CHAPTER 2010-5

Senate Bill No. 1784

An act relating to the Florida Statutes; amending ss. 7.06, 11.45, 17.0315, 112.354, 112.361, 112.363, 120.55, 121.053, 121.081, 121.091, 163.31771, 163.3180, 175.071, 185.06, 192.001, 192.0105, 193.1555, 193.503, 193.703, 196.011, 196.075, 196.1975, 196.1977, 197.402, 200.069, 210.1801, 211.06, 212.098, 215.211, 238.07, 238.071, 238.09, 255.043, 260.019, 265.2865, 265.32, 265.606, 265.701, 282.201, 282.204, 282.318, 282.702, 288.012, 288.021, 288.0656, 288.1081, 288.1169, 288.1224, 311.12, 311.121, 311.122, 318.18, 318.21, 321.02, 322.271, 327.73, 334.044, 337.0261, 337.16, 338.235, 365.172, 373.046, 373.236, 376.30713, 377.709, 380.06, 394.875, 394.9082, 395.4036, 397.311, 397.334, 400.141, 400.474, 403.0872, 403.93345, 403.9336, 408.0361, 408.05, 408.820, 409.816, 409.908, 409.911, 409.912, 409.91211, 420.628, 430.04, 440.105, 443.1117, 445.049, 450.231, 456.041, 466.0067, 472.016, 472.036, 473.315, 489.119, 494.00321, 494.00611, 494.0066, 501.1377, 517.191, 526.144, 556.105, 569.19, 589.011, 627.062, 627.351, 733.817, 817.36, 921.002, 934.02, 1002.335, 1003.57, 1004.87, 1011.71, and 1011.73, F.S.; reenacting ss. 120.52, 381.84(6), 409.905(5), 624.91(6), and 1013.45(1), F.S.; and repealing ss. 28.39, 34.205, 39.4086, 282.5001, 282.5002, 282.5003, 282.5004, 282.5005, 282.5006, 282.5007, 282.5008, 322.181, 381.912, 382.357, 400.195, and 576.092, F.S., pursuant to s. 11.242, F.S.; deleting provisions that have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; improving the clarity of the statutes and facilitating their correct interpretation; and confirming the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 7.06, Florida Statutes, as amended by section 1 of chapter 2007-222, Laws of Florida, is amended to read:

7.06 Broward County.—The boundary lines of Broward County are as follows: Beginning on the east boundary of the State of Florida at a point where the south boundary of township forty-seven south of range forty-three east, produced easterly, would intersect the same; thence westerly on said township boundary to its intersection with the axis or center line of Hillsborough State Drainage Canal, as at present located and constructed; thence westerly along the center line of said canal to its intersection with the range line dividing ranges forty and forty-one east; thence south on the range line dividing ranges forty and forty-one east, of township forty-seven south, to the northeast corner of section twenty-five of township forty-seven, south,

of range forty east; thence due west on the north boundaries of the sections numbered from twenty-five to thirty, inclusive, of townships forty-seven south, of ranges thirty-seven to forty east, inclusive, as the same have been surveyed, or may hereafter be surveyed, by the authority of the Board of Trustees of the Internal Improvement Trust Fund, to the northwest corner of section thirty of township forty-seven south, of range thirty-seven east; thence continuing due west to the range line between ranges thirty-four and thirty-five east; thence southerly on the range line dividing ranges thirty-four and thirty-five east, to the southwest corner of township fifty-one south, of range thirty-five east; thence east following the south line of township fifty-one south, across ranges thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine and forty, to the southwest corner of township fifty-one south of range forty-one east; thence north on the range line dividing ranges forty and forty-one to the northwest corner of section thirty-one of township fifty-one south, of range forty-one east; thence east on the north boundary of section thirty-one and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of the State of Florida; thence northerly along said eastern boundary to the point of beginning. In addition, the boundary lines of Broward County include the following: Begin at the northwest corner of section thirty-five, township fifty-one south, range forty-two east, Miami-Dade ~~Dade~~ County, Florida; thence, southerly following the west line of section thirty-five, township fifty-one south, range forty-two east to the intersection with a line which is two hundred and thirty feet south of and parallel to the north line of section thirty-five, township fifty-one south, range forty-two east; thence, easterly following the line which is two hundred and thirty feet south of and parallel to the north line of section thirty-five, township fifty-one south, range forty-two east, to the intersection with the west boundary line of the Town of Golden Beach; thence, northerly following the west boundary line of the Town of Golden Beach to the intersection with the north line of section thirty-five, township fifty-one south, range forty-two east; thence, westerly following the north line of section thirty-five, township fifty-one south, range forty-two east to the point of beginning.

Reviser's note.—Amended to conform to the redesignation of Dade County as Miami-Dade County by s. 1-4.2 of the Miami-Dade County Code.

Section 2. Subsection (1) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.513 ~~11.40-11.515~~, the term:

(a) "Audit" means a financial audit, operational audit, or performance audit.

(b) "County agency" means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a

separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of the above are under law separately placed.

(c) "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with generally accepted auditing standards and government auditing standards as adopted by the Board of Accountancy.

(d) "Governmental entity" means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(e) "Local governmental entity" means a county agency, municipality, or special district as defined in s. 189.403, but does not include any housing authority established under chapter 421.

(f) "Management letter" means a statement of the auditor's comments and recommendations.

(g) "Operational audit" means a financial-related audit whose purpose is to evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines and to determine the extent to which the internal control, as designed and placed in operation, promotes and encourages the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets.

(h) "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.

2. Structure or design of the program to accomplish its goals and objectives.

3. Adequacy of the program to meet the needs identified by the Legislature or governing body.

4. Alternative methods of providing program services or products.

5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.

6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.

7. Compliance of the program with appropriate policies, rules, or laws.

8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(i) "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(j) "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

Reviser's note.—Amended to conform to the repeal of s. 11.515 by s. 3, ch. 2001-86, Laws of Florida.

Section 3. Subsection (3) of section 17.0315, Florida Statutes, is amended to read:

17.0315 Financial and cash management system; task force.—

(3) State agency administrative services directors, finance and accounting officers, and budget directors within all branches of state government shall fully cooperate with the task force in its development of the strategic plan. The task force shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a strategic business plan that includes, but is not limited to:

(a) Identifying problems and opportunities imposed by current law and the current administration with respect to existing state accounting and cash management systems;

(b) Providing developmental solutions to known failures, including, but not limited to, those identified by external review and audit reports;

(c) Recommending business processes, requirements, and governance structure to support a standardized statewide accounting and cash management system;

(d) Evaluating alternative funding approaches to equitably distribute common accounting infrastructure costs across all participating users; and

(e) Providing an enterprise-wide work product that can be used as the basis for a revised competitive procurement process for the implementation of a successor system.

~~The Chief Financial Officer shall submit the initial report, along with draft legislation recommended to implement a standardized statewide financial and cash management system, by February 1, 2009.~~

Reviser's note.—Amended to delete a provision requiring submittal of an initial report and draft legislation by February 1, 2009.

Section 4. Section 28.39, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete material relating to court fees and costs imposed on or before June 30, 2004, and repealed effective July 1, 2004.

Section 5. Section 34.205, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete material relating to court fees and costs imposed on or before June 30, 2004, and repealed effective July 1, 2004.

Section 6. Section 39.4086, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete material relating to a 3-year pilot program for attorneys ad litem and providing for a final report by October 1, 2003.

Section 7. Section 112.354, Florida Statutes, is amended to read:

112.354 Eligibility for supplement.—Each retired member or, if applicable, a joint annuitant, except any person receiving survivor benefits under the teachers' retirement system of the state in accordance with s. 238.07(18) ~~238.07(16)~~, shall be entitled to receive a supplement computed in accordance with s. 112.355 upon:

(1) Furnishing to the Department of Management Services evidence from the Social Security Administration setting forth the retired member's social security benefit or certifying the noninsured status of the retired member under the Social Security Act, and

(2) Filing written application with the Department of Management Services for such supplement.

Reviser's note.—Amended to confirm an editorial substitution made to conform to the editorial redesignation of s. 238.07(15A) and (15B) as s. 238.07(16) and (17), which necessitated the redesignation of s. 238.07(16) as s. 238.07(18).

Section 8. Subsection (4) of section 112.361, Florida Statutes, is amended to read:

112.361 Additional and updated supplemental retirement benefits.—

(4) ELIGIBILITY FOR SUPPLEMENT.—Each retired member or, if applicable, a joint annuitant, except any person receiving survivor's benefits under the Teachers' Retirement System of the state in accordance with s. 238.07(18) ~~238.07(16)~~, shall be entitled to receive a supplement computed in accordance with subsection (5), upon:

(a) Furnishing to the department evidence from the Social Security Administration setting forth the retired member's social security benefit or certifying the noninsured status of the retired member under the Social Security Act, and

(b) Filing written application with the department for such supplement.

Reviser's note.—Amended to confirm an editorial substitution made to conform to the editorial redesignation of s. 238.07(15A) and (15B) as s. 238.07(16) and (17), which necessitated the redesignation of s. 238.07(16) as s. 238.07(18).

Section 9. Paragraph (a) of subsection (2) of section 112.363, Florida Statutes, is amended to read:

112.363 Retiree health insurance subsidy.—

(2) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—

(a) A person who is retired under a state-administered retirement system, or a beneficiary who is a spouse or financial dependent entitled to receive benefits under a state-administered retirement system, is eligible for health insurance subsidy payments provided under this section; except that pension recipients under ss. 121.40, 238.07(18)(a) ~~238.07(16)(a)~~, and 250.22, recipients of health insurance coverage under s. 110.1232, or any other special pension or relief act shall not be eligible for such payments.

Reviser's note.—Amended to confirm an editorial substitution made to conform to the editorial redesignation of s. 238.07(15A) and (15B) as s. 238.07(16) and (17), which necessitated the redesignation of s. 238.07(16) as s. 238.07(18).

Section 10. Section 120.52, Florida Statutes, is reenacted to read:

120.52 Definitions.—As used in this act:

(1) "Agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional

planning agency; a multicounty special district, but only when a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

This definition does not include any municipality or legal entity created solely by a municipality; any legal entity or agency created in whole or in part pursuant to part II of chapter 361; any metropolitan planning organization created pursuant to s. 339.175; any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority under chapter 343 or chapter 349; or any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

(2) "Agency action" means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(7).

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.

(4) "Committee" means the Administrative Procedures Committee.

(5) "Division" means the Division of Administrative Hearings.

(6) "Educational unit" means a local school district, a community college district, the Florida School for the Deaf and the Blind, or a state university when the university is acting pursuant to statutory authority derived from the Legislature.

(7) "Final order" means a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

(8) "Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(9) "Law implemented" means the language of the enabling statute being carried out or interpreted by an agency through rulemaking.

(10) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(11) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(12) "Official reporter" means the publication in which an agency publishes final orders, the index to final orders, and the list of final orders which are listed rather than published.

(13) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term "party" does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.1962 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

(14) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(15) "Recommended order" means the official recommendation of an administrative law judge assigned by the division or of any other duly authorized presiding officer, other than an agency head or member of an agency head, for the final disposition of a proceeding under ss. 120.569 and 120.57.

(16) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by

statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.

2. Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.

3. Contractual provisions reached as a result of collective bargaining.

4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

(17) "Rulemaking authority" means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term "rule."

(18) "Small city" means any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

(19) "Small county" means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

(20) "Unadopted rule" means an agency statement that meets the definition of the term "rule," but that has not been adopted pursuant to the requirements of s. 120.54.

(21) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

(22) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

Reviser's note.—Section 1, ch. 2009-85, Laws of Florida, amended s. 120.52 without publishing subsections (2)-(22). Absent affirmative evidence of legislative intent to repeal the omitted subsections, the section is reenacted to confirm the omissions were not intended.

Section 11. Paragraph (a) of subsection (1) of section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision system, compile and publish the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7) ~~120.545(8)~~, and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. The department may contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided in this section. This publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the

number, title, and effective date of the form and the number of the rule in which the form is incorporated.

Reviser's note.—Amended to correct an apparent error and conform to context. Prior to the amendment of s. 120.55 by ss. 8 and 9, ch. 2008-104, Laws of Florida, the reference to history notes was cited at s. 120.545(9); s. 120.545(9) became s. 120.545(7) by s. 7, ch. 2008-104; current s. 120.545(7) references history notes.

Section 12. Effective July 1, 2010, paragraph (a) of subsection (1) of section 120.55, Florida Statutes, as amended by section 9 of chapter 2008-104, Laws of Florida, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7) ~~120.545(8)~~, complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department shall publish a printed version of the Florida Administrative Code and may contract with a publishing firm for such printed publication; however, the department shall retain responsibility for the code as provided in this section. Supplementation of the printed code shall be made as often as practicable, but at least monthly. The printed publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

Reviser's note.—Amended to correct an apparent error and conform to context. Prior to the amendment of s. 120.55 by ss. 8 and 9, ch. 2008-104, Laws of Florida, the reference to history notes was cited at s. 120.545(9); s. 120.545(9) became s. 120.545(7) by s. 7, ch. 2008-104; current s. 120.545(7) references history notes.

Section 13. Subsection (2) and paragraph (b) of subsection (3) of section 121.053, Florida Statutes, are amended to read:

121.053 Participation in the Elected Officers' Class for retired members.

(2) A retired member of the Florida Retirement System, or an existing system as defined in s. 121.021, who, beginning July 1, 1990, through June 30, 2010, serves in an elective office covered by the Elected Officers' Class shall be enrolled in the appropriate subclass of the Elected Officers' Class of the Florida Retirement System, and applicable contributions shall be paid into the Florida Retirement System Trust Fund as provided in s. 121.052(7).

(a) The member may continue to receive retirement benefits as well as compensation for the elected officer service if he or she remains in an elective office covered by the Elected Officers' Class.

(b) If the member serves in an elective office covered by the Elected Officers' Class and becomes vested under that class, he or she is entitled to receive an additional retirement benefit for the elected officer service.

(c) The member is entitled to purchase additional retirement credit in the Elected Officers' Class for any postretirement service performed in an elected position eligible for the Elected Officers' Class before July 1, 1990, or in the Regular Class for any postretirement service performed in any other regularly established position before July 1, 1991, by paying the applicable Elected Officers' Class or Regular Class employee and employer contributions for the period being claimed, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded thereafter, until full payment is made to the Florida Retirement System Trust Fund. The contribution for postretirement Regular Class service between July 1, 1985, and July 1, 1991, for which the reemployed retiree contribution was paid, is the difference between the contribution and the total applicable contribution for the period being claimed, plus interest. The employer may pay the applicable employer contribution in lieu of the member. If a member does not wish to claim credit for all of the postretirement service for which he or she is eligible, the service the member claims must be the most recent service. Any retiree who served in an elective office before July 1, 1990, suspended his or her retirement benefits, and had his or her Florida Retirement System membership reinstated shall, upon retirement from such office, have his or her retirement benefit recalculated to include the additional service and compensation earned.

(d) Creditable service for which credit was received, or which remained unclaimed, at retirement may not be claimed or applied toward service credit earned following renewed membership. However, service earned in accordance with the renewed membership provisions of s. 121.122 may be used in conjunction with creditable service earned under this subsection, if applicable vesting requirements and other existing statutory conditions required by this chapter are met.

However, an officer electing to participate in the Deferred Retirement Option Program on or before June 30, 2002, is not required to terminate and remains subject to the provisions of this subsection ~~paragraph~~ as adopted in s. 1, chapter 2001-235, Laws of Florida.

(3) On or after July 1, 2010:

(b) An elected officer who is elected or appointed to an elective office and is participating in the Deferred Retirement Option Program is subject to termination as defined in s. 121.021 upon completion of his or her DROP participation period. An elected official may defer termination as provided in subsection (7) ~~paragraph (2)(e)~~.

Reviser's note.—Subsection (2) is amended to confirm an editorial substitution made to conform to the compilation of the 2009 Florida Statutes. Paragraph (3)(b) is amended to correct an erroneous reference and conform to context; paragraph (2)(e) does not exist, and subsection (7) relates to deferral of termination for elected officials.

Section 14. Paragraph (b) of subsection (1) of section 121.081, Florida Statutes, is amended to read:

121.081 Past service; prior service; contributions.—Conditions under which past service or prior service may be claimed and credited are:

(1)

(b) Past service earned after January 1, 1975, may be claimed by officers or employees of a municipality, metropolitan planning organization, charter school, charter technical career center, or special district who become a covered group under this system. The governing body of a covered group may elect to provide benefits for ~~to~~ past service earned after January 1, 1975, in accordance with this chapter, and the cost for such past service is established by applying the following formula: The employer shall contribute an amount equal to the contribution rate in effect at the time the service was earned, multiplied by the employee's gross salary for each year of past service claimed, plus 6.5-percent interest thereon, compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until date of payment.

Reviser's note.—Amended to confirm an editorial deletion made to improve clarity and facilitate correct interpretation.

Section 15. Paragraph (b) of subsection (9) and paragraph (a) of subsection (13) of section 121.091, Florida Statutes, are amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(b) Any person whose retirement is effective before July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates before July 1, 2010, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer, except that the person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement

benefits for 12 calendar months immediately subsequent to the date of retirement. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. A retiree who violates such reemployment limitation before completion of the 12-month limitation period must give timely notice of this fact in writing to the employer and to the Division of Retirement or the state board and shall have his or her retirement benefits suspended for the months employed or the balance of the 12-month limitation period as required in sub-subparagraphs b. and c. A retiree employed in violation of this paragraph and an employer who employs or appoints such person are jointly and severally liable for reimbursement to the retirement trust fund, including the Florida Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment has been made. Benefits suspended beyond the reemployment limitation shall apply toward repayment of benefits received in violation of the reemployment limitation.

a. A district school board may reemploy a retiree as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker on a noncontractual basis after he or she has been retired for 1 calendar month. A district school board may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. District school boards reemploying such teachers, education paraprofessionals, transportation assistants, bus drivers, or food service workers are subject to the retirement contribution required by subparagraph 2.

b. A community college board of trustees may reemploy a retiree as an adjunct instructor or as a participant in a phased retirement program within the Florida Community College System, after he or she has been retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. Boards of trustees reemploying such instructors are subject to the retirement contribution required in subparagraph 2. A retiree may be reemployed as an adjunct instructor for no more than 780 hours during the first 12 months of retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the 12 months of retirement. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a

written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

c. The State University System may reemploy a retiree as an adjunct faculty member or as a participant in a phased retirement program within the State University System after the retiree has been retired for 1 calendar month. A member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The State University System is subject to the retired contribution required in subparagraph 2., as appropriate. A retiree may be reemployed as an adjunct faculty member or a participant in a phased retirement program for no more than 780 hours during the first 12 months of his or her retirement. A retiree reemployed for more than 780 hours during the first 12 months of retirement must give timely notice in writing to the employer and to the Division of Retirement or the state board of the date he or she will exceed the limitation. The division shall suspend his or her retirement benefits for the remainder of the 12 months. Any retiree employed in violation of this sub-subparagraph and any employer who employs or appoints such person without notifying the division to suspend retirement benefits are jointly and severally liable for any benefits paid during the reemployment limitation period. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by the retiree while reemployed in excess of 780 hours during the first 12 months of retirement must be repaid to the Florida Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

d. The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retiree as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for 1 calendar month. Any member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The Board of Trustees of the Florida School for the Deaf and the Blind reemploying such teachers, residential instructors, or nurses is subject to the retirement contribution required by subparagraph 2.

e. A developmental research school may reemploy a retiree as a substitute or hourly teacher or an education paraprofessional as defined in s. 1012.01(2) on a noncontractual basis after he or she has been retired for 1 calendar month. A developmental research school may reemploy a retiree as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after

retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A developmental research school that reemploys retired teachers and education paraprofessionals is subject to the retirement contribution required by subparagraph 2.

f. A charter school may reemploy a retiree as a substitute or hourly teacher on a noncontractual basis after he or she has been retired for 1 calendar month. A charter school may reemploy a retired member as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis after he or she has been retired for 1 calendar month after retirement. Any member who is reemployed within 1 calendar month voids his or her application for retirement benefits. A charter school that reemploys such teachers is subject to the retirement contribution required by subparagraph 2.

2. The employment of a retiree or DROP participant of a state-administered retirement system does not affect the average final compensation or years of creditable service of the retiree or DROP participant. Before July 1, 1991, upon employment of any person, other than an elected officer as provided in s. 121.053, who is retired under a state-administered retirement program, the employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution which would be required for regular members of the Florida Retirement System. Effective July 1, 1991, contributions shall be made as provided in s. 121.122 for retirees who have renewed membership or, as provided in subsection (13), for DROP participants.

3. Any person who is holding an elective public office which is covered by the Florida Retirement System and who is concurrently employed in nonelected covered employment may elect to retire while continuing employment in the elective public office if he or she terminates his or her nonelected covered employment. Such person shall receive his or her retirement benefits in addition to the compensation of the elective office without regard to the time limitations otherwise provided in this subsection. A person who seeks to exercise the provisions of this subparagraph as they existed before May 3, 1984, may not be deemed to be retired under those provisions, unless such person is eligible to retire under this subparagraph, as amended by chapter 84-11, Laws of Florida.

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to this section, the Deferred Retirement Option Program, hereinafter referred to as DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the Florida Retirement System on behalf of the participant, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the participant shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not

guarantee employment for the specified period of DROP. Participation in DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(a) *Eligibility of member to participate in DROP.*—All active Florida Retirement System members in a regularly established position, and all active members of the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122, which are consolidated within the Florida Retirement System under s. 121.011, are eligible to elect participation in DROP if:

1. The member is not a renewed member under s. 121.122 or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2. Except as provided in subparagraph 6., election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 57, or age 52 for Special Risk Class members. A member who delays DROP participation during the 12-month period immediately following his or her maximum DROP deferral date, except as provided in subparagraph 6., loses a month of DROP participation for each month delayed. A member who fails to make an election within the 12-month limitation period forfeits all rights to participate in DROP. The member shall advise his or her employer and the division in writing of the date DROP begins. The beginning date may be subsequent to the 12-month election period but must be within the original 60-month participation period provided in subparagraph (b)1. When establishing eligibility of the member to participate in DROP, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in DROP after attaining normal retirement date in either class.

3. The employer of a member electing to participate in DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in DROP begins and the date the member's employment and DROP participation will terminate.

4. Simultaneous employment of a participant by additional Florida Retirement System employers subsequent to the commencement of participation in DROP is permissible if such employers acknowledge in writing a DROP termination date no later than the participant's existing termination date or the maximum participation period provided in subparagraph (b)1.

5. A DROP participant may change employers while participating in DROP, subject to the following:

a. A change of employment must take place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation shall cease unless the employer verifies a continuation of the employment relationship for such participant pursuant to s. 121.021(39)(b).

b. Such participant and new employer shall notify the division of the identity of the new employer on forms required by the division.

c. The new employer shall acknowledge, in writing, the participant's DROP termination date, which may be extended but not beyond the maximum participation period provided in subparagraph (b)1., shall acknowledge liability for any additional retirement contributions and interest required if the participant fails to timely terminate employment, and is subject to the adjustment required in sub-subparagraph (c)5.d.

6. Effective July 1, 2001, for instructional personnel as defined in s. 1012.01(2), election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement date. The member shall advise his or her employer and the division in writing of the date on which DROP begins. When establishing eligibility of the member to participate in DROP for the 60-month participation period provided in subparagraph (b)1., the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in either class.

Reviser's note.—Amended to confirm editorial insertions made to improve clarity and facilitate correct interpretation.

Section 16. Subsection (6) of section 163.31771, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete a provision relating to a report due January 1, 2007, on the effectiveness of using accessory dwelling units to address a local government's shortage of affordable housing.

Section 17. Paragraph (e) of subsection (15) of section 163.3180, Florida Statutes, is repealed, and paragraph (e) of subsection (5) of that section is amended to read:

163.3180 Concurrency.—

(5)

(e) Before designating a concurrency exception area pursuant to subparagraph (b)7. ~~(b)6.~~, the state land planning agency and the Department of Transportation shall be consulted by the local government to assess the

impact that the proposed exception area is expected to have on the adopted level-of-service standards established for regional transportation facilities identified pursuant to s. 186.507, including the Strategic Intermodal System and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall provide a plan for the mitigation of impacts to the Strategic Intermodal System, including, if appropriate, access management, parallel reliever roads, transportation demand management, and other measures.

Reviser's note.—Paragraph (5)(e) is amended to confirm an editorial substitution made to conform to context and correct an apparent error. Paragraph (15)(e) is repealed to delete a provision relating to a pilot project to study the benefits of and barriers to establishing a regional multimodal transportation concurrency district and requiring the Department of Transportation, in consultation with the state land planning agency, to submit a report by March 1, 2009, on the status of the pilot project.

Section 18. Subsection (8) of section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(8) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 30, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection ~~paragraph~~.

Reviser's note.—Amended to confirm an editorial substitution made to conform to context.

Section 19. Subsection (7) of section 185.06, Florida Statutes, is amended to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(7) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection ~~paragraph~~.

Reviser's note.—Amended to confirm an editorial substitution made to conform to context.

Section 20. Subsection (2) of section 192.001, Florida Statutes, is amended to read:

192.001 Definitions.—All definitions set out in chapters 1 and 200 that are applicable to this chapter are included herein. In addition, the following definitions shall apply in the imposition of ad valorem taxes:

(2) "Assessed value of property" means an annual determination of the just or fair market value of an item or property or the value of the homestead property as limited pursuant to s. 4(d) ~~4(c)~~, Art. VII of the State Constitution or, if a property is assessed solely on the basis of character or use or at a specified percentage of its value, pursuant to s. 4(a) or 4(c) ~~(b)~~, Art. VII of the State Constitution, its classified use value or fractional value.

Reviser's note.—Amended to conform to the addition of a new s. 4(b), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by the Taxation and Budget Reform Commission, Revision No. 4, in 2008.

Section 21. Paragraph (a) of subsection (1) of section 192.0105, Florida Statutes, is amended to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(1) THE RIGHT TO KNOW.—

(a) The right to be mailed notice of proposed property taxes and proposed or adopted non-ad valorem assessments (see ss. 194.011(1), 200.065(2)(b) and (d) and (13)(a), and 200.069). The notice must also inform the taxpayer that the final tax bill may contain additional non-ad valorem assessments (see s. 200.069(9) ~~200.069(10)~~).

Reviser's note.—Amended to conform to the redesignation of s. 200.069(10) as s. 200.069(9) by s. 1, ch. 2009-165, Laws of Florida.

Section 22. Paragraph (a) of subsection (1) of section 193.1555, Florida Statutes, is amended to read:

193.1555 Assessment of certain residential and nonresidential real property.—

(1) As used in this section, the term:

(a) "Nonresidential real property" means real property that is not subject to the assessment limitations set forth in s. 4(a), (c), (d), or (g) ~~4(a)-(c) or s. 4(f)~~, Art. VII of the State Constitution.

Reviser's note.—Amended to conform to the addition of a new s. 4(b), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by the Taxation and Budget Reform Commission, Revision No. 4, in 2008.

Section 23. Subsection (1) of section 193.503, Florida Statutes, is amended to read:

193.503 Classification and assessment of historic property used for commercial or certain nonprofit purposes.—

(1) Pursuant to s. 4(e) ~~4(d)~~, Art. VII of the State Constitution, the board of county commissioners of a county or the governing authority of a municipality may adopt an ordinance providing for assessment of historic property used for commercial or certain nonprofit purposes as described in this section solely on the basis of character or use as provided in this section. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The board of county commissioners or municipal governing authority shall notify the property appraiser of the adoption of such ordinance no later than December 1 of the year prior to the year such assessment will take effect. If such assessment is granted only for a specified period or the ordinance is repealed, the board of county commissioners or municipal governing authority shall notify the property appraiser no later than December 1 of the year prior to the year the assessment expires.

Reviser's note.—Amended to conform to the addition of a new s. 4(b), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by the Taxation and Budget Reform Commission, Revision No. 4, in 2008.

Section 24. Subsection (1) of section 193.703, Florida Statutes, is amended to read:

193.703 Reduction in assessment for living quarters of parents or grandparents.—

(1) In accordance with s. 4(f) ~~4(e)~~, Art. VII of the State Constitution, a county may provide for a reduction in the assessed value of homestead property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive parents or grandparents of the owner of the property or of the owner's spouse if at least one of the parents or grandparents for whom the living quarters are provided is at least 62 years of age.

Reviser's note.—Amended to conform to the addition of a new s. 4(b), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by the Taxation and Budget Reform Commission, Revision No. 4, in 2008.

Section 25. Paragraph (c) of subsection (9) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(9)

(c) A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application be made for the veteran's disability discount granted pursuant to

s. 6(e) ~~6(g)~~, Art. VII of the State Constitution after an initial application is made and the discount granted. The disabled veteran receiving a discount for which annual application has been waived shall notify the property appraiser promptly whenever the use of the property or the percentage of disability to which the veteran is entitled changes. If a disabled veteran fails to notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the veteran was not entitled to receive all or a portion of such discount, the penalties and processes in paragraph (a) relating to the failure to notify the property appraiser of ineligibility for an exemption shall apply.

Reviser's note.—Amended to conform to the deletion of former s. 6(c) and (d), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by C.S. for S.J.R. 2-D (2007) in 2008.

Section 26. Subsection (2) of section 196.075, Florida Statutes, is amended to read:

196.075 Additional homestead exemption for persons 65 and older.—

(2) In accordance with s. 6(d) ~~6(f)~~, Art. VII of the State Constitution, the board of county commissioners of any county or the governing authority of any municipality may adopt an ordinance to allow an additional homestead exemption of up to $50,000 for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained age 65, and whose household income does not exceed $20,000.

Reviser's note.—Amended to conform to the deletion of former s. 6(c) and (d), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by C.S. for S.J.R. 2-D (2007) in 2008.

Section 27. Subsection (7) of section 196.1975, Florida Statutes, is amended to read:

196.1975 Exemption for property used by nonprofit homes for the aged.—Nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

(7) It is declared to be the intent of the Legislature that subsection (3) implements the ad valorem tax exemption authorized in the third sentence of s. 3(a), Art. VII, State Constitution, and the remaining subsections implement s. 6(c) ~~6(e)~~, Art. VII, State Constitution, for purposes of granting such exemption to homes for the aged.

Reviser's note.—Amended to conform to the deletion of former s. 6(c) and (d), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by C.S. for S.J.R. 2-D (2007) in 2008.

Section 28. Subsection (5) of section 196.1977, Florida Statutes, is amended to read:

196.1977 Exemption for property used by proprietary continuing care facilities.—

(5) It is the intent of the Legislature that this section implements s. 6(c) ~~6(e)~~, Art. VII of the State Constitution.

Reviser's note.—Amended to conform to the deletion of former s. 6(c) and (d), Art. VII of the State Constitution pursuant to adoption of the constitutional amendment by C.S. for S.J.R. 2-D (2007) in 2008.

Section 29. Subsection (5) of section 197.402, Florida Statutes, is repealed.

Reviser's note.—Repeals material requiring Lake, Marion, Seminole, and Sumter Counties to enter into a 2-year pilot program regarding advertising and payment of delinquent property taxes and, by October 1, 2007, each county's tax collector to submit a report to the President of the Senate and the Speaker of the House of Representatives.

Section 30. Paragraph (a) of subsection (2), paragraph (f) of subsection (4), and paragraph (b) of subsection (10) of section 200.069, Florida Statutes, are amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director.

(2)(a) The notice shall include a brief legal description of the property, the name and mailing address of the owner of record, and the tax information

applicable to the specific parcel in question. The information shall be in columnar form. There shall be seven column headings which shall read: "Taxing Authority," "Your Property Taxes Last Year," "Last Year's Adjusted Tax Rate (Millage)," "Your Taxes This Year IF NO Budget Change Is Adopted," "Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage)," "Your Taxes This Year IF PROPOSED Budget Change Is Adopted," and "A Public Hearing on the Proposed Taxes and Budget Will Be Held:."

(4) For each entry listed in subsection (3), there shall appear on the notice the following:

(f) In the sixth column, the gross amount of ad valorem taxes that must be levied in the current year if the proposed budget is adopted.

(10)

(b) If the notice includes all adopted non-ad valorem assessments, the provisions contained in subsection (9) ~~(10)~~ shall not be placed on the notice.

Reviser's note.—Paragraphs (2)(a) and (4)(f) are amended to confirm editorial insertions made to improve clarity and facilitate correct interpretation. Paragraph (10)(b) is amended to conform to the redesignation of former subsection (10) as subsection (9) by s. 1, ch. 2009-165, Laws of Florida.

Section 31. Subsection (1) of section 210.1801, Florida Statutes, is amended to read:

210.1801 Exempt cigarettes for members of recognized Indian tribes.—

(1) Notwithstanding any provision of this chapter to the contrary, a member of an Indian tribe recognized in this state who purchases cigarettes on an Indian reservation for his or her own use is exempt from paying a cigarette tax and surcharge. However, such member purchasing cigarettes outside of an Indian reservation or a nontribal member purchasing cigarettes on an Indian reservation is not exempt from paying the cigarette tax or surcharge when purchasing cigarettes within this state. Accordingly, the tax and surcharge shall apply to all cigarettes sold on an Indian reservation to a nontribal member, and evidence of such tax or surcharge shall be by means of an affixed cigarette tax and surcharge stamp.

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity.

Section 32. Subsection (2) of section 211.06, Florida Statutes, is amended to read:

211.06 Oil and Gas Tax Trust Fund; distribution of tax proceeds.—All taxes, interest, and penalties imposed under this part shall be collected by the department and placed in a special fund designated the "Oil and Gas Tax Trust Fund."

(2) Beginning July 1, 1995, the remaining proceeds in the Oil and Gas Tax Trust Fund shall be distributed monthly by the department and shall be paid into the State Treasury as follows:

(a) To the credit of the General Revenue Fund of the state:

1. Seventy-five percent of the proceeds from the oil production tax imposed under s. 211.02(1)(c) ~~211.02(1)(b)~~.

2. Sixty-seven and one-half percent of the proceeds from the tax on small well oil and tertiary oil imposed under s. 211.02(1)(a).

3. Sixty-seven and one-half percent of the proceeds from the tax on gas imposed under s. 211.025.

4. Sixty-seven and one-half percent of the proceeds of the tax on sulfur imposed under s. 211.026.

(b) To the credit of the general revenue fund of the board of county commissioners of the county where produced, subject to the service charge imposed under chapter 215:

1. Twelve and one-half percent of the proceeds from the tax on oil imposed under s. 211.02(1)(c) ~~211.02(1)(b)~~.

2. Twenty percent of the proceeds from the tax on small well oil and tertiary oil imposed under s. 211.02(1)(a).

3. Twenty percent of the proceeds from the tax on gas imposed under s. 211.025.

4. Twenty percent of the proceeds from the tax on sulfur imposed under s. 211.026.

(c) To the credit of the Minerals Trust Fund:

1. Twelve and one-half percent of the proceeds from the tax on oil imposed under s. 211.02(1)(c) ~~211.02(1)(b)~~.

2. Twelve and one-half percent of the proceeds from the tax on small well and tertiary oil imposed under s. 211.02(1)(a).

3. Twelve and one-half percent of the proceeds from the tax on gas imposed under s. 211.025.

4. Twelve and one-half percent of the proceeds from the tax on sulfur imposed under s. 211.026.

Reviser's note.—Amended to conform to the redesignation of s. 211.02(1)(b) as s. 211.02(1)(c) by s. 1, ch. 2009-139, Laws of Florida.

Section 33. Paragraph (c) of subsection (1) of section 212.098, Florida Statutes, is amended to read:

212.098 Rural Job Tax Credit Program.—

(1) As used in this section, the term:

(c) "Qualified area" means any area that is contained within a rural area of critical economic concern designated under s. 288.0656, a county that has a population of fewer than 75,000 persons, or a county that has a population of 125,000 or less and is contiguous to a county that has a population of less than 75,000, selected in the following manner: every third year, the Office of Tourism, Trade, and Economic Development shall rank and tier the state's counties according to the following four factors:

1. Highest unemployment rate for the most recent 36-month period.

2. Lowest per capita income for the most recent 36-month period.

3. Highest percentage of residents whose incomes are below the poverty level, based upon the most recent data available.

4. Average weekly manufacturing wage, based upon the most recent data available.

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity and facilitate correct interpretation.

Section 34. Subsections (1) and (2) of section 215.211, Florida Statutes, are amended to read:

215.211 Service charge; elimination or reduction for specified proceeds.—

(1) Notwithstanding the provisions of s. 215.20(1) and former s. 215.20(3) ~~(3)~~, the service charge provided in s. 215.20(1) and former s. 215.20(3) ~~(3)~~, which is deducted from the proceeds of the taxes distributed under ss. 206.606(1), 207.026, 212.0501(6), and 319.32(5), shall be eliminated beginning July 1, 2000.

(2) Notwithstanding the provisions of s. 215.20(1) and former s. 215.20(3) ~~(3)~~, the service charge provided in s. 215.20(1) and former s. 215.20(3) ~~(3)~~, which is deducted from the proceeds of the taxes distributed under ss. 206.608 and 320.072(4), shall be eliminated beginning July 1, 2001.

Reviser's note.—Amended to conform to the repeal of former s. 215.20(3) by s. 1, ch. 2009-78, Laws of Florida.

Section 35. Subsections (15A), (15B), (16), and (17) of section 238.07, Florida Statutes, as carried forward from the 2008 Florida Statutes, are redesignated as subsections (16), (17), (18), and (19) of that section and amended to read:

238.07 Regular benefits; survivor benefits.—

(16)~~(15A)~~(a) Any member of the Teachers' Retirement System who has heretofore, or who hereafter, retires with no less than 10 years of creditable service and who has passed his or her 65th birthday, may, upon application to the department, have his or her retirement allowance redetermined and thereupon shall be entitled to a monthly service retirement allowance which shall be equal to $4 multiplied by the number of years of the member's creditable service which shall be payable monthly during his or her retirement; provided, that the amount of retirement allowance as determined hereunder, shall be reduced by an amount equal to:

1. Any social security benefits received by the member, and

2. Any social security benefits that the member is eligible to receive by reason of his or her own right or through his or her spouse.

(b) No payment shall be made to a member of the Teachers' Retirement System under this act, until the department has determined the social security status of such member.

(c) Eligibility of a member of the Teachers' Retirement System shall be determined under the social security laws and regulations; provided, however, that a member shall be considered eligible if the member or the member's spouse has reached 65 years of age and would draw social security if the member or the member's spouse were not engaged in activity that results in the member or the member's spouse receiving income that would make him or her ineligible to receive social security benefits. A member of the Teachers' Retirement System shall be deemed to be eligible for social security benefits if the member has this eligibility in his or her own right or through his or her spouse.

(d) The department shall review, at least annually, the social security status of all members of the Teachers' Retirement System receiving payment under this act and shall increase or decrease payments to such members as shall be necessary to carry out the intent of this act.

(e) No member of the Teachers' Retirement System shall have his or her retirement allowance reduced or any of his or her rights impaired by reason of this act.

(f) This subsection shall take effect on January 1, 1962.

(17)~~(15B)~~ If the member recovers from disability, has his or her disability benefit terminated, reenters covered employment, and is continuously employed for a minimum of 1 year of creditable service, he or she may claim as creditable service the months during which he or she was receiving a disability benefit, upon payment of the required contributions. Contributions shall equal the total required employee and employer contribution rate during the period the retiree received retirement benefits, multiplied times his or her rate of monthly compensation prior to the commencement of

disability retirement for each month of the period claimed, plus 4 percent interest until July 1, 1975, and 6.5 percent interest thereafter on such contributions, compounded annually each June 30 to the date of payment. If the member does not claim credit for all of the months he or she received disability benefits, the months claimed must be his or her most recent months of retirement.

(18)~~(16)~~(a) Definitions under survivor benefits are:

1. A dependent is a child, widow, widower, or parent of the deceased member who was receiving not less than one-half of his or her support from the deceased member at the time of the death of such member.

2. A child is a natural or legally adopted child of a member, who:

a. Is under 18 years of age, or

b. Is over 18 years of age but not over 22 years of age and is enrolled as a student in an accredited educational institution, or

c. Is 18 years of age or older and is physically or mentally incapable of self-support, when such mental and physical incapacity occurred prior to such child obtaining the age of 18 years. Such person shall cease to be regarded as a child upon the termination of such physical or mental disability. The determination as to such physical or mental incapability shall be vested in the department.

No person shall be considered a child who has married or, except as provided in sub-subparagraph 2.b. or as to a child who is physically or mentally incapable of self-support as hereinbefore set forth, has become 18 years of age.

3. A parent is a natural parent of a member and includes a lawful spouse of a natural parent.

4. A beneficiary is a person who is entitled to benefits under this subsection by reason of his or her relation to a deceased member during the lifetime of such member.

(b) In addition to all other benefits to which a member shall, subject to the conditions set out below, be entitled, the beneficiary of such member shall, upon the death of such member, receive the following benefits:

Minimum period of paid service of member in Florida as regular full-time teacher	Beneficiaries of deceased member	Benefits
1. One calendar day	Widow or widower who has care of dependent child or children of deceased member.	$190 per month for one child. $250 per month if more than one child, maximum benefits $250 per month.
2. One calendar day	One or more dependent children if there is no surviving widow or widower.	$190 per month per child; maximum benefits $250 per month if more than one child.
3. One calendar day	Dependent parents 65 years or older.	For each parent, $100 per month for life.
4. One calendar day	Designated beneficiary and, if no designated beneficiary, then the executor or administrator of deceased member.	$500 lump-sum death benefits payable only once.
5. One calendar day	Dependent widow or widower 50 years of age and less than 65 years of age.	$150 per month for life.
6. Ten years	Widow or widower 65 years of age or older.	$175 per month for life.
7. Retired member	Designated beneficiary and if no designated beneficiary, then the executor or administrator of deceased retired member.	$500 lump-sum death benefits payable only once.

Beginning on July 1, 1971, the lump-sum death benefit, provided in item 7 above for the retired teacher, shall apply to all present and future retirees of the systems.

(c) The payment of survivor benefits shall begin as of the month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b), in which event the payment of survivor benefits shall begin as of the month

immediately following the month in which the beneficiary reaches the required age. Provided that if death occurs during the first 3 years of employment, the payment of survivor benefits shall be reduced by the amount of monthly benefits the member's survivors are entitled to receive under federal social security as either a survivor of the member or as a covered worker under federal social security.

(d) Limitations on rights of beneficiary are:

1. The person named as beneficiary in paragraph (b) shall, in no event, be entitled to receive the benefits set out in such paragraph unless the death of the member under whom such beneficiary claims occurs within the period of time after the member has served in Florida as follows:

Minimum number of years of service in Florida	Period after serving in Florida in which death of member occurs
3 to 5.....	2 years
6 to 9.....	5 years
10 or more.....	10 years

2. Upon the death of a member, the department shall make a determination of the beneficiary or beneficiaries of the deceased member and shall pay survivor benefits to such beneficiary or beneficiaries beginning 1 month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b), in which event the payment of survivor benefits shall begin as of the month immediately following the month in which the beneficiary reaches the required age. When required by the department, the beneficiary or beneficiaries shall file an application for survivor benefits upon forms prescribed by the department.

3. The beneficiaries of a member to receive survivor benefits are fixed by this subsection, and a member may not buy or otherwise change such benefits. He or she may, however, designate the beneficiary to receive the $500 death benefits. If a member fails to make this designation, the $500 death benefits shall be paid to his or her executor or administrator.

4. The beneficiary or beneficiaries of a member whose death occurs while he or she is in service or while he or she is receiving a disability allowance under subsection (11), shall receive survivor benefits under this subsection determined by the years of service in Florida of the deceased member as set out in paragraph (b). The requirement that the death of a member must occur within a certain period of time after service in Florida as set out in subparagraph (d)1. shall not apply to a member receiving a disability benefit at the time of his or her death.

(19)~~(17)~~ Any person who hereafter elects to receive retirement benefits under s. 112.05 shall not be entitled to the retirement benefits of this chapter except for the refund of his or her accumulated contributions as provided in subsection (13); likewise any person who elects to receive retirement benefits

under this chapter shall thereby become ineligible to receive retirement benefits under s. 112.05.

Reviser's note.—Amended to confirm the editorial redesignation of subsections (15A) and (15B) as subsections (16) and (17), which necessitated the redesignation of subsections (16) and (17) as subsections (18) and (19).

Section 36. Section 238.071, Florida Statutes, is amended to read:

238.071 Social security benefits; determination of retirement allowance. Any member of the Teachers' Retirement System who has heretofore or who hereafter retires and has his or her retirement allowance redetermined under the provisions of s. 238.07(16) ~~238.07(15A)~~, shall not after July 1, 1969, have the amount of the redetermined retirement allowance reduced because of social security benefits received by the member or his or her spouse.

Reviser's note.—Amended to confirm an editorial substitution made to conform to the editorial redesignation of s. 238.07(15A) as s. 238.07(16).

Section 37. Paragraphs (a) and (d) of subsection (5) of section 238.09, Florida Statutes, are amended to read:

238.09 Method of financing.—All of the assets of the retirement system shall be credited, according to the purposes for which they are held, to one of four funds; namely, the Annuity Savings Trust Fund, the Pension Accumulation Trust Fund, the Expense Trust Fund, and the Survivors' Benefit Trust Fund.

(5)(a) The survivors' benefit fund shall be the fund in which shall be accumulated all reserves for the payment of all survivor benefits provided for in s. 238.07(18) ~~238.07(16)~~, except refund of accumulated contributions. There shall be paid into this fund:

1. All contributions by members based on the rate of twenty-five-hundredths percent of their salary as set out in paragraph (b) of this subsection.

2. All contributions by the state to the Survivors' Benefit Trust Fund.

3. All transfers from other funds as required by this subsection.

(d) A member who makes contributions to the Survivors' Benefit Trust Fund shall not thereby obtain, prior to July 1, 1959, any vested interest or right to the benefits under s. 238.07(18) ~~238.07(16)~~, and these benefits may be altered, changed or repealed by the Legislature at its 1959 session, provided that the beneficiaries of members whose deaths occur prior to July 1, 1959, shall have a vested interest in the benefits accruing to such beneficiaries under s. 238.07(18) ~~238.07(16)~~, and these rights may not be altered, changed nor repealed by the Legislature.

Reviser's note.—Amended to confirm editorial substitutions made to conform to the editorial redesignation of s. 238.07(15A) and (15B) as s. 238.07(16) and (17), which necessitated the redesignation of s. 238.07(16) as s. 238.07(18).

Section 38. Subsection (2) of section 255.043, Florida Statutes, is amended to read:

255.043 Art in state buildings.—

(2) The Department of Management Services or other state agencies receiving appropriations for original constructions shall notify the Florida ~~Arts~~ Council on Arts and Culture and the user agency of any construction project which is eligible under the provisions of this section. The Department of Management Services or other state agency shall determine the amount to be made available for purchase or commission of works of art for each project and shall report these amounts to the Florida ~~Arts~~ Council on Arts and Culture and the user agency. Payments therefor shall be made from funds appropriated for fixed capital outlay according to law.

Reviser's note.—Amended to conform to the council's name change by s. 7, ch. 2009-72, Laws of Florida.

Section 39. Subsection (2) of section 260.019, Florida Statutes, is amended to read:

260.019 Florida Circumnavigation Saltwater Paddling Trail.—

(2) The department shall establish the initial starting and ending points by latitude and longitude for the trail segments described in subsection (3) within 180 days after the effective date of this act. Except for the Big Bend Historic Saltwater Paddling Trail, segment 6, the department has the exclusive authority to officially name and locate the remaining 25 trail segments. The department shall name and locate the segments based on logical geographical boundaries, safety to trail users, ease of management, desires of local communities and user groups, and other factors that assist in the overall success of the trail system. The department may adjust the location of any trail segment; give official recognition to specific sites along the trail route; publish official trail guides and literature in cooperation with other governmental and private entities; and resolve conflicts that may arise between competing and conflicting parties over trail issues. The Florida Greenways and Trails Council may advise the department on all matters relating to the paddling trail. ~~By January 1, 2008, the department shall prepare and submit a report setting forth the names and locations adopted for each trail segment to the Governor, the President of the Senate, and the Speaker of the House of Representatives.~~

Reviser's note.—Amended to delete an obsolete provision.

Section 40. Paragraph (a) of subsection (2) and subsection (3) of section 265.2865, Florida Statutes, are amended to read:

265.2865 Florida Artists Hall of Fame.—

(2)(a) There is hereby created the Florida Artists Hall of Fame. The Florida ~~Arts~~ Council on Arts and Culture shall identify an appropriate location in the public area of a building in the Capitol Center that is under the jurisdiction of the Department of Management Services, which location shall be set aside by the department and designated as the Florida Artists Hall of Fame.

(3) The Florida ~~Arts~~ Council on Arts and Culture shall accept nominations annually for persons to be recommended as members of the Florida Artists Hall of Fame. The council shall recommend to the Secretary of State persons to be named as members of the Florida Artists Hall of Fame. The council shall recommend as members of the Florida Artists Hall of Fame persons who were born in Florida or adopted Florida as their home state and base of operation and who have made a significant contribution to the enhancement of the arts in this state.

Reviser's note.—Amended to conform to the council's name change by s. 7, ch. 2009-72, Laws of Florida.

Section 41. Paragraph (f) of subsection (7) of section 265.32, Florida Statutes, is amended to read:

265.32 County fine arts council.—

(7) COUNCIL MEETINGS; PUBLIC HEARINGS; COMMITTEES AND ADVISERS; REPORTS; RULES.—

(f) The county arts council may, from time to time and at any time, submit to the Florida ~~Arts~~ Council on Arts and Culture a report summarizing its activities and setting forth any recommendations it considers appropriate, including recommendations with respect to present or proposed legislation concerning state encouragement and support of the arts.

Reviser's note.—Amended to conform to the council's name change by s. 7, ch. 2009-72, Laws of Florida.

Section 42. Paragraph (c) of subsection (1) of section 265.606, Florida Statutes, is amended to read:

265.606 Cultural Endowment Program; administration; qualifying criteria; matching fund program levels; distribution.—

(1) To be eligible for receipt of state matching funds, the local sponsoring organization shall meet all of the following criteria:

(c) Be designated a cultural sponsoring organization by the department, if recommended by the Florida ~~Arts~~ Council on Arts and Culture to the Secretary of State pursuant to the procedures contained in s. 265.285.

Reviser's note.—Amended to conform to the council's name change by s. 7, ch. 2009-72, Laws of Florida.

Section 43. Subsections (3) and (5) of section 265.701, Florida Statutes, are amended to read:

265.701 Cultural facilities; grants for acquisition, renovation, or construction; funding; approval; allocation.—

(3) The Florida ~~Arts~~ Council on Arts and Culture shall review each application for a grant to acquire, renovate, or construct a cultural facility which is submitted pursuant to subsection (2) and shall submit annually to the Secretary of State for approval lists of all applications that are recommended by the council for the award of grants, arranged in order of priority. The division may allocate grants only for projects that are approved or for which funds are appropriated by the Legislature. Projects approved and recommended by the Secretary of State which are not funded by the Legislature shall be retained on the project list for the following grant cycle only. All projects that are retained shall be required to submit such information as may be required by the department as of the established deadline date of the latest grant cycle in order to adequately reflect the most current status of the project.

(5) The Division of Cultural Affairs shall adopt rules prescribing the criteria to be applied by the Florida ~~Arts~~ Council on Arts and Culture in recommending applications for the award of grants and rules providing for the administration of the other provisions of this section.

Reviser's note.—Amended to conform to the council's name change by s. 7, ch. 2009-72, Laws of Florida.

Section 44. Paragraph (f) of subsection (2) of section 282.201, Florida Statutes, is amended to read:

282.201 State data center system; agency duties and limitations.—A state data center system that includes all primary data centers, other nonprimary data centers, and computing facilities, and that provides an enterprise information technology service as defined in s. 282.0041, is established.

(2) AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY DUTIES.—The Agency for Enterprise Information Technology shall:

(f) Develop and establish rules relating to the operation of the state data center system which comply with applicable federal regulations, including 2 C.F.R. part 225 and 45 C.F.R. The rules may address:

1. Ensuring that financial information is captured and reported consistently and accurately.

2. Requiring the establishment of service-level agreements executed between a data center and its customer entities for services provided.

3. Requiring annual full cost recovery on an equitable rational basis. The cost-recovery methodology must ensure that no service is subsidizing another service and may include adjusting the subsequent year's rates as a means to recover deficits or refund surpluses from a prior year.

4. Requiring that any special assessment imposed to fund expansion is based on a methodology that apportions the assessment according to the proportional benefit to each customer entity.

5. Requiring that rebates be given when revenues have exceeded costs, that rebates be applied to offset charges to those customer entities that have subsidized the costs of other customer entities, and that such rebates may be in the form of credits against future billings.

6. Requiring that all service-level agreements have a contract term of up to 3 years, but may include an option to renew for up to 3 additional years contingent on approval by the board, and require at least a 180-day notice of termination.

7. Designating any nonstate data center ~~centers~~ as a primary data center ~~centers~~ if the center:

a. Has an established governance structure that represents customer entities proportionally.

b. Maintains an appropriate cost-allocation methodology that accurately bills a customer entity based on the actual direct and indirect costs to the customer entity, and prohibits the subsidization of one customer entity's costs by another entity.

c. Has sufficient raised floor space, cooling, and redundant power capacity, including uninterruptible power supply and backup power generation, to accommodate the computer processing platforms and support necessary to host the computing requirements of additional customer entities.

8. Removing a nonstate data center ~~centers~~ from primary data center designation if the nonstate data center fails to meet standards necessary to ensure that the state's data is maintained pursuant to subparagraph 7.

Reviser's note.—Amended to provide contextual consistency within the paragraph.

Section 45. Paragraph (c) of subsection (1) of section 282.204, Florida Statutes, is repealed.

Reviser's note.—Repeals a provision requiring recommendations for a workgroup report due December 31, 2008.

Section 46. Subsection (2) of section 282.318, Florida Statutes, is amended to read:

282.318 Enterprise security of data and information technology.—

(2) Information technology security is established as an enterprise information technology service as defined in s. 282.0041 ~~287.0041~~.

Reviser's note.—Amended to confirm an editorial substitution; the term "enterprise information technology service" is defined in s. 282.0041, and s. 287.0041 does not exist.

Section 47. Sections 282.5001, 282.5002, 282.5003, 282.5004, 282.5005, 282.5006, 282.5007, and 282.5008, Florida Statutes, are repealed.

Reviser's note.—Repeals sections relating to year 2000 compliance for information technology products.

Section 48. Subsection (14) of section 282.702, Florida Statutes, is amended to read:

282.702 Powers and duties.—The Department of Management Services shall have the following powers, duties, and functions:

(14) To enter into contracts or agreements, with or without competitive bidding or procurement, to make available, on a fair, reasonable, and nondiscriminatory basis, property and other structures under departmental control for the placement of new facilities by any wireless provider of mobile service as defined in 47 U.S.C. s. 153(27) ~~153(n)~~ or s. 332(d) and any telecommunications company as defined in s. 364.02 when it is determined to be practical and feasible to make such property or other structures available. The department may, without adopting a rule, charge a just, reasonable, and nondiscriminatory fee for the placement of the facilities, payable annually, based on the fair market value of space used by comparable communications facilities in the state. The department and a wireless provider or telecommunications company may negotiate the reduction or elimination of a fee in consideration of services provided to the department by the wireless provider or telecommunications company. All such fees collected by the department shall be deposited directly into the Law Enforcement Radio Operating Trust Fund, and may be used by the department to construct, maintain, or support the system.

Reviser's note.—Amended to confirm an editorial substitution; 47 U.S.C. s. 153(27) defines the term "mobile service," and 47 U.S.C. s. 153(n) does not exist.

Section 49. Subsection (4) of section 288.012, Florida Statutes, is amended to read:

288.012 State of Florida foreign offices.—The Legislature finds that the expansion of international trade and tourism is vital to the overall health and

growth of the economy of this state. This expansion is hampered by the lack of technical and business assistance, financial assistance, and information services for businesses in this state. The Legislature finds that these businesses could be assisted by providing these services at State of Florida foreign offices. The Legislature further finds that the accessibility and provision of services at these offices can be enhanced through cooperative agreements or strategic alliances between state entities, local entities, foreign entities, and private businesses.

(4) The Office of Tourism, Trade, and Economic Development, in connection with the establishment, operation, and management of any of its offices located in a foreign country, is exempt from the provisions of ss. 255.21, 255.25, and 255.254 relating to leasing of buildings; ss. 283.33 and 283.35 relating to bids for printing; ss. 287.001-287.20 relating to purchasing and motor vehicles; and ss. 282.003-282.0056 and 282.702-282.7101 ~~282.003-282.111~~ relating to communications, and from all statutory provisions relating to state employment.

(a) The Office of Tourism, Trade, and Economic Development may exercise such exemptions only upon prior approval of the Governor.

(b) If approval for an exemption under this section is granted as an integral part of a plan of operation for a specified foreign office, such action shall constitute continuing authority for the Office of Tourism, Trade, and Economic Development to exercise the exemption, but only in the context and upon the terms originally granted. Any modification of the approved plan of operation with respect to an exemption contained therein must be resubmitted to the Governor for his or her approval. An approval granted to exercise an exemption in any other context shall be restricted to the specific instance for which the exemption is to be exercised.

(c) As used in this subsection, the term "plan of operation" means the plan developed pursuant to subsection (2).

(d) Upon final action by the Governor with respect to a request to exercise the exemption authorized in this subsection, the Office of Tourism, Trade, and Economic Development shall report such action, along with the original request and any modifications thereto, to the President of the Senate and the Speaker of the House of Representatives within 30 days.

Reviser's note.—Amended to conform to the redesignation of sections within chapter 282 by ch. 2009-80, Laws of Florida, and the further redesignation of s. 282.710 as s. 282.7101 by the reviser incident to compiling the 2009 Florida Statutes.

Section 50. Subsection (2) of section 288.021, Florida Statutes, is amended to read:

288.021 Economic development liaison.—

(2) ~~Within 30 days of April 17, 1992, and~~ Whenever it is necessary to change the designee, the head of each agency shall notify the Governor in writing of the person designated as the economic development liaison for such agency.

Reviser's note.—Amended to delete obsolete language.

Section 51. Paragraph (e) of subsection (2) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(2) As used in this section, the term:

(e) "Rural community" means:

1. A county with a population of 75,000 or fewer ~~less~~.

2. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.

3. A municipality within a county described in subparagraph 1. or subparagraph 2.

4. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer ~~less~~ and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (c) and verified by the Office of Tourism, Trade, and Economic Development.

For purposes of this paragraph, population shall be determined in accordance with the most recent official estimate pursuant to s. 186.901.

Reviser's note.—Amended to provide contextual consistency within the paragraph.

Section 52. Paragraph (d) of subsection (5) of section 288.1081, Florida Statutes, is amended to read:

288.1081 Economic Gardening Business Loan Pilot Program.—

(5)

(d) A loan administrator is entitled to receive a loan origination fee, payable at closing, of 1 percent of each loan issued by the loan administrator and a servicing fee of 0.625 percent per annum of the loan's outstanding principal ~~principle~~ balance, payable monthly. During the first 12 months of the loan, the servicing fee shall be paid from the disbursement from the Economic Development Trust Fund, and thereafter the loan administrator shall collect the servicing fee from the payments made by the borrower, charging the fee against repayments of principal.

Reviser's note.—Amended to confirm an editorial substitution made to conform to context.

Section 53. Subsection (6) of section 288.1169, Florida Statutes, is amended to read:

288.1169 International Game Fish Association World Center facility.—

(6) The Department of Commerce must recertify every 10 years that the facility is open, that the International Game Fish Association World Center continues to be the only international administrative headquarters, fishing museum, and Hall of Fame in the United States recognized by the International Game Fish Association, and that the project is meeting the minimum projections for attendance or sales tax revenues as required at the time of original certification. If the facility is not recertified during this 10-year review as meeting the minimum projections, then funding shall be abated until certification criteria are met. If the project fails to generate $1 million of annual revenues pursuant to paragraph (2)(e), the distribution of revenues pursuant to s. 212.20(6)(d)6.d. ~~212.02(6)(d)6.d.~~ shall be reduced to an amount equal to $83,333 multiplied by a fraction, the numerator of which is the actual revenues generated and the denominator of which is $1 million. Such reduction remains in effect until revenues generated by the project in a 12-month period equal or exceed $1 million.

Reviser's note.—Amended to correct an apparent error. Section 9, ch. 2009-68, Laws of Florida, revised the cite from s. 212.20(6)(d)7.d. to s. 212.02(6)(d)6.d. to conform to s. 2, ch. 2009-68, which amended s. 212.20(6)(d) to delete subparagraph 2. and redesignated subsequent subparagraphs. Section 212.02 does not contain a paragraph (6)(d).

Section 54. Paragraph (b) of subsection (9) of section 288.1224, Florida Statutes, is amended to read:

288.1224 Powers and duties.—The commission:

(9) Is authorized to establish and operate tourism offices in foreign countries in the execution of its responsibilities for promoting the development of tourism. To facilitate the performance of these responsibilities, the commission is authorized to contract with the commission's direct-support organization to establish and administer such offices. Where feasible, appropriate, and recommended by the 4-year marketing plan, the commission may collocate the programs of foreign tourism offices in cooperation with any foreign office operated by any agency of this state.

(b) The Florida Commission on Tourism, or its direct-support organization, in connection with the establishment, operation, and management of any of its tourism offices located in a foreign country, is exempt from the provisions of ss. 255.21, 255.25, and 255.254 relating to leasing of buildings; ss. 283.33 and 283.35 relating to bids for printing; ss. 287.001-287.20 relating to purchasing and motor vehicles; and ss. 282.003-282.0056 and 282.702-

282.7101 ~~282.003-282.111~~ relating to communications, and from all statutory provisions relating to state employment, if the laws, administrative code, or business practices or customs of the foreign country, or political or administrative subdivision thereof, in which such office is located are in conflict with these provisions.

Reviser's note.—Amended to conform to the redesignation of sections within chapter 282 by ch. 2009-80, Laws of Florida, and the further redesignation of s. 282.710 as s. 282.7101 by the reviser incident to compiling the 2009 Florida Statutes.

Section 55. Paragraph (a) of subsection (4) of section 311.12, Florida Statutes, is amended to read:

311.12 Seaport security.—

(4) SECURE AND RESTRICTED AREAS.—Each seaport listed in s. 311.09 must clearly designate in seaport security plans, and clearly identify with appropriate signs and markers on the premises of a seaport, all secure and restricted areas as defined by the United States Department of Homeland Security-United States Coast Guard Navigation and Vessel Inspection Circular No. 03-07 and 49 C.F.R. part 1572. The plans must also address access eligibility requirements and corresponding security enforcement authorizations.

(a) The seaport's security plan must set forth the conditions and restrictions to be imposed on persons employed at, doing business at, or visiting the seaport who have access to secure and restricted areas which are sufficient to provide substantial compliance with the minimum security standards established in subsection (1) and federal regulations.

1. All seaport employees and other persons working at the seaport who have regular access to secure or restricted areas must comply with federal access control regulations and state criminal history checks as prescribed in this section.

2. All persons and objects in secure and restricted areas are subject to search by a sworn state-certified law enforcement officer, a Class D seaport security officer certified under Maritime Transportation Security Act of 2002 guidelines and s. 311.121, or an employee of the seaport security force certified under the Maritime Transportation Security Act of 2002 guidelines and s. 311.121.

3. Persons found in these areas without the proper permission are subject to the trespass provisions of ss. 810.08 and 810.09.

Reviser's note.—Amended to conform to the full title of the act.

Section 56. Paragraph (c) of subsection (3) of section 311.121, Florida Statutes, is amended to read:

311.121 Qualifications, training, and certification of licensed security officers at Florida seaports.—

(3) The Seaport Security Officer Qualification, Training, and Standards Coordinating Council is created under the Department of Law Enforcement.

(c) Council members designated under subparagraphs (a)1.-4. shall serve for the duration of their employment or appointment. Council members designated under subparagraphs (a)5.-9. ~~(b)5.-9.~~ shall be appointed for 4-year terms.

Reviser's note.—Amended to confirm an editorial substitution; paragraph (b) does not contain subparagraphs, and subparagraphs (a)5.-9. relate to designation of specified council members.

Section 57. Subsection (3) of section 311.122, Florida Statutes, is amended to read:

311.122 Seaport law enforcement agency; authorization; requirements; powers; training.—

(3) If a seaport creates a seaport law enforcement agency for its facility, a minimum of 30 percent of the aggregate personnel of each seaport law enforcement agency shall be sworn state-certified law enforcement officers with additional Maritime Transportation Security Act of 2002 seaport training; a minimum of 30 percent of on-duty personnel of each seaport law enforcement agency shall be sworn state-certified law enforcement officers with additional Maritime Transportation Security Act of 2002 seaport training; and at least one on-duty supervisor must be a sworn state-certified law enforcement officer with additional Maritime Transportation Security Act of 2002 seaport training.

Reviser's note.—Amended to conform to the full title of the act.

Section 58. Subsection (17) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(17) In addition to any penalties imposed, a surcharge of $3 must be paid for all criminal offenses listed in s. 318.17 and for all noncriminal moving traffic violations under chapter 316. Revenue from the surcharge shall be remitted to the Department of Revenue and deposited quarterly into the State Agency Law Enforcement Radio System Trust Fund of the Department of Management Services for the state agency law enforcement radio system, as described in s. 282.709, and to provide technical assistance to state agencies and local law enforcement agencies with their statewide systems of regional law enforcement communications, as described in s. 282.7101 ~~282.710~~. This subsection expires July 1, 2012. The Department of

Management Services may retain funds sufficient to recover the costs and expenses incurred for managing, administering, and overseeing the Statewide Law Enforcement Radio System, and providing technical assistance to state agencies and local law enforcement agencies with their statewide systems of regional law enforcement communications. The Department of Management Services working in conjunction with the Joint Task Force on State Agency Law Enforcement Communications shall determine and direct the purposes for which these funds are used to enhance and improve the radio system.

Reviser's note.—Amended to conform to the redesignation of s. 282.710 as s. 282.7101 by the reviser incident to compiling the 2009 Florida Statutes.

Section 59. Subsection (13) of section 318.21, Florida Statutes, is amended to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(13) Of the proceeds from the fine under s. 318.18(15) ~~318.18(14)~~, $65 shall be remitted to the Department of Revenue for deposit into the Administrative Trust Fund of the Department of Health and the remaining $60 shall be distributed pursuant to subsections (1) and (2).

Reviser's note.—Amended to conform to the redesignation of s. 318.18(14) as s. 318.18(15). Two subsections (14) were created by different 2005 laws, and this reference was renumbered as subsection (15).

Section 60. Section 321.02, Florida Statutes, is amended to read:

321.02 Powers and duties of department, highway patrol.—The director of the Division of Highway Patrol of the Department of Highway Safety and Motor Vehicles shall also be the commander of the Florida Highway Patrol. The said department shall set up and promulgate rules and regulations by which the personnel of the Florida Highway Patrol officers shall be examined, employed, trained, located, suspended, reduced in rank, discharged, recruited, paid and pensioned, subject to civil service provisions hereafter set out. The department may enter into contracts or agreements, with or without competitive bidding or procurement, to make available, on a fair, reasonable, nonexclusive, and nondiscriminatory basis, property and other structures under division control for the placement of new facilities by any wireless provider of mobile service as defined in 47 U.S.C. s. 153(27) ~~153(n)~~ or s. 332(d), and any telecommunications company as defined in s. 364.02 when it is determined to be practical and feasible to make such property or other structures available. The department may, without adopting a rule, charge a just, reasonable, and nondiscriminatory fee for placement of the facilities, payable annually, based on the fair market value

of space used by comparable communications facilities in the state. The department and a wireless provider or telecommunications company may negotiate the reduction or elimination of a fee in consideration of services provided to the division by the wireless provider or the telecommunications company. All such fees collected by the department shall be deposited directly into the State Agency Law Enforcement Radio System Trust Fund, and may be used to construct, maintain, or support the system. The department is further specifically authorized to purchase, sell, trade, rent, lease and maintain all necessary equipment, uniforms, motor vehicles, communication systems, housing facilities, office space, and perform any other acts necessary for the proper administration and enforcement of this chapter. However, all supplies and equipment consisting of single items or in lots shall be purchased under the requirements of s. 287.057. Purchases shall be made by accepting the bid of the lowest responsive bidder, the right being reserved to reject all bids. The department shall prescribe a distinctive uniform and distinctive emblem to be worn by all officers of the Florida Highway Patrol. It shall be unlawful for any other person or persons to wear a similar uniform or emblem, or any part or parts thereof. The department shall also prescribe distinctive colors for use on motor vehicles and motorcycles operated by the Florida Highway Patrol. The prescribed colors shall be referred to as "Florida Highway Patrol black and tan."

Reviser's note.—Amended to confirm an editorial substitution; 47 U.S.C. s. 153(27) defines the term "mobile service," and 47 U.S.C. s. 153(n) does not exist.

Section 61. Section 322.181, Florida Statutes, is repealed.

Reviser's note.—Repeals material requiring a study and report due February 1, 2004.

Section 62. Paragraph (b) of subsection (2) of section 322.271, Florida Statutes, is amended to read:

322.271 Authority to modify revocation, cancellation, or suspension order.—

(2) At such hearing, the person whose license has been suspended, canceled, or revoked may show that such suspension, cancellation, or revocation causes a serious hardship and precludes the person from carrying out his or her normal business occupation, trade, or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the person or his or her family.

(b) The department may waive the hearing process for suspensions and revocations upon request by the driver if the driver has enrolled in or completed the applicable driver training course approved under s. 318.1451 or the DUI program substance abuse education course and evaluation provided in s. 316.193(5). However, the department may not waive the hearing for suspensions or revocations that involve death or serious bodily

injury, multiple convictions for violations of s. 316.193 pursuant to s. 322.27(5), or a second or subsequent suspension or revocation pursuant to the same provision of this chapter. This paragraph does not preclude the department from requiring a hearing for any suspension or revocation that it determines is warranted based on the severity of the offense.

Reviser's note.—Amended to confirm an editorial insertion made to facilitate correct interpretation.

Section 63. Paragraph (x) of subsection (1) of section 327.73, Florida Statutes, is amended to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(x) Section 253.04(3)(a) ~~253.04(4)(a)~~, relating to carelessly causing seagrass scarring, for which the civil penalty upon conviction is:

1. For a first offense, $50.

2. For a second offense occurring within 12 months after a prior conviction, $250.

3. For a third offense occurring within 36 months after a prior conviction, $500.

4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, $1,000.

Any person cited for a violation of any such provision shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Reviser's note.—Amended to confirm an editorial substitution necessitated by the repeal of former subsection (3) by s. 59, ch. 2009-86, Laws of Florida.

Section 64. Subsection (26) of section 334.044, Florida Statutes, is amended to read:

334.044 Department; powers and duties.—The department shall have the following general powers and duties:

(26) To provide for the enhancement of environmental benefits, including air and water quality; to prevent roadside erosion; to conserve the natural roadside growth and scenery; and to provide for the implementation and maintenance of roadside conservation, enhancement, and stabilization ~~stabilization, and~~ programs. No less than 1.5 percent of the amount contracted for construction projects shall be allocated by the department for the purchase of plant materials, with, to the greatest extent practical, a minimum of 50 percent of these funds for large plant materials and the remaining funds for other plant materials. All such plant materials shall be purchased from Florida commercial nursery stock in this state on a uniform competitive bid basis. The department will develop grades and standards for landscaping materials purchased through this process. To accomplish these activities, the department may contract with nonprofit organizations having the primary purpose of developing youth employment opportunities.

Reviser's note.—Amended to confirm an editorial substitution made to correct an apparent error.

Section 65. Subsection (5) of section 337.0261, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete references to the "Strategic Aggregates Review Task Force," which was dissolved on July 1, 2008.

Section 66. Paragraph (a) of subsection (2) of section 337.16, Florida Statutes, is amended to read:

337.16 Disqualification of delinquent contractors from bidding; determination of contractor nonresponsibility; denial, suspension, and revocation of certificates of qualification; grounds; hearing.—

(2) For reasons other than delinquency in progress, the department, for good cause, may determine any contractor not having a certificate of qualification nonresponsible for a specified period of time or may deny, suspend, or revoke any certificate of qualification. Good cause includes, but is not limited to, circumstances in which a contractor or the contractor's official representative:

(a) Makes or submits to the department false, deceptive, or fraudulent statements or materials in any bid proposal to the department, any application for a certificate of qualification, any certification of payment pursuant to s. 337.11(11) ~~337.11(10)~~, or any administrative or judicial proceeding;

Reviser's note.—Amended to conform to the redesignation of s. 337.11(10) as s. 337.11(11) by s. 7, ch. 2009-85, Laws of Florida.

Section 67. Subsection (3) of section 338.235, Florida Statutes, is amended to read:

338.235 Contracts with department for provision of services on the turnpike system.—

(3) The department may enter into contracts or agreements, with or without competitive bidding or procurement, to make available, on a fair, reasonable, nonexclusive, and nondiscriminatory basis, turnpike property and other turnpike structures, for the placement of wireless facilities by any wireless provider of mobile services as defined in 47 U.S.C. s. 153(27) ~~153(n)~~ or s. 332(d), and any telecommunications company as defined in s. 364.02 when it is determined to be practical and feasible to make such property or structures available. The department may, without adopting a rule, charge a just, reasonable, and nondiscriminatory fee for placement of the facilities, payable annually, based on the fair market value of space used by comparable communications facilities in the state. The department and a wireless provider may negotiate the reduction or elimination of a fee in consideration of goods or services provided to the department by the wireless provider. All such fees collected by the department shall be deposited directly into the State Agency Law Enforcement Radio System Trust Fund and may be used to construct, maintain, or support the system.

Reviser's note.—Amended to confirm an editorial substitution; 47 U.S.C. s. 153(27) defines the term "mobile service," and 47 U.S.C. s. 153(n) does not exist.

Section 68. Paragraph (a) of subsection (8) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(8) E911 FEE.—

(a) Each voice communications services provider shall collect the fee described in this subsection. Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee shall not be assessed on any pay telephone in the state.

1. Each local exchange carrier shall bill the fee to the local exchange subscribers on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. Before July 1, 2009, the fee shall not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid calling arrangement that is subject to s. 212.05(1)(e).

a. The board shall conduct a study to determine whether it is feasible to collect E911 fees from the sale of prepaid wireless service. ~~If, based on the findings of the study, the board determines that a fee should not be collected from the sale of prepaid wireless service, it shall report its findings and recommendation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2008.~~ If the board determines that a fee should be collected from the sale of prepaid wireless service, the board shall collect the fee beginning July 1, 2009.

b. For purposes of this section, the term:

(I) "Prepaid wireless service" means the right to access telecommunications services that must be paid for in advance and is sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount.

(II) "Prepaid wireless service providers" includes those persons who sell prepaid wireless service regardless of its form, either as a retailer or reseller.

c. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless service on an equitable, efficient, competitively neutral, and nondiscriminatory basis and must consider whether the collection of fees on prepaid wireless service would constitute an efficient use of public funds given the technological and practical considerations of collecting the fee based on the varying methodologies prepaid wireless service providers and their agents use in marketing prepaid wireless service.

d. The study must include a review and evaluation of the collection of E911 fees on prepaid wireless service at the point of sale within the state. This evaluation must be consistent with the collection principles of end user charges such as those in s. 212.05(1)(e).

e. No later than 90 days after this section becomes law, the board shall require all prepaid wireless service providers, including resellers, to provide the board with information that the board determines is necessary to discharge its duties under this section, including information necessary for its recommendation, such as total retail and reseller prepaid wireless service sales.

f. All subscriber information provided by a prepaid wireless service provider in response to a request from the board while conducting this study is subject to s. 365.174.

g. The study shall be conducted by an entity competent and knowledgeable in matters of state taxation policy if the board does not possess that expertise. The study must be paid from the moneys distributed to the board for administrative purposes under s. 365.173(2)(f) but may not exceed $250,000.

3. All voice communications services providers not addressed under subparagraphs 1. and 2. shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for E911 services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for providing voice communications service.

Reviser's note.—Amended to delete obsolete language.

Section 69. Subsection (4) of section 373.046, Florida Statutes, is amended to read:

373.046 Interagency agreements.—

(4) The Legislature recognizes and affirms the division of responsibilities between the department and the water management districts as set forth in ss. III. and X. of each of the operating agreements codified as rules 17-101.040(12)(a)3., 4., and 5., Florida Administrative Code. Section IV.A.2.a. of each operating agreement regarding individual permit oversight is rescinded. The department shall be responsible for permitting those activities under part IV of this chapter which, because of their complexity and magnitude, need to be economically and efficiently evaluated at the state level, including, but not limited to, mining, hazardous waste management facilities and solid waste management facilities that do not qualify for a general permit under chapter 403. With regard to postcertification information submittals for activities authorized under chapters 341 and 403 siting act certifications, the department, after consultation with the appropriate water management district and other agencies having applicable regulatory jurisdiction, shall be responsible for determining the permittee's compliance with conditions of certification which were based upon the nonprocedural requirements of part IV of this chapter. The Legislature authorizes the water management districts and the department to modify the division of responsibilities referenced in this section and enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, to provide for greater efficiency and to avoid duplication in the administration of part IV of this chapter by designating certain activities which will be regulated by either the water management districts or the department. In developing such interagency agreements, the water management districts and the department should take into consideration the technical and fiscal ability of each water management district to implement all or some of the provisions of part IV of this chapter. Nothing herein rescinds or restricts the authority of the districts to regulate silviculture and agriculture pursuant to part IV of this chapter or s. 403.927. ~~By December 10, 1993, the secretary of the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the~~

~~efficiency of the procedures and the division of responsibilities contemplated by this subsection and regarding progress toward the execution of further interagency agreements and the integration of permitting with sovereignty lands approval. The report also will consider the feasibility of improving the protection of the environment through comprehensive criteria for protection of natural systems.~~

Reviser's note.—Amended to delete obsolete language.

Section 70. Subsection (7) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(7) A permit approved for a renewable energy generating facility or the cultivation of agricultural products on lands consisting of 1,000 acres or more for use in the production of renewable energy, as defined in s. 366.91(2)(d), shall be granted for a term of at least 25 years at the applicant's request based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, a permit may be issued for a shorter duration that reflects the longest period for which such reasonable assurances are provided. Such a permit is subject to compliance reports under subsection (4).

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity and correct sentence construction.

Section 71. Subsection (5) of section 376.30713, Florida Statutes, is repealed.

Reviser's note.—Repeals material relating to a report due by December 31, 1998, on the progress and level of activity made regarding preapproved advanced cleanup.

Section 72. Paragraph (f) of subsection (2) of section 377.709, Florida Statutes, is amended to read:

377.709 Funding by electric utilities of local governmental solid waste facilities that generate electricity.—

(2) DEFINITIONS.—As used in this section, the term:

(f) "Solid waste facility" means a facility owned or operated by, or on behalf of, a local government for the purpose of disposing of solid waste, as that term is defined in s. 403.703(32) ~~403.703(13)~~, by any process that produces heat and incorporates, as a part of the facility, the means of converting heat to electrical energy in amounts greater than actually required for the operation of the facility.

Reviser's note.—Amended to correct a cross-reference. The definition for "solid waste" is at s. 403.703(32) as amended by s. 6, ch. 2007-184, Laws of Florida.

Section 73. Paragraph (a) of subsection (29) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—

(a) The following are exempt from this section:

1. Any proposed development in a municipality that qualifies as a dense urban land area as defined in s. 163.3164;

2. Any proposed development within a county that qualifies as a dense urban land area as defined in s. 163.3164 and that is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan; or

3. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, which qualifies as a dense urban land area under s. 163.3164, but which does not have an urban service area designated in the comprehensive plan.

Reviser's note.—Amended to improve clarity.

Section 74. Subsection (6) of section 381.84, Florida Statutes, is reenacted to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(6) CONTRACT REQUIREMENTS.—Contracts or grants for the program components or subcomponents described in paragraphs (3)(a)-(f) shall be awarded by the State Surgeon General, after consultation with the council, on the basis of merit, as determined by an open, competitive, peer-reviewed process that ensures objectivity, consistency, and high quality. The department shall award such grants or contracts no later than October 1 for each fiscal year. A recipient of a contract or grant for the program component described in paragraph (3)(c) is not eligible for a contract or grant award for any other program component described in subsection (3) in the same state fiscal year. A school or college of medicine that is represented on the council is not eligible to receive a contract or grant under this section. For the 2009-2010 fiscal year only, the department shall award a contract or grant in the amount of $10 million to the AHEC network for the purpose of developing the components described in paragraph (3)(i). The AHEC network may apply for a competitive contract or grant after the 2009-2010 fiscal year.

(a) In order to ensure that all proposals for funding are appropriate and are evaluated fairly on the basis of merit, the State Surgeon General, in consultation with the council, shall appoint a peer review panel of independent, qualified experts in the field of tobacco control to review the content of each proposal and establish its priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals will be recommended for funding.

(b) The council and the peer review panel shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflicts of interest. A member of the council or panel may not participate in any discussion or decision with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement. Meetings of the council and the peer review panels are subject to chapter 119, s. 286.011, and s. 24, Art. I of the State Constitution.

(c) In each contract or grant agreement, the department shall limit the use of food and promotional items to no more than 2.5 percent of the total amount of the contract or grant and limit overhead or indirect costs to no more than 7.5 percent of the total amount of the contract or grant. The department, in consultation with the Department of Financial Services, shall publish guidelines for appropriate food and promotional items.

(d) In each advertising contract, the department shall limit the total of production fees, buyer commissions, and related costs to no more than 10 percent of the total contract amount.

(e) Notwithstanding the competitive process for contracts prescribed in this subsection, each county health department is eligible for core funding, on a per capita basis, to implement tobacco education and use prevention activities within that county.

Reviser's note.—Section 3, ch. 2009-58, Laws of Florida, amended subsection (6) without publishing paragraphs (a)-(e). Absent affirmative evidence of legislative intent to repeal the omitted paragraphs, subsection (6) is reenacted to confirm the omission was not intended.

Section 75. Section 381.912, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete a section relating to the Cervical Cancer Elimination Task Force, which was dissolved after submitting its final report due on or before June 30, 2008.

Section 76. Section 382.357, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete a section applicable to a study to determine the feasibility of electronically filing original and new or amended birth certificates, documentation of paternity

determinations, and adoptions with the Department of Health and a report of the findings to be made by July 1, 2006.

Section 77. Subsections (2) and (3) of section 394.875, Florida Statutes, are amended to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(2) The requirements of part II of chapter 408 apply to the provision of services that require licensure under ss. 394.455-394.903 ~~394.455-394.904~~ and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 394.455-394.903 ~~394.455-394.904~~. A license issued by the agency is required in order to operate a crisis stabilization unit, a residential treatment facility, or a residential treatment center for children and adolescents, or to act as a crisis stabilization unit, a residential treatment facility, or a residential treatment center for children and adolescents in this state.

(3) The following are exempt from licensure as required in ss. 394.455-394.903 ~~394.455-394.904~~:

(a) Homes for special services licensed under chapter 400.

(b) Nursing homes licensed under chapter 400.

(c) Comprehensive transitional education programs licensed under s. 393.067.

Reviser's note.—Amended to conform to the repeal of s. 394.904 by s. 10, ch. 2008-9, Laws of Florida.

Section 78. Paragraph (d) of subsection (2) of section 394.9082, Florida Statutes, is amended to read:

394.9082 Behavioral health managing entities.—

(2) DEFINITIONS.—As used in this section, the term:

(d) "Managing entity" means a corporation that is organized in this state, is designated or filed as a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code ~~Service~~, and is under contract to the department to manage the day-to-day operational delivery of behavioral health services through an organized system of care.

Reviser's note.—Amended to confirm an editorial substitution made to correct an apparent error and facilitate correct interpretation.

Section 79. Paragraph (b) of subsection (1) of section 395.4036, Florida Statutes, is amended to read:

395.4036 Trauma payments.—

(1) Recognizing the Legislature's stated intent to provide financial support to the current verified trauma centers and to provide incentives for the establishment of additional trauma centers as part of a system of state-sponsored trauma centers, the department shall utilize funds collected under s. 318.18 and deposited into the Administrative Trust Fund of the department to ensure the availability and accessibility of trauma services throughout the state as provided in this subsection.

(b) Funds collected under s. 318.18(5)(c) and (20) ~~(19)~~ shall be distributed as follows:

1. Thirty percent of the total funds collected shall be distributed to Level II trauma centers operated by a public hospital governed by an elected board of directors as of December 31, 2008.

2. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the department's Trauma Registry data.

3. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

Reviser's note.—Amended to conform to the redesignation of s. 318.18(19), as created by s. 1, ch. 2009-138, Laws of Florida, as s. 318.18(20) to conform to the creation of a different subsection (19) by s. 3, ch. 2009-6, Laws of Florida.

Section 80. Subsection (32) of section 397.311, Florida Statutes, is amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(32) "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (18) ~~(17)~~.

Reviser's note.—Amended to correct a cross-reference. The referenced service components are set out in detail in subsection (18).

Section 81. Subsection (5) of section 397.334, Florida Statutes, is amended to read:

397.334 Treatment-based drug court programs.—

(5) Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (4) ~~(3)~~. The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

Reviser's note.—Amended to conform to the redesignation of subsection (3) as subsection (4) by s. 1, ch. 2009-64, Laws of Florida.

Section 82. Paragraph (u) of subsection (1) of section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(u) Before November 30 of each year, subject to the availability of an adequate supply of the necessary vaccine, provide for immunizations against influenza viruses to all its consenting residents in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Subject to these exemptions, any consenting person who becomes a resident of the facility after November 30 but before March 31 of the following year must be immunized within 5 working days after becoming a resident. Immunization shall not be provided to any resident who provides documentation that he or she has been immunized as required by this paragraph. This paragraph does not prohibit a resident from receiving the immunization from his or her personal physician if he or she so chooses. A resident who chooses to receive the immunization from his or her personal physician shall provide proof of immunization to the facility. The agency may adopt and enforce any rules necessary to comply with or implement this paragraph ~~subsection~~.

Reviser's note.—Amended to conform to the redesignation of subunits by s. 39, ch. 2009-223, Laws of Florida.

Section 83. Section 400.195, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete language applicable to reports by the Agency for Health Care Administration with respect to nursing homes for a period ending June 30, 2005.

Section 84. Subsection (6) of section 400.474, Florida Statutes, is amended to read:

400.474 Administrative penalties.—

(6) The agency may deny, revoke, or suspend the license of a home health agency and shall impose a fine of $5,000 against a home health agency that:

(a) Gives remuneration for staffing services to:

1. Another home health agency with which it has formal or informal patient-referral transactions or arrangements; or

2. A health services pool with which it has formal or informal patient-referral transactions or arrangements,

unless the home health agency has activated its comprehensive emergency management plan in accordance with s. 400.492. This paragraph does not apply to a Medicare-certified home health agency that provides fair market value remuneration for staffing services to a non-Medicare-certified home health agency that is part of a continuing care facility licensed under chapter 651 for providing services to its own residents if each resident receiving home health services pursuant to this arrangement attests in writing that he or she made a decision without influence from staff of the facility to select, from a list of Medicare-certified home health agencies provided by the facility, that Medicare-certified home health agency to provide the services.

(b) Provides services to residents in an assisted living facility for which the home health agency does not receive fair market value remuneration.

(c) Provides staffing to an assisted living facility for which the home health agency does not receive fair market value remuneration.

(d) Fails to provide the agency, upon request, with copies of all contracts with assisted living facilities which were executed within 5 years before the request.

(e) Gives remuneration to a case manager, discharge planner, facility-based staff member, or third-party vendor who is involved in the discharge planning process of a facility licensed under chapter 395, chapter 429, or this chapter from whom the home health agency receives referrals.

(f) Fails to submit to the agency, within 15 days after the end of each calendar quarter, a written report that includes the following data based on data as it existed on the last day of the quarter:

1. The number of insulin-dependent diabetic patients receiving insulin-injection services from the home health agency;

2. The number of patients receiving both home health services from the home health agency and hospice services;

3. The number of patients receiving home health services from that home health agency; and

4. The names and license numbers of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the home health agency in excess of $25,000 during the calendar quarter.

(g) Gives cash, or its equivalent, to a Medicare or Medicaid beneficiary.

(h) Has more than one medical director contract in effect at one time or more than one medical director contract and one contract with a physician-specialist whose services are mandated for the home health agency in order to qualify to participate in a federal or state health care program at one time.

(i) Gives remuneration to a physician without a medical director contract being in effect. The contract must:

1. Be in writing and signed by both parties;

2. Provide for remuneration that is at fair market value for an hourly rate, which must be supported by invoices submitted by the medical director describing the work performed, the dates on which that work was performed, and the duration of that work; and

3. Be for a term of at least 1 year.

The hourly rate specified in the contract may not be increased during the term of the contract. The home health agency may not execute a subsequent contract with that physician which has an increased hourly rate and covers any portion of the term that was in the original contract.

(j) Gives remuneration to:

1. A physician, and the home health agency is in violation of paragraph (h) or paragraph (i);

2. A member of the physician's office staff; or

3. An immediate family member of the physician,

if the home health agency has received a patient referral in the preceding 12 months from that physician or physician's office staff.

(k) Fails to provide to the agency, upon request, copies of all contracts with a medical director which were executed within 5 years before the request.

(l) Demonstrates a pattern of billing the Medicaid program for services to Medicaid recipients which are medically unnecessary as determined by a final order. A pattern may be demonstrated by a showing of at least two such medically unnecessary services within one Medicaid program integrity audit period.

Nothing in paragraph (e) or paragraph (j) shall be interpreted as applying to or precluding any discount, compensation, waiver of payment, or payment practice permitted by 42 U.S.C. s. 1320a-7(b) ~~52 U.S.C. s. 1320a-7(b)~~ or regulations adopted thereunder, including 42 C.F.R. s. 1001.952 or s. 1395nn or regulations adopted thereunder.

Reviser's note.—Amended to confirm an editorial substitution; 42 U.S.C. s. 1320a-7(b) includes exemptions from application of criminal penalties relating to federal health care programs, and 52 U.S.C. s. 1320a-7(b) does not exist.

Section 85. Paragraph (a) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and March 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer

the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, times the annual hours of operation allowed by permit condition; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.

2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.

3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.

4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not allowed to operate.

5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a department-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the United States Environmental Protection Agency under the regulations

implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the department for purposes of this section.

6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

7. If the department has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

8. Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section shall not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 shall not exceed $50 per year.

9. Notwithstanding the provisions of s. 403.087(6)(a)5.a. ~~403.087(6)(a)4.a.~~, authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a. ~~403.087(6)(a)4.a.~~ for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Reviser's note.—Amended to conform to the redesignation of s. 403.087(6)(a)4.a. as s. 403.087(6)(a)5.a. by s. 19, ch. 2008-150, Laws of Florida.

Section 86. Subsection (8) of section 403.93345, Florida Statutes, is amended to read:

403.93345 Coral reef protection.—

(8) In addition to the compensation described in subsection (5), the department may assess, per occurrence, civil penalties according to the following schedule:

(a) For any anchoring of a vessel on a coral reef or for any other damage to a coral reef totaling less than or equal to an area of 1 square meter, $150, provided that a responsible party who has anchored a recreational vessel as defined in s. 327.02 which is lawfully registered or exempt from registration pursuant to chapter 328 is issued, at least once, a warning letter in lieu of penalty; with aggravating circumstances, an additional $150; occurring within a state park or aquatic preserve, an additional $150.

(b) For damage totaling more than an area of 1 square meter but less than or equal to an area of 10 square meters, $300 per square meter; with aggravating circumstances, an additional $300 per square meter; occurring within a state park or aquatic preserve, an additional $300 per square meter.

(c) For damage exceeding an area of 10 square meters, $1,000 per square meter; with aggravating circumstances, an additional $1,000 per square meter; occurring within a state park or aquatic preserve, an additional $1,000 per square meter.

(d) For a second violation, the total penalty may be doubled.

(e) For a third violation, the total penalty may be tripled.

(f) For any violation after a third violation, the total penalty may be quadrupled.

(g) The total of penalties levied may not exceed $250,000 per occurrence.

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity.

Section 87. Section 403.9336, Florida Statutes, is amended to read:

403.9336 Legislative findings.—The Legislature finds that the implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008), which was developed by the department in conjunction with the ~~Florida~~ Consumer Fertilizer Task Force, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, will assist in protecting the

quality of Florida's surface water and groundwater resources. The Legislature further finds that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, may necessitate the implementation of additional or more stringent fertilizer management practices at the local government level.

Reviser's note.—Amended to conform to the name of the task force as created in s. 576.092; the task force has been abolished, and s. 576.092 is repealed by this act.

Section 88. Subsections (6) and (7) of section 408.0361, Florida Statutes, are repealed.

Reviser's note.—Subsection (6) is repealed to delete language establishing an advisory group to study the issue of replacing certificate-of-need review of organ transplant programs with licensure regulation of organ transplant programs and to submit a report by July 1, 2005. Subsection (7) is repealed to delete language establishing a workgroup to study certificate-of-need regulations and changing market conditions related to the supply and distribution of hospital beds and to submit a report by July 1, 2005.

Section 89. Paragraph (k) of subsection (3) of section 408.05, Florida Statutes, is amended to read:

408.05 Florida Center for Health Information and Policy Analysis.—

(3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.—In order to produce comparable and uniform health information and statistics for the development of policy recommendations, the agency shall perform the following functions:

(k) Develop, in conjunction with the State Consumer Health Information and Policy Advisory Council, and implement a long-range plan for making available health care quality measures and financial data that will allow consumers to compare health care services. The health care quality measures and financial data the agency must make available shall include, but is not limited to, pharmaceuticals, physicians, health care facilities, and health plans and managed care entities. The agency shall ~~submit the initial plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2006, and shall~~ update the plan and report on the status of its implementation annually ~~thereafter~~. The agency shall also make the plan and status report available to the public on its Internet website. As part of the plan, the agency shall identify the process and timeframes for implementation, any barriers to implementation, and recommendations of changes in the law that may be enacted by the Legislature to eliminate the barriers. As preliminary elements of the plan, the agency shall:

1. Make available patient-safety indicators, inpatient quality indicators, and performance outcome and patient charge data collected from health care facilities pursuant to s. 408.061(1)(a) and (2). The terms "patient-safety indicators" and "inpatient quality indicators" shall be as defined by the Centers for Medicare and Medicaid Services, the National Quality Forum, the Joint Commission on Accreditation of Healthcare Organizations, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, or a similar national entity that establishes standards to measure the performance of health care providers, or by other states. The agency shall determine which conditions, procedures, health care quality measures, and patient charge data to disclose based upon input from the council. When determining which conditions and procedures are to be disclosed, the council and the agency shall consider variation in costs, variation in outcomes, and magnitude of variations and other relevant information. When determining which health care quality measures to disclose, the agency:

a. Shall consider such factors as volume of cases; average patient charges; average length of stay; complication rates; mortality rates; and infection rates, among others, which shall be adjusted for case mix and severity, if applicable.

b. May consider such additional measures that are adopted by the Centers for Medicare and Medicaid Studies, National Quality Forum, the Joint Commission on Accreditation of Healthcare Organizations, the Agency for Healthcare Research and Quality, Centers for Disease Control and Prevention, or a similar national entity that establishes standards to measure the performance of health care providers, or by other states.

When determining which patient charge data to disclose, the agency shall include such measures as the average of undiscounted charges on frequently performed procedures and preventive diagnostic procedures, the range of procedure charges from highest to lowest, average net revenue per adjusted patient day, average cost per adjusted patient day, and average cost per admission, among others.

2. Make available performance measures, benefit design, and premium cost data from health plans licensed pursuant to chapter 627 or chapter 641. The agency shall determine which health care quality measures and member and subscriber cost data to disclose, based upon input from the council. When determining which data to disclose, the agency shall consider information that may be required by either individual or group purchasers to assess the value of the product, which may include membership satisfaction, quality of care, current enrollment or membership, coverage areas, accreditation status, premium costs, plan costs, premium increases, range of benefits, copayments and deductibles, accuracy and speed of claims payment, credentials of physicians, number of providers, names of network providers, and hospitals in the network. Health plans shall make available to the agency any such data or information that is not currently reported to the agency or the office.

3. Determine the method and format for public disclosure of data reported pursuant to this paragraph. The agency shall make its determination based upon input from the State Consumer Health Information and Policy Advisory Council. At a minimum, the data shall be made available on the agency's Internet website in a manner that allows consumers to conduct an interactive search that allows them to view and compare the information for specific providers. The website must include such additional information as is determined necessary to ensure that the website enhances informed decisionmaking among consumers and health care purchasers, which shall include, at a minimum, appropriate guidance on how to use the data and an explanation of why the data may vary from provider to provider. ~~The data specified in subparagraph 1. shall be released no later than January 1, 2006, for the reporting of infection rates, and no later than October 1, 2005, for mortality rates and complication rates. The data specified in subparagraph 2. shall be released no later than October 1, 2006.~~

4. Publish on its website undiscounted charges for no fewer than 150 of the most commonly performed adult and pediatric procedures, including outpatient, inpatient, diagnostic, and preventative procedures.

Reviser's note.—Amended to delete provisions that have served their purpose.

Section 90. Subsection (25) of section 408.820, Florida Statutes, is amended to read:

408.820 Exemptions.—Except as prescribed in authorizing statutes, the following exemptions shall apply to specified requirements of this part:

(25) Health care clinics, as provided under part X of chapter 400, are exempt from s. 408.810(6), (7), and (10).

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity.

Section 91. Subsection (3) of section 409.816, Florida Statutes, is amended to read:

409.816 Limitations on premiums and cost-sharing.—The following limitations on premiums and cost-sharing are established for the program.

(3) Enrollees in families with a family income above 150 percent of the federal poverty level who are not receiving coverage under the Medicaid program or who are not eligible under s. 409.814(6) ~~409.814(7)~~ may be required to pay enrollment fees, premiums, copayments, deductibles, coinsurance, or similar charges on a sliding scale related to income, except that the total annual aggregate cost-sharing with respect to all children in a family may not exceed 5 percent of the family's income. However, copayments, deductibles, coinsurance, or similar charges may not be imposed for preventive services, including well-baby and well-child care, age-appropriate immunizations, and routine hearing and vision screenings.

Reviser's note.—Amended to correct an apparent error and conform to context. The reference was to s. 409.814(5) prior to amendment of s. 409.816(3) by s. 9, ch. 2009-113, Laws of Florida; s. 7, ch. 2009-113, redesignated s. 409.814(5) as s. 409.814(6).

Section 92. Subsection (5) of section 409.905, Florida Statutes, is reenacted to read:

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(5) HOSPITAL INPATIENT SERVICES.—The agency shall pay for all covered services provided for the medical care and treatment of a recipient who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395. However, the agency shall limit the payment for inpatient hospital services for a Medicaid recipient 21 years of age or older to 45 days or the number of days necessary to comply with the General Appropriations Act.

(a) The agency is authorized to implement reimbursement and utilization management reforms in order to comply with any limitations or directions in the General Appropriations Act, which may include, but are not limited to: prior authorization for inpatient psychiatric days; prior authorization for nonemergency hospital inpatient admissions for individuals 21 years of age and older; authorization of emergency and urgent-care admissions within 24 hours after admission; enhanced utilization and concurrent review programs for highly utilized services; reduction or elimination of covered days of service; adjusting reimbursement ceilings for variable costs; adjusting reimbursement ceilings for fixed and property costs; and implementing target rates of increase. The agency may limit prior authorization for hospital inpatient services to selected diagnosis-related groups, based on an analysis of the cost and potential for unnecessary hospitalizations represented by certain diagnoses. Admissions for normal delivery and newborns are exempt from requirements for prior authorization. In implementing the provisions of this section related to prior authorization, the agency shall ensure that the process for authorization is accessible 24 hours per day, 7 days per week and authorization is automatically granted when not denied within 4 hours after the request. Authorization procedures must include steps for review of denials. Upon

implementing the prior authorization program for hospital inpatient services, the agency shall discontinue its hospital retrospective review program.

(b) A licensed hospital maintained primarily for the care and treatment of patients having mental disorders or mental diseases is not eligible to participate in the hospital inpatient portion of the Medicaid program except as provided in federal law. However, the department shall apply for a waiver, within 9 months after June 5, 1991, designed to provide hospitalization services for mental health reasons to children and adults in the most cost-effective and lowest cost setting possible. Such waiver shall include a request for the opportunity to pay for care in hospitals known under federal law as "institutions for mental disease" or "IMD's." The waiver proposal shall propose no additional aggregate cost to the state or Federal Government, and shall be conducted in Hillsborough County, Highlands County, Hardee County, Manatee County, and Polk County. The waiver proposal may incorporate competitive bidding for hospital services, comprehensive brokering, prepaid capitated arrangements, or other mechanisms deemed by the department to show promise in reducing the cost of acute care and increasing the effectiveness of preventive care. When developing the waiver proposal, the department shall take into account price, quality, accessibility, linkages of the hospital to community services and family support programs, plans of the hospital to ensure the earliest discharge possible, and the comprehensiveness of the mental health and other health care services offered by participating providers.

(c) The agency shall adjust a hospital's current inpatient per diem rate to reflect the cost of serving the Medicaid population at that institution if:

1. The hospital experiences an increase in Medicaid caseload by more than 25 percent in any year, primarily resulting from the closure of a hospital in the same service area occurring after July 1, 1995;

2. The hospital's Medicaid per diem rate is at least 25 percent below the Medicaid per patient cost for that year; or

3. The hospital is located in a county that has six or fewer general acute care hospitals, began offering obstetrical services on or after September 1999, and has submitted a request in writing to the agency for a rate adjustment after July 1, 2000, but before September 30, 2000, in which case such hospital's Medicaid inpatient per diem rate shall be adjusted to cost, effective July 1, 2002.

By October 1 of each year, the agency must provide estimated costs for any adjustment in a hospital inpatient per diem rate to the Executive Office of the Governor, the House of Representatives General Appropriations Committee, and the Senate Appropriations Committee. Before the agency implements a change in a hospital's inpatient per diem rate pursuant to this paragraph, the Legislature must have specifically appropriated sufficient funds in the

General Appropriations Act to support the increase in cost as estimated by the agency.

(d) The agency shall implement a hospitalist program in nonteaching hospitals, select counties, or statewide. The program shall require hospitalists to manage Medicaid recipients' hospital admissions and lengths of stay. Individuals who are dually eligible for Medicare and Medicaid are exempted from this requirement. Medicaid participating physicians and other practitioners with hospital admitting privileges shall coordinate and review admissions of Medicaid recipients with the hospitalist. The agency may competitively bid a contract for selection of a single qualified organization to provide hospitalist services. The agency may procure hospitalist services by individual county or may combine counties in a single procurement. The qualified organization shall contract with or employ board-eligible physicians in Miami-Dade, Palm Beach, Hillsborough, Pasco, and Pinellas Counties. The agency is authorized to seek federal waivers to implement this program.

(e) The agency shall implement a comprehensive utilization management program for hospital neonatal intensive care stays in certain high-volume participating hospitals, select counties, or statewide, and shall replace existing hospital inpatient utilization management programs for neonatal intensive care admissions. The program shall be designed to manage the lengths of stay for children being treated in neonatal intensive care units and must seek the earliest medically appropriate discharge to the child's home or other less costly treatment setting. The agency may competitively bid a contract for selection of a qualified organization to provide neonatal intensive care utilization management services. The agency is authorized to seek any federal waivers to implement this initiative.

Reviser's note.—Section 5, ch. 2009-55, Laws of Florida, amended subsection (5) of s. 409.905 without publishing existing paragraphs (a), (b), (d), and (e). Absent affirmative evidence of legislative intent to repeal existing paragraphs (5)(a), (b), (d), and (e), subsection (5) is reenacted to confirm that the omission was not intended.

Section 93. Paragraph (b) of subsection (12) of section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be

retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(12)

(b) The agency shall adopt a fee schedule, subject to any limitations or directions provided for in the General Appropriations Act, based on a resource-based relative value scale for pricing Medicaid physician services. Under this fee schedule, physicians shall be paid a dollar amount for each service based on the average resources required to provide the service, including, but not limited to, estimates of average physician time and effort, practice expense, and the costs of professional liability insurance. The fee schedule shall provide increased reimbursement for preventive and primary care services and lowered reimbursement for specialty services by using at least two conversion factors, one for cognitive services and another for procedural services. The fee schedule shall not increase total Medicaid physician expenditures unless moneys are available~~, and shall be phased in over a 2-year period beginning on July 1, 1994~~. The Agency for Health Care Administration shall seek the advice of a 16-member advisory panel in formulating and adopting the fee schedule. The panel shall consist of Medicaid physicians licensed under chapters 458 and 459 and shall be composed of 50 percent primary care physicians and 50 percent specialty care physicians.

Reviser's note.—Amended to delete obsolete language.

Section 94. Subsection (5) of section 409.911, Florida Statutes, is amended to read:

409.911 Disproportionate share program.—Subject to specific allocations established within the General Appropriations Act and any limitations established pursuant to chapter 216, the agency shall distribute, pursuant to this section, moneys to hospitals providing a disproportionate share of Medicaid or charity care services by making quarterly Medicaid payments as required. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(5) The following formula shall be used to pay disproportionate share dollars to provider service network (PSN) hospitals:

DSHP = TAAPSNH x (IHPSND x THPSND)

Where:

DSHP = Disproportionate share hospital payments.

TAAPSNH = Total amount available for PSN hospitals.

IHPSND = Individual hospital PSN days.

THPSND = Total of all hospital PSN days.

For purposes of this subsection ~~paragraph~~, the PSN inpatient days shall be provided in the General Appropriations Act.

Reviser's note.—Amended to confirm an editorial substitution; subsection (5) is not divided into paragraphs.

Section 95. Paragraph (f) of subsection (5) and paragraph (g) of subsection (15) of section 409.912, Florida Statutes, are repealed.

Reviser's note.—Paragraph (5)(f) is repealed to delete language requiring a report due by December 31, 2007, analyzing the merits and challenges of seeking a waiver to implement a voluntary program that integrates payments and services for dually enrolled Medicare and Medicaid recipients who are 65 years of age or older. Paragraph (15)(g) is repealed to delete language requiring a report due by July 1, 2005, regarding the impact to the state of modifying level-of-care criteria to eliminate the Intermediate II level of care.

Section 96. Subsection (14) of section 409.91211, Florida Statutes, is amended to read:

409.91211 Medicaid managed care pilot program.—

(14) It is the intent of the Legislature that if any conflict exists between the provisions contained in this section and other provisions of this chapter which relate to the implementation of the Medicaid managed care pilot program, the provisions contained in this section shall control. ~~The agency shall provide a written report to the Legislature by April 1, 2006, identifying any provisions of this chapter which conflict with the implementation of the Medicaid managed care pilot program created in this section. After April 1, 2006,~~ The agency shall provide a written report to the Legislature immediately upon identifying any provisions of this chapter which conflict with the implementation of the Medicaid managed care pilot program created in this section.

Reviser's note.—Amended to delete provisions that have served their purpose.

Section 97. Subsection (2) of section 420.628, Florida Statutes, is amended to read:

420.628 Affordable housing for children and young adults leaving foster care; legislative findings and intent.—

(2) Young adults who leave the child welfare system meet the definition of eligible persons under ss. 420.503(17) and 420.9071(10) ~~ss.420.503(7) and 420.907(10)~~ for affordable housing, and are encouraged to participate in federal, state, and local affordable housing programs. Students deemed to be eligible occupants under 26 U.S.C. s. 42(i)(3)(D) shall be considered eligible persons for purposes of all projects funded under this chapter.

Reviser's note.—Amended to confirm editorial substitutions. Section 420.503(7) defines the term "community housing development organization," and subsection (17) defines the term "eligible persons." Section 420.907(10) does not exist, and s. 420.9071(10) defines the term "eligible person."

Section 98. Paragraph (f) of subsection (18) of section 430.04, Florida Statutes, is amended to read:

430.04 Duties and responsibilities of the Department of Elderly Affairs. The Department of Elderly Affairs shall:

(18) Administer all Medicaid waivers and programs relating to elders and their appropriations. The waivers include, but are not limited to:

(f) The Program of ~~for~~ All-inclusive Care for the Elderly.

Reviser's note.—Amended to confirm an editorial substitution made to conform to the correct name of the program.

Section 99. Subsection (5) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(5) It shall be unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee or for any firm, corporation, partnership, or association, to unlawfully solicit any business in and about city or county hospitals, courts, or any public institution or public place; in and about private hospitals or sanitariums; in and about any private institution; or upon private property of any character whatsoever for the purpose of making workers' compensation claims. Whoever violates any provision of this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~775.085~~.

Reviser's note.—Amended to correct an apparent error and facilitate correct interpretation. The reference is not consistent with the contents of s. 775.085 but is consistent with the contents of s. 775.084.

Section 100. Subsection (3) of section 443.1117, Florida Statutes, is amended to read:

443.1117 Temporary extended benefits.—

(3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in subsection (4) ~~(5)~~:

(a) For any week for which there is an "on" indicator pursuant to paragraph (2)(g) ~~(3)(g)~~, the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Fifty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Thirteen times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(b) For any high unemployment period as defined in paragraph (2)(h) ~~(3)(h)~~, the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Eighty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Twenty times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

Reviser's note.—The introductory language to subsection (3) is amended to correct an apparent error and facilitate correct interpretation. Subsection (5) does not exist; the content in subsection (4) relates to extended benefit periods. Paragraph (3)(a) is amended to confirm an editorial substitution; paragraph (2)(g) defines the term "state 'on' indicator," and paragraph (3)(g) does not exist. Paragraph (3)(b) is amended to confirm an editorial insertion; paragraph (2)(h) defines the term "high unemployment period," and paragraph (3)(h) does not exist.

Section 101. Subsection (9) of section 445.049, Florida Statutes, is repealed.

Reviser's note.—Repealed to delete language requiring the Digital Divide Council to submit a report by March 1, 2008, with results of the council's monitoring, reviewing, and evaluating of and recommendations on certain programs.

Section 102. Section 450.231, Florida Statutes, is amended to read:

450.231 Annual reports to Legislature.—The commission shall report its findings, recommendations, and proposed legislation to each regular session of the Legislature no later than February 1 of each year ~~beginning in 2006~~.

Reviser's note.—Amended to delete a provision that has served its purpose.

Section 103. Paragraph (c) of subsection (1) of section 456.041, Florida Statutes, is amended to read:

456.041 Practitioner profile; creation.—

(1)

(c) Within 30 calendar days after receiving an update of information required for the practitioner's profile, the department shall update the practitioner's profile in accordance with the requirements of subsection (8) ~~(7)~~.

Reviser's note.—Amended to conform to the redesignation of subsection (7) as subsection (8) by s. 22, ch. 2009-223, Laws of Florida.

Section 104. Subsections (7) and (8) of section 466.0067, Florida Statutes, are amended to read:

466.0067 Application for health access dental license.—The Legislature finds that there is an important state interest in attracting dentists to practice in underserved health access settings in this state and further, that allowing out-of-state dentists who meet certain criteria to practice in health access settings without the supervision of a dentist licensed in this state is substantially related to achieving this important state interest. Therefore, notwithstanding the requirements of s. 466.006, the board shall grant a health access dental license to practice dentistry in this state in health access settings as defined in s. 466.003(14) to an applicant that:

(7) Currently holds a valid, active, dental license in good standing which has not been revoked, suspended, restricted, or otherwise disciplined from another of the ~~these~~ United States, the District of Columbia, or a United States territory;

(8) Has never had a license revoked from another of the ~~these~~ United States, the District of Columbia, or a United States territory;

Reviser's note.—Amended to provide contextual consistency within the Florida Statutes.

Section 105. Subsection (1) of section 472.016, Florida Statutes, is amended to read:

472.016 Members of Armed Forces in good standing with the board.—

(1) Any member of the Armed Forces of the United States who is now or in the future on active duty and who, at the time of becoming such a member of the Armed Forces, was in good standing with the board and entitled to practice or engage in surveying and mapping in the state shall be kept in good standing by the board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the Armed Forces of the United States on active duty and for a period of 6 months after discharge from active duty, provided that he or she is not engaged in the practice of surveying or mapping in the private sector for profit.

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity and facilitate correct interpretation.

Section 106. Subsection (1) of section 472.036, Florida Statutes, is amended to read:

472.036 Unlicensed practice of professional surveying and mapping; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—

(1) When the department has probable cause to believe that any person not licensed by the department or the board has violated any provision of this chapter, or any rule adopted pursuant to this chapter, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of surveying and mapping by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order. In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed $5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department is required to seek enforcement of the order for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity and facilitate correct interpretation.

Section 107. Subsection (4) of section 473.315, Florida Statutes, is amended to read:

473.315 Independence, technical standards.—

(4) Attorneys who are admitted to practice law by the Supreme Court of Florida are exempt from the standards of practice of public accounting as

defined in s. 473.302(8)(b) and (c) ~~473.302(7)(b) and (c)~~ when such standards conflict with the rules of The Florida Bar or orders of the Florida Supreme Court.

Reviser's note.—Amended to conform to the redesignation of s. 473.302(7)(b) and (c) as s. 473.302(8)(b) and (c) by s. 3, ch. 2009-54, Laws of Florida.

Section 108. Paragraph (f) of subsection (5) of section 489.119, Florida Statutes, is amended to read:

489.119 Business organizations; qualifying agents.—

(5)

(f) In addition to any other penalty prescribed by law, a local government may impose a civil fine pursuant to s. 489.127(5) against a person who is not certified or registered under this part if the person:

1. Claims to be licensed in any offer of services, business proposal, bid, contract, or advertisement, but ~~who~~ does not possess a valid competency-based license issued by a local government in this state to perform the specified construction services; or

2. Claims to be insured in any offer of services, business proposal, bid, contract, or advertisement, but whose performance of the subject work is not covered by a general liability or workers' compensation insurance policy.

Reviser's note.—Amended to confirm an editorial deletion made to improve clarity.

Section 109. Effective October 1, 2010, subsection (3) of section 494.00321, Florida Statutes, as created by section 27 of chapter 2009-241, Laws of Florida, is amended to read:

494.00321 Mortgage broker license.—

(3) An application is considered received for the purposes of s. 120.60 upon the office's receipt of all documentation from the registry, including the completed application form, criminal history information, and independent credit report, as well as the license application fee, the fee required by s. 494.00172 ~~492.00172~~, and all applicable fingerprinting processing fees.

Reviser's note.—Amended to confirm an editorial substitution; s. 494.00172 includes material relating to fees, and s. 492.00172 does not exist.

Section 110. Effective October 1, 2010, paragraph (f) of subsection (2) of section 494.00611, Florida Statutes, as created by section 43 of chapter 2009-241, Laws of Florida, is amended to read:

494.00611 Mortgage lender license.—

(2) In order to apply for a mortgage lender license, an applicant must:

(f) Submit a copy of the applicant's financial audit report for the most recent fiscal year ~~which~~, pursuant to United States generally accepted accounting principles. If the applicant is a wholly owned subsidiary of another corporation, the financial audit report for the parent corporation satisfies this requirement. The commission may establish by rule the form and procedures for filing the financial audit report, including the requirement to file the report with the registry when technology is available. The financial audit report must document that the applicant has a bona fide and verifiable net worth, of at least $63,000 if the applicant is not seeking a servicing endorsement, or at least $250,000 if the applicant is seeking a servicing endorsement, which must be continuously maintained as a condition of licensure. However, if the applicant held an active license issued before October 1, 2010, pursuant to former s. 494.0065, and the applicant is seeking a servicing endorsement, the minimum net worth requirement:

1. Until September 30, 2011, is $63,000.

2. Between October 1, 2011, and September 30, 2012, is $125,000.

3. On or after October 1, 2012, is $250,000.

Reviser's note.—Amended to confirm an editorial deletion made to improve clarity and facilitate correct interpretation.

Section 111. Effective October 1, 2010, subsection (2) of section 494.0066, Florida Statutes, as amended by section 49 of chapter 2009-241, Laws of Florida, is amended to read:

494.0066 Branch offices.—

(2) The office shall issue a branch office license to a mortgage lender after the office determines that the mortgage lender has submitted a completed branch office application form as prescribed by rule by the commission <u>and</u> an initial nonrefundable branch office license fee of $225 per branch office. Application fees may not be prorated for partial years of licensure. The branch office application must include the name and license number of the mortgage lender under this part, the name of the branch manager in charge of the branch office, and the address of the branch office. The branch office license shall be issued in the name of the mortgage lender and must be renewed in conjunction with the license renewal. An application is considered received for purposes of s. 120.60 upon receipt of a completed branch office renewal form, as prescribed by commission rule, and the required fees.

Reviser's note.—Amended to confirm an editorial insertion made to provide clarity.

Section 112. Paragraph (a) of subsection (5) of section 501.1377, Florida Statutes, is amended to read:

501.1377 Violations involving homeowners during the course of residential foreclosure proceedings.—

(5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.—

(a)1. A foreclosure-rescue transaction must include a written agreement prepared in at least 12-point uppercase type that is completed, signed, and dated by the homeowner and the equity purchaser before executing any instrument from the homeowner to the equity purchaser quitclaiming, assigning, transferring, conveying, or encumbering an interest in the residential real property in foreclosure. The equity purchaser must give the homeowner a copy of the completed agreement within 3 hours after the homeowner signs the agreement. The agreement must contain the entire understanding of the parties and must include:

a. The name, business address, and telephone number of the equity purchaser.

b. The street address and full legal description of the property.

c. Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser.

d. The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition of the property by the equity purchaser.

e. The terms of payment or other consideration, including, but not limited to, any services that the equity purchaser represents will be performed for the homeowner before or after the sale.

f. The date and time when possession of the property is to be transferred to the equity purchaser.

2. A foreclosure-rescue transaction agreement must contain, above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME TO THE OTHER UNDERSIGNED PARTY.

3. A foreclosure-rescue transaction agreement must state the specifications of any option or right to repurchase the residential real property in foreclosure, including the specific amounts of any escrow payments or deposit, down payment, purchase price, closing costs, commissions, or other fees or costs.

4. A foreclosure-rescue transaction agreement must comply with all applicable provisions of 15 U.S.C. ss. 1601 ~~1600~~ et seq. and related regulations.

Reviser's note.—Amended to conform to the fact that 15 U.S.C. s. 1600 does not exist; the Truth in Lending Act is cited as 15 U.S.C. ss. 1601 et seq.

Section 113. Subsection (5) of section 517.191, Florida Statutes, is amended to read:

517.191 Injunction to restrain violations; civil penalties; enforcement by Attorney General.—

(5) In addition to all other means provided by law for enforcing any of the provisions of this chapter, when the Attorney General, upon complaint or otherwise, has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275, s. 517.301, s. 517.311, or s. 517.312, or any rule or order issued under such sections, the Attorney General may investigate and bring an action to enforce these provisions as provided in ss. 517.171, 517.201, and 517.2015 after receiving written approval from the office. Such an action may be brought against such person and any other person in any way participating in such act or practice or engaging in such act or practice or doing any act in furtherance of such act or practice, to obtain injunctive relief, restitution, civil penalties, and any remedies provided for in this section. The Attorney General may recover any costs and attorney fees related to the Attorney General's investigation or enforcement of this section. Notwithstanding any other provision of law, moneys recovered by the Attorney General for costs, attorney fees, and civil penalties for a violation of s. 517.275, s. 517.301, s. 517.311, or s. 517.312, or any rule or order issued pursuant to such sections, shall be deposited in the Legal Affairs Revolving Trust Fund. The Legal Affairs Revolving Trust Fund may be used to investigate and enforce this section.

Reviser's note.—Amended to confirm an editorial insertion made to provide clarity.

Section 114. Subsection (5) of section 526.144, Florida Statutes, is repealed.

Reviser's note.—Repeals material requiring submittal of a report relating to the Florida Disaster Motor Fuel Supplier Program by March 1, 2007.

Section 115. Paragraph (d) of subsection (1) of section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.—

(1)

(d)~~1.~~ The system shall study the feasibility of the establishment or recognition of zones for the purpose of allowing excavation within such zones to be undertaken without notice to the system as now required by this chapter when such zones are:

1. ~~a.~~ In areas within which no underground facilities are located.

2. ~~b.~~ Where permanent markings, permit and mapping systems, and structural protection for underwater crossings are required or in place.

3. ~~c.~~ For previously marked utilities on construction of one- or two-family dwellings where the contractor remains in custody and control of the building site for the duration of the building permit.

~~2. The system shall report the results of the study to the Legislature on or before February 1, 2007, along with recommendations for further legislative action.~~

Reviser's note.—Amended to delete material that has served its purpose.

Section 116. Section 569.19, Florida Statutes, is amended to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, ~~starting with the year 1997,~~ on the progress of implementing the enforcement provisions of this chapter. This must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid license.

(3) The number of violations for selling tobacco products to persons under age 18, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 18 cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Reviser's note.—Amended to delete obsolete material.

Section 117. Section 576.092, Florida Statutes, is repealed.

Reviser's note.—Repeals a provision requiring submittal of a report by January 15, 2008, and providing for abolishment of the Consumer Fertilizer Task Force upon transmittal of the report.

Section 118. Subsection (6) of section 589.011, Florida Statutes, is amended to read:

589.011 Use of state forest lands; fees; rules.—

(6) The Division of Forestry may enter into contracts or agreements, with or without competitive bidding or procurement, to make available, on a fair, reasonable, and nondiscriminatory basis, property and other structures under division control for the placement of new facilities by any wireless provider of mobile service as defined in 47 U.S.C. s. 153(27) ~~153(n)~~ or 47 U.S.C. s. 332(d) or any telecommunications company as defined in s. 364.02 when it is determined to be practical and feasible to make such property or other structures available. The division may, without adopting a rule, charge a just, reasonable, and nondiscriminatory fee for the placement of the facilities, payable annually, based on the fair market value of space used by comparable communications facilities in the state. The division and a wireless provider or telecommunications company may negotiate the reduction or elimination of a fee in consideration of services provided to the division by the wireless provider or telecommunications company. All such fees collected by the division shall be deposited in the Incidental Trust Fund.

Reviser's note.—Amended to confirm an editorial substitution; 47 U.S.C. s. 153(27) defines the term "mobile service," and 47 U.S.C. s. 153(n) does not exist.

Section 119. Subsection (6) of section 624.91, Florida Statutes, as amended by section 13 of chapter 2009-113, Laws of Florida, is reenacted to read:

624.91 The Florida Healthy Kids Corporation Act.—

(6) BOARD OF DIRECTORS.—

(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors chaired by the Chief Financial Officer or her or his designee, and composed of 11 other members selected for 3-year terms of office as follows:

1. The Secretary of Health Care Administration, or his or her designee.

2. One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education.

3. One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society.

4. One member, appointed by the Governor, who represents the Children's Medical Services Program.

5. One member appointed by the Chief Financial Officer from among three members nominated by the Florida Hospital Association.

6. One member, appointed by the Governor, who is an expert on child health policy.

7. One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians.

8. One member, appointed by the Governor, who represents the state Medicaid program.

9. One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties.

10. The State Health Officer or her or his designee.

11. The Secretary of Children and Family Services, or his or her designee.

(b) A member of the board of directors may be removed by the official who appointed that member. The board shall appoint an executive director, who is responsible for other staff authorized by the board.

(c) Board members are entitled to receive, from funds of the corporation, reimbursement for per diem and travel expenses as provided by s. 112.061.

(d) There shall be no liability on the part of, and no cause of action shall arise against, any member of the board of directors, or its employees or agents, for any action they take in the performance of their powers and duties under this act.

Reviser's note.—Section 13, ch. 2009-113, Laws of Florida, amended subsection (6) without publishing paragraphs (b)-(d) of that subsection. Absent affirmative evidence of legislative intent to repeal paragraphs (b)-(d), subsection (6) is reenacted to confirm that the omission was not intended.

Section 120. Subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on such classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, shall be filed with the office under one of the following procedures except as provided in subparagraph 3.:

1. If the filing is made at least 90 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, then such filing shall be considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of

intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings shall not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with the provisions of subparagraph 1., such filing shall be made as soon as practicable, but no later than 30 days after the effective date, and shall be considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders portions of rates found to be excessive, as provided in paragraph (h).

3. For all property insurance filings made or submitted after January 25, 2007, but before December 31, 2010, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered to be property coverages.

(b) Upon receiving a rate filing, the office shall review the rate filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers shall calculate investment income attributable to such classes of insurance written in this state and the manner in which such investment income shall be used to calculate insurance rates. Such manner shall contemplate allowances for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office shall not disapprove a rate as excessive solely due to the insurer having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors which impact upon the frequency or severity of claims or upon expenses.

(c) In the case of fire insurance rates, consideration shall be given to the availability of water supplies and the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

(d) If conflagration or catastrophe hazards are given consideration by an insurer in its rates or rating plan, including surcharges and discounts, the insurer shall establish a reserve for that portion of the premium allocated to such hazard and shall maintain the premium in a catastrophe reserve. Any removal of such premiums from the reserve for purposes other than paying claims associated with a catastrophe or purchasing reinsurance for catastrophes shall be subject to approval of the office. Any ceding commission received by an insurer purchasing reinsurance for catastrophes shall be placed in the catastrophe reserve.

(e) After consideration of the rate factors provided in paragraphs (b), (c), and (d), a rate may be found by the office to be excessive, inadequate, or unfairly discriminatory based upon the following standards:

1. Rates shall be deemed excessive if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered.

2. Rates shall be deemed excessive if, among other things, the rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replenishment is attributable to investment losses.

3. Rates shall be deemed inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

4. A rating plan, including discounts, credits, or surcharges, shall be deemed unfairly discriminatory if it fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program adopted pursuant to s. 627.0625.

5. A rate shall be deemed inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed which exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks.

6. A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(f) In reviewing a rate filing, the office may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria enumerated in this section.

(g) The office may at any time review a rate, rating schedule, rating manual, or rate change; the pertinent records of the insurer; and market conditions. If the office finds on a preliminary basis that a rate may be excessive, inadequate, or unfairly discriminatory, the office shall initiate proceedings to disapprove the rate and shall so notify the insurer. However, the office may not disapprove as excessive any rate for which it has given final approval or which has been deemed approved for a period of 1 year after the effective date of the filing unless the office finds that a material misrepresentation or material error was made by the insurer or was contained in the filing. Upon being so notified, the insurer or rating organization shall, within 60 days, file with the office all information which, in the belief of the insurer or organization, proves the reasonableness, adequacy, and fairness of the rate or rate change. The office shall issue a notice of intent to approve or a notice of intent to disapprove pursuant to the procedures of paragraph (a) within 90 days after receipt of the insurer's initial response. In such instances and in any administrative proceeding relating to the legality of the rate, the insurer or rating organization shall carry the burden of proof by a preponderance of the evidence to show that the rate is not excessive, inadequate, or unfairly discriminatory. After the office notifies an insurer that a rate may be excessive, inadequate, or unfairly discriminatory, unless the office withdraws the notification, the insurer shall not alter the rate except to conform with the office's notice until the earlier of 120 days after the date the notification was provided or 180 days after the date of the implementation of the rate. The office may, subject to chapter 120, disapprove without the 60-day notification any rate increase filed by an

insurer within the prohibited time period or during the time that the legality of the increased rate is being contested.

(h) In the event the office finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the office shall issue an order of disapproval specifying that a new rate or rate schedule which responds to the findings of the office be filed by the insurer. The office shall further order, for any "use and file" filing made in accordance with subparagraph (a)2., that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified be returned to such policyholder in the form of a credit or refund. If the office finds that an insurer's rate or rate change is inadequate, the new rate or rate schedule filed with the office in response to such a finding shall be applicable only to new or renewal business of the insurer written on or after the effective date of the responsive filing.

(i) Except as otherwise specifically provided in this chapter, the office shall not prohibit any insurer, including any residual market plan or joint underwriting association, from paying acquisition costs based on the full amount of premium, as defined in s. 627.403, applicable to any policy, or prohibit any such insurer from including the full amount of acquisition costs in a rate filing.

(j) With respect to residential property insurance rate filings, the rate filing must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

(k)1. An insurer may make a separate filing limited solely to an adjustment of its rates for reinsurance or financing costs incurred in the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Temporary Increase in Coverage Limits (TICL) portion of the Florida Hurricane Catastrophe Fund including replacement reinsurance for the TICL reductions made pursuant to s. 215.555(17)(e); the actual cost paid due to the application of the TICL premium factor pursuant to s. 215.555(17)(f); and the actual cost paid due to the application of the cash build-up factor pursuant to s. 215.555(5)(b) if the insurer:

a. Elects to purchase financing products such as a liquidity instrument or line of credit, in which case the cost included in the filing for the liquidity instrument or line of credit may not result in a premium increase exceeding 3 percent for any individual policyholder. All costs contained in the filing may not result in an overall premium increase of more than 10 percent for any individual policyholder.

b. Includes in the filing a copy of all of its reinsurance, liquidity instrument, or line of credit contracts; proof of the billing or payment for the contracts; and the calculation upon which the proposed rate change is based demonstrates that the costs meet the criteria of this section and are not loaded for expenses or profit for the insurer making the filing.

c. Includes no other changes to its rates in the filing.

d. Has not implemented a rate increase within the 6 months immediately preceding the filing.

e. Does not file for a rate increase under any other paragraph within 6 months after making a filing under this paragraph.

f. That purchases reinsurance or financing products from an affiliated company in compliance with this paragraph does so only if the costs for such reinsurance or financing products are charged at or below charges made for comparable coverage by nonaffiliated reinsurers or financial entities making such coverage or financing products available in this state.

2. An insurer may only make one filing in any 12-month period under this paragraph.

3. An insurer that elects to implement a rate change under this paragraph must file its rate filing with the office at least 45 days before the effective date of the rate change. After an insurer submits a complete filing that meets all of the requirements of this paragraph, the office has 45 days after the date of the filing to review the rate filing and determine if the rate is excessive, inadequate, or unfairly discriminatory.

The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

Reviser's note.—Amended to confirm an editorial insertion made to improve clarity.

Section 121. Paragraph (cc) of subsection (6) of section 627.351, Florida Statutes, is repealed, and paragraph (b) of subsection (2) and paragraphs (b), (c), and (o) of subsection (6) of that section are amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage, which may include formation of an association for this purpose. As used in this subsection, the term "property insurance" means insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners' multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but

excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties. An applicant or policyholder is eligible for coverage only if an offer of coverage cannot be obtained by or for the applicant or policyholder from an admitted insurer at approved rates.

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct premiums; and similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

(II) Effective July 1, 2002, the association shall operate subject to the supervision and approval of a board of governors who are the same individuals that have been appointed by the Treasurer to serve on the board of governors of the Citizens Property Insurance Corporation.

(III) The plan of operation shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment of a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

(IV) A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

(V) There shall be no credits or relief from apportionment to a company for emergency assessments collected from its policyholders under sub-sub-subparagraph d.(III).

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or 15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

b. Assessments to pay deficits in the association under this subparagraph shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

c. The Legislature finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for paying regular assessments and collecting emergency assessments for any deficits of the association; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

d.(I) When the deficit incurred in a particular calendar year is 10 percent or less of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the deficit.

(II) When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-

sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(IV) Each member insurer's share of the total regular assessments under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) shall be in the proportion that the insurer's net direct premium for property insurance in this state, for the year preceding the assessment bears to the aggregate statewide net direct premium for property insurance of all member insurers, as reduced by any credits for voluntary writings for that year.

(V) If regular deficit assessments are made under sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by the Residential Property and Casualty Joint Underwriting Association under sub-subparagraph (6)(b)3.a. or sub-subparagraph (6)(b)3.b., the association shall levy upon the association's policyholders, as part of its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for property insurance for member insurers for the prior calendar year. Market equalization surcharges under this sub-sub-subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of defraying deficits of the association. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any other entity created pursuant to this subsection as

are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $20 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds $50 million after payment of available plan funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-sub-subparagraph 2.d.(III). The plan shall provide that, if the department determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-sub-subparagraph 2.d.(III).

4. The plan shall provide for the deferment, in whole or in part, of a regular assessment of a member insurer under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not for an emergency assessment collected from policyholders under sub-sub-subparagraph 2.d.(III), if, in the opinion of the commissioner, payment of such regular assessment would endanger or impair the solvency of the member insurer. In the event a regular assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

5.a. The plan of operation may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

b. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and not competitive with approved rates charged in the admitted voluntary market such that the association functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. The plan of operation shall provide a mechanism to assure that, beginning no later than January 1, 1999, the rates charged by the association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

c. The association shall provide for windstorm coverage on residential properties in limits up to $10 million for commercial lines residential risks and up to $1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above $10 million or a personal lines residential risk with limits above $1 million if coverage is not available in the authorized market. The association may write coverage above the limits specified in this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

d. The plan of operation must provide objective criteria and procedures, approved by the department, to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

(I) Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

(II) Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the association pursuant to such criteria and procedures must be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

e. If the risk accepts an offer of coverage through the market assistance program or through a mechanism established by the association, either before the policy is issued by the association or during the first 30 days of coverage by the association, and the producing agent who submitted the application to the association is not currently appointed by the insurer, the insurer shall:

(I) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

f. When the association enters into a contractual agreement for a take-out plan, the producing agent of record of the association policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(I) Pay to the producing agent of record of the association policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the association policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

6.a. The plan of operation may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, a partnership, a trust, a limited liability company, or a nonprofit mutual company which may be empowered, among other things, to borrow money by issuing bonds or by incurring other indebtedness and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan may authorize all actions necessary to facilitate the issuance of bonds, including the pledging of assessments or other revenues.

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2. ~~(6)(p)2.~~, in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The association shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

c. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness issued or incurred by the association or any other entity created under this subsection.

7. On such coverage, an agent's remuneration shall be that amount of money payable to the agent by the terms of his or her contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

8. Subject to approval by the department, the association may establish different eligibility requirements and operational procedures for any line or type of coverage for any specified eligible area or portion of an eligible area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the association. When coverage is

sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

9. Notwithstanding any other provision of law:

a. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the association created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the association under the laws of this state or any other applicable laws.

b. No such proceeding shall relieve the association of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

c. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, emergency assessments, market equalization or renewal surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of or after any such proceeding shall continue unaffected by such proceeding.

d. As used in this subsection, the term "financing documents" means any agreement, instrument, or other document now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation of the association related to such bonds or indebtedness.

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to

any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of directors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An authorized insurer's assessment liability shall begin on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and shall terminate 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for such policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide coverage for basic property perils on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on

January 1, 2002, and for such policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A high-risk account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and the corporation shall continue to offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the high-risk account. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there would be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who then obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the high-risk account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the high-risk account, the personal lines account, or the commercial lines account. The high-risk account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. When the financing obligations are no longer outstanding, in accordance with the terms of the corresponding financing documents, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with the requirement of this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or

to obtain approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan to consolidate the three separate accounts into a single account. ~~By February 1, 2007, the board shall submit a report to the Financial Services Commission, the President of the Senate, and the Speaker of the House of Representatives which includes an analysis of consolidating the accounts, the actions the board has taken to minimize the cost of carrying debt, and its recommendations for executing the most efficient plan.~~

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and of the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II) and shall have no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association shall have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and shall have no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. No part of the income of the corporation may inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., when the remaining projected deficit incurred in a particular calendar year is not greater than 6 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) ~~(p)~~ and assessable insureds.

b. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., when the remaining projected deficit incurred in a particular calendar year exceeds 6 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) ~~(p)~~ and on assessable insureds in an amount equal to the greater of 6 percent of the deficit or 6 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining deficit shall be recovered through emergency assessments under sub-subparagraph d.

c. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. shall be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. shall be paid as required by the corporation's plan of operation and paragraph (q) ~~(p)~~. Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

d. Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments under sub-subparagraph a. or sub-subparagraph b., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., as to the remaining projected deficit the board shall levy, after verification by the office, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessments so collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and shall be held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may,

at the discretion of the board of governors, be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and for all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q) ~~(p)~~, bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a., sub-subparagraph b., or subparagraph (q)1. ~~(p)1.~~ and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or other indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in the sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and shall report that information to the corporation in

a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and shall assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. If a deficit is incurred in any account in 2008 or thereafter, the board of governors shall levy a Citizens policyholder surcharge against all policyholders of the corporation for a 12-month period, which shall be collected at the time of issuance or renewal of a policy, as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit. Citizens policyholder surcharges under this sub-subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes. However, failure to pay such surcharges shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(c) The plan of operation of the corporation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which forms must be approved by the office prior to use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which coverage is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. that contain more restrictive coverage.

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance agreement, may not be altered by the inability of the other party to the agreement to pay its specified percentage of hurricane losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that neither the authorized insurer nor the corporation may be held responsible beyond its specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance

agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the quota share primary insurance agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of quota share agreements, pricing of quota share agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer shall be voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation shall have the power to borrow funds, by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to

effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. ~~(p)2.~~, in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation is authorized to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.a. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from different geographical areas of this state. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board of governors are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. Any board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer

and agent service levels in relationship to the voluntary market insurers writing similar coverage. The members of the advisory committee shall consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members must serve for 3-year terms and may serve for consecutive terms. The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, with regard to a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period, the policyholder remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who

submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, with regard to a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period, the policyholder remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the

corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison shall be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the

authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the high-risk account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant shall be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation shall make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that, if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no

longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the corporation. The notice shall also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the corporation. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the high-risk account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the high-risk account in 2006 or thereafter may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds pursuant to s. 627.3512, but the regular assessment must be paid in full within 12 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan shall provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. ~~(p)4.~~ However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide, by July 1, 2007, a premium payment plan option to its policyholders which allows at a minimum for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built prior to 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

(o) If coverage in an account is deactivated pursuant to paragraph (p) ~~(o)~~, coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from admitted carriers at their filed rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability of residential property insurance.

Reviser's note.—Paragraphs (2)(b) and (6)(b), (c), and (o) are amended to conform to the addition of a new paragraph (6)(f) by s. 4, ch. 2009-77, Laws of Florida. Paragraph (6)(b) is amended and paragraph (6)(cc) is repealed to delete references to reports that were due February 1, 2007.

Section 122. Paragraph (c) of subsection (5) of section 733.817, Florida Statutes, is amended to read:

733.817 Apportionment of estate taxes.—

(5) Except as provided above or as otherwise directed by the governing instrument, the net tax attributable to each interest shall be apportioned as follows:

(c) The net tax attributable to an interest in protected homestead shall be apportioned against the recipients of other interests in the estate or passing under any revocable trust in the following order:

1. Class I: Recipients of interests not disposed of by the decedent's will or revocable trust that are included in the measure of the federal estate tax.

2. Class II: Recipients of residuary devises and residuary interests that are included in the measure of the federal estate tax.

3. Class III: Recipients of nonresiduary devises and nonresiduary interests that are included in the measure of the federal estate tax.

The net tax apportioned to a class, if any, pursuant to this paragraph shall be apportioned among the recipients in the class in the proportion that the value of the interest of each bears to the total value of all interests included in that class.

Reviser's note.—Amended to conform to context.

Section 123. Paragraph (a) of subsection (1) of section 817.36, Florida Statutes, is amended to read:

817.36 Resale of tickets.—

(1) A person or entity that offers for resale or resells any ticket may charge only $1 above the admission price charged therefor by the original ticket seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are ~~, is~~ required to pay state, county, and city occupational license taxes.

Reviser's note.—Amended to confirm an editorial substitution made to improve clarity and correct sentence structure.

Section 124. Paragraph (a) of subsection (4) of section 921.002, Florida Statutes, is amended to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(4)(a) The Department of Corrections shall report on trends in sentencing practices and sentencing score thresholds and provide an analysis on the sentencing factors considered by the courts and shall submit this information to the Legislature by October 1 of each year~~, beginning in 1999~~.

Reviser's note.—Amended to delete language that has served its purpose.

Section 125. Subsection (11) of section 934.02, Florida Statutes, is amended to read:

934.02 Definitions.—As used in this chapter:

(11) "Communication common carrier" shall have the same meaning which is given the term "common carrier" in 47 U.S.C. s. 153(10) ~~153(h)~~.

Reviser's note.—Amended to confirm an editorial substitution; 47 U.S.C. s. 153(10) defines the term "common carrier," and 47 U.S.C. s. 153(h) does not exist.

Section 126. Paragraph (a) of subsection (7) of section 1002.335, Florida Statutes, is amended to read:

1002.335 Florida Schools of Excellence Commission.—

(7) COSPONSOR AGREEMENT.—

(a) Upon approval of a cosponsor, the commission and the cosponsor shall enter into an agreement that defines the cosponsor's rights and obligations and includes the following:

1. An explanation of the personnel, contractual and interagency relationships, and potential revenue sources referenced in the application as required in paragraph (6)(c).

2. Incorporation of the requirements of equal access for all students, including any plans to provide food service or transportation reasonably necessary to provide access to as many students as possible.

3. Incorporation of the requirement to serve low-income, low-performing, gifted, or underserved student populations.

4. An explanation of the academic and financial goals and expected outcomes for the cosponsor's charter schools and the method and plans by which they will be measured and achieved as referenced in the application.

5. The conflict-of-interest policies referenced in the application.

6. An explanation of the disposition of facilities and assets upon termination and dissolution of a charter school approved by the cosponsor.

7. A provision requiring the cosponsor to annually appear before the commission and provide a report as to the information provided pursuant to s. 1002.33(9)(k) ~~1002.33(9)(l)~~ for each of its charter schools.

8. A provision requiring that the cosponsor report the student enrollment in each of its sponsored charter schools to the district school board of the county in which the school is located.

9. A provision requiring that the cosponsor work with the commission to provide the necessary reports to the State Board of Education.

10. Any other reasonable terms deemed appropriate by the commission given the unique characteristics of the cosponsor.

Reviser's note.—Amended to conform to the redesignation of paragraphs within s. 1002.33(9) by s. 7, ch. 2009-214, Laws of Florida.

Section 127. Paragraph (c) of subsection (3) of section 1003.57, Florida Statutes, is amended to read:

1003.57 Exceptional students instruction.—

(3)

(c) Within 10 business days after receiving the notification, the receiving school district must review the student's individual educational plan (IEP) to determine if the student's IEP can be implemented by the receiving school district or by a provider or facility under contract with the receiving school district. The receiving school district shall:

1. Provide educational instruction to the student;

2. Contract with another provider or facility to provide the educational instruction;

3. Contract with the private residential care facility in which the student resides to provide the educational instruction; or

4. Decline to provide or contract for educational instruction.

If the receiving school district declines to provide or contract for the educational instruction, the school district in which the legal residence of the student is located shall provide or contract for the educational instruction to the student. The school district that provides educational instruction or contracts to provide educational instruction shall report the student for funding purposes pursuant <u>to</u> s. 1011.62.

The requirements of paragraphs (c) and (d) do not apply to written agreements among school districts which specify each school district's responsibility for providing and paying for educational services to an exceptional student in a residential care facility. However, each agreement must require a school district to review the student's IEP within 10 business days after receiving the notification required under paragraph (b).

Reviser's note.—Amended to confirm an editorial insertion made to provide clarity.

Section 128. <u>Paragraph (a) of subsection (2) and subsection (7) of section 1004.87, Florida Statutes, are repealed.</u>

Reviser's note.—Paragraph (2)(a) is repealed to delete material relating to appointment of initial members of the Florida College System Task Force on or before August 31, 2008, and holding of the first task force meeting on or before September 15, 2008. Subsection (7) is repealed to delete material relating to submittal of a report and recommendations by March 2, 2009.

Section 129. Subsection (6) of section 1011.71, Florida Statutes, is amended to read:

1011.71 District school tax.—

(6) Violations of the expenditure provisions in subsection (2) or subsection (5) ~~(4)~~ shall result in an equal dollar reduction in the Florida Education Finance Program (FEFP) funds for the violating district in the fiscal year following the audit citation.

Reviser's note.—Amended to conform to the redesignation of subsection (4) as subsection (5) by s. 33, ch. 2009-59, Laws of Florida.

Section 130. Subsection (2) of section 1011.73, Florida Statutes, is amended to read:

1011.73 District millage elections.—

(2) MILLAGE AUTHORIZED NOT TO EXCEED 4 YEARS.—The district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school district may approve an ad valorem tax millage as authorized under s. 1011.71(9) ~~1011.71(8)~~. Such election may be held at any time, except that not more than one such election shall be held during any 12-month period. Any millage so authorized shall be levied for a period not in excess of 4 years or until changed by another millage election, whichever is earlier. If any such election is invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held.

Reviser's note.—Amended to conform to the redesignation of subsections within s. 1011.71 by s. 33, ch. 2009-59, Laws of Florida.

Section 131. Subsection (1) of section 1013.45, Florida Statutes, is reenacted to read:

1013.45 Educational facilities contracting and construction techniques.

(1) Boards may employ procedures to contract for construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities, that will include, but not be limited to:

(a) Competitive bids.

(b) Design-build pursuant to s. 287.055.

(c) Selecting a construction management entity, pursuant to s. 255.103 or the process provided by s. 287.055, that would be responsible for all scheduling and coordination in both design and construction phases and is generally responsible for the successful, timely, and economical completion of the construction project. The construction management entity must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed, as required by law. At the option of the board, the construction management entity, after having been selected, may be required to offer a guaranteed maximum price or a guaranteed completion date; in which case, the construction management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold construction subcontracts. The criteria for selecting a construction management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction projects of similar size and complexity by methods of delivery other than construction management.

(d) Selecting a program management entity, pursuant to s. 255.103 or the process provided by s. 287.055, that would act as the agent of the board and would be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services. The program management entity must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed as required by law. The program management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the board, the program management entity, after having been selected, may be required to offer a guaranteed maximum price or a guaranteed completion date, in which case the program management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold design and construction subcontracts. The criteria for selecting a program management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction programs of similar size and complexity by methods of delivery other than program management.

(e) Day-labor contracts not exceeding $280,000 for construction, renovation, remodeling, or maintenance of existing facilities. Beginning January 2009, this amount shall be adjusted annually based upon changes in the Consumer Price Index.

Reviser's note.—Section 5, ch. 2009-227, Laws of Florida, amended subsection (1) without publishing paragraph (e). Absent affirmative evidence of legislative intent to repeal paragraph (e), subsection (1) is reenacted to confirm that the omission was not intended.

Section 132. This act shall take effect on the 60th day after adjournment sine die of the session of the Legislature in which enacted.

Approved by the Governor March 30, 2010.

Filed in Office Secretary of State March 30, 2010.