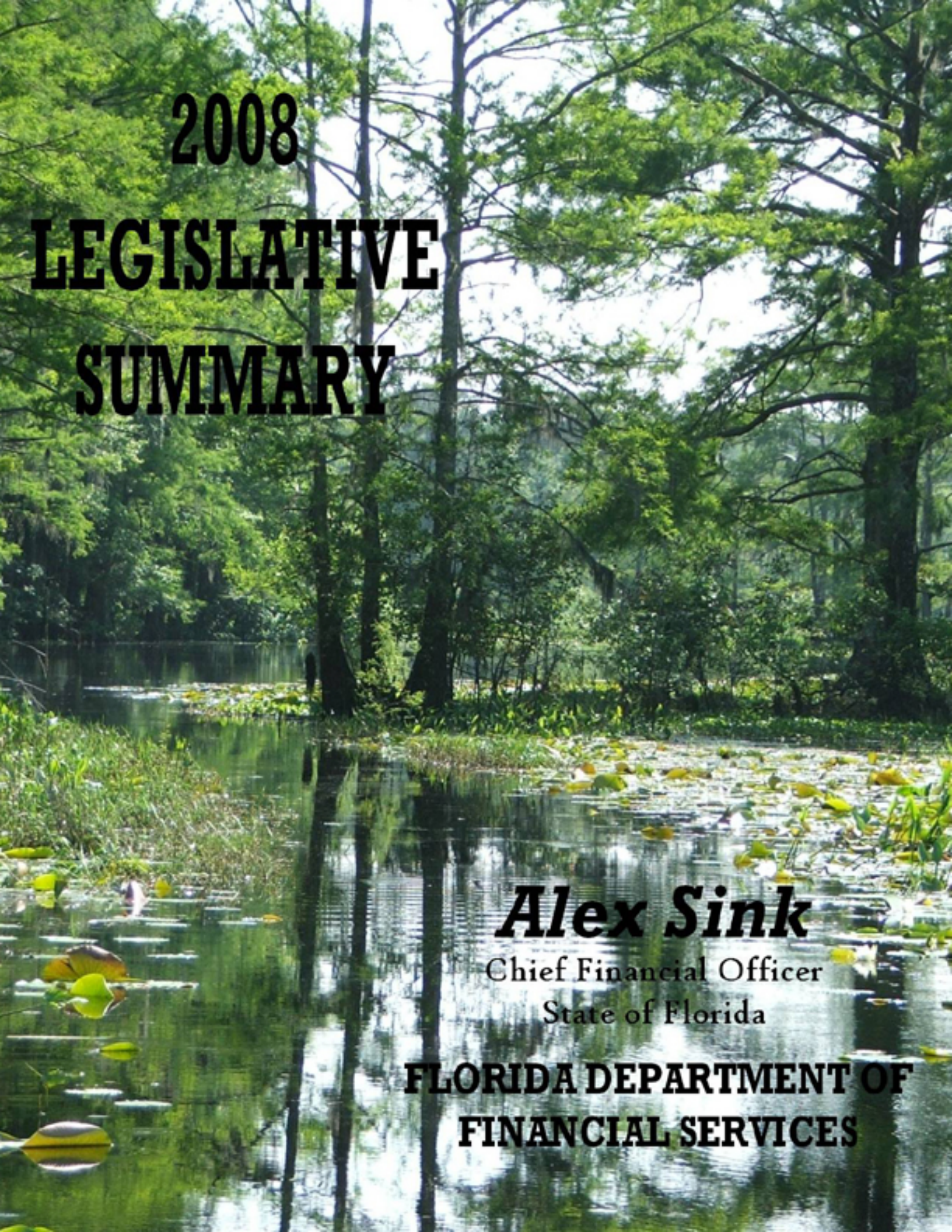

2008 LEGISLATIVE SUMMARY

Alex Sink

Chief Financial Officer
State of Florida

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

INTRODUCTION

This document has been compiled to offer an overview of the legislation passed by the Florida Legislature during Special Session C (October 2007) and the 2008 Regular Legislative Session that affects the Department of Financial Services.

At the time this publication was finalized, some of the legislation was pending the Governor's approval; therefore, please verify that the legislation has been enacted into law and has not received a veto by the Governor. This document and the status of bill actions by the Governor will be updated on the DFS internet.

Access to all bills, their final action, legislative staff analyses, floor amendments, bill history and Florida Statutes citations are available through the Internet. The Internet address for the Florida Legislature Online Sunshine web site is:

http://www.leg.state.fl.us

For additional information on legislation passed by the Florida Legislature you may contact the Office of Legislative Affairs at (850) 413-2863 or SUNCOM 293-2863.

TABLE OF CONTENTS

SB 34 – Relief/Laura Laporte/Dept. of Agriculture and Consumer Services: Effective April 29, 2008, by Senate Judiciary Committee; and Senator Lawson.

Compensates Laura Laporte for damages she sustained in a motor vehicle accident in which her vehicle was struck by a vehicle driven by an employee of the Department of Agriculture and Consumer Services and is based on a jury verdict. The bill awards the sum of $4 million dollars from General Revenue to Laura Laporte. Not more than 25 percent of the award may be paid by the claimant for attorney's fees, lobbying fees, costs, or other similar expenses. The Chief Financial Officer is directed to issue the warrant.

HB 165 - Agency Inspector Generals: Chapter 2008-183, L.O.F., Effective July 1, 2008; by House Government Efficiency and Accountability Council; and Representative Bean.

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

The bill further requires each IG to provide to the agency head all written complaints concerning the duties or responsibilities of the office of the inspector general received from the subjects of investigations who are individuals substantially affected or entities contracting with the state. In addition, for agencies under the Governor's jurisdiction, the agency IG must report to the Chief Inspector General all written complaints or alleged misconduct concerning the office of the IG or its employees.

HB 343 – Debt Cancellation Products: Chapter 2008-75, L.O.F.; Effective October 1, 2008; by House Policy & Budget Council; House Jobs & Entrepreneurship Council; and Representative Carroll and others.

The bill addresses a number of issues related to banking, insurance, and financial instruments, as follows.

- ✓ Authorizes the sale of optional guaranteed asset protection (GAP) products by motor vehicle installment sellers, sales finance companies, retail lessors and their assignees, and establishes requirements for the sale of such products. The creditor selling the GAP product agrees to waive the customer's liability for some or all of the amount by which the debt exceeds the value of the collateral. The seller of GAP coverage may not require its purchase as a condition for making a loan. In order to offer a GAP product, the seller of the GAP product must comply with specified statutory consumer protection requirements.
- ✓ Defines "debt cancellation product," specifies that such products may be sold by financial institutions (banks, credit unions, etc.) and their subsidiaries and other business entities authorized by law, and states that it is not insurance for purposes of the Florida Insurance Code. A creditor selling a debt cancellation product agrees to cancel or suspend all or part of a customer's obligation to make payments upon the occurrence of specified events, including guaranteed asset protection contracts and other debt cancellation or suspension agreements. Financial institutions are required to manage risks associated with debt cancellation products prudently, and to establish and maintain effective risk management and control programs regarding such products. A financial institution may not require the purchase of a debt cancellation product as a condition for making the loan, line of credit, or loan extension.
- ✓ Defines insurance purchased by a creditor for its financial debt cancellation products as a form of casualty insurance.
- ✓ Eliminates the $50,000 limit on insurance that may be procured on the life of a debtor under a debtor group contract, or pursuant to a credit life insurance policy. Instead, the limit is the amount of the person's indebtedness to the creditor. The bill also allows the term of credit disability insurance to extend for the term of the indebtedness, rather than the current 10-year time limitation.
- ✓ Specifies that a deposit or account made in the name of two persons who are husband and wife is considered a tenancy by the entirety unless otherwise specified in writing.
- ✓ Raises the minimum proposed capitalization for any proposed bank to $8 million and deletes the differing capitalization for banks in metropolitan areas and those in rural counties. The bill also raises the minimum total capital accounts at opening for a trust company from $2 million to $3 million and sets differing capitalization standards for banks owned by single-bank holding companies and banks owned by multi-bank holding companies.
- ✓ Eliminates the need for a bank or trust company to obtain approval from the Office of Financial Regulation (OFR) in order to increase its capital. However, a state bank or trust company must notify the OFR in writing

15 days before increasing its capital stock. The bill deletes the prohibition against a bank or trust company issuing capital stock with over a $100 par value. It states a financial institution may not issue or sell stock of the same class which creates different rights, options, warrants, or benefits among the purchasers or stockholders of that class of stock. However, the financial institution may create uniform restrictions on the transfer of stock as permitted in s. 607.0627, F.S.

- ✓ Deletes the current prohibition against a bank or trust company issuing capital stock that has a par value greater than $100, thus giving these institutions more flexibility.
- ✓ Clarifies who can assert dissenter's rights pursuant to the approval of the sale of stock by a state bank or trust company. The fair value of the shares of stock will be determined using the procedures in s. 607.1326, F.S., and s. 607.1331, F.S. – the same as is applied to corporations.
- ✓ Allows state-mandated endowments that are funded by a general appropriation act prior to 1990 to maintain funds in trust accounts in financial institutions.

HB 443 – Relief/Marissa Amora/Dept. of Children and Family Services: Effective May 6, 2008; by House Policy & Budget Council; House Healthcare Council; and Representative Coley.

Appropriates $1,200,000 in non-recurring General Revenue to finance and purchase a structured settlement which must include an annuity to provide for the habilitative care of Marissa Amora over the duration of her lifetime and to compensate her for the damages she sustained as a result of the negligence of employees of the Department of Children and Family Services.

The Chief Financial Officer is directed to execute all necessary agreements to implement the payment of this claim and to draw a warrant in the amount of $1,200,000 for fiscal year 2008-2009 in favor of the financier of the structured settlement to be paid from the General Revenue Fund. The bill also requires the Department of Children and Family Services to include in its annual legislative budget requires a specific appropriation for $1,700,000 each year for 10 years, for a total of $17,000,000. The total of the award to be paid over 11 years is $18,200,000. The bill limits attorney's fees, lobbying fees, and costs to 25% of each annual payment.

HB 461 – Health Flex Plans: Chapter 2008-118, L.O.F.; Effective July 1, 2008; by Representative Patronis and others.

The Health Flex Plan Program was established to offer basic affordable health care services to low-income, uninsured residents. The bill expands the population eligible to purchase health flex plans by raising the income limit from 200 to 300 percent of the federal poverty level. The bill also extends the expiration date of the program from July 1, 2008 to July 1, 2013.

HB 535 – Health Insurance/Bone Marrow Transplant:
Chapter 2008-119, L.O.F.; Effective January 1, 2009; by House Policy & Budget Council; and Representative Cretul and others.

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

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

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

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

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

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

HB 542 – Land Acquisition and Management: Chapter 2008-___, L.O.F.; Effective July 1, 2008; by Senate General Government Appropriations Committee; Senate Environmental Preservation and Conservation Committee; and Senator Saunders and others.

Florida Forever

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

The bill expands the scope of the program to include protecting agricultural lands and working waterfronts from conversion to other land uses and revises the allocation of Florida Forever funds and the uses of those funds to reflect the expansion. The allocation to the water management districts is reduced from 35% to 30% ($15 million reduction, if Florida Forever is funded at $300 million) and the allocation to the Florida Community Trust is reduced from 22% to 21% ($3 million reduction, if Florida Forever is funded at $300 million). New allocations are provided to the Department of Agriculture and Consumer Services (DACS) to acquire perpetual conservation easements on agricultural lands (3.5% or $10.5 million, if Florida Forever is funded at $300 million) and to the Department of Community Affairs (DCA) to acquire fee and less-than-fee interests in working waterfronts (2.5% or $7.5 million, if Florida Forever is funded at $300 million). The bill establishes a 1% to 3% floor and a 10% ceiling for capital projects that enhance public access at the time of acquisition.

The bill states legislative intent for the state to play a major role in the recovery and management of imperiled species through the acquisition, restoration, enhancement, and management of ecosystems, and to support programs benefiting imperiled species habitat by providing public and private land owners meaningful incentives to participate in such activities. The bill defines the term "imperiled species" to mean plants and animals that are federally- listed under the Endangered Species Act, or state-listed by the Fish and Wildlife Conservation Commission (FWC) or the DACS. Intent is provided that public lands identified by the lead management agency, in consultation with the FWC

and DACS, as potential habitat for such species be restored, enhanced, managed, and repopulated to advance imperiled species management consistent with the purposes for which such lands are acquired without restricting other uses identified in the management plan. The bill provides additional intent that additional consideration be given to acquisitions that achieve a combination of conservation goals, including restoration, enhancement, management, or repopulation of habitat for imperiled species.

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

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

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

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

- ✓ The number of acres acquired through the state's land acquisition programs that contribute to the enhancement of essential natural

resources, ecosystem service parcels, and connecting linkage corridors as identified and developed by the best available scientific analysis.

- ✓ The number of acres of publicly owned land identified as needing restoration, enhancement, and management, acres undergoing restoration or enhancement, and acres with restoration activities completed, and acres managed to maintain such restored or enhanced conditions; the number of acres which represent actual or potential imperiled species habitat; the number of acres which are available pursuant to a management plan to restore, enhance, repopulate, and manage imperiled species habitat; and the number of acres of imperiled species habitat managed, restored, enhanced, repopulated, or acquired.

Acquisition and Restoration Council

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

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

Land Management

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

- ✓ Habitat restoration and improvement;
- ✓ Public access and recreational opportunities;
- ✓ Hydrological preservation and restoration;
- ✓ Sustainable forest management;

- ✓ Exotic and invasive species maintenance and control;
- ✓ Capital facilities and infrastructure;
- ✓ Cultural and historical resources;
- ✓ Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

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

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

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

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

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

Biennially, each Land Management Uniform Accounting Council (LMUAC) reporting agency shall also submit an operational report for each management area along with an approved management plan. The report should assess the progress toward achieving short-term and long-term management goals of the approved management plan, including all land management activities, and

identify any deficiencies in management and corrective actions to address identified deficiencies as appropriate. This report must be submitted to the ARC and the DSL for inclusion in the annual Florida Forever report. (NOTE: HB 7059 as passed by the Legislature revises this reporting interval from biennial to every three years.)

Board of Trustees and the Division of State Lands

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

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

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

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

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

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

The bill requires the DSL to prepare an annual work plan. The annual work plan must prioritize projects on the Florida Forever list and set forth the funding for

the upcoming year. The annual work plan must categorize existing Florida Forever projects into the following:

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

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

Conservation and Recreation Land Trust Fund

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

- ✓ Expanding the intent language regarding state lands to include prioritizing the restoration and management of the state's conservation and recreation lands and acquiring lands that advance the goals and objectives of the FWC's approved species or habitat recovery plans;
- ✓ Expanding the public purpose of acquiring lands to include preserving agricultural lands under the threat of conversion to development through less-than-fee acquisitions;
- ✓ Changing the 1.5% ceiling for the funding of land management, maintenance and capital improvement to a 1.5% floor to fund such activities;
- ✓ Requiring the Land Management Uniform Accounting Council (LMUAC) to prepare and deliver a report on the methodology and formula for allocating land management funds to the ARC;
- ✓ Requiring the ARC to review the report submitted by the LMUAC, modify as appropriate, and submit the report to the BOT;
- ✓ Requiring the BOT to review the report submitted by the ARC, modify as appropriate, and submit the report to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 2008. The report is to provide an interim management formula and a long-term management formula, and the methodologies used to develop the formulas that will be used to allocate CARL land management funds. The methodology and formula for interim management shall be based on

the estimated land acquisitions for the fiscal year in which the interim funds will be expended. The methodology and formula for long-term management must recognize, but not be limited to, the following:

- The assignment of management intensity associated with managed habitats and natural communities and the related management activities to achieve land management goals provided in land management plans:
  - The acres of land that require minimal effort for resource preservation or restoration;
  - The acres of land that require moderate effort for resource preservation or restoration;
  - The acres of land that require significant effort for resource preservation or restoration.
- The assignment of management intensity associated with public access, including, but not limited to:
  - The acres of land that are open to the public but offer no more than minimally developed facilities;
  - The acres of land that have a high degree of public use and offer highly developed facilities; and
  - The acres of land that are sites that have historic significance, unique natural features, or a very high degree of public use.
- The acres of land that have a secondary manager contributing to the over-all management effort;
- The anticipated revenues generated from management of the lands;
- The impacts of, and needs created or addressed by, multiple-use management strategies;
- The acres of land that have infestations of nonnative or invasive plants, animals, or fish.

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

Land Management Uniform Accounting Council

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

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

Rural and Family Lands

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

Working Waterfronts

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

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

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

Payment in Lieu of Taxes

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

Surplus Lands

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

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

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

- ✓ The land is used as linear facilities for electric transmission or distribution, telecommunications transmission and distribution, pipeline transmission or distribution, or public transportation corridors;
- ✓ A conservation easement on the land is retained;
- ✓ The land is exchanged for lands with a higher conservation value;
- ✓ The land is used by a governmental entity for a public purpose.

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

HB 643 – Foreclosure Fraud: Chapter 2008-79, L.O.F.; Effective October 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Ford and others.

With the increasing number of foreclosures in Florida and nationwide, a significant number of schemes have appeared that are allegedly designed to rescue or save a homeowner from foreclosure. Unscrupulous businesses have targeted and defrauded homeowners of the equity in their homes. Often the

specific details of these arrangements are not explained or adequately disclosed to the homeowner.

The bill provides additional protections to such homeowners facing foreclosure. The bill defines and addresses transactions involving foreclosure-rescue consultants and equity purchasers-two of the main types of foreclosure-rescue schemes.

Foreclosure-Rescue Consultants

- ✓ Defines the term, "foreclosure-rescue consultant" as a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure related rescue services. The bill provides exceptions.
- ✓ Requires a foreclosure-rescue consultant to have a signed agreement before initiating or engaging in any services. Certain disclosures are required to be in the agreement. A homeowner is allowed one business day to review the agreement before signing, and a homeowner must receive a copy of the signed agreement within three hours of signing the agreement.
- ✓ Prohibits a foreclosure rescue-consultant from soliciting, charging, or receiving fees for such services until all services contained in the agreement have been completely performed.
- ✓ Allows the homeowner the right to cancel an agreement within three business days of signing without penalty. This right may not be waived by either party. In the event of cancellation, any payments made to a consultant are returned to the homeowner within 10 business days of cancellation notice.

Equity Purchasers

- ✓ Defines the term "equity purchaser," as any person who acquires title to any residential real property as a result of a foreclosure-rescue transaction.
- ✓ Requires a foreclosure-rescue transaction written agreement to contain certain disclosures including any option or right to repurchase the property in foreclosure.
- ✓ Requires at the time the written agreement is signed, the purchaser must give a homeowner a notice of the homeowner's right to cancel the transaction. A homeowner may cancel a transaction within 3 business days without penalty. This right to cancel may not be waived or limited by either party.
- ✓ Requires that, in the event of cancellation, any payments made by an equity purchaser to the homeowner or by the homeowner to the equity purchaser must be returned at cancellation.

- ✓ Provides that the homeowner has a 30-day right to cure any default of the contract with the purchaser, and this right may be exercised on at least three separate occasions during the life of the agreement.
- ✓ Requires that, if the homeowner has the right to repurchase the property, the purchaser must verify and demonstrate that the homeowner has a reasonable ability to make the repurchase payment. A rebuttable presumption arises that the homeowner has a reasonable ability to make the payments if the monthly payments and interest payments on other personal debt do not exceed 60 percent of the homeowner's monthly gross income.
- ✓ Provides that the price the homeowner pays may not be unconscionable. A rebuttable presumption arises that the transaction was unconscionable if the repurchase price is greater than 17 percent per annum more than the total amount paid by the equity purchaser to acquire, improve, and maintain the property.
- ✓ Provides that any foreclosure-rescue transaction involving a lease option or other repurchase agreement creates a rebuttable presumption that the transaction is a loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage under s. 697.01, F.S.
- ✓ Provides that a violation of any provision of this act is an unfair and deceptive trade practice. Violators are subject to the penalties and remedies provided in ch. 501, part II, F.S., including a monetary penalty not to exceed $15,000 per violation.

SB 648 – Insurable Interests/Insurance Contracts: Chapter 2008-36, L.O.F.; Effective July 1, 2008; by Senate Judiciary Committee; and Senator Posey.

This bill is expressly intended to clarify current Florida law relating to insurable interests and the purchase of life insurance. Florida case law has interpreted Florida law as prohibiting the issuance of a life insurance policy to someone who does not have an insurable interest in the insured.

The bill states that a person may purchase insurance on his or her own life or body for payment to any beneficiary. However, no person may purchase an insurance contract on the life or body of another individual unless the benefits under the insurance are payable to the individual insured, the insured's personal representatives, or a person who had an "insurable interest" in the life of the insured when the contract was entered into. The bill defines the various circumstances that constitute an insurable interest for purposes of life, health, or disability insurance. An insurable interest exists that allows such insurance to be purchased on:

- ✓ ***Yourself***: an individual has an insurable interest in his or her own life, health and body.
- ✓ ***Family members and loved ones***: an individual has an insurable interest in another person who is a close relation by blood or law and in whom the individual has a substantial interest engendered by love and affection.
- ✓ ***Persons whose health and life is of substantial benefit to you financially***: an individual has an insurable interest in another person if there is a substantial pecuniary advantage in the continued life, health, and safety of that other person and the individual will have a substantial pecuniary loss upon the death, illness, or disability of that other person.
- ✓ ***Other parties to a contract for the sale of a business***: an individual party to a contract for the purchase or sale in a business entity has an insurable interest in the life of the other parties for purposes of that contract.
- ✓ ***Grantors of trusts, their relations, and others***: a trust or trustee acting in its fiduciary capacity has an insurable interest in the life of the trust grantor, persons closely related by blood or law to the grantor, or individuals in whom the grantor has an insurable interest. The insurable interest only exists if the life insurance proceeds are primarily for the benefit of trust beneficiaries who have an insurable interest in the life of the insured. *Beneficiaries*: a guardian, trustee, or fiduciary who acts in a fiduciary capacity has an insurable interest in a beneficiary and in any person for which the beneficiary has an insurable interest.
- ✓ ***Persons who consent in writing to a charity***: a charitable organization has an insurable interest in the life of any person who consents in writing to the charity's ownership or purchase of insurance on that person. This provision is the substance of current s. 627.404(2), F.S.
- ✓ ***Participants in a retirement or deferred compensation plan who consent in writing***: a trustee or custodian of a retirement or deferred compensation plan has an insurable interest in the life of participants in the plan who consent in writing to the plan's ownership of a life insurance policy on that person. The bill prohibits an employer, trustee, or custodian from taking adverse action against a plan participant who refuses to give consent.
- ✓ ***Owners, directors, officers, partners, managers, and key employees of a business***: a business entity has an insurable interest in its owners, directors, officers, partners, and managers, and in key employees if their loss will result in a substantial pecuniary loss.

The bill requires the written consent of the insured as a prerequisite to the issuance of a contract of insurance on the insured, with exceptions for group life insurance or group or blanket accident, health or disability insurance. The signature of the proposed insured on the application for insurance constitutes written consent.

The bill provides a right of recovery against persons who receive insurance policy benefits if they did not have an insurable interest in the insured when the insurance contract was entered into.

HB 697 – Building Standards: Chapter 2008-191, L.O.F.; Effective July 1, 2008; by House Economic Expansion & Infrastructure Council; and Representative Aubuchon.

This bill addresses a variety of issues, including the following relative to this agency:

Windstorm loss mitigation - The bill provides that the criteria developed and adopted by the commission relating to secondary water barriers may not be limited to one method or material. Roof-to-wall connections are not required unless evaluation and installation of connections at the gable ends or all corners can be completed for 15 percent of the cost of roof replacement. For houses with both hip and gable roof-to-wall connections, priority must be given to retrofitting the gable end roof-to-wall connections unless the width of the hip is more than 1.5 times greater than the width of the gable end. Priority shall also be given to connecting the corners of roofs to walls below the locations at which the spans of the roofing members are greatest.

Repealers - The bill repeals s. 553.731, F.S., relating to wind-borne debris and provides that the repeal of the statutory provisions does not affect Florida Building Code requirements relating to wind resistance or water intrusion adopted pursuant to chapter 2007-1, L.O.F. The bill repeals s. 627.351(6)(a)6., F.S., relating to requirements for certain properties to meet the building code plus requirements as a condition of eligibility for coverage by Citizens Property Insurance Corporation.

SB 704 – Administrative Procedures: Chapter 2008-104, L.O.F.; Effective July 1, 2008, except as otherwise provided; by Senate Transportation & Economic Development Appropriations Committee; Senate Judiciary Committee; and Senator Bennett.

This bill revises provisions in the Administrative Procedure Act (APA), codified in ch. 120, F.S., relating to unadopted agency rules. The bill creates incentives for agencies to adopt rules and for affected persons to challenge unadopted rules by:

- ✓ Creating requirements for agency adoption of policy statements as rules; and

- ✓ Modifying provisions relating to the award of costs and fees in rule challenges.

The bill also modifies provisions of the APA concerning the incorporation by reference of materials into agency rules. In addition to technical or administrative refinements to ch. 120, F.S., the bill makes the following significant changes:

- ✓ Provides additional requirements for the use of material that is being incorporated by reference in rules;
- ✓ Requires electronic publication of the Florida Administrative Code (FAC);
- ✓ Provides for material incorporated by reference to be filed in electronic form, unless doing so would constitute a violation of federal copyright law;
- ✓ Provides that if an agency head is a board or other collegial body created under Department of Business and Professional Regulation or Department of Health, then the agency head must conduct at least one of the requested public hearings itself;
- ✓ Provides an award of attorney's fees to the petitioner in an unadopted rule challenge if, prior to the final hearing, the agency initiates rulemaking and the agency knew or should have known that the agency statement was an unadopted rule, but provides no attorney's fees if the agency initiates rulemaking in response to notice prior to the filing of an unadopted rule challenge;
- ✓ Provides for the granting of a stay in an unadopted rule challenge when certain conditions are met;
- ✓ Appropriates non-recurring funds of $50,000 in FY 2008-2009 and $401,000 in FY 2009-2010 from the Records Management Trust Fund to implement electronic publication of the Florida Administrative Weekly;
- ✓ Requires a temporary space charge fee increase to cover the cost of implementing system changes required for electronic publication;
- ✓ Authorizes one full-time-equivalent position and appropriates $22,399 in recurring Salaries and Benefits from the Records Management Trust Fund; and
- ✓ Allows the Department of State to carry forward unencumbered cash balance in the Records Management Trust Fund at the end of FY 2008-2009.

HB 727 – Firesafety/Structure Markings: Chapter 2008-192, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Gibson and others.

Truss type construction is popular, versatile, and cost effective in the erection of commercial, industrial and residential structures. These factors make the truss type systems increasingly popular. A truss system can be comprised of

boards, timbers, beams, or steel bars, all of which are joined together in a rigid framework. However, the firefighting community has concern because certain roof and floor truss systems can collapse without warning during a firefighting operation, due to the fact that the truss system is often hidden and may be on fire for long periods of time before being noticed.

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

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

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

HB 743 – Mortgage Fraud: Chapter 2008-80, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Lopez-Cantera and others.

During the recent real estate boom Florida ranked high in the number of mortgages that were entered into with some component of fraud. Mortgage fraud is divided into two types: fraud for property and fraud for profit. Fraud for property is a misrepresentation made by a borrower or other party in order to qualify for a mortgage loan. The applicant may alter or falsify tax returns or misrepresent income or expenses. Generally, the buyer intends to repay the loan.

However, the most prevalent type of mortgage fraud is fraud for profit. This crime generally involves multiple loan transactions with several financial institutions involved. The FBI estimates that fraud for profit accounts for 80 per

cent of all mortgage fraud and involves collaboration or collusion by industry insiders.

The bill addresses the reassessment of real property involved in the crime of mortgage fraud primarily for profit. This bill creates s. 193.133, F.S., which provides two opportunities for a property appraiser to adjust, if necessary, an assessment of property affected by mortgage fraud, or other fraud involving real property, that may artificially inflated property values.

The bill also increases the criminal penalty for mortgage fraud from a third degree felony to a second degree felony if the loan value exceeds $100,000.

SB 756 – Wrongful Incarceration: Chapter 2008-39, L.O.F.; Effective July 1, 2008; by Senate Criminal & Civil Justice Appropriations Committee; Senate Criminal Justice Committee; Senate Judiciary Committee; and Senator Joyner and others.

This bill creates a program under which a person who was convicted and incarcerated for a felony of which he or she was actually innocent may apply for compensation from the state.

Petition for a Finding of Wrongful Incarceration and Eligibility for Compensation

Upon an order vacating a felony conviction and sentence becoming final, a person may petition the original sentencing court for a determination whether he or she qualifies as a "wrongfully incarcerated person." The petition must set forth with particularity verifiable and substantial evidence of actual innocence. Additionally, the petitioner must state that:

- ✓ Prior to the person's wrongful incarceration, he or she was never convicted of any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any juvenile delinquency disposition;
- ✓ During the person's wrongful incarceration, he or she was not convicted of any felony offense; and
- ✓ During the person's wrongful incarceration, he or she was not also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

The petition must be filed within 90 days of the order vacating a conviction and sentence, if the person's conviction and sentence is vacated on or after July 1, 2008. For those persons whose convictions and sentences were vacated by an

order that became final prior to July 1, 2008, the petition must be filed by July 1, 2010.

Prosecutor's Response to Petition

The prosecuting authority in the underlying felony must be provided proper notice of the filing of the petition. The prosecutor has 30 days to respond to the petition by either:

- ✓ Certifying to the court that no further criminal proceedings in the case can or will take place, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not disqualified from seeking compensation; or
- ✓ By contesting the evidence of actual innocence, the related facts, or the petitioner's eligibility for compensation.

Uncontested Petitions

If the prosecutor does not contest the petition and the original sentencing court finds by clear and convincing evidence that the petitioner is a wrongfully incarcerated person, the court may certify to the Department of Legal Affairs (department) that the petitioner is also eligible for compensation.

Contested Petitions

If the prosecutor contests the petition, the court will make a determination of eligibility, limited to the issues of prior felonies and concurrent sentences. If, based on those factors, the court finds by a preponderance of the evidence that the petitioner is ineligible, the court must dismiss the petition.

However, if the petitioner is eligible under those criteria (no prior or concurrent felonies), but the prosecutor contests the evidence of actual innocence or the related facts, the court shall set forth its findings and transfer the petition to the Division of Administrative Hearings (DOAH) for findings of fact and a recommendation to the court.

DOAH Hearing for Contested Petitions

The petitioner must establish, by clear and convincing evidence before an administrative law judge, his or her status as a wrongfully convicted person who is eligible for compensation. The hearing must be conducted no later than 120 days after the petition is transferred from the court. The prosecutor may appear to contest factual matters, or matters related to the nature, significance, and effect of the evidence of actual innocence. The administrative law judge must enter his or her findings of fact and recommendations to the court within 45 days of the hearing.

The court shall consider the order from the administrative law judge and enter its own order within 60 days. The court may adopt or decline to adopt the

findings of the administrative law judge. If the court finds that the petitioner has met his or her burden of proof – based upon the administrative law judge's findings and the court's own assessment of the findings and recommendations – the court's own order shall include a certification to the department that the petitioner is a wrongfully incarcerated person who is eligible for compensation.

Application for Compensation

Within two years of the original sentencing court's order finding the person to be a wrongfully incarcerated person who is eligible for compensation, the person must initiate an application for compensation with the department. The bill sets forth the required documentation that must accompany the application and allows the department to adopt rules as necessary to carry out the program. It also provides time limitations for each step of the review, approval, and payment process.

Purchase of an Annuity

Upon determination that the requirements of the program are satisfied, the department is directed to notify the Chief Financial Officer to draw a warrant from the General Revenue Fund or another source designated by the Legislature for the purchase of annuity based on the total amount of compensation determined by the department. The annuity must:

- ✓ Be for a term of not less than 10 years;
- ✓ Provide that the annuity may not be sold, discounted, or used as security for a loan or mortgage by the applicant; and
- ✓ Contain beneficiary provisions for the continued disbursement of the annuity upon the wrongfully incarcerated person's death.

Compensation for Wrongful Incarceration

A person who is found to be a wrongfully incarcerated person who is eligible for compensation is entitled to receive:

- ✓ Monetary compensation in the amount of $50,000 for each year of wrongful incarceration. This amount will be prorated as necessary to account for a portion of a year. For those persons found to be wrongfully incarcerated after December 31, 2008, the Chief Financial Officer may adjust the annual rate of compensation for inflation.
- ✓ A tuition and fee waiver for up to 120 hours of instruction at any career center, community college, or state university.
- ✓ Immediate administrative expunction of the criminal record resulting from the wrongful incarceration.
- ✓ Fines, costs, and attorney's fees imposed and paid by the wrongfully incarcerated person and associated with the wrongful conviction and incarceration.

The cap on total compensation under the program is $2 million.

Prior to receiving the first payment, the claimant must execute a release and waiver releasing the state or any agency, or any political subdivision, from any and all liability for present and future claims arising out of the factual situation in connection with the person's wrongful incarceration.

Limitations on Relief for Wrongful Incarceration

A wrongfully incarcerated person may not submit an application for compensation under this program if the person has a lawsuit pending against the state or any agency in state or federal court arising out of the facts in connection with the person's wrongful incarceration. The person may not submit an application for compensation under this program if the person is the subject of a pending claim bill. Conversely, the person may not pursue recovery under a claim bill once an application is filed. The bill expresses that the program is intended to be the sole redress for the person's wrongful incarceration.

Waiver of Sovereign Immunity

The bill includes a statement declaring that any compensation paid under the act does not constitute a waiver of any defense of sovereign immunity or an increase in the limits of liability on behalf of the state or any person subject to the provisions of s. 768.28, F.S.

HB 853 – Cemetery Lands: Chapter 2008-83, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Troutman and others.

The bill provides that except for road system, transportation corridor, or rights-of-way purposes, property dedicated for cemetery purposes and licensed under ch. 497, part II, F.S., may not be taken by eminent domain if the area of property to be taken is one contiguous acre or greater in size, unless the taking entity determines in a public hearing that there are no reasonable alternatives except to use cemetery property for the project. It also prohibits a governmental entity from requiring the transfer of property dedicated for cemetery purposes and licensed under ch. 497, part II, F.S., as a condition of obtaining regulatory approval under the chapter.

SB 874 – Title Loans/Regulation/Consumers: Chapter 2008-42, L.O.F.; Effective July 1, 2008; by Senator Fasano.

In 2000, the Legislature enacted the Florida Title Loan Act, which established a regulatory framework for title loan transactions. A title loan is a transaction in which a loan of money is made with the title to a motor vehicle offered as

security. Physical possession of the motor vehicle is maintained by the borrower, and the motor vehicle title is held by the lender. This legislation was in response to title loan lenders making high interest loans to consumers.

In recent years, litigation has arisen regarding the application of the Florida Title Loan Act to commercial transactions, such as financing floor planning or inventory purchases for independent used car dealers. This bill amends the scope of the act by providing that this act applies to the regulation of title loans made to consumers. The term "consumer" is defined to mean an individual borrowing money for personal, family, or household purposes.

HB 887 – Career Service System: Chapter 2008-126, L.O.F.; Effective January 1, 2009; by House Policy & Budget Council; House Government Efficiency & Accountability Council; and Representative Coley and others.

Current law establishes the Career Service System, which was last amended in 2001. The bill revises the changes made to the Career Service System by the 2001 Legislature.

The bill expands the rulemaking authority of the Department of Management Services (DMS) by requiring DMS to develop rules that implement layoff procedures requiring retention of an agency's employees based upon objective measures. Those objective measures must give consideration to an employee's length of service in addition to comparative merit, demonstrated skills, and employee experience.

The bill provides that a permanent career service employee who is promoted is subject to the one year probationary period and may be removed from that position without cause, but is entitled to return to his or her former position, or the equivalent level, if such position is available. The bill further provides that if a position is not available, that does not authorize the displacing an existing employee out of such a position in order to provide a position to the employee removed from a promotional position; however, a reasonable effort must be made to retain an employee under such circumstances.

The bill expands notice requirements to include employees subject to a 50-mile away transfer in addition to notice for other circumstances. It revises timeframes for filing certain grievances and for filing certain notices and orders.

HB 937 – Title Insurance: Chapter 2008-198, L.O.F.; Effective June 17, 2008; by House Jobs & Entrepreneurship Council; and Representative Ambler.

This bill creates the Florida 2008 Title Insurance Study Advisory Council (Council) which will undertake a comprehensive examination of the title insurance system in Florida and make findings and recommendations in its final report to the Governor, Speaker of the House of Representatives and President of the Senate on or before December 31, 2009. The final report must be approved by at least two-thirds of the Council's membership with the chair voting to approve. The Council will terminate after submitting its final report, but no later than December 31, 2009.

The Council is composed of 21 members including the Governor or designee serving as chair; the Chief Financial Officer or designee serving as vice chair; one member of the Senate appointed by the President; one member of the House of Representatives appointed by the Speaker; the Insurance Consumer Advocate; the Commissioners of Insurance Regulation and Financial Regulation or their designees; three representatives of title insurers and two independent title agents appointed by the Senate President; four representatives of title insurers and one independent title agent appointed by the Speaker of the House of Representatives; two members designated by the Real Property, Probate and Trust Law Section of the Florida Bar; one member of the banking industry appointed by the Commissioner of Financial Regulation, and one member of the real estate industry appointed by the Chief Financial Officer.

The Council will be administratively supported by the staff of the Executive Office of the Governor (EOG) with specified agencies and applicable legislative committees supplying information, assistance and facilities. The Legislature's Office of Program Policy Analysis and Governmental Accountability will conduct an independent historical analysis of title insurance and report its findings to the Council by September 30, 2008. The Council must hold its first meeting by August 1, 2008, with all meetings to be held in Tallahassee.

The legislation provides the sum of $242,003 in nonrecurring funds to be appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services for transfer to the EOG for FY 2008-2009 for the purpose of implementing the activities of the Council. The legislation authorizes two full-time equivalent positions to support the Council's activities.

SB 966 – Automated Teller Machine Transactions: Chapter 2008-166, L.O.F.; Effective July 1, 2008; by Senate Commerce Committee; and Senator Alexander.

In 2006, the Legislature passed SB 704, relating to Automated Teller Machine surcharge, which took effect July 1, 2006. Provisions in the law allowed automated teller machine owners and operators to charge customers an access fee, or a surcharge, whenever customers conducted transactions using an international account.

However, the internal policies and practices of Visa and MasterCard do not allow automated teller machine owners or operators to collect surcharges from international cardholders at automated teller machines in the United States, except in states where it is expressly allowed by law.

This bill authorizes an owner or operator of an automated teller machine to charge an access fee or surcharge to a customer conducting a transaction using an automated teller machine card issued by an international banking corporation. The bill requires an owner or operator of an automated teller machine to disclose such fee or surcharge in compliance with federal Regulation E, addressing electronic fund transfers. The bill also protects an owner or operator's ability to enter into an agreement to participate in a fee-free or surcharge-free network.

HB 967 – Workplace Safety: Chapter 2008-128, L.O.F.; Effective June 10, 2008; by House Policy & Budget Council; House Government Efficiency & Accountability Council; and Representative Gibson.

The bill creates the Florida Public Task Force on Workplace Safety (task force), within the University of South Florida Safety Florida Consultation Program, to issue recommendations regarding ways by which the state may effectively ensure state agencies and local governments comply with the Occupational Safety and Health Administration standards. The task force must submit a report and recommendations to the Governor, Chief Financial Officer, and Legislature by January 1, 2009. It dissolves upon submission of the report. The sum of $100,000 in nonrecurring funds is appropriated from the Worker's Compensation Administration Trust Fund in the Department of Financial Services for transfer to the University of South Florida for the 2008-2009 fiscal year.

SB 1012 – Health Insurance Claims Payments: Chapter 2008-212, L.O.F.; Effective November 1, 2008; by Senate General Government Appropriations Committee; Senate Banking & Insurance Committee; and Senator Gaetz and others.

The bill makes a number of changes to current law regarding assignment of benefits by policyholders or subscribers, third party access to provider networks, and recouping of certain overpayments to providers.

Assignment of Benefits

The bill requires any insurer that contracts with a preferred provider to make payments directly to the preferred provider for such services to its insureds. The bill allows a health insurance policy insuring against loss or expense due to hospital confinement or medical and related services to provide direct payment to licensed ambulance providers, in addition to recognized hospitals and physicians to whom current law authorizes direct payment. Additionally, an insurance contract may not prohibit the direct payment of a licensed ambulance provider for emergency services provided pursuant to s. 395.1041, F.S., or medical transportation services provided pursuant to part III of chapter 401, F.S. Payment to the medical provider may not be greater than the payment the insurer would have paid without an assignment of benefits by the policyholder.

Health maintenance organizations (HMOs) are required to directly pay contracted hospitals, ambulance providers, physicians, and dentists for covered services if their subscribers make an assignment of benefits. An HMO contract may not prohibit the direct payment of benefits to a licensed hospital, ambulance provider, physician or dentist for covered services, for emergency services provided pursuant to s. 395.1041, F.S., or for ambulance transport and treatment provided pursuant to part III of chapter 401. Payment to the medical provider may not be more than the payment due in the absence of an assignment of benefits. These requirements do not affect the prohibition against balanced billing and other requirements in s. 641.3154, F.S., or the requirements for payment of emergency services in s. 641.31, F.S.

Third Party Access to Provider Networks

The bill establishes requirements for a contracting entity to lease, rent, or grant access to the health care services of a preferred provider or exclusive provider to a third party (sometimes referred to as a "silent Preferred Provider Organization") not involved in the original contract. The requirements apply if the participating provider is licensed under ch. 458, F.S., (physicians), ch. 459, F.S., (osteopaths), ch. 460, F.S., (chiropractors), ch. 461, F.S., (podiatrists), or ch. 466, F.S., (dentists). The bill also applies these requirements to group, blanket, and franchise health insurance. The requirements are that:

- ✓ The health care contract between the contracting entity and participating provider must expressly authorize granting access to provider's services to third parties. When the contract is entered into, the contracting entity must identify any third party it has granted access to the health care services of the participating provider.
- ✓ The contracting entity may sell, lease, rent or otherwise grant access to the participating provider's services only to the following third parties:
  - A payer or third-party administrator or other entity responsible for administering claims on the payer's behalf.
  - A preferred provider organization or network that is required to comply with all of the terms to which the originally contracted primary participating provider network is bound.
  - An entity that is engaged in the business of providing electronic claims transport.
- ✓ Upon request by a participating provider, a contracting entity must provide the identity of any third party that has been granted access. A contracting entity must also maintain an Internet website or a toll-free telephone number through which the provider may obtain a listing of the third parties that have been granted access.
- ✓ A contracting entity must ensure that an explanation is furnished to the participating provider that identifies the contractual source of any applicable discount.
- ✓ A contracting entity must ensure that all third parties given access comply with the physician contract, unless otherwise agreed by a participating provider.
- ✓ The right of a third party to exercise the rights and responsibilities of a contracting entity terminates on the day following the termination of the contract with the contracting entity, subject to applicable continuity-of-care laws.
- ✓ A health care contract may provide for arbitration of disputes under the section.

A contracting entity is deemed in compliance when the insured's identification card provides information, written or electronically, which identifies the preferred provider network(s) to be used to reimburse the provider for covered services.

The provisions regarding third party access to provider networks do not apply if the third party granted access is:

- ✓ An employer or other entity providing coverage and the employer or entity has a contract with the contracting entity for the administration or processing of claims for payment or services provided under the health care contract;

- ✓ An entity providing administrative services to, or receiving administrative services from, the contracting entity; or
- ✓ An affiliate or a subsidiary of a contracting entity, or other entity if operating under the same brand licensee program as the contracting entity (Blue Cross Blue Shield operates under a brand licensee program).

Claims for Overpayment and Underpayment

Reduces the maximum time period from 30 months to 12 months after payment is made to a provider for an insurer or HMO to make a claim for overpayment, or a provider to make a claim for underpayment if the provider is licensed under ch. 458, F.S., (physicians), ch. 459, F.S., (osteopaths), ch. 460, F.S., (chiropractors), ch. 461, F.S., (podiatrists), or ch. 466, F.S., (dentists). However, a 30-month period is available if the provider is convicted of fraud pursuant to s. 817.234, F.S.

Other Provisions:

- ✓ Revises the definition of small employer for group health insurance coverage to provide that companies that are affiliated groups as defined in s. 1504(a) of the Internal Revenue Code are considered one employer, for purposes of calculating the number of employees. Certain companies currently considered small employers will no longer be entitled to guarantee issue and modified community ratings since they will no longer be deemed small employers. The bill also exempts from the definition small employers formed primarily for the purpose of providing health insurance. This conforms Florida law to the current National Association of Insurance Commissioners Model Act.
- ✓ Allows the Office of Insurance Regulation to waive the requirement that a multiple employer welfare arrangement must have its principal place of business in Florida and maintain complete records of its assets, transactions and affairs at that locale if an arrangement has been operating in another state for at least 25 years, has been licensed in that state for at least 10 years, and has a minimum fund balance of at least $25 million at the time of licensure.
- ✓ If approved by the Governor, these provisions take effect November 1, 2008, and will apply to contracts entered into, issued, or renewed on or after that date. The amendments made to ss. 627.6131 and 641.3155, F.S., (overpayment or underpayment of claims) apply to claims payments made on or after November 1, 2008.

HB 1037 – Escrow Agents: Chapter 2008-200, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Poppell.

The bill restricts unauthorized individuals from transacting business using the term "escrow" unless authorized under state law. The parties who are authorized to act as an "escrow agent," and are thus exempt from the requirements of this bill include:

- ✓ A financial institution as defined in s. 655.005, F.S.;
- ✓ An attorney who is a member of The Florida Bar or his or her law firm;
- ✓ A real estate broker who is licensed pursuant to chapter 475, F.S., or his or her brokerage firm; or
- ✓ A title insurance agent who is licensed pursuant to s. 626.8417, F.S., a title insurance agency that is licensed pursuant to s. 626.8418, F.S., or a title insurer who is authorized to transact business in this state pursuant to s. 624.401, F.S.

A willful violation is a first degree misdemeanor. The bill creates a cause of action for a person aggrieved by violation of the section. The bill provides for recovery of actual damages plus attorney fees and court costs.

HB 1167 – Reduced Cigarette Ignition Propensity Standard and Firefighter Protection Act: Chapter 2008-129, L.O.F.; Effective January 1, 2010, except as otherwise provided; by House Policy & Budget Council; House Jobs & Entrepreneurship Council; and Representative Legg.

Fire-safe cigarettes, also known as reduced ignition propensity cigarettes, are designed to stop burning when left unattended. The bill creates the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act." It provides a performance standard for testing cigarette ignition propensity and prohibits cigarettes from being sold in Florida unless the cigarettes are tested, certified by the State Fire Marshal and marked as required.

The bill provides civil penalties for violations of the requirements and preempts political subdivisions from adopting their own standards. It provides a civil penalty of $100 per pack of cigarettes, not to exceed $100,000 during a 30-day period, for knowingly selling at wholesale uncertified cigarettes. It provides a civil penalty of $100 per pack of cigarettes, not to exceed $25,000 during a 30-day period, for knowingly selling at retail uncertified cigarettes. It provides a civil penalty of at least $75,000 and not more than $250,000 per false certification, for knowingly making a false certification. Any other violation would result in a civil penalty not to exceed $1,000 for a first offense and may not exceed $5,000 for subsequent offenses. The bill provides for the seizure

and forfeiture of cigarettes that do not meet the performance standards or that are unmarked.

The bill provides for its repeal if a federal reduced cigarette ignition propensity standard that preempts state law is adopted and becomes effective. Effective upon this act becoming law, the bill also preempts any municipal or county ordinance on the subject.

SB 1488 – Health Care Consumer's Right to Information Act:

Chapter 2008-47, L.O.F.; Effective January 1, 2009; by Senate Banking & Insurance Committee; Senate Health Regulation Committee; and Senator Dean.

This bill creates the "Health Care Consumer's Right to Information Act" to provide health care consumers with reliable and understandable information about health care charges.

The bill requires a health care provider (allopathic physicians, osteopathic physicians, and podiatric physicians) or health care facility (hospitals, ambulatory surgical centers, and mobile surgical facilities) to automatically furnish to an uninsured patient a reasonable estimate of charges for any planned nonemergency medical service and information on the facility's discount or charity policies for which the uninsured patient may be eligible. The estimate must be written in language that is comprehensible to an ordinary layperson.

The bill requires health care facilities not operated by the state to provide the estimate of reasonably anticipated charges within 7 days after the person notifies the facility and the facility confirms that the person is uninsured. The estimate may be the average charge for the diagnosis-related group or average charge for that procedure. If requested, the facility must also notify the person upon a revision of the estimate.

The bill requires the facility to place a notice in the reception area where the discount or charity care discount policy is available and a facility that fails to provide the estimate and information is subject to a $500 fine for each time the facility fails to do so.

The Agency for Health Care Administration must publish on its website for public access, undiscounted charges for no fewer than 150 of the most commonly performed adult and pediatric procedures, including outpatient, inpatient, diagnostic, or preventative procedures.

SB 1892 – State Data Center System: Chapter 2008-116, L.O.F.; Effective June 10, 2008; by Senate General Government Appropriations Committee; and Senator Carlton.

This bill sets forth a framework for data center consolidation to occur over the next decade. It creates the state data center system, which is composed of primary data centers, non-primary data centers and computing facilities. The Agency for Enterprise Information Technology is made responsible for establishing policy and for overall coordination in the transition to a consolidated system. Two primary data centers, the Northwood Shared Resource Center and the Southwood Shared Resource Center are established in the bill. The bill authorizes the creation of boards of trustees for each primary data center as a data center Governance structure. The bill consolidates the mainframe functions of The Department of Transportation and the Department of Highway Safety into the Southwood Shared Resource Center by July 2009.

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

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

SB 2012 – Insurance Policies: Chapter 2008-220, L.O.F.; Effective July 1, 2008, except as otherwise provided; by Senate Health Policy Committee; Senate Banking & Insurance Committee; and Senator Deutch.

Long-Term Care Insurance

The bill amends s. 627.94073, F.S., to require insurers to notify a long-term care insurance policyholder of the right to designate a secondary addressee annually, rather than every 2 years, and requires the form designating the secondary addressee to inform the policyholder to update any change made to the address of the secondary addressee. Notice of possible lapse in coverage due to nonpayment of premium must be made by the United States Postal Service proof of mailing or certified or registered mail to the policyholder and to

the secondary designee at the address shown in the policy or at the last known address provided to the insurer. The bill changes the requirement for an insurer to allow a policyholder to reinstate a long term care policy that has been cancelled for non-payment of premium, to include persons whose failure to pay the premium was due to continuous confinement in a hospital, skilled nursing facility, or assisted living facility of longer than 60 days. These provisions are effective January 1, 2009.

Holocaust Victims

The bill amends s. 626.9543, F.S., to extend the statute of limitations for filing insurance claims under the Holocaust Victims Insurance Act, from July 1, 2008 to July 1, 2018.

Multiple Employer Welfare Arrangement (MEWA)

The bill amends s. 624.443, F.S., to allow the Office of Insurance Regulation to waive the requirement that each MEWA maintain its principal place of business in this state if the MEWA has been operating in another state for at least 25 years, has been licensed in such state for at least 10 years, and has a minimum fund balance of $25 million at the time of licensure.

Motor Vehicle Personal Injury Protection Insurance

The bill amends s. 627.736, F.S., to clarify that personal injury protection (PIP) reimbursement for medical services be based on 200 percent of the allowable amount under the "participating physicians" schedule of Medicare Part B for 2007. Participating physicians accept Medicare's allowed charges as payment in full for their Medicare patients.

Hospital Self-Insurance Alliances

Under current law, any two or more hospitals may form a self-insurance alliance to pool and spread liabilities for property insurance coverage. If an alliance purchases excess insurance, it is subject to the premium tax. The bill amends s. 395.106, F.S., to allow such alliances to be considered insurers only for the purpose of purchasing reinsurance coverage which would not be subject to the premium tax. The bill clarifies that contracts of reinsurance issued to a hospital alliance shall receive the same tax treatment as reinsurance contracts issued to insurers.

Citizens Property Insurance Corporation (Citizens)

The bill amends s. 627.351, F.S., to provide that a policyholder (and his or her attorney) who has filed suit against Citizens may have access to his or her own claim file to the same extent that discovery would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure. This same right of access to claim files is provided to a third party in litigation pursuant to subpoena. Access to such files is subject to any confidentiality

protections requested by Citizens. The bill authorizes Citizens to release confidential underwriting and claims file contents as it deems necessary to underwrite or service insurance policies and claims, subject to confidentiality protections deemed necessary. It also allows Citizens to release confidential underwriting file records to other governmental agencies upon written request and demonstration of need, which records remain confidential.

The bill requires Citizens to electronically report claims data and histories to a consumer reporting agency upon the request of such agency. A consumer reporting agency, as defined by the federal Fair Credit Reporting Act, that is in compliance with the confidentiality requirements of the Act maintains claims data and histories for use in connection with the underwriting of insurance involving a consumer. Insurers are able to review the claims history of insureds using the service provided by a consumer reporting agency.

Public Housing Authority Self-Insurance Funds

Current law allows public housing authorities to form self-insurance funds to spread liabilities of their members for property and casualty insurance. The bill amends s. 624.46226, F.S., to provide criteria that such entities must follow in forming self-insurance funds which includes:

- ✓ Having annual premiums in excess of $5 million;
- ✓ Using a qualified actuary to determine rates and reserves;
- ✓ Maintaining excess insurance coverage and reserve evaluation to protect the financial stability of the fund;
- ✓ Submitting annual audited financial statements to the Office of Insurance Regulation (OIR);
- ✓ Having a governing body comprised of commissioners of public housing authorities;
- ✓ Using knowledgeable persons or business entities to service the fund; and
- ✓ Certifying to the OIR that the fund meets the above provisions.

Should a self-insurance fund not meet such requirements, the fund is subject to the requirements under general law for commercial self-insurance funds, or if the fund provides only workers' compensation coverage, the general law for group (employer) self-insurance funds. The bill clarifies that such funds are not covered by the insurance guaranty association, but are subject to the premium tax.

Public Adjusters

The bill contains the substance of CS/SB 1098, as revised, and is the product of recommendations pertaining to public adjusters from the Task Force on Citizens Claims Handling and Resolution. The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss,

the current laws do not adequately protect consumers from unscrupulous public adjusters.

The bill amends various provisions of the Insurance Code to provide for the following changes:

- ✓ Requires the Department of Financial Services to create a specific examination for public adjusters and mandates continuing education requirements for such adjusters;
- ✓ Prohibits public adjusters from contacting an insured or claimant until 48 hours after the occurrence of an event that may be the subject of a claim under a policy;
- ✓ Prohibits public adjusters from soliciting an insured or claimant except on Monday through Saturday and only between the hours of 8 a.m. and 8 p.m.;
- ✓ Prohibits public adjusters from charging a fee unless a written contract was executed prior to the payment of a claim;
- ✓ Prohibits public adjusters from charging more than:
  - 20 percent of the insurance claims payment on non-hurricane claims;
  - 10 percent of the insurance claims payment on hurricane claims for claims made during the first year after the declaration of emergency;
- ✓ Provides for no cap on re-opened or supplemental hurricane claims; however, the fee cannot be based on any payments made by the insurer to the insured prior to the time of the public adjuster contract;
- ✓ Allows insureds or claimants to have 5 business days after the date on which the contract is executed to cancel a public adjuster's contract during a state of emergency declared by the Governor; insureds or claimants have 3 business days to cancel a contract as to claims involving non-emergencies;
- ✓ Creates a public adjuster apprentice license and examination;
- ✓ Requires public adjuster contracts to be in writing and to display an anti-fraud statement; and
- ✓ Provides for nonresident public adjuster qualifications.

Title Insurance (UCC Personal Property Insurance)

The bill allows a title insurer to petition the OIR for a rate deviation under s. 627.783, F.S., for personal property title insurance, a Uniform Commercial Code insurance product. The bill requires that the OIR, in determining whether to approve a rate deviation for a personal property title insurance product, must be guided by "standards for national rates for the product being offered in other states."

Florida Hurricane Catastrophe Fund

The bill amends s. 215.555, F.S. to require the Florida Hurricane Catastrophe Fund to offer $10 million of additional coverage to qualified insurers in 2008, as was required in 2006 and 2007. This coverage would again be made available to limited apportionment companies (each having $25 million or less in surplus and writing at least 25 percent of its premiums in Florida), insurers approved to participate in the Insurance Capital Build Up Incentive Program, and insurers that purchased the supplemental coverage in 2007. This coverage would reimburse the insurer for up to $10 million in losses, for each of two hurricanes. The coverage will again be priced at a 50 percent rate on line (e.g., $5 million premium for $10 million in coverage) with a free reinstatement for a second storm. The insurer's retention for such coverage remains at 30 percent of the company's surplus. The bill would provide that the coverage expires on May 31, 2009.

Insurance Agents and Other Insurance Representatives

The bill amends several sections of the Insurance Code pertaining to insurance agents and other insurance representatives and provides for the following:

- ✓ Allows applicants to be exempt from the customer representative licensing examination if they have earned a specified degree and have completed at least nine academic hours in property and casualty insurance;
- ✓ Prohibits insurers, including Citizens, from requiring appointees (insurance agents) to complete specified continuing education (CE) courses offered by such insurers or by Citizens, in order for the appointment to be issued or renewed;
- ✓ Allows insurers, including Citizens, to require appointees to attend non-CE training and education programs offered by such insurers or by Citizens, in order for the appointment to be issued or renewed;
- ✓ Allows Citizens to require its employees to take training relevant to their employment and to require appointees to take CE courses which pertain solely to Citizens' internal procedures or products; and
- ✓ Authorizes independent study programs offering CE courses through correspondence to allow students to take a final closed book examination without being monitored provided that the student submits a sworn affidavit attesting he or she did not receive assistance while taking the exam.

SB 2016 – Public Lodging and Food Service Establishments/Fire Prevention Code: Chapter 2008-55, L.O.F.; Effective July 1, 2008; by Senate General Government Appropriations Committee; Senate Community Affairs Committee; Senate Regulated Industries Committee; and Senator Aronberg.

The bill eliminates the requirement that the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) assist the State Fire Marshal in updating the Florida Fire Prevention Code. It also eliminates the division's responsibility to enforce the Florida Fire Prevention Code when it conducts inspections of public lodging and public food service establishments. It eliminates the requirement that the division must immediately notify the local firesafety authority or the State Fire Marshal of any major violation of a fire prevention and control rule adopted under ch. 633, F.S. It also eliminates the authority of the division to impose administrative sanctions for violations of these rules and to refer the violations to the local firesafety authorities for enforcement. However, the division is required to notify local firesafety authorities or the State Fire Marshall of readily observable fire safety violations relating to public lodging or public food service establishments.

The bill makes a number of other changes relative to public lodging and food service establishments.

SB 2082 – Insurance: Chapter 2008-___, L.O.F.; Effective January 1, 2009; by Senate General Government Appropriations Committee; Senate Banking & Insurance Committee; and Senator Bennett.

The bill increases penalties for specified unfair or deceptive insurance practices related to the sale of life insurance and annuity contracts and strengthens the standards for making recommendations involving annuities to senior consumers. The act is named the "John and Patricia Seibel Act."

Unfair or Deceptive Insurance Practices

The bill imposes increased fines and penalties for the unfair and deceptive insurance practices known as "twisting" and "churning," and adds a prohibited practice of willfully submitting to an insurer on behalf of a consumer a document bearing a false signature. "Twisting" and "churning" involves misleading representations in an attempt to induce a consumer to cash in funds from a current investment or insurance product in order to purchase another product. The bill classifies engaging in a pattern or practice of "twisting" and "churning" as a first degree misdemeanor. Willfully submitting a false signature

is a third degree felony. The fines (administrative penalties) for these practices are increased to:

- ✓ $5,000 for each non-willful violation (currently $2,500), up to a maximum aggregate amount of $50,000 (currently $10,000).
- ✓ $30,000 for each willful violation (currently $20,000), up to a maximum aggregate amount of $250,000 (currently $100,000).

The bill also makes it an unfair or deceptive insurance practice for an agent to use designations or titles that falsely imply that he or she has special financial knowledge or training.

Sales of Annuities to Senior Consumers

The bill strengthens the standards that apply to recommendations to a senior consumer to purchase an annuity contract. Specifically, it:

- ✓ Requires that the insurer or insurance agent have an objectively reasonable basis for believing that an annuity recommendation to a senior consumer is suitable.
- ✓ Requires insurance agents, prior to recommending a product to a senior consumer, to obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation, on a form adopted by the Department of Financial Services (department).
- ✓ Requires the insurer or agent to provide the consumer with specified information on a form adopted by the department concerning differences between the annuity being recommended for purchase and the existing annuity that would be surrendered or replaced.
- ✓ Authorizes the Office of Insurance Regulation (OIR) to order an insurer to rescind a life insurance policy or annuity and provide a full refund of the premiums paid or the accumulation value, whichever is greater, when a senior consumer is harmed by a violation of the suitability statute.
- ✓ Requires insurers, managing general agents, and insurance agencies to each maintain or make available to the department or the OIR records of information collected from senior consumers and other information for five years after the insurance transaction is completed.
- ✓ Deems that any person who is registered with a member of the federal Financial Industry Regulatory Authority, who is required to make a suitability determination and does so while documenting the determination, is deemed to satisfy the section's requirements.

"Free Look" Period; Annuity Regulation

The bill increases the "free look" period from 10 days to 14 days after purchase of a life insurance or fixed annuity, for the consumer to obtain a refund. The bill applies this requirement to all annuities, rather than "fixed" annuities.

The bill clarifies the regulatory jurisdiction of the agencies under the Department of Financial Services regarding the sale of annuities.

Other Provisions

- ✓ Requires applicants for agent licensure to provide their home and business telephone numbers and email address in the application and to notify the department within 60 days after any changes.
- ✓ Requires all licensees to complete three hours of department-approved continuing education on the subject of suitability in annuity and life insurance transactions. The hours may be used to satisfy the current ethics continuing education requirement.

SB 2158 – Money Services Businesses: Chapter 2008-177, L.O.F.; Effective January 1, 2009; by Senate General Government Appropriations Committee; Senate Finance & Tax Committee; and Senate Banking & Insurance Committee.

Money services businesses (MSBs), also known as money transmitters, offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. This bill incorporates recommendations from a recently released statewide grand jury report, *Check Cashers: A Call for Enforcement* and from the Senate Interim Project 2008-101, *Regulation of Money Services Businesses* designed to enhance the regulation of money services businesses in Florida. The bill provides the following changes.

General Provisions

- ✓ Reduces application and renewal fees for part II (money transmitters) and part III (check cashers) licensees by 25 percent.
- ✓ Caps branch location and vendor application fees associated with a change in control at $20,000.
- ✓ Expands prohibited acts to include violations under 18 U.S.C., sec. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity. This violation would be punishable as a third-degree felony.
- ✓ Makes it a violation of state law, subject to administrative sanctions, for a licensee to fail to comply with federal regulations relating to the prevention of money laundering such as maintaining records and preparing reports.
- ✓ Authorizes the office to immediately suspend or revoke a license if a licensee fails to provide requested records at the time of an exam.
- ✓ Requires licensees to incur the costs of an examination. An examination of a licensee is required at least once every five years. A new licensee is

required to be examined within 6 months of licensure. Currently, there is not a statutory schedule and less than 40 percent of licensees have been examined in the last 5 years.

- ✓ Requires the office to make referrals of violations of law that may be a felony to the appropriate criminal investigatory agency having jurisdiction.
- ✓ Requires the office to adopt disciplinary rules concerning violations of the law.
- ✓ Requires the office to submit an annual report to the Legislature summarizing its activities relating to the regulation of ch. 560, F.S., entities, including examinations, investigations, referrals and the disposition of such referrals.

Money Transmitter Provisions

- ✓ Requires a money transmitter to be organized as a limited liability company, limited liability partnership, or a corporation to assist in the determination of net worth requirements.
- ✓ Creates a definition for net worth and increases the maximum net worth requirements to $2 million. The net worth requirement per location is reduced from $50,000 to $10,000.
- ✓ Requires all licensees to submit annual audited financial reports that are used to determine whether net worth and other safety and soundness requirements are met.

Check Casher Provisions

- ✓ Exempts from licensure a check casher that engages in a check cashing transaction that is less than $2,000 per person per day and for whom the check cashing compensation at each location does not exceed 5 percent of the total gross income of the retail business for the prior 60 days. Currently, the law provides that a person is engaged in check cashing which is incidental to its retail business if the check cashing compensation at each location does not exceed 5 percent of the total gross income of the retail business for the prior year.
- ✓ Requires a customer to present an acceptable identification and provide a thumbprint for checks greater than $1,000.
- ✓ Increases security at licensed check cashing locations by requiring the installation of security cameras or bullet-proof glass.
- ✓ Requires check cashers subject to licensure to submit suspicious activity reports (SARs) to the federal government, when applicable.

Deferred Presentment Provider Provisions:

- ✓ Requires a deferred presentment provider to notify the office within 15 business days after ceasing operations. The bill authorizes the Financial

Services Commission to adopt rules regarding the reconciliation of open transactions.

- ✓ Prohibits a deferred presentment provider from accepting more than one check to collect on a deferred presentment transaction for a single transaction.
- ✓ Prohibits a deferred presentment provider from assessing the costs of collection, other than charges for insufficient funds as allowed by law, without a judgment from a court of competent jurisdiction. This same provision is also added to s. 560.309, F.S., relating to check cashers.

SB 2264 – Motor Vehicle Warranty Associations: Chapter 2008-178, L.O.F.; Effective June 17, 2008; by Senate Commerce Committee; Senate Banking & Insurance Committee; and Senator Lawson.

The bill makes several changes to ch. 634, F.S., which governs the regulation of warranty associations, including motor vehicle service agreement companies and service warranty associations.

- ✓ Creates a definition of "motor vehicle manufacturer" that includes the subsidiaries and affiliates of an automobile manufacturer. It further defines "subsidiary" as used in this context.
- ✓ Exempts motor vehicle manufacturers from complying with certain financial solvency requirements that are required of other companies selling automobile service warranties. However, motor vehicle manufacturers still would be required to file forms and rates, comply with the unfair trade practices statutes, and be subject to other provisions in this chapter and regulation by the Office of Insurance Regulation (OIR).
- ✓ Exempts motor vehicle manufacturers from submitting fingerprinting or background information for anyone except those serving as officers or directors of the applicant entity.
- ✓ Gives the OIR the authority to develop by rule an abbreviated form for statistical reporting of sales of service agreements sold by motor vehicle manufacturers. Therefore, motor vehicle manufacturers will be required to file the abbreviated form instead of submitting the detailed financial report required by current Florida law.
- ✓ Specifies that the warranty register required in s. 634.4165, F.S., of warranty associations selling service warranties for consumer products (which are not motor vehicle service agreements or home warranties) must include the name and address of warranty holders, to the extent that the warranty holders provide that information.
- ✓ Requires that service warranty companies provide an alternate means for consumers to submit their name and address such as online registration, postcard remittance, or other methods acceptable to the OIR.

- ✓ Adds to the existing list of what constitutes an unfair or deceptive claim settlement practice by a service warranty association. The bill prohibits a service warranty association from denying a claim solely because it was unable to confirm that a customer in fact purchased a warranty, because the association did not collect the customer's name and address.

SB 2310 – Economic Stimulus: Chapter 2008-31, L.O.F.; Effective July 1, 2008; by Senate Governmental Operations Committee; and Senator Ring and others.

Economically Targeted Investments

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

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

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

The bill provides a definition of "life sciences" for the purpose of the program, to mean the use of information technology, engineering, and biological and chemical sciences for the development and production of goods and services, including, but not limited to, drug development, medical implants and devices, bio-related diagnostic products, bioagriculture technologies, biosecurity, biofuels, and biorelated applications.

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

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

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

Reusable Space Industry Prize Program

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

SB 2422 – Local Government Finance: Chapter 2008-59, L.O.F.; Effective May 28, 2008; by Senate Governmental Operations Committee; and Senator Alexander.

This bill makes changes to the Local Government Investment Pool (LGIP) managed by the State Board of Administration (SBA) based on the recent recommendations of an independent investigative report. The bill modifies the administration, security oversight, and transparency of the LGIP as a means of restoring confidence in the fund. Further, the bill makes the trustees, consisting of the Governor, the Chief Financial Officer, and the Attorney General, more accountable to pool participants by requiring certain certifications and reports to the Joint Legislative Auditing Committee. The bill also provides for full disclosure of investment information to participants upon enrollment which, among other things, outlines the LGIP investment policy and basic operations of the trust fund. Additionally, the bill requires monthly management reports detailing investment related actions. Further, the bill establishes heightened protocol by which management and employees must abide.

The bill also creates the Participant Local Government Advisory Council to assist in evaluating the LGIP which may also provide input to the trustees. To address emergencies, the bill allows the executive director of the SBA to freeze assets or restrict fund contributions for 48 hours and requires the trustees to agree to continuation of such measures after 48 hours, up to a maximum of 15 days. Additionally, the bill provides rules and regulations for the administration of the Fund B Surplus Funds Trust Fund which is created as a separate legal entity in CS/HB 7097. The bill provides that the Fund B trust fund will be a self-liquidating pool, allowing revenue to be returned to pool participants as assets are sold, mature, or are worked out. The bill also requires the trustees to review the condition of the Fund B trust fund at each SBA meeting until self-liquidation has fully occurred.

SB 2462 – Group Self-insurance Funds: Chapter 2008-181, L.O.F.; Effective June 17, 2008; by Senate Banking & Insurance Committee; and Senator Gaetz.

Section 624.4621, F.S. allows two or more employers to pool their liabilities under the workers' compensation act and form a group self-insurance fund (fund). There are four active authorized group self-insurance funds currently in Florida. All members of a self-insurance fund must have common interest. The Financial Services Commission through the Office of Insurance Regulation (OIR) has promulgated extensive rules dealing with self-insurance funds. A basic requirement is that the fund must have, and will continue to have, the financial strength to pay claims.

Under current law, if a group self-insurance fund has surplus monies for a year in excess of the amount necessary to fulfill the obligations of the fund, the surplus monies may be refunded to fund members in the form of dividends. The trustees of the fund determine whether payment of a dividend is warranted. Before a dividend can be distributed to fund members, the fund must provide financial information about the fund to the OIR and obtain approval for the dividend distribution from the OIR. The OIR has sixty days to approve the dividend distribution or the distribution is deemed approved. A fund cannot require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for a fund member to receive a dividend.

This bill amends current law relating to the process by which group self-insurance funds pay dividends to members. It does not change what type of dividends are payable and it maintains authority for the fund trustees to decide whether to pay dividends to the fund members. The bill changes current law by allowing the trustees of the fund established prior to June 1, 2008 to distribute

fund dividends to fund members without prior approval of the OIR but with notification to the OIR of the dividend distribution within 10 days of the distribution. The self-insurance fund must also provide certain information and records to the OIR to support the dividend payment. The bill restricts the amount of dividends distributed to no more than the total sum of the dividends declared and recorded on the current audited financial statement of the fund. There is no restriction on dividend amount in current law. In addition, the bill prohibits the distribution of dividends to jeopardize the financial condition of the fund. Current law does not specify this restriction either. The bill maintains current law prohibiting funds to require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for the fund member to receive a dividend.

This bill requires funds established after June 1, 2008 to obtain approval by the OIR before distributing dividends during the first seven years the fund is in operation. The OIR has sixty days to approve the dividend distribution.

SB 2534 – Health Insurnce/Cover Florida Health Care Access Program:

Chapter 2008-32, L.O.F.; Effective May 21, 2008; by Senate Health & Human Services Appropriations Committee; Senate Banking & Insurance Committee; and Senator Peaden.

The bill provides for two significant new programs designed to provide more affordable access to coverage for health care, primarily for individuals who are uninsured and small employers.

Cover Florida Health Access Program

Creates the "Cover Florida Health Access Program Act," which is designed to provide affordable health care options for uninsured residents. The program will allow insurers, HMOs, health-care-sponsored-organizations, or health care districts to offer consumers a choice of benefit plans at affordable prices. A Cover Florida plan entity must provide non-catastrophic coverage and may provide catastrophic coverage, supplemental insurance, and discount medical plan product options to enrollees.

Enrollment Eligibility Requirements:

- ✓ Resident of Florida;
- ✓ Ages 19 to 64;
- ✓ Not covered by private insurance or eligible for public insurance; and
- ✓ Uninsured for at least the prior 6 months, with exceptions for persons who lost coverage within the past 6 months under certain conditions.

Administration of the Cover Florida Health Access Program:

The Agency for Health Care Administration and the Office of Insurance Regulation are jointly responsible for establishing and administering the program. The agency and the office are required to issue an invitation to negotiate no later than July 1, 2008, to health insurers, health maintenance organizations, health care provider-sponsored organizations, and health care districts ("Cover Florida plan entities"). The agency and the office are required to approve at least one Cover Florida plan entity having an existing statewide provider network, and may approve at least one regional network plan in each Medicaid area.

Changes in plan benefits, premiums, and forms are subject to regulatory oversight by the agency and the office. The agency is required to ensure that the plans follow standardized grievance procedures. The office and the agency are required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the program.

Health Flex Plan Program

The Health Flex Plan Program was established to offer basic affordable health care services to low income, uninsured residents. The amendment provides the following changes to the program:

- ✓ Expands the population eligible to purchase health flex plans by raising the family income limit from 200 to 300 percent of the federal poverty level (FPL).
- ✓ Allows a person who is covered under subsidized Medicaid or KidCare coverage and who lost eligibility due to the income limits to apply for coverage without a lapse in coverage if all other requirements are met. Under current law, these persons would be required to be uninsured for the prior 6 months prior to enrolling in a health flex plan.
- ✓ Expands the population eligible for health flex plans by allowing individuals who are covered under an individual contract issued by an HMO that has an approved health flex plan, as of October 1, 2008, to enroll in the HMO's health flex plan. These individuals would not be subject to the current requirement of being uninsured for the prior 6 months.
- ✓ Allows a person who is part of an employer group with at least 75 percent of the employees having income equal to or less than 300 percent of the FPL and not covered by private insurance during the last 6 months to be eligible for coverage. If the health flex plan is an insurer, only 50 percent of the employees must meet the income test.
- ✓ Extends the expiration date of the program from July 1, 2008 to July 1, 2013.

Florida Health Choices Program

The bill creates the Florida Health Choices Program ("program"). The program is designed to be a single, centralized market for the sale and purchase of health care products including, but not limited to: health insurance plans, HMO plans, prepaid services, service contracts, and flexible spending accounts. Products sold as part of the program would be exempt from regulation under the Insurance Code and laws governing health maintenance organizations.

Authorized Vendors

The following entities are authorized to be eligible vendors of these products and plans: (1) insurers authorized under ch. 624, F.S., (2) HMOs authorized under ch. 641, F.S., (3) prepaid health clinics licensed under ch. 641, part II, F.S., (4) health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, and other licensed health care providers, (5) provider organizations, including services networks, group practices, and professional associations, and (6) corporate entities providing specific health services. Vendors may not sell products that provide "risk-bearing coverage" unless those vendors are authorized under a certification of authority issued by the Office of Insurance Regulation under the Florida Insurance Code. Vendors are required to make all risk-bearing products offered through the program guaranteed-issue policies, subject to preexisting condition exclusions established by the corporation.

Administration of the Program

The bill creates Florida Health Choice, Inc., as a not-for-profit corporation under ch. 617, F.S. The corporation will administer the program and function like a third-party administrator (TPA) for employers participating in the program. The corporation is responsible for certifying vendors and ensuring the validity of their offerings.

The corporation is governed by a fifteen member board, four members appointed by the Governor, four members appointed by the Senate President, four members appointed by the Speaker of the House of Representatives, and three ex-officio, non-voting members from the following agencies: Agency for Health Care Administration, Department of Management Services, and the Office of Insurance Regulation. The board members may not include insurers, health insurance agents, health care providers, HMOs, prepaid service providers, or any other entity or affiliate of eligible vendors.

The corporation is subject to the ethics (conflict of interest) requirements of part III of ch. 112, F.S., as well as the public records and public meetings requirements of chs. 119 and 287, F.S.

Board members are entitled to per diem and travel expenses but no other compensation is allowed. The board may secure staff and consultant services necessary to the operation of the program. A total of $1.5 billion (the sum of 3 separate appropriation categories) in non-recurring funds is appropriated from the General Revenue Fund to fund the program.

Eligibility and Enrollment

The bill provides that small employers (1-50 employees), certain eligible individuals, cities (population less than 50,000), fiscally constrained counties, municipalities having a population of fewer than 50,000 residents, school districts in fiscally constrained counties, and statutory rural hospitals are eligible to enroll. Eligible individuals include individual employees of enrolled employers, state employees ineligible for the state group insurance plan, state retirees, and Medicaid reform participants who opt-out.

Pricing; Risk Pooling

Prices for products sold through the program must be based on age, gender, and location of participants. The corporation must develop a methodology for evaluating the actuarial soundness of the product, which methodology must be reviewed by the OIR. The corporation must use the methodology to compare the expected costs and benefits of the products, which must be reported to individuals participating in the program. Prices must remain in force for at least one year. The corporation must add a surcharge not to exceed 2.5 percent to generate funding for administrative services provided by the corporation and payments to buyer's representatives (including insurance agents).

The program must utilize methods for pooling the risk of individual participants and preventing selection bias, including a post-enrollment risk adjustment of the premium payments to the vendors. Monthly distributions of payments to the vendors must be adjusted based on the assessed relative risk profile of the enrollees in each risk-bearing product for the most recent period for which data is available.

OIR Recommendation on Risk-Bearing Products

Prior to making a risk-bearing product available through the program, the corporation must provide information on the product to the OIR. The OIR has 30 days to review the product and make a recommendation that it should, or should not, be made available through the program. If the OIR recommends that a risk-bearing product should not be made available, the product may be offered only if a majority of the board vote to include the product.

Florida KidCare Program

The Florida KidCare program is primarily targeted to uninsured children under age 19 whose family income is at or below 200 percent of the federal poverty level. The bill makes the following changes to the program:

- ✓ Expands eligibility and enrollment for the KidCare program by eliminating the 10 percent cap on enrollment for MediKids (ages 1-5) and Healthy Kids (ages 6-19) enrollees who have a family income of greater than 200 percent of the federal poverty level and pay full premiums. These enrollees must pay the full cost of the premium (unsubsidized).
- ✓ Requires Healthy Kids Corp. to submit a report to the Legislature and Governor, by February 1, 2009, on the premium impact to the subsidized portion of KidCare from the inclusion of the full pay program, and recommendations on how to eliminate or mitigate possible impacts to the subsidized premiums.

Dependent Coverage

The bill requires individual and group health insurers and HMOs to offer policyholders and certificate holders (parents) the option to continue coverage of their children on their family policy until age 30, if the child is: (1) unmarried with no dependents; (2) a resident of Florida or a full-time or part-time student; and (3) does not have insurance coverage under any private or public plan.

The bill maintains the current law that requires dependents to be covered until age 25 if the child is dependent upon the parent for support and who either lives in the household of the parent or is a full-time or part-time student. However, this requirement currently applies only to group health insurance policies, which the bill applies to individual health insurance policies and to all HMO contracts.

Insurance Code Exemption for Certain Religious Organizations

The bill creates an exemption from the Florida Insurance Code for nonprofit religious organizations that qualify under Title 26, sec. 501 of the IRS Code. In order to meet this exemption, the nonprofit religious organization must:

- ✓ Limit its membership to members of the same religion;
- ✓ Act as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and those with the ability to pay for the benefit of those members in need;
- ✓ Provide for medical or financial needs of participants through payments directly from one participant to another;
- ✓ Suggest amounts that participants may voluntarily give with no assumption of risk or promise to pay either among the participants or between the participants.

SB 2598 – Impaired Medical Practitioners/Treatment Programs/ Sovereign Immunity: Chapter 2008-63, L.O.F.; Effective July 1, 2008; by Senate Health & Human Services Appropriations Committee; Senate Health Regulation Committee; and Senator Atwater.

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

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

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

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

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

SB 2654 – Autism Spectrum Disorder: Chapter 2008-30, L.O.F.; Effective January 1, 2009; by Senate Health & Human Services Appropriations Committee; Senate Health Policy Committee; Senate Banking & Insurance Committee; and Senator Geller.

This bill authorizes the Agency for Health Care Administration (AHCA or Agency) to seek federal approval through a Medicaid waiver or state plan amendment for the provision of occupational therapy, speech therapy, physical therapy, behavior analysis, and behavior assistant services to individuals who are 5 years old and younger and have a diagnosed developmental disability, an autism spectrum disorder, or Down syndrome. Coverage for such services must be limited to $36,000 annually and $108,000 in total lifetime benefits. The agency must submit an annual report beginning on January 1, 2009 to the Legislature regarding progress on obtaining federal approval and recommendations for the implementation of services. The agency may not implement the provision of these services without prior legislative approval.

The bill creates the "Window of Opportunity Act" which requires the Office of Insurance Regulation (OIR or Office) to convene a workgroup by August 31, 2008, to negotiate a binding compact agreement among participants relating to insurance and access to services for persons with developmental disabilities. The working group must include representatives from all licensed health insurers, all licensed health maintenance organizations, and employers with self-insured health benefit plans. No party must agree to the compact, but a party that does agree to the compact is bound to its terms and conditions. The compact agreement must include:

- ✓ A requirement to increase coverage for behavior analysis and behavior assistant services, speech therapy, physical therapy, and occupational therapy due to the presence of a developmental disability.
- ✓ Procedures for clear and specific notice to policyholders identifying the amount, scope, and conditions under which coverage is provided for such services.
- ✓ Penalties for documented cases of denial of claims for medically necessary services due to the presence of a developmental disability.
- ✓ Proposals for new product lines to be offered in conjunction with health insurance.

Once the compact agreement negations are completed, the OIR must report the results to the Governor, President of the Senate, and Speaker of the House of Representatives. Beginning February 15, 2009, the OIR must submit an annual report regarding the implementation of the compact agreement.

The bill also creates the "Steven A. Geller Autism Coverage Act" which requires insurer large group health insurance plans and HMO large group health

maintenance contracts to provide coverage for diagnostic screening, intervention, and treatment of autism spectrum disorder in children through speech therapy, occupational therapy, physical therapy, and applied behavior analysis that is prescribed by the insured's treating physician in accordance with a treatment plan. All large group health insurance policies and HMO contracts issued or renewed on or after April 1, 2009, must provide the mandated autism spectrum coverage, except that the mandate is not enforceable against an insurer or HMO that is a signatory of the developmental disabilities compact for developmental disabilities, described above, as of April 1, 2009. However, the autism spectrum mandate is enforceable against a signatory of the developmental disabilities compact if the insurer or HMO has not complied with the terms of the compact by April 1, 2010.

The mandatory coverage for autism spectrum disorder is subject to a maximum benefit of $36,000 per year not to exceed $200,000 in total lifetime benefits. Beginning January 1, 2011, the maximum benefit is to be adjusted annually on that date to reflect annual changes in the medical inflation component of the Consumer Price Index. To be eligible for benefits and coverage, an individual must be diagnosed with an autism spectrum disorder at 8 years of age or younger. Benefits and coverage must be provided to eligible persons who are under 18 years of age or who are in high school. Coverage may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable than those applied to covered physical illnesses under the health plan or contract, except as allowed by the act. The coverage for autism may be subject to other general exclusions and limitations of the insurer's or HMO's policy or plan. Benefits may not be denied on the basis that provided services are habilitative in nature.

Health insurance plans and HMOs may not deny, refuse to issue or reissue coverage, terminate, or restrict coverage because an individual is diagnosed with autism spectrum disorder.

SB 2860 – Property and Casualty Insurance/Homeowner's Bill of Rights Act:

Chapter 2008-66, L.O.F.; Effective July 1, 2008, except as otherwise provided; by Senate General Government Appropriations Committee; Senate Banking & Insurance Committee; and Senator Atwater and others.

Rating Law for Property and Casualty Insurance (s. 627.062, F.S.)

Repeal of Arbitration - Repeals the option for an insurer, for any property and casualty insurance rate filing (or any other filing), to appeal a rate filing disapproved by the Office of Insurance Regulation (OIR) to an arbitration panel

in lieu of an administrative hearing. Current law prohibits use of arbitration until January 1, 2009.

Extension of Prohibition on "Use and File"- Extends for one additional year, until December 31, 2009, the current prohibition on insurers using the "use and file" option for property insurance rate increases. This would continue to require that an insurer make a "file and use" filing that prohibits an insurer from increasing its rates prior to approval by the OIR, unless deemed approved by failure of the OIR to issue a notice of intent to disapprove within 90 days. Current law prohibits "use and file" rate increases until December 31, 2008.

Use of Approved Hurricane Loss Models - Requires that projected hurricane losses must be estimated using a model or method found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology.

Profit Factor - Deletes the requirement that the OIR approve a profit factor in a rate filing for an insurer that is commensurate with the risk, for that portion of the rate covering hurricane losses for which the insurer has not purchased reinsurance. By striking this language, the law requires the OIR to consider "a reasonable margin for profit and contingencies."

Expedited Hearings on Rate Filings - Provides for an expedited hearing process for rate filings by:

- ✓ Requiring Division of Administrative Hearings to hold the hearing within 30 days after the request for the hearing.
- ✓ Requiring the hearing officer to issue the recommended order within 30 days after the hearing (or after receipt of the transcripts).
- ✓ Requiring parties to submit written exceptions within 10 days.
- ✓ Requiring the OIR to enter a final order within 30 days after the entry of the recommended order.
- ✓ Allowing timeframes to be waived upon agreement of all parties.
- ✓ Allowing an insurer to request an expedited appellate review of a final OIR rate order and providing legislative intent that the 1st DCA grant the insurer's request.

Transparency in Rate Regulation (creating s. 627.0621, F.S.)

For residential property insurance rate filings the OIR must provide information on an Internet website of all assumptions made by any OIR actuary; the overall rate change requested by the insurer; a statement describing any assumptions that deviate for actuarial standards of the Casualty Actuarial Society; and a certification by the office's actuary that based on the actuary's knowledge, that his or her recommendations are consistent with accepted actuarial principles.

In any administrative or judicial proceeding, the work-product and attorney-client privilege exemptions from public disclosure do not apply to communications with office attorneys or records prepared by or at the direction of an OIR attorney except when the communication or record reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the OIR that was prepared exclusively for civil or criminal litigation or adversarial administrative proceedings *and* the communication occurred or the record was prepared after the initiation of a court action, after issuance of a notice of intent to deny a rate, or after the filing by an insurer of a request for a hearing.

Administrative Proceedings in Rate Determinations

The bill allows an administrative law judge (ALJ) to make the certain findings of fact in an administrative hearing on a property insurance rate filing. The ALJ may find whether the factors used in a rate filing or applied by the office are consistent with standard actuarial techniques or practices or are otherwise based on reasonable actuarial judgment, whether a factor for underwriting profit and contingencies is reasonable or excessive, or whether the cost of reinsurance is reasonable or excessive. The administrative law judge may enter a recommended order that approves, modifies or rejects the requested change, as supported by the record.

Requirements for Trade Secret Documents (s. 624.4213, F.S.)

The bill specifies requirements for submission of a document to the OIR or the Department of Financial Services (DFS) in order for a person to claim that the document is a trade secret. Each page or portion that is a trade secret must be labeled as such and be separated from non-trade secret material. The submitting party must include an affidavit certifying certain information as to the trade secret status of the documents.

The OIR is authorized to release a document marked as trade secret to a requestor if the OIR provides the insurer with 30-days notice and opportunity to obtain a court order barring disclosure. The bill allows the OIR or DFS to disclose a trade secret to employees or officers of another governmental agency whose use of the trade secret is within the scope of their employment.

Market Conduct Examinations—Required Filing of Claims Handling Practices (s. 624.3161, F.S.)

The bill authorizes the OIR to order an insurer to file its claims handling practices and procedures as a public record based on findings of a market conduct examination. The OIR findings must be that the insurer had a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling causing harm to policyholders, as prohibited by s. 626.9541(1)(i), F.S. The requirement applies to the claims-handling procedures

for the line of insurance that was the subject of the market conduct exam. The filings must be held by the office for a 36-month period.

Administrative Fines for Violations of the Insurance Code (s. 624.4211, F.S.)

The bill doubles all current fines that may be imposed by the OIR upon an insurer for violation of the Insurance Code or any rule or order. A maximum fine of $40,000 (rather than $20,000) may be levied for a willful violation, not to exceed an amount equal to $200,000 (rather than $100,000), for all willful violations arising out of the same action. A maximum fine of $5,000 (rather than $2,500) for a nonwillful violation, not to exceed an amount of $20,000 (rather than $10,000) for all nonwillful violations arising out of the same action.

Administrative Fines for Unfair Insurance Trade Practices (s. 626.9521, F.S.)

The bill doubles all current fines that may be imposed by the OIR or the Department of Financial Services (within each agency's respective jurisdiction) upon a person who violates any unfair or deceptive act or practice related to insurance. A maximum fine of $40,000 (rather than $20,000) may be levied for a willful violation, not to exceed an amount equal to $200,000 (rather than $100,000), for all willful violations arising out of the same action. A maximum fine of $5,000 (rather than $2,500) for a nonwillful violation, not to exceed an amount of $20,000 (rather than $10,000) for all nonwillful violations arising out of the same action.

Unfair Insurance Trace Practices; Payment of Undisputed Claim Amount (s. 626.9541, F.S.)

The bill prohibits an insurer from failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance polices within 90 days after determining the amount and agreeing to coverage, unless payment of the undisputed benefits is prevented by an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed. Violations are grounds for a private civil remedy action, due to the cross-reference in current s. 624.155, F.S.

Notice of Non-Renewal

The bill increases the required notice of nonrenewal of a personal or commercial residential insurance policy from 100 days to 180 days if the policy has been written for 5 years or more. Insurers that are planning to nonrenew more than 10,000 policies within a 12-month period must notify the OIR 90 days before issuing any notices of nonrenewal.

Required Use of Models Approved by Florida Commission on Hurricane Loss Projection Methodology (s. 627.0628, F.S.)

The bill requires that for purposes of a rate filing insurers must use, and may not modify or adjust, a model or method found to be accurate or reliable by the Commission on Hurricane Loss Projection Methodology. The bill deletes the current law that in order for an approved model to be admissible and relevant, the OIR must have access to all of the assumptions and factors used in developing the model.

The commission is required to adopt findings related to a model's probable maximum loss calculations. An insurer must use and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels for rate filings made more than 60 days after the commission has made such findings.

The bill specifies that the processes, standards, and guidelines of the commission do not constitute final agency action or statements of general applicability that implement, interpret, or prescribe law and are exempt from chapter 120, F.S.

Use of Public Hurricane Loss Model

The bill allows insurance companies to use the Public Hurricane Loss Model to determine rate requests in advance of a filing, but requires the insurer to pay for use of the public model. It requires the Financial Services Commission to establish by rule, by January 1, 2009, a fee schedule for access and use of the model, reasonably calculated to cover only the actual costs.

Hurricane Mitigation Premium Credits Tied to Uniform Home Rating Scale (s. 627.0629, F.S.)

The OIR is required to develop, by February 1, 2011, a proposed method for insurers to establish windstorm mitigation premium credits (discounts) that correlate to the numerical rating of a structure pursuant to the uniform home rating scale. The Financial Services Commission must then adopt rules by October 1, 2011, requiring insurers to make rate filings which revise their credits pursuant to this method, consistent with generally accepted actuarial principles and wind loss mitigation studies. The rules must allow a period of at least two years after the effective date of the revised credits for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer must continue to apply the old mitigation credit.

Disclosure of Windstorm Mitigation Rating Upon Sale of Home (s. 689.262, F.S.)

The bill provides that, effective January 1, 2010, the potential purchaser of a residential property with an insured value of $500,000 or more, insured by

Citizens, and located in the wind-borne debris region be informed of the structure's windstorm mitigation rating.

Effective January 1, 2011, a purchaser of residential property located in the wind-borne debris region must be informed of the windstorm mitigation rating of the structure, either in the contract for sale or as a separate document attached to the contract. The Financial Services Commission is authorized to adopt rules, including the form of the disclosure and the requirements for the inspection or report that is required.

Citizens Property Insurance Corporation (s. 627.351, F.S.)

***Extension of Rate Freeze* -** Extends the freeze on rate increases in Citizens from January 1, 2009 to January 1, 2010. Requires Citizens to make an annual, actuarially sound rate filing beginning July 15, 2009, to be effective no earlier than January 1, 2010.

***Assessments for Citizens Deficits* -** Revises the required assessments to fund a deficit in *each* of Citizens' three accounts (high risk, personal lines, or commercial lines) to:

- ✓ Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal;
- ✓ If this is insufficient, require a regular assessment against insurers which may be recouped from their policyholders, of up to 6 percent (rather than 10 percent) of premium for most lines of property and casualty insurance or 6 percent of the deficit, whichever is greater;
- ✓ Require any remaining deficit to be funded by a bond issue, funded by multi-year emergency assessments on policyholders on most types of property and casualty insurance, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.

The bill grants the board of Citizens the discretion to apply the amount of any assessment or surcharge which exceeds the amount of the deficit to various business purposes.

***Eligibility for Higher Value Homes* -** Provides that homes with a dwelling replacement cost of $2 million or more, rather than current law's $1 million or more, are ineligible for coverage, effective January 1, 2009, with limited exceptions for current policyholders who obtain rejections from three surplus lines insurers and one authorized insurer.

***Eligibility for Properties Within 2,500 Feet of the Coast* -** Deletes the current law requiring that new properties constructed after January 1, 2009, within 2,500 feet of the coast must meet "Code Plus" requirements in order to

be eligible for Citizens. By repealing this provision, the law would still require that any new home meet the Florida Building Code.

Forced Purchase of Bonds - Deletes current law requiring insurers to purchase bonds that remain unsold for 60 days.

Access to Claims and Underwriting Files - Provides that a policyholder who has filed suit against Citizens has the right to discover the contents of his or her claims file to the same extent that discovery would be available from a private insurer. Allows Citizens to release confidential underwriting and claims file information under certain circumstances.

Multi-Policy Discount

Allows an insurer to offer a multi-policy discount if the policyholder has wind-only coverage with Citizens or an insurer that has removed a policy from Citizens, provided that the same insurance agent services both policies.

Citizens Property Insurance Corporation Mission Review Task Force

The bill creates the Citizens Mission Review Task Force to analyze and report on changes needed to return Citizens to its former role as a state-created, noncompetitive residual market mechanism that provides property insurance coverage to risks that are otherwise entitled but unable to obtain such coverage in the private market. The task force must submit reports by January 31, 2009, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force is composed of 11 members and must be funded by Citizens.

Section 16 of the bill was vetoed 5/28

~~***Insurance Capital Build-Up Incentive Program (s. 215.5595, F.S.)***~~

~~The bill revises the requirements for the Program, which provides for surplus note loans to insurers of up to $25 million, repayable over 20 years at the 10-year Treasury bond rate, as approved by the State Board of Administration (SBA). Insurers that apply by September 1, 2008 are eligible for a surplus note loan equal to the amount of new capital that an insurer contributes. Insurers that apply after September 1, but before June 1, 2009, may apply for a surplus note equal to one-half of the amount of new capital that the insurer contributes. The bill revises the minimum premiums that the insurer must commit to write, by adding a minimum *gross* premium to surplus ratio requirement, as an alternative to the current *net* premium to surplus writing ratio requirement. The distinction is that net premiums deduct the reinsurance premiums that the insurer pays (cedes) to a reinsurer. An insurer must write at least 15 percent of its premiums for new policies for policies taken out of Citizens, for each of the first 3 years of the surplus note.~~

~~To fund the program, Citizens is to transfer $250 million from its personal lines account and commercial lines account to the General Revenue Fund on December 15, 2008, unless the estimated year-end surplus in the Personal Lines Account and the Commercial Lines Account is less than $1 billion. The State Board of Administration (SBA), beginning July 1, 2009, must make quarterly transfers to Citizens of interest and principal payments for surplus notes that were funded by appropriations from Citizens in FY 2008-09. Citizens is prohibited from using any of the amendments to the Insurance Capital Build-Up Program or any transfer of funds as justification or cause in seeking any rate or assessment increase. However, this provision does not limit the amount of an assessment that may be greater due to the transfer of these funds.~~

~~The bill requires the SBA to make annual reports to the Legislature on the results of the program and each insurer's compliance with the terms of its surplus note. The SBA must transfer to Citizens on January 15, 2009, uncommitted or unreserved funds, that were funded by transfers from Citizens.~~

Florida Hurricane Catastrophe Fund; $10 Million Coverage Option

The bill requires the FHCF to offer $10 million of additional coverage to limited apportionment companies (having $25 million in surplus or less and writing at least 25 percent of premiums in Florida), insurers approved to participate in the Insurance Capital Build-Up Incentive Program, and insurers that purchased the supplemental coverage in 2007. Similar coverage was offered in 2006 and 2007. This coverage would reimburse the insurer for up to $10 million in losses, for each of two hurricanes. The coverage will again be priced at a 50 percent rate on line (e.g., $5 million premium for $10 million in coverage) with a free reinstatement for a second storm. The insurer's retention for such coverage remains at 30 percent of the company's surplus. The coverage expires on May 31, 2009.

Annual Report by CFO

Requires the CFO to annually report to the Governor and Legislative presiding officers regarding the economic impact on Florida from a 1-in-100 year hurricane and the premium increase needed to fund such a hurricane.

HB 5043 – Financial Services/Financial and Cash Management System: Chapter 2008-132, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Reagan and others.

- ✓ Establishes a task force, to be led by the CFO, to develop a strategic plan for a successor financial and cash management system to the system

currently used for settling and approving accounts against the state and keeping a record of all state funds.

- ✓ Establishes the Strategic Markets Research and Assessment Unit within the Department of Financial Services, which is directed to analyze and report on the state's financial services market trends and conditions to the Legislature.
- ✓ Amends the distribution of securities transaction fees to provide that the $30 portion of the $50 agent fee (or $9,120,765) and 30.44% (or $407,974) of the $100 branch fee be redirected from the General Revenue Fund to the Regulatory Trust Fund within the OFR.
- ✓ This redirect of fees is offset by a fund shift from General Revenue for the securities program within the Office of Financial Regulation.
- ✓ Redirects $18.4 million from the of surplus lines tax revenues from the Insurance Regulatory Trust Fund to General Revenue.

HB 5045 – Workers' Compensation Medical Services and Supplies:

Chapter 2008-133, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Reagan and others.

This bill transfers the responsibilities of the Agency for Health Care Administration (AHCA) with respect to workers' compensation medical services and supplies from AHCA to the Department of Financial Services (DFS). The responsibilities transferred to DFS include certification of health care providers to treat injured workers; certification of expert medical advisors; determination of whether any health care provider has engaged in a pattern or practice of overutilization; and resolution of reimbursement and utilization disputes concerning medical services. DFS through the Division of Workers' Compensation has provided day-to-day responsibility for these activities since November 2005 pursuant to an interagency agreement with AHCA.

HB 5047 – Dept. of Business and Professional Regulation:

Chapter 2008-134, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Reagan and others.

This bill addresses several issues, including:

- ✓ Eliminates the duplication of duties between the DBPR and the Department of Financial Services related to the Fire Prevention Code.

HB 5049 – Mortgage Broker's Licenses: Chapter 2008-135, L.O.F.; Effective Jul 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Reagan and others.

Currently, the Office of Financial Regulation administers a written test for the licensing of mortgage brokers. The law provides that the Office of Financial Regulation may offer an electronic version and requires the associated fees to be promulgated by rule. The Office has been unsuccessful in its rulemaking attempts to establish the fees for the electronic version of the examination.

The bill:

- ✓ Requires the Office of Financial Regulation to make the Mortgage Broker Licensing Exam available electronically.
- ✓ Reduces the Mortgage Broker application fee from $200 to $195.

Additional fee reductions:

	Current	New
Application Fee	$200.00	$195.00
Electronic Licensing Exam	$100.00	$ 75.00
Review of Graded Exam	$ 50.00	$ 35.00

~~**HB 5057 – Insurance Capital Build-up Incentive Program:**~~

~~Chapter 2008-___, L.O.F.; Effective July 1, 2008; by House Policy & Budget Council; House Jobs & Entrepreneurship Council; and Representative Reagan.~~

Vetoed by Governor 6/10/08

~~In 2006, the Insurance Capital Build-Up Incentive Program (ICBIP) was created to increase the availability of residential property insurance covering the risk of hurricanes and mitigating premium increases by providing a low-cost source of capital to write additional residential property insurance. The State Board of Administration (SBA) administers the ICBIP. The SBA makes available, upon application, loans (surplus notes) of up to $25 million, or 20 percent of the total funds available, to qualifying new or existing residential property insurers. ICBIP loans are memorialized in surplus note agreements, repayable over 20 years, with interest at the 10 year treasury rate on unpaid principal. Payments for the first three years are of interest only.~~

~~The bill:~~

- ~~✓ Provides that insurers must apply by September 1, 2008, for a surplus note loan equal to the amount of new capital that an insurer contributes. Insurers that apply after September 1, but before June 1, 2009, may apply for a surplus note equal to one-half of the amount of new capital that the insurer contributes.~~

- ✓ Revises a minimum writing ratio of premium to surplus an insurer must maintain.
- ✓ Provides that an insurer must also commit to writing at least fifteen percent of its net or gross written premium for new policies, not including renewal premiums, for policies taken out of Citizens Property Insurance Corporation, during each of the first 3 years after receiving the surplus note.
- ✓ Provides that an insurer must commit to maintaining a level of surplus and reinsurance sufficient to cover in excess of its 1-in-100 years probable maximum loss.
- ✓ Allows the SBA to charge a late fee for repayments.
- ✓ Provides that amendments made by the act do not affect the terms of surplus notes approved prior to January 1, 2008, but authorizes the SBA and an insurer to renegotiate such terms consistent with such amendments.

Citizens Property Insurance Corporation is directed to transfer $250 million to the General Revenue Fund by December 15, 2008, if the combined surplus of each of its accounts exceeds $1 billion. While this bill makes available $250 million to the General Revenue Fund for the ICBIP, it does not provide an appropriation of those funds to the program. The appropriation is made in House Bill 5001, the proposed General Appropriations Act for Fiscal Year 2008-2009.

Beginning July 1, 2009, the SBA is directed to quarterly transfer any interest and principle repaid on any surplus notes issued after December 1, 2008, to Citizens provided that the surplus notes were funded exclusively by an appropriation to the ICBIP by the Legislature for the 2008-2009 fiscal year.

The bill additionally provides that Citizens may not use any amendments made to s. 215.5595, Florida Statutes, by this act or any transfer of funds authorized by this act as justification or cause in seeking any rate or assessment increase.

Also see the Summary for SB 2860. That bill provides that provisions of SB 2860 shall supersede and control over any conflicting provisions adopted in HB 5057, to the extent of such conflict, if both bills become law.

HB 7037 – Relief/Alan Jerome Crotzer/Wrongful Incarceration:

Effective April 10, 2008, by House Policy & Budget Council; and Representative Sansom

This bill provides relief for Alan Jerome Crotzer. The bill:

- ✓ Appropriates $1,250,000 from the General Revenue Fund, which is to be used by the Department of Financial Services to purchase an annuity on behalf of Alan Jerome Crotzer to compensate him for 24 years of wrongful incarceration
- ✓ Waives tuition and fees for up to 120 hours of instruction at specified community colleges or state universities
- ✓ Requires a release of liability
- ✓ Provides that the Legislature has not waived sovereign immunity
- ✓ Provides that the award is intended to provide the sole compensation for any and all present and future claims.
- ✓ Specifies that no part of the award is to be paid for attorney's fees, lobbying fees, costs, or other similar expenses.

HB 7053 – OGSR/Florida Kidcare Program: Chapter 2008-146, L.O.F.; Effective October 1, 2008; by House Government Efficiency & Accountability Council; and Representative Gardiner.

Pursuant to a review under the Open Government Sunset Review Act, this bill revives and readopts the public records exemption for any information identifying a Florida Kidcare program applicant or enrollee held by the Agency for Health Care Administration, the Department of Children and Family Services, the Department of Health, or the Florida Healthy Kids Corporation.

The bill amends the current exemption: to improve the statutory structure of the exemption; to permit access to confidential and exempt information by another governmental entity in the performance of its official duties and responsibilities; to include a "willful and knowing" standard to determine whether a violation of the section has occurred; and to remove the phrase "notwithstanding any other law to the contrary" to simplify the administration of the exemption. The bill also clarifies that an enrollee's legal guardian, who is not a program applicant, is authorized to obtain confirmation of Kidcare coverage, dates of coverage, name of the child's health plan, and the amount of premium being paid.

The bill also repeals the sunset requirement pertaining to this public records exemption in chapter law and repeals a conflicting public records exemption relating to information maintained by the Florida Healthy Kids Corporation.

HB 7103 – Mitigation Enhancement: Chapter 2008-___, L.O.F.; Effective July 1, 2008; by House Jobs & Entrepreneurship Council; and Representative Reagan.

The bill makes several changes to the My Safe Florida Home Program (MSFHP) administered by the Department of Financial Services (DFS). The intent of the MSFHP is to provide free home inspections for at least 400,000 site-built, single-family residential properties and provide grants to at least 35,000 applicants prior to June 30, 2009.

The bill provides that to qualify for selection by the DFS as a wind certification entity to provide hurricane mitigation inspections, an entity must use hurricane mitigation inspectors who are certified or licensed as building inspectors, general or residential contractors, professional engineers or architects, or individuals who have at least two years prior experience in residential construction or residential building inspection and who have received specialized training in hurricane mitigation procedures.

The legislation requires DFS to adopt a quality assurance program that includes a statistically valid number of reinspections. It also allows DFS to verify that mitigation improvements have been made to all openings, including exterior doors and garage doors, prior to issuing a reimbursement grant check to the homeowner. The bill eliminates a provision in current law which requires DFS to transfer $40 million to the Volunteer Florida Foundation to provide inspections and grants to low-income homeowners. This provision is removed due to concerns about the tax status of the Foundation. The DFS may provide the remaining $18.7 million that has not yet been transferred to the Foundation, directly to non-profit organizations to serve low-income homeowners.

The bill mandates that DFS implement a no-interest loan program by October 1, 2008, which is to be contingent upon the selection of a qualified vendor and the execution of a contract acceptable to DFS and the vendor. The DFS is directed to set aside $10 million from the MSFHP funds for the loan program.

The bill allows DFS to contract with third parties for the provision of information technology and contractor services for low-income homeowners, which shall be considered direct program costs, rather than administrative costs for purposes of administrative cost limitations.

The bill clarifies that policyholders may submit a uniform mitigation verification inspection form to their insurers for the purpose of determining premium discounts for wind insurance. Further, insurers must accept as valid the uniform mitigation verification forms certified by the DFS or signed by a hurricane mitigation inspector employed by an approved My Safe Florida Home wind

certification entity, a building code inspector, a general or residential contractor or a professional engineer or architect so that homeowners can access insurance discounts or credits for which they are eligible.

HB 7135 – Energy: Chapter 2008-___, L.O.F.; Effective July 1, 2008, except as otherwise provided; by House Environment & Natural Resources Council; and Representative Mayfield and others.

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

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

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

Hearing on Order of Taking Property by Electric Utilities (s. 74.051, F.S.) - Provides that it is the intent of the Legislature that the court, when practicable, conduct the hearing within 120 days after the petition is filed when the petitioner is an electric utility that is seeking to appropriate property for an

electric generation plant, associated facility of such plant, an electric substation, or a power line; provides additional legislative intent that the court, when practicable, issue its order of taking no more than 30 days after the conclusion of the hearing.

Telecommuting (ss. 110.171 and 255.249, F.S.) - Encourages the use of telecommuting by state agencies for qualified employees by requiring each state agency's telecommuting program be posted on the state agency's website to allow access by employees and the public. Requires each state agency telecommuting program to provide measurable financial benefits associated with the program.

Renewable Energy Devices within a Condominium Unit (s. 163.04, F.S.) - Provides that condominium governing documents cannot prohibit unit owners from placing renewable energy devices within the boundaries of the condominium unit, and removes the three-story height restriction for installation of solar collectors on residential properties.

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

Property Tax Exemption for Renewable Energy Source Devices (ss. 196.012(14) and 196.175, F.S.) - Removes the expiration date of the property tax exemption for real property on which a renewable energy source device is installed and is being operated, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. Retains the period of each exemption at 10 years. Revises the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property. Removes outdated and obsolete language from the definition of "renewable energy source device," provided in s. 196.012(14), F.S.

Sales Tax Exemption for Renewable Energy Technologies (s. 212.08, F.S.) – Makes revisions to the existing sales and use tax exemption for renewable energy technologies. Revises the definition of "ethanol" to mean anhydrous denatured alcohol produced by the "conversion of carbohydrates" rather than by the "fermentation of plant sugars." Specifies that items eligible for the sales tax exemption are limited to one refund and requires a purchaser who receives a refund to notify a subsequent purchaser on the sales invoice or

other proof of purchase that the item is no longer eligible for a tax refund. Transfers current responsibilities of the Department of Environmental Protection (DEP) to the Florida Energy and Climate Commission.

Capital Investment Tax Credit (s. 220.191, F.S.) – Makes revisions to the existing capital investment tax credit section to provide for the transferability of tax credits for a project that includes locating a new solar panel manufacturing facility in the state that generates a minimum of 400 jobs within 6 months with an average salary of at least $50,000. Limits credit that can be transferred to the lesser of the qualifying business' tax liability for that year or the credit amount granted for that year.

Renewable Energy Technologies Investment Tax Credit (s. 220.192, F.S.) – Makes revisions to the existing corporate income tax credit provision for investment costs associated with hydrogen vehicles and hydrogen vehicle fueling stations, commercial stationary fuel cells, and biofuels, including biodiesel and ethanol. Provides for the transferability of tax credits and authorizes existing tax credits to be passed through to underlying partners, members, or owners by written agreement. Transfers current responsibilities of the Department of Environmental Protection (DEP) to the Florida Energy and Climate Commission.

Renewable Energy Production Tax Credits (s. 220.193, F.S.) - Makes revisions to the existing corporate renewable energy production tax credit provision to include electricity "sold" as well as electricity "used" by the producer when the producer would have otherwise been required to purchase the electricity. Clarifies that corporations that own an interest in a partnership can claim the tax credits earned by those partnerships for generating renewable energy. Allows taxpayers using the alternative minimum tax process to also utilize the credit. Provides for retroactivity of the amendments to the section (to the effective date of the law establishing the credit) so that entities that have been prohibited from taking advantage of the production tax credits, due to a lack of clarification, may now claim such credit.

Construction of Electric Transmission Lines on State Uplands (s. 253.02, F.S.) - Authorizes the Board of Trustees of the Internal Improvement Trust Fund (board) to delegate its authority to grant easements across state lands for the construction of electric transmission lines to the DEP. Requires the electric utility to compensate the state in an amount equal to the market value of the interest acquired and vest in the board fee simple title to replacement lands that must be 1.5 times the size of the easement acquired when the DEP approves such easements for electric transmission lines on behalf of the board. Grants the board the discretion to determine the amount of replacement lands within a range of 1 to 2 times the size of the easement granted where the

board approves the grant of an easement for electric transmission lines across state lands.

Green State Buildings (ss. 255.251-255.257, F.S.) - Provides all state agency facilities constructed and renovated by the state comply with the Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high performance green building rating system as approved by the Department of Management Services (DMS). Provides requirements for state buildings relating to energy management and addresses life-cycle costs in public facilities. Requires each state agency occupying space within buildings owned or managed by the DMS to compile a list of state-owned buildings (that are over 5,000 square feet in area and for which the agency is responsible for paying utility and operating expenses as they relate to energy use) suitable for a guaranteed energy performance saving contracts. Requires the DMS to consult with state agencies and create a schedule to prioritize state-owned buildings suitable for energy conservation projects by July 1, 2009. The schedule is to provide a deadline for guaranteed energy performance savings contract improvements to be made.

Green Government Buildings (Section 22) - Requires all county, municipal, school district, water management district, state university, community college, and court buildings be constructed to meet the LEED rating system, Green Globes rating system, Florida Green Building Coalition standards, or other nationally recognized building rating system. Provides applicability of section to buildings whose architectural plans are started after July 1, 2008. Authorizes St. Petersburg College to provide training and educational opportunities that will ensure that green building rating system certifying agents are available to work with entities as they construct public buildings to meet green building rating system standards.

Climate-friendly Public Business (s. 286.29, F.S.) - Creates the Florida Climate Friendly Preferred Products List to be used by state agencies for purchasing decisions. Requires state entities to contract with facilities for meeting and conference space from hotels or conference facilities granted the "Green Lodging" designation. Requires each state agency to ensure that all maintained vehicles meet certain minimum maintenance schedules. Requires that, when procuring a new vehicle, all state agencies, state universities, community colleges, and local governments procure vehicles with the greatest fuel efficiency available for a given use class when fuel-economy data are available. Requires all state agencies to use ethanol and biodiesel-blended fuels when available.

Deferred Payment Commodity Contracts (s. 287.063, F.S.) - Deletes a subparagraph limiting agencies' authority to obligate an annualized amount of payments in excess of current operating capital outlay appropriations. Adds a provision that the payment term may not exceed the useful life of the equipment unless the contract provides for the replacement or extension of the useful life of the equipment during the term of the loan. Provides that the annualized amount of a deferred-payment contract must be supported from available recurring funds.

Consolidated Financing of Deferred-Payment Purchases (s. 287.064, F.S.) - Provides that a master equipment financing agreement may finance the cost of energy, water, or wastewater efficiency and conservation measures for a term of repayment that may exceed 5 years but not more than 20 years.

DMS/DOT Biofuel Analysis (s. 287.16, F.S.) – Directs the Department of Management Services (DMS) to conduct, in coordination with the Department of Transportation (DOT), an analysis of fuel additive and biofuel use by the DOT through its central fueling facilities. Directs the DMS to encourage other state government entities to analyze transportation fuel usage and report such information to the DMS.

Innovation Incentive Program (s. 288.1089, F.S.) – Authorizes the Office of Tourism, Trade, and Economic Development to provide incentive awards to alternative and renewable energy projects. Establishes criteria for these projects, authorizes Enterprise Florida, Inc., to evaluate proposals for the awards, and requires Enterprise Florida, Inc., to solicit comments and recommendations from the Florida Energy and Climate Commission for alternative and renewable energy project proposals.

High Occupancy Vehicles (HOV) Lanes (s. 316.0741, F.S.) - Authorizes the use of HOV lanes by specified hybrid, low-emission, and energy-efficient vehicles. Authorizes certain vehicles having decals to use any HOV lane redesignated as high-occupancy toll lanes without payment of a toll.

Placement of Electric Transmission Lines on Department of Transportation (DOT) Controlled Rights -of-Way (s. 337.401, F.S.) - Provides that for transmission lines that operate more than 69 kilovolts, and where there is no practical alternative available, DOT rules must provide for placement of, and access to, transmission lines within the right-of-way of any department-controlled public roads, including longitudinally within limited access facilities to the greatest extent allowed by federal law, provided that compliance with minimum clear zone and other safety standards established by rules or regulations is achieved. Provides that when the DOT notifies an electric utility that the property where the transmission lines have been co-located is to

be expanded, the electric utility will relocate their transmission lines at the utility's expense.

Metropolitan Planning Organizations (s. 339.175, F.S.) – Adds "greenhouse gas emissions" to the list of the negative impacts of transportation systems that the Legislature wishes to minimize while promoting the management, operation, and development of these transportation systems. Provides that each Metropolitan Planning Organization is encouraged to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions.

Public Service Commission (PSC) Nominating Process (ss. 350.01, 350.012, 350.03, 350.031, 350.061, and 350.0614, F.S.) – Provides that a Public Service Commissioner seeking reappointment to the commission apprise the PSC Nominating Council (Nominating Council) no later than June 1 prior to the year in which their term expires and changes the beginning of the chair's term to January 2 of the first year of the term to coincide with the terms of the commissioners. Provides that "the Governor shall have the same power to remove, suspend, or appoint to fill vacancies in the office of commissioners as in other offices," as set forth in Art. IV, s. 7, of the State Constitution.

- ✓ Renames the Committee on PSC Oversight as the Committee on Public Counsel Oversight and removes the Oversight Committee's authority and responsibility to recommend applicants to the Governor for appointment to the PSC, but retains the committee's authority for oversight of the Public Counsel and authority to file complaints with the Commission on Ethics for alleged violations of the chapter by commissioners, former commissioners, former commission employees, or members of the PSC Nominating Council.

- ✓ Reverts commissioner selection process to the pre-2005 process, whereby the Nominating Council screens applicants and makes recommendations to the Governor. Clarifies that the Governor has 30 "consecutive" calendar days to make an appointment after receipt of the Nominating Council's recommendations. Provides that, after an appointment is made to fill a vacancy occurring due to expiration of the term, a successor Governor may, within 30 days after taking office, recall the appointment under specified circumstances.

- ✓ Increases the membership of the Nominating Council from nine to twelve to consist of six members appointed by the Speaker of the House of Representatives, including three representatives; and six members appointed by the President of the Senate, including three senators. Requires that one legislative member from each chamber must be from

the minority party. Provides that the President of the Senate appoint the chair in even-numbered years and the vice chair in odd-numbered years, and the Speaker of the House of Representatives appoint the chair in odd-numbered years and the vice chair in even-numbered years. Provides that the Nominating Council send to the Governor "not fewer than three persons" per vacancy. Changes the deadline for the Nominating Council to recommend applicants to the Governor to September 15 to shorten the overall length of time for the selection process.

- ✓ Terminates the current Nominating Council members' terms on June 30, 2008. Provides for reappointment of the Nominating Council, and provides for staggered terms. Establishes the beginning date for non-legislator Nominating Council member terms as January 2 after initial terms under the act expire.

Jurisdiction of the Public Service Commission (PSC) over Municipal Electric Utilities (s. 366.04, F.S.) - Requires each municipality that operates an electric utility that serves two cities in the same county, is located in a non charter county, has between 30,000 and 35,000 retail electric customers as of September 30, 2007, and does not have a service territory that extends beyond its home county as of September 30, 2007, to conduct a referendum election of all its retail electric customers to determine whether a separate electric utility authority should be created to operate the business of the electric utility in the affected municipal utility. If a majority of the retail electric customers vote in favor of creating the authority, the municipal electric utility must provide each Legislative member whose district includes any part of the utility's service territory a proposed charter that transfers the utility's operations to a duly-created authority.

Energy Efficiency and Conservation (ss. 366.81 and 366.82, F.S.) - Revises the Florida Energy Efficiency and Conservation Act (FEECA), to explicitly allow efficiency and conservation investments across generation, transmission, and distribution as well as efficiencies within the user base; to encourage the development of demand-side renewable energy; and to provide criteria the Public Service Commission (PSC) is to consider when evaluating proposed conservation and efficiency measures. The criteria the PSC is required to consider include the following:

- ✓ The costs and benefits to customers participating in the measure (Participants test).
- ✓ The costs and benefits to the general body of ratepayers as a whole, including both utility incentives and participant contributions (similar to a Total Resource Cost test or TRC test but including the costs of incentives).

- ✓ The need for incentives to promote both customer-owned and utility-owned energy efficiency and renewable energy systems.
- ✓ The costs imposed by state and federal regulations on the emissions of greenhouse gases.

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

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

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

Environmental Cost Recovery (s. 366.8255, F.S.) **-** Revises the definition of "environmental compliance costs" to include the costs or expenses prudently incurred for the quantification, reporting, and third party verification as required for participation in greenhouse gas emission registries for greenhouse gases as defined in s. 403.44, F.S.; and costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in Florida for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with State of Florida government agencies and State of Florida universities.

Net Metering (s. 366.91, F.S.) - Expands the term "biomass" to include waste, byproducts or products from agricultural and orchard crops, waste or co-products from livestock and poultry operations, and waste or byproducts from food processing.

Requires investor-owned utilities to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation on or before January 1, 2009, and directs municipal electric utilities and rural electric cooperatives that sell electricity at retail to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation, as well. Directs each governing authority to establish requirements relating to such.

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

Renewable Portfolio Standard (s. 366.92, F.S.) - Directs the Public service Commission (PSC) to adopt a rule for a renewable portfolio standard (RPS) requiring each provider, which includes an investor-owned utility, but not a municipal electric utility or a rural electric cooperative, to supply renewable energy to its customers, either directly, by procuring, or indirectly providing through the purchase of Renewable Energy Credits (RECs). Requires the rule to provide for the following:

- ✓ Methods of managing the cost of compliance with the RPS whether through direct supply, procurement of renewable power, or through the purchase of RECs.
- ✓ Appropriate compliance measures and the conditions under which noncompliance can be excused due to a determination by the commission that the supply of renewable energy or RECs was not adequate to satisfy the demand for such energy, or that the cost of securing renewable energy or RECs was cost prohibitive.
- ✓ An appropriate period of time for which renewable energy credits may be used for purposes of compliance with the RPS.
- ✓ The monitoring of compliance with and enforcement of the requirements of this section.
- ✓ A means of ensuring that energy credited toward compliance with the provisions of the RPS not be credited toward any other purpose.
- ✓ Development of procedures to track and account for RECs, including ownership of RECs that are derived from a customer-owned renewable energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by that supplier.

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

Provides that the rule may give added weight to energy provided by wind and solar photovoltaic over other forms of renewable energy. Requires the PSC to present the draft rule for legislative consideration by February 1, 2009, and prohibits the rule from being implemented until ratified by the Legislature.

Provides rulemaking authority to the PSC for providing annual cost recovery and incentive-based adjustments to authorized rates of return on common equity to providers to incentivize renewable energy. Authorizes the PSC to approve projects and power sales agreements with renewable power producers, and the sale of renewable energy credits which are needed to comply with the RPS. Provides that if there is a conflict between this provision and s. 366.91(3) and (4), F.S., the RPS section will supersede s. 366.91(3) and (4), F.S., in terms of paying more than avoided costs. Provides that nothing in the section shall impede or impair terms and conditions in existing contracts.

Directs the PSC to provide for full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by a provider for renewable energy projects that are zero greenhouse gas emitting at the point of generation, up to a total of 110 MW statewide. Provides conditions and a July 1, 2009, deadline for filing for such cost recovery. Directs municipal electric utilities and rural electric cooperatives to develop standards for the promotion, encouragement, and expansion of the use of renewable energy resources and energy conservation and efficiency measures.

Alternative Cost Recovery Mechanisms for Nuclear Power Plants (s. 366.93, F.S.) – Specifies that the advanced cost recovery requirement consists of the costs incurred in the siting, design, licensing, construction, or operation of new, expanded, or relocated electric transmission lines and facilities that are necessary to serve a nuclear power plant. Furthermore, the bill allows utilities to recover preconstruction and construction costs associated with such electrical transmission lines and facilities incurred after the issuance of a final order granting a determination of need for a nuclear power plant, rather than at the time that the nuclear power plant commences operation. In the event that the utility elects not to complete or is precluded from completing construction of any new, expanded, or relocated electrical transmission lines or facilities of a nuclear power plant, the utility may recover all prudent costs incurred after the issuance of the final order granting the determination of need for the nuclear power plant. This is intended to lower capital costs by reducing financial risk and allowing utilities to begin recovering costs prior to operation, and therefore shortening the required financing period.

Florida Energy and Climate Commission (ss. 377.601 - 377.806 and 377.901, F.S.) - Provides for a transfer of the Florida Energy Commission from the Office of Legislative Services (and authorizes 4 FTEs) and the State Energy Program from the Department of Environmental Protection (DEP) to the Florida Energy and Climate Commission (commission) in the Executive Office of the Governor and repeals the Florida Energy Commission. The bill provides for the following:

- ✓ The FECC is to be comprised of nine (9) members, seven (7) of which are appointed by the Governor, for 3-year terms. The other two positions are to be appointed, one each, by the Commissioner of Agriculture (Commissioner), and the Chief Financial Officer (CFO). Provides for staggered terms.
- ✓ The Governor is to select from three people nominated by the Florida Public Service Commission Nominating Council (Nominating Council) for each seat on the commission.
- ✓ In addition, the Commissioner and the CFO are each to select from three people nominated by the Nominating Council.
- ✓ The Nominating Council is to submit the nominations by September 1 of those years in which the terms are to begin the following October, or within 60 days after a vacancy occurs for any reason other than the expiration of the term.
- ✓ The Governor, the Commissioner, and the CFO may proffer names to be considered by the Nominating Council.
- ✓ The Governor is to select a chair from one of the nine people appointed to the FECC.
- ✓ If the Governor, Commissioner, or the CFO does not make an appointment within 30 days of receiving the Nominating Council's recommendations or if the Senate fails to confirm the Governor's appointment to the commission, the Nominating Council is to initiate the nominating process within 30 days.
- ✓ The Governor or his or her successor can recall an appointee.
- ✓ A commission member must be an expert in specified fields.
- ✓ The chair may designate specified ex-officio, non-voting members to provide information and advice to the commission.
- ✓ The commission must meet at least six times a year and may employ staff and counsel, as needed. The commission is directed to perform specific duties that are enumerated in the section.
- ✓ The commission must submit an annual report to the Governor and Legislature reflecting its activities and making recommendations of policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of citizens.

Clarifies that the definition of “energy resources” includes “energy converted from solar radiation, wind, hydraulic potential, tidal movements, geothermal sources, biomass, and other energy sources the commission determines to be important to the production or supply of energy.”

Expands the requirement of the Department of Management Services to furnish data on agencies’ energy consumption to include their emissions of greenhouse gases. Renames the “Florida Renewable Energy Technologies and Energy Efficiency Act,” as the “Florida Energy and Climate Protection Act.” Renames the “Renewable Energy Technologies Grants Program,” as the “Renewable Energy and Energy-Efficient Technologies Grants Program,” and adds “innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings” to the list of projects for which the program will provide renewable energy matching grants.

Florida Green Government Grants Act (s. 377.808, F.S.) - Creates the “Florida Green Government Grants Act,” to provide that the newly-created Florida Energy and Climate Commission (FECC) award grants to assist local governments, including municipalities, counties, and school districts, to develop programs that achieve green standards. Authorizes the FECC to provide necessary administrative expenses to local governments from the grants. Requires “green standards” to be determined by the FECC to provide cost-efficient solutions that reduce greenhouse gas emissions, improve the quality of life, and strengthen Florida’s economy.

Florida Climate Protection Act (Cap and Trade Regulatory Program) (s. 403.44, F.S) – Authorizes Department of Environmental Protection (DEP) to adopt rules for a cap-and-trade regulatory program to reduce greenhouse gas emissions by electric utilities. Provides for methodologies, reporting periods, and reporting systems that must be used when electric utilities report to the Climate Registry. Requires the DEP to consult with the Florida Energy and Climate Commission and the Public Service Commission (PSC) when developing the rules. Requires the Florida Energy and Climate Commission (FECC) to review the draft rule and report to the Legislature on the design, cost, and economic impact factors. Provides that the rule may not become effective until ratified by the Legislature and not until after January 1, 2010.

Electrical Power Plant and Transmission Line Siting Act (ss. 403.502 - 403.5365, F.S.) – Revises various provisions of the Power Plant Siting and Transmission Line Siting Acts to create greater efficiency in the siting process and facilitate the need for expanded power generation. Creates an alternate corridor proposal process within the Power Plant Siting Act that mirrors the same process currently in the Transmission Line Siting Act, and allows electric

utilities constructing a nuclear power plant to obtain certain preconstruction site support permits before obtaining the certification.

Recycling (s. 403.7032, F.S.) – Requires a long term goal by state and local governments, private companies and organizations, and the general public to reduce the amount of recyclable solid waste disposed of in waste management facilities, landfills, or incinerator facilities by a statewide average of at least 75 percent. Directs the Department of Environmental Protection (DEP) to develop a recycling program designed to achieve the 75 percent reduction and submit the program to the Legislature by January 1, 2010.

Analysis of Disposable Plastic Bags by DEP (s. 403.7033, F.S.) – Authorizes the DEP to undertake an analysis of the need for regulation of auxiliary containers, wrappings or disposable plastic bags. Requires Department of Environmental Protection (DEP) to report their findings to the Legislature no later than February 1, 2010, and prohibits local or state government entities from enacting any regulation of such auxiliary containers, wrappings, or disposable plastic bags until the Legislature has acted on the DEP's recommendations.

Methane Capture (s. 403.7055, F.S) - Encourages counties to form multicounty regional solutions to capture methane gas from landfills and wastewater treatment facilities. Requires the Department of Environmental Protection (DEP) to provide planning guidelines and technical assistance to each county to develop these multicounty efforts.

Composting (s. 403.706, F.S.) – Requires each county by July 1, 2010, to develop and implement a plan to achieve a goal of up to 10 percent and no less than 5 percent of organic material to be composted within the boundaries of a county or municipality. Authorizes the Department of Environmental Protection (DEP) to provide exemptions for the plan if the county demonstrates that the achievement of the goal is impractical given the county's unique demographic, urban density, or inability to separate normally compostable material from the solid waste stream. Encourages each county to consider plans for mulching organic materials otherwise disposed of in a landfill.

Guaranteed Energy Performance Savings Contracts (s. 489.145, F.S.) – Authorizes all state agencies to use the guaranteed energy, water, and wastewater performance savings contracting program to utilize savings from energy, water, and wastewater conservation and efficiency measures to finance such measures.

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

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

- ✓ Fuel used in aircraft.
- ✓ Fuel sold for use in boats and similar watercraft.
- ✓ Fuel sold to a blender.
- ✓ Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines.
- ✓ Fuel unable to comply due to requirements of the United States Environmental Protection Agency.
- ✓ Fuel transferred between terminals.
- ✓ Fuel exported from the state in accordance with s. 206.052, F.S.
- ✓ Fuel qualifying for any exemption in accordance with chapter 206, F.S.
- ✓ Fuel for a railroad locomotive.
- ✓ Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

Requires that all records of sale of unblended gasoline include the following statement: "Unblended gasoline may be sold only for the purposes authorized under s. 526.203(3), F.S."

Requires each terminal supplier, importer, blender, and wholesaler to provide to the Department of Revenue (DOR) the number of gallons of blended and unblended gasoline sold and directs the DOR to provide a monthly summary report of these totals to the Department of Agriculture and Consumer Services (DACS). Provides for a waiver of the standard in situations where a terminal supplier, importer, blender, or wholesaler is unable to obtain fuel ethanol or blended gasoline at the same or lower price as unblended gasoline.

Provides that if a supplier, importer, blender, or wholesaler has made a good faith effort to comply with the requirements but has been unable to do so for reasons beyond the applicant's control, such as delays in receiving governmental permits, he or she can apply to the DACS for an extension of time to comply with the requirements. Provides for suspensions of the standard requirement in cases of emergency, which are addressed in s. 252.36(2), F.S. Provides for penalties for violations of the act.

Directs the Florida Energy and Climate Commission to conduct a study to evaluate and recommend the lifecycle greenhouse gas emissions associated

with all renewable fuels including, but not limited to, biodiesel, renewable diesel, biobutanol, and ethanol derived from any source and evaluate and recommend a requirement that all renewable fuels introduced into commerce in the state, as a result of the Renewable Fuel Standard, reduce the lifecycle greenhouse gas emissions by an average percentage. Provides that the study may also evaluate and recommend any benefits associated with the creation, banking, transfer, and sale of credits. Directs that the study be submitted to the President of the Senate and the Speaker of the House of Representatives no later than December 31, 2010.

Provides for fuel volatility standards for gasoline and gasoline blended with ethanol and provides for a transition period for retail service stations transitioning from unblended gasoline to the new standard.

Florida Building Code (s. 553.73, F.S.) - Directs the Florida Building Commission to select the most recent International Energy Conservation Code as a foundation code. Provides for modification of the code by the commission to achieve the efficiency levels of the Florida Energy Efficiency Code for Building Construction.

Thermal Efficiency Standards (s. 553.9061, F.S.) - Provides for targeted increases in the energy efficiency standards in the Florida Building Code totaling 50 percent by the year 2019. Prior to implementing the increases, requires the Florida Building Commission to adopt by rule and implement a cost-effectiveness test to ensure increases in efficiency result in a positive net financial impact.

Appliances and Pool Pumps (s. 553.909, F.S.) – Sets minimum requirements for commercial or residential swimming pool pumps, swimming pool water heaters, and water heaters used to heat potable water. Requires commercial or residential swimming pool pumps or water heaters sold after July 1, 2011, comply with requirements for appliances set by the Florida Energy Efficiency Code for Building Construction. Sets requirements for residential pool pump motors and portable electric spas.

Agency for Enterprise Information Technology (Section 111) – Requires the Agency for Enterprise Information Technology to define specified objective standards and conduct evaluations relating to energy efficiency. Requires the agency to submit recommendations to the Legislature for reducing energy consumption and improving the energy efficiency of state data centers by December 31, 2010, and bi-annually thereafter. Requires that when the total cost of ownership of an energy efficient product is less than or equal to the existing data center facility or infrastructure, technical specifications for energy

efficient products be incorporated in the plans and processes for replacing, upgrading, or expanding data center facilities or infrastructure.

Florida Energy Systems Consortium (s. 1004.648, F.S.) – Establishes the Florida Energy Systems Consortium (consortium), consisting of all eleven state universities. The consortium is designed to promote collaboration between experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a "comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state."

- ✓ Provides for the consortium to be administered at the University of Florida (UF). Provides that the director be selected by the President of UF and that the director's office be located at the UF. Requires the director to report to the Florida Energy and Climate Commission.
- ✓ Creates an Oversight Board, consisting of the Vice President for Research, or other appropriate representative, at each of the universities, which will have ultimate responsibility for both the technical performance and financial management of the consortium. Specifies that the consortium is responsible for soliciting and leveraging state, federal, and private funds for the purpose of conducting education and research and development in the area of sustainable energy.
- ✓ Creates a Steering Committee, consisting of representatives of the University of Florida, Florida State University, the University of South Florida, the University of Central Florida, the Florida Atlantic University, the Florida International University, and the Florida Energy and Climate Commission, to establish and assure the success of the consortium's strategic plan.
- ✓

Woody Biomass Economic Study (Section 113) - Directs the Department of Agriculture and Consumer Services, in conjunction with the Department of Environmental Protection, to conduct an economic impact study on the effects of granting financial incentives to energy producers who use woody biomass as fuel. Requires study to include an analysis of effects on wood supply and prices, impacts on current markets, and on forest sustainability. Requires results of the study to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than March 1, 2010.

Decoupling (Section 114) - Directs the Public Service Commission (PSC) to analyze utility revenue decoupling and provide a report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2009.

Motor Vehicle Emissions Standards (Section 115) - Prohibits DEP from adopting and implementing the California motor vehicle emissions standards

until ratified by the Legislature and prohibits DEP from modifying its rules to implement such standards until ratified by the Legislature.

Recognition Program for Green Schools (Section 116) – Requires the Department of Education and the Department of Environmental Protection (DEP) to develop a program to provide awards or recognition for outstanding efforts in conservation, energy and water use reduction, environmental enhancement, and conservation-related educational curriculum development; authorizes students, classes, teachers, schools, or district school boards to be eligible for such awards or recognition; encourages the departments to seek private sector funding for the program.

Special Session 2007-C

HB 13-C - Motor Vehicle Insurance/No-Fault: *Chapter 2007-324, L.O.F.; Effective October 11, 2007; by House Jobs & Entrepreneurship Council; and Representative Bogdanoff and others.*

The bill reenacts and revises the Florida Motor Vehicle No-Fault Law (ss. 627.730-627.7405, F.S.) effective January 1, 2008. All motor vehicle owners must obtain personal injury protection (PIP) coverage by that date, and insurers must add PIP coverage to motor vehicle insurance policies in force on that date. Insurers are required to send notice to policyholders by November 15, 2007, that PIP coverage will be added to their policies on January 1, 2008, and the premium that is due. Insurers are to use the same rates and forms that they had in effect under the prior no-fault law in effect on September 30, 2007 (the day before it was repealed), unless the insurer makes new rate and form filings. Motor vehicle owners are not required to have PIP coverage from October 1, 2007, until January 1, 2008. The no-fault law tort restrictions (which prohibit recovery of non-economic damages for non-permanent injuries) will not apply to accidents occurring on October 1, 2007, through December 31, 2007, unless the plaintiff and defendant in an accident both have PIP coverage that meets the requirements of the no-fault law that was in effect on September 30, 2007. The bill also clarifies that the requirement that motor vehicle owners maintain property damage liability coverage continues to apply.

The bill revises the Florida Motor Vehicle No-Fault Law as follows, effective January 1, 2008:

Medical Benefits

Personal injury protection (PIP) coverage will continue to pay 80 percent of medical expenses up to $10,000. However, benefits are limited to services and

care lawfully provided, supervised, ordered or prescribed by a licensed physician, osteopath, chiropractor or dentist; or provided by:

- ✓ A hospital or ambulatory surgical center;
- ✓ An ambulance or emergency medical technician that provided emergency transportation or treatment;
- ✓ An entity wholly owned by physicians, osteopaths, chiropractors, dentists, or such practitioners and their spouse, parent, child or sibling;
- ✓ An entity wholly owned by a hospital or hospitals;
- ✓ Licensed health care clinics that are accredited by a specified accrediting organization;
- ✓ Licensed health care clinics that:
  - Have a medical director that is a Florida licensed physician, osteopath, or chiropractor;
  - Have been continuously licensed for more than 3 years or are a publicly traded corporation; and
  - Provide at least four of the following medical specialties: general medicine, radiography, orthopedic medicine, physical medicine, physical therapy, physical rehabilitation, prescribing or dispensing outpatient prescription medication, or laboratory services.

Medical Fee Limits for PIP Reimbursement

The bill allows insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- ✓ For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- ✓ For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- ✓ For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
- ✓ For hospital inpatient services, 200 percent of Medicare Part A;
- ✓ For hospital outpatient services, 200 percent of Medicare Part A;
- ✓ For all other medical services, supplies, and care, 200 percent of Medicare Part B, not to be lower than the 2007 Medicare fee schedule;
- ✓ For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to pay.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation. Also, the insurer must reimburse any health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill

the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent co-payment) or for amounts that exceed maximum policy limits.

Priority of Payment for Physicians Rendering Care in a Hospital

The insurer must reserve $5,000 of PIP benefits for payment to licensed physicians, osteopaths, or dentists rendering emergency care or inpatient care at a hospital. The funds must be reserved for 30 days after the insurer receives notice of an accident that is potentially covered by PIP benefits, after which time the unclaimed amount of the reserve may be used to pay claims from other providers. The required time to pay claims to other providers is tolled to the extent that the PIP benefits not held in reserve are insufficient to pay the claim.

Demand Letter

The bill increases from 15 days to 30 days the time an insurer has to pay a claim (with interest and penalty) after a medical provider has sent a "demand letter" for late payment of a claim. A provider may not file suit and potentially collect attorney's fees until the end of this 30-day period.

Mandatory Consolidation of PIP Claims

The bill requires that all PIP claims against an insurer related to the same health care provider for the same injured person must be brought together in a single lawsuit, unless good cause is shown why such claims should not be brought separately.

Unfair Trade Practices for Failure to Pay Valid Claims

An insurer that fails to pay valid PIP claims with such frequency that it indicates a general business practice violates the unfair and deceptive practice pursuant to the Insurance Code, subject to penalty pursuant to s. 626.9521, F.S. The Office of Insurance Regulation is authorized to investigate, impose fines, and enter a cease and desist order against such an insurer through exercising the powers and duties specified in ss. 626.9561-626.9601, F.S. The Department of Legal Affairs (Attorney General) may investigate and initiate actions for such violations, as specified in ch. 501, part II, F.S., The Florida Deceptive and Unfair Trade Practices Act.

Death Benefits

The bill clarifies current law that the PIP death benefit is $5,000, or the remainder of unused PIP benefits, whichever is less.

Property Damage Liability Mandate

The bill clarifies that property damage liability is mandatory and remains effective during any period that PIP coverage is not required.

The provisions were approved by the Governor and became effective October 11, 2007. However, the provisions of the bill reenacting and amending the Florida Motor Vehicle No-Fault Law, other than provisions regarding the no-fault law's application, are effective January 1, 2008.