

# *2010 Legislative Summary*

*Florida Department of  
Financial Services*



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## **INTRODUCTION**

This document is an overview of legislation passed by the Florida Legislature during Special Session B (December 2009) and the 2010 Regular Legislative Session affecting the Department of Financial Services.

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.

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**SB 12 - Relief/Stephen Hall/DOT:** Approved by Governor April 30, 2010; Effective April 30, 2010; by Senator Haridopolos and others.

The bill compensates Stephen Hall for injuries and damages sustained as the result of negligence by the Department of Transportation (Department). Based on a settlement agreement, the Department admitted liability and agreed to pay a total of \$500,000, \$112,000 of which has been paid by the Department. The Chief Financial Officer is directed to draw a warrant, pursuant to the Stipulated Settlement Agreement, in the amount of \$388,000 from the Department's unappropriated trust fund balances. Payment for attorney's fees, lobbying fees, and costs incurred is limited to 25 percent of the total award.

**HJR 37 - Health Care Services:** By Rules and Calendar Council; Health Care Regulation Policy Committee; Representative Plakon and others.

This joint resolution proposes to amend Section 28 of Article I of the Florida Constitution. The joint resolution prohibits any person, employer, or health care provider from being compelled to participate in any health care system. The joint resolution authorizes any person or employer to pay directly for health care services and provides that persons or employers shall not incur a penalty or fine for direct payment.

The joint resolution authorizes a health care provider to accept direct payment and prohibits penalties and fines for providers accepting direct payment.

The joint resolution permits reasonable regulation but bans any law or rule which prohibits private health insurance sales or purchases.

Nothing in the joint resolution will affect:

- Which health care services a provider is required to perform;

- Which health care services are permitted by law;
- Worker's compensation care as provided by general law;
- Laws or rules in effect as of March 1, 2010;
- Negotiated provisions in any insurance contract, network agreement, or other provider agreement contractually limiting co-payments, coinsurance, deductibles, or other patient charges; and
- Any general law passed by a two-thirds vote of the membership of each house, provided that the law states with specificity the public necessity justifying the exemption.

The joint resolution provides definitions and usage of its terms and includes a ballot summary.

The joint resolution was approved by three-fifths vote of the membership of each house; thus it will be presented to the electors of Florida at the November 2, 2010, general election. Approval requires a favorable vote from 60 percent or more of the electors voting on the measure.

If approved by the voters, the joint resolution would take effect January 4, 2011.

**SB 60 - Relief/Pierreisna Archille/DCFS:** Effective June 3, 2010; by Children, Families, and Elder Affairs; Senator Storms.

The bill compensates Pierreisna Archille for injuries and damages sustained as the result of negligence by the Department of Children and Family Services (Department) for failing to protect Ms. Archille from the repeated sexual assault and impregnation from her foster parent. Pursuant to a settlement agreement, the Department has agreed to pay a total of \$1,300,000, \$100,000 of which has been paid by the Department. The Chief Financial Officer is directed to draw a warrant, pursuant to the settlement agreement, in the amount of \$1,200,000 from the Department's Federal Grants Trust Fund.

Payment for attorney's fees, lobbying fees, and costs incurred is limited to 25 percent of the total award.

**HB 159 - Guaranty Associations:** Ch. 10-49, LOF; Effective July 1, 2010; by General Government Policy Council; Finance and Tax Council; Insurance, Business, and Financial Affairs Policy Committee; Representative Legg and others.

***Florida Insurance Guaranty Association (FIGA)***

The bill consolidates the two automobile accounts in FIGA and streamlines the assessment recoupment process insurers use to recover FIGA assessments from their policyholders. Under current law, FIGA can impose regular and emergency assessments against property and casualty insurers to raise funds to pay the claims of an insolvent insurer. An insurance company is allowed by law to pass the assessment through to its policyholders. The bill exempts the recoupment of regular assessments from the imposition of commissions and fees. The recoupment of emergency assessments is currently exempt from insurance premium tax, commission, and fees.

***Florida Life and Health Insurance Guaranty Association (FLAHIGA)***

The bill increases the coverage limits for some types of claims covered by FLAHIGA, permits insurance agents to provide information about FLAHIGA with potential or current policyholders or annuity purchasers, and makes numerous statutory changes to conform the FLAHIGA statutes to the National Association of Insurance Commissioners model act.

***Florida Worker's Compensation Insurance Guaranty Association (FWCIGA)***

The bill designates FWCIGA, rather than FIGA, responsible for covering employment liability claims of insolvent worker's compensation insurers.

**SB 464 - Military Affairs/Leave of Absence:** Ch. 10-79, LOF; Effective July 1, 2010; by Transportation and Economic Development Appropriations; Senator Fasano and others.

The bill increases the amount of military leave authorized for state or local government employees, who are members of the National Guard or Reserve, engaged in national training from 17 days to 240 hours per year (effectively increasing military leave to 30 days). The leave is granted without loss of vacation leave, pay, time, or efficiency rating.

In addition, the bill authorizes the creation of a second Assistant Adjutant General of the Florida National Guard at the state's National Guard Joint Forces Headquarters. The position is funded by federal funds and the appointee is subject to Senate confirmation.

**HB 545 - Residential Property Sales:** Ch. 10-\_\_\_, LOF; Effective *upon becoming law*; by Representative Patterson. ***VETOED BY GOVERNOR JUNE 1, 2010.***

**HB 661 - Surplus Requirements/Mortgage Guaranty Insurers:** Ch. 10-56, LOF; Effective July 1, 2010; by Representative Nelson.

This bill grants the Commissioner of Insurance Regulation, within the Office of Insurance Regulation, discretion to grant a temporary exception to mortgage guaranty insurers with regard to the current minimum capital surplus requirements. Mortgage guaranty insurance companies may request such an exception and the Commissioner of Insurance Regulation, at his discretion, will determine whether to grant the temporary exception.



**HB 663 - Building Safety:** Ch. 10-176, LOF; Effective July 1, 2010, except as otherwise provided; by Full Appropriations Council on Education and Economic Development; General Government Policy Council; Military and Local Affairs Policy Committee; Insurance, Business, and Financial Affairs Policy Committee; Representative Aubuchon and others.

The bill revises various laws related to building safety, including provisions related to the Florida Building Code, the Elevator Safety Code, and the Fire Prevention Code.

The bill provides that the expiration, lapse, non-renewal, or revocation of a building permit issued to the property owner after a 3 year period provided to commence repair or rebuilding constitutes abandonment of the property as homestead.

The bill delays applicability of home inspector and mold assessor licensure and regulation until July 1, 2011, provides home inspector and mold assessor licensing programs under ch. 20, F.S., amends licensure requirements, and provides guidelines for practicing home inspectors and mold assessors to be licensed under a grandfather provision.

Regarding elevator safety, the bill:

- ✓ States that the Division of Hotels and Restaurants (division) may enter and have reasonable access to all buildings and rooms or spaces which an existing or newly installed conveyance or equipment are located, authorizing the division to grant variances for undue hardship;
- ✓ Exempts elevators issued certificates of operation before July 1, 2008, from any updates to the Elevator Safety Code concerning modifications for Phase II Firefighter Services until July 1, 2015, or until it is replaced or modified, whichever comes first; and
- ✓ Provides that a lock box containing all elevator keys and accessible by the master key of the relevant emergency

response region may be an alternative method to elevator emergency public access requirements.

Regarding the Florida Building Code, the bill:

- ✓ Authorizes distance learning courses as an alternative to continuing education requirements for certain licenses;
- ✓ Requires that mold assessors or mold remediators must maintain general liability and errors and omissions for both preliminary and post-remediation mold assessment insurance coverage of at least \$1 million as a requirement for licensure;
- ✓ Revises the surcharge on building permit fee for the Building Code Administrators and Inspectors Fund by setting the surcharge rate at 1.5 percent of all permit fees associated with enforcement of the Florida Building Code and provides that the minimum amount collected on any issued permit shall be \$2;
- ✓ Authorizes the Department of Community Affairs to contract for administration of the inspection and certification of manufactured buildings and reinstates local jurisdiction over prototype buildings;
- ✓ Requires state agencies to contract for inspection services under the alternative plans review and inspection process or with a local governmental entity;
- ✓ Permits the Florida Building Commission to charge a fee of no more than \$125 for filing requests for declaratory statements and for nonbinding interpretations of the Florida Building Code;
- ✓ Exempts certain mausoleums and prisoner housing from the Florida Building Code; and
- ✓ Revises requirements related to: carbon monoxide alarms, residential pool filtration pumps and motors, energy-saving devices, air conditioner installation, ground and roof-mounted

Relating to fire prevention and safety, the bill:

- ✓ Prohibits a property owner from being required to install fire sprinklers in any residential property based on the use, change in use, or reclassification of that property as a rental property;
- ✓ Provides guidelines for the State Fire Marshal to follow when issuing expedited declaratory statements;
- ✓ Establishes a process for the Division of the State Fire Marshal and the Fire Code Interpretation Committee to issue nonbinding interpretations of the Florida Fire Prevention Code;
- ✓ Requires continuing education reciprocity between the Division of the State Fire Marshal and the Building Code Administrators and Inspectors Board;
- ✓ Amends certification requirements for fire protection service contractors, fire equipment dealers, and certain firefighters;
- ✓ Revises continuing education licensure requirements; and
- ✓ Prohibits agencies from requiring the removal of any fire sprinkler systems system that is not required by such codes/standards.

The bill also directs that public fire hydrants owned by a governmental entity be inspected following standards adopted by the State Fire Marshal or equivalent standards. Additionally, the bill provides that county, municipal, and special district utilities may perform fire hydrant inspections with employees that have not been certified by the State Fire Marshal; however, the utilities are responsible for ensuring that the designated employees are qualified to perform such inspections.

The bill repeals the 5-year inspection requirement concerning the maintenance, useful life, and replacement cost of common elements for certain condominiums.

**HB 751 - Automatic Renewal of Service Contracts:** Ch. 10-58, LOF; Effective July 1, 2010; by Insurance, Business and Financial Affairs Policy Committee; Representative McBurney.

This bill requires clear and conspicuous disclosure of automatic renewal provisions in service contracts, if the provision renews a contract for more than one month, and if the provision causes the contract to be in effect more than 6 months after the contract was initiated.

If the length of the service contract is 12 months or more, and if the contract automatically renews for a period of more than 1 month, the provider must notify the consumer, in a clear and conspicuous manner, of the renewal and how to cancel the renewal “no less than 30 days and no more than 60 days before” the deadline provided in the service contract. The contract renewal is effective until the consumer terminates the service contract. The consumer must give the seller notice of his or her intent to terminate the contract.

This bill makes automatic renewal provisions void and unenforceable if any requirements of the bill are violated, except under certain circumstances.

This bill provides exemptions from the disclosure and notice requirements for financial institutions, health studios, licensed insurance providers, warranty associations, health care service organizations and programs, electric utilities, and private companies providing certain municipal services.

**SB 846 - Residential Fire Sprinkler Requirements:** Ch. 10-99, LOF; Effective May 26, 2010; by Banking and Insurance; Community Affairs; Regulated Industries; Senator Bennett and others.

Section R313 of the 2009 International Residential Code currently requires the installation of automatic fire sprinkler systems in newly constructed one-family and two-family residential dwellings and townhouses effective January 1, 2011.

The bill prohibits inclusion of s. R313 of the most recent version of the International Residential Code, which relates to mandatory fire sprinklers, in the Florida Building Code (code). It also prohibits its adoption as a local amendment to the code. The bill clarifies that the prohibition does not apply to a local government that has lawfully adopted ordinances, relating to fire sprinklers, which have been in effect since January 1, 2010.

The bill further prohibits a local government from requiring a property owner to install fire sprinklers in any residential property based on its use or reclassification as a rental property.

**HB 885 - Life Insurance:** Ch. 10-61, LOF; Effective May 11, 2010; by Rules and Calendar Council; General Government Policy Council; Representatives Tobia and Plakon.

The bill makes changes to various aspects of life insurance and annuities sales. The bill:

- ✓ Specifies circumstances under which an insurer is not required to send notice of replacement of a life insurance policy to the current insurer.
- ✓ Allows coverage of spouses and dependent children under a group life insurance policy up to the amount for which the employee is insured under the policy.

- ✓ Bars the sale or transfer of annuities that were purchased as part of a settlement to satisfy Medicare secondary payer requirements to third parties that are not connected with the settlement.
- ✓ Prohibits, for purposes of group life insurance, the creation of a class of employees consisting solely of employees covered under the employer's group health plan.
- ✓ Exempts certain inactive life insurance sales agents from the continuing education requirements currently required in order for an agent to maintain a license.

**SB 926 - Relating to Trusts:** Ch. 10-172, LOF; Effective July 1, 2010; by Judiciary Committee; Banking and Insurance Committee; Senator Richter.

This bill eliminates the application of the Prudent Investor Rule and the Prudent Trust Administration Rule with respect to a contract for life insurance acquired or retained on the life of the trust settlor. The bill removes certain duties from the trustee in specified situations, provides that a trustee is not allowed to receive compensation for performing certain services, and eliminates liability of the trustee to the beneficiaries for a loss sustained with respect to certain life insurance contracts.

The bill also adds additional duties that a trustee may delegate to an investment agent.

**HB 945 - Automated External Defibrillators in Assisted Living Facilities:** Ch. 10-200, LOF; Effective July 1, 2010, except as otherwise provided; by Health Care Appropriations Committee; Elder and Family Services Policy Committee; Representative Anderson.

The bill amends s. 429.255, F.S., effective July 1, 2011, to provide that an Assisted Living Facility (ALF) with 17 or more beds must have

on the premises at all times a functioning Automated External Defibrillator (AED). The bill encourages the location of the AED to be registered with the medical director of the local emergency medical service.

The bill directs that facility staff may withdraw or withhold the use of an AED if presented with an order not to resuscitate in the same manner as they can now withdraw or withhold cardiopulmonary resuscitation. The civil immunity provisions of the Cardiac Arrest Survival Act and the Good Samaritan Act will apply to both the ALF and the facility staff.

**HB 1059 - Pub. Rec./Examination Techniques and Procedures/OFR:** Ch. 10-65, LOF; Effective May 11, 2010; by Governmental Affairs Policy Committee; Representative Domino.

Current law provides a public records exemption for certain information related to investigations and examinations conducted by the Office of Financial Regulation (OFR) pursuant to the Florida Securities and Investor Protection Act (Act). Generally, the exemption expires once the investigation or examination is completed or ceases to be active; however, certain information remains confidential and exempt, including information that would disclose investigative techniques or procedures. Protection is not provided for information that would reveal examination techniques or procedures.

The bill creates a public records exemption for information that would reveal examination techniques or procedures used by OFR pursuant to the Act. It provides for retroactive application of the exemption. Information that would reveal such examination techniques or procedures may be provided by OFR to another governmental entity having oversight or regulatory or law enforcement authority.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**SB 1136 - Firesafety Inspections:** Ch. 10-173, LOF; Effective June 1, 2010; by Senator Crist.

The bill provides that county, municipal, and special district utilities may designate employees to perform fire hydrant inspections, regardless of whether those employees are certified by the State Fire Marshal. Although a certification is no longer required, the county, municipal, and special district utilities are responsible for ensuring that the designated employees are qualified to perform fire hydrant inspections. Additionally, the bill provides that public fire hydrants owned by a governmental entity shall be inspected following standards adopted by the State Fire Marshal or equivalent standards, such as those contained in the latest edition of the American Water Works Association Manual.

**HB 1143 - Health Care:** Ch. 10-\_\_\_, LOF; Effective July 1, 2010; by Health and Family Services Policy Council; Health Care Appropriations Committee; Health Care Regulation Policy Committee; Representative Hudson and others. ***VETOED BY GOVERNOR JUNE 11, 2010.***

**SB 1152 - Funeral, Cemetery, and Consumer Services**

**Act:** Ch. 10-125, LOF; Effective July 1, 2010; by Regulated Industries Committee; Banking and Insurance Committee; Senators Bennett and Negron.

Current law requires a state license to provide services as a funeral director or embalmer. This bill allows persons wishing to obtain a funeral director license to take courses in funeral service arts in substitution of the currently required courses in mortuary science. Mortuary science courses are required for learning the process of embalming, which funeral director licensees are not permitted to practice without an additional license. This bill gives applicants for a funeral director license an option to take either mortuary science or funeral service arts courses in order to obtain a license.



This bill also requires that the director in charge of a funeral establishment must be licensed as an embalmer or licensed with a combination embalmer and funeral director license. However, the bill provides a grandfather provision to allow funeral directors currently serving as the full time funeral director in charge of a funeral facility to continue to do so, provided they meet certain requirements.

To prepare the state for a catastrophe that may leave an overwhelming number of deceased persons, this bill provides for certain waivers and modifications to the funeral services licensure requirements of ch. 497, F.S., in the event of a declared state of emergency. It modifies health and safety education requirements for licensees and requirements for preneed contracts. The bill also requires monument establishments to provide proof of liability insurance as required by law.

Finally, the bill amends the priority list for persons who are authorized to direct the disposition of human remains when a family member dies. For members of the U.S. military the bill adds to the priority list a person who the deceased service person identified on a Department of Defense form as the designee to direct the disposition of their remains if they die while serving.

**HB 1193 – Retirement:** Ch. 10-179, LOF; Effective June 1, 2010, except as otherwise provide; by Representative Plakon and others.

The bill revises the definition of “special risk member” to include members of the Florida Retirement System (FRS) who suffer from a qualifying injury and are no longer capable of being employed in a Special Risk Class eligible position. Any member employed in a law enforcement, firefighting, or criminal detention position who suffers a qualifying injury in the line of duty could continue membership in the FRS Special Risk Class. However, such member must continue to work for the same employer for whom they were working when they sustained the qualifying injury. In addition, the bill defines the term “qualifying injury” as the physical loss, or loss of use, of two or more limbs. This provision of the bill applies to members reaching maximum medical improvement after August 1, 2008.

This bill also revises firefighter death benefits and expands the activities that qualify firefighters to receive death benefits to include training sessions. An additional death benefit is authorized when a firefighter is injured by an unlawful and intentional act of another in the performance of his or her duties and dies as the result of such injury. Both benefit payments are adjusted to the Consumer Price Index. This provision of the bill applies to deaths of firefighters occurring on or after November 1, 2007.

**SB 1196 & SB 1222 - Community Associations:** Ch. 10-174, LOF; Effective July 1, 2010; by Judiciary; Military Affairs and Domestic Security; Regulated Industries; Senators Fasano; Ring and others.

Current law requires older multi-family residential structures, including condominiums, to retrofit units and common areas with fire sprinklers by 2012. Current law also allows condominium and cooperative associations (by unit owner vote) to forever waive retrofitting of sprinklers in unit interiors, forever waive retrofitting of common areas in shorter buildings, and delay retrofitting of common areas in high rise buildings until 2014. This bill allows the owners in a high-rise condominium to vote to forever waive retrofitting of the common areas with fire sprinklers, just like owners in shorter buildings are allowed to do under current law. Additionally, this bill provides that the time for condominium associations who do not vote to forego retrofitting of either unit interiors or the common areas to comply with retrofitting requirements is extended from 2014 to 2019, and requires such associations to complete planning and permitting by 2016.

As to delinquent assessments owed to a condominium association at the time of foreclosure, current law provides that the foreclosing lender is only liable for the lesser of 6 months or 1 percent of the original mortgage balance. This bill increases the limit to the lesser of 12 months or 1 percent.

This bill also amends condominium law to move new director certification from election qualifying to after the election, and provides a means by which a bulk buyer may purchase units owned by a

financially troubled developer without having to assume all of the liabilities of such developer.

This bill amends all association laws to expand the list of records exempt from disclosure to members to include certain records containing personal identification information; allow an association to collect delinquent fees from a tenant (who deducts such payment from the rent owed to the delinquent unit or parcel owner); and allows an association to suspend common area use rights and suspend voting rights of delinquent owners.

This bill amends homeowners' association law to allow a homeowners' association the ability to direct where a flagpole may be erected and whether the flag may be lighted; allows a homeowners' association to purchase recreational facilities that are not located next to the neighborhood; limits compensation of directors of an association; and creates an absentee voting procedure.

**HB 1253 - Continuing Care Facilities:** Ch. 10-202, LOF; Effective July 1, 2010; by Insurance, Business and Financial Affairs Policy Committee; Representative Proctor.

Continuing Care Retirement Communities (CCRCs), also known as life-care facilities, are retirement facilities that furnish residents with shelter and health care for an entrance fee and monthly payments. In Florida, CCRCs are regulated by the Department of Financial Services (DFS), the Agency for Health Care Administration and the Office of Insurance Regulation (OIR); the latter primarily through ch. 651, F.S. The OIR authorizes and monitors a facility's operation as well as determines the facility's financial status and the management capabilities of its managers and owners. The OIR is also empowered to discipline a facility for violations of residents' rights.

This bill clarifies and updates several provisions in ch. 651, F.S., many of which are reflective of current practices in CCRCs. Among its key provisions, the bill:

- ✓ Increases allowable provider cancellation processing fees for prospective residents who cancel contracts prior to occupancy;

- ✓ Adds new content requirements for annual reports;
- ✓ Clarifies that a provider may assess a non-refundable application processing fee;
- ✓ Clarifies that the taxes and insurance that must be factored into the escrow account as a debt service reserve pertain to “property”;
- ✓ Clarifies that if a prospective resident signs a contract but delays moving into the community, he or she is considered to have occupied a unit in the facility when he or she pays an entrance fee, or any portion thereof, and has begun paying a monthly fee. The proposed language also reiterates that such resident has seven days from the date of signing the contract to cancel without financial penalty;
- ✓ Adds new requirements for the residents’ council regarding providing notice to residents;
- ✓ Gives residents the right to receive memos and announcements from the residents’ council as well as unrestricted access to the council;
- ✓ Increases the availability and distribution of certain information and reports to residents and prospective residents;
- ✓ Changes OIR inspections from at least once every three years to at least once every five years for certain accredited providers;
- ✓ Requires the Continuing Care Advisory Council to report annually the Council’s findings and recommendations concerning continuing care facilities to the Governor and the Commissioner of OIR;
- ✓ Requires OIR to disclose to Council members specified information regarding complaints filed with DFS and to notify

the Council regarding rule changes and scheduled rule workshops and hearings; and

- ✓ Repeals current law regarding provisional certificates issued under prior law.

**SB 1264 - International Banking Corporations:** Ch. 10-9, LOF; Effective July 1, 2010; by Senator Richter.

This bill grants the Office of Financial Regulation (OFR) regulatory authority over international trust company representative offices (ITCROs). The provisions of this bill require ITCROs within the state to meet minimum licensure requirements, submit to ongoing safety and soundness requirements, and be subject to the examination and enforcement authority of the OFR. Further, this bill will allow the OFR to consider the solvency of international banks in their home countries when granting or revoking licenses. The impetus for providing this additional regulatory authority is to prevent future Ponzi schemes resembling the one allegedly executed in recent years by Allen Stanford.

**HB 1281 - Loan Origination:** Ch. 10-67, LOF; Effective October 1, 2010; by Insurance, Business, and Financial Affairs Policy Committee; Representative Workman and others.

This bill defines a “loan processor” as an individual licensed as a loan originator but only performing clerical or support duties. This definition is consistent with federal law. If the individual wishes to work for multiple employers, (s)he must file a “declaration of intent to engage solely in loan processing” with the Office of Financial Regulation.

A loan processor may be employed by a company other than a mortgage broker or mortgage lender. This bill provides an exception to Florida Statutes, which prohibit the payment of fees or commissions in any mortgage loan transactions to any person or entity other than a licensed or exempt mortgage broker or lender.

The bill removes the current statutory requirement that mortgage lenders file a new license application upon a change of control in the business.

The bill provides clarifications as to disclosures provided as part of the good faith estimate process and requires that the borrower acknowledge receipt of the disclosure by signing and dating the document. Additionally, the bill removes the requirement that mortgage lenders file a new license application because of a change of control in the business.

The bill also reenacts s. 494.00255(1)(m), F.S., thereby providing a basis for disciplinary action by the Office of Financial Regulation for violating provisions of the federal Real Estate Settlement Procedures Act, the federal Truth in Lending Act, or any regulations adopted under such acts, regarding mortgage transactions.

**HB 1307 - State Financial Matters:** Ch. 10-180, LOF; Effective July 1, 2010, except as otherwise provided; by Economic Development and Community Affairs Policy Council; Governmental Affairs Policy Committee; Representative Schenck.

The bill makes changes to the Florida Retirement System (FRS) Investment Plan that codify practices and policies used by the State Board of Administration (SBA) in administration of the plan since its inception.

In addition, the bill:

- ✓ Makes changes to the investment authorizations for the FRS Pension Plan by increasing the permitted holdings of foreign equity from 25 to 35 percent of the total fund;
- ✓ Permits proceeds of bonds issued on behalf of the Florida Hurricane Catastrophe Fund to be invested without limitation in certain federal tax-exempt obligations; and

- ✓ Authorizes the SBA to secure trademarks, copyrights, and patents on behalf of the FRS or any other fund under its jurisdiction.

The bill reduces the administrative charge employers pay for employee participants in the FRS Investment Plan by 40 percent for the next four years. It also provides additional time for employers to pay invoices for FRS Investment Plan participant losses related to an employer payment delinquency.

The bill makes SBA governance changes to improve transparency and accountability including:

- ✓ Producing an annual set of financial statements that must be reported to the Legislature and audited by an independent commercial audit firm;
- ✓ Creating minimum qualifications for the executive director of the SBA;
- ✓ Increasing the number of members of the Investment Advisory Council from six to nine effective February 1, 2011;
- ✓ Codifying in law the Audit Committee created in 2007 by the Trustees of the SBA;
- ✓ Requiring the Investment Advisory Council to receive regular fiduciary training and to complete an annual conflict disclosure statement; and
- ✓ Creating ethics, certification, and disclosure requirements for SBA investment advisers and managers.

If the Trustees of the SBA cannot be convened within 48 hours, the bill authorizes the executive director of the SBA to act in an emergency to extend the expiration of moratoriums on contributions and withdrawals to the Local Government Investment Pool.

**HB 1411 - Foreclosures:** Ch. 10-134, LOF; Effective May 27, 2010; by Criminal and Civil Justice Policy Council; Civil Justice and Courts Policy Committee; Representative Dorworth and others.

The bill provides a nonjudicial process for the foreclosure of liens on timeshare interests, which the bill refers to as a trustee foreclosure process. The bill creates a separate but similar trustee procedure for the foreclosure of liens based on unpaid assessments and for mortgage liens. Each procedure gives the timeshare interest owner (obligor) an opportunity to object to the trustee foreclosure process and to contest the foreclosure through a judicial process. If the owner does not object to the use of the trustee foreclosure procedure, he or she will not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

The trustee foreclosure process for assessment liens applies to any default that gives rise to an assessment lien after the effective date of the bill. If a timeshare instrument contains a provision that prevents the use of a trustee foreclosure procedure, or if the managing entity determines that the timeshare instrument should be amended to specifically provide for the trustee foreclosure procedure, an amendment to the timeshare instrument must be adopted and recorded prior to using the trustee foreclosure procedure.

The trustee foreclosure process for mortgage liens can only be used if the mortgage, or an amendment to a mortgage executed by the obligor before the effective date of the bill, contains a notice that informs the obligor that the mortgagee (the mortgage lender) has the right to elect to use the nonjudicial or the judicial foreclosure procedure. It also provides that, if the mortgagee elects the nonjudicial procedure, the obligor would have the option to object and proceed with a judicial foreclosure action.

The bill requires the payment of a \$50 administrative fee per trustee deed for each deed recorded pursuant to the trustee foreclosure procedures. The revenues from the administrative fee are to be remitted to the Department of Revenue in the same manner as documentary stamp taxes and deposited in the State Courts Revenue Trust Fund.



## **SB 1412 - Obsolete or Outdated Agency**

**Plans/Reports/Programs:** Ch. 10-102, LOF; Effective May 26, 2010; by Policy and Steering Committee on Ways and Means; Governmental Oversight and Accountability; Senator Haridopolos.

This bill modifies or deletes numerous specific agency program, planning, and reporting requirements. The bill generally deletes outdated agency reporting requirements and obsolete plans or commissions. This is largely a statutory “cleanup” that removes sections of law that have already, in practice, lapsed. Revisions specific to DFS/OIR/OFR are:

- ✓ Revises the recipients of the annual report of trust funds by the Chief Financial Officer.
- ✓ Deletes a reporting requirement relating to the governmental efficiency hotline.
- ✓ Repeals s. 455.2226(8), F.S., relating to the requirement of a report by the Board of Funeral Directors and Embalmers.
- ✓ Amends s. 517.302, F.S.; deleting a requirement for a report by the Office of Financial Regulation on deposits into the Anti-Fraud Trust Fund.
- ✓ Amends s. 627.64872, F.S.; deleting provisions relating to an interim report by the board of directors of the Florida Health Insurance Plan; prohibiting the board from acting to implement the plan until certain funds are appropriated.

## **SB 1460 - FL Hurricane Catastrophe Fund/Contract Year:**

Ch. 10-10, LOF; Effective April 15, 2010; by Banking and Insurance Committee; Senator Richter.

The Florida Hurricane Catastrophe Fund (FHCF or fund) is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of

mandatory reinsurance for residential property insurers. All companies that write such insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the fund.

Legislation enacted in 2009 changed the contract year of the FHCF from June 1 through May 31 to January 1 through December 31 (a calendar year), starting January 1, 2011. To implement the contract year date change, the legislation created a "transitional" contract year for 2010, which began on June 1, 2010, and ended on December 31, 2010. The shortening of the 2010 contract year to 7 months will cause an accounting problem for insurers due to the acceleration of the recognition of an insurer's expense (of FHCF reinsurance) resulting in potential solvency difficulties for insurers. In essence, an insurer's revenue will not match its expense, and the resulting loss could unduly reduce surplus, thus impacting an insurer's financial solvency.

The bill corrects the "transitional" 2010 contract year problem by changing the FHCF's contract year back to June 1 through May 31 thereby eliminating the acceleration of an insurer's expenses for purchasing FHCF reinsurance. The bill provides legislative intent language which emphasizes the importance of providing residential property insurers with more time to negotiate and purchase private reinsurance and a greater degree of certainty regarding the coverage provided by the fund. To facilitate these goals, the bill requires the FHCF's aggregate coverage and aggregate retention to be published in the Florida Administrative Weekly by January 1 of each year, the FHCF's reimbursement contract to be adopted by February 1 of each year, and insurers to execute their FHCF reimbursement contract by March 1 of each year (with an effective date of June 1). These procedures will afford insurers greater opportunity to better estimate their coverage from the fund and their private reinsurance needs.

The bill also changes the retention multiple formula in calculating an insurer's retention, by using exposure from "two years" prior (as opposed to "one year" provided under current law) in calculating the retention factor. This change will permit the fund to calculate and provide retention multiples to insurers earlier in the year because the fund will no longer have to wait on its more recent exposure data. The

retention formula change will enable property insurers to obtain FHCF reinsurance earlier in the year and be able to more accurately assess their need for additional private reinsurance in advance of the upcoming hurricane season.

The legislation also caps the FHCF's mandatory layer at \$17 billion, unless the FHCF has capacity to pay \$17 billion in one year and \$17 billion in the subsequent year. This provision accomplishes the objective of making the FHCF's mandatory layer more of a certain or known benefit for insurers.

**SB 1484 – Medicaid:** Ch. 10-144, LOF; Effective May 28, 2010, except as otherwise provided; by Policy and Steering Committee on Ways and Means; Health and Human Services Appropriations; Senator Peadar.

This bill amends multiple sections of Florida Statutes relating to Medicaid as following:

- ✓ Amends s. 16.59, F.S., requiring Medicaid related fraud units to be collocated, to the extent possible; requiring the Medicaid managed care fraud investigators within the Attorney General's Office to collocate with the Division of Insurance Fraud within the Department of Financial Services (DFS); and conforming provisions to changes made by the act;
- ✓ Amends s. 20.121, F.S., establishing the Division of Public Assistance Fraud within the DFS effective January 1, 2011;
- ✓ Amends s. 409.912, F.S., allowing a provider service network to provide behavioral health services in addition to physical health services in areas of the state not under Medicaid reform and conforming provisions to changes made by the act;
- ✓ Amends s. 409.91211, F.S., extending the guidelines for phasing in financial risk for approved provider service networks and Children's Medical Services Networks over the period of the waiver and the extension thereof; revising the requirements for the selection of a behavioral health care provider in Broward

County for children who have a case open in the Department of Children and Family Services' HomeSafeNet; and authorizing a participating specialty plan to receive an administrative fee for coordination of services contingent on the state share being provided through intergovernmental transfers (IGTs);

- ✓ Amends s. 409.91212, F.S., requiring each Medicaid managed care plan to adopt an anti-fraud plan to address overpayment, abuse, and fraud in the provision of Medicaid services and to submit the plan for approval to the Office of Medicaid Program Integrity with the Agency for Health Care Administration (AHCA); requiring each Medicaid managed care plan to establish a fraud investigative unit or contract with an entity; requiring an annual report from each managed care plan outlining its experience in implementing an anti-fraud plan; providing penalties for Medicaid managed care plans that fail to comply; and requiring all Medicaid managed care plans to report any suspected instance of overpayment, fraud, or abuse to the Office of Medicaid Program Integrity within 15 days;
- ✓ Amends ss. 411.01, 414.33, and 414.39, F.S., conforming provisions to changes made by the act.
- ✓ This bill also amends 943.401, F.S., transferring and renumbering s. 934.401, F.S., as s. 414.411, F.S., and directing the DFS rather than the Florida Department of Law Enforcement (FDLE) to investigate public assistance fraud;
- ✓ Creates ss. 624.35 and 624.351, F.S., establishing the "Medicaid and Public Assistance Fraud Strike Force" (Strike Force) within the DFS to develop a statewide strategy and coordinate state and local efforts and resources to prevent, investigate, and prosecute Medicaid and public assistance fraud.
- ✓ Creates s. 624.352, F.S., requiring the Chief Financial Officer to develop model interagency agreements to coordinate the prevention, investigation, and prosecution of Medicaid and public assistance fraud;

- ✓ Creates an undesignated section of law directing the AHCA to request an extension of the current Medicaid Reform waiver obtained under s. 1115 of the Social Security Act and to preserve the Low Income Pool provisions of the waiver by no later than July 1, 2010;
- ✓ Creates an undesignated section of law directing the AHCA to develop methodologies to maintain the use of IGTs and certified public expenditures in a Medicaid managed care environment; authorizing the AHCA to convene a workgroup to advise on the study and development of IGT distribution methods; and requiring a report to the Legislature and Governor by January 1, 2011;
- ✓ Creates an undesignated section of law requiring the Auditor General and the Office of Program Policy Analysis and Government Accountability to review and evaluate the AHCA's Medicaid fraud and abuse systems and requiring a report to the Legislature and Governor by December 1, 2011;
- ✓ Creates an undesignated section of law establishing the Medicaid claims adjudication project in the AHCA to decrease the incidence of inaccurate payments and to improve efficiency to the Medicaid claims processing systems; and
- ✓ Creates an undesignated section of law transferring all powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to public assistance fraud in the FDLE to the Division of Public Assistance Fraud in DFS.

**HB 1565 – Rulemaking:** Ch. 10-\_\_\_, LOF; Effective *upon becoming law*; by Economic Development and Community Affairs Policy Council; Governmental Affairs Policy Committee; Representatives Dorworth, Ford, Gaetz and others. ***VETOED BY GOVERNOR MAY 28, 2010.***

**SB 2020 - Information Technology:** Ch. 10-148, LOF; Effective May 28, 2010; by Policy and Steering Committee on Ways and Means; Senator Alexander.

The bill makes the following changes:

- ✓ Expands the role of the Agency for Enterprise Information Technology (AEIT) in coordinating the consolidation state agency purchases of information technology (IT) products and services.
- ✓ Establishes a competitive solicitation process for procuring a statewide consolidated email service.
- ✓ Requires the consolidation of SUNCOM services connecting users in state primary data centers to SUNCOM Network services.
- ✓ Provides for a staggered consolidation schedule of agency computing services, required by section 17, chapter 2008-116, Laws of Florida, into three primary data centers (Southwood Shared Resource Center, Northwood Shared Resource Center and the Northwest Regional Data enter).
- ✓ Provides for the ability of the state primary data centers to contract with each other for administrative services.
- ✓ Appropriates three FTEs and \$300,000 for additional duties associated with AEIT's expanded role in IT purchases.

**SB 2044 - Insurance:** Ch. 10-\_\_, LOF; Effective June 1, 2010, except as otherwise provided; by General Government Appropriations Committee; Banking and Insurance Committee; Senators Richter and Gaetz. ***VETOED BY GOVERNOR JUNE 1, 2010.***

**SB 2060 - Sovereign Immunity:** Ch. 10-26, LOF; Effective October 1, 2011; by Judiciary; Senator Bennett.

In 1973, the Florida Legislature enacted a limited waiver of sovereign immunity in s. 768.28, F.S. This section provides that the state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances. The statute imposes a \$100,000 limit per person and a \$200,000 limit per incident on the collectability of any tort judgment based on the government's liability.

The bill amends s. 768.28(5), F.S., to raise the limited waiver of sovereign immunity applicable to the state, its agencies, and subdivisions from \$100,000 per individual claim and \$200,000 per aggregate claims to \$200,000 per individual claim and \$300,000 per aggregate claim on the collectability of any tort judgment.

**SB 2086 - Consumer Debt Collection:** Ch. 10-127, LOF; Effective October 10, 2010; by Banking and Insurance; Senator Richter.

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities.

Current Florida Statutes designate the Department of Financial Services (DFS) as the registry for consumer complaints, while the Office of Financial Regulation (OFR) is responsible for registration of consumer collection agencies. In January 2008, the DFS and the OFR mutually agreed to delegate responsibility for the registry to the OFR.

The bill:

- ✓ Transfers responsibility for receiving and maintaining records of consumer correspondence and complaints regarding debt collection from the Division of Consumer Services of the Department of Financial Services to the OFR;

- ✓ Increases the maximum administrative fine from \$1,000 to \$10,000 for an out-of-state consumer debt collector that collects or attempts to collect debt in Florida prior to registering with the OFR;
- ✓ Authorizes the Attorney General to take action on behalf of the state against an out-of-state consumer debt collector in any state court of competent jurisdiction;
- ✓ Authorizes the Attorney General to take action against in-state debt collectors for any violations of the Florida Consumer Collection Practices Act;
- ✓ Requires that a written notice be provided to the debtor prior to an assignee taking any action to collect the debt;
- ✓ Eliminates the requirement that there must be at least five, unresolved, sworn complaints filed by five different consumers within a 12-month period against a consumer collection agency prior to the OFR initiating action to investigate a complaint;
- ✓ Specifies that a complainant must certify, subject to penalty of perjury, a summary of the nature of an alleged violation and the facts that allegedly support the complaint, using a prescribed form;
- ✓ Requires that registrants maintain books and records for three years and provides that OFR will have access to those records;
- ✓ Authorizes the OFR to issue subpoenas, and cease and desist orders;
- ✓ Requires that a registered consumer collection agency respond, in writing, to the OFR within 45 days after receipt of a written request from the OFR concerning a consumer complaint. Failure to respond timely can result in an administrative fine of up to \$250 per request per day; and



- ✓ Authorizes administrative fines of up to \$10,000 for a violation of a prohibited practice.

**SB 2176 – Insurance:** Ch. 10-175, LOF; Effective January 1, 2011, except as otherwise provided; by General Government Appropriations; Banking and Insurance; Senator Peaden.

This bill makes changes to various insurance laws primarily related to commercial lines insurance, risk management or self-insurance for public entities, warranty associations, disability presumption and worker's compensation for law enforcement officers, Medicare supplemental insurance, and annuities. The changes made by the bill are as follows:

### ***Commercial Lines Insurance***

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover certain types of losses sustained by the business. Under current law, rates for commercial insurance must be filed with, reviewed by, and approved by the Office of Insurance Regulation (OIR).

The bill excludes the following types of commercial insurance and risks from having to file a rate with the OIR:

- ✓ Excess or umbrella insurance;
- ✓ Surety insurance;
- ✓ Fidelity insurance;
- ✓ Boiler and machinery insurance;
- ✓ Leakage and fire extinguishing equipment insurance;
- ✓ Fleet commercial motor vehicle insurance covering 20 or more vehicles;
- ✓ Errors and omissions insurance;

- ✓ Directors' and officers', employment practices, and management liability insurance;
- ✓ Intellectual property and patent infringement insurance;
- ✓ Advertising injury and Internet liability insurance;
- ✓ Property risks rated under a highly protected risks rating plan; and
- ✓ Other types of commercial insurance determined by the OIR.

Rates for these types of commercial insurance and risks must still not be excessive, inadequate, or unfairly discriminatory as determined by the rate factors and standards in current law. The insurer writing commercial insurance or the rating organization setting the loss cost for commercial insurance covered by the bill must notify the OIR when the company changes a rate or loss cost for the commercial insurance. The OIR can examine the insurance company's records relating to the rate charged and request any information it needs to determine if the rate is excessive, inadequate, or unfairly discriminatory.

### ***Risk Management or Self-Insurance for Public Entities***

The bill prohibits an association, fund, or pool created to manage a risk management mechanism or for providing self-insurance for a public entity from requiring its members to give more than a 45-day notice of the member's intention to withdraw from the association, fund, or pool.

### ***Warranty Associations***

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or

replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

This bill reduces some regulatory oversight by the OIR over warranty associations while specifying new prohibited acts and adding penalties. Among its key provisions relating to warranty associations and warranty contracts, the bill:

- ✓ Exempts motor vehicle service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes from the Florida Insurance Code;
- ✓ Provides unlicensed activity by warranty associations is a first-degree misdemeanor;
- ✓ Prohibits false, deceptive or misleading advertising, under certain circumstances;
- ✓ Removes requirements to submit warranty service agreements to the OIR for approval;
- ✓ Provides the OIR can order a form not to be used if it does not meet specified criteria;
- ✓ Switches from quarterly to annual financial reports requirements;
- ✓ Makes periodic OIR examinations discretionary, and provides factors to consider in choosing to conduct an examination;

- ✓ Provides there is no violation of knowingly overcharging, if the motor vehicle service agreement company refunds the excess premium within 45 days;
- ✓ Makes a failure to provide a complete sample copy of the terms and conditions of a service or warranty agreement prior to sale an unfair practice, but provides the terms may be provided online;
- ✓ Broadens the definition of home warranty service agreements;
- ✓ Allows premium increases in renewal home warranty contracts, if supported by claims history or claims cost data;
- ✓ Removes the OIR's ability to require additional regular or special reports from home warranty associations;
- ✓ Repeals requirement for home warranty associations and motor vehicle service agreement companies to file rates with the OIR; and
- ✓ Requires, by July 1, 2011, all types of warranty contracts sold in Florida to be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the OIR.

### ***Disability Presumption and Worker's Compensation for Law Enforcement Officers***

Current law establishes a presumption for state and local firefighters, law enforcement officers, and correctional officers regarding determinations of employment related disability. The law provides certain diseases (tuberculosis, heart disease, and hypertension) acquired by such firefighters and officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer, the burden of proving by competent evidence that the disabling disease resulted from the person's employment.

The bill specifies the presumption also applies to correctional probation officers. The bill provides that a law enforcement officer, correctional officer, or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and materially departs from the prescribed course of treatment of his or her physician, and the departure is demonstrated to result in an aggravation of his or her condition, loses a specified presumption for claims after July 1, 2010. The bill also specifies claims for benefits must be made prior to or within 180 days of leaving employment for the presumption to apply. These provisions would not apply to state or local firefighters.

The bill also provides a broader interpretation of worker's compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for a private employer. For purposes of worker's compensation benefits related to off-duty employment, the bill authorizes a sheriff to include the sheriff's proportionate cost of worker's compensation premiums for the off-duty deputy sheriffs providing such off-duty employment.

### ***Medicare Supplemental Insurance***

Medicare is health insurance for people 65 years of age and older and for those under age 65 with a disability or End Stage Renal Disease. Under federal law, Medicare beneficiaries age 65 and older, who are also enrolled in Medicare Part B, have a guaranteed right to purchase a Medicare supplemental policy (Medigap insurance) during an open enrollment period. Medigap insurance helps pay some of the health costs not covered by Medicare, including copayments, coinsurance, and deductibles.

The Department of Health and Human Services (HHS) defines the parameters and provides guidelines for standardized Medigap policies. HHS has formulated a network arrangement wherein the facility agrees to waive all or a portion of the Medicare Part A in-patient deductible if the facility does not violate standardization provisions. In addition, HHS has determined if products containing such provisions are permitted to be marketed and sold in a state, the waiver of the Part A premium deductible and the premium credit must be factored into the loss ratio calculation and into the policy premium.

The bill allows insurers that offer Medigap insurance policies to enter into agreements with in-patient facility networks that agree to waive the Medicare Part A deductible in whole or in part. The insurer is not required to file a copy of the network agreement with the OIR. Such network agreements are not subject to OIR approval. The bill also provides that premium credits granted to insureds under Medigap insurance policies for using in-network in-patient facilities do not constitute an unfair method of competition or unfair or deceptive trade practice. The waiver of the Medicare Part A deductible and premium credit are required to be factored into the insurer's loss-ratio calculation and policy premium.

### ***Annuities***

An annuity is a contract sold by an insurance company designed to provide a stream of payments to the purchaser at specified intervals, typically after retirement. Because these contracts allow retirees protection against outliving their savings, these products have become extremely popular among Florida's increasingly large retirement-aged population.

The Department of Financial Services (DFS) is the state agency responsible for regulating the sale of annuities in Florida. This bill makes several changes in the Florida Insurance Code to enhance penalties for unethical annuity sales practices as well as provide certain consumer protections for seniors who purchase annuity contracts. The bill includes the following provisions:

- ✓ Generally prohibits family members of the life insurance agent that sells the policy from being named as beneficiaries;
- ✓ Strengthens DFS's ability to deny licensure to agents for specified misconduct;
- ✓ Bars issuance of a license to an agent or customer representative who previously had their license revoked due to the solicitation or sale of an insurance product to a senior consumer;

- ✓ Generally entitles senior consumers of annuities to a 21-day unconditional refund;
- ✓ Requires more favorable annuity contract terms for seniors and requires sales agents to provide seniors with greater disclosures prior to the sale of an annuity contract; and
- ✓ Increases the maximum administrative fines for deceptive annuity sales practices towards seniors and gives DFS the authority to order the selling agent to pay restitution to a senior who is harmed by a violation of this section.

### ***Miscellaneous Provisions***

- ✓ Exempts applicants from the examination required for licensure as a customer representative if the applicant is designated a Certified Insurance Representative from the National Association of Christian Catastrophe Insurance Adjusters; and
- ✓ Exempts insurance agents that do not have any active life insurance or annuity contracts from current law requiring any person with a license to solicit or sell life insurance to complete at least three hours in continuing education on the subject of suitability in annuity and life insurance transactions.

**SB 2284 – Legislature/2012 Regular Session Dates:** Ch. 10-91, LOF; Effective July 1, 2010; By Representative Negron.

This bill provides that the 2012 Regular Session of the Legislature will convene on January 10, 2012.

The next regular apportionment would occur in 2012. Traditionally, the Legislature fixes an early start date for the regular session in apportionment years—years in which the Legislature redistricts Florida’s state legislative and congressional district boundary lines.

The Legislature advances the commencement of session in apportionment years in order that the redistricting plans can be timely submitted to and reviewed by the Florida Supreme Court and the

United States Department of Justice, in adequate time prior to qualifying for state and federal offices in June 2012.

**SB 2386 - State Financial Matters:** Ch. 10-151, LOF; Effective July 1, 2010; by Policy and Steering Committee on Ways and Means; Senator Alexander.

Reports, Commissions, Task Forces: Annual Report to DFS; Annual Report by DFS.

The bill revises statutory provisions related to competitive solicitation processes, coordination of contracted services, contract management and oversight, and collections of delinquent accounts.

The bill also revises provisions relating to identification and collection of delinquent accounts. It sets a time certain of 120 days for agencies to report delinquent accounts to the Department of Financial Services for collection. The bill requires:

- ✓ Agencies to submit an annual report detailing delinquent accounts that were referred for collection, those that were not referred for collection, and a list of all accounts that were waived or written off for any reason; and
- ✓ The Chief Financial Officer (CFO) to submit an annual report that includes the amount of claims referred for collection, the number of accounts by age and amount, a listing of agencies that failed to report known delinquent accounts in a timely manner, and the total amount of claims collected.

The bill revises provisions specific to procurement. It increases threshold amounts based upon the consumer price index from 1999 forward and then rounding to the nearest \$5,000 amount. The bill also revises current exemptions to the competitive solicitation process. It retains statutory requirements for business cases for outsourcing projects more than \$10 million and requires those business cases to go through the legislative budget request process.



The bill requires state agencies to provide specific information to the Department of Financial Services when an agency elects not to use the competitive solicitation process to award a contract for commodities or services. It also directs the CFO's office to provide contract training to agencies in order to ensure better monitoring and documentation of contractor performance.

The bill increases contractual requirements relating to protection of state interests regarding intellectual property. State purchasing agreements and state term contracts must include provisions that:

- ✓ Define the scope of work that a contractor must perform;
- ✓ Identify quantifiable, measurable and verifiable units of deliverables and require those deliverables to be accepted in writing prior to payment;
- ✓ Specify the financial consequences for contractor noncompliance; and
- ✓ Specify the ownership rights of any intellectual property related to the contract.

The bill updates and expands upon the conflict of interest provisions. Updates are based upon similar criteria used at the federal level.

The bill requires coordination of contract management for health and human services between agencies and their contracted service providers.

State agencies are directed to review and renegotiate current contract renewals and procurements in an effort to realize savings of at least three percent. If savings are found, then those savings must be placed in reserve by the Executive Office of the Governor. In addition, agencies are directed to enforce any preferred-pricing clause in state contracts. Agencies may terminate a contract for failure to comply with the preferred-pricing clause.

The bill revises provisions specific to payment of services by:

- ✓ Directing all agencies and the judicial branch to use electronic payment disbursements and receipts for all state payments where possible; and
- ✓ Authorizing the CFO and agencies to adopt rules requiring electronic funds transfers for payment of services and goods and by requiring that those rules provide alternate means for payment to accommodate persons with certain hardships.

The bill repeals the Council on Efficient Government, a statutorily created advisory body, charged with reviewing business plans for outsourcing. Five FTEs and \$311,915 in salaries and benefits from General Revenue are appropriated to the Department of Financial Services in order to carry out the provisions of this act.

**HB 5201 - Postsecondary Education Funding:** Ch. 10-155, LOF; Effective July 1, 2010; by: State Universities and Private Colleges Appropriations Committee; Representative Proctor.

This bill conforms the Higher Education funding statutes to the appropriations bill. One of the many provisions in this bill establishes a reversion schedule for any unencumbered and/or undisbursed funds that are transferred from the Department of Financial Services Workers' Compensation Administration Trust Fund to the Department of Education;

**HB 5603 - Department of Financial Services:** Ch. 10-\_\_\_, LOF; Effective July 1, 2010; by Government Operations Appropriations Committee; Representative Hays. ***VETOED BY GOVERNOR MAY 28, 2010.***

**HB 5611 - Department of Management Services:** Ch. 10-\_\_\_, LOF; Effective July 1, 2010, or as otherwise expressly provided; by Full Appropriations Council on Education and Economic Development; Government Operations Appropriations Committee; Representative Hays. ***VETOED BY GOVERNOR MAY 28, 2010.***

**HB 5607 - Retirement:** Ch. 10-\_\_\_, LOF; Effective July 1, 2010; by Government Operations Appropriations; Representative Hays.  
***VETOED BY GOVERNOR MAY 28, 2010.***

**HB 7017 - Pub. Rec./Credit History Information and Credit Scores/OFR:** Ch. 10-169, LOF; Effective July 10, 2010; by Insurance, Business and Financial Affairs Policy Committee; Representative Workman.

The bill makes changes to the confidentiality provisions of Part I, ch. 494, F.S. which regulates mortgage brokerage and mortgage lending.

The bill collocates the confidentiality provisions found in Part I, ch. 494, F.S., within a single section of law.

The bill creates a public record exemption for credit history information and credit scores held by the Office of Financial Regulation for licensure purposes under ch. 494, F.S., and pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. It also provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature.

**HB 7019 - Trust Funds/Creation/Mortgage Guaranty Trust Fund/Office of Financial Regulation:** Ch. 10-135, LOF; Effective July 1, 2010; by Insurance, Business and Financial Affairs Policy Committee; Representative Workman.

The bill creates the Mortgage Guaranty Trust Fund within the Office of Financial Regulation (OFR). The OFR is the administrator of the trust fund.

Funds credited to the trust fund must be used to pay claims against loan originators, mortgage brokers, and mortgage lenders pursuant to s. 494.00172, F.S.

The trust fund's assets consist of an annual fee imposed on Florida-licensed loan originators, mortgage brokers, and mortgage lenders.

Any balance in the trust fund at the end of the fiscal year shall remain in the trust fund and be available for the payment of claims.

The trust fund shall be terminated on July 1, 2014 pursuant to s. 19(f)(2), Article III of the Florida Constitution. Prior to its termination, the trust fund must be reviewed pursuant to s. 215.3206(1) and (2), F.S.

### **HB 7089 - OGSR/Florida Self-Insurers Guaranty**

**Association:** Ch. 10-72, LOF; Effective October 1, 2010; by Governmental Affairs Policy Committee; Representative Holder.

Current law provides a public records and public meeting exemption for the Florida Self-Insurers Guaranty Association (association). Claims files and medical information relating to a claimant are confidential and exempt from public records requirements. The public records exemption for claims files expires upon termination of all litigation and settlement of all claims arising out of the accident.

Current law also provides a public meeting exemption for those portions of association meetings wherein confidential and exempt claims files or medical information is discussed. All closed portions of meetings must be recorded and transcribed. Minutes of closed portions of association meetings are confidential and exempt from public records requirements; however, such exemption expires upon termination of all litigation and settlement of all claims.

The bill reenacts the public records and public meeting exemptions, which would have repealed on October 2, 2010. It also reorganizes the section for clarity.

**HB 7117 - OGSR/Board of Funeral, Cemetery, and Consumer Services:** Ch. 10-76, LOF; Effective October 1, 2010; by Governmental Affairs Policy Committee; Representative Kreegel.

The bill reenacts the public records and public meeting exemptions for the Board of Funeral, Cemetery, and Consumer Services (board) relating to examination development meetings and probable cause panel meetings. It requires a recording to be made of any closed portion of a meeting, and for the recording to be maintained by the board. The bill expands the current exemptions to protect recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

The bill reenacts the temporary public records exemption for records related to examinations, inspections, and investigations conducted by the Department of Financial Services (department). Finally, it reenacts the public records exemption for trade secrets held by the board or the department.

**HB 7119 - OGSR/FL Commission on Hurricane Loss Projection Methodology:** Ch. 10-89, LOF; Effective October 1, 2010; by Governmental Affairs Policy Committee; Representative K. Roberson.

Current law provides a public records exemption for a trade secret used in designing and constructing a hurricane loss model that is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (commission), Office of Insurance Regulation, or an appointed consumer advocate. In addition, current law provides a public meeting exemption for that portion of a meeting of the commission or a rate proceeding on an insurer's rate filing at which confidential and exempt trade secrets are discussed.

The bill reenacts the public records and public meeting exemptions for the commission. It requires a recording to be made of any closed portion of a meeting. The bill expands the current exemptions to

protect recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

**HB 7121 - OGSR/Hurricane Loss and Exposure Data:** Ch. 10-137, LOF; Effective October 1, 2010; by Governmental Affairs Policy Committee; Representative K. Roberson.

Current law provides a public records exemption for reports of hurricane loss data and associated exposure data that are specific to a particular insurance company, as reported by an insurer or a licensed rating organization to the Office of Insurance Regulation or to a center at a state university (currently Florida International University). Hurricane loss data and associated exposure data means the type, age, wind mitigation features, and location of each property insured; the amount and type of coverage written on each of those properties; the amount, date, and type of damage paid for by the insurer on each property; and the amount of any reserves held by an insurer for future payments or expenses on damages associated with the date or dates of occurrence of hurricanes.

The bill removes the repeal date, thereby reenacting the public records exemption. Beginning October 1, 2011, and each subsequent October 1, the bill requires the Florida International University center that develops, maintains, and updates the public model for hurricane loss projections to publish a report summarizing loss data and associated exposure data. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

**HB 7217 - FL Hurricane Catastrophe Fund Emergency Assessments:** Ch. 10-141, LOF; Effective May 27, 2010; by General Government Policy Council; Representative Nelson.

The Florida Hurricane Catastrophe Fund (FHCF or fund) is a tax-exempt trust fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. All

insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.

If the cash balance of the FHCF is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders. The fund is authorized to levy emergency assessments against most property and casualty insurance premiums paid by policyholders, including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations. By law, workers' compensation, accident and health, federal flood and, until May 31, 2010, medical malpractice insurance are not included in the fund's assessment base and thus are not assessed for fund deficits.

The bill continues the exemption of medical malpractice insurance premiums from the FHCF emergency assessment for three years, from May 31, 2010 to May 31, 2013. Because the bill extends the exemption another three years, until May 31, 2013, the FHCF will not be able to assess medical malpractice insurance for fund deficits until after May 31, 2013.

## **Overview of 2010-11 Budget:**

### **Department of Financial Services**

- \$230.5 million budget. Total General Revenue of \$22.7 million, which is 2.9 percent less than the FY 2009-10.
- Reduction of 30 vacant positions for a savings of \$1.2 million.
- Includes \$298,478 and added 3 FTEs to the State Risk Management Program's Bureau of Loss Prevention to implement a "Return to Work" program to assist with reducing workers' compensation expenditures in state government which have increased 27 percent over the last four years.
- Transferred nearly \$41 million in operating budget for the State Risk Management Program from the nonoperating budget to the General Appropriations Act to provide full budget transparency in the State Risk Management Program and allow greater legislative oversight.
- \$35.6 million in trust fund sweeps.

### **Office of Insurance Regulation (OIR)**

- \$28.1 million budget – 100 percent trust funds.
- Reduction of 10 positions for a savings of \$479,000.

### **Office of Financial Regulation (OFR)**

- \$43.2 million budget, which is 0.5 percent less than the FY 2009-10 budget – 100 percent trust funds.
- Reduces 13 vacant positions for a savings of \$722,000.
- Increases funding for expert witnessing in securities-related cases by \$125,000.
- Reduction of \$1,200,000 in excess budget authority in the Mortgage Broker Exams.

## **Overview of Trust Fund Sweeps:**

### **Department of Financial Services**

- Administrative Trust Fund, \$4 million
- Anti-Fraud Trust Fund, \$26.6 million
- Regulatory Trust Fund, \$5 million



## **Special Session B**

**HB 1-B - Transportation:** Ch. 09-271; Effective December 16, 2009, except as otherwise provided; by Economic Development and Community Affairs Policy Council; Representative Aubuchon.

Generally, this bill provides a statutory framework for enhancing the consideration of passenger rail as a modal choice in the development and operation of Florida's transportation network. Essentially, the bill:

- ✓ Creates a Florida Rail Enterprise (enterprise), modeled after the Florida Turnpike Enterprise, to coordinate the development and operation of passenger rail services statewide, including high-speed rail.
- ✓ Establishes a Statewide Passenger Rail Commission to monitor, advise, and review publicly-funded passenger rail systems.
- ✓ Creates dedicated funding sources for the South Florida Regional Transportation Authority (SFRTA) and for future passenger rail development and operations, and revises funding levels and duration for operating costs.
- ✓ Revises, beginning in 2014, the documentary stamp tax revenues that are allocated among the Small County Outreach Program, the Transportation Regional Incentive Program, and the Strategic Intermodal System.
- ✓ Requires the Florida Department of Transportation (DOT) to identify and address the impacts of freight rail traffic changes resulting from passenger rail activities.
- ✓ Grants DOT the authority to contractually indemnify freight rail operators from whom DOT acquires a real property interest in a rail corridor in certain circumstances.

- ✓ Authorizes DOT to purchase insurance and establish a self-retention fund to insure against liability risks.
  
- ✓ Allows for an escrowed closing of the Central Florida Rail Corridor contingent upon the receipt of certain federal funds; and revises definitions and deletes obsolete provisions relating to DOT's rail system program.