CARLTON FIELDS

ATTORNEYS AT LAW

2003 Florida Legislature Post-Session Report

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

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2003 Florida Legislature Post-Session Report

(Regular Session and Special Session A)

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How To Use This Report

This is a summary of significant legislation that passed in the 2003 Regular Session and Special Session A of the Florida Legislature. Please note that this report does not summarize every piece of legislation enacted, nor is it meant to be an exhaustive section-by-section analysis of those bills included. The goal of this report is to provide a general overview of legislative actions that are likely to be of interest to our clients, attorneys, and consultants.

All of the bills summarized in this report have been passed by the Regular Session and Special Session A of the 2003 Florida Legislature. As of this writing, many of them are awaiting review of the Governor and are subject to the Governor's veto authority. The reader is therefore encouraged to check the ultimate status of any bill by visiting the Legislature's web site *(www.leg.state.fl.us)*. Please select the "Enrolled" (ER) version of the bill. Chapter Law citations and final legislative staff analyses of bills are also available on the Legislature's web site. Special Session A bills are noted with an "A" after the bill number, e.g., 120-A. This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives.

A Word About Additional 2003 Special Legislative Sessions

A few major issues were left pending at the close of the Regular 2003 Legislature on May 2, 2003, and Special Session A on May 27, 2003. Chief among them is medical malpractice insurance reform. The Legislature is expected to meet again in 2003 in at least one additional special session beginning June 16, 2003, to address this, and perhaps, other issues. This report does not include the legislative outcome of those issues.

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Lawyers and consultants in our Government Law and Consulting Practice Group are experienced, skilled, and have a thorough understanding of government's inner workings at all levels. Our network of relationships are sought by businesses and associations nationwide to address legislative, administrative, procedural, or political issues, and to coordinate public relations and grass-roots efforts. This resource gives you access to insightful and effective strategic planning advice, and governmental affairs counseling in areas of lobbying, and regulatory and administrative law.

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Our knowledge and relationships extend to Florida's executive branch – those agencies and commissions responsible to the executive branch and to local governments throughout the state. We represent regulated industries and others in administrative proceedings, parliamentary, regulatory, or other procedural issues. We also assist in obtaining proper permits and licenses, and can advise and provide representation regarding the range of options available for addressing concerns raised by agency rulemaking and rule challenges.

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Education

EDUCATION

- **SB 30-A**

Quality Education/
Class-size Reduction

This bill, passed during Special Session A, contains provisions to implement the amendment to Section 1, Article IX of the State Constitution approved by voters in the November 2002 General Election (Amendment No. 9 to reduce class size). The amendment establishes the maximum number of students in certain grade groups assigned to a teacher teaching in a public school classroom beginning in the 2010-2011 school year. In addition the amendment requires that beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the maximum does not exceed the requirement in 2010-2011.

The bill defines the terms "core-curricula courses" and "extra-curricula courses" for the purpose of identifying courses that are subject to class size requirements; incorporates the class size limits set by the constitution as amended; provides implementing procedures for reducing the average number of students per classroom by at least two students per year; provides procedures for school districts and the Department of Education to determine average class size and to monitor required reductions; outlines options available to a school district in meeting the class size requirements; and provides accountability measures to ensure implementation.

The bill creates a Class Size Reduction Operating Categorical Fund and provides for the allocation and use of appropriated funds for reducing average class size by at least two students per year beginning with the 2003-2004 fiscal year.

The bill creates a Class Size Reduction Lottery Revenue Bond Program and provides for the allocation and use of appropriated funds for class size reduction. Two capital outlay programs are created: (1) The Classrooms for Kids Program provides for funds to be allocated to all school districts based on a statewide formula (same formula as used for the 1997 Classrooms First Capital Outlay Program); (2) The District Effort Recognition Capital Outlay Program provides for funds to be allocated to school districts in which the district's voters by referendum have approved supplemental local revenue for public school capital outlay. All districts will have equal opportunity to participate in this program with funds allocated based on the statewide formula prescribed in this bill.

The bill revises the costs per student station in constructing educational facilities.

The bill amends the corporate income tax credit scholarship program to provide a cap of $88 million in annual tax credits and carry-forward of tax credits. Participating corporations may carry-forward their unused tax credit for up to three years by submitting a request. The bill creates accelerated high school graduation options to include the standard high school graduation requirements, a college preparatory program, and a career preparatory program. The bill amends several statutes to assist with teacher recruitment and retention including extending DROP to 96 months for instructional personnel in K-12 and at the Florida School for the Deaf and the Blind at the discretion of the

district school superintendent or Board of Trustees of the Florida School for the Deaf and the Blind, respectively. The bill establishes a differentiated pay model for instructional personnel with four levels: associate teacher, professional teacher, lead teacher, and mentor teacher.

The bill creates The Florida Business and Education in School Together (Florida BEST) program. Businesses are encouraged to house k-3 public schools in business facilities.

Effective date: July 1, 2003, except as otherwise provided within the bill.

● HB 51-A
State University System/ Board of Governors

In the 2002 General Election, Floridians amended the State Constitution to require a single state university system comprising all public universities, with a board of trustees administering each university and a board of governors governing the state university system.

The bill, passed during Special Session A, amends the Florida Statutes to reflect the adoption of this constitutional amendment by establishing the Board of Governors as a body corporate comprised of: 14 members appointed by the Governor and subject to confirmation by the Senate; the Commissioner of Education; the chair of the advisory council of faculty senates or the equivalent; and the president of the Florida student association or the equivalent. The appointed members serve staggered seven year terms.

The bill revises statutory provisions relating to university boards of trustees. Each university will be administered by a university board of trustees comprised of 13 members, 6 of whom are appointed by the Governor and 5 of whom are appointed by the Board of Governors. These 11 members are subject to confirmation by the Senate. The chair of the faculty senate or the equivalent, and the president of the student body of the university serve as the final 2 members of the board. The appointed members serve staggered 5 year terms.

The bill authorizes state universities to establish a nonrefundable admissions deposit for undergraduate, graduate, and professional degree programs. The admissions deposit is assessed at the time of a student's acceptance to the institution, may not exceed $200, and will be applied toward the tuition of the student if the student enrolls in the institution.

The bill caps the annual compensation of state university presidents that can be paid from public funds at $225,000. The bill defines the terms "remuneration," "public funds," and "cash-equivalent compensation" for purposes of the cap.

Effective date: July 1, 2003.

● HB 55-A
Charter Schools

The bill, passed during Special Session A, provides guiding principles for the establishment and operation of charter schools. The guiding principles include standards of student achievement, increased accountability, and specific emphasis on reading. The charter itself must contain specific information relating to the reading curriculum and show that instructional strategies are grounded in scientifically based reading research.

The bill revises provisions related to charter school sponsorship. The bill provides that a

charter school sponsor must ensure that the charter school participates in the state's accountability system. The bill also authorizes community colleges to work with the school districts to develop charter schools that offer secondary education and an option to receive an associate degree upon high school graduation.

The bill modifies the charter school application and review process. The bill allows community college applications for charter schools to be approved by the district school board at any time. The bill requires the application to incorporate specified accountability principles relating to both quality of education and financial stability. The bill specifies that failure to participate in the state's accountability system may result in nonrenewal or termination of the charter.

The bill provides guidelines for the content of the annual progress report required of charter schools. The bill removes the existing limitation on the number of charter schools that may be established in a school district. The bill revises the administrative fees that may be withheld. The bill limits certain universities to one lab school, with some specific grandfather provisions, and changes the public employer of school personnel at certain lab schools.

The bill provides for a reduction in the administrative fee withheld by the school district for charter schools over 500 students. Any savings resulting through the reduction in the administrative fee must be used for capital outlay purposes. The bill clarifies that capital outlay for charter schools, from all sources, should not exceed the 1/15 cost per student station statutory formula.

The bill revises the authorized uses of capital outlay funds and revises the current funding formula for distributing capital outlay funds beginning in 2003-2004. However, the new distribution method should not result in any fiscal impact to the state as charter schools are funded in a line-item, in an amount set by the Legislature in the General Appropriations Act.

Effective date: July 1, 2003.

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General Business & Professional Regulation

GENERAL BUSINESS & PROFESSIONAL REGULATION

• HB 79
Communications Services

The bill expands the current statute on theft of cable television video programming to cover any communication transmitted by any means except for voice transmission over telephone landlines.

It broadens the offense of intercepting or receiving communications services and modifies its elements. The offense, as amended, prohibits a person from knowingly intercepting, receiving, decrypting, disrupting, transmitting, retransmitting, or acquiring access to any communications service without the express authorization of the cable operator or other communications service provider as stated in a contract or otherwise, with the intent to defraud either of them, or knowingly assist others in doing those acts with the intent to defraud either of them.

The bill broadens the offense of assisting by including the sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of any device for the purpose of committing these unlawful acts and by adding similar language relating to devices for the purpose of defeating or circumventing any technology, device, or software used to protect communications services from these unlawful acts.

Finally, it amends current provisions on possession of equipment used for theft of cable services and on advertising such equipment for sale to include the new terminology of communications device and the offense of assisting in using such equipment in commission of these crimes.

Violation of these provisions, theft, possession, or advertising for sale, is a first degree misdemeanor. The bill makes it a third degree felony to commit these unlawful acts willfully and for purposes of financial gain.

As to criminal penalties, the bill:

- Provides that all fines are to be imposed for each communications device and for each day a defendant is in violation of this section.
- Requires restitution as an additional penalty.
- Authorizes a court to order a convicted defendant to forfeit any communications device in the defendant's possession or control which was involved in the violation for which the defendant was convicted.

As to civil remedies, the bill:

- Authorizes the court to impound any communications device that is in the custody or control of the violator and that the court has reasonable cause to believe was involved in the alleged violation and to grant other equitable relief, including the imposition of a constructive trust, as the court considers reasonable and necessary.
- Authorizes the court to order the remedial modification or destruction of any communication device or other device used in a violation which is in the custody and control of the violator.

- Includes in actual damages the retail value of all communications services to which the violator had unauthorized access and the retail value of any communications service illegally available to each person to whom the violator directly or indirectly provided a communications device.

- Provides that the current statutory damages may be applied to each device.

- Makes the discretionary increase in damages of up to $50,000 for each violation apply to any case where the court finds that the violation was committed willfully and for purposes of financial gain, and to each communications device involved in the action and for each day the defendant was in violation of the section.

The bill provides that it is not to be construed to impose any criminal or civil liability upon any state or local law enforcement agency; any state or local agency, municipality, or authority; or any communications service provider unless such entity is acting knowingly and with intent to defraud a communications services provider.

The bill provides that a person who manufactures, produces, assembles, designs, sells, distributes, licenses, or develops a multipurpose communications device does not violate the bill's provisions by doing so unless the person is acting knowingly and with intent to defraud a communications service provider and the multipurpose device meets specified conditions.

Effective date: October 1, 2003.

● HB 283
Uniform Commercial Code/Statements

The bill revises two provisions related to secured transactions as part of the Florida law that incorporates provisions of the Uniform Commercial Code. The first revised provision is the creation of two additional requirements in s. 679.509(3), F.S., for filing certain amendments to financing statements. The additional requirements are that the debtor must authorize the filing of the termination statement, and that the termination statement must indicate that the debtor authorized it to be filed.

The second revised provision amends s. 679.513(4), F.S., and provides that if a termination statement falls under the provisions of s. 679.510, F.S., then the provisions of that section govern the termination statement to the extent they are in conflict with s. 679.513(4), F.S. The bill also corrects an incorrect citation in s. 679.509(3), F.S. The purpose of the bill is to better enable creditors to challenge fraudulent termination statements, and make the Florida Commercial Code more consistent with the statutory commercial codes of other states.

Effective date: July 1, 2003.

● CS/CS/CS/SB 592
Corporate Affairs/ Homeowners Associations/ Condominiums/Cooperatives

This bill makes the following changes to existing law governing the affairs of corporations not for profit, condominiums, cooperatives, and homeowners' associations:

- Defines the term "electronic transmission" for purposes of ch. 617, F.S., the Florida Not For Profit Corporation Act as any form of communication, not directly in-

volving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process.

- Provides criteria to determine when an electronic transmission sent by a corporation not for profit to a member has been received.

- Authorizes foreign corporations not for profit to become domesticated in this state through a procedure similar to s. 607.1801, F.S., authorizing the domestication of foreign for-profit corporations.

- Permits members of condominiums, cooperatives, and homeowners' associations to consent to receive notice of association meetings by electronic transmission, such as facsimile or e-mail in lieu of regular mail.

- Authorizes notices of condominium, cooperative, or homeowners' association meetings to be broadcast on a closed circuit cable television system serving the association in lieu of physical posting of a conspicuous meeting notice on association property.

- Requires condominium associations, cooperative associations, and homeowners' associations to maintain the e-mail addresses of their members. The associations are not liable for the inadvertent disclosure of their members' e-mail addresses and facsimile numbers.

- Enables condominium unit owners and cooperative shareholders to vote by limited proxy to waive certain financial reporting requirements of a condominium or cooperative association.

- Permits condominium and cooperative associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium or cooperative unit.

- Authorizes certain condominium and cooperative unit owners or shareholders to exempt their condominium or cooperative buildings from any requirement of law to retrofit any common element or units with a fire sprinkler system or other engineered life safety system. The exemption must be secured through the affirmative vote of two-thirds of all voting interests in the affected building. Certain high-rise condominium and cooperative buildings, however, may not be exempted from these fire-safety requirements. A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but must be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by a member.

- Directs the Department of Financial Services to report to the Legislature on how insurance premiums on condominiums may be reduced.

- Clarifies the responsibilities of a condominium association to insure condominium property by specifying more precisely the objects that must be covered by a hazard insurance policy.

- Defines the term mortgage for the purpose of foreclosure proceedings to include liens created pursuant to the re-

corded covenants of a homeowners' association.

Specifies that legal proceedings to enforce the governing documents of a condominium or cooperative association shall not be deemed actions for specific performance.

Effective date: upon becoming law.

● CS/SB 654
Telecommunications Companies

The bill (Chapter 2003-32, Laws of Florida) delegates to the Florida Public Service Commission authority to reduce to parity in a revenue neutral manner intrastate network access charges paid by long distance providers to local exchange telecommunications companies (LECs) upon certain conditions. The LECs must petition the commission, who may not approve the petition unless:

- Current support for basic local telecommunications services that is preventing the development of more competitive options for the benefit of residential customers is removed.
- Market entry is enhanced.
- Switched network access rates reach parity in two to four years.
- The reduction is revenue neutral.

The terms "parity," "revenue neutral," and "intrastate switched network access rate" are defined. The term "parity" means that the larger LEC's intrastate switched network access rate is equal to its interstate switched network access rate as of January 1, 2003. (Those rates are approximately as follows: BellSouth - $.0098, Verizon - $.0157, and Sprint - $.0140.) For smaller LECs, the rate is set at $.08. The term "intrastate switched network access rate" means the composite of the originating and terminating network access rate for carrier common line, local channel/entrance facility, switched common transport, access tandem switching, interconnection charge, signaling, information surcharge, and local switching. The term "revenue neutral" means that the total revenue within the revenue category remains the same before and after the local exchange telecommunications company implements any rate adjustments. The revenue category includes basic local telecommunications rates and intrastate switched network access charges.

The bill provides for commission oversight of the deregulation of LEC service quality standards and treatment of basic services. In addition, the unnecessary regulation of the provision of voice over Internet protocol (VOIP) is found not to be in the public interest. The providers of intrastate interexchange telecommunications service are exempt from further regulation; however, such providers remain subject to certain taxation, penalty, and consumer protection regulations. Local governments are prohibited from regulating certain terms and conditions relating to the provision of broadband and information services.

Finally, the bill provides for new qualifying criteria for Lifeline Assistance a credit of up to $13 for basic local telecommunications service. Persons having an income of 125 percent or less of the federal poverty income guidelines may automatically qualify for this subsidy. Local exchange telecommunications companies are to provide promotional information in the form of pamphlets, brochures, and other materials to state agencies that provide benefits to eligible customers. The commission must report each year to the Legislature on the number of customers

enrolled in Lifeline and the effectiveness of any promotional programs.

Effective date: May 23, 2003.

• HB 1277
Unlicensed Contractors/ Contracting Generally

The bill amends ss. 489.128 and 489.532, F.S., to make unenforceable, in law or equity, contracts that are entered into on or after October 1, 1990, by a contractor who fails to obtain or maintain a license under ch. 489, F.S., which is the practice act for construction, electrical/alarm system, and septic tank contracting. The bill provides that a person is unlicensed if the individual fails to obtain or maintain a license required under ch. 489, F.S. It provides that a business organization is unlicensed if it fails to have a primary or secondary qualifying agent.

If a contract is rendered unenforceable under this section, no lien or bond shall exist in favor of the unlicensed contractor. The bill does not affect the rights of parties other than the unlicensed contractor to enforce the contract, lien, or bond remedies. The bill does not affect the rights or obligations of a surety that has provided a bond on behalf of an unlicensed contractor. The fact that the principal or indemnitor is unlicensed under this section may not be used as a defense to any claim on a bond or indemnity agreement.

The bill provides that a townhouse is considered a single family residence for purposes of performing specialty contracting services without obtaining a local professional license if the person is supervised by a contractor. The bill specifies that authorized supervision does not require a direct contract between the contractor and the person performing the specialty contracting services. The bill clarifies that a general contractor may perform, on public or private property, the same services that a licensed underground utility and excavation contractor may perform.

The bill provides that a business organization proposing to engage in contracting is not required to apply for a certificate of authority through a qualifying agent if it satisfies the registration, certification, and net worth conditions set forth in the bill.

The bill provides for the retroactive application of specific sections of the bill and further provides that if the retroactive application of any section is held invalid, the invalidity shall not affect the retroactive application of the other sections. Finally, it provides for the severability of any provision(s) declared invalid.

Effective date: upon becoming law.

• CS/HB 1307
Emergency Communications/ Siting of Wireless Facilities

The bill provides for facilitation of implementation of 911 service. These provisions are to apply notwithstanding any law or local ordinance to the contrary.

Collocation of any antennae and related equipment to service the antennae on an existing aboveground structure is exempt from land development regulation, provided the height of the existing facility is not increased. Construction of the new facility is subject to local building regulations and any existing permits. The bill does not relieve the permitholder or owner of the existing facility of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including any aesthetic requirement, or law.

Local governments are prohibited from requiring wireless companies to provide evidence of compliance with federal regulations, but are permitted to require evidence of proper federal licensure.

A local government is required to act on a properly completed application for a permit for collocation of a wireless facility within 45 business days after the date the properly completed application is submitted in accordance with applicable government application procedures, provided that the permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements, and local building regulations.

A local government is required to act on a properly completed application for a permit for the siting of a new wireless facility within 90 business days after the date the properly completed application is submitted in accordance with applicable government application procedures, provided that the permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements, and local building regulations.

The local government must notify the applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and submitted. This determination is not to be deemed approval of the application. The notification must set forth any deficiencies which, if cured, would make the application properly completed.

If a local government fails to act within the prescribed timeframes on a properly completed application which has been properly submitted, the permit is deemed automatically approved. To be effective, a waiver of the specified timeframes must be voluntarily agreed upon by the applicant and the local government. A local government may request a waiver but may not require one, except that, with respect to a specific permit, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

Any additional facilities needed at a secured equipment compound at an existing site are deemed a permitted use or activity. Local building and land development regulation, including aesthetic requirements, apply.

The Department of Management Services and the Department of Transportation are required to negotiate leases of state-owned property for siting of wireless facilities. Lease fees are required to be reasonable and to reflect the market rate for use of state-owned property.

Any wireless telephone service provider may report to the E911 wireless board no later than September 1, 2003, the specific locations or general areas within a county or municipality where unreasonable delays have occurred in locating wireless facilities necessary to provide the needed coverage to comply with federal Phase II E911 requirements. The provider must also provide this information to the specifically identified county or municipality by this date. If the board receives any report that unreasonable delays have occurred, it is to establish a subcommittee no later than September 30, 2003, to develop a balanced approach between the ability of wireless providers to site facilities necessary to comply with federal Phase II E911 requirements using the providers own equipment and the desire of local governments to zone and regulate land uses

to achieve public welfare goals. If a subcommittee is established, it is to develop recommendations for the board and any specifically identified local government to consider regarding actions to be taken for compliance with federal Phase II E911 requirements, and the board is to include these recommendations in its annual report to the Governor and Legislature.

The bill also provides specific authority to impose the monthly wireless 911 surcharge on prepaid wireless telephone services, to provide for collection of the surcharge, and to define related terms. For prepaid wireless telephone service, the 50 cent monthly wireless 911 surcharge is collected only from each wireless service customer that has a sufficient positive balance as of the last day of each month. As direct billing may not be possible, the surcharge amount, or an equivalent number of minutes, may be reduced from the prepaid subscriber's account.

The bill also gives new authority to the board of directors of the Wireless 911 Board to:

- Provide coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems in the state.
- Provide coordination and support for educational opportunities related to 911 issues for the 911 community in this state.
- Act as an advocate for issues related to 911 system functions, features, and operations to improve the delivery of 911 services to the residents of and visitors to this state.
- Coordinate input from this state at national forums and associations, to ensure that policies related to 911 systems and services are consistent with the policies of the 911 community in this state.
- Work cooperatively with the system director to enhance the state of 911 services in this state and to provide unified leadership for all 911 issues through planning and coordination.

Finally, the bill requires that all private branch exchanges constructed after January 1, 2004, be capable of providing automatic location identification. A private branch exchange is a private telephone system that is connected to the public switched telephone system. Automatic location identification means the automatic display at the public safety agency that receives 911 calls of the caller's telephone number, the address or location of the telephone, and supplementary emergency services information.

Effective date: July 1, 2003.

● HB 1623
Florida Business Corporations Act

This bill substantially revises ch. 607, F.S., the Florida Business Corporation Act. Specifically, this bill:

- Expands the number of authorized signatories for documents filed by the Department of State to include all directors of the corporation.
- Permits corporate filings with the Department of State to specify a time to become effective when the filing has a delayed effective date.
- Extends the time frame for a corporation to correct a filed document from 10 to 30 days after the filing date.

- Permits multiple shareholders within a single household to receive a single notice from a corporation if the shareholders consent to receive a single notice.

- Requires domestic and foreign corporations to clearly indicate their corporate status in their names.

- Provides a process for alien business organizations to withdraw their registered agents.

- Authorizes corporate articles of incorporation to provide shareholders with preemptive rights to purchase a corporation's treasury shares, and specifies that shareholders have no preemptive rights to shares of a corporation issued pursuant to a court-approved plan of reorganization.

- Provides for shareholder participation at annual and special shareholder meetings through remote electronic communication.

- Requires shareholders wait 90 days after making a demand to obtain action by the board of directors of a corporation before initiating legal proceedings in the right of the corporation.

- Eliminates a shareholder's right to demand payment for his or her shares when a vote is taken to grant voting rights to shares that would constitute a controlling interest.

- Authorizes voting rights to be accorded to shares for which voting rights have not been approved after a control share acquisition when those shares are transferred to a person who will not have a controlling interest in the corporation.

- Repeals s. 607.0903, F.S., which was held unconstitutional in *Grand Metropolitan P.L.C. v. Butterworth,* Civ.A. No. 88-40317WS, slip op. at 15 (N.D. Fla. Nov. 28, 1988); s. 607.0903, F.S., purports to impose restrictions on the internal governance structures of corporations domiciled elsewhere.

- Renames dissenters' rights, which is shareholder's right to demand payment for his or her shares, as appraisal rights.

- Eliminates appraisal rights for shareholders of corporations that have at least 2,000 shareholders and a market value of at least $10 million.

- Establishes time frames and procedures by which shareholders must assert appraisal rights.

- Segments s. 607.1320, F.S., relating to a shareholder's right to demand payment for his or her shares, into its component parts and codifies them in ss. 607.1320-607.1332, F.S.

- Makes conforming changes relating to the execution and filing of articles of dissolution.

- Requires a dissolved corporation to publish a "Notice of Corporate Dissolution" in a newspaper or to file a notice with the Department of State to notify creditors having unknown claims against the dissolved corporation how to file a claim against the corporation.

- Streamlines the reinstatement process for administratively dissolved corporations.

- Provides express rights for directors to inspect corporate records.

- Eliminates the requirement for annual reports to include a statement of whether the corporation is liable for intangible taxes.

Effective date: October 1, 2003, except as otherwise provided.

● CS/SB 2520
Beverage Law

The bill provides procedures for the issuance of a revoked quota alcoholic beverage license by allowing it to be put in a double random drawing under s. 561.19, F.S. It also provides enforcement protections for a person holding a perfected lien or security interest in the revoked license.

The bill amends s. 561.422, F.S., to add the requirement that nonprofit civic organizations must present a building permit and zoning permit upon the filing of an application to sell alcoholic beverages, and to require that all net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization.

The bill amends s. 561.65(1), F.S., to provide that a person with a bona fide mortgage, lien, or security interest in a spirituous alcoholic beverage license has a right to enforcement of the lien within 180 days after any order of revocation or suspension, and it bars the issuance of a revoked alcoholic beverage license that is encumbered with a lien or security interest until the 180-day period has elapsed or the enforcement proceeding is final.

This bill creates the "Christopher Fugate Act" to prohibit an alcoholic beverage licensee or the licensee's agents, officers, servants, and employees from providing alcoholic beverages to employees younger than 21 years of age, except as authorized pursuant to ss. 562.111 or 562.13, F.S., or permitting a person younger than 21 years of age to consume alcoholic beverages on the licensed premises. It provides that a violation of this provision is a misdemeanor of the first degree.

Effective date: July 1, 2003.

● HB 63-A
Clean Indoor Air Act/ Smoking Ban

This bill, passed during Special Session A, implements section 20, of Article X, of the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. The bill amends the "Florida Clean Indoor Air Act" (the act) to implement the constitutional amendment approved by the Florida electorate in 2002.

The bill prohibits tobacco smoking in enclosed indoor workplaces. It also adopts and implements the definitions of the constitutional amendment. The bill implements the exceptions in the constitutional amendment for private residences whenever not being used for certain commercial purposes, standalone bars, and designated smoking rooms in hotels and other public lodging establishments.

The bill implements the exception for retail tobacco shops. It defines a retail tobacco shop as including a business that manufactures, imports, or distributes tobacco products and tobacco loose leaf dealers. It permits manufacturers, importers, or distributors of tobacco products and tobacco loose-leaf dealers to heat, burn, smoke, or light for testing tobacco products when it is a necessary and integral part of the processes of making, manufacturing, importing, or distributing tobacco.

The bill provides an exception for tobacco smoking to the extent that tobacco smoking is an integral part of a smoking cessation program approved by the Department of Health, medical research, and scientific research. The bill permits the designation of a smoking room in an intransit lounge in a customs area of an airport. The bill provides requirements for these designated smoking rooms intended to protect persons from the hazards of second-hand smoke. The bill clarifies the definition of the term "workplace" to provide that the term does not include facilities owned or leased by a membership association, including veterans' groups, that are used exclusively for noncommercial activities performed by the members and guests of the association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work as the term is defined in the act.

A stand-alone bar may not derive more than 10 percent of its gross revenue from the sale of food. Every three years a stand-alone bar that serves food other than pre-packaged items must file a report with the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation attesting to the percentage of food sales. The report must be attested to by a Certified Public Accountant.

The bill provides for enforcement of the act by the Department of Health and the Department of Business and Professional Regulation. It provides specific penalties for violations by stand-alone bars ranging from a warning for a first violation to revocation of the right to smoke on the premises for a fourth or subsequent violation. It changes the penalties for violations of the act by other proprietors to provide a first violation penalty of not less than $250 and not more than $750. It changes the penalty provisions for subsequent violations to not less than $500 and not more than $2,000. The bill maintains the penalty provisions under the current act for violations by individuals.

Effective date: July 1, 2003.

CARLTON FIELDS

ATTORNEYS AT LAW

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Florida Legislature
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General Government & Miscellaneous

GENERAL GOVERNMENT & MISCELLANEOUS

● CS/CS/SB 52
Driver's License/Vision Tests

The bill amends s 322.18 F.S., requiring a licensee who is otherwise eligible for a renewal license and who is over 79 years of age to: (1) submit to and pass a vision test administered at any driver's license office; or (2) if applying for an extension by mail, then submit to a vision test administered by a licensed physician or optometrist who must send the results of the test to the Department of Highway Safety and Motor Vehicles (DHSMV) via electronic means as approved by DHSMV, or on the proper DHSMV form signed by the physician or optometrist and meet vision standards equivalent to DHSMV's vision test. The bill further modifies driver's license laws to prohibit a licensee who is over 79 years of age from submitting an application for extension by electronic or telephonic means, unless the results of a vision test have been electronically submitted in advance by the physician or optometrist. Finally, the bill also requires the DHSMV to study the effects of aging on driving ability.

Effective date: upon becoming law, except as otherwise provided.

● CS/SB 54
Minimum Wage/Living Wage/ Local Governments

This bill prohibits the political subdivisions of the state from requiring employers to pay a minimum wage other than a federal minimum wage, or from requiring employers to apply a federal minimum wage to wages that are exempt under federal law. However, political subdivisions may establish a minimum wage for their employees, for employees of contractors and subcontractors under contract with the political subdivision, and for employees of employers receiving direct tax abatements or subsidies from the political subdivision.

Effective date: upon becoming law.

● CS/CS/SB 140
Utilities/Host Government

The bill implements the recommendations of a legislative audit and makes conforming changes in reaction to recent attempts by local municipalities to sell their municipal utility systems to a private entity.

The bill requires a separate legal entity seeking to acquire a utility provide written notice of the proposed acquisition to the relevant local government or "host government". The host government may either adopt a resolution to become a member of the separate legal entity; adopt a resolution approving the acquisition; adopt a resolution prohibiting the acquisition based on a determination that the acquisition is not in the public interest; request in writing an automatic 45-day extension of the 90-day period to allow sufficient time for the host government to evaluate the proposed acquisition; or take no action, which is to be construed as a denial of the acquisition. If the host government adopts a prohibition resolution, the separate legal entity is prohibited from acquiring the utility without the host government's consent by subsequent resolution.

The bill gives a host government the right to review and approve as fair and reasonable any proposed changes to rates and terms of service and changes to the financing of the utilities which may result in increased costs to

customers. The right of review and approval is subject to the obligation of the separate legal entity to establish rates that allow it to comply with bond requirements and to pay debts. If the host government reviews the proposed changes and determines that they are in the public interest, it may approve the changes. If the host government determines that the proposed changes are not in the public interest, it may negotiate with the separate legal entity to resolve the host government's concerns. Finally, if the parties are unable to reach agreement within 30 days of the determination that the proposed changes are not in the public interest, the host government may request binding arbitration through the Public Service Commission (PSC).

Further, the bill guarantees the right of a host government to acquire any separate-legal-entity-owned utility within its boundaries. If the parties cannot agree to the terms and conditions of the acquisition, the host government may request binding arbitration through the PSC. The PSC is authorized to develop and adopt administrative rules governing the arbitration processes contained in this bill and establish fees.

In addition, the bill amends the definition of "agency" for purposes of the Administrative Procedure Act to include a separate legal entity created under s. 163.01(7)(g)1., F.S. This bill excludes a separate legal entity created under s. 163.01(7)(g)1., F.S., from the definition of "governmental authority" as used in ch. 367, F.S. Finally, the bill deletes a provision in s. 367.071, F.S., that allows a utility to be sold or transferred contingent upon the approval of the PSC.

The bill substantially amends the following sections of the Florida Statutes: 163.01, 120.52, 367.021, and 367.071.

Effective date: upon becoming law, except as otherwise provided.

● SB 312
Juvenile Justice Department

The bill amends s. 985.407, F.S., to require the Department of Juvenile Justice to adopt a rule pursuant to ch. 120, F.S., establishing a procedure to provide notice of policy changes that affect contracted delinquency services and programs. In other words, this rule provides notice of how the department will adopt policies affecting private juvenile justice providers. A "policy" is defined under the bill as an operational requirement applying to only the specified contracted delinquency service or program. The procedure to provide notice of policy changes will be required to include the following components: public notice, opportunity for public comment, assessment of fiscal impact upon the department and the providers, and the department's response to any comments received.

Effective date: July 1, 2003.

● HB 439
Statewide Guardian Ad Litem Office

This bill provides for the transfer, oversight, and administration of locally-based guardian ad litem programs and the attorney ad litem pilot program from the auspices of the judicial branch to the Statewide Guardian Ad Litem Office to be created and housed administratively within the Judicial Administrative Commission. The office is be headed by an executive director appointed by the governor from a list of applicants selected by a 5-member Guardian Ad Litem Qualifications Committee.

The bill sets forth the office's duties including program oversight and review, the provision

of technical support, training, review of funding sources and services, program development, and creation of statewide performance measures and standards. The office is required to continue the attorney ad litem pilot program and may contract or develop other such projects with available or solicited gifts, grants, or contributions. The office is required to submit an interim status report and proposed plan to the Legislature, the governor, and the Florida Supreme Court by October 1, 2004, and subsequent annual reports thereafter.

Effective date: July 1, 2003.

• CS/SB 676
Transportation/
Florida Space Authority

Section 331.308, F.S., currently provides that the Lieutenant Governor serves as chair of the board of supervisors of the Florida Space Authority. There are a number of administrative and fiscal issues that rise to the level where board review and approval are appropriate, but do not warrant the attention of the Lieutenant Governor. The bill amends this section to authorize the board of supervisors to elect a vice chair to preside in the absence of the Lieutenant Governor and to perform other duties as may be required.

Florida Space Research Institute

The bill amends s. 331.368, F.S., to revise several provisions relating to the Florida Space Research Institute (FSRI)**.** The bill implements a schedule to rotate industry and academic members on the FSRI board of directors. Under this schedule, private-sector representatives would serve 3-year terms, and academic members would serve 2-year terms. This same section is amended to provide that the board may select additional exofficio, nonvoting members to serve on the board. In addition, the bill clarifies that FSRI board members are volunteers and are subject to all protections afforded to volunteers of state agencies under s. 768.1355, F.S.

The bill provides that contracts and grants issued by FSRI to state agencies, including state universities and colleges, are subject to s. 216.346, F.S. That section provides that in contracts between state agencies, the agency receiving the contract or grant monies shall charge no more than 5 percent of the total cost of the contract or grant for overhead or indirect costs. In addition, the bill clarifies FSRI's operational responsibilities by providing specific authorization to: appoint a person to serve as executive director; acquire and dispose of property; execute contracts; establish rules and procedures governing administrative and financial operations; administer grants, contracts, and fees from other organizations; and work in partnership with other economic development and educational organizations.

Florida Commercial Space Finance Corporation

The bill amends s. 331.401, F.S., to change the name of the corporation to the "Florida Aerospace Finance Corporation." According to representatives of the corporation, this change will eliminate confusion surrounding its mission and enable the corporation to service aviation-related projects. Additionally, the bill amends s. 331.407, F.S., to incorporate legislative intent language providing that the corporation is not an agency for purposes of s. 216.011, F.S. (state budget) and s. 287.012, F.S. (procurement).

Effective date: upon becoming law, except as otherwise provided.

● CS/CS/SB 686
South Florida Regional Transportation Act

The bill replaces Tri-Rail with the South Florida Regional Transportation Authority (SFRTA) whose proposed authority would extend to any transit system in Miami-Dade, Broward, and Palm Beach counties with approval by the county commission with authority over the transit agency. The governing board of SFRTA will consist of nine members: one county commissioner from each of the three counties, selected by each county commission; one resident from each county, selected by each county commission, representing business or civic interests; one representative of Florida's Department of Transportation selected by its Secretary; and two residents of any of the three counties selected by the Governor.

The bill provides if the SFRTA service area is expanded the new member county on the SFRTA will be represented by one member appointed by the county commission for that county; one resident from the county, selected by the county commission, representing business or civic interests; and one resident of the county selected by the Governor.

The bill provides that Palm Beach, Broward and Miami-Dade counties must each contribute $2.67 million annually beginning on August 1, 2003, and it provides these funds may come from each county's share of the ninth-cent fuel tax, the local option fuel tax, or any other source of local gas taxes or nonfederal funds available.

In addition, the bill authorizes the levy of an annual license tax in the amount of $2 for the registration or registration renewal of each vehicle registered in the area served by the SFRTA, upon approval by referendum from the registered voters in the county. It specifies counties served by SFRTA must continue to dedicate $1.565 million to the SFRTA as they were dedicated annually to Tri-Rail, and the $2.67 million contribution is in addition to these funds.

The bill authorizes the authority to expand the service area of the SFRTA beyond Palm Beach, Broward and Miami-Dade Counties and enter into a partnership with contiguous counties with consent from the county commission of that county. However, a county may join the SFRTA only in the year federal reauthorization legislation for transportation funds is enacted.

Effective date: July 1, 2003.

● HB 773
Central Florida Regional Transportation

The bill amends s. 343.63, F.S., to change the membership of the governing board of the Central Florida Regional Transportation Authority from 11 members to 5 members as follows:

- The chair of the county commissions of Seminole, Orange, and Osceola Counties or their designees will each serve as members for the full extent of his or her term.
- One member must be the mayor of the city of Orlando, or a member of the Orlando City Council, as designated by the mayor, and serve for the full extent of his or her term.
- One member will be the FDOT district secretary or his or her designee.

Effective date: upon becoming law.

● HB 847
Citizens' Right to Honest Government

The bill provides for criminal penalties for official misconduct, misuse of official position, disclosure or use of confidential criminal justice information, and tampering with the bid process.

The bill also revises the definition of "bribery" (below) and increases to a second degree felony the acts of bribery, unlawful compensation for official behaviors, and bid tampering.

The acts of official misconduct and disclosure or use of confidential criminal justice information, as defined in the bill, are third degree felonies.

The bill substantially modifies the following definitions to mean:

- Benefit – Gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

- Bid – A response to an "invitation to bid," "invitation to negotiate," "request for a quote," or "request for proposals" as those terms are defined in s. 287.012.

- Commodity – Any goods, merchandise, wares, produce, chose in action, land, article of commerce, or other tangible or intangible property, real, personal, or mixed, for use, consumption, production, enjoyment, or resale.

- Corruptly or With Corrupt Intent – Acting knowingly and dishonestly for a wrongful purpose.

- Harm – Pecuniary or other loss, disadvantage, or injury to the person affected.

- Service – Any kind of activity performed in whole or in part for economic benefit.

- Public Servant – Any officer or employee of a state, county, municipal, or special district agency or entity; any legislative or judicial officer or employee; any person, except a witness, who acts as a master, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or a candidate for election or appointment to certain positions listed in the bill; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

Effective date: October 1, 2003.

● HB 945
Nonagricultural Vehicles

This bill amends ch. 570, F.S., which contains general laws pertaining to the Department of Agriculture and Consumer Services (DACS). It permits DACS to establish rules that will allow certain vehicles that are not carrying agriculture products to by-pass agriculture inspection stations. It also makes it unlawful to impersonate an inspector, agent, or other DACS employee.

Effective date: July 1, 2003.

● HB 1051
Lieutenant Governor/Vacancy

The bill clarifies an ambiguity created by conflicting provisions in the State Constitution which currently provide that, upon a vacancy

in the office of Lieutenant Governor, the Governor shall appoint a successor unless there are more than 28 months remaining in the term, in which case the appointee serves until the first Tuesday following the next general election (s. 1(f), Art. IV, State Constitution) and the provision which requires the Governor and Lieutenant Governor to run jointly (s. 5, Art. IV, State Constitution).

Specifically, the bill provides that upon a vacancy in the office of Lieutenant Governor, the Governor shall appoint a successor for the remainder of the term. If, following such appointment, a vacancy in the office of Governor should occur and there are more than 28 months left in that term of office, electors shall select a Governor and Lieutenant Governor at the next general election.

Effective date: upon becoming law.

• CS/SB 1098
Armed Forces/Reserves/ National Guard

This bill addresses several issues that have been identified by the Florida National Guard during their recent deployments which could be changed to better address those situations unique to today's military men and women. In doing so, the bill creates part IV of chapter 250, F.S. (ss. 250.80-250.84), F.S., which may be known by the popular name of the "Florida Uniform Servicemembers Act." These sections provide for legislative intent, short title, applicability of federal law, and the distribution of information relating to servicemembers' rights.

The Act also recognizes that in addition to state law, federal law contains protections that are applicable to servicemembers in every state even though such provisions are not specifically identified under state law. The two major bodies of applicable federal law are the Soldiers' and Sailors' Civil Relief Act (SSCRA), Title 50, Appendix United States Code, s. 501 et seq., and the Uniform Services Employment and Reemployment Rights Act (USERRA), Title 38 United States Code, ch. 43.

The bill also provides definitions for "active duty," "state active duty," and "servicemember." Most importantly, "servicemember" is defined as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and the United States Reserve Forces.

The protections provided in the bill for servicemembers are identified below.

The Florida Residential Landlord and Tenant Act is amended to prohibit a landlord from discriminating against a servicemember in offering a dwelling unit for rent or in any of the terms of a rental agreement (see s. 83.67, F.S.). The Act is also amended to prohibit retaliatory conduct by a landlord for termination of a rental agreement by a servicemember (see s. 83.64, F.S.).

The Florida Residential Landlord and Tenant Act is further amended to provide conditions under which a servicemember may terminate his or her rental agreement without being liable for liquidated damages (see s. 83.682, F.S.).

The bill clarifies provisions of ch. 115, F.S., relating to pay and leave of absence provisions for active military service.

Motor vehicle license provisions are amended to exempt servicemembers from penalties for expiration of mobile home and motor vehicle registrations when such registrations expire while the servicemember is

serving on active duty or state active duty (see. s. 320.07, F.S.).

The bill creates a new section relating to termination of a telecommunications service contract by a servicemember to provide requirements and procedures with respect to termination of a telecommunications service contract by a servicemember if certain criteria are met (see s. 364.15, F.S).

A new section relating to termination of a retail installment contract for leasing a motor vehicle by a servicemember is created to provide requirements and procedures with respect to the termination of such contract by a servicemember if certain criteria are met (see s. 520.14, F.S.).

The bill modifies existing provisions relating to cancellation and return of auto insurance premiums to require insurance companies to refund the entire unearned portion of a premium upon cancellation of motor vehicle insurance by a servicemember when the servicemember is required to move pursuant to military orders (see s. 627.7283, F.S.).

The bill creates a new section relating to the purchase of real property by a servicemember which provides requirements and procedures for the termination of an agreement to purchase real property by a servicemember (see s. 699.27, F.S.).

Under the Florida Bright Futures Scholarship Program, student eligibility requirements for initial awards are amended to extend the eligibility period for students who enlist in the armed forces or reserves immediately after completion of high school. The student eligibility requirements for renewal awards are also amended to provide eligibility for the continuation of Florida Bright Futures Scholarships for students attending postsecondary institutions who are also Florida National Guard or United States Reserves servicemembers and are called to active duty or state active duty (see ss. 1009.531 and 1009.532, F.S.).

Effective date: June 2, 2003.

• CS/SB 1374 Administrative Procedures/ DEP Pilot

This bill amends s. 120.551, F.S., which was enacted during the 2001 Legislative Session (Chapter 2001-278, L.O.F.) to authorize the Department of Environmental Protection (DEP) to establish a pilot project to determine the cost effectiveness of publishing administrative notices on the Internet, rather than in the Florida Administrative Weekly (FAW). This project began on December 31, 2001, and is scheduled to end under current law on July 1, 2003. A report, submitted by the DEP to the Legislature in January 2003, indicated that the project had been well received by the public and had resulted in annually savings.

This bill extends the DEP's authority to publish administrative notices on the Internet and also provides that the Board of Trustees for the Internal Improvement Trust Fund, which is staffed by the DEP, may likewise publish administrative notices on the Internet. The bill requires that the Internet website be: (a) centralized; (b) established and maintained by the DEP; and (c) provided to the public without charge. Further, the website must allow the public to: (a) search for notices by type, publication date, program area, or rule number; (b) search a permanent database that archives all notices published on the website; and (c) subscribe to an automated e-mail notification of selected notice types. Notices published on the website must clearly state the date the notice was first pub-

lished and may only be published on the same days as the FAW is published.

The authority for the DEP and the board to publish on the Internet is repealed on July 1, 2004, unless the Legislature reviews and re-enacts s. 120.551, F.S., before that date.

Effective date: upon becoming law, except as otherwise provided.

● CS/SB 1426
Municipalities/Per Diem & Travel Reimbursement

The bill permits a municipality, or agency thereof, to exempt itself from the provisions of s. 112.061, F.S., which sets forth a comprehensive, uniform system for the reimbursement of public travel expenses by state and local government entities. Under the bill, s. 166.021, F.S., is amended to permit the governing board of a municipality or an agency thereof to provide its own policy regarding the per diem and travel expenses of its travelers. A municipality or agency thereof, which does not provide for a per diem and travel expense policy, remains subject to s. 112.061, F.S. These provisions apply retroactively to January 1, 2003. The bill also provides that fraudulent travel claim offenses are second degree misdemeanors and those persons receiving an allowance or reimbursement by means of a false claim are civilly liable for the amount of overpayment.

This bill allows a county, county officer, district school board, or special district to provide reimbursement rates that exceed the maximum travel reimbursement rates for out-of-state travel if adopted by the entity's governing body, or established as a written policy for a county constitutional officer. These rates must apply uniformly to all travel by the entity. An entity that is not governed by this provision or s. 166.021, F.S., remains subject to s. 112.061, F.S.

The bill amends ss. 112.061 and 166.021, F.S.

Effective date: upon becoming law.

● SB 1488
Governmental Reorganization of the Cabinet

In November 1998, the voters of Florida approved an amendment to s. 4, Art. IV, State Constitution, which substantially restructured the Cabinet by merging two cabinet offices, the Comptroller and the Treasurer, into the newly created Chief Financial Officer and eliminating the Secretary of State and Commissioner of Education from the Cabinet. As a result, the new state Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. These provisions were effective January 7, 2003.

This bill (Chapter 2003-6, Laws of Florida) provides the following conforming, statutory changes relating to the Governor, Cabinet, and the Governor and the Cabinet collectively, or the Governor and certain members of the Cabinet sitting as boards, commissions, or other collegial bodies, since these provisions were affected by the enactment of the amendment to the State Constitution restructuring the Cabinet:

- Clarifies the constitutional provision that in the event of a tie vote by the Governor and Cabinet, the side on which the Governor votes prevails. This applies to the Governor and Cabinet sitting in any capacity, unless otherwise provided by law. The Legislature may still require a super-majority vote, but if the law simply

requires a majority vote, the side on which the Governor votes prevails.

- Requires a vote of at least three out of four, rather than at least five out of seven members of the Governor and Cabinet sitting as the Board of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund, in order to dispose of any lands for which title is vested in the board.

- Requires the approval of the Governor and at least two other members, rather than three, of the Cabinet sitting as the Administration Commission.

- Revises the clemency voting requirements to require the approval of the Governor and two other members of the Cabinet, rather than three other members. This would also apply to releasing any child on probation who has been convicted of a capital felony.

- Revises the appointments to the Florida Commission on the Status of Women, to delete the former Cabinet members from making appointments, but maintaining the current size of the commission by increasing appointments made by other officers.

- Provides that only the current Cabinet members would be subject to the prohibition against being absent from the state for more than 60 days without the approval of the Governor and Cabinet.

- Revises references to State Board of Administration to conform to the constitutional requirement that the State Board of Administration would consist of the Governor, the Chief Financial Officer, and the Attorney General. This also applies to the Division of Bond Finance, the Financial Management Information Board, and the coordinating council to the State Board of Administration.

- Changes the membership of the Governor's Committee on Interstate Cooperation to the current Cabinet members.

Effective date: upon becoming law.

• CS/CS/SB 1616
Seaport Security

This bill amends s. 311.12, F.S., to revise provisions relating to statewide seaport security standards. A public port without maritime activity may be exempted from the minimum seaport security standards by the Department of Law Enforcement.

The bill provides additional offenses that prohibit an individual from gaining initial employment on a seaport or being granted access to restricted areas within the seaport. To qualify for employment or restricted area access, a person convicted for any listed offense must, after release from incarceration and any supervision imposed, remain free from any subsequent conviction for a period of at least 7 years. For purposes of employment and access, seaports are prohibited from exceeding statewide minimum requirements. An appeal process is authorized for individuals denied employment on a seaport based upon procedural inaccuracies or discrepancies regarding criminal history factors.

The bill provides for the implementation of a Uniform Port Access Credential System for use by all ports subject to the statewide minimum seaport security standards. The Department of Highway Safety and Motor Vehicles (DHSMV) must consult with other agencies and entities to develop the system and each seaport must operate and maintain

the system to control access security within the boundaries of the seaport.

Specific requirements for the credential system address collection and storage of biometric identifiers, a methodology for granting and deactivating access permissions, and technology requirements for each gate on a seaport. A fingerprint-based criminal history check must be performed on each applicant and each credential card must include photographs, fingerprints, barcodes, scanning capability, and background color differentials.

DHSMV will set the price of the credential card to include the cost of fingerprint checks and production and issuance costs, and seaports may charge an additional administrative fee to cover the costs of issuing credentials.

Seaports must comply with technology improvement requirements necessary to activate the system no later than July 1, 2004. DHSMV must specify equipment and technology requirements no later than July 1, 2003. The system must be implemented at the earliest time that all ports have technology in place, but no later than July 1, 2004.

Finally, provisions for the Uniform Port Access Credential System are contingent on the receipt of federal grant funds necessary to implement the system.

Effective date: upon becoming law.

• CS/CS/SB 1712 Governmental Reorganization/ CFO/Dept. of Financial Services/ Dept. of Insurance

The bill makes changes to the Florida Statutes to conform to the constitutional amendment that created the office of the Chief Financial Officer and to the 2002 act (ch. 2002-404, L.O.F.) that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003. A separate bill, SB 1488, makes conforming changes related to the restructuring of the Cabinet pursuant to the constitutional amendment.

The 2002 act created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services (department), headed by the Chief Financial Officer. That act also created the Financial Services Commission (commission), headed by the Governor and Cabinet, as an independent body within the department. Two offices were created under the commission: the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation, each headed by a director appointed by the commission. The commission is agency head for all rulemaking of each office. The 2002 act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new department and commission, but did not make conforming changes to the Florida Statutes, which this bill addresses.

This year's bill amends various Florida Statutes to provide all state fiscal powers to the Chief Financial Officer (or the Department of Financial Services), which were previously assigned to the Treasurer or Comptroller. The bill consolidates in an amended ch. 17, F.S., all of the constitutional duties of the Chief Financial Officer for the accounting and auditing of state funds and the keeping of all state funds and securities.

The Department of Financial Services, headed by the Chief Financial Officer, is also authorized to:

- Approve financial institutions as qualified public depositories.
- Administer the Unclaimed Property Program.
- Administer the Deferred Compensation program for state employees.
- Perform all duties of the State Fire Marshal.
- Administer the state's Risk Management (self-insurance) program.
- Have powers of investigation and arrest of insurance fraud crimes.
- Petition a circuit court for an order in a delinquency proceeding against an insurer or other risk bearing entity, upon being required to do so by the Office of Insurance Regulation, and to be appointed as receiver, liquidator, or rehabilitator.
- Approve plans of operation and have oversight responsibilities for insurance guaranty associations.
- License and regulate insurance agents and agencies, customer representatives, service representatives, viatical settlement brokers, reinsurance intermediaries, and bail bond agents.
- License and regulate cemeteries and preneed funeral and burial contracts;
- Administer the workers' compensation act (ch. 440, F.S.), including enforcement of employer compliance, monitoring carrier compliance and sanctioning carriers for noncompliance, assisting employees with obtaining compensation, and approving and regulating individual self-insured employers and the guaranty fund for such employers.
- Have the powers of the Office of Insurance Consumer Advocate to represent the general public in any insurance matter or hearing.
- Have authority provided to the Division of Consumer Services to receive inquiries and complaints related to insurance or financial institutions from consumers, to fine insurers and others who fail to respond to requests for information, to provide assistance and advocacy to consumers, and to prepare and disseminate information about regulated products and services.
- Administer mediation of property and motor vehicle insurance claims.
- Administer insurance claims of Holocaust victims.
- Have the CFO act as agent for service of process in all cases where the Insurance Commissioner so acted.
- Receive notices of civil remedy actions against insurers and other entities.
- Hold or arrange for financial institutions to hold statutory deposits of persons regulated by either the department or the Office of Insurance Regulation.

The Financial Services Commission and its Office of Financial Regulation would be provided substantially all of the regulatory (nonconstitutional) powers and duties of the former Department of Banking and Finance. This includes all activities relating to the regulation of banks, credit unions, mortgage bro-

kers and lenders, the securities industry, finance companies, retail installment sales providers, title lenders, collection agencies, check cashers, deferred presentment ("payday loan") providers, money transmitters, certified capital companies, and other financial institutions.

The Financial Services Commission and its Office of Insurance Regulation would be authorized to have those powers and duties of the former Department of Insurance related to the regulation of insurers and other entities, including the authority to:

- License and regulate insurers, multiple employer welfare arrangements, commercial self-insurance funds (including workers' compensation group self-insurance funds), viatical settlement providers and contracts, purchasing groups and risk retention groups, fraternal benefit societies, warranty associations, prepaid limited health service organizations, health maintenance organizations, prepaid health clinics, legal expense corporations, and continuing care facilities.
- Conduct financial and market conduct examinations of insurers.
- Regulate all accounting, financial, solvency-related matters of insurers, including administrative supervision of insurers.
- License and regulate insurance adjusters, administrators, service companies, and premium finance companies and agreements.
- Approve eligible surplus lines insurers.
- Approve policy forms and rates for insurers.
- Approve plans of operation and regulate joint underwriting associations (not including appointment of board members).
- Approve donor annuity agreements.
- Receive reports of claims information from insurers.
- Approve local government self-insurance plans for health coverage.

The bill requires the Department of Financial Services and the two offices to each have an Office of Inspector General, and exempts each office from the requirement that written approval of the Attorney General be obtained before contracting with private attorneys.

The bill revises appointments to all boards and commissions for which appointments were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal, for which most of such appointments are provided to the Chief Financial Officer.

The bill repeals the current laws (ss. 627.0623 and 655.019, F.S.) which limit campaign contributions to the Treasurer and Comptroller, respectively, and also repeals s. 624.305, F.S., which prohibits the Insurance Commissioner and employees of the Department of Insurance from having a financial interest in an insurer or agency. Other laws limiting campaign contributions and establishing standards of conduct for public officers and employees would still apply.

The bill repeals or deletes outdated provisions of the statutes related to the regulation of banking and insurance; changes references from the Florida Residential Property and Casualty Joint Underwriting Association

and the Florida Windstorm Underwriting Association to the Citizens Property Insurance Corporation (Citizens) to conform to the act creating Citizens; updates references to the latest edition of publications that are cited in the Insurance Code for purposes of establishing accounting and actuarial standards for insurers and HMOs; allows for electronic (Internet) filing of certain insurance-related filings; and amends the law specifying percentage voting requirements for elected officials who are members of the state executive committee of a political party (to conform to the re-structuring of the Cabinet).

Effective date: upon becoming law, except as otherwise provided.

• HB 1833
Secure Airports for Florida Act

Section 322.14, F.S., creates the Secure Airports for Florida's Economy (SAFE) Council consisting of the directors, or their designees, of commercial service airports in Florida; the Secretaries, or their designees, of the departments of Community Affairs and the Transportation (FDOT); the director of the Office of Tourism, Trade, and Economic Development and of the Department of Law Enforcement, or his or her designee; the executive directors of two general aviation airports, appointed by the Florida Airports Council; a representative of the general aviation industry appointed by the Florida Aviation Trades Association; and a representative of the airline industry appointed by the Air Transport Association.

The airports to be represented are: Daytona Beach International Airport, Gainesville Regional Airport, Fort Lauderdale-Hollywood International Airport, Jacksonville International Airport, Key West International Airport, Melbourne International Airport, Miami International Airport, Naples Municipal Airport, Okaloosa County Regional Airport, Orlando International Airport, Orlando-Sanford International Airport, Palm Beach County International Airport, Panama City- Bay County International Airport, Pensacola Regional Airport, Sarasota-Bradenton International Airport, Southwest Florida International Airport, St. Petersburg-Clearwater International Airport, Tallahassee Regional Airport, and the Tampa International Airport.

The Section provides the SAFE Council members will serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S. The section provides the SAFE Council must develop a five-year SAFE Master Plan defining goals and objectives needed to develop airport facilities and an intermodal transportation system. The Master Plan must include recommendations for the acquisition and construction of transportation facilities connecting any airport with another mode of transportation, and the acquisition and construction of transportation or aviation facilities designed to protect passengers and crews, enhance international trade and increase airport revenues.

The Master Plan must be updated annually, and submitted by February 1 of each year to the President of the Senate, the Speaker of the House of Representatives, the Office of Tourism, Trade, and Economic Development, the Department of Community Affairs, and FDOT. The bill further directs the SAFE Council to review existing programs in Florida and other states when developing programs for the training of minorities and secondary school students interested in aviation careers. The SAFE Council is authorized to utilize, as authorized by the legislature, any federal, state, and local-government contributions, as well as private donations to fund the Master Plan.

The section requires the SAFE Council to promulgate rules for evaluating projects that may be funded under this act. The SAFE Council must review and approve or disapprove each project eligible to be funded under the SAFE Program.

The Department of Community Affairs is required to review the SAFE Council project list to determine a project's consistency with local government comprehensive plans. FDOT is required to review the project list to determine whether the projects are in the Five-Year Work Program, or if not, are necessary to provide for projected movement of cargo or passengers from an airport to a state transportation facility or local road. The bill provides that the Department of Law Enforcement must review the list of projects for consistency with domestic security provisions, and the Office of Tourism, Trade, and Economic Development must review the project lists to determine economic benefits of the projects and if the projects are consistent with SAFE's Mission Plan.

The section requires the SAFE Council to create bylaws and address certain administrative matters, including hiring administrative staff whose expenses are shared by the airports.

Effective date: upon becoming law.

• HB 1869
Government Employees

This act places in general law provisions now contained in expiring appropriations act proviso language authorizing the development of a substantially changed state personnel infrastructure. Two acts of the legislature during the past two years significantly altered the methods and means of administrative services and personnel administration. The first of these, initially entitled *Service First,* changed the scope of civil service coverage while the second, *HR Outsourcing*, moved portions of the state agency administrative apparatus from direct to indirect administration. The effect of HB 1869 is to make the necessary nomenclature changes in the Florida Statutes to permit the changes to employee classification and pay to reflect the new system and its revised labels as they appear throughout chapter 110 and other sections of the Florida Statutes. A central feature of the redeployed personnel infrastructure is the development of broad pay bands as the successor system to the narrow and department-specific classification actions undertaken by agencies.

The act also provides for the development of a negotiated procurement by the Department of Management Services for the examination of state agency service contracts.

Effective date: July 1, 2003.

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● CS/SB 90
Parent-Child Privilege

This bill creates a statutory parent-child privilege. This evidentiary privilege allows a parent or child, or guardian or conservator thereof, to invoke the privilege to refuse to disclose, or prevent another from disclosing certain communications between the parent and child which were intended to be made in confidence. The parent-child privilege is not available in any of the following proceedings:

- Any proceeding brought by the child against the parent or vice versa.
- Any criminal proceeding in which the child is charged with a crime committed against the person or property of the child's parent or any other child of the parent.
- Any criminal proceeding in which the parent is charged with a crime committed against the person or property of the child or any child of the child.
- Any criminal or other governmental investigation involving allegations of abuse, neglect, abandonment, or nonsupport of a child by the parent.
- Any criminal or other governmental investigation involving allegations of certain types of abuse of a parent by a child of that parent.
- Any proceeding governed by the Florida Family Law Rules or Florida Juvenile Rules of Procedure.

The child or parent can expressly waive the privilege and consent to disclosure of the communication. Consent by a minor child or a child who has not yet been emancipated, however, is only valid if approved by the court based on the recommendation of a court-appointed guardian ad litem who has recommended that the waiver is in the child's best interest.

Effective date: July 1, 2003.

● CS/SB 192
Library Records/Confidentiality

Section 257.261, F.S., makes library registration records and circulation records confidential and exempt from the requirements of s. 24, Art. I, State Constitution, except in accordance with a proper judicial order. That section defines "library registration records" to mean "…any information that a library requires a patron to provide in order to become eligible to borrow books and other materials…." Section 257.261, F.S., defines "circulation records" to include "…all information that identifies the patrons who borrow particular books and other materials."

Statistical reports of registration and circulation are expressly excluded from the exemption.

Under the exemption, library registration records and circulation records may be made available to any business, municipal or county law enforcement officials, or to judicial officials for the purpose of "…recovering overdue books, documents, films, or other items or materials owned or otherwise belonging to the library." Further, those officials are permitted access to the records for the

purpose of "…collecting fines or overdue books, documents, films, or other items of materials." If a patron is under the age of 16, confidential information can be released "…relating to the minor's parent or guardian." According to the Department of State (DOS), s. 257.261, F.S., is interpreted differently among local communities. The DOS states that currently some libraries allow parental access to their children's records and some prohibit this access.

The bill clarifies that a parent or guardian of a child under the age of 16 can be granted access to that child's registration or circulation records for the purpose of recovering overdue books or collecting fines. It does not, however, grant a parent or guardian access to his or her child's library records for the purpose of monitoring or discovering what books that child checks out at the library. The bill also clarifies that a patron may have access to his or her exempt information.

The bill indicates it does not expand the exemption to public records requirements and, therefore, does not create a new exemption.

Effective date: July 1, 2003.

● CS/CS/CS/SB 340
Involuntary Commitment/ Baker Act

Florida's Baker Act is a civil commitment statute which allows a person to be involuntarily admitted to a receiving facility for short-term emergency service and maximum 72-hour detention until an evaluation and treatment of a mental, emotional, or behavioral disorder are completed. The bill amends s. 394.463(2)(f), F.S., which authorizes a clinical psychologist or psychiatrist to approve the release of a patient who is being involuntarily detained at a receiving facility under the Baker Act. The bill extends such authority to a hospital emergency department physician with diagnostic and treatment experience in mental and nervous disorders, provided the patient has undergone an involuntary examination and the hospital is designated as a receiving facility.

Effective date: upon becoming law.

● SB 524
Rules of Evidence

This bill amends three sections of the Florida Evidence Code. The first section provides that, in order to preserve appellate review, a party does not have to renew an objection or offer of proof during trial in response to a pre-trial evidentiary ruling. The second section allows business records to be admitted into evidence by means of a certificate of authenticity, while the third section sets forth the criteria for establishing the certificate of authenticity.

Effective date: July 1, 2003.

● SB 580 ● SB 582 ● SB 584 ● SB 588
Florida Statutes/Reviser Bills

These bills are designed for general "housekeeping" purposes related to amending, transferring, and renumbering specified statutory provisions. The bills: reenact and repeal specified provisions pursuant to specific provision; delete provisions that have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replace incorrect cross-references and citations; correct grammatical, typographical, and like errors; repeal provisions which have become inoperative by non-current repeal or expiration and, pursuant to certain

provisions, may be omitted from Florida Statutes 2003 only through reviser's bill duly enacted by Legislature; amend provisions to conform to repeal of specific provision; re-enact specific provision to conform to reenactment and amendment of paragraph (b) of that subsection by s. 10, ch. 2002-218, Laws of Florida; amend provisions to conform to directive in s. 1, ch. 93-199, Laws of Florida, to remove gender-specific references from Florida Statutes without substantive change in legal effect; remove inconsistencies, redundancies, and unnecessary repetition; and improve clarity of statutes and facilitates their correct interpretation

Effective date: 60 days after sine die (July 1, 2003).

● HB 835
Adoption of Children/Family Law

This bill substantially revises the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, venue, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involves the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires unmarried biological fathers to register with the Putative Registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaces existing constructive notice provisions as previously applied to fathers who could not be identified or located. The categories of "fathers" for whom notice and consent may be required is revised to incorporate and conform with the new definition of "unmarried biological father."

The bill also makes the following changes:

- Deletes the statutory duty of a mother placing a child to identify a potential unmarried biological father.
- Allows for pre-birth execution of an affidavit of nonpaternity.
- Broadens the criteria for abandonment to include evidence of little or no communication or lack of emotional support as basis for termination of parental rights.
- Expands placement options to permit out-of-state or out-of-the-country adoption of a child.
- Revising venue provisions to include 4 primary venue options and waiver of venue.
- Revises a number of statutory timeframes including reducing the statute of repose period from 2 years to 1 year for any challenge to an adoption or termination of parental rights, reducing in half the time period between the date of personal or constructive service and the date of a final hearing, and extending the time period from 7 to 14 days in which make adoption disclosures to birth and prospective adoptive parents, extending from 24 hours to 7 days in which to forward a judgment terminating parental rights from the clerk of the court to the Department of Children and Family Services, from 24 hours to 7 days, and changing the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement.
- Revises the statutory forms for consent to adoption, for adoption disclosure and for notice of service of process, and eliminates the statutory forms for affidavits of

nonpaternity and the waiver of venue to conform with changes in the bill in those areas.

- Revises provisions relating to adoption fees for adoption entities by increasing recovery of pre-approved fees and allowing for flat-fee representation and for birth mothers by expanding recovery of pre-birth *and* post-birth expenses including toiletries, insurance, investigator fees, birth certificate, medical records, and other expenses for the birth mother's well being.

- Deletes requirement that all proceedings for adoption be conducted by the same judge that conducted the termination proceedings.

- Allows private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.

- Creates provisions specific to stepparent, relative, and adult adoptions to facilitate compliance with or to except them from the requirements applicable in typical adoptions.

- Revises provisions relating to preplanned adoption agreements by relocating such provisions into a separately created statutory section and by allowing prospective adoptive parents to agree to pay for lost wages due to the pregnancy and birth, and reasonable compensation for inconvenience, discomfort, and medical risk.

- Revises provisions governing sanctions against adoption entities to make award of attorney fees permissive rather than mandatory, to require an evidentiary hearing to determine whether the actions or failures of the adoption entity directly contributed to a finding of fraud or duress, to require orders of sanctions against the Department of Children and Families to be forwarded to the Office of the Attorney General, to preclude fraudulent representation as a basis for dismissing a petition for termination of parental rights or adoption, and to require willful violation and criminal intent in the imposition of criminal sanctions against an adoption entity.

- Replaces a grandparent's priority right to adopt a grandchild to one of a right to notice of an adoption proceeding of such grandchild.

- Eliminates the right of a non-party to petition for judicial review of a placement's appropriateness.

- Revises the adoption process for abandoned infants including giving the court the discretion to order paternity testing and making conforming changes to the bill.

- Revises provisions relating the duties of an adoption entities when a child in their custody.

- Clarifies that forgiveness by a parent of vested child support arrearages owed in a stepparent adoption does not constitute a felony.

- Allows the department to contract with more than one licensed child-placing agency to operate the state adoption information center.

Effective date: October 1, 2003.

• HB 1017
Florida Statutes/"Adopter's Bill"

This bill adopts Florida Statutes 2003 and designates portions thereof that are to constitute official law of state. Provides that Florida Statutes 2003 shall be effective immediately upon publication. Provides that general laws enacted during April 29-May 31, 2002, special session and prior thereto and not included in said statutes are repealed. Provides that general laws enacted during 2003 regular session are not repealed by this adopter act.

Effective date: 60 days after sine die (July 1, 2003).

• CS/SB 1072
Identity Theft/Internet Fraud

This bill amends ss. 817.568 and 921.022, F.S., to provide that it is a second degree felony, ranked in Level 5 of the offense severity chart of the Criminal Punishment Code, with a mandatory minimum sentence of 3-years imprisonment, for a person to willfully and without authorization fraudulently use personal identification information of an individual without first obtaining that individual's consent. This penalty applies if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud is $5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals without their consent. The definition of "personal identification information" is amended to include a bank account or credit card number.

If the amount is $50,000 or more or if the person fraudulently uses the personal identification information of 20 or more individuals without their consent, it is a first degree felony. A mandatory sentence of 5 years applies if the amount is $50,000 to less than $100,000. A mandatory minimum sentence of 10 years applies if the amount is $100,000 or more or if the person fraudulently uses the personal identification information of 30 or more individuals without their consent. If the unlawfully used personal information concerns a person less than 18 years of age, it is a second degree felony, ranked in Level 8. If the person unlawfully using such information of a minor is a parent or legal guardian of that minor, it is a second degree felony, ranked in Level 9.

The bill amends s. 934.23, F.S., to define that a "court of competent jurisdiction" means a court having jurisdiction over the investigation or otherwise authorized by law.

The bill creates s. 92.605, F.S., which requires out-of-state corporations who provide electronic communication services or remote computing services to comply with subpoenas or other court orders issued by a Florida court and also requires Florida providers of electronic communication services or remote computing services to comply with subpoenas or other court orders issued by a court of another state.

In a criminal court proceeding, out-of-state records of regularly conducted business activity or a copy of those records are not excluded as hearsay evidence if an out-of-state certification makes specified attestations.

In a criminal case, the content of any electronic communication may be obtained under the section only by court order or by the issuance of a search warrant, unless otherwise provided under the Electronic Communications Privacy Act or other provision of law.

Effective date: July 1, 2003.

• CS/CS/SB 1584
Administrative Procedure Act

This bill amends numerous provisions of ch. 120, F.S., the Administrative Procedure Act, relating to definitions, procedural and evidentiary matters, administrative and appellate review, unadopted rule challenges, licensing, and attorney fees and costs awards.

Definitions

The bill amends ss. 120.52(8)(e) and 120.57(1)(e)1.d., F.S., to provide that a rule is "arbitrary" if it is not supported by logic or the necessary facts, and that a rule is "capricious" if it is "adopted without thought or reason or is irrational." These changes define the terms in a manner consistent with case law.

Procedural Matters

The bill amends s. 120.54(5)(b)4., F.S., to provide that petitions for administrative hearings must include a statement explaining how the facts of a case relate to the rules or statutes alleged in the petition to require reversal or modification of an agency's proposed action.

The bill amends s. 120.569(2), F.S., to require an administrative law judge, when requested by any party, to enter an initial scheduling order that includes discovery and joint report deadlines.

The bill amends s. 120.57(1)(i), F.S., to require, rather than permit, as is provided in current law, an administrative law judge to relinquish jurisdiction to an agency when it is determined by the administrative law judge that no genuine issue as to any material fact exists.

Finally, the bill amends s. 120.57(1)(k), F.S., to provide that an agency need not rule on exceptions to a recommended order if the exception does not: (1) clearly identify the disputed portion of the recommended order by page number or paragraph; (2) identify the legal basis for the exception; or (3) include appropriate and specific citations to the record.

Standard and Burden of Proof

The bill amends s. 120.56(1)(e), F.S., to specify that the standard of proof to be used in a rule challenge hearing is a preponderance of the evidence. Further, the bill provides in s. 120.56(3), F.S., that a petitioner who challenges the validity of an existing rule has the burden to prove by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority.

Administrative and Appellate Review

The bill amends ss. 120.52(8)(f), 120.56(1)(e), and 120.57(1)(e)1., F.S., to provide the standard for an administrative law judge's review of a petition challenging a proposed or existing rule is de novo, rather than "competent and substantial evidence," as is currently provided by case law. "Competent and substantial evidence" remains the appellate courts' standard of review, for appeals of administrative final orders in rule challenges. Further, the bill clarifies in s. 120.68, F.S., an agency's findings of immediate danger, necessity, and procedural fairness in justification of an emergency rule are subject to appellate review. This clarification is repetitive of existing s. 120.54(4)(a)3., F.S.

Unadopted Rule Challenges

The bill amends s. 120.56(4)(e), F.S., to create new time frames and legal impacts for agency responses in challenges alleging that an agency statement is an unadopted rule. Under the bill, if an agency, prior to the final hearing on the unadopted rule challenge,

publishes: (1) a notice of rule development, then a stay of the proceedings may be granted for 30 days during which time the agency may publish proposed rules; or (2) a proposed rule addressing the statement, then a presumption is created that the agency is acting expeditiously and in good faith to adopt rules and the agency may rely on the statement as a basis for agency action. Further, the bill clarifies in s. 120.56(4)(e)5., F.S., that an agency may not continue to rely on a statement underlying an unadopted rule challenge when the statement has been found to be an invalid exercise of delegated legislative authority pursuant to s. 120.52(8), F.S.

Licensing

The bill amends s. 120.60, F.S., to provide that if an agency fails to approve or deny a license within the time frame specified in the section, the application is "considered approved" and the license must be issued, unless a recommended order recommends denial of the license. Further, if an examination is a prerequisite to licensure, the bill provides that issuance of the license is subject to satisfactory completion of that examination.

Attorney Fee Awards

The bill amends s. 120.595(1), F.S., which requires an award of costs and attorney fees where a non-prevailing party has participated in a s. 120.57(1), F.S., proceeding for an "improper purpose." The definition of this term is expanded by the bill to include needlessly increasing the cost of litigation. The bill also eliminates the subsection's reference to s. 120.569(2)(e), F.S., in defining "improper purpose," so that filing pleadings for an improper purpose is not a condition precedent to an award of attorney fees under the section.

Further, the bill amends ss. 120.595(6) and 57.105(5), F.S., to provide that attorney fee awards currently available in state courts pursuant to s. 57.105, F.S., for frivolous actions apply in administrative proceedings. Case law currently holds that such attorney fee awards are only applicable to judicial proceedings.

Finally, the bill amends s. 57.111, F.S., to increase the attorney fee awards available under the section in judicial and administrative proceedings to prevailing small business parties in state initiated actions from a maximum of $15,000 to a maximum of $50,000.

Effective date: upon becoming law.

● SB 2450
Florida Uniform Principal and Income Act

This bill amends provisions of Chapter 738, F.S., the Florida Uniform Principal and Income Act, which governs the identification of principal and income in or from a trust property through a trust instrument, will, or other governing instrument, the allocation of principal and income, and the apportionment of assets between income and principal. The bill makes technical and clarifying changes necessary as a result of a major revision to the Act enacted in 2001, including revisions to the scope and duties of a trustee and clarifying certain activities related to the valuation and distribution of trust assets.

Effective date: upon becoming law.

● CS/SB 2568
Vulnerable Persons

This bill sets forth a number of provisions relating to vulnerable persons, including the following:

- The definitions of "abuse" and "vulnerable adult" as used for adult protective services are amended. "Abuse" is narrowed to acts of abuse committed by a caregiver. "Vulnerable adult" is revised to exclude persons with short term physical impairments.

- The Florida Guardianship Law, as it affects the practice and regulation of professional and public guardians, is revised to:

  - Place the Statewide Public Guardianship Office under the direct auspice and control of the Department of Elderly Affairs and its Secretary.

  - Require the Department of Elderly Affairs to contract with the Florida Guardianship Foundation or another not-for-profit entity to perform functions associated with the registration of professional guardians.

  - Require a public guardian to be considered a professional guardian for the purposes of regulation, education, and registration.

  - Revise provisions for statewide registration of professional guardians and expand the registry requirement to public guardians.

  - Provide that a state college or university or independent college or university may, but shall not be required to, register as a professional guardian.

  - Require professional and public guardians to undergo revised credit checks and criminal background screening and to take a state competency exam as a prerequisite to appointment.

  - Allow plenary and limited guardians to provide confidential ward information under specified terms to local ombudsman council members for investigative purposes.

  - Require guardians to obtain court approval of the annual accounting in order to pay or reimburse costs incurred and reasonable fees or compensation to persons including attorneys, employed by the guardian, from assets of the guardianship estate.

  - Provide that when court proceedings are instituted to review or determine guardian or attorney fees, such proceedings are part of the guardianship administration process and the costs, including fees for the guardian's attorney, shall be determined by the court and paid from the assets of the guardianship estate, unless the court finds the requested compensation unreasonable.

  - Reduce the educational requirements for a person serving as a guardian for his or her own minor child from 8 hours to 4 hours.

  - Create a 10-member Guardianship Task Force and set forth its duties including the submission of a preliminary and final report to the Governor and the Legislature regarding the status of the guardianship delivery system and recommendations for improvements.

Effective date: July 1, 2003.

• SB 2700
Probate and Trusts/Limitations

This bill continues Florida's comprehensive revision of its probate and trust law. Some of the more significant provisions of this bill include:

- Adding evidence of exposure to a "specific peril" as a basis for presuming death, with particular venue provisions for petitioning a court for such a determination.

- Establishing a specific conflict of interest standard, i.e., when each of the trustees is also a personal representative of the estate, then the beneficiaries of the trust are the estate beneficiaries. Otherwise, it is the trustees of the trust who are the beneficiaries of the estate.

- Eliminating a conflict in the law by removing the exception of homestead property from the application of the Florida Uniform Disposition of Community Property Rights at Death Act.

- Addressing gaps in the anti-lapse laws concerning beneficiaries deemed to have predeceased a decedent by operation of law.

- Incorporating federal law by expressly providing that military testamentary instruments properly executed by an individual eligible for military legal assistance pursuant to Title 10 U.S.C. § 1044d are valid wills in this state.

- Amending provisions relating to the serving of the notice of administration and notice to creditors.

- Providing that civil actions based upon constructive fraud must be initiated within four years of when the facts giving rise to the action are discovered, or should have been discovered with the exercise of due diligence.

- Clarifying personal representative's powers pertaining to control and expenditure of funds for protected homestead property.

Effective date: upon becoming law.

• HB 113-A
Judicial Branch Funding

This bill, passed during Special Session A, continues the 4-year phase-in legislative implementation of constitutional Revision 7 to Article V (relating to the judicial branch) of the State Constitution begun in 2000. Revision 7, adopted by the Florida electorate in 1998, requires the state to shift primary costs and funding for the operation of the state courts system to the state and to reallocate other costs and expenses among the local governments and other users and participants in the state courts system. The bill:

- Delineates state and county funding responsibilities for the state courts system, the offices of the state attorney, the offices of the public defender, and the local requirements and other court-related functions performed by the clerks of the court.

- Delineates and expands substantially the duties of the clerks of the court including collection and submission of revenues sufficient to support court-related functions and the operations of their offices, the provision of ministerial assistance solely to pro-se litigants, and the submission of various reports including budget reports.

- Establishes a 9-member Clerk of Court Operations Conference as a review and advisory body with authority to recommend changes to court-related service charges, fines, and fees; to receive, review, and approve clerks' court-related projected revenues, court projected revenues, and budgets; to certify budget deficits; to develop accountability and performance standards; and to publish and adjust fee schedules.

- Creates a 12-member Article V Indigent Services Advisory Board whose responsibilities include recommending qualifications for authorized state-funded due process services including eligibility and performance standards for court-appointed counsel, recommending adjustments to compensation standards for court-appointed counsel and other providers of due process services, identifying due process services for indigents, recommending statewide contracting standards for procurement of such services, and advising the Legislature on strategies and policies for cost-containment.

- Delineates the responsibilities or role of the courts in issues relating to indigence, collection of costs and fees, jury management, selection, and process.

- Circumscribes the scope of prosecution by state attorneys and defense by public defenders and private court-appointed counsel and prescribes the process for compensation.

- Prescribes methodologies and processes for selection, appointment, and compensation of court-appointed counsel including the establishment of a rotating registry of qualified attorneys and state- and circuit-level administrative bodies for the purpose of administering indigent services.

- Creates a statutory cause of action for civil enforcement of violations of municipal or county ordinances in which the county or municipality would be the plaintiff.

- Revises various provisions affecting local government finances including replacing the local option county levy to fund, in part, mediation and arbitration services with a statewide mandatory $1 filing fee on all circuit and county court proceedings, redefining guaranteed entitlement for municipalities, revising the authority to pledge state-shared revenue, and expanding the use of discretionary sales surtaxes.

- Adjusts court fines, fees, costs, and service charges and redirects other court fines, fees, costs, and service charges from the counties to the state and the clerks of the circuit court in order to implement Revision 7 at the state level.

- Directs the state Chief Financial Officer to conduct a study to determine county expenditures for court-related services for FY 2001-2002 and provides for a $200,000 appropriation from the Insurance Regulatory Trust Fund to support the study.

Effective date: July 1, 2003, except as otherwise provided within the bill.

● HB 143-A
Florida Civil Rights Act

This bill, passed during Special Session A, provides that Florida's Attorney General may commence a civil action for damages, in-

junctive relief, civil penalties not to exceed $10,000 per violation, and such other relief as may be appropriate under the laws of this state if the Attorney General has reasonable cause to believe that any person or group:

(a) Has engaged in a pattern or practice of discrimination as defined by the laws of this state; or

(b) Has been discriminated against as defined by the laws of this state and such discrimination raises an issue of great public interest.

The bill provides that the prevailing party in an action brought under the bill is entitled to an award of reasonable attorney fees and costs. Any damages recovered under this section shall accrue to the injured party.

The bill defines "public accommodations" as places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other establishments that hold themselves out as serving the general public.

The bill provides that all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status, or religion.

Effective date: upon becoming law.

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Florida Legislature
Post-Session Report

Growth Management, Natural Resources & Real Property

GROWTH MANAGEMENT, NATURAL RESOURCES & REAL PROPERTY

• CS/SB 260
Condominiums/ Armed Services Flag

This bill allows condominium owners to fly flags representing branches of the U.S. Armed Services on military and patriotic holidays.

This bill amends s. 718.113, F.S.

Effective date: July 1, 2003.

• CS/SB 472
Mining Activities

This bill provides an exclusive administrative remedy through the Division of Administrative Hearings (DOAH) solely for the recovery of damages to real and personal property caused by the use of explosives in construction mining activities. Recovery of damages for personal injury, emotional distress, or punitive damages is excluded from this administrative forum and must be pursued separately in court.

The administrative remedy for the alleged damage must be sought no later than 6 months after the damage occurred. Within 5 days of filing the petition, the case is assigned and an order is issued directing mandatory non-binding mediation to be held no later than 60 days after the mediator is selected by the parties or the administrative law judge.

If no settlement is reached within 15 days of the concluded mediation, the matter may be set for an expedited summary hearing upon mutual agreement of the parties. If the parties have not reached a settlement within 30 days of the concluded mediation, the matter is set for formal administrative hearing.

If the court finds by a preponderance of evidence that the damages are attributable to construction mining activities, the court must direct the respondent to pay the damages within 30 days of the order unless the matter is appealed to a district court of appeal. If the respondent fails to pay the damages within 30 days of the order, or within 30 days of an appellate mandate affirming the order, then the damages may be paid upon the petitioner's request from the security bond the respondent was required to post as a statutory prerequisite to applying or renewing a user license in connection with the construction mining activities.

The court may reduce to judgment any amount not covered by the security bond. If the court finds by a preponderance of evidence that the damages were not caused by the respondent's activities, the court must issue an order stating that the respondent is not responsible for the damages. The prevailing party is entitled to taxable costs including expert witness fees and administrative costs.

Additionally, the prevailing party is entitled to reasonable attorney fees unless the claim or defense was frivolous or without basis in fact or law. The $100 filing fee is to be deposited into the Administrative Trust Fund of the Division of Administrative Hearings as the repository to defray the cost and expense of the specialty administrative hearing process.

Effective date: upon becoming law.

● SB 482
Rental Agreements/ Military Personnel

This bill (Chapter 2003-30, Laws of Florida) amends s. 83.682, F.S., to eliminate a provision requiring the payment of liquidated damages when a member of the United States Armed Forces terminates a rental agreement due to reassignment. The bill would continue to require that service members provide notice of termination to the landlord at least 30 days in advance and provide either a copy of the official military orders or a written verification signed by the member's commanding officer. In addition, the service member would remain liable for the portion of rent due under the rental agreement prorated to the effective date of the termination. The bill also prohibits landlords from discriminating against members of the United States Armed Forces in renting residential property.

The bill creates a new section of law, s. 83.575, F.S., permitting residential rental agreements with a specific duration to contain a provision requiring a tenant to give up to 60 days' notice of his or her intent to vacate the premises at the completion of the rental agreement. If a rental agreement requires notice and the tenant does not give such notice, the tenant may be liable for liquidated damages as specified in the rental agreement. Additionally, this new section of law provides that if the tenant remains in the rental unit after the termination of the rental agreement with the landlord's permission and fails to give timely notice prior to leaving, the tenant is liable to the landlord for one month's rent.

Effective date: May 23, 2003.

● CS/CS/SB 554
Interdistrict Transfer & Water Use

This bill provides that the term "interdistrict transfer and use" does not include a withdrawal and use within the same county. In the case of withdrawal of groundwater from a point within one water management district for use outside of the boundaries of that district but within the same county, certain provisions of s. 373.2295, F.S., apply. Those provisions include:

- Consideration of the future land use elements of the comprehensive plan within which the withdrawal areas and the proposed use are located.

- Allowing the applicant to appeal certain decisions to the Land and Water Adjudicatory Commission. Such decisions may include a decision that the proposed use or withdrawal does not conform with existing zoning ordinances or the proposed use if granted for use beyond the boundaries of a local government from which or through which groundwater is withdrawn, and the local government denies a permit.

Any interagency agreement between water management districts entered into before the effective date of this act authorizing the issuance of permits for the interdistrict withdrawal and use of water within a county are validated and shall continue in effect until otherwise rescinded.

Effective date: upon becoming law.

● HB 623
Northwest Florida Water Management District/ Environmental Resource Permit

This bill delays the repeal of the interim dredge-and-fill and stormwater permitting

provisions for the Northwest Florida Water Management District (NWFWMD) until July 1, 2005, and extends the date by which implementation of the Environmental Resource Permit (ERP) program is to be assumed by the NWFWMD from July 1, 2003 until July 1, 2005.

In 1993, Part IV of Chapter 373, F.S., was amended to direct creation of the ERP program and a unified statewide wetland delineation methodology. This was done to streamline environmental permitting and provide statewide consistency, while considering differing hydrologic and topographic features throughout the state. Streamlining was accomplished by combining the water management districts' Management and Storage of Surface Waters (MSSW) and the Department of Environmental Protection's (DEP) dredge-and-fill and stormwater permits into a single ERP that was then linked to the review of requests to conduct activities on sovereign submerged lands.

The unified statewide wetland delineation methodology was ratified by the Legislature in 1994 and DEP and four of the five water management districts implemented ERP rules in October 1995. However, the geographic area of the NWFWMD was exempted from the ERP program by s. 373.4145, F.S., as amended, until July 1, 2003. Consequently, the 16 counties of Northwest Florida continue to be regulated under the MSSW, dredge-and-fill, and stormwater programs in effect prior to development of the ERP program. The 1994 unified statewide wetland delineation methodology does apply in this area, but only for non-isolated wetlands.

One of the difficulties in expanding the ERP program into Northwest Florida is that, under Florida's constitution NWFWMD's ad valorem tax level is capped at 0.05 mill ($0.05 per $1000), whereas the other water management districts have a constitutional cap of 1.0 mill and statutory caps varying from 0.24 to 0.75 mill. Under the constitutional cap, NWFWMD lacks sufficient revenue to fully implement the water management provisions of ch. 373, F.S., including a comprehensive ERP program.

The bill extends the current division of regulatory responsibilities of the DEP and the NWFWMD for MSSW, dredge-and-fill, and stormwater, until July 1, 2005.

Effective date: upon becoming law.

• CS/SB 626
Everglades Forever Act

The bill (Chapter 2003-12, Laws of Florida) amends the Everglades Forever Act, established in s. 373.4592, F.S., to provide that portions of the plan for waters within the Everglades Protection Area to meet state water quality standards, including those related to the removal of excess phosphorus, originally scheduled for completion by December 31, 2006, could be extended to as late as 2016.

The bill provides that the use of a Long-Term Plan, as adopted by the governing board of the South Florida Water Management District in March 2003, is the best way to ensure that the stormwater treatment areas in the Everglades Construction Project, and other projects in the Everglades Stormwater Program for urban and other tributary basins not included in the Everglades Construction Project, will meet state water quality standards, including a numeric phosphorus criterion and moderating provisions, if any, as contained in the rule to be adopted by the Environmental Regulation Commission (ERC) by December 31, 2003. All waters discharged into the Everglades Protection Area must

meet state water quality standards no later than December 31, 2006, as provided in current law.

The bill provides that the implementation of the Long-Term Plan, and any revisions to that Plan, must allow the achievement of the numeric phosphorus criterion to be adopted by the ERC in a manner that is consistent with the Everglades Forever Act. The Plan must identify and implement incremental optimization measures to further reduce phosphorus levels in discharges. Any moderating provisions incorporated into the state water quality standard rule must provide for the use of best available phosphorus reduction technology to provide net improvements in reducing phosphorus loads in impacted areas of the Everglades Protection Area.

Implementation of the Long-Term Plan is authorized for an initial 13-year phase, beginning this year. State water quality standards, including the numeric phosphorus criterion, must be met to the maximum extent practicable which is a standard applied by the U.S. Environmental Protection Agency under the Clean Water Act. Monitoring stations must be established to ensure that this goal is being met.

The bill provides that implementation of the 10-year second phase of the Long- Term Plan must be approved and authorized by the Legislature. The agricultural privilege tax in the Everglades Agricultural Area, scheduled to be reduced from $35 to $10 per acre starting with tax notices mailed in 2014, will be assessed at $25 per acre for an additional three-year period. This additional assessment will serve as the implementation of the "Polluters Pay" provision in s. 7, Art. II of the State Constitution.

The bill establishes the Legislature's intent that the State of Florida continue to honor its longstanding commitment to meet water quality standards, including standards for water discharged onto the federal lands in the Everglades National Park and the Loxahatchee Wildlife Refuge. The bill provides that the Long-Term Plan must be integrated and consistent with the Comprehensive Everglades Restoration Plan (CERP) to avoid duplicative and unnecessary cost. Nothing in the Long-Term Plan can modify any cost share responsibility or any state responsibility for projects authorized as part of the Water Resources Development Acts of 1996 and 2000.

Finally, the bill provides that the 1/10th of a mill ad valorem assessment in the Okeechobee Basin can be used to design, construct, and implement projects in the initial phase of the Long-Term Plan, such as stormwater treatment in the C-11 Basin in western Broward County, and can be used for the enhancement, operation, and maintenance of the stormwater treatment areas in the Everglades Construction Project.

Note: The provisions of this act were revisited by the Legislature during Special Session A. See the summary for SB 54-A.

Effective date: May 20, 2003.

● HB 861
Homeowners' Associations

This bill allows the board of directors of an incorporated homeowners' association to preserve a covenant or restriction, or a portion of such covenant or restriction, if the action is approved by a two-thirds vote of the board of directors of the association. The bill contains requirements for a homeowners' association that is filing the notice to pre-

serve covenants and restrictions under the Marketable Record Title Act.

The bill also allows a homeowners' association to institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The association is also authorized to defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation for an amount in controversy in excess of $100,000, the association must obtain the approval of a majority of voting interests at a meeting where a quorum is present. However, this provision in the bill does not limit the statutory or common-law right of an individual or class to bring any action without participation from the association.

In addition, the bill states that, unless otherwise provided in the governing documents of an association, an amendment may not materially or adversely alter the voting interest of a parcel or increase the percentage by which a parcel shares in the common expenses of a homeowners' association unless the record parcel owner and all record owners of liens join in the execution of the amendment.

The bill states that a change in quorum requirements is not an alteration of voting interests. However, this provision does not affect any vested right recognized by a court order or judgment in any action commenced prior to July 1, 2003, and such vested right may not be subsequently altered without the consent of the affected parcel owner(s).

This bill amends the following sections of the Florida Statutes: 712.05, 712.06, 720.303, and 720.306.

Effective date: July 1, 2003.

• CS/SB 956
Dry-Cleaning Solvent Cleanup Program

The bill provides immunity from property damage claims for drycleaning site owners that are voluntarily conducting site rehabilitation. Insurance companies that would have provided property damage coverage for these sites are also given protection from these claims. Finally, legislative findings that this immunity is necessary and in the public interest are provided.

Effective date: upon becoming law.

• CS/SB 1044
Water Use Permits

The bill provides that a water management district must provide written notice of an application for a consumptive use permit to the county and appropriate city government. It specifies that notice of an application for such permit may be sent by electronic mail to any person who has filed a written request for notification of pending applications for that particular area. Further, the bill requires that all permits for consumptive water use, dam and reservoir construction, and dredge and fill activities for stormwater management systems must contain certain specified language stating the permittee is not relieved from complying with any other applicable rule, law, or ordinance.

This bill amends s. 373.116, F.S.

Effective date: upon becoming law.

• HB 1123
Contaminated Site Rehabilitation/Risk-Based Corrective Action

This bill provides that risk-based corrective-action (RBCA) principles apply to all contaminated sites resulting from a discharge of

pollutants or hazardous substances, to the extent the sites are not subject to RBCA cleanup criteria established for the petroleum, brownfields, and drycleaning rehabilitation programs. This concept is often referred to as "Global RBCA." The bill provides for rulemaking authority for the Department of Environmental Protection (DEP) and cleanup criteria consistent with that found in the petroleum, brownfields, and drycleaning site rehabilitation programs.

The bill also clarifies and revises provisions relating to the intangible tax credit for contaminated site rehabilitation, corporate income tax credit for contaminated site rehabilitation, and the partial tax credit for rehabilitation of drycleaning solvent contaminated sites and brownfield sites in designated brownfield areas. The bill clarifies who may transfer a tax credit and allows a 5-year expiration period to begin anew following the transfer. The voluntary cleanup tax credit application period is converted from a tax year to a calendar year. The tax credit application deadline is changed from December 31 to January 15 of the year following the calendar year for which site rehabilitation costs are being claimed. An applicant must submit a complete application. The filing of placeholder applications is prohibited. Tax credit applications are processed on a first-come, first-served basis. The application must be filed with the DEP's Division of Waste Management.

The bill also allows the DEP to issue a hazardous waste corrective action permit to conform to the delegation authority DEP received from the U.S. Environmental Protection Agency to administer the federal Hazardous and Solid Waste Amendments Program (HSWA).

Effective date: upon becoming law.

• CS/CS/SB 1220
Sale of Real Property/Disclosure of Restrictive Covenants

This bill amends s. 689.26, F.S., to revise the disclosure requirements that must be provided to prospective purchasers of real property and will implicitly require that such disclosure be provided to buyers in those neighborhoods where restrictive covenants run with the property.

Sellers will be required to specify whether or not a property purchaser will be obligated to be a member of a homeowners' association, to pay assessments to this association, and to pay assessments to a municipality. The notice must also state whether or not the restrictive covenants of the association can be amended with the approval of the membership or, if there is not a mandatory association, the parcel owners. This bill encourages prospective purchasers to refer to actual governing documents and covenants prior to purchasing the property. Disclosure requirements must be provided to prospective purchasers of real property. A contract for sale of property governed by covenants subject to disclosure under s. 689.26, F.S., must contain a voidability clause, in the same form as provided for in statute, and such contract is voidable at the option of the purchaser prior to closing if it does not have such a clause.

Effective date: July 1, 2003.

• CS/CS/SB 1286
Construction Defects/ Pre-suit Settlement

The bill creates a process to give homeowners, subsequent purchasers of a dwelling, tenants, associations, and construction professionals the opportunity to settle legal claims related to construction defects arising out of the construction of a dwelling before a lawsuit is filed.

Sixty days before filing a lawsuit against a construction professional for a claim related to a construction defect, the bill requires that the claimant must serve a written notice of claim on the construction professional. The construction professional has a right to inspect the dwelling within 5 days of the notice of claim. Within 10 days of the notice of claim the construction professional must serve a copy of the notice of claim to any other construction professional that he or she thinks is responsible for the construction defect. These construction professionals also have a right to inspect the alleged construction defect.

Within 20 days after the notice of claim, the construction professional must respond to the claimant with a written offer to remedy the claim, a written offer to settle the claim, or a written dispute of the claim. The claimant has 15 days, or 45 days for an association, to accept or reject the offer to settle and compromise the claim or to remedy the alleged construction defect.

The claimant can file suit without further notice if he or she rejects the construction professional's offer to remedy the alleged construction defect, or offer to settle and compromise the claim. The claimant may also file a lawsuit without further notice after the construction professional rejects the claim or the construction professional does not meet the agreed timetable to remedy the construction defect or make the settlement payment.

Failure by any party to follow the procedures in the bill is admissible in court. The bill does not bar or limit a claimant from making any emergency repairs to the claimant's dwelling. The bill provides that the provisions relating to legislative findings, definitions, and abatement of the action for noncompliance do not bar or limit any defense, or create any new defense, except as specifically provided in the bill.

Effective date: upon becoming law.

● CS/CS/SB 1300
Citrus/Air Emissions

This bill revises the statute regulating air pollutant emissions from the citrus juice processing industry. It:

- Revises and conforms statutory deadlines to the U.S. Environmental Protection Agency approval process and schedules.
- Lowers the limitation on sulfur content in fuel used by citrus processors.
- Authorizes the Department of Environmental Protection to develop management practices for Clean Air Act pollutants not otherwise regulated by this program.
- Provides for evaluation and potential sunset of this program.
- Requires any change in the salary of an employee of the Department of Citrus which is at or above $100,000 annually to be approved by the full membership of the Citrus Commission.
- Requires the Department of Citrus to publish an annual travel report that provides specific information for each staff member of the department and each member of the commission who has traveled during that year.

Effective date: upon becoming law.

• HB 1431
Mobile Homes

This bill provides a mechanism by which the owner of a mobile home which is permanently affixed to real property owned by that same person may permanently retire the title to the mobile home.

Effective date: upon becoming law.

• CS/CS/SB 1660
Community Development & Planning/Agriculture Preemption and Exemption

This bill creates s. 163.3162, F.S., which regulates certain aspects of farm activities. It prohibits a county from restricting farm activities on land classified as agricultural land if the activity is regulated by best management practices, interim measures, or regulations developed by specified state and federal agencies. It permits a county to regulate farm activities within a wellfield protection area if such activity is not already addressed by the type of regulation previously described. The prohibition against duplicative regulation does not permit a farm operation located next to an established homestead or business on March 15, 1982, to change to a more intensive farming use. A county ordinance regulating the transportation or land application of sewage sludge will not be deemed to be a duplicative regulation.

Urban counties meeting certain criteria will not be governed by this bill. (Note: the only county currently meeting all the criteria is Broward.)

This bill also amends s. 193.461, F.S., by authorizing counties to establish procedures to waive the requirement that annual applications be filed to have land classified as agricultural.

The elimination of duplicative regulation is intended to reduce the efforts that farm operators expend for regulatory compliance. The automatic renewal of the agriculture land classification exemption restores a provision that previously existed and is consistent with treatment accorded homestead classifications.

Effective date: July 1, 2003.

• HB 1719
Construction Lien Law

The bill provides mandatory provisions regarding lien law for direct contracts between an owner and a contractor related to improvements to real property consisting of single or multiple family dwellings up to and including four units.

It provides warning language in the Notice to Owner form that alerts owners to liens that may be filed against their property by unpaid contractors, subcontractors, and sub-subcontractors, and establishes the form for the contractor's final payment affidavit. It provides warning language in the Claim of Lien form alerting the owner of the real property that a lien has been placed on his or her property and what steps can be taken to shorten the time the lien can be valid.

It includes an "explanation of owner's rights" regarding the steps to take if no notice is furnished by a lienor in the currently required statement issued to building permit applicants and the owners of the real property by the permitting authority. The Department of Business and Professional Regulation provides the statements to the permitting authority for distribution to each non-owner permit applicant. The non-owner permit applicant, as a condition to issuance of the permit, must deliver the statement to the owner.

It creates a permissive inference that a person knowingly and intentionally misapplied construction funds when a valid lien has been recorded against the property of the owner and the person who recorded the lien has received sufficient funds for the construction and has failed, for a period of at least 45 days, to remit sufficient funds to pay off the labor, services, or materials.

It requires a state attorney or statewide prosecutor to forward a copy to the department of an indictment or information that charges a contractor, subcontractor, or sub-subcontractor with the willful filing of a fraudulent lien, misapplication of construction funds, or making false statements for inducing payment. It also requires the department to promptly open an investigation, and if probable cause is found, furnish a copy of any investigative report to the prosecutor and to the owner of the property.

It requires a lender, prior to making any loan disbursement, to provide a written warning statement regarding lien releases.

Effective date: July 1, 2003.

• SB 1862
Community Development Districts

The bill expands the powers of a community development district to include the authority to collect any ground rent due on behalf of a governmental entity pursuant to a contract with a governmental entity that owns real property in the district. The bill also allows a community development district to contract with the county tax collector for the collection of ground rent using the procedures authorized in s. 197.3631, F.S., other than the uniform method of collection found in s. 197.3632, F.S.

This bill amends s. 190.011, F.S.

Effective date: July 1, 2003

• CS/CS/SB 1944
Mobile Home Owners

This bill amends a number of provisions in ch. 723, F.S., relating to mobile home owners. Specifically, the bill provides for a $1 per mobile home lot surcharge on mobile home park owners and $1 tax surcharge on mobile home licenses to fund the Florida Mobile Home Relocation Trust Fund. Also, the bill increases park owner payments into the Florida Mobile Home Relocation Trust Fund (trust fund), and reduces the amount of money mobile home owners can receive from the Florida Mobile Home Relocation Corporation (corporation).

This bill provides for the placement, by a home owner or park owner, of a home on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the initial approval and creation of the mobile home park.

The bill requires notice to tenants and occupants, in addition to the mobile home owner, as parties who may become subject to eviction by the park owner.

Further, the bill prohibits a mobile home owner from bringing a cause of action against a park owner if the owner has already received compensation from the corporation or park owner. In addition, the bill prohibits a home owner with a pending eviction action from collecting from the corporation. This bill requires submission of additional documentation by home owners that apply for funds when it is necessary to abandon their home. Finally, the bill appropriates $500,000 from the trust fund to the corporation for fiscal year 2003-2004.

This bill substantially amends the following sections of the Florida Statutes: 48.183, 320.081, 715.101, 723.007, 723.041, 723.061, 723.0611, 723.06115, 723.06116, and 723.0612; and creates s. 320.08015.

Effective date: upon becoming law.

• CS/SB 2260
Water Policy

This bill deletes requirements that Basins existing within the Southwest Florida Water Management District (SWFWMD) may not be abolished or combined without the approval of the Legislature.

It repeals provisions that require the state, through the Department of Environmental Protection (DEP), to provide funds to assist with the implementation of Surface Water Improvement and Management (SWIM) plans, and provides that the list for priority water bodies of regional or statewide significance will be reviewed and updated every 5 years instead of every 3 years.

The criteria used to develop the lists is amended to include water bodies on DEP's list of impaired waters, water bodies for which total daily maximum loads have been established, the management of the water body through federal, state, or local water quality programs or plans, and public input. The bill directs the South Florida Water Management District to add the Lake Worth Lagoon as a priority area which must be considered by the District when preparing the priority water body list.

The bill authorizes, rather than requires, the water management districts to prepare SWIM plans and programs for water bodies identified on the priority lists. For SWIM plans that are prepared, plan requirements are amended to include schedules for related management actions for restoring or protecting water bodies to Class III or better, and a list of available and potential funding sources or amounts. The water management districts are authorized to use legislative appropriations for SWIM activities for detailed planning, plan, and program implementation.

The bill provides that counties that fall within the jurisdiction of two water management districts can receive a consumptive use permit from one water management district under an agreement executed by the affected water management districts.

The boundary description of the St. Johns River Water Management District is amended to exclude a portion of Polk County that is being transferred to the jurisdiction of the SWFWMD, and the transfer of that portion of Polk County to the SWFWMD is authorized.

Finally, the bill extends the bonding authority of the Florida Water Pollution Control Financing Corporation which is repealed this year. The bond issue is subject to appropriation or an amount established in general law. However, bond revenues fund the revolving loan program that provides grants and loans to local governments for stormwater and wastewater projects.

Effective date: upon becoming law.

• SB 54-A
Environmental and Conservation Lands/Everglades

The bill, passed during Special Session A, simplifies land acquisition and land management responsibilities for state and water management district lands purchased and managed under the state's land acquisition

programs. This is the "glitch bill" the Governor asked for when he signed the Everglades bill (CS/SB 626) following the 2003 Regular Session.

Revisions are made to appraisal requirements when the value of a proposed acquisition exceeds $1 million. A 10-year land management planning process for conservation lands and a 10-year land use planning process for nonconservation lands are established. The Division of State Lands at the Department of Environmental Protection is authorized to determine the sale price of surplus lands, and requirements that surplus lands be sold to other units of government for no more than the original amount paid by the state or a water management district are eliminated.

The bill requires that the Division of State Lands, with assistance from counties, begin preparing a state inventory identifying all federal lands and all lands titled in the name of the state, a state agency, a water management district, or a local government on a county-by-county basis. In certain small counties with populations of 75,000 or fewer, lands titled in the name of the state, a state agency, or a water management district may be made available for purchase under certain conditions. A new process to expedite surplus land requests made by local governments is created.

The bill also creates a new process for the exchange of donated state lands to local governments, including a requirement that the exchange provide an equal or greater conservation benefit to the state. The Board of Trustees of the Internal Improvement Trust Fund is directed to complete two land exchanges under certain conditions.

The bill reaffirms the state's commitment to funding Everglades restoration by reenacting provisions of law enacted during the 2002 Regular Session that created a bond program to fund the state's Everglades restoration efforts (see CS/SB 626). The Everglades Forever Act, which was amended during the 2003 Regular Session by the enactment of Chapter 2003-12, Laws of Florida, is revised to remove all references to the phrases "earliest practicable date" and "maximum extent practicable." Finally, the bill provides that if moderating provisions are adopted in the state water quality standard rule establishing a numeric phosphorus criterion, the moderating provisions may not extend beyond 2016 without legislative authorization.

Effective date: July 1, 2003, except as otherwise provided within the bill.

CARLTON FIELDS

ATTORNEYS AT LAW

2003
Florida Legislature
Post-Session Report

Health Care

HEALTH CARE

● CS/SB 56
Certificate-of-Need Exemption/Open-Heart Surgery

This bill amends s. 408.036, F.S., to create an exemption for an adult open-heart-surgery program to be located in a new hospital that is being established in the location of an existing hospital when the existing hospital and existing adult open-heart-surgery program are being relocated to a replacement hospital that will use a closed-staff model. The Agency for Health Care Administration (AHCA) may grant the exemption provided the applicant:

- Meets and maintains current requirements of Florida rules, any future licensing requirements governing adult open-heart surgery adopted by AHCA, and the most current guidelines of the American College of Cardiology and American Heart Association Guidelines for Adult Open Heart Programs.
- Certifies that it will maintain the appropriate equipment and personnel.
- Certifies that it will maintain appropriate times of operation and protocols to ensure appropriate referrals.
- Is a newly licensed hospital in a physical location previously owned and licensed to a hospital that performed more than 300 open-heart surgeries per year, including heart transplants.
- Certifies that it can perform more than 300 diagnostic cardiac catheterization procedures per year, combined inpatient and outpatient, by the end of its third year of operation.
- Has a payor mix that reflects the community average for Medicaid, charity care, and self-pay patients or certifies that it will provide a minimum of 5 percent Medicaid, charity care, and self-pay services to open-heart-surgery patients.

If the applicant fails to meet these criteria or fails to reach 300 surgeries per year by the end of its third year of operation, the applicant must show cause why its exemption should not be revoked.

The bill provides that the applicant of the newly licensed hospital may apply for the certificate of need before taking possession of the facility, and the effective date of the certificate of need will be concurrent with the effective date of the newly issued hospital license.

AHCA must report to the Legislature by December 31, 2004, and annually thereafter concerning the number of requests for exemptions granted or denied.

The provision is repealed January 1, 2008.

Effective date: upon becoming law.

● HB 195
Emergency Medical Dispatch Act

The bill creates the Emergency Medical Dispatch Act relating to a statutory presumption of nonnegligence for emergency medical dispatchers and agencies.

The bill provides that where a public or private emergency medical dispatcher has been provided certain training and has followed unspecified protocols that are substantially similar to standards developed by the

American Society for Testing and Materials or the National Highway Traffic Safety Administration, the dispatcher, and the dispatcher's agency, its agents, or employees will be presumed to not have acted negligently in any injuries or damages resulting from the use of those protocols. This bill also allows emergency medical dispatch services to participate in the Emergency Medical Services Grant Program administered by the Department of Health.

Effective date: September 11, 2003.

• CS/CS/SB 250
Rural Hospitals

The bill changes the definition of rural hospital to provide that a hospital that received funding under the Medicaid disproportionate share/financial assistance program for rural hospitals prior to July 1, 2002, is deemed to have been a rural hospital and will continue to be a rural hospital through June 30, 2012, as long as the hospital continues to meet certain criteria. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria established in the bill may apply to the Agency for Health Care Administration for that designation.

The bill permits a rural hospital, or a not-for-profit operator of a rural hospital, to construct a new hospital located in a county with a population of at least 15,000 but no more than 18,000 and a density of less than 30 persons per square mile, or a replacement facility, without obtaining a certificate of need, provided certain conditions are met.

The bill expands the definition of the term "infant delivered," for the purpose of payment of an initial assessment for each infant delivered in a hospital, to finance the Florida Birth-Related Neurological Injury Compensation Plan to exclude infants born in a teaching hospital that have been deemed by the Florida Birth-Related Neurological Injury Compensation Association as being exempt from assessments since fiscal year 1997 to fiscal year 2001.

Effective date: July 1, 2003.

• CS/CS/SB 296
Continuing Care Retirement Communities/Nursing Homes

The bill specifies that a nursing home that is part of a Continuing Care Retirement Community (CCRC) that is accredited by a recognized accrediting organization and that meets the minimum liquid reserve requirements established by the Office of Insurance Regulation satisfies the financial criteria for the Gold Seal Program, as long as the accreditation is not provisional. The Governor's Panel on Excellence in Long-term Care, in conjunction with the Agency for Health Care Administration, administers the award program, known as the Gold Seal Program, which recognizes nursing facilities that demonstrate excellence in long-term care over a sustained period of time.

The bill revises nursing home staffing standards to permit a nursing home that has a standard license or is a Gold Seal facility, exceeds minimum staffing requirements, and is a part of a CCRC or retirement community to share programming and staff with their assisted living, home health, and adult day care services. The bill establishes additional criteria for the sharing of staff and authorizes the Agency for Health Care Administration to adopt rules for documentation necessary to determine compliance with staffing requirements.

The bill modifies requirements for residents' organizations in CCRCs and selection of a

resident representative before the provider's governing body to specify the methods of election of representatives, requirements for notice to residents, minimum levels of participation, and the duration of the term of election, and requires that there shall be only one resident's organization which represents the residents before the governing body of a provider.

Effective date: upon becoming law.

● CS/SB 460
Certificate-of-Need/ Open Heart Surgery

This bill amends s. 408.036, F.S., to authorize an exemption from certificate-of-need (CON) review for adult open-heart-surgery services in one or more hospitals in Palm Beach, Polk, Martin, St. Lucie, and Indian River Counties. A hospital that meets the following criteria will be exempt from CON review for the establishment of an adult open-heart-surgery program:

- The hospital must certify that it will meet and continuously maintain the minimum licensure requirements adopted by the Agency for Health Care Administration for adult open-heart-surgery programs and the most current guidelines of the American College of Cardiology and the American Heart Association.

- The hospital must certify that it will maintain sufficient appropriate equipment and health personnel to ensure quality and safety.

- The hospital must certify that it will maintain appropriate times of operation and protocols to ensure availability and appropriate referrals in the event of emergencies.

- The hospital must demonstrate that it is referring 300 or more patients per year away from the hospital for cardiac services at a hospital with cardiac services, or that the average wait for transfer for 50 percent or more of the cardiac patients exceeds 4 hours.

- The hospital is a general acute care hospital that is in operation for three years or more.

- The hospital performs more than 300 diagnostic cardiac catheterization procedures per year (combined inpatient and outpatient).

- The hospital's payor mix, at a minimum, reflects the community average for Medicaid, charity care, and self-pay patients, or the facility must certify that it will provide a minimum of 5 percent of Medicaid, charity care, and self-pay to open-heart-surgery patients.

- If the hospital fails to meet the established criteria for open-heart programs or fails to perform 300 surgeries per year by the end of its third year of operation, it must show cause why its exemption should not be revoked.

By December 31, 2004, the Agency for Health Care Administration must report to the Legislature the number of requests for exemptions received under the provisions of this bill and the number granted or denied.

Effective date: upon becoming law.

● SB 530
Nick Oelrich Gift of Life Act/ Anatomical Gifts

The bill creates the "Nick Oelrich Gift of Life Act" in honor of Alachua County Sheriff

Stephen M. Oelrich's deceased son. The bill amends ch. 765, F.S., to revise procedures relating to anatomical gifts. Amendments to s. 765.512, F.S., prohibit a family member, guardian, representative ad litem, or health care surrogate of an adult donor from modifying "a decedent's wishes" or denying or preventing an anatomical gift from being made. In the absence of contrary indications by the decedent, the organ donation document would be a legally sufficient document of informed consent and would be legally binding. The bill adds an authorization for informational requests concerning the decedent's medical and social history to be directed to the decedent's family member or medical provider, or to third parties when a decedent's body or part thereof is donated.

The bill amends s. 765.516, F.S., relating to the ways to revoke or amend an anatomical gift. A donor may no longer amend or revoke an anatomical gift by making an oral statement to his or her spouse. Additionally, of the two persons to whom an oral amendment or revocation can be made regarding an anatomical gift, one must not be a family member. The bill also deletes the acceptability of a signed amendment or revocation found in the donor's effects versus on or about a person's body.

Effective date: July 1, 2003.

• SB 1568
Sole Acute Care Hospitals in High-Growth Counties

This bill authorizes certain acute care hospitals in high-growth counties to add up to 180 additional beds without certificate-of-need review by the Agency for Health Care Administration (Agency). A project authorized under the bill would not be subject to challenge under s. 408.039, F.S., or ch. 120, F.S., and the beds authorized would be excluded from the Agency inventory used to calculate future need for additional acute care beds.

To be eligible for this special provision created under s. 408.043, F.S., a hospital must be the sole acute care hospital in the county and be the only acute care hospital within a 10-mile radius of another hospital. A high-growth county is one that has experienced at least a 60-percent growth rate for the most recent 10-year period for which data are available as determined by using the most recent edition of the Florida Statistical Abstract. The hospital must provide written notice to the Agency that it qualifies under the subsection prior to the addition of the beds.

Four counties — Collier, Flagler, Sumter, and Wakulla — experienced a greater than 60-percent increase in population during the decade 1991-2001. Two of the four high-growth counties have a hospital with no other hospital within 10 miles of the eligible hospital. The two hospitals that currently would qualify for the bed addition allowable under the provisions of the bill are a 60-bed facility located in Sumter County, and an 81-bed facility located in Flagler County. In future years, other hospitals in high-growth counties that meet the criteria provided in the bill could add beds under this special provision.

Effective date: July 1, 2003.

• SB 2082
Saboor Grieving Parents Act

This bill may be cited as the "Stephanie Saboor Grieving Parents Act." The bill creates s. 383.33625, F.S., to require a physician licensed under ch. 458 or ch. 459, F.S., a nurse licensed under ch. 464, F.S., or a midwife licensed under ch. 467, F.S., who has custody of fetal remains following a

spontaneous fetal demise, i.e., a miscarriage, after a gestation period of less than 20 weeks to notify the mother of her option to arrange for the burial or cremation of the fetal remains as well as the procedures provided by general law. Notification may also include other options, such as a ceremony, a certificate, or common burial of the fetal remains.

The Department of Health must adopt rules for the development of forms to be used by the health care practitioner for notification and election. The forms must be provided to the mother by the health care practitioner.

A birth center licensed under ch. 383, F.S., or a hospital, ambulatory surgical center, or mobile surgical facility licensed under ch. 395, F.S., having custody of fetal remains following a spontaneous fetal demise after a gestation period of less than 20 weeks must notify the mother of her option to arrange for the burial or cremation of the fetal remains as well as the procedures provided by general law. Notification may also include other options, such as a ceremony, a certificate, or common burial of the fetal remains.

The Agency for Health Care Administration must adopt rules for the development of forms to be used by the facility for notifications and elections, and the hospital must provide the forms to the mother.

Effective date: upon becoming law.

● CS/SB 2084
Drug Prescriptions/Legible Handwriting

The bill requires a written prescription for a medicinal drug issued by a health care practitioner licensed by law to prescribe such drug to be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription. The prescription must also contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity in both textual and numerical formats, and directions for use. The prescription must be dated with the month written out in textual letters and signed by the prescribing practitioner on the day when issued.

Effective date: July 1, 2003.

● CS/CS/SB 2312
Prescription Drug Protection Act

The bill revises the Florida Drug and Cosmetic Act to impose more stringent regulations on prescription drug wholesalers. The list of prohibited acts relating to drugs, devices, and cosmetics is expanded to include additional prohibitions relating to prescription drugs. The bill creates criminal offenses relating to illicit activities involving diversion from the wholesale distribution of prescription drugs. Effective January 1, 2004, the permitting requirements for drug wholesalers are overhauled to require extensive information upon application for a permit, including a criminal history background check, and to require that permits expire annually rather than biennially.

Reciprocity for out-of-state drug wholesalers who are already licensed in another jurisdiction is eliminated and such establishments must seek a Florida permit. The bill distinguishes "primary drug wholesalers" from "secondary drug wholesalers." The bill specifies factors that the Department of Health must consider in reviewing the qualifications of persons seeking a permit to engage in prescription drug wholesale activities in Florida. The department is authorized to adopt rules for the annual renewal of permits for prescription drug wholesalers.

The recordkeeping requirements for prescription drug wholesalers are revised for a wholesaler that is an authorized distributor of record (ADR) of a drug manufacturer. Each person who is engaged in wholesale drug distribution and who is not an ADR must provide to each wholesale drug distributor of such drug, before the sale is made, a written statement under oath *identifying each previous sale of the drug back to the last ADR*, the lot number of the drug, and the sales invoice number of the invoice evidencing the sale of the drug. The written statement must accompany the drug to the next wholesale drug distributor and *no longer needs to identify all sales of such drug* in the "pedigree papers." Effective March 1, 2004, an ongoing relationship is defined to exist between a manufacturer and a wholesaler when:

- The wholesaler is on the manufacturer's list of ADRs; or
- The wholesaler buys at least 90 percent of all of the manufacturer's products handled by the wholesaler directly from the manufacturer and has total annual prescription drug sales of $100 million or more; or
- The wholesaler has a verified account issued to the wholesaler by the manufacturer and makes twelve purchases from the manufacturer using the account and the wholesaler has more than $100 million in total annual prescription drug sales. The bill limits the definition of an authorized distributor to those wholesalers who have a verified account with a manufacturer, if the manufacturer fails to provide the department with a list of authorized distributors. The requirement for an ongoing relationship expires July 1, 2006.

Until July 1, 2006 wholesale prescription drug distributors of "specified drugs" (high-risk prescription drugs) must identify sales as required by the bill.

Each person who is engaged in the wholesale distribution of a "specified drug" must provide to each wholesale drug distributor of such drug, before any sale of such high-risk drug is made to such wholesale distributor, a written statement under oath identifying each previous sale of the specified drug back to the manufacturer, the lot number of the high-risk prescription drug, and the sales invoice number of the invoice evidencing each previous sale of the high-risk prescription drug. The written statement must accompany the high-risk prescription drug at each subsequent wholesale distribution to a wholesale distributor.

"High-risk prescription drug" is a specific drug on the list of drugs adopted by the department by rule, each of which is a specific drug seized by the department on at least five separate occasions because such drug was adulterated, counterfeited, or diverted from legal prescription drug distribution channels and the department has begun an administrative action to revoke the permits of two or more wholesale distributors that engaged in the illegal distribution of that specific drug.

Each wholesale distributor must annually provide the department with a written list of all prescription drug wholesalers and out-of-state prescription drug wholesalers from whom the wholesale distributor purchases drugs. The term "authorized distributor of record" is revised to mean those distributors with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products, without regard to whether the wholesale distributor acquired

the products directly from the manufacturer. A wholesale distributor may not pay for any drug with cash.

The bill creates an 11-member Drug Wholesaler Advisory Council within the Department of Health. The council must annually review rules adopted to enforce the Florida Drug and Cosmetic Act, provide input to the department, and make recommendations regarding all proposed rules and matters to improve coordination with other state regulatory agencies and the Federal government.

The bill increases the statutory fee caps: for a prescription drug manufacturer's permit from $600 to $750 annually; for a prescription drug wholesaler's permit from $400 to $800 annually and for an out-of-state prescription drug wholesaler's permit no less than $300 (previously $200) and no greater than $800 (previously $300) annually.

The Department of Health is authorized to inspect and copy financial documents or records related to the distribution of a drug in order to determine compliance with the Florida Drug and Cosmetic Act. A new cease and desist enforcement remedy is established, and the bill authorizes procedures for the department to issue an order to remove key personnel of a prescription drug wholesaler if she or he is engaged in specified prohibited acts.

The enforcement authority of the Statewide Grand Jury and the Office of the Statewide Prosecutor is expanded to investigate and prosecute criminal violations of the Florida Drug and Cosmetic Act. The criminal offenses relating to violations of the act which involve contraband or adulterated drugs may be prosecuted as racketeering. The Criminal Punishment Code is revised to include certain violations under the Florida Drug and Cosmetic Act.

Effective date: July 1, 2003, except as otherwise provided.

CARLTON FIELDS

ATTORNEYS AT LAW

2003
Florida Legislature
Post-Session Report

Insurance & Financial Services

INSURANCE & FINANCIAL SERVICES

● HB 235
Insurance Holding Companies

This bill revises several provisions in ch. 628, F.S., relating to mutual insurance holding companies. A mutual insurance holding company is a form of domestic insurance corporate organization established as an alternative method for a domestic mutual (policyholder-owned) insurance company to convert to a stock (stockholder-owned) insurance company. There are several advantages to converting into a stock insurance company, including that the conversion may significantly enhance an insurer's ability to raise capital, issue debt, and engage in mergers and acquisitions.

Membership Criteria of a Mutual Insurance Holding Company

The bill amends the definition of a paid premium to mean all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company. The bill also revises the membership criteria of mutual insurance holding companies in the following ways:

- After the formation of a mutual insurance holding company, membership in the holding company is governed by ch. 628.727, F.S., which states that membership is to be based on the mutual insurance company's bylaws. The criteria for membership must be based upon each member holding a policy of insurance with a subsidiary insurer or a contract with a subsidiary HMO.

- At the time a mutual insurance holding company is formed, policyholders of another subsidiary of the mutual insurance holding company cannot be members of the holding company unless the subsidiary they belong to was a mutual insurer which merged with the holding company.

Calculation of Distributive Shares and Corporate Equity

The bill also specifies the methods used to calculate the distributive shares and corporate equity of mutual insurance holding company members. In the event of the voluntary dissolution or merger of the mutual holding company, the distributive share of each member is based upon a ratio comparing the total amount of premiums the member paid in the 3 years prior to dissolution or merger versus the total amount of premiums paid by all members during that period. When a mutual insurance holding company is converted, the corporate equity of each member is determined by the same ratio, so long as the equity is not based upon more than the company's net assets. Alternatively, a different formula may be used to calculate distributive shares or corporate equity if approved by the Department of Financial Services. If the mutual insurance holding company only owns life and health insurance subsidiaries, then the distributive share is to be determined by a reasonable formula that the Department of Financial Services may approve.

Effective date: upon becoming law.

● HB 513
Insurance Claims/ Premium Payments

This bill makes various changes to the laws related to insurance, as follows:

- Amends s. 627.4035, F.S., to clarify that premiums for insurance may be paid by debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.

- Amends s. 627.7015, F.S., to exempt certain types of claim disputes from the statutory mediation program for the resolution of property insurance claims, to codify exemptions that are currently in rule, and to exempt claims for which the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact.

- Amends s. 627.901, F.S., to allow insurers and general lines agents to charge a service charge of $3 per payment installment, if an annual premium is paid monthly or in installments, with a maximum annual service charge of $36 (as an alternative to the current law allowing a rate of interest not exceeding 18 percent simple interest per year on the unpaid balance).

- Amends various sections in ch. 626, F.S., related to insurance agents, which are also contained in CS/SB 2364. (See the summary of that bill for details.)

- Amends s. 627.351(6), F.S., related to rates charged by Citizens Property Insurance Corporation (Citizens). (These provisions are similar to provisions contained in CS/SB 1308, which did not pass. See the Senate staff analysis of that bill for additional background.) The Legislature created Citizens in 2002 to assume the operations of the former Florida Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). In general, Citizens provides residential property insurance in all areas of the state (like the former RRPCJUA) and provides wind-only coverage for both residential and non-residential risks in designated coastal areas (like the former FWUA). The bill provides as follows:

  - The maximum allowable rate increase is 20 percent for personal lines residential wind-only policies (formerly, FWUA policies) issued or renewed between July 1 2003, and June 30, 2004, as compared to the rate in effect on June 30, 2003, as adjusted for coverage changes and seasonal occupancy surcharges.

  - Requires Citizens, in conjunction with the Office of Insurance Regulation (Office), to develop a wind-only ratemaking methodology to be contained in a rate filing made by January 1, 2004, to implement the requirement that such rates be noncompetitive with rates charged by authorized insurers. The office must provide a report on the methodology to the Senate and the House of Representatives by January 31, 2004.

  - Citizens must certify to the Office at least twice annually that its personal lines rates comply with the current requirement that its average rates for each county (excluding wind-only policies, which are addressed in the above paragraph) must be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state. To assist Citizens in this regard, it must appoint a rate methodology panel consisting of representatives of specified

associations, insurers, and public officials. By January 1, 2004, the panel must provide a report to Citizens of its findings and recommendations, and within 30 days after such report,

- Citizens must present a plan to the Senate and House of Representatives for implementing the ratemaking methods and an outline of any needed legislation.

- The above plan must include a provision that producer (agent) commissions shall not be calculated to include any rate-equalization surcharge. However, regardless of the report, commissions must remain fixed until January 1, 2004.

- By January 1, 2004, Citizens must develop a notice to policyholders or applicants that its rates are intended to be higher than the rates of any admitted carrier and providing other information to assist consumers in finding other coverage.

- Provides that it shall not be considered insurance if a telecommunication company, public utility, or water system charges customers for an optional waiver of liability, at the election of the customer, where the entity agrees to waive all or a portion of the customer's liability for service from a defined period, in the event of the customer's death, disability, call to active military service, involuntary unemployment, qualification for family leave, or similar qualifying event.

- The bill creates s. 717.1071, F.S., related to unclaimed property, providing that property that becomes distributable over the course of an insurance company's demutualization, rehabilitation or related organization is considered abandoned 2 years after the distribution if certain conditions are met. First, at the time of distribution, the last known address of the owner of property (in possession of the holder of the property) must be known to be incorrect or the distribution or statement is returned by the post office as undeliverable. The second requirement is that the owner does not communicate in writing or otherwise to the holder of property, regarding the property interest. Property from a demutualization that is not covered by these provisions is reportable as otherwise provided by ch. 717, F.S. Property subject to s. 717.1071, F.S., must be reported and delivered no later than May 1 for the preceding year. (This provision may be in conflict with SB 2680, which also creates s. 717.1071, but contains different language regarding when property is considered unclaimed.)

- Amends s. 624.430, F.S., to require an insurer that is surrendering its certificate of authority, withdrawing from the state, or discontinuing the writing or any kind or line of insurance, to avail itself of all reasonably available reinsurance. Such insurer must engage an independent third party to search for unrealized reinsurance and certify to the Office of Insurance Regulation that it has done so. The compensation to the third party may be a percentage of unrealized reinsurance identified and collected. The bill also amends s. 624.81, F.S. to impose these same requirements on any insurer subject to administrative supervision.

- Amends s. 626.7451, F.S., to increase the maximum allowable per-policy fee

that a managing general agent may charge from $25 to $40. It further provides that if a managing general agent collects a per-policy fee, it must remit at least $5 per policy to the Division of Insurance Fraud of the Department of Financial Services, which must be dedicated to the prevention and detection of motor vehicle insurance fraud. It must remit an additional $5 per policy, 95 percent of which ($4.75) to the Justice Administration Commission, which must distribute the fees to the state attorneys of the 20 judicial circuits for investigating and prosecuting cases of motor vehicle insurance fraud. The remaining 5 percent ($0.25) must be remitted to the Office of Statewide Prosecution for the same purposes. By July 1, 2005, the state attorneys and the Office of Statewide Prosecutor must provide a report to the Senate and the House of Representatives evaluating the effectiveness of the investigation, detection, and prosecution of motor vehicle insurance fraud related to such funds.

- Creates s. 624.4623, F.S., to allow any two or more independent nonprofit colleges or universities accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, or independent, nonprofit, accredited secondary educational institutions, located in an chartered by the state of Florida to form a self-insurance fund for any property or casualty risk or surety insurance or securing the payment of workers' compensation benefits. The bill establishes certain criteria that must be met for any such self-insurance fund.

- Amends s. 626.9541(1)(x), F.S., to prohibit insurers from refusing to insure any individual or risk solely because of the fact that the insured or applicant is a public official.

Effective date: upon becoming law.

• HB 721
Warranty Association Regulation

The bill amends ss. 634.031, 634.303, and 634.403, F.S., all of which relate to warranty association regulation. Chapter 634, F.S., governs warranty associations in the state, and is divided into three parts for the regulation of three types of warranty associations. Part I covers motor vehicle service agreement companies. Part II covers home warranty associations. Part III covers service warranty associations. An entity must have a license issued by the Office of Insurance Regulation in order to transact, administer, or market any of these three types of warranty association agreements.

The bill creates an exemption from licensure for affiliates of domestic insurers that issue motor vehicle service agreement policies, home warranties, or service warranties under certain conditions. Licensure is not necessary if the affiliate does not issue, market, or cause to be marketed, such warranty policies to residents of Florida and does not administer policies that were originally issued to a Florida resident who then moved out of state.

A domestic insurer or its wholly owned Florida licensed insurer must be the direct obligor of all motor vehicle service agreements, home warranties, or service warranties issued by the affiliate, or must issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.041(8)(b), F.S. The bill also provides that the affiliate will be subject to licensure if the Office of Insurance Regulation determines, after notice and an opportunity for a

hearing, that the affiliate is not complying with the conditions of the exemption.

Effective date: upon becoming law.

• HB 821
Florida Auto Joint Underwriting Association

This bill amends s. 627.311(6), F.S., to designate the General Manager of the Florida Automobile Joint Underwriting Association (FAJUA) as the agent to receive service of all legal process issued against the FAJUA in any civil action or proceeding in this state and that the process so served is valid and binding upon the FAJUA. It provides that service of process upon the General Manager is the sole method of service of process upon the association. Under current Florida law, there is no statutory provision for service of process on the FAJUA and lawsuits are often served upon incorrect parties, which has caused unnecessary delays for the FAJUA to respond to such lawsuits.

Effective date: upon becoming law.

• CS/CS/SB 1448
Unemployment Compensation

This bill revises the Unemployment Compensation Law (ch. 443, F.S.) and other provisions of the Florida Statutes to reflect the current agency framework for administration of the Unemployment Compensation (UC) Program, in which the program is administered by the Agency for Workforce Innovation (AWI) and the Unemployment Appeals Commission, and unemployment tax collection services are provided by the Department of Revenue (DOR) under contract with AWI. The bill clarifies which functions are unemployment tax collection services by assigning duties throughout ch. 443, F.S., to the "tax collection service provider," which the bill designates as DOR.

The bill provides technical changes to reflect current bill drafting practices and methods, revising the text of the UC law to reflect current grammar and usage of the English language, and correcting or updating erroneous, obsolete, and archaic provisions. The bill deletes obsolete historical references and replaces nonspecific cross-references (e.g., "herein," "hereto," "hereof," "hereunder," and "hereinabove") with specific cross-references to discrete subdivisions of the Florida Statutes. The bill also replaces inconsistent terms (e.g., "employment record," "experience-rating record," and "employer's account") with uniform terms.

The bill updates provisions of the UC law which have become obsolete due to advancements in information technology, thereby reflecting current procedures and practices used to administer the program. The bill also provides conforming changes to recognize the role of the state's workforce system, including the one-stop career centers operated by the regional workforce boards under the direction of AWI and Workforce Florida, Inc.

The bill clarifies that limited liability companies are "employing units" under the UC law, requires claimants to submit a valid social security number in order to receive unemployment benefits, and requires claimants whose claims are denied to continue reporting to certify for benefits during any pending appeal. The bill removes a requirement that persons who prepare and report quarterly wages and unemployment contributions or reimbursements must remit the amounts due by electronic means, requires that persons who prepare quarterly reports for 100 or more employers (rather than 5 or more employers under the prior law) must file the reports electronically, and revises the penalties imposed for failure to file a report by elec-

tronic means. The bill also removes a requirement that AWI contract with one or more consumer-reporting agencies to provide creditors with secured electronic access to information contained in the quarterly wage reports submitted to DOR.

Effective date: October 1, 2003, except as otherwise provided.

• CS/CS/SB 1694
Insurance Fraud

This bill creates the "Pete Orr Insurance Anti-Fraud Act," that provides for the following:

- Allows a party to bring a civil action against an unauthorized insurer if such party is damaged by that insurer. An unauthorized insurer is an entity which has not obtained a certificate of authority to operate as an insurer from the Office of Insurance Regulation, as required under the Insurance Code.

- Makes it a third-degree felony for an affiliated party, who is removed or prohibited from participating in the affairs of an insurer, or for a licensee, whose rights and privileges under such license have been suspended or revoked, to knowingly act as an affiliated party or to knowingly transact insurance until expressly authorized by the Department of Financial Services or the Office of Insurance Regulation. The authorization by the department or office may not be provided unless the affiliated party or licensee has made restitution to all parties damaged by the actions of the party or licensee.

- Provides that a person who acts as an insurer without obtaining a certificate of authority commits insurance fraud and is subject to escalating criminal penalties depending upon the amount of premium involved.

- Provides investigators employed by the Division of Insurance Fraud within the Department of Financial Services with full statutory arrest and search powers.

- Increases the penalty from a first-degree misdemeanor to a third-degree felony for selling used motor vehicle goods as new, when charges are paid from the proceeds of a motor vehicle insurance policy.

- Increases the penalty from a second-degree misdemeanor to a third-degree felony for overcharging for motor vehicle repairs and parts which are paid from the proceeds of a motor vehicle insurance policy.

- Increases the ranking of specified insurance-related offenses on the Offense Severity Ranking Chart law within the Criminal Punishment Code.

The bill is named for Pete Orr, a former NASCAR-circuit driver from Monteverde, Florida, who died of cancer. Mr. Orr had purchased a health insurance policy from an out-of-state insurance company that was later determined to be an unauthorized insurer. Mr. Orr subsequently developed cancer and applied for benefits with his health insurer, but the company did not pay any of his claims. Under the provisions of this bill, an individual will be able to sue an unauthorized insurer if damaged by an unauthorized insurer.

Effective date: July 1, 2003.

• CS/CS/SB 2264
Health Insurance/ Out-of-State Group

The bill revises the criteria for a policy issued to a group outside of Florida, but which covers Florida residents ("out-of-state group policy"), to be exempt from the requirements that apply to group health insurance policies issued in Florida related to disclosures on applications for certificates of coverage, unfairly discriminatory rating practices, rights to conversion policies, and other requirements of part VII of ch. 627, F.S. Currently, out-of-state group policies are exempt from most of the requirements that apply to group policies issued in Florida, including rate filing and approval requirements, if certain criteria are met.

The bill adds new criteria that must be met for out-of-state group policies to be exempt. Out-of-state group policies are (1) prohibited from using any pricing structure that results in rate escalations producing a death spiral, which the bill establishes as a form of unfair discrimination; (2) required to provide an insured within such a group, upon termination, the option of a conversion policy; and (3) required to provide additional disclosures, with exceptions, in an application for coverage offered to Florida residents that specify that the policy is primarily regulated by another state and, as a result, all of the rating laws of Florida would not apply to the coverage. The Financial Services Commission is authorized to adopt rules to define other unfairly discriminatory or predatory health insurance rating practices.

The bill also revises the grounds for disapproval of rate filings for health insurance policies issued in Florida by providing more specific criteria. Health insurance policies must meet a minimum loss ratio of at least 65 percent, meaning that at least 65 percent of the premium dollar must be used to pay claims. A policy would be disapproved if it contained provisions that apply rating practices that result in unfair discrimination, between individuals of the same actuarially supportable class in premiums, fees, or rates, at the original time of issuance of the coverage, as provided in s. 626.9541(1)(g)2., F.S.

Current law generally exempts out-of-state group policies from rate filing and approval requirements, which the bill does *not* change. The impact of the bill, however, would effectively require insurers to make one of three choices, to either: (1) meet the new criteria for an exemption from Florida's group insurance requirements; (2) issue individual health insurance policies in Florida, subject to the amended rating law requirements; or (3) withdraw from the Florida market and cease issuing new coverage in the state.

The bill also exempts health maintenance organizations (HMOs) from certain regulatory requirements relating to contracts for groups of 51 or more persons which were authorized for a group health insurance policy insuring 51 or more persons last session. The bill provides that any law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments would not apply to any HMO contract that provides health insurance coverage consisting of medical care offered or delivered to an individual or a group of 51 or more persons. The bill also exempts certain group HMO contracts insuring 51 or more persons from the requirement of filing any changes in rates 30 days in advance of the effective date.

Effective date: July 1, 2003.

• CS/SB 2364
Insurance/Agents/Insurance Code

This bill provides for comprehensive changes to Florida's insurance agent licensing laws as well as other changes to the state's Insurance Code as noted below:

- Conforms insurance agent licensing provisions to the National Association of Insurance Commissioner's (NAIC) "Model Act" to provide that applicants for licensure must be at least 18 years of age and United States citizens, or legal aliens who possess work authorization from the U.S. Immigration and Naturalization Service (INS).

- Conforms insurance continuing education (CE) and prelicensing education to the NAIC Model Act by reducing the number of required hours for most types of insurance agents from 28 hours to 24 hours every 2 years, and requiring that all courses include 3 hours of training on ethics. Provides that specified public adjusters complete 24 hours of courses, 2 hours of which relate to ethics, in subjects relating to current laws relating to all lines of insurance other than life and annuities. Provides for the Financial Services Commission to adopt rules pertaining to continuing education.

- Provides that the prohibition against "sliding" applies to all lines of insurance, not just motor vehicle insurance. This is a prohibition against selling an ancillary coverage or product as part of the policy and representing that it is required by law, included without an additional charge, or sold without informed consent.

- Provides for compliance with the Federal Bureau of Investigation's (FBI) requirement that Florida's insurance licensing provisions expressly authorize the use of FBI records for the screening of applicants for licensure.

- Provides for the automation of appointments of agents by insurers to permit persons designated by the Department of Financial Services (Department) to carry out the appointment process.

- Increases the allowable maximum face value of a preneed burial insurance contract that agents may sell under contract with a funeral director from $10,000 to $12,500 plus an annual percentage increase based on the annual consumer price index.

- Increases the per-policy fee cap from $10 to $20 that a general lines agent may charge on motor vehicle policies, and allowing the fee for all motor vehicle policies, not just policies limited to the minimum mandatory coverage of PIP and property damage liability. (Note: This provision was revisited by the Legislature during Special Session A. See summary of SB 32-A.)

- Provides for late renewal filing fees and delinquent fees pertaining to appointments and for continuing education fees applicable only to adjusters.

- Clarifies that the applicant for a temporary bail bond license must be employed full-time by a licensed bail bond agent at the time of application and provides for rule authority for the Department to establish standards for such employment. Provides a presumption that the insurer performed a background investigation and found the applicant to be of good moral character.

- Simplifies the application process for all limited lines agents to require only one application for a license which may cover multiple locations.

- Requires licensees to advise the Department in writing within 30 days after having been found guilty of or having pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under federal or state laws.

- Provides for technical changes including: deleting references to "solicitor," "runner," and "administrative agent"; clarifies certain dates for expiration of appointments; provides the Department with rulemaking authority in specified instances; updates the reference to the Florida Association of Insurance and Financial Advisors (FAIFA); and provides for delinquent fees, late filing fees, and continuing education fees.

The bill further amends Florida's Insurance Code as follows:

- Amends s. 627.4035, F.S., to clarify that premiums for insurance may be paid by debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.

- Amends s. 627.7015, F.S., to exempt certain types of claim disputes from the statutory mediation program for the resolution of property insurance claims, to codify exemptions that are currently in rule, and to exempt claims for which the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact.

- Amends s. 627.901, F.S., to allow insurers and general lines agents to charge a service charge of $3 per payment installment, if an annual premium is paid monthly or in installments, with a maximum annual service charge of $36 (as an alternative to the current law allowing a rate of interest not exceeding 18 percent simple interest per year on the unpaid balance).

- Amends s. 626.9541(1)(o), F.S., by limiting the applicability of the current unfair or deceptive practices law, which prohibits insurers from charging rates in excess of or less than those specified in the policy, for premiums or rates that are not required to be filed or approved by the Office of Insurance Regulation. As amended, this would apply only to premiums and charges "collected from a Florida resident."

- Amends s. 626.9541(1)(x), F.S., to prohibit insurers from refusing to insure any individual or risk solely because of the fact that the insured or applicant is a public official.

- Amends s. 631.914, F.S., by expanding the assessment base for funding the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA or "association"), which pays workers' compensation claims of insolvent insurers and self-insurance funds. It provides that the assessments levied against insurers and self-insurers of a specified percentage of workers' compensation premiums written in the state, would be applied to the full policy premium value, without taking into account any discount or credit for deductibles. This provision does not increase the percentage caps on assessments, but the expanded assessment base significantly increases funding for

FWCIGA, which is facing mounting liabilities.

- Amends s. 631.913, F.S., to provide that the FWCIGA's obligation to return any unearned premium to an employer shall not exceed $50,000 per policy.

- Amends s. 631.924, F.S., to provide for a 6-month stay of all legal proceedings in which an insolvent insurer is a party, as the law currently provides if a self-insurance fund is a party to a legal proceeding.

- Amends s. 624.406, F.S., to provide that a health insurer may transact reinsurance for the medical and lost wages benefits provided under a workers' compensation insurance policy.

- Amends s. 631.141, F.S., to provide a contingent appropriation relating to delinquency proceedings. It provides that if, at the initiation of such a proceeding, either the Department of Financial Services is not appointed as a receiver, or if the funds of an insurer for which the department is appointed as receiver are not sufficient to cover costs of compensating attorneys, agents, or assistants, there is appropriated, upon the approval of the Chief Financial Officer and the Legislative Budget Commission, from the Insurance Regulation Trust Fund to the Division of Rehabilitation and Liquidation, a sum that is sufficient to cover the unreimbursed costs.

- Amends s. 627.679, F.S., relating to credit life insurance. Current law requires certain written disclosures to be made to borrowers before credit life insurance may be sold. This provision limits these disclosures to credit life insurance sold in connection with a specific installment loan or home equity line of credit. It further provides that such disclosures do not apply to credit life insurance relating to open-end or revolving credit arrangements (such as credit cards)

- Amends s. 648.50, F.S., to provide that one or more taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may provide financial responsibility by providing evidence of holding a motor vehicle liability policy with minimum limits of $125,000/$250,000/$50,000. Currently, such vehicles must obtain liability policies with minimum limits of $10,000/$20,000/$10,000. (Other options for meeting financial responsibility requirements, such as self-insurance or deposits are not changed.)

Effective date: upon becoming law.

• SB 2466
Premium Finance Company Application

This bill amends s. 627.826, F.S., to revise the definition of a "premium finance company" to exempt any person who purchases or acquires premium finance agreements from a licensee (premium finance company), if the licensee retains the possession of and the legal obligation to service the agreements, collects payments due under the agreements, and remains responsible for the premium finance agreements being administered.

Pursuant to the Insurance Code, consumers may finance their insurance premiums through premium finance companies. Under this financial arrangement, the premium finance company advances money to the consumer in the form of payment of premiums on

an insurance contract. Such companies are licensed by the Office of Insurance Regulation and must meet specified net worth and other requirements.

Effective date: upon becoming law.

● SB 2680
Unclaimed Property/ Dept. of Financial Services

The bill amends ch. 717, F.S., The Florida Unclaimed Property Act, which provides the statutory procedure for the escheat (reversion) and disposition of presumed abandoned property to the state. Unclaimed property constitutes funds or other property that has remained unclaimed by the owner for a certain number of years. If the property remains unclaimed, all proceeds from abandoned property are then deposited by the Department of Financial Services into the Department of Education School Trust Fund (State School Fund), except for an $8 million balance that is retained in a separate account for the prompt payment of verified claims by the rightful owners of property. The general purpose of the Act is to protect the interest of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever.

The bill amends or creates four sections of ch. 717, F.S. The definition of "intangible property" contained in s. 717.101, F.S., is amended to include bearer bonds and original issue discount bonds. This change makes bearer bonds and original issue discount bonds subject to s. 717.102, F.S., which states that intangible property held for more than 5 years after the property becomes payable or distributable is presumed unclaimed.

The bill creates s. 717.1071, F.S., to govern when property from the demutualization of an insurance company is presumed unclaimed. Property that becomes payable or distributable in the course of the demutualization of an insurance policy is presumed unclaimed 5 years after the earlier of the date of last contact with the policyholder or the date the property became available or distributable. (House Bill 513 also creates s. 717.1071, F.S., with provisions that may be in conflict with the version enacted by this bill.)

Section 717.1101, F.S., is revised with its title changed to "unclaimed equity and debt of business associations." The section explains when stock or other equity interest in a business association is presumed unclaimed, and provides guidelines for the handling of investments that do not pay out actual dividends. Stock or another equity interest in a business association is presumed unclaimed 5 years after the earliest of the following dates:

- The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner.
- The date of a statement of account or other notification or communication that was returned as undeliverable.
- The date the holder discontinued mailings, notifications, or communications to the apparent owner.

The changes to s. 717.1101, F.S., also state that unmatured or unredeemed debt is presumed unclaimed 5 years after the date of the most recent interest payment unclaimed by the owner. Matured or redeemed debt is presumed unclaimed 5 years after the date of maturity or redemption.

The 5-year period that determines if property is considered unclaimed ceases to run when the owner or person entitled to the property communicates with the association or its agent regarding the interest or a dividend, distribution, or other sum payable as a result of the interest. The 5-year period also ends if the owner or entitled person presents an instrument issued to pay interest or a dividend or other cash distribution.

This bill amends s. 717.119, F.S., to mandate that firearms or ammunition found in an unclaimed safe deposit box or other repository is to be delivered by the holder to a law enforcement agency for disposal.

Effective date: upon becoming law.

• SB 32-A
Motor Vehicle Insurance/ Personal Injury Protection

This bill, passed during Special Session A, creates the "Florida Motor Vehicle Insurance Affordability Reform Act" which implements various changes to the personal injury protection (PIP) automobile insurance laws and other related statutory provisions. The bill provides for the following:

Criminal Penalties for PIP Fraud

The bill creates new crimes for soliciting accident victims; intentionally causing motor vehicle accidents; disclosing confidential vehicle accident reports; presenting false or fraudulent motor vehicle insurance cards; and specified fraudulent actions by insurers and providers. It increases penalties for soliciting accident victims and presenting false or fraudulent insurance applications; provides minimum mandatory penalties for intentionally causing motor vehicle accidents and soliciting accident victims during the 60-day period accident reports are confidential; and increases the ranking of solicitation crimes and certain motor vehicle insurance fraud offenses under the Offense Ranking Chart law.

Regulation of Health Care Clinics

The bill transfers health care clinic regulation from the Department of Health to the Agency for Health Care Administration (AHCA) to be funded by license application fees up to $2,000, effective October 1, 2003. License applications must be submitted by March 1, 2004. The bill strengthens clinic regulation by requiring licensed clinics to meet specified financial and other conditions; authorizes AHCA to conduct clinic inspections; and requires Level 2 criminal background screenings, under ch. 435, F.S., of clinic applicants who have a 5 percent or more ownership interest in the clinic, and other licensed medical employees.

It further prohibits an applicant who has committed a Level 2 crime (including violations relating to insurance fraud) within the past 5 years from obtaining a clinic license or working as a licensed medical provider, medical director, or clinical director; provides that civil rights must be restored prior to obtaining a license; mandates clinics to allow AHCA complete access to premises and records; authorizes the agency to impose administrative fines or seek corrective action from clinic owners or directors under specified circumstances; and requires magnetic resonance imaging (MRI) clinics to become accredited by specified national organizations within one year of licensure, with a single 6-month extension if there is evidence of good cause shown.

The bill authorizes AHCA to promulgate rules and to institute injunctive proceedings and other agency actions under specified circumstances. It provides for new crimes and penalties associated with operating an unli-

censed clinic and requires that providers who are aware of the operation of an unlicensed clinic, but fail to report such clinic, be reported to an appropriate licensing board. The bill appropriates $2.5 million from the Health Care Trust Fund for 51 fulltime equivalent positions for AHCA to implement the clinic licensure program.

PIP Payment and Billing Provisions, Disclosure and Acknowledgment Form; Unnecessary Diagnostic Tests, Independent Medical Examinations

The bill revises provisions governing the submission and payment of PIP benefits so that statements are in compliance with specified coding and billing requirements. It provides that consideration may be given to evidence of the usual and customary charges and payments accepted in the community when determining whether a particular charge for medical services covered by PIP is reasonable, including consideration of other reimbursement levels in the community, state and federal fee schedules, and other information applicable to automobile and other insurance coverages. It provides that PIP coverage will be voided by an act of insurance fraud that is admitted to in a sworn statement or determined by a court of competent jurisdiction. It allows insurers to sue to recover monies paid to a person who committed insurance fraud and provides for recovery of costs and attorneys fees to the prevailing party in any such action.

The bill specifies that PIP insureds and insurers are not required to pay for charges that are not lawful, contain false or misleading statements, or are improperly upcoded or unbundled for the purpose of obtaining a higher reimbursement than otherwise due. However, an MRI facility may globally combine both the technical and professional components, if the total billed amount is not more than the components billed separately.

The bill clarifies that the current fee schedule that applies to specified services based on a percentage of the Medicare fee schedule is the participating physician fee schedule under Medicare Part B, and revises the method for making an annual adjustment to the fee schedule on August 1 of each year.

The bill requires the Financial Services Commission to adopt by rule (by October 1, 2003) a "disclosure and acknowledgment form" which providers and the insured person or his or her guardian must execute, at the initial treatment of the insured. The form must reflect that:

- The insured or guardian attests to the fact that the services set forth therein were actually rendered.
- The insured or guardian was not solicited to seek medical services from the provider.
- The provider rendering the service explained the services to the insured or guardian.
- If the insured notifies the insurer in writing of a billing error, the insured may be entitled to a certain percentage of a reduction in the amounts paid by the insured's motor vehicle insurer.

This legislation further requires the original disclosure and acknowledgment form to be furnished to the insurer when billed by the provider. The bill mandates that for subsequent services, a provider (except for a hospital) maintain a patient log signed by the patient by date of service that is consistent with services being rendered. Hospitals must, however, maintain specified medical records

and make such records available to insurers upon request.

The bill provides for an anti-fraud financial incentive to consumers that if, based on a written report by a person, the insurer finds improper billing by a medical provider, the insurer would pay the person 20 percent of the amount of the reduction up to $500, or pay 40 percent if the provider is arrested due to improper billing. The bill also prohibits insurers from systematically downcoding with the intent to deny reimbursement otherwise due.

The bill authorizes the Department of Health, in consultation with the appropriate professional licensing boards, to establish by rule a list of diagnostic tests that are not medically necessary, and therefore not compensable, by January 1, 2004. Such lists shall be revised from time to time as determined by the department.

The bill requires that only Florida physicians may conduct independent medical examinations (IME); prohibits insurers or their employees from improperly requiring physicians to materially change IME reports (provided that this does not preclude the insurer from notifying the physician of errors of fact in the report based on information in the claim file); and, provides that the denial of payment as the result of such a changed opinion constitutes a material misrepresentation by the insurer under the Insurance Code. The bill mandates physicians who prepare IME reports, and physicians rendering expert opinions on behalf of persons claiming PIP benefits, to maintain such reports and applicable payment records for at least 3 years.

Demand Letter

This legislation expands the current presuit demand letter provision to be applicable to all PIP disputes and increases the time for insurers to respond to the demand letter from 7 business days to 15 calendar days. A demand letter must be sent to a PIP insurer prior to filing any action for PIP benefits, and if the claim is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount, up to $250, no action may be brought against the insurer (and, therefore, no attorney fees would be awarded against the insurer).

Increased PIP Benefits by the Financial Services Commission

The bill provides that if the Financial Services Commission determines that cost savings under PIP have been realized due to the provisions in this act, prior reforms, or other factors, then the Commission may increase the minimum $10,000 benefit coverage requirement. However, in establishing the amount of the increase, the Commission must determine that the additional premium for such coverage is approximately equal to the premium cost savings that have been realized by the $10,000 PIP coverage.

Deductibles

The bill changes the calculation of the PIP deductible to require that it must be applied to 100 percent of medical expenses, rather than to the current 80 percent of expenses that PIP pays. It also changes the calculation of the PIP deductible so that the full $10,000 in PIP benefits can be obtained. This latter provision has the effect of requiring PIP to pay more than it does currently if a deductible is elected. The bill also eliminates the $2,000 PIP deductible, so that the allowable deductibles would be: $250, $500, and $1,000. The bill further provides that liability suits may be brought by an injured person to recover the amount of his or her PIP deductible from the at-fault driver.

PIP Reports to the Legislature
The bill requires the Department of Financial Services, the Department of Health, and AHCA to each submit a report by December 31, 2004, to the President of the Senate and the Speaker of the House of Representatives on the implementation of this bill and recommendations, if any, to further improve the automobile insurance market, and reduce costs, fraud, and abuse. The report by the Department of Financial Services must include a study of the medical and legal costs associated with PIP claims.

Sunset Provision
The bill provides that effective October 1, 2007, the Florida Motor Vehicle No-Fault Law is repealed, unless reenacted by the Legislature during the 2006 Regular Session.

Repeals $10 Fee Increase Pertaining to Licensed General Lines Agents
The bill repeals the $10 per policy fee increase (from $10 to $20) that general lines agents would have been authorized to charge to cover administrative expenses on motor vehicle insurance policies which passed during the 2003 Regular Session in CS/SB 2364. The bill provides that, notwithstanding the amendments made by CS/SB 2364, s. 627.7295(5)(a), F.S., is not amended and is reenacted. In effect, the bill returns to current law the agent fee provision.

Effective Dates
The bill takes effect October 1, 2003, with certain exceptions. In addition to the specific effective dates noted above, the bill provides the following effective dates:

- Section 456.0375, F.S., relating to clinic regulation by the Department of Health, is repealed effective March 1, 2004 (because that is the date applications for clinic licenses are to be submitted to AHCA).
- Any increase in benefits approved by the Financial Services Commission under this bill shall apply to new and renewal policies that are effective 120 days after the order issued by the commission becomes final.
- The provisions pertaining to PIP deductibles shall apply to new and renewal policies issued on or after October 1, 2003.
- The provisions applying to the presuit demand letter shall apply to actions filed on and after August 1, 2003.
- The provisions applying to IMEs shall apply to examinations conducted on and after October 1, 2003.
- The provisions applying to subsection (5) of s. 627.736, F.S., (charges for treatment of injured persons) shall apply to treatment and services occurring on or after October 1, 2003.

● SB 40-A
Credit Reports and Scores/ Use by Insurers

This bill, passed during Special Session A, regulates and limits the use of credit reports and credit scores by insurers for underwriting and rating personal lines motor vehicle insurance and personal lines residential insurance. The bill will be enacted in conjunction with SB 42-A, which provides a public records exemption for trade secrets for credit scoring methodologies and related data required by SB 40-A to be filed with the Office of Insurance Regulation.

The bill requires that a rate filing that uses credit reports or credit scores must comply with the requirements of s. 627.062, F.S., or s. 627.0651, F.S., to ensure that rates are

not excessive, inadequate, or unfairly discriminatory.

Insurers will be required to notify an applicant or insured, in the same medium as the application is received, that a credit report is being requested for underwriting or rating purposes. An insurer will be prohibited from requesting a credit report based upon the race, color, religion, marital status, age, gender, income, national origin, or place of residence of the applicant or insured. In the event an insurer makes an adverse underwriting or rating decision based upon a credit report, the insurer, or a designated third party, will be required to provide a copy of the credit report to the applicant or insured.

The insurer will be required to include the four primary reasons, or fewer if applicable, that were the primary influences of the adverse decision. The bill establishes rights and responsibilities for the insured or applicant and the insurer to address adverse underwriting or rating decisions made by the insurer and establishes an appeal process for an insured or applicant whose credit report or credit score is unduly influenced by the death of a spouse or temporary loss of employment.

The bill prohibits an insurer from making an adverse decision relating to underwriting or rating solely because of the credit information contained in a credit report or credit score.

Insurer will be prohibited from making an adverse decision if based, in whole or in part, on any of the following factors: (1) the absence of, or insufficient credit history, in which case the insurer must treat the consumer as otherwise approved by the Department of Financial Services if the insurer presents information that such an absence or inability is related to the risk for the insurer; (2) collection accounts with a medical industry code, if so identified on the consumer's credit report; (3) place of residence; or (4) any other special circumstance that the Financial Services Commission determines, by rule, lacks sufficient statistical correlation and actuarial justification as a predictor of insurance risk. Insurer will be authorized to use the number of credit inquiries requested or made regarding the applicant or insured except in certain circumstances.

Insurer will be required to re-evaluate the credit history of an insured that was adversely impacted by the use of the insured's credit history, at the initial rating of the policy or at a subsequent renewal, every two years or upon the request of the insured, whichever occurs first. As an alternative, an insurer could re-evaluate the insured within the first three years after the inception of the policy based on other allowable underwriting or rating factors, excluding credit information, provided that the insurer does not increase the rates or premium charged to the insured based on the exclusion of credit reports or credit scores.

The Financial Services Commission will be authorized to adopt rules to administer the provisions of this act and the rules may include: (1) certain information in the filings to demonstrate compliance relating to adverse decisions by the insurer; (2) statistical information an insurer must retain and report annually to the Office of Insurance Regulation; (3) standards that ensure that the use of a credit report or credit score does not unfairly discriminate, based upon race, color, religion, marital status, age, gender, income, national origin, or place of residence; and (4) standards for reviewing methods to grade or rank credit report data.

Effective date: January 1, 2004.

• SB 50-A
Workers' Compensation

This bill, passed during Special Session A, provides changes to the workers' compensation system designed to expedite the dispute resolution process, provide greater compliance and enforcement authority for the Division of Workers' Compensation to combat fraud, revise certain indemnity benefits for injured workers, increase medical reimbursement fees for physicians and surgical procedures, and increase availability and affordability of coverage.

Benefits

Permanent Total Disability – In each of the following cases, an injured employee would be presumed to be permanently and totally disabled unless the employer or carrier establishes that the employee is physically capable of engaging in at least sedentary employment within a 50-mile radius of the employee's residence:

- Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk.
- Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage.
- Severe brain or closed head injury.
- Second-degree or third-degree burns of 25 percent or more of the total body or third degree burns of 5 percent or more to the face and hands.
- Total or industrial blindness.

In all other cases, the employee must establish that he or she is not able to engage in at least sedentary employment, within a 50-mile radius of the employee's residence, due to physical limitations. Generally, such benefits are payable until the employee reaches age 75. If the accident occurs on or after the employee reaches age 70, benefits are payable during the continuance of permanent total disability, not to exceed 5 years following the determination of permanent total disability. The bill provides that an employee is eligible to receive permanent total disability benefits after age 75, and to receive the annual 3 percent permanent total disability supplementary benefit after age 62, if the employee is not eligible for social security benefits due to the compensable injury preventing the employee from working sufficient quarters to be eligible for such benefits.

Permanent Partial Disability – The bill revises the impairment benefits for a permanent partial disability, by increasing the amount of the benefit from 50 percent to 75 percent of temporary total disability benefit, (i.e., increased to 75 percent of 66.6 percent of average weekly wage (AWW), or to about 50 percent of AWW, rather than the current 50 percent of 66.6 percent of AWW, or about 33.3 percent of AWW). However, the amount of the impairment benefit would be reduced by 50 percent (i.e., to about 25 percent of AWW) if the employee is able to earn the same wage or greater after the injury.

The duration of this impairment benefit is changed from the current 3 weeks for each percent of impairment to the following schedule:

- 2 weeks for each percent of impairment from 1 to 10 percent.
- 3 weeks for each percent of impairment from 11 to 15 percent.
- 4 weeks for each percent of impairment from 16 to 20 percent.

- 6 weeks for each percent of impairment from 21 percent and higher.

The bill eliminates the permanent partial disability supplemental benefits for employees who have at least 20 percent impairment and who are unable to earn at least 80 percent of their preinjury wage.

Permanent impairment benefits are limited for the permanent psychiatric impairment to a 1 percent permanent impairment.

The bill also provides that only the disability or medical treatment associated with a compensable injury is payable, excluding preexisting disability or medical condition.

Other Benefits – Funeral and Death, Chiropractic, and Training and Education
The bill increases benefits for funeral expenses from $5,000 to $7,500 and increases death benefits for dependents from $100,000 to $150,000.

The bill increases caps on chiropractic treatments from 18 to 24 visits and the number of weeks of treatments from 8 to 12 weeks.

The bill provides that benefits for training and education authorized by the Department of Financial Services and funded by the Workers' Compensation Administration Trust Fund may include payment to attend a community college or vocational-technical school and this benefit would include securing a general education diploma (GED). The bill provides that temporary total compensation benefits paid during the training and education would be included within, and not added to, the maximum 104 weeks provided for temporary total benefits.

Compensability for Injuries
The bill requires that an accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only. An injury or disease caused by toxic substance would require clear and convincing evidence establishing that exposure to the specific substance caused the injury or diseases sustained by the employee. Both causation and sufficient exposure to support causation must be proven by clear and convincing evidence in cases involving occupational disease or repetitive exposure.

The bill provides that pain or other subjective complaints alone, in the absence of objective relevant medical findings, are not compensable.

For mental and nervous injuries, there must be a physical injury requiring medical treatment which is the major contributing cause. The mental or nervous injury must be demonstrated by clear and convincing evidence. Payment of temporary benefits for mental or nervous injuries is limited to no more than 6 months, after the date of maximum medical improvement for the employee's physical injury, which shall be included in the 104-week period.

Workers' Compensation Joint Underwriting Association
The bill revises the current subplans within the Florida Workers' Compensation Joint Underwriting Association (JUA) to address affordability and availability for small employers and charitable and nonprofit organizations. A new subplan "D" is created, in which the premiums for small employers with 15 or fewer employees and an experience

modification factor of 1.10 or less would be capped at 125 percent of the rate for the voluntary market manual rate, and premiums for charitable organizations meeting certain criteria with an experience modification factor of 1.10 percent or less would be capped at 110 percent of the voluntary market rate. However, any deficits in subplan "D" would be assessed against the employers in that subplan.

The board of the JUA is reduced from 13 to 9 members. Currently 11 of the 13 members are chosen by insurance industry representatives. Under the bill, three members are appointed by the Financial Services Commission; two members by domestic insurers (Florida domiciled); two members by foreign insurers (non-Florida domiciled); one member by the largest property and casualty insurance agents' association; and the Insurance Consumer Advocate of the Department of Financial Services. The Financial Services Commission would designate a member of the board to serve as chairperson.

Dispute Resolution

The bill limits an employer and employee to one independent medical examination (IME) per accident rather than one per medical specialty. The party requesting and selecting the IME is responsible for all expenses associated with the examination. An employee may recoup the costs of an IME from the employer or carrier if the employee prevails in a medical dispute, as determined by a judge of compensation claims, or if benefits are paid or treatment provided after the employee has obtained an IME.

As an alternative to resolving a medical dispute, the bill authorizes the use of a consensus medical examination, if both parties agree. The findings and conclusions of such examination would be binding on both parties, would constitute resolution of the medical dispute, and would not affect the rights of the employee and carrier to have one IME per accident.

The bill also allows an employee, employer, and carrier to agree to seek consent from a judge of compensation claims to enter into binding claim arbitration in lieu of any other remedy provided in ch. 440, F.S.

Attorney Fees

The bill continues the use of the current contingency fee schedule in awarding attorney fees. The fee for benefits secured are limited to 20 percent of the first $5,000 of benefits secured, and 15 percent of the next $5,000 of benefits secured, 10 percent of the remaining amount of benefits secured to be provided during the first 10 years after the claim is filed, and 5 percent of the benefits secured after 10 years.

As an alternative to the contingency fee, the judge of compensation claims may approve an attorney fee not to exceed $1,500 once per accident, based on a maximum hourly rate of $150 per hour, if the judge of compensation claims determines that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney for a disputed medical-only claim.

If there is a written offer to settle issues, including attorney fees, at least 30 days prior to the hearing date, for purposes of calculating the amount of attorney fees to be taxed against the carrier or employer, the term "benefits secured" would include only that amount awarded to the claimant above the amount specified in the offer.

Medical Fee Reimbursement

The bill increases the maximum reimbursement for all physicians to 110 percent of the

reimbursement allowed by Medicare; and increases the maximum reimbursement for surgical procedures to 140 percent of Medicare. The bill continues to allow deviations from fee schedules in certain circumstances, and reduces outpatient reimbursement for scheduled (non-emergency) surgeries from 75 percent to 60 percent of charges. The bill also specifies that outpatient observation status cannot exceed 23 hours.

The bill includes legislative intent to fund increases in payments to physicians by reductions in payments to hospitals.

Reimbursements for prescription drugs are reduced from 1.2 times the average wholesale price (plus a $4.18 dispensing fee) to the average wholesale price (plus the same $4.18 dispensing fee).

Coverage Requirements and Construction Industry Exemptions

Effective January 1, 2004, the bill limits exemptions from coverage in the construction industry to three corporate officers each having at least a 10 percent stock ownership. The bill eliminates exemptions for sole proprietors and partners in the construction industry and deletes the provisions enacted in 2002 that disallowed all exemptions for commercial construction sites valued over $250,000, while allowing exemptions for other construction sites. The type of construction site would no longer be relevant. All persons in the construction industry remunerated for their services would be required to have coverage, except for up to three corporate officers meeting the 10 percent ownership requirement. The bill provides that an exemption certificate is applicable to the corporate officer named on the notice of exemption and applies only within the scope of the business or trade listed.

Any employer with employees engaged in the construction industry in Florida is required to obtain a Florida policy or endorsement that uses Florida class codes and rates. Failure to comply is a second-degree felony.

Compliance and Fraud Enforcement

The bill establishes several measures designed to fight fraud and increase prosecution of fraud in the workers' compensation system, including:

- Provides that an employer that fails to pay stop-work order penalties is ineligible for an exemption from coverage.
- Requires a carrier to submit an annual report to the department detailing losses and recoveries attributable to workers' compensation fraud and authorizes the department to fine carriers for noncompliance.
- Requires an annual report by the Bureau of Workers' Compensation Fraud and the Division of Workers' Compensation of the Department of Financial Services to provide greater accountability regarding compliance and enforcement activities.
- Authorizes the Division of Unemployment Compensation to release information in certain circumstances concerning an employee's wages to determine if an injured worker is employed and receiving workers' compensation benefits.
- Incorporates certain violations of ch. 440, F.S., in the Offense Severity Ranking Chart which would assist in the prosecution and sentencing of workers' compensation fraud by establishing ranking for these violations.

Carrier Compliance

The bill authorizes the department to examine and investigate carriers, self-insured em-

ployers, and servicing agents to determine compliance with ch. 440, F.S., and increases the department's authority to examine and fine entities that engage in patterns or practices of unreasonable delay in claims handling or patterns or practices of harassment, coercion, or intimidation of claimants.

The department may impose an administrative penalty in an amount not to exceed $2,500 for each pattern or practice constituting a non-willful pattern or practice, not to exceed an aggregate amount of $10,000 for all non-willful violations arising out of the same action. Any administrative penalty imposed under this section (s. 440.525, F.S.) for a non-willful violation cannot duplicate an administrative penalty imposed under another provision in ch. 440, F.S., or the Insurance Code. The department is also authorized to impose an administrative penalty for patterns or practices constituting a willful violation in an amount not to exceed $20,000 for each willful practice or pattern. Such fines cannot exceed $100,000 for all willful violations arising out of the same action.

Safety in the Workplace

The bill requires the Division of Workers' Compensation to publicize on its Internet site, and encourage carriers to publicize, the availability of free safety consultation services and safety program resources. All policyholders in the Florida Workers' Compensation Joint Underwriting Association are required to participate in a safety program.

Horizontal Immunity

The bill provides immunity to a subcontractor from lawsuits by employees of another subcontractor or the contractor, if the subcontractor is providing services in conjunction with a contractor on the same project or contract work, under certain conditions. The conditions are: (1) that the subcontractor or contractor has secured workers' compensation coverage for the subcontractor's employees and (2) that the subcontractor's own gross negligence was not the major contributing cause of the injury.

Intentional Torts

Clarifies that the liability of an employer for compensation under s. 440.10, F.S., is exclusive and in place of all other liability except in cases where the employer commits an intentional tort that causes the death or injury of an employee. An employer's actions are deemed to constitute an intentional tort only when the employee proves by clear and convincing evidence that the employer deliberately intended to injure the employee or the employer engaged in conduct that the employer knew was virtually certain to result in injury or death to the employee. The bill also expands immunity from third-party civil liability for safety consultants to all employees of the employer or employees of its subcontractors on a jobsite.

Joint Select Committee on Workers' Compensation Rating Reform

The bill establishes a Joint Select Committee on Workers' Compensation Rating Reform to study the merits of requiring each insurer to individually file its expense and profit portion of a rate filing, while permitting each insurer to use a loss cost filing made by a licensed rating organization. The committee must also study options for the current prior approval system, including procedures that would promote greater competition and would encourage insurers to write coverage in the state while protecting employers from rates that are excessive, inadequate, or unfairly discriminatory. The committee, consisting of three Senators and three Representatives, must issue its final report by Dec. 1, 2003.

Effective date: October 1, 2003, except as otherwise provided within the bill.

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Public Records

PUBLIC RECORDS

● HB 1019
Minor/Videotaped Statement

This bill amends s. 119.07, F.S., and reenacts a public records exemption that makes confidential and exempt from public inspection information contained in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery and other specified sexual offenses, if that information identifies the victim.

The bill designates law enforcement agencies as the custodian of such statements. Only law enforcement agencies and Department of Health child protection teams are responsible for videotaping such minor's statement, but Department of Health child protection teams already have an agency-specific exemption for such minor's videotaped statement.

The bill removes the sentence that requires repeal of the public records exemption.

Effective date: October 1, 2003.

● HB 1021
Housing Assistance Program

This bill is the result of an Open Government Sunset Review of s. 119.07(3)(bb), F.S. That section makes medical history records, bank account numbers, credit card numbers, telephone numbers, and information related to health or property insurance furnished to an agency pursuant to a federal, state, or local housing assistance program confidential and exempt. The bill continues the exemption, with amendments to clarify and narrow it, based upon a review conducted pursuant to the requirements of s. 119.15, F.S. Specifically, the bill amends the section to:

- Identify the state agencies that implement housing assistance programs.
- Remove references to bank account and credit card numbers as the general exemption in s. 119.07(3)(bb), F.S., applies and is more comprehensive.
- Eliminate telephone numbers from the exemption as they are readily available from other sources and, in the case of victims of domestic violence, other statutes provide protection for telephone numbers, as well as addresses.
- Remove language regarding the source of the information, i.e., an "individual" who furnishes information to an agency.
- Delete a provision that states that any other information that is received is subject to open government requirements because that provision reiterates the current state of the law and, as drafted, is confusing and unnecessary.

Effective date: October 1, 2003.

● HB 1023
County Employees

This bill amends and reenacts the public records exemption for personnel records of a county employee's participation in certain alcohol, drug, or mental health programs.

This bill substantially amends s. 125.585, F.S.

Effective date: October 1, 2003.

● HB 1025
Municipal Employees

This bill amends and reenacts the public records exemption for personnel records of a municipal employee's participation in certain alcohol, drug, or mental health programs.

This bill substantially amends s. 166.0444, F.S.

Effective date: October 1, 2003.

● HB 1027
DCA/Trade Secret Information

This bill amends and reenacts the public records exemption for information, other than release or emissions data, that constitutes a trade secret and is submitted as part of a risk management plan or found in records or reports obtained during an investigation, inspection, or audit under the Accidental Release Prevention Program. The objective of the program is to prevent accidental chemical releases and minimize the consequences of such releases if they do occur.

In addition, the bill includes editorial changes for clarification.

The bill amends s. 252.943, F.S.

Effective date: October 1, 2003.

● HB 1033
Meetings/Agency for Health Care Administration/ Dept. of Insurance

The bill reenacts and amends the public records and meetings exemptions relating to the Statewide Provider and Subscriber Assistance Program contained in s. 408.7056, F. S. The bill consolidates and clarifies the exemptions for information held by the Agency for Health Care Administration and the Department of Insurance that identifies a subscriber, provides for the release of the records in a subscriber's grievance to the subscriber or the managed care entity involved in that grievance without redaction of identifying information about the subscriber, and deletes the public meetings exemption when trade secrets are discussed in Statewide Provider and Subscriber Assistance Panel hearings.

Effective date: October 1, 2003.

● HB 1035
Workers' Compensation

This bill reenacts an exemption for certain investigatory records of the Division of Workers' Compensation of the Department of Financial Services relating to workers' compensation employer compliance. The bill also authorizes the department to share such investigatory records with administrative and law enforcement agencies, if such agencies maintain the confidentiality of such records, as specified by s. 440.108, F.S.

This bill is the result of an Open Government Sunset Review performed by the Banking and Insurance Committee during the interim. The exemption would have been repealed on October 2, 2003, unless the Legislature abrogated the repeal.

Effective date: October 1, 2003.

● HB 1037
Rabies Vaccination Certificate

This bill reenacts and narrows the public records exemption for certain information contained in rabies vaccination certificates, which would otherwise be repealed on October 2, 2003. Florida law requires all dogs, cats, and ferrets four months of age or older to be vaccinated against rabies by a licensed veterinarian. Upon vaccination, the veterinarian must provide a rabies vaccina-

tion certificate to the animal's owner and to the animal control authority.

Current law provides a public records exemption for information contained in a rabies vaccination certificate which identifies the owner of the animal vaccinated and is contained in a rabies vaccination certificate provided to the animal control authority with certain exceptions. This provision has proved unclear and difficult. This bill narrows the public records exemption by limiting the exemption to the animal owner's name, street address, and phone number, and the animal tag number. It also narrows the exemption by only making such information exempt from public disclosure rather than confidential and exempt, as there are a number of exceptions to the current exemption.

This bill removes the vague provision whereby one may view rabies vaccination certificates one record at a time upon written request, because the provision is unclear as to whether the requestor is permitted to view exempt information contained in rabies vaccination certificates while viewing them one record at a time. This change makes it clear that the only persons permitted access to the exempt information are those listed in the current exceptions to the public records exemption. The related requirement to provide a written request to view the records one at a time is also removed because it is not necessary and because many of the animal control authorities currently request personal information regarding the records requestor, as well as ask for reasons for needing to view the certificate one record at a time. Chapter 119, F.S., requires no showing of purpose or special interest as a condition of access to public records, and a records custodian may not impose a rule or condition of inspection which operates to restrict or circumvent a person's right of access.

This bill also removes the redundant provision restating that information contained in an existing database is exempt. Information made exempt remains so whether it is contained in the actual rabies vaccination certificate or is further contained in a database. The location of information does not change its status as exempt. Finally, this bill adds clarifying language, makes editorial changes, and removes the review and repeal language.

Effective date: October 1, 2003.

• HB 1039
Investigative Information

This bill amends and reenacts the provisions of s. 498.047(8), F.S., which make information concerning an investigation into land sales practices by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation confidential and exempt from the public records law, s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution. The bill provides for the sharing of information with other governmental entities when a request is made in connection with its official duties. The bill removes the repeal of the exemption scheduled under the Open Government Sunset Review Act of 1995, s. 119.15, F.S.

Effective date: October 1, 2003.

• HB 1041
Public Records & Meetings

This bill reenacts with certain changes the public records and public meetings exemptions for the Florida Automobile Joint Underwriting Association (FAJUA) pertaining to open claims, underwriting, and audit files; proprietary information; specified employee records; on-going negotiations; and portions of meetings relating to open claims and un-

derwriting files. The bill removes the public records exemption for "matters reasonably encompassed in privileged attorney client communications" because current law already provides a public records exemption for such information under ch. 119, F.S. The bill further adds technical conforming language and makes changes to conform to ch. 2002-404, L.O.F., which abolished the Department of Insurance and created the Department of Financial Services, the Office of Insurance Regulation, and the office of the Chief Financial Officer.

This bill is the result of an Open Government Sunset Review performed by the Banking and Insurance Committee during the interim. The exemption would have been repealed on October 2, 2003, unless the Legislature abrogated the repeal.

Effective date: October 1, 2003.

● HB 1061
Federal Records

This bill authorizes confidential federal records which are provided to the Department of Agriculture and Consumer Services for assistance during a joint food safety or food illness investigation to remain confidential and exempt from public records requirements. The department has been unable to provide timely assistance in evaluating information or providing meaningful input because of Florida's sunshine laws. The bill prohibits the disclosure of such information unless a federal agency has found that the record is no longer entitled to protection or unless ordered by a court. It also provides for future legislative review and repeal and provides a statement of public necessity.

Effective date: contingent.

● CS/SB 1182
Security System Plans

This bill amends an existing exemption found in s. 119.071, F.S., to clarify that security system plans of a public or private entity, which plans are held by an agency, are confidential and exempt from the public record requirements. The bill creates an exception to the exemption to allow the disclosure of security system plans by a custodial agency to a property owner or leaseholder.

Effective date: upon becoming law.

● HB 1717
Execution/ID Information

This bill amends s. 945.10(g), F.S., reenacting the public records exemption for information that identifies any person who prescribes, prepares, compounds, dispenses or administers the lethal injection used to carry out a death sentence pursuant to ch. 922, F.S. The bill repeals s. 922.106, F.S., which is duplicative, and also amends s. 922.10, F.S., to eliminate a duplicative exemption for the identity of an executioner.

Effective date: upon becoming law.

● HB 1763
Domestic Violence Victims

This bill reenacts the public records exemption for the addresses, telephone numbers, and social security numbers of program participants of the Address Confidentiality Program for victims of domestic violence. The separate statutory provision prohibiting the Office of the Attorney General from disclosing this information is repealed and replaced with the specification that the reenacted public records exemption applies to the information held by the Office of the Attorney General. The separate statutory provision prohibiting the supervisors of elections from disclosing this information is also repealed and re-

placed with a new subsection that explicitly provides for the public records exemption of this information held by the supervisors of elections. The required 5-year repeal for the new exemption for the supervisors of elections is provided for by the bill.

Effective date: upon becoming law.

• HB 1785
Medical Information

The bill makes confidential and exempt all personal identifying information in records relating to a person's health held by local government entities or their service providers for the purpose of determining eligibility for paratransit services under Title II of the Americans with Disabilities Act or eligibility for the Transportation Disadvantaged Program as provided in part I of ch. 427, F.S. Such information may be released with the express written consent of the individual or the individual's legally authorized representative; in a medical emergency, if necessary to protect the health or life of the individual; by court order upon a showing of good cause; or for purposes of determining eligibility for paratransit services, if the individual or the individual's legally authorized representative has filed an appeal or petition before an administrative body of a local government or a court.

This bill creates s. 119.07(3)(gg), F.S.

Effective date: upon becoming law.

• SB 42-A
Credit Scoring Methodologies/Trade Secrets

The bill, passed during Special Session A, makes confidential and exempt all credit scoring methodologies and related data and information that are trade secrets as defined in s. 688.002 and that are filed with the Office of Insurance Regulation pursuant to a rate filing or other filing required by law. The bill is enacted in conjunction with the provisions of SB 40-A related to the use of credit reports and scores by insurers.

Effective date: January 1, 2004.

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Taxation

TAXATION

• HB 267
Unpaid Taxes/Sale of Certificate

This bill authorizes counties to conduct the sale of tax certificates for unpaid taxes by electronic means.

This bill amends s. 197.432, F.S.

Effective date: upon becoming law.

• HB 691
Economic Development Incentive Program

This bill revises laws relating to several of the state's economic development incentive programs.

Capital Investment Tax Credit Program

Under the Capital Investment Tax Credit (CITC) Program, a "qualifying business" that establishes a "qualifying project" in this state is eligible to receive an annual credit against the business's corporate income tax liability or the premium tax liability generated by the project. The bill modifies the definition of a "qualifying project" eligible to receive a capital investment tax credit to expressly include:

> a new financial services facility in this state which creates at least 2,000 new jobs in this state, pays an average annual wage of $50,000, and makes a cumulative capital investment of at least $30 million.

Tax Refund Program for Qualified Defense Contractors

The bill modifies the definition of "Department of Defense contract" in the Qualified Defense Contractor Tax Refund Program to include certain contracts for products or services for homeland security. Under the revised definition, eligible contracts may be made with the Department of Homeland Security. Businesses having Department of Defense contracts may be eligible for refunds of specified taxes paid to this state.

Tax Refund Program for Qualified Target Industry Businesses

The Office of Tourism, Trade, and Economic Development and Enterprise Florida, Inc., are expressly directed by the bill to consider the development of strong industrial clusters which include defense and homeland security businesses when identifying target industry businesses under the Qualified Target Industry (QTI) Tax Refund Program. The bill also extends the deadline to June 30, 2004, for a qualified target industry business to apply for an economic stimulus exemption from its contractual obligations with the Office of Tourism, Trade, and Economic Development (OTTED). An economic-stimulus exemption will enable a qualified target industry business to remain in the QTI Tax Refund Program if it has been unable to comply with its contractual obligations with OTTED due to economic conditions or terrorism. The business will be able to receive the exemption in lieu of a tax refund.

Quick Action Closing Fund

The bill revises the Quick Action Closing Fund to allow the Governor to disburse such funds to an eligible economic development project without consulting the Legislative Budget Commission through the process prescribed in s. 216.177, F.S. The bill also allows the Governor, in consultation with the President of the Senate and the Speaker of the House of Representatives, to request a

budget amendment from the Legislative Budget Commission for authority to reallocate unencumbered funds in the Quick Action Closing Fund to other economic development programs and operations in an emergency or special circumstance.

Effective date: upon becoming law.

● CS/SB 1024
Non-Ad Valorem Assessments

This bill expands the time frame for holding a public hearing to adopt a non-ad valorem assessment roll, and authorizes an alternative notice process for certain changes to non-ad valorem assessments.

This bill amends s. 197.3632, F.S.

Effective date: upon becoming law.

● SB 1162
Taxation

This bill revives and reenacts provisions relating to the tourist development tax and the Florida Taxpayer's Bill of Rights which are otherwise scheduled to be repealed October 1, 2005.

This bill revives and readopts ss. 125.0104(7) and 192.0105, F.S.

Effective date: upon becoming law.

● CS/SB 1176
Tax Administration

The bill adopts numerous improvements to the administration and enforcement of Florida's revenue laws. Specifically, the bill does the following:

Communications Services Tax

- Specifies what the service address shall be in the case of third-number and calling-card calls.
- Provides an exemption for the sale of communications services to a home for the aged.
- Creates penalties for providers who improperly situs customers and fail to make corrections when customers are assigned to the incorrect local jurisdiction.
- Authorizes that the penalty for a communications services dealer failing to respond to a notice from the Department of Revenue or request an extension may be compromised pursuant to s. 213.21, F.S.
- Provides a mechanism for correcting possible errors in situsing of local communications services tax revenues.
- Requires that each person selling communications services in more than one jurisdiction within Florida assist the Department of Revenue by providing necessary data in an electronic format specified by the department. The bill imposes a penalty for failure to comply.

Fuel Taxes

- Inclusion of a definition of the new fuel "bio-diesel" and licensing requirements consistent with other fuels.
- Imposes a $5,000 penalty for retailers who refuse to provide required reports.
- Requires wholesalers or terminal suppliers who divert a load of Florida fuel to pay the Florida tax on the return and establish limits to the number of loads that may be diverted to Florida before an importer license is required.

- Imposes a flat $5,000 penalty for taxpayers required to file electronically but fail to do so.

- Changes the requirement for corporations from having to provide certified copies of corporate documents to simply providing the Department of Revenue with a statement that the corporation is in good standing with the Florida Department of State.

- Authorizes, by statute, the Department of Revenue to obtain fingerprints and personal data from persons applying for certain fuel licenses.

Unemployment Compensation Tax

- Provides that, for unemployment compensation tax purposes, a limited liability company will be treated the same as it is for federal income tax purposes.

- Provides that an employer may not be considered a successor under this section if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions.

- Authorizes the Department of Revenue to charge no more than 10 percent of the total cost of the interagency agreement for the overhead or indirect costs of providing unemployment compensation tax collections.

Other Tax Administration Issues

- Provides authority for the Department to require dealers to report rental car surcharge collections on a county-by-county basis in order to facilitate the allocation of surcharge revenues to each Department of Transportation district.

- Authorizes carriers to prorate the tax on their purchases of motor fuel and diesel fuel used in a railroad locomotive or vessel when the carrier has been in business for less than a year.

- Permits the Department of Revenue to allow a taxpayer with a perfect tax return filing record for at least 12 consecutive months to retain his or her collection allowance, under certain circumstances.

- Specifies that only one penalty of 10 percent, which may not be less than $50, shall be imposed for failure to timely file a sales and use tax return and to timely pay the tax shown due on the return.

- Permits the Department of Revenue to establish new tax brackets when necessary without requiring rulemaking when the Legislature changes a tax rate.

- For voluntary self-disclosure of tax liability, the bill changes the time period that the Department of Revenue may settle and compromise tax and interest due. The time period is changed from 5 years to 3 years immediately preceding the date the taxpayer contacted the Department of Revenue.

- Provides that failure to make an electronic funds transfer payment will be subject to the same prosecution as payment with a worthless check, bank draft, or debit card.

- Eliminates the requirement that the annual intangible tax return include language permitting a voluntary contribution

of $5 for the Election Campaign Financing Trust Fund, because the trust fund expired November 4, 1996.

- Authorizes an affiliate group of corporations that created a service company with an affiliated group on July 30, 2002, to receive the salary credits for Insurance Premium Tax purposes.

- Repeals the restriction on the use of Local Government Infrastructure Surtax revenue to supplant or replace user fees or reduce ad valorem taxes.

- Repeals the repeal of the certified audits pilot project, making it permanent.

- Expands the sales and use tax exemption for building materials used in a designated brownfield area of affordable housing.

- Expands the use, by a charter county, of the Charter County Transit System Surtax to include planning, development, construction, operation and maintenance of, as well as the payment of principal and interest on bonds issued for, roads and bridges in the county and bus and fixed guideway systems.

- Provides that local governments that collect a municipal resort tax may participate in the RISE (Registration Information Sharing and Exchange) Program.

- Corrects an unintended consequence of last year's legislation by restoring the automatic renewal of lands classified as agricultural under s. 193.461, F.S., if the county waives the requirement for annual applications. It also declares that, for January 1, 2003, failure of a property owner to return the agricultural classification form or card in a county that waived the annual application process shall constitute an extenuating circumstance.

Effective date: July 1, 2003, except as otherwise provided.

● SB 1632
County Governments

This bill specifies additional services for which counties may create municipal service taxing or benefit units.

This bill amends s. 125.01(1)(q), F.S.

Effective date: July 1, 2003.

● HB 1721
Subdivision Property

This bill increases the tax deed application fee from $15 to $75; requires that before property is sold under an outstanding tax certificate on land that is either submerged land or common elements in a subdivision, each owner of property contiguous to the property subject to sale must be notified; requires that a county notify each owner of such property within 90 days after property is placed on the list of lands available for taxes if the county holds the tax certificate and does not purchase the property; and requires that the value of taxes and non-ad valorem assessments against common elements of a subdivision be prorated by the property appraiser and included within the value of the lots within the subdivision.

This bill amends ss. 197.502, 197.522 and 197.582, F.S., and creates an unspecified section of Florida Law.

Effective date: January 1, 2004.

• HB 1813
Local Option Fuel Taxes/ Motor Fuel

The bill amends s. 206.60, F.S., to add bicycle paths and pedestrian pathways to those projects for which the "1-cent county fuel tax," levied pursuant to s. 206.41(1)(b), F.S., may be spent, at the discretion of county commissions.

The bill amends s. 206.605, F.S., to add bicycle paths and pedestrian pathways to those projects for which the "1-cent municipal fuel tax," levied pursuant to s. 206.41(1)(c), F.S., may be spent, at local discretion.

The bill amends s. 336.025(1)(b), F.S., to expand how counties and municipalities may expend funds received from the local option gas tax. This bill authorizes funds from the last 5 cents of the 11-cent local option fuel tax to be expended for projects needed to meet immediate local transportation problems and for other transportation related expenditures critical for building comprehensive roadway networks by local governments.

Subsection (7) of s. 336.025, F.S., is also amended to provide that proceeds from the 11-cent local option gas tax may be expended on current expenditures for the construction or reconstruction of sidewalks. Subsection (8) is amended authorizing a municipality in a county with a population of 50,000 or less to use the proceeds from the first 6 cents of the 11-cent local option gas tax for infrastructure projects, provided such projects are consistent with the local government's comprehensive plan.

Effective date: upon becoming law.

• HB 1839
Corporate Income Tax

This bill updates the Florida Income Tax Code to reflect changes in the U.S. Internal Revenue Code enacted by Congress since January 1, 2002. This definition provides for "piggybacking" each change made during 2002 in the Internal Revenue Code.

This bill ensures current administration of the corporate income tax and provides that corporations that are subject to Florida corporate income tax can base their tax calculations on current IRS rules. Failure to pass this bill would result in increased bookkeeping burdens for these entities.

Since Florida's corporate income tax is based upon a taxpayer's income as calculated for federal tax purposes, this bill allows Florida to rely on the efforts of the IRS to ensure the accuracy of the starting point for determining tax liability. Passage of this bill helps keep down the cost of enforcing Florida's income tax law.

Effective date: upon becoming law.

• SB 18-A
Taxpayer Amnesty

The bill, passed during Special Session A, directs the Department of Revenue to develop and implement, not later than July 1, 2003, an amnesty program for taxpayers subject to the state and local taxes imposed by chapters 125, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221, 336, 370, 376, 403, 538, 624, 627, and 681, Florida Statutes.

The amnesty program is a one-time opportunity for eligible taxpayers to satisfy their tax liabilities under the revenue laws of this state and thereby avoid specified criminal prosecution, penalties, and interest. Any taxpayer that has entered into a settlement of liability

for state or local option taxes before July 1, 2003, whether or not full and complete payment has been made of the settlement amount, is not eligible to participate in the amnesty program.

The amnesty program will be in effect for a 4-month period beginning on July 1, 2003, and ending on October 31, 2003. The amnesty program applies only to tax liabilities due prior to July 1, 2003. In order to participate in the amnesty program, eligible taxpayers must file the forms and other documentation specified by the Department of Revenue, including, but not limited to, returns and amended returns, must make full payment of tax due, and must make payment of the interest due, if any, as further provided.

A taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, inquiry, examination, or civil investigation initiated by the Department of Revenue, regardless of whether the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the Department of Revenue, and without regard to whether the amount due is subject to a pending administrative or judicial proceeding.

Under certain circumstances, the taxpayer will be required to pay the full amount of the tax due and 50 percent of the amount of interest due.

No penalties will be imposed on any tax paid pursuant to the amnesty program, and the Department of Revenue will not initiate a criminal investigation against or refer for prosecution any taxpayer participating in the amnesty program with respect to the failure to timely pay the tax disclosed in the amnesty program.

The executive director of the Department of Revenue is authorized to adopt emergency rules under sections 120.536(1) and 120.54(4), Florida Statutes, to implement the amnesty program. Such rules may provide forms, procedures, terms, conditions, and methods of payment appropriate for fair and effective administration of the amnesty program and to ensure the taxpayer's ongoing commitment to proper remittance of taxes to the state. Notwithstanding any other law, the emergency rules will remain in effect until the later of the date that is 6 months after the date of adoption of the rule or the date of final resolution of all amnesty applications filed pursuant to the bill.

Effective date: upon becoming law, except as otherwise indicated within the bill.

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