of negligence or intentional misconduct on part of a motor vehicle owner or rental company that rents or leases motor vehicles for a period less than 1 year, the vicarious liability of the lessor to a third party for injury or damage to a third party due to the operation of the vehicle by an operator or lessee is limited to $100,000 per person and $300,000 per occurrence for bodily injury and $50,000 for property damage. If the lessee or operator of the motor vehicle is uninsured or has less than $500,000 combined property and bodily injury liability insurance), then the lessor is liable for an additional cap of $500,000 in economic damages which shall be reduced by amount actually recovered from the less, the operator or insurance of the lessee or operator.

Subsection (9)(b)3. is added to apply the same vicarious liability limitations to owners (who are natural persons) who lend their motor vehicles to permissive users other than relatives residing in the same household. Subsection (9)(c) is added to exclude owners of motor vehicles that are used for commercial activity, other than rental companies that rent or lease motor vehicles, from the limits on vicarious liability in subsections (9)(b)2. and (9)(b)3. The term "rental company" is defined to include an entity that is engaged in the business of renting or leasing motor vehicles to the general public and rents or leases a majority of its vehicles to persons with no direct or indirect affiliation with the rental company, and a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days.

This section has the effect of limiting the amount of damages that may be awarded under Florida's common law dangerous instrumentality doctrine, which currently allows a motor vehicle owner to be held liable for injuries caused by the negligence of someone entrusted to use the motor vehicle.

Civil Enforcement/Nursing Home Residents

Section 28 amends s. 400.023, F.S., relating to civil enforcement of rights of nursing home residents. This section adds subsection (6) to require mediation by the parties in actions based upon this section as prerequisite to recovery of attorney's fees. Mediation must be held within 120 days of filing a responsive complaint or defense motion in response to a complaint. This section details the procedure for setting and conducting the mediation. If no settlement is reached, then the last offer made by the defendant at the mediation is reduced to writing to include the

amount of the offer, the date of the written offer, and the date of the offer's rejection. If the amount awarded in damages, exclusive of attorney's fees, is equal to or less than the last written offer, then the plaintiff is not entitled to recover any attorney's fees. The mediation provisions apply to all causes of action, with the exception of actions for injunctive relief, accruing on or after October 1, 1998.

This section adds subsection (7) to prohibit the discovery of financial information for purposes of valuing punitive damages in any civil action under this section unless the plaintiff proffers or shows evidence in the record that a reasonable basis exists to support a punitive damages claim.

This sections also adds subsection (8) to require, in addition to any other standards for punitive damages, that any award of punitive damages must also be reasonable in light of the actual harm suffered by the nursing home resident and the egregiousness of the conduct that caused the actual harm to the resident.

Attorney Advertising

Section 29 establishes legislative findings and intent with respect to the regulation of advertising of legal services by attorneys. The U.S. Supreme Court has declared that states must have a substantial governmental interest to justify regulation of truthful commercial speech, such as advertising. This section declares the Florida Legislature's interest to be in protecting citizens' privacy, ensuring that advertising provides consumers with thorough information, and ensuring that advertising does not reflect poorly on the legal profession, the legal system, or the administration of justice. This section also cites Florida Bar research and recognition by the U.S. Supreme Court as supportive of the public views that legal advertising and solicitation are intrusive, contribute to poor images of the profession and the legal system, and, in some cases, provide inadequate information. The section includes a legislative finding that electronic advertising and television advertising are not useful or factual, and diminish the public's respect for the fairness and integrity of the legal system. The Legislature requests that the Florida Supreme Court regulate attorney advertising to advance the state's public policy interests as declared, and that the Florida Bar form a task force to address the adoption of rules prohibiting advertising.

Section 30 requests the Florida Supreme Court to consider adoption of rules to effectuate the legislative expression of public policy set forth in the act.

Actuarial Analysis

Section 31 requires the Department of Insurance (DOI) to contract with a national independent actuarial firm to conduct an actuarial analysis of the expected reduction in judgment and related costs resulting from the litigation reform provisions in this act. The analysis must be based on credible loss cost data derived from settlement or adjudication of liability claims accruing after October 1, 1998, and must include an estimate of the percentage decrease in judgments, settlements and costs by type of coverage affected by the act. Liability claims insured under private passenger automobile insurance ("personal auto insurance") and personal line residential property insurance ("homeowners insurance") are excluded from the analysis. The analysis report must be submitted to DOI by March 1, 2001. The analysis report may be admitted into evidence in any proceedings if the actuary providing the report is available to testify regarding the report's preparation and validity. Each party to such proceeding shall otherwise bear its own cost.

The DOI must subsequently review rate filings of insurers, and underwriting profits or losses for Florida liability insurance businesses, and require any rate modifications deemed necessary, in accordance with applicable rating law. Liability insurers other than personal auto insurers and homeowners insurers are required to submit their first rate filing to include specific data on judgments, settlements, and costs after March 1, 2001, for the purpose of enabling DOI and the Legislature to monitor and evaluate the effects of the act.

It is clarified that the provisions of this section do not limit the authority of the DOI to order an insurer to refund excessive profits to policyholders as refunds or credits, as provided in s. 627.066, F.S., relating to motor vehicle insurance, and s. 627.215, F.S., relating workers' compensation, employer's liability, commercial property and commercial casualty insurance (Note: The refund of excessive profits provision as applied to commercial property and commercial casualty insurance ceased on January 1, 1997).

Section 32 provides a severability clause.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 24-16; House 70-46

FLORIDA'S MEDICAID THIRD-PARTY LIABILITY LAW

HB 3077 — Medicaid Provider Fraud

by Reps. Goode and Dockery (CS/SBs 1192, 628, & 1412 by Rules & Calendar Committee and Senators Clary, Williams, Dyer, Ostalkiewicz and Horne)

This bill reverses amendments made in 1994 to the Medicaid Third-Party Liability Act, essentially restoring the provisions governing third-party reimbursement of Medicaid expenses to their condition prior to the 1994 Regular Session. Among other changes, the bill has the effect of: 1) reinstating the availability of certain affirmative defenses for use by liable third parties in Medicaid recovery actions by the state, 2) removing specific authority given to the state to pursue in one proceeding reimbursement for medical services provided to multiple Medicaid recipients, and 3) eliminating the state's ability to use statistical evidence to prove causation and damages in such a consolidated proceeding.

The bill specifies that the provisions of the bill operate retroactively to July 1, 1994, with an exception for any civil actions filed prior to March 1, 1998. Any such filed action and any related matters including the enforcement of any settlement agreement would remain covered and shall proceed under the law as it existed on the date of the filing of such action. If the settlement is overturned, canceled, terminated or materially altered by subsequent court order, such action remains covered and shall proceed under the law as it existed on the date the action was filed.

This bill also specifies that any civil action or proceeding initiated on or after July 1, 1994, that seeks to pursue or establish liability under the 1994 amendments to the Medicaid Third-Party Liability Act may not be maintained, continued, or enforced.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 113-0

Senate Committee on Transportation

TRANSPORTATION

SB 1750 — Old Keys Bridges
by Senators Jones and Diaz-Balart

This bill amends ch. 86-304, L.O.F., to implement the recommendations of the Old Keys Bridges Task Force established by Governor Chile's Executive Order 97-253. Title to the Old Keys Bridges located in Monroe County is given to the Board of Trustees of the Internal Improvement Trust Fund, except the portion of the Seven Mile Bridge from Knights Key to Pigeon Key which remains with the Department of Transportation. The bill allows the board to lease the bridges primarily for a public purpose and in compliance with the recommendations of the task force, the local comprehensive plan, and applicable zoning requirements.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

CS/HB 3061 — Airports/Licensing Exemption
by Governmental Operations Committee, Rep. Minton and others (CS/SB 110 by Transportation Committee and Senator Hargrett)

This bill (Chapter 98-17) exempts certain airports used exclusively for aerial application or spraying of crops on seasonal basis from provision of law requiring the Department of Transportation to approve the airport site and the requirements for licensing of airports.

These provisions became law without the Governor's signature on April 22, 1998.
Vote: Senate 38-0; House 118-0

HIGHWAY SAFETY

CS/HB 1377 — Motor Vehicle Emissions

by Transportation Committee, Reps. Fuller, Healey and others (CS/CS/SB 374 by Natural Resources Committee, Transportation Committee, and Senators Klein and Crist)

This bill prohibits the Department of Highway Safety and Motor Vehicles from entering or extending any motor vehicle inspection contract until directed by program specific legislation. The department is directed to hire an independent consultant who will study and recommend to the Legislature before January 1, 1999, appropriate request-for-proposal specifications and fee ranges. If no specific legislation is passed during the 1999 legislative session, the department may enter one or more contracts for no longer than 2 years. The contracts shall be for a biennial inspection program for vehicles five model years and older using the basic test. A fee of $10 may be imposed if approved through the budget amendment process and noticed to the Legislature.

This bill appropriates $125,000 from the department's trust fund for the study.

If approved by the Governor, these provisions take effect 60 days after sine die.
Vote: Senate 40-0; House 118-1

CS/SB 1498 — Disabled Persons/Motor Vehicle Use

by Transportation Committee and Senators Forman, Campbell, Meadows, Casas and Myers

The bill amends s. 316.1955, F.S., to clarify that disabled parking access aisles are reserved for the exclusive use of persons who have disabled parking permits and who require extra space to deploy a mobility device, lift, or ramp, and that persons who have disabled parking permits may be penalized for parking in access aisles. The section also provides that signs designating disabled parking spaces must be 84 inches above the ground to the bottom of the sign, and that only a warning may be issued for unlawfully parking in a designated disabled parking space if there is no above-grade sign.

Further, the section is amended to provide that obstructing a disabled parking space, curb cut, or access aisle carries the same penalties as imposed for illegally parking in a disabled parking space. Section 316.1958, F.S., is amended to provides that if an individual is required by law to have a Florida vehicle registration, the disabled parking permit or license plate from another state or jurisdiction is not valid for parking in spaces reserved for persons with disabilities.

Section 316.1964, F.S., is amended to clarify that persons displaying a valid disabled parking permit may park in *on-street* metered parking spaces without charge for four hours, but may be charged for parking in a facility or lot that provides timed parking spaces.

The bill amends s. 318.18, F.S., to provide that the fine for illegally parking in a disabled parking space may be waived if the person provides to the law enforcement agency which issued the citation, proof of ownership of a valid disabled parking permit. The section requires a law enforcement officer to sign an affidavit of compliance that persons who were issued the citation have demonstrated that they do have a valid disabled parking permit.

Sections 320.0842 and 320.0848, F.S., are amended to provide that a person who qualifies for a disabled parking permit or a disabled veteran's license plate may be issued an international wheelchair user symbol license plate instead, which entitles the user to all the privileges afforded to disabled parking permit holders.

Section 320.0843, F.S., is amended to clarify that any owner of a motor vehicle weighing up to 8,000 pounds is eligible to apply for a disabled parking permit or an international wheelchair user symbol license plate.

Section 320.0848, F.S., is further amended to provide that, to be considered for certification for a disabled parking permit, the applicant must be legally blind or have a condition which renders them unable to walk 200 feet without stopping to rest. The section is further amended to authorize out-of-state physicians to certify patients as disabled on the disabled parking permit application, and that, beginning April 1, 1999, persons certified as permanently disabled by a physician will not be required to show such certification upon renewal.

The section is amended to provide a $1.00 fee for the replacement of a lost or stolen disabled parking permit, and to authorize the waiver of the fee if the permit holder shows a police report demonstrating that the permit was stolen. The section is amended to provide that the date of expiration must be color coded on the permit to distinguish between long-term and temporary permits and must be in large print. Otherwise, the temporary permit and the long-term permit must be identical including the inclusion of the state identification card or driver's license number.

The section provides that any person who uses a disabled parking permit that belongs to another person while the owner of the permit is not being transported, is guilty of a misdemeanor of the second degree. The bill provides that a law enforcement officer may confiscate a parking permit that is expired, reported lost or stolen, or defaced, or does not display a personal identification number.

The bill provides that beginning April 1, 1999, permit numbers of all confiscated disabled parking permits must be submitted to the Department of Highway Safety and Motor Vehicles to be noted on the permit holder's record. If two permits issued to the same person have been confiscated, the

Department of Highway Safety and Motor Vehicles must refer the information to the Florida Abuse Hotline for an investigation of potential abuse, neglect, or exploitation of the owner.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 40-0; House 119-0

HB 3275 — Traffic Violations and Bad Checks

by Rep. Arnall and others (CS/SB 190 by Transportation Committee and Senators McKay and Lee)

Driver's Licenses

This bill amends s. 322.142, F.S., to authorize the Department of Highway Safety and Motor Vehicles to sell copies of photographs, electronically stored photographs, or digitized images provided such items are to be used solely for the prevention of fraud, including, use in mechanisms intended to prevent the fraudulent use of credit cards, debit cards, or checks, or fraud in other forms of financial transactions.

This bill amends s. 322.251, F.S., to establish requirements for the reinstatement of driving privileges where a person's driver's license has been suspended as a result of passing worthless checks. The Department of Highway Safety and Motor Vehicles and the Department of Law Enforcement are directed to jointly develop a plan to ensure the identification of persons who are the subject of a warrant or capias for passing worthless bank checks and the identification of these person's driver's license records.

This bill amends s. 322.26, F.S., to provide for the permanent revocation of a driver's license if a person is convicted of murder resulting from the operation of a motor vehicle, DUI manslaughter where the conviction represents a subsequent DUI-related conviction, or a 4th or subsequent DUI offense. In such cases, the reinstatement of driving privileges is specifically prohibited.

This bill amends s. 322.283, F.S., to provide that for purposes of calculating a person's eligibility for driver's license reinstatement, the date of release from incarceration must be deemed the date the suspension or revocation was imposed, and provides for notice to the Department of Highway Safety and Motor Vehicles by correctional authorities. The bill also revises the element of knowledge for purposes of driving with a suspended, canceled, revoked, or disqualified driver's license, and establishes penalties for driving with a permanently revoked driver's license.

Finally, this bill eliminates the authority of the Department of Highway Safety and Motor Vehicles to suspend the driver's license of a motor vehicle owner not complying with the financial security

requirements provided for in ss. 324.022 and 627.733, F.S. The effective date of this section is July 1, 2000.

Passing Worthless Bank Checks

This bill creates s. 832.09, F.S., to provide for the suspension of driving privileges for any person who is the subject of a warrant or capias for passing worthless bank checks. In addition, this bill creates s. 832.10, F.S., to authorize the use of private debt collectors by the payee in instances of worthless bank checks.

Traffic Violations and Motor Vehicle Licenses

This bill amends s. 318.18, F.S., to provide that other than in a school zone, persons exceeding the posted speed limit by 1-5 miles per hour would receive a warning rather than a $25 citation. In addition, fines for speed violations will be doubled for construction zone violations only if construction personnel are present or operating equipment on the road or immediately adjacent to the road under construction.

This bill amends s. 320.07, F.S., to provide that a person whose motor vehicle or motor home registration has been expired for more than 6 months will, upon the first offense, be issued a noncriminal infraction. Upon a conviction for a second or subsequent offense, the person will be deemed guilty of a misdemeanor of the second degree.

If approved by the Governor, these provisions take effect July 1, 1998, except as otherwise indicated.
Vote: Senate 39-0; House 111-3

CS/HB 3345 — Wrecker Operator/Immobilizing Autos

by Community Affairs Committee, Rep. Lacasa and others (CS/SB 710 by Transportation Committee and Senators Silver, Lee and Forman)

Section 1.1, F.S., is amended to define the term “wrecker operator” for purposes of the entire Florida Statues, as any person or firm regularly engaged for hire in the business of towing or removing motor vehicles.

Section 320.04, F.S., is amended to authorize tax collectors and tag agencies to charge a $1 service fee for license plate validation stickers and mobile home stickers issued from a printer dispenser machine.

Section 713.78, F.S., is amended to authorize wrecker operators to place a lien on vessels to recover towing and storage costs, and provides that immobilization of a vehicle does not authorize any person to claim a lien on a vehicle for fees or charges connected with the immobilization of the vehicle.

Section 320.08, F.S., is amended to clarify that wreckers which register at a flat rate of $30 may also tow vessels as well as abandoned, stolen-recovered, or impounded motor vehicles, and wreckers which register by gross vehicle weight may also tow vessels and any other cargo.

Hold orders

The bill provides that a law enforcement officer, or court may put a hold order on a vehicle which is stored in a wrecker operator's storage facility, for a period not to exceed five days, when the officer has probable cause to believe that the vehicle was used in an illegal act or is evidence in a crime. The wrecker operator must comply with the hold order and may not release the vehicle.

If the law enforcement agency wishes to continue to hold the vehicle beyond five days they may move the vehicle to another lot, but must hold the vehicle until the owner pays the wrecker operator for all accrued towing and storage charges. If the law enforcement agency chooses to hold the vehicle at the wrecker's storage facility beyond five days, the agency will be responsible for payment of the storage fees for the extended period, and the owner of the vehicle is responsible for payment for the first five days. However, the law enforcement agency will be responsible for all towing and storage charges if a court finds that the agency did not have probable cause to impound or put a hold order on the vehicle. The vehicle owner will be responsible for all towing and storage charges if found guilty of, or pleads nolo contendere to, the offense that resulted in a hold being placed on their vehicle.

Authorized and Unauthorized Wreckers

The bill defines an "authorized wrecker operator" as any wrecker operator who has been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle. An "unauthorized wrecker operator" is defined as a wrecker operator who has not been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle. A "wrecker operator system" is defined as a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker operator system.

The bill provides that in a county or municipality that operates a wrecker operator system for the removal and storage of wrecked, disabled, or abandoned vehicles, which system operates in a manner similar to the rotation operated by the FHP, a wrecker may not solicit or offer towing services as a result of information received by police radio. A violation of this provision is a noncriminal violation. Further, an unauthorized wrecker may not give false information in rendering towing services at the scene of an accident, or falsely identify themselves as under contract for emergency towing services with the governmental unit having jurisdiction over the accident scene. A violation of these provisions is a misdemeanor of the second degree.

The bill provides that an unauthorized wrecker may offer towing services when the operator of a vehicle signals the wrecker for assistance. However, the unauthorized wrecker must disclose the charges for towing and storage and must inform the operator that they are not an authorized wrecker. A violation of this provision is a misdemeanor of the second degree.

The provisions of this bill do not prohibit the owner of a motor vehicle from contracting with any wrecker operator for wrecker services, regardless of whether the wrecker operator is an authorized member of the rotation system.

The bill amends ss. 125.0103 and 166.043, F.S., to require local governments to enact ordinances to establish maximum fees which may be charged for: the towing of vehicles from or immobilization of vehicles on private property; the removal and storage of wrecked or disabled vehicles from an accident scene; or for the removal and storage of vehicles, in the event the owner or operator is incapacitated, unavailable, leaves the procurement of the wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle.

DUI and Driving on a Suspended License

The bill amends s. 316.193, F.S., relating to vehicle impoundment, and s. 327.35, F.S., relating to vessel impoundment to allow the court to impound or immobilize a vehicle or vessel currently owned, leased or rented by a person convicted of a DUI offense. The bill requires as a condition of probation the impoundment or immobilization of the vehicle or vessel used in a DUI offense or another vehicle or vessel currently owned by a person convicted of a DUI offense. The period of immobilization or impoundment will be 10, 30, or 90 days depending on the number of DUI convictions. The bill provides for dismissal of the impoundment order against a vehicle or vessel used in the offense when the vehicle or vessel was stolen or has changed owners since the offense was committed. The bill also expressly reiterates that the period of impoundment or immobilization cannot be concurrent with imprisonment.

Section 322.34, F.S., is amended to provide that after a vehicle is impounded or immobilized for having been driven by an operator who was driving on a suspended or revoked license, the towing service which has the vehicle in its possession must notify the registered owner and all persons of record claiming a lien against the vehicle by certified mail or express courier service within seven business days. If the vehicle is a rental vehicle, the rental company may pass the charge to the renter. The bill provides that, when a person's vehicle is impounded or immobilized, and that person does not prevail on a complaint that the vehicle was wrongly taken, the owner must pay all accrued charges for towing and storage.

Wrecker Operator Liability

Section 713.78, F.S., is further amended to limit the liability of a wrecker operator when towing or storing a vehicle. The bill provides that a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, providing the wrecker operator uses reasonable care. The wrecker operator is not liable for damages when complying with the lawful directions of a law enforcement officer to remove a vehicle which is a hazard or obstructing the normal movement of traffic.

The section further provides that any law enforcement agency requesting that a motor vehicle be removed from an accident scene, street, or highway must conduct an inventory and prepare a written record of all personal property found in the vehicle before the vehicle is removed by a wrecker operator. The wrecker operator may not be held liable for the loss of personal property which was not identified on the inventory record prepared by the law enforcement agency.

If approved by the Governor, these provisions take effect October 1 of the year in which enacted. *Vote: Senate 39-0; House 116-0*

HB 3509 — Specialty License Plate Requirements

by Rep. Constantine (SB 1250 by Senator Burt)

The bill amends s. 320.08053, F.S., deleting the speciality license plate requirement that 10,000 signatures be submitted as part of the application process. In lieu of the signatures, the bill requires the results of a scientific sample survey be submitted as part of the application process in order to better gauge potential interest and sales. The survey results must indicate that at least 15,000 motor vehicle owners intend to purchase the proposed specialty license plate at the increased cost. The application fee is increased to $60,000 except where the application process has been started prior to the effective date of the act..

The bill amends s. 320.08056, F.S., to revise the requirements for discontinuing production of low-volume specialty plates except collegiate plates, to require that a specialty license plate be discontinued if less than 8,000 plates are issued by the 5th year of sales. Distribution of specialty plate proceeds will be discontinued if an audit or expenditure report is not submitted by the recipient organization or if the funds are not properly spent. If the organization fails to comply within 12 months, proceeds from that specialty plate are deposited into the Highway Safety Operating Trust Fund and used to offset DHSMV's costs related to specialty license plates.

The bill also establishes accountability guidelines in s. 320.08062, F.S., for organizations seeking to establish a voluntary contribution or "check off" on a motor vehicle registration or driver's license application. Audits are required for all organizations receiving funds through voluntary contributions. The bill also establishes guidelines for the discontinuance of certain voluntary contributions.

Finally, the bill increases the annual use fee for the manatee license plate from $15 to $20 and the fees are deposited into the Save the Manatee Trust Fund within the Department of Environmental Protection (DEP). The funds are to be used for manatee research, protection and recovery, and manatee facilities as provided in s. 370.12(5),F.S. The Save the Manatee Trust Fund is exempted from the general revenue service charge required by s. 215.20(1), F.S.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 34-5; House 116-0

HB 4713 — Federal Law Enforcement TF/HSMV

by Transportation & Economic Development Appropriations and others (SB 2242 by Senator Hargrett)

This bill creates s. 932.7051, F.S., to create the Federal Law Enforcement Trust Fund within the Department of Highway Safety and Motor Vehicles. Funds and revenues received by the Department from federal forfeiture actions pursuant to 21 U.S.C. and all federal criminal proceedings, including criminal, administrative, or civil forfeiture proceedings, will be deposited into this trust fund. This will allow the Department to comply with federal guidelines which require the Department to separately account for these federal funds.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 114-0

CS/SB 368 — Motorcycle Safety Education

by Transportation Committee and Senator Kurth

This bill amends s. 215.20(l), F.S., to exempt the $2.50 Motorcycle Safety Education fee from the 7 percent general revenue fund service charge. The amount exempted is to be retained in the Highway Safety Operating Trust Fund and used to fund the Florida Motorcycle Safety Education program.

This bill amends s. 322.0255, F.S., to delete the requirement that the reimbursement fee be paid to the course provider upon successful completion of the course by the student. Instead, the reimbursement fee would be paid when a student begins the *on-cycle* portion of the course. The bill also deletes the $50 per student cap on the reimbursement that is paid to the course provider.

If approved by the Governor, these provisions take effect July 1, 1998.
Vote: Senate 37-0; House 116-0

Senate Committee on Ways and Means

SB 2454 — Distribution of Tax Revenue to Persons Entitled to an Homestead Exemption

by Ways & Means Committee and Senator Burt

The bill provides that each person who, as of June 30, 1998, was entitled to and received a homestead exemption, for tax year 1998, is entitled to a distribution of $50. Every property appraiser must provide to the Department of Revenue by July 15, 1998, a certified list of all homestead property in his or her county as of June 30, 1998. Distributions must be sent to qualified persons as soon as practicable, but no later than October 1, 1998.

Each recipient of the distribution may elect to return the distribution and designate the application of the $50 to the state for one of the following uses: education; childrens' health care; criminal justice; or transportation. A delinquent child-support obligor who is entitled to receive a distribution will have the amount of the delinquency withheld from the rebate.

The sum of $184 million is appropriated from the General Revenue Fund to the Department of Revenue for FY 1998-99 for distribution to eligible holders of homestead tax exemptions. If the $184 million is insufficient, the bill authorizes the Administration Commission to transfer sufficient funds from the Working Capital Fund.

Any action to challenge the validity or constitutionality of the rebate must be brought within 60 days after the effective date of the bill, or else the challenge is barred. If any such proceeding is initiated, distribution of the rebate shall be held in abeyance until a judicial determination has become final and the time limit for any further proceedings has expired.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-2; House 93-22

CS/CS/HB 4407 — Florida Residents' Tax Relief Act of 1998

by Finance & Taxation Committee, Governmental Operations Committee, Reps. Byrd, Fasano and others (CS/SB 1900 by Ways & Means Committee and Senator Cowin)

The bill establishes the "Florida Residents' Tax Relief Act of 1998," providing that no sales and use tax shall be collected on sales of clothing having a taxable value of $50 or less during the period of 12:01 a.m., August 15, 1998, through midnight, August 21, 1998. Clothing is defined to

mean any article of wearing apparel, including footwear, intended to be worn on or about the human body and does not include watches, watchbands, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands or belt buckles. The exemption does not apply to sales within a theme park or entertainment complex, or within a public lodging establishment.

The bill has an estimated non-recurring revenue impact of $18.1 million, of which, $16.3 million is expected to be General Revenue.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 36-3; House 114-1

CS/SB 1450 — Intangible Personal Property Taxes

by Ways & Means Committee and Senators Bankhead, Lee, Clary, Hargrett, Sullivan, McKay, Crist and Cowin

This bill amends ss. 199.023, 199.052, 199.175, 199.185, 199.104, 199.282, 199.292, 220.02, 220.68, and 624.509, F.S. It makes numerous changes to the intangible tax:

- The minimum amount of tax due before a return and payment are required is raised from $5 to $60 dollars.

- A definition is provided for "accounts receivable" and, beginning January 1, 1999, one-third of accounts receivable are exempted from the intangible tax. The bill expresses the intent of the Legislature to increase the exempt amount to two-thirds on January 1, 2000, and to completely exempt accounts receivable on January 1, 2001, pursuant to future legislative action.

- Banks, savings associations and insurance companies are exempted from intangible tax for taxes due on or after July 1, 1999. Additionally, the credits for intangible tax paid which are given to banks, savings associations, and insurers are repealed for tax years beginning on or after December 31, 1999.

- Penalties for late filing, and late payment are capped at a combined total of no more than 10 percent per month and no more than 50 percent of the total tax due. The penalty for under reporting and undervaluation is reduced from 30 percent to 10 percent.

- Tax exemptions are provided for credit card receivables, owned or controlled by Florida banks, which would not otherwise be taxable; stock options granted to an employee by an employer, if the employee cannot transfer, sell or mortgage the options; and interests in real estate

securitizations which are ultimately secured solely by mortgages, deeds of trust, or other liens upon real property.

- The list of qualified individual retirement accounts exempt from tax is expanded to include recently created forms of these accounts, particularly Roth IRAs.

- The revenue sharing of funds between the counties and the state is modified to hold counties harmless on their distribution from intangibles tax revenues.

The final impact of these changes is to reduce General Revenue in 1998-99 by $57.7 million. The recurring loss is $65.2 million.

If approved by the Governor, these provisions take effect July 1, 1998, and apply to taxes due on or after January 1, 1999.
Vote: Senate 37-0; House 117-0

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