1976 SUMMARY OF GENERAL LEGISLATION

FLORIDA LEGISLATURE

REGULAR SESSION APRIL 6 - JUNE 4

DEMPSEY J. BARRON
President

DONALD L. TUCKER
Speaker

THE FLORIDA LEGISLATURE

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Representative John Ryals

Room 95, Holland Building
Tallahassee, Florida 32304
Telephone (904) 488-2194

August 20, 1976

Honorable Dempsey Barron
President, and Members of
the Senate

Honorable Donald Tucker
Speaker, and Members of
the House of Representatives

Gentlemen:

I am pleased to furnish you herewith the Summary of General Legislation, 1976, prepared under the supervision and coordination of the Division of Library Services, with the assistance of members of the legislative staff.

The information in these articles is presented so as to reflect generally the areas in which the legislature interest was centered during the session.

Sincerely,

Lew

Lew Brantley, Chairman
Joint Legislative Management Committee

DEMPSEY J. BARRON
President

DONALD L. TUCKER
Speaker

THE FLORIDA LEGISLATURE

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Senator Lew Brantley, *Chairman*
Senator Kenneth Plante
Senator Bob Saunders
Representative Dick Clark
Representative William James
Representative John Ryals

B. GENE BAKER, DIRECTOR
Room 2, Holland Building
Telephone (904) 488-2812

Room 12, Main Corridor, Capitol
Tallahassee, Florida 32304
Telephone (904) 488-7590

FOREWORD

This book highlights, within broad subject areas, the general laws enacted and the constitutional amendments proposed by the 1976 Regular Session of the Florida Legislature. Essentially, it is a revision of the preliminary summary articles mailed to Legislators and other interested persons in recent weeks.

Some of the more significant legislation passed by the 1976 Legislature include: a prohibition against age discrimination in state and local government employment; the Omnibus Nursing Home Reform Act; a law authorizing the substitution of generically equivalent drugs; establishment of a state water management policy; periodic legislative review of licensing and regulatory agencies; general revision of the Administrative Procedures Act; the Basic Skills Act in public education requiring testing at specific grade levels to determine mastery of essential educational skills; requirement that state agencies prepare an economic impact statement for each proposed administrative rule; the creation of a contractual relationship between prisoners and the state concerning confinement, parole and release; refinements of No-Fault Automobile Insurance and Medical Malpractice Insurance; and revision of statutes relating to condominiums and cooperative apartments.

Those offices, committees and individuals who initially prepared the articles are identified respectively with each article. This division is responsible for the final editing and organization of the material. In preparing the subject index to this SUMMARY OF GENERAL LEGISLATION, this office utilized the indexes prepared by the Legislative Information Division and the Division of Statutory Revision and Indexing.

B. Gene Baker

B. Gene Baker

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AGRICULTURE*

The regulatory authority of the Department of Agriculture and Consumer Services was expanded in the 1976 Legislature in the areas of forest protection; plant industry protection; milk processing plant inspections; definitions for fertilizer regulations; and certification of pesticide applicators. Other agriculture bills enacted into law provide for: higher indemnity rates for cattle required to be disposed of due to brucellosis; prompt payment to producers of livestock when sold to processing firms or other persons, corporations, associations or other legal entities; permitting liens to be placed on livestock by the seller; definitions of certain milk products; changes to strengthen the practice of veterinary medicine; and repeal of outdated statutes relating to hog cholera. Acts relating to the citrus industry include an indemnity program for exported grapefruit; establish boundaries for "Indian River" and "Interior" citrus; and upgrade statutes governing the Department of Citrus.

General Agriculture Regulatory Acts

Senate Bill 364 (Chapter 76-185) exempts retail dealers of Florida agricultural products from regulation by the Department of Agriculture and Consumer Services if their purchases do not exceed $1,000 during any peak month of a calendar year.

*Prepared by the Senate Committee on Agriculture

Senate Bill 502 (Chapter 76-136) requires authorization from the Division of Forestry in order to set fire to vegetative land clearing debris.

Under House Bill 3977 (Chapter 76-95), the Division of Plant Industry's powers to intercept and inspect all plants or plant products being moved into this state are broadened to include not only plants or plant material which are being transported but that which have been transported in violation of the rules of the Department of Agriculture and Consumer Services. This act also provides the more severe penalty of first degree misdemeanor for theft of nursery stock or for trespass upon a nursery during closing times without consent of owner; a penalty of third degree felony for persons importing citrus plants or propagative plant parts into the state without a permit from the Division of Plant Industry; and a first degree misdemeanor penalty for persons having such plants or plant parts in their possession.

Another measure, Senate Bill 559 (Chapter 76-189), writes into law the former departmental rule on permitting entry of citrus plants or propagative plant materials into the state. Application procedures and guidelines for obtaining permits are provided. This act declares that citrus plants, citrus plant products, or propagations therefrom, brought into the state unlawfully are contraband and shall be confiscated and destroyed.

Overlapping and duplicative inspections of milk processing plants by the Department of Health and Rehabilitative Services and the Department of Agriculture and Consumer Services are eliminated under Senate Bill 552 (Chapter 76-235). Full authority

rests with the Department of Agriculture and Consumer Services which is required to designate members of the Department who shall be certified by the U. S. Food and Drug Administration as state milk sanitation officers. The Florida Department of Health and Rehabilitative Services will be involved in inspecting milk processing plants only to the extent of cooperating with the Agriculture Department where health hazards exist. The Department of Agriculture and Consumer Services is given full authority to enforce the laws pertaining to milk production, processing and distribution. Chapter 502, Florida Statutes (as amended by this act), and all rules promulgated thereunder, shall supersede municipal and county regulations which are in conflict. Senate Bill 849 (Chapter 76-282) provides definitions for milk products not previously defined and amends current definitions to conform to revised U. S. Food and Drug Administration definitions. Dairy products required to be labeled for shelf-life are required to be labeled with more pronounced lettering; and "industry trade products" are defined as food products having the semblance of milk or a milk product, but which do not come within the definition of milk, a milk product, filled milk, or filled milk product.

Committee Substitute for House Bill 2272 (Chapter 76-35) clarifies, updates, changes and corrects the uses of certain existing language in the Florida Statutes relating to fertilizers and provides new definitions for the term "organic" and "specialty fertilizer." Mixed fertilizers containing less than 5% of the three basic elements (nitrogen, phosphoric acid and potash) may be guaranteed in other than whole percentages. The exemption

from separate registration of a fertilizer, when secondary plant nutrients or pesticides are added, does not apply to specialty fertilizers. The Department of Agriculture and Consumer Services is authorized to levy a penalty of $10 when a commercial fertilizer has been distributed without required labeling.

The latest date that applicators of restricted pesticides may apply pesticides without certified applicator's license issued by the Department of Agriculture and Consumer Services was extended until October 21, 1977, by Senate Bill 362 (Chapter 76-40). Several obsolete sections of the Pesticide Application Act of 1974 were repealed by this measure.

Livestock

The practice of veterinary medicine is refined to a higher degree of professionalism by Committee Substitute for House Bill 2255 (Chapter 76-14). The definitions of "graduate veterinarian", "preceptor" and "animal technican" are provided, and acupuncture is authorized as a method in the practice of veterinary medicine on animals. Stricter confidence of examinations administered by the State Board of Veterinary Medicine to an applicant for license to practice veterinary medicine in Florida is assured. The certificate of a holder of a faculty certificate shall automatically expire when the holder's relationship is terminated with the College of Veterinary Medicine. The fee for obtaining a temporary permit to practice veterinary medicine under a licensed doctor of veterinary medicine has been reduced to $25, not refundable. Other conditions for a temporary permit are provided. The application fee for examination to

obtain a license to practice veterinary medicine is raised to $100. Limitations are provided for the practice of a "preceptor" of veterinary medicine. The State Board of Veterinary Medicine is required to submit a report of its proceedings annually to the Governor and to the Florida Veterinary Medical Association.

The statutes relating to the purchase, sale or free distribution of hog cholera antiserum, virus, vaccine, or other hog cholera immunization agent by the Department of Agriculture and Consumer Services are repealed by House Bill 3976 (Chapter 76-65).

House Bill 2970 (Chapter 76-62) requires purchasers of cattle or hogs for slaughter to pay for such livestock on the day the transfer of possession occurs or as otherwise provided for "prompt" payment. If a purchaser artifically delays prompt payment to the seller, the purchaser is liable for additional charges for the delay. The existing "prompt payment" law with respect to livestock markets (Section 534.49, F. S.) is excluded from prompt payment provisions of this act. Any person, partnership, corporation, or other organization who sells livestock shall have a lien on such animal, its carcass, all products therefrom, and proceeds thereof to secure all or a part of its sale price. The lien shall not be enforceable against a purchaser of commingled carcasses or products of such animals without purchaser having actual knowledge of a lien.

House Bill 4030 (Chapter 76-206) doubles the indemnity payment to owners of cattle which are required to be condemned and destroyed due to brucellosis (Bang's disease) infection.

The rate of reimbursement is $50 for grade cattle and $100 for registered purebred cattle.

Citrus Industry

House Bill 2984 (Chapter 76-11) divides Section 601.60, F. S., "Issuance of dealers' licenses," into two subsections for clarification. It conforms the language to recent legislative changes in Section 601.55, F. S., to make clear that licenses are issued with a specific termination date, and provides for notification to the Department of Citrus of changes in ownership or management.

Senate Bill 356 (Chapter 76-134) provides authority to the Department of Citrus for preparation and dissemination of citrus information.

House Bill 2978 (Chapter 76-8) amends statutory definition of "citrus fruit" to clearly exclude citrus hybrids for which no specific standards have been established by the Department of Citrus from the regulatory provisions of the Florida Citrus Code.

Senate Bill 358 (Chapter 76-98) requires payment of citrus excise taxes to accompany each citrus handler's return and removes obsolete references regarding the use of advertising tax stamps.

House Bill 2981 (Chapter 76-9) clarifies and corrects existing language relating to the special marketing campaigns provided for in the Florida Citrus Code, and changes certain procedures for implementation; requires notices of hearings to be published in the Florida Administrative Weekly; and provides

for the confidentiality of competitive information as may be necessary to administer and enforce any plan implemented under the act.

House Bill 2982 (Chapter 76-10) clarifies existing grounds and creates additional grounds for disapproval of a citrus fruit dealers license application.

House Bill 2983 (Chapter 76-25) makes Dealer and Agent registration fees payable per shipping season or portion thereof covered by the license instead of each calendar year.

House Bill 3980 (Chapter 76-87) creates a new section under the Citrus Code dividing the state into two production areas; defining "Interior" and "Indian River" production areas; and prohibiting improper area identification of citrus fruit being grown in these two areas unless specifically provided by a final court order resulting from legal proceedings instituted prior to July 1, 1976.

House Bill 4096 (Chapter 76-129) creates the "Offshore Export Grapefruit Indemnity Act." Provides for a referendum to determine if all grapefruit growers in the state should be taxed at a maximum rate of 2¢ per box for a 5-year period, beginning December 1, 1976, to indemnify fresh grapefruit exporters against losses which might occur due to actions by foreign governments.

Enactments on inspection and permit regulations covering the importation of citrus plant stock and propagative parts are discussed above in General Agriculture Regulatory Acts.

APPROPRIATIONS

The improvement in the national economic picture over the past year is reflected in Florida by a "shortfall" of $42.5 million for Fiscal 1976 compared with $232.2 million for Fiscal 1975. As in 1974-75, the Administration Commission (Governor and Cabinet) utilized the Working Capital Fund and mandatory reserves to prevent a deficit from developing.

Legislative appropriations for the Fiscal Year ending June 30, 1977, total $5,155,388,221 of which $4,991,290,995, adjusted to delete vetoed items, is contained in the General Appropriations Act, Conference Committee Report for House Bill 3500 (Chapter 76-285). The major categories of funds in this act are: General Revenue, $2,427,530,432; Federal Revenue Sharing, $69,200,000; Trust, $2,494,560,563.

The adequacy of educational funding was one of the most hotly debated issues of the 1976 Session. While the education function will receive 61.2% of total appropriations for the coming fiscal year compared with 63.6% last year, actual dollars are increased by $58,468,887 to total $1,527,734,970. Monies for education and health and rehabilitative activities account for 82.1% of all appropriations.

The remaining pages in this article are excerpted from Fiscal Analysis in Brief; Based on 1976 Legislation, issued jointly by the Senate Ways and Means Committee and the House Appropriations Committee, and present a more complete picture of programmed spending for the coming fiscal year.

SUMMARY OF 1976 APPROPRIATIONS

	General Revenue Fund	Fed. Revenue Sharing Fund	Trust Funds	Total
	$	$	$	$
General Appropriations Act	2,428,162,211	69,200,000	2,494,752,563	4,992,114,774
Less Items Vetoed	(631,779)		(192,000)	(823,779)
Gen. Appropriations Act (Adjusted)	2,427,530,432	69,200,000	2,494,560,563	4,991,290,995
Higher Education Capital Outlay			161,100,000	161,100,000
Claims Bills (Excluding those from Local Funds)	123,443		1,036,598	1,160,041
Other Special Acts	732,185		1,105,000	1,837,185
Total Appropriations Act	$2,428,386,060	$ 69,200,000	$2,657,802,161	$5,155,388,221

NOTE: * Includes $2,419,538,114 appropriated from the General Revenue Fund and $8,847,946 from Working Capital Fund.

GENERAL REVENUE, WORKING CAPITAL AND FEDERAL REVENUE SHARING FUNDS SUMMARY OF 1976 APPROPRIATIONS

Purpose	General Approp. Act Amount $	Spc. Approp. Acts Amount $	Total Appropriations Amount $	% of Total
Operations				
Education	1,527,734,970		1,527,734,970	61.2
Health & Rehab. Svcs.	522,772,345	125,000	522,897,345	20.9
Criminal Justice	193,782,766		193,782,766	7.8
Natural Resource & Environment	43,380,668	100,000	43,480,668	1.7
Legislative Branch	27,847,061		27,847,061	1.1
All Other Agencies	104,282,117	507,185	104,789,302	4.2
Fixed Capital Outlay	76,930,505		76,930,505	3.1
Claims Bills		123,443	123,443	0.0
Total Adjusted Appro.	$ 2,496,730,432	$ 855,628**	$2,497,586,060*	100.0%
Plus: Items Vetoed	631,779			
Total - Conference Report (HB 3500)	$ 2,497,362,211			

NOTE: * Includes $2,419,538,114 from General Revenue Fund, $69,200,000 from the Federal Revenue Sharing Fund, and $8,847,946 from the Working Capital Fund.

** Excludes duplicate appropriations. (Section (03) Item 4B)

AVAILABLE FUNDS AND APPROPRIATIONS, 1975-76 and 1976-77
GENERAL REVENUE, WORKING CAPITAL, FEDERAL REVENUE SHARING FUNDS

	General Revenue Fund	Working Capital Fund	Federal Revenue Sharing	Total All Funds
Funds Available 1975-76	$	$	$	$
Balance Forward 7-1-75	0.0	12.6	4.3	16.9
Reverted 7-1-75 By Chapter 75-280	20.7			20.7
Midyear Reversions 12-31-75	1.4			1.4
Fixed Capital Outlay Reversions 4-1-76	4.0			4.0
Repayments of Sewage Treatment Loans	31.0			31.0
Coastal Protection TF Repayment	6.6			6.6
Estimated Revenues (Jan Revision)	2,125.0		70.7	2,195.7
End of Year Adjustments to Estimates	7.0			7.0
Transfer From Working Fund	11.4	(11.4)		0.0
SB 892*- Reversions of FCO	1.1			1.1
Total Available 1975-76	2,208.2	1.2	75.0	2,284.4
Appropriated 1975-76				
Operations	2,196.0	1.2	75.0	2,272.2
Fixed Capital Outlay	28.8			28.8
Special Acts	3.2			3.2
Offender Rehab. & Gen. Serv Supp.	7.7			7.7
Mandatory Reserves	(44.6)			(44.6)
Total Adjusted Appropriations	2,191.1	1.2	75.0	2,267.3
Funds Available 1976-77				
Balance Forward 7-1-76	17.1	0.0	0.0	17.1
Reversions 7-1-76	6.5			6.5
Transfer to Working Capital Fund	(23.6)	23.6		0.0
Estimated Revenues (Jan. 1976 Est.)	2,312.6		69.2	2,381.8
Midyear Reversions 12-31-76	1.2			1.2
Motor Vehicle License Speedup	44.4			44.4
Repayment of Sewage Treatment Loans	42.0			42.0
Legislative Changes	32.9			32.9
Coastal Protection	1.9			1.9
Total Available 1976-77	2,435.0	23.6	69.2	2,527.8
Appropriated 1976-77				
Operations	2,341.9	8.8	69.2	2,420.4
Fixed Captial Outlay	76.9			76.9
Special Acts	.6			.6
Claims	.1			.1
Total Appropriated	2,419.5	8.8	69.2	2,497.5
Unappropriated Estimate	$ 15.5	$ 14.8	$ 0.0	$ 30.3

*Chapter 76-290

OTHER SPECIAL APPROPRIATIONS ACTS, 1976

Chapter No.	Bill Number	SUBJECT	General Revenue $	Trust Funds $
76-290	SB 892	Offender Rehabilitation Supplemental (1975-76)	6,535,793*	
76-194	SB 1008	Mental Health - Involuntary Hospitalization	478,000++	
76-216	SB 1015	Lake Okeechobee Fish Tagging & Harvesting Program		130,000
76-201	HB 3140 (CS)	Nursing Home Reform Act of 1976	125,000	125,000
76-113	HB 3719 (CS)	Restoration of Kissimmee River Valley & Taylor Creek	100,000	
76-291	HB 3994	Reimbursement for Special Elections - Broward & Dade County	111,185+	
76-129	HB 4096	Grapefruit Offshore Export Indemnity Program		850,000
76-292	HB 4119	General Services Supplemental (1975-76)	1,131,842	
76-280	HB 4190 (CS)	Education Capital Outlay Projects		161,100,000
76-228	HB 2710	State Retirement	396,000	
	TOTALS		$ 8,877,820**	$162,205,000

NOTES:

* The appropriation in SB 892 (Chapter 76-290) is contingent on the reversion prior to July 1, 1976, of $1,110,000 in fixed capital outlay projects.

+ Double appropriations HB 3500 (Chapter 76-285) - Line Item 1054A - Vetoed by Governor

++ Double appropriations HB 3500 (Chapter 76-285) - Section (03) Line Item 4B

** The $8,877,820 of general revenue appropriated in Special Acts includes; $589,185 of double appropriations, $7,667,635 of supplemental appropriations for 1975-76 and $621,000 of appropriations for 1976-77.

GENERAL REVENUE FUND

Revenue Collections, 1974-75 to 1976-77
(In Millions)

SOURCE	Actual 1974-75	Estimated 1975-76	Estimated 1976-77	1976-77 Over/Under 1975-76
	$	$	$	%
Sales Tax	1,200.1	1,260.0	1,380.0	9.5
Beverage Tax & Licenses (a)	178.8	187.0	192.6	3.0
Corporation Income Tax	180.3	173.0	196.5	13.6
Motor Vehicle Licenses (b)	105.0	105.5	106.5	.9
Documentary Stamp Tax (c)	63.0	73.7	88.1	19.5
All Other (d)	359.9	325.8	348.9	7.1
Legislative Changes - 1976	-	-	32.9	-
Total - Net Revenue (d)	$2,087.1	$2,125.0	$2,345.5	10.4 %

NOTES:

(a) Excludes county and city portion of Beverage Licenses

(b) Excludes School Tag Fees & Mobile Home Licenses distributed to local governments.

(c) Excludes Documentary Surtax, which goes to the Land Acquisition Trust Fund.

(d) Tax refunds have been deducted.

MEASURES AFFECTING REVENUE, 1976-77

ESTIMATED INCREASES and (DECREASES)

Session Law	Bill Number	DESCRIPTION	General Revenue	Trust Fund
			$	$
		Veto Overrides		
76-2	HB 64	Special Alcoholic Beverage License	27,000	
76-7	SB 251 (CS)	Sales Tax Exemption-Motor Vehicle Sales to Non-Florida Residents	(1,500,000)	
76-6	SB 440	Sales Tax Exemption-Out-of-state Yacht Sales	(500,000)	
		Motor Vehicle Licenses		
76-135	SB 415	Marine Boat Trailer Dealer Tags	*	
76-137	SB 505	Motor Vehicle Dealer Tags on Inventory	*	
76-152	SB 1195	Indefinite License Plates to Trailers for Hire	*	
		Racing Tax		
76-24	HB 3143	Dog Racing In Lieu of Harness At Certain Tracks	1,000,000	
76-257	HB 4209	Quarter Horse Substitution	185,000	
VETOED	HB 3299 (CS)	Additional Charity Racing Day for Florida College of Vet Medicine		750,000
		Documentary Stamp Tax & Intangibles Tax		
76-199	HB 2038	Documentary Stamp Tax Commissions	(370,700)	(68,113)
76-130	HB 4108	Intangibles Tax - Rate of Levy for Obligations Secured by Personalty and realty	*	
76-32	SB 647	Intangibles Tax Situs Definition	(157,500)	(192,500)
		Other Taxes, Licenses & Fees		
76-265	HB 2003	Public Service Commission Fees		802,500
76-204	HB 3621	Registered Nurse License Charge		445,554
76-205	HB 4015	Road Tax & Certificate Fee-Disposition	(550,000)	550,000
76-74	SB 403	License Fee for Real Estate Salesmen		225,000
76-213	SB 678	Dental Hygienist License & Fees		118,000
76-216	SB 1015	Commerical Fishing Tags		111,500
76-67	SB 97,102, 208 (CS)	Hunting & Fishing License Exemption-Totally & Permanently Disabled		*
76-261	SB 804 (CS)	Interest on Extensions & Delinquent Tax Payments	13,200,000	
76-156	SB 1009	Fishing License Exemption-Cane Pole Fisherman		(450,000)
76-224	SB 1047	Public Monies Bill	17,500,000	
76-182	SB 1122	Permits for Commercial Fishing		18,500
76-120	SB 1194	L. P. Gas License		45,000
		Other Measures Affecting Revenue		
-	HB 4131**	Intangible Personal Property-Situs	(2,250,000)	(2,750,000)
-	HB 2728**	Corporate Income-Extension of Time	(100,000)	
76-285	HB 3500 (CCR)	Tax Auditors	3,200,000	
76-285	HB 3500 (CCR)	Fixed Capital Outlay - Interest	2,500,000	
76-285	HB 3500 (CCR)	Communication W/C Fund Advance	700,000	
TOTAL			$32,883,800	$ (394,559)

* Insignificant Fiscal Impact

** Revenues to the State will be lost by not passing these bills.

FIXED CAPITAL OUTLAY

EDUCATION

The Legislature also appropriated a total of $161,100,000 for fixed capital outlay projects for education from the utilities gross receipts tax and bond proceeds in CS/HB 4190* as follows:

1.	Division of Public Schools	$ 81,133,990 (1)
2.	Division of Community Colleges	27,554,940
3.	Division of Universities	22,962,450 (2)
4.	Division of Vocational Education	21,431,620
5.	Board of Trustees, Florida School for the Deaf and Blind	750,000
6.	Community Education Facilities:	
	a. South Florida Junior College	667,000
	b. Broward Community College	2,000,000
7.	Public Broadcasting Facilities:	
	a. WEDU, Tampa, Florida	2,250,000 (3)
	b. WJCT, Jacksonville, Florida	2,250,000 (3)
8.	New Capitol - Public Broadcasting Equipment	100,000

(1) Of the amount appropriated, $3,000,000 is to be allocated to those districts which provide multi-district programs for exceptional students and $50,000 is to be expended for the renovation of existing facilities to initiate a program in 1976-77 for students who are both deaf and blind.

(2) Of the amount appropriated, $2,630,665 is to be allocated to the University of West Florida for an educational research and development center.

(3) The Commissioner of Education is to approve building plans for the facilities to be constructed to assure that space is included in such plans for use by public schools, community colleges or universities.

Committee Substitute for House Bill 4190* also made the following major changes or additions to statutes related to the funding and construction of public educational facilities:

1. Requires the State Board of Education through the Office of Educational Facilities Construction, to develop a uniform, comparable, system for determining total fixed capital outlay needs, inventorying existing facilities, conducting utilization studies, projecting enrollments, and for any other procedure deemed appropriate in arriving at the amounts required to fund net unmet needs.

2. Requires that all requests from the various divisions of the Department of Education for educational facilities construction and fixed capital outlay needs be submitted as an integrated comprehensive request and directs the Commissioner of Education to include therein a report containing certain designated information, to include recommendations for the priority of expenditure of funds among the various levels of education with reasons for the recommended priorities.

3. Creates the Public Education Capital Outlay and Debt Service Trust Fund to provide for maximum use of cash available and to expedite the construction of authorized projects. Appropriates funds from various sources to the Trust Fund and added as additional sources student building and capital improvement fees, except those needed for debt service and reserve requirements, and all capital outlay funds previously appropriated and certified forward.

4. Appropriates from the trust fund all certifications forward to the fund and all previous allocations by the Board of Regents from student building and capital improvement fees.

5. Provides that the Office of Educational Facilities Management may authorize the various boards in each Division to enter into contracts for a period exceeding one year within amounts appropriated and budgeted for authorized projects, but such contracts are to be executory only for the value of services to be rendered or agreed to be paid for in the succeeding fiscal year.

*Chapter 76-280

Fixed Capital Outlay - EDUCATION (Continued)

6. Provides for adjustments to annual allocations to school districts within two years of the initial annual allocation.

7. Authorizes the Commissioner, within certain prescribed guidelines, to allocate funds for the construction of facilities for the cooperative use of two or more school districts.

8. Provides within the Public Education Capital Outlay and Debt Service Trust Fund a special facility construction account to be used to provide necessary construction funds to school districts that have urgent construction needs but lack sufficient resources or cannot reasonably anticipate sufficient resources for this purpose within five years from currently authorized sources of revenue. Establishes criteria for eligibility, approval and repayment in connection with such advance funding.

GENERAL GOVERNMENT

The Legislature provided $99,523,664 in appropriations for fixed capital outlay for FY 1976-77. These projects are widespread over the State, and for the benefit of many agencies and programs. For details, the reader should review Section 2 and 3 of House Bill 3500*, the General Appropriations Act. Following are major highlights of the fixed capital outlay appropriation:

Health and Rehabilitative Services:

Regional Juvenile Detention Center - Jacksonville	$ 2,975,000
Regional Juvenile Detention Denter - West Palm Beach	1,366,200
Regional Juvenile Detention Center - Orlando	1,366,200
Regional Juvenile Detention Center - Tampa	1,000,000
Regional Juvenile Detention Center Planning	212,600
Improvements Forensic Facility - South Florida State Hospital	478,000
Planning and Land Acquisition, New 500 Bed Forensic Facility For South Florida	1,500,000
Renovation, Santa Rosa County Hospital	1,206,200
Renovation, W. T. Edwards District Office Facility	713,288
Security Fencing For Youth Development Center, Lancaster; and Florida School For Boys, Okeechobee	396,250
Port St. Joe Park - Phase IV	143,400
Other Institutional Repairs, Renovations and Minor Additions	4,151,500
TOTAL	$ 15,508,638

Offender Rehabilitation

The appropriations act provided $53,085,375 to build 5,826 beds at maximum capacity. The major items of fixed capital outlay are as follows:

New Institution for 900 Inmates--Polk Co.	$ 7,210,000
New Institution for 900 Inmates--Baker Co.	6,700,000
New Institution for 900 Inmates--Dade Co.	6,700,000
Additional Facilities for 375 Inmates--Lawtey	3,152,057
Additional Facilities for 400 Inmates--Cross City	3,500,000
Converting and Expanding Road Prisons and Forestry Camp for Additional 1323 Inmates	13,085,563
Expansion of Apalachee and Glades Correctional Institutions for Additional 772 Inmates	6,679,655
Community Correction Centers/Jacksonville, Miami, Ft. Myers - 256 Inmates	1,725,000
Additional Facilities for Expanding an Industries Program	3,000,000
Other Institutional Repairs, Renovations, Minor Additions	1,333,100
TOTAL	$53,085,375

*Chapter 76-285

Fixed Capital Outlay - GENERAL GOVERNMENT (Continued)

Natural Resources	
Land Acquisition & Development for Parks	$18,040,839
Game & Fresh Water Fish Land & Facilities	1,404,400
Transportation	
Interstate System Matching	$ 8,000,000
Maintenance Facilities - South Miami and Pensacola	1,458,140
Other	
Miscellaneous Smaller Projects for Various Agencies	$ 2,026,272

BUSINESS REGULATION* AND COMMERCE**

FINANCIAL INSTITUTIONS

Banks and Trust Companies

Senate Bill 494 (Chapter 76-41) provides that when a trust service office is opened by a trust company at the location of a bank which has a trust department, the trust department may continue its operations. Former law stated that the established trust service office would automatically succeed to all the fiduciary powers, rights and duties of the trust department. Any substitution of fiduciaries made under former law prior to the effective date of this act (May 31, 1976) will not be affected.

House Bill 3190 (Chapter 76-37) permits one trust company to engage services of another trust company to perform part or all of its fiduciary duties. This type of relationship is permitted for the administration of estates under the Florida Probate Code in Section 733.612(19), Florida Statutes. This legislation utilizes most of the wording from that section of the Probate Code. A similar provision regarding trusts is contained in Section 737.402(2)(y), F. S. In addition, this law provides a mechanism for the transfer of fiduciary relationships between trust companies. Due process is accorded all interested persons in generally the same manner due process would be accorded the substitution of personal representatives under the new Probate Code. This legislation provides a definitive mechanism by which such transfers

*Prepared by House Committee on Regulated Industries & Licensing
**Prepared by House Committee on Commerce

may be made, and permits an orderly transfer of accounts from trust departments to a trust service office established pursuant to Section 659.061, F. S.

Senate Bill 711 (Chapter 76-142) permits industrial savings banks to branch on a county-wide basis, effective January 1, 1977. They are permitted to branch in the same manner as commercial banks. Specifically, the act authorizes the establishment of as many as two branch banks per calendar year within the county in which the parent bank, as defined, is located, and also authorizes branch banks by merger with other banks within the county. The act requires a showing of public convenience and necessity for the establishment of a branch bank upon application to and approval by the Department of Banking and Finance. Deferral of action for no more than six months by the Department on a branch application is required when there is a pending application for a bank to be located within one mile of the proposed branch. The merger of banks within the same county is permitted.

Senate Bill 1344 (Chapter 76-154) authorizes a state bank or trust company to invest up to 5 percent of its "unimpaired capital and surplus" in bonds or other evidences of indebtedness of the State of Israel, and state savings and loan associations are allowed to invest up to 5 percent of the "net worth" of the association for the same purpose.

House Bill 2991 (Chapter 76-125) raises from $5,000 to $15,000, the amount of money a state-chartered bank may loan at an interest rate of 6% discount. (11.58% Annual Percentage Rate for a 12 month loan)

House Bill 4124 (Chapter 76-177) is a partial modernization

of the Florida Banking Code. It amends the existing code in the following manner: (1) Applications to acquire a controlling interest in a state-chartered bank and applications for branches are included in the present fee structure. Also, a fee is provided for the processing of applications for mergers, consolidations, or purchase of assets and assumption of liabilities. (2) The requirement for directors' qualifying shares is deleted. (3) The word "previously" is removed from the clause "debt previously contracted" to broaden the financing capability of persons owning bank stock, and to allow creditors to take a security interest in state bank stocks simultaneously with the funding of a loan. (4) Changes from mandatory to permissive the requirement that the Department of Banking and Finance provide for security margin requirements and deletes the requirement that a list of acceptable security for loans be published by the Department. (5) Makes it a crime for any person to willfully violate the Banking Code, or for any officer, director or employee of a state bank to knowingly provide the Department with false information.

House Bill 4161 (Chapter 76-178) also is a partial revamp of the Florida Banking Code. The existing code is amended in the following manner: (1) State banks are given "competitive equality" with national banks by being authorized to exercise any power accorded to a national bank with the approval of the Department of Banking and Finance, except in the area of branch banking and the electronic transfer of funds. (2) The "laundry list" of permissible activities which can be performed at bank remote facilities is deleted. (3) A requirement is added that any person acquiring a "controlling interest" in a state-chartered bank shall apply to the Department of Banking and Finance for permission to make such

an acquisition. Controlling interest is defined as (a) owning or voting 25% or more of any class of voting securities of a bank, or (b) controlling the election of a majority of the directors or trustees of a bank. Ownership or control of shares in a fiduciary capacity is excluded from the definition. (4) Cease and desist and officer removal powers are given to the Department. The basic requirements of the Administrative Procedures Act must be followed. (5) Civil administrative fines may be imposed by the Department for violation of a cease and desist order.

Industrial Development Corporations

Senate Bill 858 (Chapter 76-77) prohibits the total obligations of a Florida Industrial Development Corporation from exceeding the greater of (a) twenty times the aggregate of the current amount paid in on the outstanding capital stock of the corporation and retained earnings, or (b) twenty times the current amount paid in on the outstanding capital stock of the corporation. The act also provides no member (financial institution) may loan more than $250,000 to a corporation at any one time.

Credit Unions

Senate Bill 613 (Chapter 76-119) provides for fees collected from state-chartered credit unions to be paid into a Special Bank and Trust Company Trust Fund under the Department of Banking and Finance instead of the Regulatory Trust Fund of the Division of Finance of the Department of Banking and Finance. This act reflects the internal reorganization of the Department of Banking and Finance placing regulation of credit unions under the Division of Banking.

Senate Bill 609 (Chapter 76-192) allows a state-chartered credit union to invest its surplus funds in shares and other savings accounts of the Southeast Corporate Federal Credit Union.

Consumer Finance Companies

Senate Bill 785 (Chapter 76-180) amends Section 516.031, F. S. (Consumer Finance Act), to change the amount on which a licensee is permitted to charge an interest rate of 30% per $100 per annum computed on the first $500 instead of the first $300, and the amount on which a licensee can charge 24% per $100 per annum on that part of the principal amount is changed from $300-$600 to $500-$1,000. Due to the above changes, the interest rate ceiling of 16% applies only on loans above $1,000. Subsections 516.031(2) and (3), F. S., are repealed to eliminate the provisions allowing for delinquent fees and their waiver.

Usury

Committee Substitute for House Bill 2891 (Chapter 76-124) exempts from certain provisions of the general usury law loans made pursuant to a commitment to insure by the Federal Housing Administration or guaranty by the Veterans Administration. (Under present law the interest rate ceiling on loans to individuals is 10% simple interest.) Also included in this exemption are loans made pursuant to a binding offer or sale made by a financial institution, at the time of origination of a loan, to certain federal agencies. The act provides for prospective application only.

PROFESSIONS AND OCCUPATIONS GENERALLY

The "Regulatory Reform Act of 1976" was created by

Committee Substitute for Senate Bill 1156 (Chapter 76-168) which was the result of the 1976 Legislature's attempt to provide a legislative review of programs which license or regulate the entry into a profession, occupation, business, industry or other endeavor. The legislative intent provides that no such endeavor should be subject to the state's regulatory power unless such regulation is necessary to protect the public health, safety and welfare, and that such regulation shall not be in a manner that will adversely affect the competitive market. The act further provides for repeal on a six year rotating schedule of certain sections of the statutes that require the licensure or regulation of specified professions, occupations or business. Excepted are the laws regulating dog racing, horse racing, frontons and alcoholic beverages. This phasing out of unnecessary regulation has been popularly referred to as the "sunset law," and Florida has adopted at least a partial "sunset" approach to its regulatory bureaucracy.

A joint legislative committee is created to establish procedures for implementing the act, and criteria are provided for reviewing the programs and functions to determine the economic effects of continued regulation. Any program or function scheduled for termination may, upon favorable review, be extended for any length of time not to exceed six years at which point the Legislature will again review the program and reestablish or modify it. An unfavorable review will result in the abolition of all personnel positions incident to the program and the reversion of all funds either to the fund from which the appropriation was made or to the General Revenue Fund. All new regulatory laws enacted subsequent to this act are to be subject to these same provisions. Continuation of causes of action is provided for and shall be prosecuted or

defended in the name of the state by the Department of Legal Affairs.

House Bill 1445 (Chapter 76-28) sets out legislative intent and criteria for the creation by the Legislature of any new examining and licensing boards within the Department of Professional and Occupational Regulation. It requires that professions or occupations shall be regulated only for the purpose of preservation of the health, safety, and welfare of the public.

New boards would be created only upon showing that: (1) the unregulated practice of a profession or occupation would harm or endanger the health, safety and welfare of the public and that the potential for harm would outweigh the anti-competitive impact resulting from licensing; (2) there must be no other statute or local or federal legal means available for this protection; and (3) less restrictive means of regulation are not available. In addition, the law provides that present regulatory boards under Section 20.30, Florida Statutes, shall not adopt rules which set undue, restrictive, and extraordinary standards that would bar an individual from practicing a profession or occupation.

Senate Bill 122 (Chapter 76-161) directs the Department of Professional and Occupational Regulation to implement a staggered biennial renewal plan for all licenses issued by its licensing boards and commissions. This act is to be effective beginning July 1, 1977.

REGULATION OF PROFESSIONS

Physicians

House Bill 1899 (Chapter 76-219) authorizes the granting of limited licenses to practice in Florida to retired physicians

and osteopaths by appropriate licensing boards subject to procedures and restrictions set out in the act. Such practice is to be limited to employment, by public agencies or institutions or nonprofit agencies or institutions as defined by reference to the Internal Revenue Code, in areas of critical medical need or medically underserved areas defined by reference to the United States Code. Probationary supervision prior to licensing is provided in the event the applicant has not practiced for more than five years. The director of each full-time health unit is authorized to supervise the limited practitioner if the director becomes aware of questionable actions on the part of the practitioner. Annual review of the practice of limited licensees is required, and failure to comply with restrictions of the act is grounds for revocation of license.

House Bill 4187 (Chapter 76-157) reduces the prior practice time requirement to eight years for any physician holding a valid license from another state to be temporarily certified to practice in Florida communities where there is a critical need for physicians and a population of less than 7,500.

Podiatry

House Bill 2237 (Chapter 76-23) requires the Board of Podiatry Examiners to establish and develop residency programs in Florida hospitals through the promulgation of rules subject to conditions set forth in the act.

Nursing

House Bill 3621 (Chapter 76-204) increases various license and renewal fees for registered professional nurses and licensed practical nurses. An inactive status fee is created,

and the fee charged by the Florida State Board of Nursing for a statement or endorsement of licensure to another jurisdiction is doubled. Certification in advanced or specialized nursing practice is instituted with a non-refundable fee of $50, and provision is made for the renewal or reinstatement of such certification. Any person practicing as an advanced or specialized nurse practitioner with a lapsed certificate is guilty of a first degree misdemeanor.

Dentistry

Senate Bill 910 (Chapter 76-193) increases the Florida State Board of Dentistry from seven to eight members by adding a dental hygienist who is to serve at large from the state and who must have been in Florida practice at least five years prior to appointment by the Governor. Selection is to be made from two nominees submitted by the Florida Dental Hygienists' Association. The dental hygienist member is to vote on all matters not directly relating to the examination or licensing of dentists. Board member terms are to run for four years beginning February 1 of the year in which each appointment is made.

Senate Bill 678 (Chapter 76-213) alters the fee schedule of the State Board of Dentistry. The license application fee for dental hygienist is increased to $50 and the license renewal fee to $20. Examination fees for dentists and dental hygienists are raised to $75 and $35 respectively and the charge for the issuance of any duplicate license is made $25. The fee for duplicating any other certificate is increased from $1 to $2. The age requirement for applicants to practice dentistry is brought into conformance with the law removing disabilities of nonage for persons 18 years

and older. The provision that the executive director of the State Board of Dentistry be a graduate of an accredited college of dentistry is deleted.

Funeral Directors and Embalmers

Senate Bill 573 (Chapter 76-253) generally updates the language of Chapter 470, Florida Statutes, which regulates funeral directing and embalming by changing statutory provisions relating to: embalmer application, examination, licensing, license revocation or suspension, intern training and record keeping, and fees received by the State Board of Funeral Directors and Embalmers. Community College programs in funeral directing and embalming, approved by the American Board of Funeral Service Education, may be substituted for two years of practical training and instruction as an intern embalmer.

Veterinary Medicine

Senate Bill 1102 (Chapter 76-108) requires that any person desiring to practice veterinary medicine in Florida furnish proof of passage of the examination prepared by the National Board of Veterinary Medical Examiners when applying for a license or license examination.

REGULATION OF OCCUPATIONS

Real Estate

House Bill 2666 (Chapter 76-84) provides that 75 percent of any advance fees collected by a real estate agent or broker from a client (principal) be placed in a trust account. Procedures are set out for the withdrawal and expenditure of such fees and their return to the principal in the event no sale takes place

within the time specified in the contract, or within 18 months of the contract date. The Florida Real Estate Commission is granted authority to promulgate necessary accounting rules, and provision is made for quarterly accountings to the principal. In addition to a misdemeanor penalty, a principal may recover treble damages and reasonable attorney's fees for misapplied funds.

Senate Bill 403 (Chapter 76-74) establishes the "Florida Real Estate Recovery Fund Act." This fund is provided for the purpose of reimbursement to those individuals who suffer monetary damages because of a transaction involving the sale of real property by any licensed real estate broker or salesman, for any of the following reasons: (a) violation of the Florida Real Estate License Law, or (b) obtaining money or property by fraud, misrepresentation, deceit, false pretenses, artifice, trickery, or by any other act which would constitute any violation prescribed in Section 475.25, Florida Statutes.

The recovery fund will consist of $250,000 to be transferred from the Real Estate Trust Fund, with each broker assessed $3.50 per annum and each salesman $1.50 per annum in addition to the regular license fees. These special fees are to be discontinued in the event the recovery fund exceeds $450,000, and reimposed in the event this fund totals less than $250,000. Conditions for recovery are enumerated as well as conditions barring recovery. Procedures for payment from the fund are stipulated as are limitations on the amounts to be paid.

The Real Estate Commission is empowered to make necessary rules and regulations, and any violation of the provisions of the act is made a second degree misdemeanor.

Cosmetology

Committee Substitute for House Bill 1645 (Chapter 76-57) substitutes the term "specialist" for the terms "manicurist and pedicurist" in the occupations requiring registration by the State Board of Cosmetology. The act further provides for the licensing of cosmetology salons by the Board; requires supervision of such by a registered master cosmetologist; and fixes a five-to-one ratio of cosmetologists to master cosmetologists. Specialist salons are also required to be licensed.

Chapter terms are redefined and qualifications as to various categories of "specialists" are revised. The Board is given authority to approve courses of training for "cosmetic demonstrative specialists," and permits anyone practicing as such on the effective date of the act (October 1, 1976) to be registered within six months without examination or further proof of training.

Opticians

Senate Bill 24 (Chapter 76-5) deletes the statutory prohibition against directly or indirectly advertising price or credit terms on eyeglass lens, frames, complete glasses, or optical dispensing service. Moreover, the State Board of Dispensing Opticians is barred from making any rule or policy to prevent dispensing opticians from offering discounts and advertising price and credit terms.

Land Sales

Committee Substitute for House Bill 881 (Chapter 76-262) substantially amends Chapter 478, Florida Statutes, the Uniform Land Sales Act, provides a statement of legislative intent, and creates a seven-member advisory council to advise the Division of Land Sales and Condominiums of the Department of Business Regulation and to arbitrate controversies between customers and developers. In addition, the advisory council may recommend administrative action against registrants who violate the law. The act provides for the establishment of executive offices of the Division in Tallahassee, with branch offices in southeastern Florida and the Tampa Bay area.

Purchasers of subdivided property are given an option to inspect the property on a guided personal inspection by the subdivider within a six months period after a telephone solicitation sale, and may, if not satisfied with the property, request a refund of monies notwithstanding the execution of an agreement to purchase. The definition "disposition" of property, has been broadened to include resale of property.

The Division of Land Sales and Condominiums has been given the authority to adopt and require uniform accounting reports from each registrant of subdivided land. Trust and escrow accounts are required of each registrant with the Division for payments of refunds under circumstances set forth in the act, and registered subdividers are required to submit a monthly statement to the Division indicating the status of such accounts. In addition, they must submit quarterly reports to the Division as proof of

timely payments for the satisfaction of any lien, mortgage, or other encumbrance upon their subdivided lands or any portion thereof.

Additional information is required of registrants in an application with the Division. This will include the home address of every officer and director of the corporation, the name and address of every shareholder holding a 10 percent or larger interest in the corporation, and a certified statement of the most recently assessed value of the property which is to be subdivided. A subdivider is required to furnish the purchaser an agreement for deed in a recordable form; each subdivider shall furnish the Division with a financial statement prepared by a certified public accountant within five months after the end of each fiscal year; and civil penalties for violations of the land sales law have been increased from $1,000 for each offense to $5,000 per offense.

The Division is given the authority to issue an order to show cause, providing for a hearing within seven days, if it finds that another state or federal agency has suspended or revoked a land sales registration; and a purchaser may recover reasonable legal fees and costs for civil remedy based upon an affidavit filed with the trial judge.

Offers or dispositions of evidences of indebtedness, secured by a mortgage or deed of trust or real estate, have been removed from exemptions of the laws of the chapter; and exemption advisory opinions may be sought of and given by the Division to any registrant, provided, however that such advisory opinion shall not bind the Division in any future actions.

Public offering statements by registrants shall add information relating to any land use moratorium of 180 days or longer duration, when such moratorium imposes a restriction of the development of the property offered for sale. In addition, the offering statement must include a recordable agreement for deed. Dispositions of interests in subdivisions through advertising, which involve indebtedness secured by a mortgage or deed of trust of real estate, must be registered with, and approved by the Division.

The act takes effect upon becoming a law (June 27, 1976) for the purposes of the Division adopting rules. All other purposes in the act take effect October 1, 1976, except for Section 6 of the act relating to the establishment of escrow and trust accounts, which takes effect July 1, 1976.

Condominiums and Cooperatives

The statute law with respect to condominiums and cooperative apartments, found in Chapter 711, Florida Statutes 1975, was revised and completely reorganized by House Bill 3639 (Chapter 76-222) into two new chapters: 718, Florida Statutes, entitled the "Condominium Act," and 719, Florida Statutes, entitled the "Cooperative Act," to take effect January 1, 1977. The act was prepared in response to a directive to the Law Revision Council to prepare a draft eliminating the repetitions and ambiguities in the existing law.

Both of the new chapters are divided into five parts and are comparable in their provisions, with the exception that Part I of each chapter sets forth particular provisions for the creation of each such type ownership. The most significant departures from the previous law include the following:

1. Common law condominiums may not be created in the future. Section 718.104, F. S., provides that every condominium created in Florida shall be pursuant to the provisions of Chapter 718.

2. The developer's warranty of fitness and merchantability for the purposes or uses intended, as to each unit, is reduced from five years to three years. (See Section 718.203(1)(a), F. S. This could already be done by action of the developer under the existing law.)

3. Section 718.403, F. S., provides enabling legislation for the development of condominiums in phases.

4. The creation of a condominium prior to the completion of construction is permitted under Section 718.104(4)(e), F. S.

5. Requirements relating to a prospectus and offering circular are simplified by Section 718.504, F. S.

6. All associations are required to be incorporated, either for profit or not for profit. See Section 718.111(1), F. S.

7. The amount of sales deposits which may not be used by the developer prior to closing a sales transaction is increased from five to ten percent of the purchase price by Section 718.202, F. S.

8. Section 718.111(10), F. S., provides a method for relocating easements across condominium property.

9. Under Section 718.116(5)(b), F. S., the association is required to give unit owners 30 days notice before foreclosure of a lien for unpaid assessments.

The act also contains provisions relating to the treatment of condominium and cooperative apartment leases as "intangible personal property" which are discussed under the article on TAXATION.

Senate Bill 989 (Chapter 76-150) gives statutory authority for the merger of a Florida business trust into a wholly owned subsidiary corporation if permitted by the laws of the jurisdiction under which the subsidiary corporation is organized, and provides a simplified method of converting the form of organization. Also, it sets out that unless otherwise provided in the declaration of trust, no shareholder of a common law business trust shall have any dissenters' rights of appraisal. The act uses substantially the same organization, language and style as the new Florida General Corporation Act, Chapter 607, Florida Statutes, and therefore is substantially the same in both substantive and procedural respects, except that it does not authorize complex mergers.

In the 1975 session, the Legislature passed a complete revision of the Florida General Corporation Act (Chapter 607, Florida Statutes). House Bill 4092 (Chapter 76-209) is basically a clean-up of last year's revision. Specifically, the act does the following:

(1) Amends Section 48.091, F. S., to delete the obsolete term "resident agent" and substitute the current term "registered agent."

(2) Transfers out of Section 48.091, F. S., several paragraphs dealing with corporate law and relocates these paragraphs in Chapter 607, F. S.

(3) Clarifies the term "partner" to specifically include general and limited partners.

(4) Clarifies the phrase "act of a corporation, conveyance, transfer" to specifically include an "encumbrance" of real or personal property.

(5) Clarifies the authority of the Department of State to renew corporate name reservations. Currently, renewals are accomplished by re-reserving.

(6) Eliminates the bar on a corporation receiving a promissory note as consideration for the issuance of shares.

(7) Eliminates the requirement for duplicate articles of incorporation to be filed with the Department of State.

(8) Eliminates the requirement that the articles of consolidation be recorded with clerks of the circuit courts.

(9) Eliminates the requirement for filing duplicate articles of dissolution with the Secretary of State in cases of voluntary dissolution.

(10) Eliminates obsolete term "certificate" and substitutes "articles."

(11) Eliminates the requirement that articles of dissolution be executed in duplicate pursuant to satisfaction of all corporate liabilities and obligations and distribution of corporate property and assets.

(12) Clarifies that status of existing recorded mortgages, liens, perfected security interests, and possessory rights upon liquidation proceedings being initiated.

(13) Clarifies the title status of corporate property after dissolution by reinstating the prior provision (See Section 608.30, F. S., 1973) permitting a majority of the surviving trustees of a dissolved corporation to act as the board of trustees.

(14) Clarifies the status of deeds, mortgages, security interests and liens as "acts" of corporations.

(15) Eliminates the requirement that a street address be given in the annual report for the directors of the corporation.

(16) Provides more traditional language in giving the Department of State rulemaking power.

(17) Amends Section 607.314, F. S., dealing with name changes by a foreign corporation to tract the same system as the corporation's original application to do business. The section is applicable when a foreign corporation changes its name to one which is not available in Florida. This section would allow the corporation to file a fictitious name or receive the written consent of the holder of the reserved name, the same system as is used when a corporation originally applies for authority to do business under a name which is not available.

(18) Limits the right to examine the books and records of a corporation to one who has owned at least 1/4 of 1 percent of the shares or voting trust certificates therefor for no less than six months prior to the demand to examine.

(19) Prohibits a fee being charged for telephone requests to the Department of State for general corporate information.

PARI-MUTUEL INDUSTRY

House Bill 3986 (Chapter 76-48) gives the Board of Business Regulation discretionary power to grant additional performances to any pari-mutuel permittee which lost performances during a season due to circumstances beyond its control. It further waives the season requirements for permittees if the extra days allotted carry over into another racing season.

House Bill 2537 (Chapter 76-179) places certain restrictions on the transfer of a thoroughbred horse racing permit. Under the act, a permit may not be transferred to another location within a county without a public referendum approving the same. If the permit is to be transferred across a county line, both counties

involved must approve the transfer through a public referendum. The referendum is to be held under statutory provisions for the ratification of permits and expenses are to be borne by the licensee requesting the transfer. Leasing of facilities is permitted so long as the lessee and leasor are in the same county.

House Bill 4209 (Chapter 76-257) includes horses registered with the American Paint Horse Association among those which may be substituted for quarter horses by any person holding a valid quarter horse racing permit for no more than 50 percent of the quarter horse races daily. Horses registered with the Jockey Club may be substituted at any time for any number of races up to 20 percent of the maximum number of days (120) authorized for quarter horse racing and are to be taxed by the schedule provided for daily pari-mutuel pools of less than $400,000.

Holders of valid harness racing permits are authorized by House Bill 3143 (Chapter 76-24) to apply to the Board of Business Regulation for a license to conduct dograce meetings instead of harness racing for the same number of days authorized in counties having not more than one dogracing track. Such permits are subject to all pari-mutuel tax laws, and certain conditions set out in the law must be met by the harness racing applicant.

ALCOHOLIC BEVERAGE SALES

House Bill 64 (Chapter 76-2)* authorizes the Division of Beverage to issue special alcoholic beverage licenses to qualified applicants who own or lease bowling establishments having 12 or more lanes. The act prohibits the transference of any such special license and prohibits the sale by any such licensee of alcoholic beverages by the package for off-the-premises consumption. It

* Vetoed in 1975 and passed over the Governor's veto by the 1976 Legislature.

also authorizes the issuance of special alcoholic beverage licenses to any chartered or incorporated club owning or leasing and maintaining a bona fide tennis club consisting of not less than 10 regulation size courts with attendant facilities. Any board of county commissioners may now be issued a special alcoholic beverage license in the name of the county for facilities owned and operated by the county which may be transferred from one qualified county facility to another upon written notification to the Department of Business Regulation.

Committee Substitute for Senate Bill 1264 (Chapter 76-242) transfers to new Paragraph 561.20(2)(c), Florida Statutes, for purposes of conformity, language permitting hotel or motel owners to lease their restaurant facilities to independent operators who in turn may provide alcoholic beverage room service under restaurant beverage licenses.

House Bill 4081 (Chapter 76-288) permits an applicant for an alcoholic beverage vendor's license to possess no more than one-half percent of stock in a corporation which manufactures, distributes, or exports such beverages. The employment of persons under the age of 18 in dinner theaters which serve alcoholic beverages is permissible provided certain conditions are met. The transfer fee for certain alcoholic beverage licenses is changed from the present 10 percent of the annual license tax to the full value of the tax.

MISCELLANEOUS BUSINESSES

Cemeteries

House Bill 3433 (Chapter 76-251) amends the Florida Cemetery Act so as to broaden its scope and redefine "cemetery"

and "cemetery company." The law is made to refer to the operation of "cemeteries" rather than "cemetery companies." Criteria are established for the demonstration of need of a cemetery in a community and such criteria shall be investigated by the Department of Banking and Finance upon receipt of an application for authority to operate a cemetery. Savings and loan associations, in addition to state or national banks, are authorized as depositories for required cemetery care and maintenance trust funds, and a proviso is added on the transfer of or withdrawal of such funds.

Repair Shops - Disposition of Unclaimed Property

House Bill 3132 (Chapter 76-255) provides that any article of jewelry, or other article accepted for repair, cleaning or adjustment by any jewelry, television or radio repair store, may be disposed of after one year if unclaimed. The individual delivering the property to the store is to be notified in writing of the law at the time of delivery of the article to the store, and by certified mail 15 days prior to disposition. Value received in excess of costs and expenses to the store is to be given to the individual within 15 days after sale or other disposition of the article.

Private Investigative Agencies

Various technical amendments to the laws regulating private investigative agencies and the licensing of persons seeking statewide gun permits are provided by Committee Substitute for Senate Bill 1257 (Chapter 76-170). Fees and procedures for the licensing and yearly renewal of licenses for statewide gun permits are modified and provision is made for license fees to be

deposited into a trust fund for the Division of Licensing, Department of State, to hire personnel and pay expenses relating to licensing and regulation of investigative agencies. Any unencumbered balance in this fund exceeding $50,000 will revert to general revenue. The Division is granted access to information in the state criminal justice information systems so that applicants for gun licenses may be screened for criminal records; and the membership of the private investigative agency advisory council is increased from five to nine.

Professional Solicitors

Senate Bill 132 (Chapter 76-162) amends the Solicitation of Charitable Funds Act by excluding employees, agents and servants of professional solicitors from the definition of "professional solicitor." Certification of employees of professional solicitors is required unless such employees are making telephone solicitations under the direct supervision of a certified solicitor or employee. A solicitor is required to file the text of any telephone solicitation with his registration application and to substantially adhere to it. The investigative and enforcement powers of the Department of State under this act are extended to cover agents, servants or employees of solicitors.

Liquified Petroleum Gas

Senate Bill 1194 (Chapter 76-120) increases the license fees levied by the Department of Insurance on manufacturers of appliances for use with liquified petroleum gas (to $225), for dealers in liquified petroleum gas only (to $225), for persons installing equipment or appliances (to $100), for dealers in liquified petroleum gas, appliances using such gas, and installation (to $225).

Invention Development Contracts

House Bill 3321 (Chapter 76-229) deals with the abuses in the area of invention development service contracts by regulation of the invention developer and the contract for promotion. This act is a response to the highly misleading and deceptive practice of unscrupulous invention developers located throughout Florida. Current statutes were not specific enough to prohibit these practices and many Florida citizens were being injured. Invention developers who do not charge a fee or who take only a percentage of the royalties received from the invention are exempted from the act. In addition, governmental and certain eleemosynary organizations are exempted.

The act provides that all contracts for invention development services be in writing and contain certain disclosures. The contract may be cancelled by any party within seven business days by giving written notice and the contract is required to disclose that fact. The invention developer is prohibited from acquiring certain interests in his customer's invention. Assignees of the developer's rights are subject to all prior equities and defenses of the customer. The developer must also provide the customer with quarterly reports of the services performed. Each invention development contract is required to have certain specified terms to protect the customer from being mislead. Also, there are mandated disclosures to be made prior to the execution of any contract.

The act declares contracts which intentionally violate the act are void and unenforceable and civil remedies are set out by which anyone injured by a violation of the act can bring a civil action. Moreover, the State's Attorney or Attorney General

may enjoin any violation of the act as may any affected person. To further protect the customer every invention developer is required to file a bond or a cash deposit with the Secretary of State.

Economic Promotional Expenditures

Committee Substitute for House Bill 3289 (Chapter 76-202) authorizes the Division of Economic Development of the Department of Commerce to provide, arrange and pay for transportation, lodging, meals and other reasonable and necessary items and services which it deems proper with the performance of promotional and other duties of the Division. All expenditures in excess of $10.00 must be substantiated by paid bills, and all expenditures must be justified on a travel expense voucher or attachment.

Foreign Trade Zones

Senate Bill 39 (Chapter 76-42) authorizes defined corporations and government agencies to apply to appropriate authorities for a grant of privilege to establish, operate and maintain foreign trade zones within the state under the federal Foreign Trade Zones Act. Grantees are empowered to select and describe the locations of such zones and subzones and to make all necessary rules and regulations to comply with pertinent federal laws and regulations. Any foreign trade zone application must stipulate that all Florida laws and rules of the State Department of Citrus, applicable to citrus fruit and processed citrus fruit, will apply equally within the zones.

CONSERVATION AND NATURAL RESOURCES*

The 1976 legislative year reflected the state's growing concern for the protection and conservation of natural resources and for the planned utilization of resources so as to balance growth with conservation. The single most significant legislation in the area was the passage of a water management bill which gave the state an overall water management policy and eliminated the fragmented approach which has characterized water management in the past. Once again the development and conservation of our various energy sources received attention by the Legislature in several areas. In addition many other subjects, including freshwater and saltwater fishing, were also addressed.

Environmental, Land, and Water Management

The implementation of the 1972 Water Resources Act has at last been enacted with the passage of Senate Bill 1274 (Chapter 76-243). As the provisions of the act take effect, Florida will move to a position of statewide water management. The act authorizes and sets limits on the taxing authority of each of the five water management districts.

The 1972 law, as amended in 1973, divided the state into several water management districts -- five permanent districts, and a sixth temporary one, all of whose boundaries were set forth in the law. The 1976 act restates these boundaries for the five districts, apportioning the area formerly within the sixth district, and effecting several minor changes which, in the years

*Prepared by House Bill Drafting

between 1973 and 1976, were found necessary. The new boundaries go into effect at 11:59 p.m. on December 31, 1976. The designated districts are: Northwest Florida Water Management District; Suwannee River Water Management District; St. Johns River Water Management District; Southwest Florida Water Management District; and South Florida Water Management District.

Several areas transferred from the temporary Ridge and Lower Gulf Coast Water Management District are incorporated into the permanent districts as "basins" to provide for continuation of water management programs already underway in these essentially local areas. Other areas of the "Ridge District" merely are merged into one of the other districts.

The act forms the Manasota Watershed Basin of the former temporary Ridge and Lower Gulf Coast Water Management District into a subdistrict or basin of the Southwest Florida Water Management District and redesignates the area as the Manasota Basin; creates the Oklawaha River Basin of the St. Johns River Water Management District from an area transferred from the Southwest Florida Water Management District; creates the Big Cypress Basin which is annexed to the South Florida Water Management District from the temporary Ridge District; and creates the Okeechobee Basin from the remaining areas of the South Florida Water Management District.

Each district, with the exception of the St. Johns, may further subdivide itself into basins in order to provide localization of tax benefits. The total authorized tax for each district is divided into two parts -- up to 25 percent of the total for districtwide purposes, and up to 75 percent of the total for individual basin purposes. The St. Johns District may not

subdivide into additional basins without express legislative approval of its basin plan.

This act authorizes a maximum tax levy for each water management district according to the need expressed by each district. The South Florida Water Management District may levy a total of 0.8 mill; Southwest Florida Water Management District is authorized to levy up to 1 mill; St. Johns Water Management District, 0.375 mill; Suwannee River Water Management District, 0.75 mill; while the Northwest Florida Water Management District is limited by the Constitution to the levy of 0.05 mill. In addition, in response to critical water supply problems in the Tampa Bay area, the Southwest Florida Water Management District is directed to furnish up to 0.05 mill from the levy in its basins which are within the boundaries of the West Coast Regional Water Supply Authority for the use of the Authority until December 31, 1981, when the Authority so requests.

Under the Water Resources Act, regional water supply authorities may be established to assist local governments to meet critical water needs. To date, the West Coast Regional Water Supply Authority is the first, and only, authority in existence.

The 1972 Water Resources Act provided for appointment of Governing Board members from the water management districts on an at-large basis within each district except in the Southwest Florida Water Management District, which under its special act (Chapter 61-691) required board appointments from river basin areas. The 1976 act adopts a modified Southwest Florida Water Management District governing board appointment method to the other districts, with some modifications in the South Florida

Water Management District. The South Florida District differences are brought about because of the lack of readily identifiable river basins in South Florida, as well as the unbalanced population pattern within the district. Members of the South Florida District governing board are appointed on the basis of residence in a county or specific group of counties.

In the Northwest Florida, Suwannee River, and St. Johns River Water Management Districts appointments are on the basis of five members from the designated river basin areas and four members at large. In Southwest Florida Water Management District, six members are appointed from specific river basin areas, with three "at large," two of which are to reside respectively in Hillsborough and Pinellas Counties. Appointments under the new plan are to be made as vacancies occur on each district board.

Other provisions of this act clearly identify the water management districts as the sole permitting authorities for the consumptive use of water; provide for permit fees which reflect the cost to the districts of issuing them; repeal obsolete parts of the law; provide for annual audits, and for procurement of funds to pay expenses. Other local or state laws in conflict are preempted. The new law clearly states that when a water management district implements a permit program for water use, the cost of the permits is to reflect the cost to the districts of issuing them.

Two sections of Chapter 61-691 which created the Southwest Florida Water Management District are repealed because they conflict with the state law: The section relating to the residency requirements of governing board members, and the section prohibiting Manatee or Sarasota Counties from being included within the district

boundaries. In addition, obsolete taxing provisions in the state law are repealed.

Finally, the new law requires each governing board to submit detailed budget and audit information to local and state government authorities. Provision is also made for districts to borrow funds in advance of tax receipts.

Another act dealing with water management districts of the type previously known as drainage districts is Senate Bill 457 (Chapter 76-187) which requires that the report of the commissioners appointed to appraise the lands within and without a water management district, pursuant to Chapter 298, Florida Statutes, shall be served on the water management district created under Chapter 373, Florida Statutes, in which the appraised lands are situated, the board of county commissioners, the governing body of any municipality in which the lands are situated, and the Department of Environmental Regulation. In addition, a copy of the report of the commissioners, together with a copy of notice as published, shall be mailed by the Clerk of the Circuit Court to each person owning land within, and to each person owning land immediately adjacent to, the boundaries of the district as shown on the current tax roll.

Where a district has the authority to designate units within the district for development and to adopt water management plans for such units, the act provides that a copy of the report of the commissioners as to the unit together with required notice shall be mailed only to the owners of land located within the boundaries of the unit. The act modifies current provisions of law which relate to the readjustment of assessment of benefits within a district, and provisions relating to the creation of a

district by petition.

Senate Bill 871 (Chapter 76-181) provides 5 supervisors for the Melbourne-Tillman Water Management District; three district landowners elected by their peers and two residents appointed by the Brevard Board of County Commissioners. The act stipulates a three-year term for appointed supervisors, and establishes the method for filling a vacancy in the staggered annual terms of elected supervisors in the event the vacancy is not filled by vote of the landowners.

Senate Bill 116 (Chapter 76-69) alters the procedure whereby guidelines for developments of regional impact are recommended by the state land planning agency to the Administration Commission, to provide that all such guidelines and standards shall be subject to legislative review; and requires the Administration Commission to consider the extent to which a proposed development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments. Reports and recommendations of regional planning agencies are also to take into consideration the extent to which the development would create additional use of energy.

Senate Bill 566 (Chapter 76-190) requires the state land planning agency, within 30 days after the designation of an area as an area of critical state concern, to record a legal description of the boundaries of the area in the public records of the county or counties wherein the area is located. The act also requires that all areas of critical state concern in existence upon the effective date of the act (June 20, 1976) be recorded within 60 days after such effective date.

State agencies possessing regulatory powers involving the issuance of permits are prohibited by Senate Bill 1340 (Chapter 76-245) from issuing any permit, license, or other evidence of authority involving the use of sovereignty or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources, until the applicant has received consent authorizing the proposed uses from the Trustees and has exhibited it to such issuing agency. Any permit, license or other form of consent issued prior to the effective date of this act (June 23, 1976) is exempted from the provisions of the measure.

Committee Substitute for House Bill 3719 (Chapter 76-113) creates the Coordinating Council on the Restoration of the Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin which is directed to develop measures which are to be taken by the Department of Environmental Regulation, the Department of Natural Resources, the Game and Fresh Water Fish Commission and the Central and Southern Florida Flood Control District to restore the water quality of the Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin. The Council is required, in developing such measures; to conserve and improve ground and surface water supplies throughout the region; to improve the quality of water for all beneficial purposes; to restore the natural seasonal water level fluctuations in the lakes of the Kissimmee River and in its natural flood plains and marshlands; to recreate conditions favorable to increases in production of wetland vegetation, native aquatic life and wetland wildlife; to protect presently developed areas from unnatural floods; to utilize the natural and free energies of the river

system to the greatest extent possible; and to provide for the effective enforcement of existing laws designed to prevent excessive nutrient loading of area waters. The act directs the Central and Southern Florida Flood Control District to establish a Special Trust Fund for the Restoration of the Kissimmee River Valley and Lake Okeechobee funded by state general revenue, federal matching funds, donations and district funds, provided that the district funds shall equal at least 20% of state general revenue funds. The act directs the Secretary of the Department of Environmental Regulation to present to the Legislature, within one year of the effective date of the act (June 14, 1976), the Council's comprehensive report which shall be implemented within five years from the effective date of the act. Annual comprehensive interim progress reports during the five year implementation period are required to be made by the Department Secretary to the Legislature. An appropriation of $100,000 from the General Revenue Fund is to be deposited in the Special Trust Fund for the Restoration of the Kissimmee River Valley and Lake Okeechobee.

Oil and Gas Resources

The bonding requirements for oil and gas wells, as promulgated by the Department of Natural Resources with respect to the plugging of dry or abandoned wells used for the exploration, drilling, and production of petroleum products, were altered under the provisions of Senate Bill 611 (Chapter 76-103) to require that the bonds be conditioned upon the full and complete restoration, by the applicant, of the area over which the drilling or production

is conducted to the similar contour and general condition in existence prior to the drilling or production. The act also directs the Department of Natural Resources to require the filing of any recorded sonic, radioactive, and mechanical logs of oil and gas wells, along with the presently required filing of electrical logs and other records.

Senate Bill 614 (Chapter 76-104) defines the term "well site" for the purpose of the regulation of oil and gas resources to mean the general area around a well which area has been disturbed from its natural or existing condition and includes the drilling or production pad, mud and water circulation pits, and other operations necessary to drill for or produce oil or gas.

Senate Bill 519 (Chapter 76-188) authorizes the Division of Resource Management of the Department of Natural Resources to examine, survey, check, test, and gauge storage tanks, treatment plants and facilities, and modes of transportation used to gather and process crude oil or gas and products derived from wells within the state, prior to delivery to a common carrier.

Freshwater Fishing

Four pieces of legislation dealing with freshwater fishing survived the 1976 legislative session. Perhaps foremost among them was Senate Bill 1009 (Chapter 76-156), the "Dempsey J. Barron, W. D. Childers, and Joe Kershaw Cane Pole Tax Repeal Act of 1976," which permits persons to fish with not more than three poles or lines for noncommercial purposes in the county of their residence without a fishing license.

Committee Substitute for Senate Bills 97, 102, and 208

(Chapter 76-67) authorizes persons who are residents of the state and who are totally and permanently disabled to fish without a fishing license in the state so long as each such person possesses documentation of his total and permanent disability. The act also exempts such persons from the payment of permit fees with respect to permits issued for the purpose of fishing on recreational lands provided that such persons obtain such a permit from the tax collector of the county of their residence by attesting to the fact that they are totally and permanently disabled.

In keeping with modern theories of conservation and management of our natural resources, Senate Bill 1015 (Chapter 76-216) prohibits the sale for consumption of game fish taken from any lake in the state which is in excess of 500 square miles unless the fish are tagged as required by the Game and Fresh Water Fish Commission and requires that bass or pickerel taken by any method other than hook and line be immediately returned to the water. It prohibits the taking of freshwater game fish from a lake in this state which is 500 square miles or less other than with pole and line, rod and reel, plug, bob, spinner, spoon, or other artificial bait or lure and prohibits the sale or offer to sell any freshwater game fish from any such lake. The act authorizes the Game and Fresh Water Fish Commission to assess a fee of not more than five cents per tag to make the tagging program self-sufficient. An appropriation of $130,000 to the Game and Fresh Water Fish Commission from the State Game Trust Fund for the fiscal year 1976-77 is made for use in implementing the tagging program, including the employment of seven personnel.

Senate Bill 1122 (Chapter 76-182) authorizes the Game and Fresh Water Fish Commission to issue permits and charge fees for

each haul seine or trawl used in freshwater lakes in the state having an area in excess of 500 square miles, and provides for the maximum amounts to be charged for these annual permits.

Saltwater Conservation

The area of saltwater conservation was addressed by several bills during the 1976 legislative session which generally revised and tightened up portions of the law dealing with the taking of various types of shellfish and other marine life.

Committee Substitute for Senate Bill 704 (Chapter 76-107) provides that the Division of Law Enforcement rather than the Division of Marine Resources shall issue special permits for the transportation of crawfish which have been separated, and special permits to Florida licensed seafood dealers. The act prohibits the possession or the landing of crawfish or crawfish tails from which eggs, swimmerettes or pleopods have been removed. The crawfish permit trap system is revised to provide that wooden slat traps may be used regardless of dimensions; traps may be placed in the water five days (rather than ten days as is currently allowed) prior to the opening of the crawfish season; and restricts the working of traps to daylight hours only. Timed released float devices are permitted and traps are required to have license numbers issued by the Division of Law Enforcement. The act prohibits the sale of crawfish without possession of a valid license and requires holders of such licenses who sell licensed crawfish traps to notify the Division within 15 days of sale and to notify the Division of any address change within 15 days of said changes.

House Bill 3238 (Chapter 76-27) provides for the permissive

rather than mandatory refusal of the Division of Marine Resources to accept reports postmarked later than midnight of the third day after the commencement of the closed season, by seafood dealers with respect to saltwater crawfish and stone crabs; and provides that the Division may, rather than shall, seize frozen stocks of any restaurant. The act also makes acceptance of required monthly reports permissive if mailed late.

House Bill 3237 (Chapter 76-26) provides that it is unlawful to transport, fish with, or place any part of a stone crab trap in the waters of the state during closed season, and provides that the Department of Natural Resources rather than the Division of Marine Resources shall seize and destroy stone crab traps used illegally. The act authorizes the use of timed release buoys for stone crab traps.

Senate Bill 658 (Chapter 76-105) changes the specifications with respect to the opening in blue crab traps; requires permits to be on board the boat; and provides that both the permits and blue crabs on the boat are subject to inspection at all times. The use of times release buoys and the attachment of buoys to trotlines are also authorized.

Senate Bill 700 (Chapter 76-106) prohibits the gathering of clams from natural reefs or private bedding grounds between sunset and sunrise, as is currently the case with respect to oysters, and eliminates the current exception to the prohibition against gathering oysters in this manner where a vessel is conspicuously lighted.

Senate Bill 184 (Chapter 76-30) revises the state law with respect to the taking of marine corals and sea fans, to provide that it is unlawful to take, destroy, sell, or attempt to sell any

sea fan of the species Gorgonia flabellum or Gorgonia ventalina, or any hard or stony coral (Scleractinia) or any fire coral (Millepora), thus eliminating the 5-pound exemption which had heretofore been authorized. The act prohibits the possession of any such fresh, uncleaned, or uncured sea fan or coral unless it can be proven that the sea fan or coral was imported from a foreign country or lawfully taken before July 1, 1976.

Senate Bill 524 (Chapter 76-101) provides that gill nets may be gathered or taken in, or taken up by power, on the open waters of the Gulf of Mexico or the Atlantic Ocean.

Conservation Easements, Acquatic Preserves, and Recreational Areas

"Conservation Easements" are defined in Senate Bill 1231 (Chapter 76-169) as rights or interests in real property which are appropriate to retaining land or water areas predominantly in their natural, scenic, open or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; maintaining existing land uses; and prohibiting or limiting specified acts or uses detrimental to the retention of land or water areas. The act provides that such easements are perpetual undivided interests in property and may be created or stated as restrictions or covenants in deeds, wills, and other instruments, and may be acquired in the same manner as other interests in property are acquired, except by condemnation or by other exercise of the power of eminent domain; limits the acquisition of conservation easements to governmental bodies or a charitable corporation or trust whose purposes include the conservation of land or water areas or the preservation of buildings or sites of historical or cultural significance; and further provides that conservation easements run

with the land and will be binding on all subsequent owners; however, such easements may be released by the holder of the easement to the holder of the fee, and must be recorded and indexed.

Aquatic preserves were the subject of three legislative efforts which passed during the 1976 session. House Bill 4185 (Chapter 76-211) exempts any and all submerged lands conveyed by the Trustees of the Internal Improvement Trust Fund prior to October 12, 1966, from the Estero Bay Aquatic Preserve. Senate Bill 1451 (Chapter 76-197) confirms the designation by the Board of Trustees of the Internal Improvement Trust Fund of the Cockroach Bay Aquatic Preserve in Hillsborough County for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975 for a period of a 40-year lease from the Tampa Port Authority. The Biscayne Bay Aquatic Preserve Act was the subject of Senate Bill 1204 (Chapter 76-109) which stipulates that where the provisions of law establishing the preserve are in conflict with the Florida Aquatic Preserve Act of 1975, the stronger provisions for the maintenance of the aquatic preserve shall prevail. It also prohibits the use of nets or seines in the Biscayne Bay Aquatic Preserve, except when fishing is for shrimp or mullet and such fishing is otherwise permitted by state law or rule of the Department of Natural Resources.

Miscellaneous

The Florida Electrical Power Plant Siting Act was the subject of Committee Substitute for Senate Bill 659 (Chapter 76-76) which requires the Department of Environmental Regulation to administer the processing of applications for electric power

plant site certifications and to notify all affected agencies of the filing of an application within 15 days of receipt. It increases the maximum application fee for site certification from $25,000 to $50,000 based upon a sliding scale with respect to the generating capacity of the proposed site, with a minimum fee of $5,000; prescribes a procedure for the appointment of a hearing officer and for determining the completeness of an application; and revises the current provisions on required reports and studies with respect to 10-year site plans, the proceedings and participants of the hearing on site certification, the final disposition of applications for certification, the effect of certification, grounds for revocation or suspension of certification, and judicial review. The Board (Governor and Cabinet) and/or Department may adopt reasonable procedural rules to carry out its duties and to provide an efficient, simplified, centrally coordinated one-step permitting process. The act further provides that certain modifications which increase the electrical output of a certified unit to no greater capacity than the maximum operating capacity of the existing generator shall not constitute an alteration which requires certification. Electrical power plants certified pursuant to the act must comply with rules adopted by the Department of Environmental Regulation subsequent to the issuance of the certifications which prescribe newer or stricter criteria. The act also provides for supplemental applications for sites certified for ultimate site capacity.

Solar energy was the subject of House Bill 776 (Chapter 76-246) which creates the "Solar Energy Standards Act of 1976" and directs the Florida Solar Energy Center of the Board of Regents

to develop and promulgate standards for solar energy systems manufactured or sold in this state and to establish criteria for testing the performance of solar energy systems. The Center is authorized to accept the results of tests on solar energy systems made by other organizations, and is entitled to charge testing fees sufficient to cover the cost of testing. The act also directs the Department of Education, in cooperation with the Solar Energy Center and the Department of General Services, to develop a plan for a pilot program on utilizing solar energy as a source of power for the public schools in the state. The plan is to be submitted to the Legislature by March 1, 1977.

House Bill 3075 (Chapter 76-112) provides that the civil liability provisions of the Florida Air and Water Pollution Control Act shall not apply to damage resulting from the application of state approved chemicals in the waters in the state for the control of aquatic weeds or algae so long as the application is done in accordance with state standards, state permit requirements, and label instructions approved by the state, provided the application is not done negligently. The Department of Environmental Regulation is authorized to permit discharge into the waters of the state of chemicals approved by the appropriate state agency for the control of aquatic weeds or algae so long as the chemicals are applied in accordance with state standards, state permit requirements, and approved labeling.

Senate Bill 502 (Chapter 76-136) provides that, in addition to present requirements such as notice to residents, it is unlawful for any person, willfully or carelessly, to burn any forest, grass, and other specified areas without first obtaining authorization from

the Division of Forestry. The burning of vegetative land clearing debris is included.

Committee Substitute for House Bill 2832 (Chapter 76-254) directs the Board of Trustees of the Internal Improvement Trust Fund to make the following conveyances or leases which are to include restrictions upon the land:

1. To convey ten acres of described state-owned land to the Guidance Center of Hernando County for use as a permanent site for a facility to be constructed on the premises.

2. To convey twenty-eight acres of described state-owned land near Boorksville to the Department of Highway Safety and Motor Vehicles for use as a permanent site for a Highway Patrol driver's license facility to be constructed on the premises.

3. To lease for fifty years at $1 per year to the Hernando Youth League, Inc., of Hernando County, forth-nine acres for use as a permanent site for the development of a sports complex.

4. To lease for fifty years at $1 per year to the Board of County Commissioners of Hernando County, 106 acres of state-owned land as a site for a permanent park facility.

5. To convey to the Board of County Commissioners of Hernando County, nine acres for the construction of a roadway for general public use.

CONSTITUTIONAL AMENDMENTS*

The 1976 Regular Session of the Florida Legislature adopted five joint resolutions proposing amendments to the State Constitution. All five will be submitted to the electorate at the 1976 General Election held in November. A brief description of these resolutions follows:

Committee Substitute for Senate Joint Resolutions 619 and 1398 would amend Section 18, Article I of the State Constitution to permit the Legislature to nullify any administrative rule of any agency of the executive branch if the rule is without or in excess of delegated legislative authority and to permit the suspension of a rule as provided by law on the same ground. By a majority vote, the Governor and Cabinet may defer the suspension of a rule until acted upon by the Legislature, and if the Legislature fails to "disapprove the suspension" at the next regular session, the rule is reinstated.

Senate Joint Resolution 266 proposes the creation of Section 8, Article II in the State Constitution to prohibit, by July 1, 1978, the number of full-time salaried state employees, excluding elected officers and persons appointed to fill such offices, from exceeding one percent of the state population estimate for the preceding year, and the number of part-time state employees from exceeding ten percent of the full-time employees. The Governor, with the approval of three members of the Cabinet, may be authorized by law to approve additional positions to meet emergencies.

*Prepared by Senate Legislative Services

Committee Substitute for Senate Joint Resolutions 49 and 81 would amend Sections 3, 10 and 11 of Article V of the State Constitution to require that each appellate district have at least one Supreme Court Justice elected or appointed from the district, who was a resident of the district at the time of his original appointment or election, and to provide for the retention of a Supreme Court Justice or a District Court of Appeal Judge for a 6-year term by a majority vote of the electors voting within the territorial jurisdiction of the court in the General Election preceding the expiration of the term being served by the justice or judge. If a justice or judge is ineligible or fails to qualify for retention, or if a majority vote of the electors voting within the territorial jurisdiction of the court vote not to retain the justice or judge, a vacancy in that office exists upon the expiration of the term being served by the justice or judge. The Governor is required to fill a vacancy on the Supreme Court or District Court of Appeal by appointing one of the three persons nominated by the appropriate judicial nominating commission for a term ending in January of the year following the next General Election occurring at least one year after the date of appointment.

House Joint Resolution 1779 would create Section 16, Article VII in the State Constitution to permit the issuance of revenue bonds, without an election, to finance or refinance housing and related facilities in Florida. The bonds are required to be secured by a pledge of, and payable primarily from all or part of, revenues derived from the financing, operation or sale of the facilities, mortgage or loan payments, and any other revenues or assets legally available for such purposes from sources other than ad valorem taxation, including revenues from

other facilities. The issuance of bonds is prohibited unless a state fiscal agency determines that in no state fiscal year will the debt service requirements of the bonds to be issued, and all other bonds secured by the same pledged revenues, exceed pledged revenues available for such debt service requirements; and the total bonds outstanding are prohibited from exceeding $100,000,000 in any one fiscal year. The amendment will take effect upon approval of the electorate.

Committee Substitute for House Joint Resolution 3982 would amend Sections 3 and 4 of Article VII of the State Constitution and create a new Section 16 in that article to permit a community redevelopment plan to provide for a total or partial tax exemption for improvements to land within the community redevelopment area for a period not exceeding 25 years; to permit real property within the community redevelopment area to be valued for taxation for a period not exceeding 25 years at the value of the land, excluding improvements, for the year immediately prior to the redevelopment; to permit ad valorem tax collections of the taxing unit within which the community redevelopment project is located, which exceed the ad valorem tax collections produced at the rate of tax levy each year upon the assessed valuation of the taxable property within each community redevelopment area as reflected in the just value tax roll existing prior to the adoption of the community redevelopment plan, to be allocated to and used by the community redevelopment agency to finance or refinance each community redevelopment project. Community redevelopment projects may: redevelop property for residential, recreational, commercial or industrial uses; acquire property by eminent domain by any city, county or authority; and resell

or transfer property to a private person. Community redevelopment plans are required to contain findings and determinations that the area is a slum or blighted area and that the community redevelopment agency has a plan for relocating persons temporarily or permanently displaced from housing facilities within the area. Any municipality, county, district, or authority may be authorized to issue revenue bonds, secured solely by a pledge of and payable from tax revenues which are authorized by this amendment to the State Constitution, to be used to finance or refinance community redevelopment projects.

COURTS AND CIVIL LAW*

Courts

House Bill 4004 (Chapter 76-175) increases the number of judges in specified districts, circuits, and counties. The Legislature provided additional judges in each district, circuit, and county in which the Florida Supreme Court requested additional judges, but did not provide as many additional judges as the court certified for the year 1976. The additional judges are to be elected in the nonpartisan elections in 1976 and are to take office on the first Tuesday after the first Monday in January, 1977. Committee Substitute for Senate Joint Resolutions 49 and 81 (discussed under the Article on CONSTITUTIONAL AMENDMENTS) proposes an amendment to Sections 3, 10 and 11 of Article V of the State Constitution, to provide for the selection, retention and terms of justices of the Supreme Court and judges of the District Courts of Appeal, and for the election, terms of office and filling of vacancies on Circuit Courts and County Courts.

House Bill 3773 (Chapter 76-114) authorizes the board of county commissioners, in any county having a population exceeding 50,000 and in which the county or circuit court holds jury trials in more than one location, to create a jury district for each such location from which a jury list will be selected. The board may create such districts upon the request of a majority of the circuit court judges of the circuit in which the county is located.

*Prepared by Senate Legislative Services

Each district must include at least 6,000 registered voters.

Senate Bill 515 (Chapter 76-118) provides that a person placed in a jury pool may, if authorized by the court, as an alternative to attending court, list a telephone number with the clerk of the court to be on call on an hour's notice. A juror who elects to be on call is to be compensated only for the days he attends court.

Eminent Domain

Senate Bill 64 (Chapter 76-158) prohibits attorneys' fees in eminent domain proceedings from being based solely on a percentage of the award, and prescribes certain criteria to be considered by a court in assessing attorneys' fees in eminent domain cases.

Evidence

"The Florida Evidence Code," Committee Substitute for Senate Bill 754 (Chapter 76-237), codifies the law of evidence and abrogates inconsistent common law rules of evidence. The code governs the admission of evidence in civil and criminal actions tried in the courts of the state. The Florida Evidence Code, among other matters, makes provision in the areas of judicial notice, relevancy of evidence, privileged communications, testimony of witnesses, opinion testimony by expert witnesses, and hearsay.

The code takes effect July 1, 1977. This delayed effective date is calculated to give the bar, bench, and Legislature sufficient time to study the code and to determine whether further change is needed.

Landlord and Tenant

House Bill 358 (Chapter 76-15) requires that, when a tenant fails to object within fifteen days after receipt of his landlord's notice of intention to impose a damage claim, the landlord may deduct the amount of his claim and shall refund the balance of the tenant's security deposit within 30 days after the date of such notice.

The "Florida Mobile Home Landlord and Tenant Act," relating to tenancies in which a mobile home is placed upon a rented or leased lot in a mobile home park for residential use, is created by Committee Substitute for Senate Bill 277 (Chapter 76-81). The act does not apply to any other tenancy including a tenancy in which both a mobile home and a mobile home lot are rented or leased by a mobile home resident. The act makes some substantive changes in the current Florida Residential Landlord and Tenant Act, but basically consolidates the provisions of current law relating to such tenancies.

Committee Substitute for House Bill 483 (Chapter 76-278) provides that an invitee (as defined in the law) of a mobile home park tenant shall have ingress and egress to the tenant's site without the tenant or invitee being required to pay a fee or any charge. The law provides that no tenancy entered into by the purchaser of a mobile home may be terminated unless the purchaser has been offered a written agreement by the landlord of the mobile home park to assume the remainder of the term of any written lease then in effect between the landlord and the seller of the mobile home. Also, mobile home lease violations are included among those violations for which a mobile home owner or dweller may bring a civil action against a mobile home park owner or operator.

Negligence

The basis for determining the shares for contribution among tortfeasors in negligence actions was changed by Senate Bill 439 (Chapter 76-186) to make the relative degrees of fault of the tortfeasor the basis for allocation of liability.

Probate

The Florida Probate Code is amended by House Bill 2775 (Chapter 76-172) to provide that compensation for personal representatives, attorneys, accountants, appraisers, and other agents employed by a personal representative with respect to the probate of an estate, may be based on any one or more of the seven criteria prescribed by law, rather than upon all seven such criteria. Eliminated is the requirement that a personal representative who renounces his right to all or any part of the compensation provided in a will must file such renunciation with the court. Also eliminated is the requirement that no compensation shall be paid to the personal representative or attorney with respect to an estate unless all persons bearing the impact of the payment have consented to the compensation or method of payment, or unless the court has ordered payment following notice of the petition to all persons bearing the impact of the payment. The law provides for court review of the propriety of employment of a personal representative or his agent and the reasonableness of compensation of any such person. A personal representative is authorized, without order of the court, to pay compensation to the personal representative, attorneys, accountants, appraisers, and other agents employed by the personal representative.

Procedure

The provision of law which requires the parties to an action to consent to a change of venue to the county of residence of either of the parties was repealed by House Bill 1565 (Chapter 76-22).

House Bill 895 (Chapter 76-263) authorizes service of process by a special process server. The sheriff of each county is authorized to appoint as many special process servers as he deems necessary. A special process server must meet certain age and residency requirements and file with the sheriff an application together with a prescribed fee. The signatures of two persons vouching for the good moral character of an applicant are required. The sheriff may revoke any appointment for neglect of duty. A special process server may charge a reasonable fee for his services. A process server is required to execute a bond in the amount of $1000. A process server must be disinterested in any process he serves, and if he willfully and knowingly executes a false return of service, or violates his oath, shall be guilty of a third degree felony and shall be permanently barred from serving process in the state. The provisions of law requiring the bond of a public official to be filed, and requiring payment of the bond premium from county funds, do not apply to a special process server.

House Bill 1954 (Chapter 76-58), relating to official or legal advertisements, increases from $1 to $2 the additional charge on the preparation and execution of a proof of publication or publisher's affidavit in any county having a population in excess of 450,000. The additional charge is a maximum additional charge and is discretionary.

Slander

House Bill 849 (Chapter 76-123) requires that before any civil action is to be brought for broadcasting any slanderous remark, the plaintiff shall, before instituting such action, serve notice on the defendant. If it appears upon the trial that the broadcast was made in good faith, that its falsity was due to an honest mistake of facts, that there were reasonable grounds for believing the statements were true, and that within ten days after service of the notice by the plaintiff, a full and fair correction, apology, and retraction was broadcast at a comparable time, then the plaintiff is limited to a recovery of actual damages. The law also provides that the owner, lessee, licensee, or operator of a broadcasting station may require, except where prohibited by federal law or regulation, the submission of a written copy of any statement to be broadcast, and that if the owner, lessee, licensee, or operator has requested such a copy, then he shall not be liable in damages for any slanderous utterance made by or for the person submitting the copy of such broadcast which utterance is not contained in the copy.

Stolen Property

House Bill 1302 (Chapter 76-55) provides that anyone injured by a person who intentionally receives, retains, disposes, or aids in concealment of any stolen property shall be entitled, in a civil action against such person, to a judgment in the amount of three times the amount of damages sustained plus court costs and reasonable attorney's fees.

Senate Bill 422 (Chapter 76-19) provides for the issuance of a prejudgment writ of replevin and delivery of seized property

to the petitioner under certain conditions. The court may issue such a writ if it finds that the defendant is engaging, or is about to engage, in conduct that may place the property in danger of destruction, concealment, waste, removal from the state, removal from the jurisdiction of the court, or transfer to an innocent purchaser during the pendency of the action, or that the defendant has failed to make payment as agreed. The petitioner is required to post bond in the amount of twice the value of the goods subject to the writ or twice the balance remaining due and owing as security for payment of damages to the defendant if the writ is obtained wrongfully. The law provides that the defendant may obtain release of the property seized under such writ by posting bond in the amount of one and one-fourth the amount due and owing. A prevailing defendant may maintain an action for damages, attorney's fees and costs. The law repeals Sections 78.055(6), 78.069, 78.073, Florida Statutes, which provide for the issuance of temporary restraining orders with respect to action for replevin and the issuance of emergency writs of replevin upon a showing that the defendant will violate a restraining order.

Property

House Bill 75 (Chapter 76-36) provides that the head of family status (required to qualify an owner's homestead property for the exemption from forced sale set forth in Section 4, Article X of the State Constitution) shall inure to the benefit of the surviving tenant by the entirety or spouse of the owner. Such status is to inure to the surviving spouse irrespective of the fact that there are not two persons living together as one family under the direction of one of them who is recognized as the head of the family.

EDUCATION*

Providing the services of public education costs more than two billion dollars annually and employs in excess of 200,000 people. Since it directly serves more than one-fourth of the citizens of the state, the impact of education legislation cannot alone be measured by the number of bills enacted. As has been the case in recent years, only a few acts relating to education completed the legislative process and were sent to the Governor. These acts establish legislative priorities in the operation of the state system of public education, the funding of that system, and the construction of educational facilities to meet the housing needs for a growing education population.

For information as to the funds appropriated for operation of the state educational program for 1976-77, please refer also to the article on APPROPRIATIONS where information as to the amounts allocated is given.

EDUCATIONAL FUNDING

The Florida Education Finance Program

Conference Committee Report on Senate Bill 321 (Chapter 76-259) was the vehicle for amending the Florida Education Finance Program. The primary purpose of the legislation as

*Prepared by the Staff of the Committee on Education, Florida Senate

filed was to remove certain recurring fiscal decisions from substantive law and place them in the General Appropriations Act.

Because there has been some confusion in the meaning of the term "base student cost" and what it represents, the act changes it to "base student allocation." The act further specifies that the base student allocation shall be specified annually in the General Appropriations Act. The Department of Education is given the authority to raise the base student allocation if the funds available exceed the amount allocated.

This act specifies that weighted full-time equivalent membership in special programs for exceptional students, part-time programs, special vocational-technical programs, and special adult general education programs, including adult basic education, adult high school, and community service, shall not exceed the maximum prescribed in the current General Appropriations Act. The act directs the Department of Education to review its method for projecting enrollment in these programs and to report annually, at least 60 days prior to each regular session of the Legislature, a projected three year enrollment of full-time equivalent students in these programs.

The language relating to the sparsity supplement is amended to provide for the funding of a fixed amount to be allocated annually in the General Appropriations Act. Language relating to the level of assessment as a condition for receipt of the supplement is deleted from law.

The prior procedure for establishing district cost differentials was to make an annual revision to the law. This act places the formula for calculating the differentials into law and delegates the Commissioner of Education authority to

calculate annually the correct value. The formula prescribed is as follows: multiply the most recent index of each district by .008; to the resulting product, add .200. The amount thus obtained is that district's cost differential. The method of calculating required local effort is changed from prescribing a dollar amount in law to a fixed millage rate as prescribed in the General Appropriations Act.

The definition of a full-time equivalent student is amended to define eligible membership, for funding purposes, beyond the normal 180 day school year. Funding is limited to basic programs offered for promotion or credit, special exceptional student programs, special vocational-technical programs, and special adult general education programs. The definition of a full-time equivalent student is amended to allow the Department of Education to implement an equitable method of funding for experimental schools, and schools operating under emergency conditions for less than the minimum school day.

Education Fixed Capital Outlay

Committee Substitute for House Bill 4190 (Chapter 76-280) incorporates several bills relating to capital outlay to appropriate from the Public Education Capital Outlay and Debt Service Trust Fund (Capital Outlay Fund) the following amounts for the several levels of education:

1. Public Schools - $81,133,990. Of this amount $3 million is earmarked for multidistrict exceptional child facilities, and of the $3 million, $50,000 is earmarked for renovation of existing facilities to initiate in 1976-77 a program for students who are both deaf and blind.
2. Area Vocational-Technical Centers - $21,431,620.

3. Community Colleges - $27,554,940.

4. Board of Regents (for State University System) - $22,962,450. Of this amount, $2,630,665 is earmarked for the construction of an educational research and development center at the University of West Florida.

5. Florida School for the Deaf and the Blind - $750,000.

6. Community Educational Facilities - $2,667,000. Of this amount $667,000 goes to South Florida Junior College and $2,000,000 to Broward Community College.

7. Public Broadcasting - $4,600,000. Of this amount, $2,250,000 each, is earmarked for WEDU, Tampa, and WJCT, Jacksonville. $100,000 is for public broadcasting equipment in the new Capitol building. The Commissioner of Education is to approve building plans for these public broadcasting facilities in order to assure that space is included for use by public schools, community colleges and universities.

The act substantially rewrites the provisions in law which require the submission of an integrated comprehensive capital outlay budget request. The request is to be submitted to the Legislature and Department of Administration through the Office of Educational Facilities Construction (OEFC) no later than 60 days prior to the legislative session each fiscal year.

Section 235.42, Florida Statutes, is amended to provide for certain moneys which are to be deposited in the Public Education Capital Outlay and Debt Service Trust Fund. The OEFC is empowered and directed to transfer appropriations and cash within and among authorized projects. The Fund is to be used to provide timely

advances of cash for eligible projects to meet disbursement requirements.

Section 236.084, F. S., is amended to provide that the recalculation of a district's allocation has a definite limit of two prior years; and Section 235.195, F. S., is created to provide for the construction of facilities which by design serve one or more counties. This section provides procedures for requesting funds from the Department of Education.

Section 215.61, F. S., is amended to provide technical corrections to existing law and to clarify the time period to be used for calculating the average rate of collection of gross receipts taxes; and Section 235.22, F. S., is created to provide for the full funding of facilities for those districts which have urgent construction needs but lack sufficient resources to construct the facilities. Each district requesting the funds must certify that insufficient revenue will be generated in the next five years and must forego its annual entitlement until the amount advanced by the state is repaid or for seven years, whichever comes first. No funds were provided to implement this provision.

Section 235.4235, F. S., is also created by this act. It places certain technical language into the statutes and provides for the allocation of funds among authorized projects at the discretion of the State Board of Education.

Sections 229.815 and 229.820, F. S., relating to the State Planning Council for Post High School Finance, are repealed, as are Sections of Chapter 75-292, Laws of Florida, relating to the 1975-1976 Public Education Capital Outlay bond authorization.

Student Financial Aid

Committee Substitute for House Bill 2635 (Chapter 76-227) provides for the continuation of the Florida Insured Student Loan Program by increasing the authorization for revenue bonds supporting the Student Loan Trust Fund from 40 million dollars to 65 million dollars. Registration or tuition fees at state universities and public community colleges may be increased to comply with the debt service requirements of the student loan revenue bonds from $3.00 to $4.68 per quarter, and from $4.50 to $7.02 per semester per full-time student or credit hour equivalent.

There are several other provisions relating to student financial aid included in the act. The period of residency in Florida required of a student as a condition upon participation in the scholarship loan program is increased from one to three preceding years. Eligibility requirements for loans are expanded to include students admitted to attend institutions of higher learning or community colleges accredited by an association which is a member of the Council on Postsecondary Accreditation. The Department of Education is permitted to purchase federally-insured loans from other eligible lenders. In addition, the Department is authorized to assess a fixed nonrebatable service charge of 50 cents on each $100 of short-term student loans, and is allowed to charge off delinquent financial aid accounts with past due balances of $25 or less after six months. Finally, the act authorizes the withholding of academic transcripts for delinquent borrowers.

Legislative Approval of Tuition Fees

Committee Substitute for House Bill 344 (Chapter 76-111)

clarifies the procedure for legislative approval of registration and tuition fees established by the Board of Regents. Currently, inaction by the Legislature constitutes approval of the latest fee structure established by the Board, whether or not changes in the structure have been made. By this act, the Legislature is required to approve or amend by concurrent resolution the fee structure which the Board is required to submit to the Legislature at least thirty days prior to each regular session. If the Legislature fails to act, the most recent legislatively approved fee structure remains in effect. This act has an effective date of January 1, 1977.

STUDENTS

Education Accountability and Student Performance

Conference Committee Report for Committee Substitute for Senate Bill 107 (Chapter 76-223) amends and creates various sections of the School Code related to educational accountability and student performance to create the "Educational Accountability Act of 1976."

The various programs and activities related to accountability, which are presently conducted by the Department of Education, are set forth, and the Commissioner of Education is directed to clearly fix responsibility for the overall coordination of the entire system of accountability.

The kinds of planning that the Department of Education shall do are specified. Eliminated is the requirement that districts plan comprehensively and have the plans reviewed and approved by the Department. Districts are required to plan and budget for local needs, based on local goals and objectives, and to begin to develop a system of school-based management. The

requirements which the Legislature expects from the Comprehensive Education Management Information System are specified. This does not require any more than is in present statute; the intent is to clarify responsibility and to insure that the Department and the districts all understand what is needed.

The Educational Research and Development Program is amended to insure that its activities are conducted in concert with the system of accountability. A required annual report is eliminated.

The 1975 act which requires the Department to conduct educational evaluations of district programs and procedures is changed to insure that the data collected under the auspices of the various programs addressed in this act are utilized by the Department in such a way as to improve the state system of education.

The statute authorizing the state-wide testing program is substantially reworded to clarify legislative intent. The program will test in grades 3, 5, 8, and 11 in the basic skills, and the data shall be used to improve the state system of education by identifying needs and assessing how well districts and schools are meeting minimum state standards -- or to determine how well educational programs are equipping students with those minimum skills necessary to function and survive in today's society.

The present reporting procedures required of the Commissioner the district, and the school are clarified. The statute relating to the annual report of school progress is substantially changed so that schools may prepare reports which truly reflect their needs and future plans. The statute authorizing the establishment of school advisory committees is recast; however, no substantial changes in present law are made.

The high school equivalency examination program is modified

by this act to provide for subject area examinations, in addition to the high school equivalency examination which shall be made available to eligible students. School districts and community colleges are required to plan cooperatively to provide advanced instruction to students who demonstrate readiness for such activities.

The Basic Skills Act is revised to provide that basic skills must be tied to performance and ability to survive in today's society - "functional literacy." Prescriptive techniques and diagnostic testing are required, and district evaluations of basic skills in grades 1 through 3 are called for. These evaluations - including, but not limited to, state tests - shall be used in determining how schools should deal with identified problems.

Each district is required to establish a program of pupil progression by July 1, 1977, which is based upon performance and is designed to reduce social promotions. Such programs shall be based upon local goals and objectives which supplement state standards. Emphasis shall be placed on performance in the basic skills (as measured by statewide tests) before a student progresses from grades 3, 5, 8, and 11. Other factors for progression shall be set by school board rule. The act further requires that, by the 1978-79 graduating class, district standards for high school graduation shall be established. These are to include: (1) mastery of basic skills and satisfactory performance in functional literacy as determined by the State; and (2) completion of the minimum number of credits required by the district school board. Each district is required to provide remediation for students unable to meet such standards, and to provide for the awarding of certificates of attendance. The districts are permitted to use differentiated

diplomas to correspond with the varying achievement levels and competencies of their graduates.

This act sets out the specifics of the cost accounting system, the kinds of cost reporting required by the Legislature of the districts, and the program expenditure requirements which must be met. Each district is required to expend an amount equal to at least 80 percent of the funds generated for each program or the total school costs for that program. Adjustments in future allocations are provided for should a district not be in compliance with the requirements.

Finally, certain sections of the statutes relating to the annual report of school progress, the Commissioner's report, and the educational program audits are repealed; however, provisions for these reports and audits have been included in sections created or amended by this act.

Job Placement and Follow-up Services

House Bill 2814 (Chapter 76-90) allows districts to conduct job placement follow-up studies either on a stratified random sample basis or based on all graduating from or leaving the public school system, and including in either case area vocational-technical center graduates.

Student Discipline

House Bill 4144 (Chapter 76-131) makes technical changes in the Administrative Procedures Act, including exempting school boards from using state hearing officers and from complying with certain notice provisions in hearings which involve student disciplinary suspensions or expulsions and which are conducted by educational units.

Conference Committee Report for Committee Substitute for Senate Bill 575 (Chapter 76-236) relates to student conduct and discipline. It defines suspension, expulsion, corporal punishment, and alternative measures to be used to meet special needs of students.

School board expulsion hearings are to be governed by procedural requirements of the Administrative Procedures Act; suspension hearings, however, are exempted from such provisions. School boards are directed to make available to teachers, school personnel, students, parents or guardians a code of student conduct. Such code may be disseminated through a handbook or other existing student publication and shall include grounds for disciplinary action, procedures to be followed, and student responsibilities and rights. Codes are to be distributed at the beginning of the 1977-78 school year and each year thereafter.

The use of parental assistance and other alternative measures prior to suspension is encouraged except when conditions require immediate suspension. In addition, this act provides that no student shall be suspended for truancy. School personnel are not to be held legally responsible for suspensions made in good faith.

Superintendents are required to notify, in writing, the affected pupil and his parents of a recommendation for expulsion. Those acts which are grounds for expulsion are specified.

The act sets out procedures to be followed when a teacher determines that corporal punishment is necessary. The procedures follow those included in a decision by a North Carolina District Court, which was affirmed by the Supreme Court. They are as follows:

a) The principal must give general approval of corporal punishment;

b) The presence of another adult is required; and

c) A parent or guardian shall be given a written explanation if one is requested.

School personnel may not be held criminally or civilly liable for action carried out in conformity with school board rules -- except in cases of cruel or unusual punishment. School boards are authorized to provide legal services and costs for officers and employees of the board if suit is brought against them for their actions carried out in conformity with school board rules.

Finally, the act authorizes a law enforcement officer to take a child into custody if he has grounds to believe the child is absent without authorization from school. The child must be delivered without unreasonable delay to the school system.

Student Athletic Accident Insurance

House Bill 3172 (Chapter 76-86) permits district school boards to purchase athletic insurance for students enrolled in schools in that district. Heretofore only schools and school athletic associations had this authority. The act allows the purchaser of insurance to finance the cost of the insurance by adding a surcharge to the fee charged for admission to athletic events. In addition, school boards are authorized to pay for the insurance from available school board funds.

Administrative Personnel - Managerial Employees

Committee Substitute for Senate Bill 814 (Chapter 76-214) includes administrative personnel (both those who are primarily responsible for performing managerial duties and those who assist in formulating policies and perform specified managerial duties) in the definition of "managerial employees" for purposes of collective bargaining. Specifically included within the definition are the administrative personnel of the state system of public education, but this inclusion does not affect collective bargaining contracts entered into prior to the effective date of this act - June 22, 1976.

Florida School for the Deaf and Blind

House Bill 3051 (Chapter 76-269) amends the definition of the words "public employer" by providing that the district school board shall be the public employer of all employees of the school district, and the Board of Trustees of the Florida School for the Deaf and the Blind shall be the public employer for the academic and academic administrative personnel of the School.

House Bill 3050 (Chapter 76-268) exempts academic and academic administrative employees of the Florida School for the Deaf and Blind from the state career service system and requires the salaries of such employees to be set by the Board of Trustees of the School, subject to approval of the State Board of Education.

Personal Leave for Instructional Staff

House Bill 882 (Chapter 76-44) provides school boards with the option of granting members of the instructional staff up to four days of leave per year for personal reasons. Personal

leave is non-cumulative and is charged against an employee's earned sick leave. The act deletes the reference to two days of leave for emergencies.

Sex Discrimination in Faculty Salaries

Committee Substitute for Senate Bill 1064 (Chapter 76-241) is designed to eliminate sex discrimination in faculty salaries within the State University System. The Division of Universities of the Department of Education is directed to undertake such a program. Each university must complete a study of inequities by December 1, 1976, and annually thereafter. Any increases in salary, granted as a result of this study, shall be retroactive to September 15, 1976. Further, the Commissioner is required to report the results of the studies to the Legislature on or before March 15, 1977, and annually thereafter.

REGULATORY AGENCIES

Non-Public Colleges

Senate Bill 221 (Chapter 76-43) changes certain definitions related to non-public colleges excluded from the licensing and regulatory processes, requiring that they be chartered in Florida. It provides minimum educational standards for the licensing of non-public colleges by the State Board of Independent Colleges and Universities and certain requirements which have to be met before a licensed college can either expand or discontinue operation.

Finally, the act requires that non-public colleges which solicit students from outside the United States must disclose in writing to these students a statement of the college's purpose, its educational programs and curricula, a description of its facilities, its status regarding licensure, and the fact that

additional information may be obtained from the State Board of Independent Colleges and Universities, Department of Education, Tallahassee, Florida. Such disclosure is made a condition of licensure.

Teacher Regulatory Councils

House Bill 4191 (Chapter 76-230) provides that members of the Council on Teacher Education be appointed by the State Board of Education and requires the Commissioner of Education to consult with teaching and other professional associations in Florida prior to making nominations to the Board. Former provisions for nominations to be made by specified teacher organizations, councils and associations are deleted from the law.

The act also changes membership in the Professional Practices Council. The number of elementary school classroom teachers is increased from four to six as is the number of high school teachers. The reference to four representatives nominated by the Florida Education Association is deleted as is the reference to nominees from specific educational associations and institutions.

Committee Substitute for Senate Bill 1156 (Chapter 76-168), the "Regulatory Reform Act of 1976," provides for a legislative review of programs and functions that require the licensure or regulation of professions, occupations or businesses. It provides for automatic repeal of such laws dealing with specified regulatory agencies on certain dates on a six year rotating schedule. Unless extended by legislative act the automatic repeal is set for July 1, 1982, of Chapter 231, F. S., relating to public school personnel (which includes statutory provision for the Florida Council on Teacher Education, and the Professional Practices

Council), and Chapter 246, F. S., relating to nonpublic educational and training institutions (which includes statutory provision for the State Board of Independent Colleges and Universities and the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools).

SCHOOL FACILITIES AND EQUIPMENT

Solar Energy

House Bill 776 (Chapter 76-246), the "Solar Energy Standards Act of 1976," directs the Department of Education to develop a plan for a pilot program relating to the feasibility of utilizing solar energy as a source of power for the public schools in Florida, to be presented to the Legislature by March 1, 1977.

Flag Display

Senate Bill 377 (Chapter 76-99) requires publicly supported and controlled auditoriums, including schools, to display the flag of the United States daily. Auditoriums within a separate building are to display the flag upon a flagstaff on the grounds of the building except when weather does not permit, and auditoriums within a part of a building shall display the flag inside the auditorium whenever the auditorium is open.

Fire Safety

House Bill 4145 (Chapter 76-252) directs the State Fire Marshal to establish uniform fire safety standards for all state-owned and state-leased buildings, including public schools where standards adopted by the State Board of Education will be utilized. Schools and community colleges are required to report deficiencies

to the Fire Marshal and make corrections within budget limitations. Deficiencies requiring sizable expenditures of money are to be reported to the Legislature.

Construction Payments to Contractors

Committee Substitute for Senate Bill 158 (Chapter 76-4)* repeals Section 255.053, F. S., which provides for the maximum amount which can be paid to contractors prior to completion of work on public buildings. It amends Section 235.22, F. S., giving school boards full authority and responsibility for all decisions regarding school construction contracts and payments.

This act becomes effective August 3, 1976 (sixty days after adjournment of the Legislature).

School Bus Speed Limit

Senate Bill 70 (Chapter 76-159) provides school bus speed limits shall be the same as for vehicles over 8,000 pounds which permits 30 miles per hour in business or residential districts. The act also requires that equipment used by school patrols or special school traffic police in darkness be made in part from retroreflective materials visible at night at 300 feet.

*Vetoed in 1975 and passed over the Governor's veto by the 1976 Legislature.

ELECTIONS*

Advisory Opinions

Senate Bill 348 (Chapter 76-233) provides that, upon their request, supervisors of elections, local officers with election-related duties and persons and organizations involved in political activity shall be entitled to advisory opinions on election laws from the Division of Elections of the Department of State with respect to their actions or proposed actions.

All advisory opinions of the Division must be in writing, sequentially numbered, dated and indexed by subject. An advisory opinion shall be binding upon the person or organization requesting it unless the opinion is amended or revoked or unless material facts were omitted or misstated in the request.

The provisions of this act relating to verification of petition signatures are discussed under the subject Petition Qualifying Method, and provisions concerning maintaining of registration books under Precinct Boundaries, below.

Campaign Financing

House Bill 247 (Chapter 76-88) provides that campaign contributions of $100 or less need not be deposited in a campaign depository until the end of the 7th day following the receipt thereof (rather than the second business day) unless the aggregate of contributions received during the 7 day period exceeds $100.

*Prepared by House Bill Drafting

Petition Qualifying Method

Senate Bill 348 (Chapter 76-233) provides that in verifying signatures on a petition of a person using the petition method of qualifying, the supervisor of elections may use a name-by-name, signature-by-signature check or a random sample check. Random samples are to be provided by the Department of State. The Department is required to promulgate rules and guidelines for random sampling verification.

Any petitioner who submits petitions containing at least 15 percent more than the required number of signatures may require the use of a random sample check. If an affected candidate, representative of a designated political committee, or announced opponent does not accept the results of a random sample check, he may require a complete check. However, he must pay the board of county commissioners a fee if the result is not changed by the complete check.

Political Advertisements

House Bill 1514 (Chapter 76-49) redefines the term "political advertisement" as used in provisions which require such advertisements to disclose certain information and to meet other requirements, so as to include within the term any advertisement which endorses or opposes any proposition or issue to be submitted to the electorate for their approval or rejection. Previously, these requirements applied only to advertisements in furtherance of the candidacy of a person for public office.

Provisions of this act relating to unauthorized use of voter registration identification cards are discussed under the subject Voter Registration Cards, below.

Polling Places

Committee Substitute for House Bills 2955 and 3056 (Chapter 76-61) expands upon the activity which is prohibited within 100 yards of a polling place on election day to prohibit any person from distributing or attempting to distribute political or campaign material; soliciting or attempting to solicit votes, opinions, or contributions; soliciting or attempting to solicit signatures on a petition; or, except for established businesses, selling or attempting to sell any item. Any person who engages in such prohibited activity is guilty of a misdemeanor of the first degree.

Senate Bill 235 (Chapter 76-50) requires polling places to meet certain standards of accessibility to elderly or physically handicapped persons. The supervisor of elections may select a site not meeting such standards if none is available, or if the site is anticipated to meet them in the foreseeable future, or will temporarily comply during the time when the polls are open. If the supervisor selects a site not meeting the standards, he must report his selection to the board of county commissioners who must then take affirmative action to conform the site to the standards. District school boards and municipalities are to cooperate with the several boards of county commissioners in the implementation of this act.

Polling places which are temporary in nature are exempted from provisions of law which require buildings and facilities constructed, altered, or leased by the state, or a political subdivision thereof, to comply with the state standards of accessibility to physically handicapped persons.

Precinct Boundaries

Senate Bill 1206 (Chapter 76-121) requires all precincts, as nearly as practicable, to be composed of contiguous and compact areas having clearly observable boundaries, and specifies the periods of time during which precinct or election district boundaries may be changed. The Secretary of State may waive compliance with the restriction upon boundary changes if the county meets the requirements of the United States Bureau of the Census.

Each supervisor of elections must provide the Secretary of State with scale maps of each precinct, election district, representative district, and senatorial district. The Secretary of State is then required to forward a copy to the United States Bureau of the Census. Each supervisor of elections must notify the Secretary of State in writing with current map within 30 days of any reorganization of precincts or election districts.

House Bill 2749 (Chapter 76-60) and Senate Bill 348 (Chapter 76-233) provide that regardless of the location of precinct boundaries, as determined by the board of county commissioners and the supervisor of elections, the registration books must be maintained in such a manner that the total number of electors in each municipality may be determined therefrom.

Suspension of Municipal Elections

Senate Bill 104 (Chapter 76-68) authorizes the Governor to suspend a municipal election whenever he determines that it would be impracticable to hold the election due to an emergency resulting from a flood or hurricane or the immediate probability of the occurrence of a flood or hurricane. The Governor must

provide for the election within 30 days thereafter, and at least one week's notice of the election must be provided in a newspaper of general circulation in the municipality.

Voter Registration Cards

House Bill 1514 (Chapter 76-49) provides that any person who commits any of the following acts is guilty of a misdemeanor of the first degree:

1. The knowing possession without authorization of a blank, forged, stolen, fictitious, counterfeit, or unlawfully issued voter registration identification card.

2. The unauthorized barter, trade, sale, or giving away of a voter registration identification card.

3. The willful destruction or defacement of the voter registration identification card of another.

Election Cost Reimbursement

House Bill 3994 (Chapter 76-291) provides an appropriation of $111,184.75 from the General Revenue Fund to the Department of State to reimburse Broward and Dade Counties for expenses incurred in the special election held to fill the 94th district House of Representatives seat.

HEALTH AND REHABILITATIVE SERVICES*

The 1976 Florida Legislature enacted a number of measures which represent innovative responses to problems in the area of health and rehabilitative services. Significant legislation dealing with problems faced by older persons was passed. New approaches to parole and work programs for prisoners will be tried under laws passed pertaining to corrections. Several measures which modify and upgrade programs related to health and mental health were passed. Finally, a number of legislative acts provided for assistance to special needs groups such as displaced homemakers, children who are eligible for adoption, persons in foster care, and families who are not receiving child support payments to which they are entitled.

Aging

Senate Bill 578 (Chapter 76-51) revises the "Community Care for the Elderly Program Development Act of 1973" into the "Community Care for the Elderly Act," and directs the Department of Health and Rehabilitative Services to conduct or to contract for combination demonstration projects and evaluation studies in at least three areas of the state to test alternatives to institutionalization for the elderly. Such projects may include home-delivered service programs, multi-service senior center programs, and family placement programs as needed to assist elderly persons

*Prepared by the Senate Committee on Health & Rehabilitative Services

to remain living independently in their own homes and/or communities rather than be subjected to unnecessary or premature placement in a nursing home or other long-term care facility. Health maintenance services, homemaking and chore services, and mobile meals services would be available through home-delivered service programs. Multi-service senior center programs would provide the same services as a home-delivered service program, and in addition would provide counseling, telephone reassurance, and information and referral services. Each type of program would add additional services, such as transportation, legal, and employment services, depending on local needs and resources. Family placement programs would attack the problem of unnecessary institutionalization from a different aspect by providing for placement of an elderly person in the home of a caretaker who would assist the elderly person in meeting the normal demands of daily living, and could be reimbursed for providing such assistance according to a rate schedule set by the Department. An additional aspect of the statute provides for the establishment of programs of day care for the elderly as part of a multi-service senior center program, or in a hospital or nursing home. Such programs would provide a protective daytime environment for mentally or physically impaired or frail persons who are 60 years of age or older, who have a regular home but who might require admission to acute or long-term health care in the absence of such programs. Day care programs would provide a sheltered physical environment, at least one meal a day, rest facilities, and social activities.

Entities desiring to contract with the Department of Health and Rehabilitative Services to conduct a community care program

must provide at least 25% of project funding. Existing community resources and the use of volunteers are to be maximized in operating programs. Additionally, the Legislature in the 1976-1977 General Appropriations Act authorized the use of various funds under the Medicaid Program to pay for services provided by community care programs. The Department of Health and Rehabilitative Services is to evaluate the effectiveness of such coordinated programs of community services as a means of delaying or avoiding the placing of elderly citizens in long-term care facilities and report its findings and recommendations to the Legislature.

Committee Substitute for House Bill 3140 (Chapter 76-201), the "Omnibus Nursing Home Reform Act of 1976," is an effort to upgrade the quality of nursing home care in Florida and as such is complementary in purpose to efforts to improve community care programs for the elderly. The act touches on the operation of nursing homes in a number of areas, by prohibiting certain unfair business practices, by providing for a rating system based on quality of care standards and a reimbursement system which in part takes such ratings into account, and by providing for protection of certain rights of patients. Additional provisions of the act relate to composition of the Board of Examiners of Nursing Home Administrators and to programs for persons with injuries to the spinal cord.

Disclosure of the names and addresses of any directors or persons owning at least 10% of a corporation applying for a license to operate a nursing home is required. The name and address of any business entity in which an officer, director or owner of a nursing home has an interest of 10% or more which will

be providing goods, leases, or services to the nursing home is also required to be disclosed. Kickbacks, bribes and rebates are prohibited. Willful coercive solicitation of contributions for a nursing home, such as a contribution being made a condition for acceptance of a specific patient, is also prohibited.

The rights and welfare of patients who are residents of a facility which voluntarily closes are protected by requiring a 90-day notice of the closing in order to allow adequate time to arrange for transfer. The Department of Health and Rehabilitative Services is responsible for transfer of patients who receive assistance under the Medicaid Program. The Department must have a representative in the facility at least 30 days in advance of closing and must monitor the transfer of patients to other facilities and insure that patients' rights are protected.

At least one unannounced inspection of each nursing home shall be made annually by the Department, and penalties are provided for the giving of advance notice of such inspections. Provisions are made to insure adequate public availability of records and reports of nursing home inspections, including a requirement that a summary of the results of the last completed inspection be posted in a facility and that a copy of the full inspection report be obtainable upon request, subject to a charge for copying. Promulgation of standards for the quality of care in nursing homes is mandated, as well as the establishment of a system of rating nursing homes. Such ratings, based on inspection results, are to be publicly posted and included in all advertising, and will in part form the basis for levels of state assistance payments for services rendered to patients, with higher rated homes receiving higher levels of payment. A system of classifying

inspection deficiencies is also mandated to allow quick recognition and understanding of the severity of a deficiency. The Department of Health and Rehabilitative Services is to publish a report, available to the public, by January 1, 1977, and annually thereafter, which shall contain certain specified information including the name, address and owners of all nursing home facilities in Florida, the rating of such facilities, the number of beds, rooms and employees, languages spoken, religious affiliations of the facilities, recreational and other programs available, and whether or not such nursing homes accept Medicare or Medicaid patients.

Adoption by a nursing home of a public statement of the rights of its patients is required. Among other things, the statement must insure each patient the following: civil and religious liberties, adequate and appropriate health care, the right to present grievances, the right to manage his or her own financial affairs, privacy in treatment and in caring for personal needs, courteous treatment, freedom from mental and physical abuse and unnecessary restraints, the right to be informed of his or her medical condition and proposed treatment, and the right of freedom of choice in selecting a health care facility.

In order to increase the skill and knowledge of health practitioners in the care and treatment of nursing home patients, the Department of Education is directed, in cooperation with the Department of Health and Rehabilitative Services, to develop appropriate educational programs. Practical education courses may be conducted in nursing homes which have received high quality ratings and which contract to provide such an educational setting. Prior to March 1, 1977, the Department of Education will report to

the Legislature on the progress of these programs and make recommendations for legislative action.

Various other aspects of nursing home care are affected by the Omnibus Nursing Home Reform Act. Certified statements of the cost of providing care are required to be submitted semi-annually to the Department of Health and Rehabilitative Services by nursing homes which contract to provide services to indigent patients under the medical assistance programs. The composition of the Board of Examiners of Nursing Home Administrators is changed to provide a majority of non-administrators of nursing homes, and noninstitutional members of the board are required to have no direct financial interest in nursing homes. Certain home health agencies are exempted from the requirement of obtaining a certificate of need prior to receiving a license. Various reports to the Legislature are required in order to monitor the implementation of the act.

Also provisions requiring the Department of Health and Rehabilitative Services to develop a plan for the establishment of a multilevel treatment program for persons with spinal cord injuries are included in the act. The program envisioned would provide for an emergency medical evacuation system, intensive trauma care centers, rehabilitation centers, and halfway houses as a temporary measure for victims of spinal cord injury, with appropriate treatment and rehabilitative services at each level. By insuring early identification, skilled handling, and proper treatment, such a system should aid in prevention of permanent paralysis and in restoration of injury victims to as normal a life as possible.

An appropriation of $125,000 from general revenue funds

is made to be matched by federal funds for purposes of implementing this act.

House Bill 1899 (Chapter 76-219) provides that a retired physician or osteopath, who was licensed and practiced in another state for at least 10 years and who was in good standing at the time of his retirement, shall be granted without cost a limited license to practice medicine or osteopathy in Florida. If it has been more than 5 years since the practitioner's retirement, the director of the local health unit shall supervise the applicant for six months prior to granting of a limited license. Holders of limited licenses may practice only in the employ of public or nonprofit agencies or institutions which are located in areas of critical medical need, and may not receive an annual salary which exceeds twice the income eligibility guidelines for federal assistance programs for a single person in Florida.

Other changes in laws regulating the medical care professions are found in the article on BUSINESS REGULATION AND COMMERCE.

House Bill 4063 (Chapter 76-208) contains the "Florida Age Discrimination in Employment Act," which prohibits discrimination in employment because of age by a public employer, labor union or employment agency. Public employers, except law enforcement and firefighting agencies, may not segregate or classify an employee in any way which would adversely affect employee status if the classification was based on age. A labor organization may not exclude from membership, refuse to refer for employment or cause an employer to discriminate against anyone because of age. It is also unlawful for an employment agency to refuse to refer an individual for employment because of age. However, seniority systems, employee retirement, pension, or insurance plans which

do not evade the purposes of the act may be observed. An individual may not be discriminated against because the individual makes a charge under this act. Persons who are not state career service employees, when aggrieved by a violation of the act, may appeal directly to a court for civil relief.

In the case of the state employee who is within the career service system additional specific prohibitions are made against the employee being forced into mandatory retirement. Such an employee who believes he has been discriminated against may appeal to the Career Service Commission and then to a court, and the Commission is given authority to hear appeals under additional circumstances for employees over 65. The Commission as part of its decision in an appeal may require that an employee beyond the age of 65 be reduced to a part-time position for the purpose of phasing the employee out of employment into retirement.

Corrections

Committee Substitute for House Bill 3958 (Chapter 76-273) calls for the Department of Offender Rehabilitation to use inmate labor to provide for its own self-sufficiency in foodstuffs and clothing and thus reduce reliance upon general tax dollars for support. An amount has been provided in the General Appropriations Act to speed the development of wide-ranging programs of manual labor by all inmates.

The legislation provides incentives to inmates to work by allowing them credit for gain-time on a monthly basis as earned for the productive labor they perform. It also repeals the system which gave every inmate the same amount of time off the

sentence whether work was performed or not. Educational and training programs will be secondary to the requirement of performing a day's labor. Inmates convicted of serious felonies will be prohibited from attending state-operated or state-supported universities or community colleges although college-level courses may be taught on the grounds of a prison itself.

To coordinate the development of inmate labor programs, a Prison Industry Commission is created composed of representatives of private enterprise, labor, and agriculture. This group will act as a catalyst in developing inmate work programs which can be of benefit to the state and the taxpayers while not being unduly competitive with private enterprise. The emphasis of the correctional work programs is to provide inmates with useful work experience on a full-time basis where feasible, to provide appropriate job skills that will facilitate their reentry into society, and to provide an economic benefit to the public and to the Department of Offender Rehabilitation through effective utilization of inmates.

Senate Bill 892 (Chapter 76-290) provides supplemental appropriations to the 1975 General Appropriations Act to grant additional moneys to pay salaries, expenses, operating capital outlay, food products, and for other specified purposes of the Department of Offender Rehabilitation for the fiscal year which began July 1, 1975, and ended June 30, 1976.

House Bill 3996 (Chapter 76-274), the "Mutual Participation Program Act of 1976," provides for a 2-year pilot program under which an offender, other than an habitual felony offender or an offender convicted of a capital or life felony, will be told the terms of his institutional confinement and a parole date and terms

of parole supervision and release, which will become effective only if the offender meets certain criteria. The criteria for the offender during confinement must include participation in a correctional work program, and shall include additional criteria jointly established by the Department of Offender Rehabilitation and the Parole and Probation Commission, such as vocational counseling and participation in a work-release program. Criteria shall also be established for the period of parole supervision, such as a requirement for participation in vocational or counseling programs, and stipulations regarding employment.

The act also modifies the right of a defendant to appeal a conviction by providing that a defendant who pleads guilty or nolo contendere with no express reservations of the right to appeal shall have no right to a direct appeal, and instead shall obtain review by means of a collateral attack. In a case where a defendant has pled guilty or nolo contendere, the victim of the crime shall be permitted to appear at the sentencing hearing, prior to the imposition of sentence, to make a statement under oath for the record, or the victim may submit a written statement. Such statement shall be limited to the facts of the case, the extent of any injuries, and any financial loss or loss of earnings as a result of the crime.

Senate Bill 286 (Chapter 76-232) prohibits the conversion of G. Pierce Wood Memorial Hospital at Arcadia into a correctional facility as long as it remains in use as a state mental health hospital.

Marriage and the Family Unit

House Bill 2911 (Chapter 76-220) provides legislative intent to modify and supplement existing legislation regarding the support of dependent children, and declares the public policy to

be that this act shall be construed and administered to the end that children shall be maintained from the resources of responsible parents in order to relieve the burden of the public assistance programs. The Department of Health and Rehabilitative Services is designated as the agency responsible for administration of the child support enforcement program, and public assistance money used for a dependent child shall constitute a debt due to the Department to be paid by the responsible parent. If there has been a prior court order the debt is limited to the amount provided therein; however, the Department may petition the appropriate court for modification of a court order or institute actions for support against any person liable for the support of the child. The act provides the procedure for payments to be made and the action to be taken when the responsible parent fails to pay.

Child support and paternity services may be extended to persons otherwise ineligible provided proper application is filed with the Department. A parent locator service, to assist in locating parents who have deserted their children and other persons liable for support of dependent children, is to be established by the Department, and procedures are provided for reporting uncollectible child support debts. Certain unidentifiable funds are required to be held by the Department for 90 days and then revert to the General Revenue Fund unallocated. The Department is required to report to the Legislature no later than March 15 of each year the number of parents located, the amount of money generated through the collection of child support of dependent children, the cost of program management and administration, and any other information which may be useful in evaluating the program.

Committee Substitute for House Bill 3385 (Chapter 76-271) requires the Department of Health and Rehabilitative Services to establish and implement programs of training, counseling, and services to aid displaced homemakers in becoming financially secure. A displaced homemaker is defined as an individual who is at least 35 years of age, who worked providing unpaid household services and was dependent on the support of a family member or on federal assistance, who no longer receives such support, and who is not employed and has difficulty in finding employment. Services to be provided in the program include specialized job counseling by professionals, job training and placement, a well-person health clinic, financial management services, educational services, and research in the creation of new jobs to utilize the talents of displaced homemakers. The program is to be staffed using displaced homemakers where practicable. Coordination with other programs which may be available to help the same group of clients is mandated.

House Bill 3612 (Chapter 76-203) provides that the Department of Health and Rehabilitative Services may pay adopting parents subsidies when such payments offer the best opportunity to obtain a permanent adoption placement for a special needs child. A special needs child is defined as a child who is emotionally tied to foster parents or is unlikely to be adopted because he or she is 6 years of age or older, mentally retarded or physically or emotionally handicapped, or of black or racially mixed parentage. The Department may pay a monthly subsidy up to the maximum monthly amount which would be paid for foster care for the child for a period of up to 3 years. The Department may also pay for health care needed as the result of a condition existing at the time of

adoption, until the child reaches age 18. In addition, a handicapped child's existing eligibility for services of the children's medical services program shall continue after adoption, and adoption fees shall be waived. The Department is required to make annual reports to the Legislature by January 1 of each year regarding the cost and benefits of the program.

Social Services

House Bill 177 (Chapter 76-20) revises the anti-fraud provisions in Section 409.325, Florida Statutes, relating to public assistance. The act provides for punishment of anyone who falsely obtains public assistance or who knowingly uses falsely acquired food stamps, or anyone who aids and abets others in the commission of such acts. Also, provision is made for the punishment of any assistance program administrator who fraudulently misappropriates public assistance or assists others in such misappropriation. If the value of the wrongfully received assistance is less than $200 in a year, the guilty person has committed a first degree misdemeanor. If the value of the assistance is more than $200 in a year, the person is guilty of a third degree felony. A person providing service for an assistance program who receives a payment from a recipient must notify the Department of Health and Rehabilitative Services within ten days at penalty of being guilty of a first degree misdemeanor. This revision removes the former requirement that the Department make an investigation of fraud and transmit the report to the state attorney's office. However, any investigation records pertaining to fraud are made business records. The act also removes the required investigation by the state attorney.

Senate Bill 866 (Chapter 76-258) provides for periodic review by the circuit court of the status of children in long-term foster care. Such reviews shall occur after a child has been in foster care for 6 months and shall be conducted at least annually. The Department of Health and Rehabilitative Services, or the licensed child-placing agency which has custody of the child, shall make an investigation and social study of the child's situation and present its report and recommendations to the court and petition the court to review the status of the child. The court may continue the child in foster care, return the child to its family, or free the child for adoption. This program of review should enable many children who presently remain in foster care for extended periods to find permanent homes through adoption.

House Bill 4084 (Chapter 76-128) permits the Department of Health and Rehabilitative Services to forgive repayment of 20% of the principal of a development loan from the Group-Living Home Trust Fund made to a nonprofit group-living home for retarded persons for each year the home remains in operation. If any home which has received a loan closes, the outstanding amount of any loan it has received must be paid within one year.

House Bill 1826 (Chapter 76-264) removes the Chief of the Bureau of Budget of the Division of Budget, Department of Administration, from the Council for the Purchase of Products and Services of the Blind or Other Severely Handicapped, which is located within the Department of General Services. In lieu thereof, a representative of private enterprise shall be appointed to the Council by the Governor, and the Chief of the Bureau of Blind Services of the Department of Education and the Director of Prison Industries of the Department of Offender Rehabilitation are also

designated as Council members.

Mental Health

House Bill 3634 (Chapter 76-221) revises the manner in which mental health services, as provided through the Department of Health and Rehabilitative Services, are to be funded, coordinated and administered on the district level. The act requires that by January 1, 1977, the current 23 mental health districts shall be aligned with the 11 departmental service districts. Mental health boards are to be established in subdistricts as determined by the District Administrator of the Department of Health and Rehabilitative Services. The total operating budget of a board must not exceed 6% of the district or subdistrict mental health budget as approved by the District Administrator, or $150,000, whichever is less. The board shall prepare a district mental health plan which shall reflect both the program priorities established by the Department and the needs of the district. The plan is to include a list of the mental health services and the service providers which will receive state and county funds. A schedule, format and procedures for plan development and review will be promulgated by the Department. All claims for services by a district mental health board shall be made utilizing a purchase of service approach. The act further directs the Department to develop uniform management information, cost accounting, and reporting systems for mental health programs statewide.

Senate Bill 1008 (Chapter 76-194) requires the Department of Health and Rehabilitative Services to establish by January 1, 1977, a separate unit or units for the treatment of patients who have been involuntarily hospitalized for reason of having been found incompetent to stand trial, and who the Department determines

to have the potential to escape or cause injury. Such facilities are to be secure and have separate security staffs which meet or exceed the minimum standards for employment and training of correctional officers. The Department may contract with the Department of Offender Rehabilitation, with law enforcement agencies, or licensed private investigative or patrol agencies to provide security if such arrangement is more cost effective and is not detrimental to treatment. The Department of Health and Rehabilitative Services, in consultation with the Department of Administration, is given sole responsibility for the construction of these treatment units in order to expedite implementation of the act, and an appropriation is made for the purposes of the act.

Senate Bill 1348 (Chapter 76-79) amends the Comprehensive Alcoholism Prevention, Control, and Treatment Act, popularly known as the "Myers Act." The length of time an intoxicated person may be detained in protective custody in a detention facility is increased from 12 to 72 hours. Municipal or county jails and other detention facilities are added as sites which may be used as a treatment resource. The disability of minority for persons under age 18 is removed for the purpose of obtaining treatment for alcoholism. State-operated mental hospitals are excluded from treatment resources to which a person may be ordered for involuntary treatment of alcoholism. The chief of police of the municipality in which a person resides or is found is added to the list of persons who may petition the court to order involuntary treatment. A provision is added to the statutes allowing commitment of an habitual alcohol abuser, defined as a person who has been treated for alcoholism three or more times in the prior 12 months, to an outpatient program for up to 120 days or to an

inpatient program for up to 60 days, subject to recommitment.

Senate Bill 311 (Chapter 76-132) prohibits disclosure of information received by a Drug Abuse Treatment and Education Center or by the licensing agency in such a manner as to identify individuals, and eliminates an existing prohibition against disclosing such information so as to identify facilities.

Health Care Delivery

Committee Substitute for House Bills 2740 and 2950 (Chapter 76-47) requires pharmacists who receive prescriptions for brand name drugs to substitute a less expensive generically equivalent drug product listed in a formulary established by the pharmacy, unless the prescriber writes the words "medically necessary" on the written prescription or expressly states so in prescribing orally. The pharmacist is to notify the customer of the substitution and any savings resulting therefrom, as well as the fact that the customer may refuse the substitution. The full amount of savings resulting from a substitution is to be passed on to the consumer. A sign is to be posted in pharmacies notifying the customer that generic substitution is required by law unless the physician directs otherwise. The Florida Board of Pharmacy and the State Board of Medical Examiners are to establish by rule a "negative formulary" of generic and brand name drugs which because of significant inequivalence may not be substituted.

Certain other provisions affecting the practice of pharmacy are included in the act. Pharmacists are authorized to delegate to nonlicensed supportive personnel certain supervised functions in a pharmacy which do not fall within the

practice of the profession of pharmacy. Manufacturers selling drugs in Florida are required to file a current price list with the Department of Health and Rehabilitative Services annually on or before January 20, as well as within 10 days after any change. Such a list shall, upon request, be furnished to any pharmacy.

Senate Bill 472 (Chapter 76-53) creates three diabetes centers for education, treatment and research to be located at the three medical schools in the state and specifies the duties of these centers. The medical schools shall administer the centers in consultation with the Department of Health and Rehabilitative Services. A 15-member Diabetes Advisory Council to be appointed by the Governor will advise and consult in the operation of the program. Diabetes centers can accept gifts, grants and donations, but state general revenue funds are not to be used for the purposes of the act.

Committee Substitute for House Bill 3156 (Chapter 76-54) provides specific statutory authority and intent regarding the neonatal intensive care program regulated by the Department of Health and Rehabilitative Services. The six existing neonatal intensive care centers are specified as regional neonatal intensive care centers and a seventh center is designated in Pinellas County. Three additional regional centers are to be established in the future to complete the state network. "Affiliated centers" will provide a less intensive level of care than regional centers but will be affiliated with a regional center in order to assure an integrated system of care. The act provides for a Neonatal Advisory Council to recommend standards and facilities for designation as regional or affiliated centers.

Annual program review by the Department and a report to the Legislature by February 15 of each year are required.

Senate Bill 697 (Chapter 76-33) specifies that chiropractic services are to be included in the definition of "comprehensive health-care services" for the purposes of the Health Maintenance Organization Act.

House Bill 1356 (Chapter 76-13) reduces from 18 years to 17 years the age at which a minor may give consent to donate blood without parental approval. However, the consent of a minor shall not be sufficient in the event a parent objects in writing to the donation.

Three bills pertaining to abortion and pregnancy were passed by the Legislature. Committee Substitute for Senate Bill 60 (Chapter 76-231) provides that termination of pregnancy cannot be performed during the third trimester unless two physicians certify in writing that the termination is necessary to save the life or preserve the health of the mother, or one physician certifies in writing that legitimate emergency medical procedures for termination are medically necessary and another physician is not available for consultation. House Bill 1218 (Chapter 76-16) provides that an abortion referral or counseling agency as defined in the act is required to furnish a client with a full and detailed explanation of abortion, including the effects of and alternatives to abortion, prior to making a referral or aiding the client to obtain an abortion. In the event the client is a minor, a good faith effort shall be made to furnish such information to the client's parents or guardian. Kickbacks or the payment of fees by a physician, hospital, clinic or other medical facility to an abortion referral or counseling agency for referrals is prohibited.

Senate Bill 928 (Chapter 76-215) authorizes an unwed pregnant minor to consent to medical or surgical care or services relating to her pregnancy, and authorizes an unwed minor mother to consent to medical or surgical care or services for her child.

Health Manpower

House Bill 3350 (Chapter 76-63) clarifies legislative intent relating to the Community Hospital Education Council by stating legislative support for an expansion in the number of family practice residency positions so that 150 new family physicians can be graduated into practice each year by 1988. Further, legislative intent is stated that funding for graduate education in family practice be maintained at $10,000 per resident per year, or that all programs under the act be maintained or reduced proportionately should funding be reduced. The act also increases membership on the Community Hospital Education Council from 7 to 9 members by adding two consumer representatives. In addition, certain additional details regarding program goals and objectives and measures of attainment are specified for inclusion in the Council's annual report to the Legislature which is due on or before January 1 of each year.

Department of Health and Rehabilitative Services - Procedures

House Bill 4055 (Chapter 76-115) authorizes the Governor to designate local service agencies of county government to provide services pursuant to federally required state plans administered by the Department of Health and Rehabilitative Services. The local agencies shall correspond in geographic coverage to the Department's service districts, and shall administer service plans which have been approved by each county

commission on behalf of all counties within a district. The local agency, which shall be headed by the District Administrator for the service district, shall administer the service programs in conformity with statewide standards established by the Department. The act also changes the date of repeal of all rules in effect prior to departmental reorganization from October 1, 1976 to January 1, 1977, and clarifies certain procedures to be followed in the event that the Secretary of the Department of Health and Rehabilitative Services is required to make adjustments in the structure of the Department in order to eliminate conflict with federal statute or implementing regulation. The local service agency is to administer its program through a written agreement with the Department and the terms of the agreement are prescribed in the act.

House Bill 4147 (Chapter 76-210) amends Chapter 75-190, Laws of Florida, relating to collection of fees from clients of the Department of Health and Rehabilitative Services, to clarify certain portions of the law and to eliminate the provision which would have repealed the law on July 1, 1976. Generally, it provides that clients, parents of a minor client, the spouse of a client, and third-party payors shall be liable for the cost of services received from the Department and shall be charged fees consistent with ability to pay. Upon recordation with the appropriate circuit court, unpaid fees shall constitute a claim against the client until three years after the client's death, unless earlier satisfied. Upon the death of a client, a caveat may be filed by the Department to attempt to recover unpaid fees.

INSURANCE*

The two major enactments of insurance legislation by the 1976 Legislature were amendments to the no-fault insurance law (Florida Automobile Reparations Reform Act) and the medical malpractice insurance laws. The no-fault amendments seek to lower the cost of insurance coverage for motorists and insure that premium or rate reductions are passed on to the insurance policy holder. Changes in the medical malpractice laws expand the scope of the regulations dealing with the Medical Malpractice Joint Underwriting Association and hospital risk management to cover a wider range of health care providers.

Other enactments provide for group health policies to cover treatment of mental and nervous disorders and chiropractic services; prohibit discrimination against mentally or physically handicapped in issuance of policies or charging of rates; revise the windstorm insurance apportionment plan; increase the service charge of premium finance companies; prohibit additional premium charges for auto insurance in certain cases involving moving traffic violations; and make leasing driver's insurance primary over that of an auto rental company.

Insurance Generally

Committee Substitute for Senate Bill 98 (Chapter 76-160) requires that insurers, health maintenance organizations and nonprofit hospital and medical service plan corporations transacting group health insurance or providing prepaid health care

*Prepared by House Committee on Commerce

in Florida offer at appropriate additional cost under group health policies, group prepaid health care contracts, or group hospital and medical service plan contracts coverage for necessary care and treatment of mental and nervous disorders. The act specifies the level of benefits to be provided and designates policies and contracts excluded from this law, the effective date of which is January 1, 1977.

Senate Bill 698 (Chapter 76-167) amends Section 627.419(4), Florida Statutes, to allow a subscriber under a group health policy to request an optional rider for chiropractic services.

House Bill 4059 (Chapter 76-127) prohibits a health insurance company from discriminating against persons who are mentally or physically handicapped in individual, group, blanket or franchise disability policies by refusing to insure or charging unfairly discriminatory rates solely because of such persons' condition. A company is not required to cover a handicap already in existence when the policy is purchased.

Committee Substitute for Senate Bill 1278 (Chapter 76-96) amends the current windstorm pool law. It provides that any property insurance company with a policyholder surplus of $5,000,000 or less, which writes at least 25% of its total country-wide property insurance premiums in Florida, may petition the Department of Insurance to qualify as a limited apportionment company. Such companies benefit in two ways under the new law: they do not participate in the apportionment of losses exceeding $50,000,000, and if the Department determines that an assessment against them will impair their surplus, then such assessment may be deferred. Companies which are not limited assessment companies will receive a credit for any voluntary writing which will act as

an offset to their assessments under the law.

The law also sets out criteria for determining which counties or areas in Florida are eligible for windstorm coverage. Covered property includes dwellings, buildings, and other structures including mobile homes which comply with tie-down requirements, and the contents of all such properties.

Authorized investments for insurers are expanded to include bonds or notes issued by the Florida Windstorm Underwriting Association or private nonprofit corporations, and associations authorized by this act and their subsidiaries or affiliates authorized by the Department of Insurance.

House Bill 3688 (Chapter 76-126) increases the additional service charge of premium finance companies from a limit of $10 per finance agreement to a limit of $15, to apply only once in a 12-month period for any customer unless that customer's policy has been cancelled due to nonpayment within the immediately preceeding 12-month period.

House Bill 81 (Chapter 76-82) prohibits an insurance company from charging an additional premium for automobile insurance or refuse to renew a policy solely because the policy-holder or applicant was cited for a moving violation, provided the violation was subsequently dismissed or nolle prosequi (not prosecuted).

House Bill 3687 (Chapter 76-56) makes a leasing driver's liability or personal injury insurance primary over that of the lessor (rental company). If a driver has insurance of his own and rents an automobile in Florida, his own insurance will cover damages first. These provisions shall be placed in bold type on the face of each rental or lease agreement with information as to the lessee's insurance company's name.

No-Fault Insurance (Automobile Reparations or Financial Responsibility)

The Conference Committee Report for Committee Substitute for House Bills 2825, 3042, 3043, 3044 and 3155 (Chapter 76-266) is the large no-fault revision for the 1976 session. The financial responsibility and compulsory insurance minimums for operators of motor vehicles were lowered from $15,000/$30,000 to $10,000/$20,000 ($10,000 because of one injury or death, $20,000 because of injury or death to two or more persons in any one accident). Financial responsibility applies where a driver has had an accident involving $500 in property damage (formerly $200) or injury or death to a person. The property damage financial responsibility or compulsory insurance minimum remains at $5,000.

Insureds will be able to select uninsured motorist limits that better meet their needs. They may select such coverage from $10,000/$20,000 up to $100,000/$300,000 ($100,000 per person, $300,000 each occurrence), as offered by the insurer's filed rating plan. Under the old law personal injury protection benefits had to be paid within 30 days. Under this act such time period is held in abeyance when a charge for driving while under the influence or while committing a felony is pending. Such benefits may be excluded if a conviction based on such charge is obtained.

The monetary threshold of the old law is deleted and a new verbal threshold applies. The new threshold reads as follows: "In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by Sections 627.730-627.741, F. S., or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of

bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle, only in the event that the injury or disease consists in whole or in part in:

(a) loss of a body member, or

(b) permanent loss of a bodily function, or

(c) permanent injury within a reasonable degree of medical probability other than scarring or disfigurement, or

(d) significant permanent scarring or disfigurement, or

(e) a serious non-permanent injury which has a material degree of bearing on the injured person's ability to resume his normal activity and life-style during all or substantially all of the ninety day period after the occurrence of the injury, and the effects of which are medically or scientifically demonstrable at the end of such period, or

(f) death."

Claims fraud or conspiracy to defraud is made a felony of the third degree and the penalty applies against insureds, insurers, insurance adjusters, doctors or other practitioners, lawyers and hospital administrators. A Division of Fraudulent Claims within the Department of Insurance is established and its powers and duties, funding and number of employees are fixed.

Other provisions of this act include: a prohibition against stacking of coverages; an optional collision deductible of $500 to be offered by insurers; prohibition of joinder of insurers in litigation over an accident unless a policy defense is likely; submission of certain medical bills for personal injury

protection benefits by practitioners under oath subject to perjury; and reasonable notice to the insurer of the existence of a claim by an insured. Insurers may require a medical examination prior to paying personal injury protection benefits, and if a person unreasonably refuses, such benefits no longer apply. An additional optional deduction in personal protection benefits of $2,000 is permitted by policy endorsement.

The effective date of the provisions of this act is October 1, 1976; however, the act stipulates that within 60 days after October 1, 1977, the Department of Insurance shall review the level of Florida automobile insurance rates for the purpose of insuring that premium or rate reductions resulting from this act are being passed on to the insurance policy buyers.

Medical Malpractice

The medical malpractice Conference Committee Report on Committee Substitute for Senate Bill 586 (Chapter 76-260) makes a number of needed technical changes to last year's law, provides further tort reforms, and delves deeper into the concept of risk management.

Section 627.352, Florida Statutes, is amended to extend the deadline for the report of the Medical Liability Study Commission until January 1, 1977. Amendments to Section 395.18, F. S., extend risk management requirements to ambulatory surgical centers, as defined, health maintenance organizations, nursing homes and other similar facilities in addition to hospitals, which are currently covered under the law. The section deletes the 300 bed requirement currently in force. The section further delineates

the concept of risk management to require an incident reporting system and places the responsibility for such a program on the governing board of the health care facility. Two or more facilities are permitted to combine their risk management programs. Risk management innovations beyond those required by the act are encouraged.

The law requires each facility to carry insurance or show financial responsibility for the purpose of compensating certain patient injuries. The Department of Insurance shall make rules and audit every hospital's risk management and patient compensation program annually. The Department of Health and Rehabilitative Services is responsible for setting up a data processing and statistical compilation system using information from medical incident reports. Information obtained will be used in determining licensure and certification qualifications of health care facilities. An annual report of statewide statistical information will be made by the Department of Insurance and the Department of Health and Rehabilitative Services to the Governor and Legislature, with the first report due January 1, 1978.

Requirements are established for the payment to injured parties of certain expenses without regard to fault. Health care providers are required to report any medical incident to the risk manager who shall investigate the incident. The risk manager may then convene the Medical Incident Committee (members are the chief of medical staff or his representative and one additional person appointed by him, the presiding member of the facility's governing board and one additional person designated by the board) to determine whether a compensable injury has occurred. The Committee has

the power to decide the amount of compensation or the type of care to be rendered to the injured patient. The risk manager shall convey to the patient the offer and the legal rights affected by acceptance of such offer.

If the patient accepts the offer and thereafter decides to file a claim, his rights are limited in the following ways: (1) He must file within 24 months of the offer provided that time period is within the statute of limitations; (2) If he has received compensation or services, the value received shall be deducted from any award; and (3) His general damages are limited to $250,000.

If a malpractice suit is filed, no offer by the Committee shall be considered as an admission of negligence, and the fact that compensation was offered shall not be admissible into evidence. If the Medical Incident Committee is meeting to determine the extent to which a physician is responsible for an injury, the physician's insurer shall be given prompt notice and be permitted to participate in the proceedings. The insurer is bound by the final determination of the Committee, but has the right to go to arbitration. The Committee has the right to apportion fault among those responsible.

The law amends Section 627.351, F. S., relating to the temporary joint underwriting plan, by providing primarily a technical revision of the medical Joint Underwriting Association provisions which were established last year. It broadens the coverage under the JUA and also broadens the definition of covered health care providers.

Section 627.353, F. S., is amended to extend admissibility into the Patient's Compensation Fund and limit assessments for all

health care providers, other than hospitals, to an amount equal to any fees and assessments originally paid for the year giving rise to the deficit necessitating the assessment. In an attempt to make the fund actuarially sound, the amendments provide that if the claims against the fund for any given year total more than $100,000, they will be paid out at the rate of $100,000 per person per year until satisfied.

Section 768.133, F. S., is amended to extend medical liability mediation panel requirements to podiatrists. This requirement provides that claims arising from incidents must be submitted to such a panel before they can be filed in court.

Amendments to Section 627.355, F. S., stipulate that health care providers may self-insure for medical malpractice and subjects all such self-insurers to departmental regulation.

The Unfair Insurance Trade Practices Act is completely rewritten, a policyholder's Bill of Rights is provided and the Department of Insurance is given greater control over companies in order to curb bad faith claims handling.

Section 768.043, F. S., is created to provide for a direct offset of amounts received from collateral sources to the award in medical malpractice cases. It also provides for an offset to the offset for premiums paid by the claimants to secure such collateral sources benefits. It provides that there shall be no offset if the collateral source has the right to subrogation, but it disallows the right of subrogation to collateral sources unless expressly provided by law. The term "collateral source" is defined in very broad terms except that life insurance is excluded.

The law defines "medical negligence" and retains the

locality or similar community standard for non-specialists. The locality standard does not apply to specialists. The definition requires that the claimant must prove negligence and that no inference or presumption of negligence may arise because of death or personal injury. There is an exception for the discovery of surgical paraphernalia left in a patient, the presence of which constitute a presumption of negligence on the health care provider's part.

If a jury finds the health care provider liable in a malpractice suit, it will itemize the damage award into these categories: medical expenses; lost wages and other economic losses, and general damages (including losses characterized by pain and suffering). The jury will further break down the award into the amounts in each of those categories which have already been incurred (past damages) and those awarded for expected future losses, expenses, and general damages.

If the jury award for all <u>future</u> damages is $200,000 or more, then either party may request the court to require that those future damages be paid out over a period of time rather than in a lump sum. The court, in its discretion, may order the periodic payment of the award over the period of time determined by the jury in which future losses and expenses will accrue. This period of time is not necessarily the claimant's life expectancy. If damages are to be paid out over a period of time and the claimant dies during that period of time, payments will cease except that the balance of expected wage loss will be paid into the claimant's estate in a lump sum. If the claimant lives until all periodic payments have been made, the payment will cease when the total

amount awarded by the jury has been paid.

The court is given greater leeway to change the amount of a jury verdict. The standard set forth is to determine if the amount awarded is clearly excessive or inadequate. If the judge finds clear excessiveness or inadequacy based on his examination of the award, he may order that it be increased or decreased, or order a new trial on the issue of damages if the adversely affected party does not agree with the remittitur or additur.

All provisions of this act take affect July 1, 1976, except those relating to the processing of medical incidents and the determination of liability assessments which become operative January 1, 1977.

Domestic Stock Insurance Companies

Senate Bill 470 (Chapter 76-100) provides that offers or exchanges of 5% or more of the outstanding voting stock of a domestic stock insurance company or controlling company (as defined) are subject to regulation by the Department of Insurance. If a person is seeking to buy that amount of stock, he must file a statement containing specific information and any additional information the Department may require at least 60 days prior to the furnishing of offers or exchanges to securityholders. The Department is authorized to call a public hearing within 60 days of the filing of the statement, if requested by the insurer or controlling company or in its discretion, and must approve the acquisition of voting securities if certain conditions are met; however, such approval is not to be considered a departmental recommendation. The administrative authority of the Department and the jurisdiction

of the Circuit Court are established and the private right of action is reserved to the insurer or controlling company for enforcement purposes. The Department is given authority to make necessary rules and regulations under the Administrative Procedure Act, and the Insurance Commissioner and his deputies are made agents for service of process on persons required to file a statement.

LAW ENFORCEMENT* AND CRIMINAL JUSTICE

The 1976 enactments in the field of law enforcement and criminal justice concern: (1) regulation of law enforcement, private investigative and patrol personnel; (2) increasing the severity of penalties of selected crimes; and (3) relations between the offender and the state following conviction.

LAW ENFORCEMENT OFFICERS - REGULATION

Police Officers

Senate Bill 1299 (Chapter 76-277) requires police officers to be United States citizens and permits temporary employment for not more than 180 consecutive days as law enforcement officers of persons who have not completed the police standards training program in certain specified instances. Such temporary employment is not renewable or transferable.

Traffic infraction enforcement officers are included within the definition of "officer" for the purpose of enforcing the provisions of Chapter 318, Florida Statutes, by Senate Bill 92 (Chapter 76-183) which authorizes the employment of certain individuals as such enforcement officers by sheriffs and police departments of chartered municipalities. These persons must have complied with the requirements of an established training program of at least 200 hours of instruction in traffic enforcement

*Prepared by the House Committee on Criminal Justice

procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Standards and Training of the Department of Criminal Law Enforcement, or through a similar program. Such employment shall be as part of an accident investigation team, or other type of traffic infraction enforcement under direct supervision of a fully qualified law enforcement officer. Traffic infraction enforcement officers are authorized to issue citations for noncriminal traffic infractions, but they are not vested with arrest authority or permitted to carry firearms or other weapons.

Guards and Private Investigative Agencies

The duties of the Department of State regulating private investigative agencies and authorizing the issuance and renewal of certain licenses and permits are clarified by Committee Substitute for Senate Bill 1257 (Chapter 76-170). The Department will be authorized access to criminal history information for the purpose of determining eligibility of applicants for certain licenses and permits. Fees and procedures for the licensing and yearly renewal of licenses for Class "G" statewide gun permits are modified. License fees will be deposited into a trust fund for the Division of Licensing, Department of State, to use for hiring personnel and paying expenses relating to licensing and regulation of investigative and patrol agencies. Any unencumbered balance in this fund exceeding $50,000 will revert to general revenue.

Certain part-time and auxiliary law enforcement officers are exempted from the licensing requirements of Chapter 493, F. S., relating to private investigative and partol agencies and employees, by House Bill 2903 (Chapter 76-267).

Legal Fees

The payment of legal costs and attorney's fees for law enforcement officers by their employing agency is authorized by Senate Bill 583 (Chapter 76-191) in instances where civil or criminal action in any court is commenced against the officer, provided the action arose out of the performance of his official duties, and when the plaintiff requests dismissal of the suit or such law enforcement officer is found to be not liable or not guilty as charged.

Special assistant public defenders and other attorneys appointed to represent insolvent defendants in capital or other cases may be awarded reasonable fees, costs, and expenses by the court. The specification of maximum awards allowed in such cases is removed by Committee Substitute for House Bill 421 (Chapter 76-287), and the circumstances authorizing reimbursement of the counties for assistance provided to state prisoners in certain proceedings are revised.

CRIMINAL JUSTICE AND PROCEDURE

Criminal Penalties

The classification of death resulting from the unlawful distribution of heroin as first degree murder is altered by Senate Bill 703 (Chapter 76-141) to apply to the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation thereof, resulting in death.

Assault and battery upon a law enforcement officer or firefighter is made a more serious crime by Senate Bill 405 (Chapter 76-75) than assault and battery upon others. Assaults

and batteries upon law enforcement officers and firefighters are included in the 3-year mandatory minimum sentencing provisions applicable to crimes committed with firearms. The mandatory minimum sentencing provisions are amended to exclude persons convicted of such charges from eligibility for parole or statutory gain time prior to serving the minimum sentence.

Senate Bill 828 (Chapter 76-146) expands the penalty provisions for willfully making false reports of bomb threats and other violence to state-owned property to include property owned by political subdivisions of the state. Such acts are punishable as second degree felonies.

The penalty for sale, delivery or possession of over 100 pounds of "cannabis" is increased by Committee Substitute for House Bill 2599 (Chapter 76-200) from a felony of the third degree to a felony of the second degree.

A number of problems with the existing trespass statute are cleared up by House Bill 2694 (Chapter 76-46) which clarifies the posted land exceptions; and provides for the offense of trespass in a structure or conveyance after being asked to leave, for trespass with a weapon, for trespass on property other than structure or conveyance, and for the unauthorized entry on land as prima facie evidence of trespass. Penalties for the various trespass offenses are established. The term "owner" of land is defined, and certain exceptions from trespass are established for governmental employees performing specified duties on private or posted lands.

House Bill 3442 (Chapter 76-64) provides a penalty for trespass to utility or cable television fixtures, and establishes a presumption with regard to any unauthorized connection to such

fixtures. "Utility" is defined to include any person, firm, corporation or association which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio or communication service. Violators are guilty of a misdemeanor of the first degree and those convicted in a civil action are liable to the utility involved in an amount equal to three times the amount of services unlawfully obtained or $1,000, whichever is greater.

Cruelty to Animals

The baiting or using of any bull, bear, or dog for the purpose of fighting or baiting any other such animal is prohibited by House Bill 2360 (Chapter 76-59), known as "The Animal Fighting Act of 1976." The act also prohibits: knowing, owning, managing, or operating any facility kept or used for the purpose of fighting or baiting such animals; promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more such animals; betting on or attending such animal fights.

Counties are authorized to appoint agents to prevent cruelty to children and animals and to take custody of neglected or mistreated animals by Senate Bill 584 (Chapter 76-102). The act also provides for the county to sell at public auction, to destroy or otherwise dispose of seized animals pursuant to court order.

Weapons and Firearms

Senate Bill 375 (Chapter 76-165) defines "electric weapons or devices" and makes them subject to the various

provisions of Chapter 790, Florida Statutes, relating to the regulation of and penalties for unlawful uses of such weapons. Procedures are established for disposition of such weapons confiscated by law enforcement officers; and penalties are provided for furnishing or selling such weapons to minors, or for convicted felons owning or having in their custody, possession or control any such electric weapon or device.

Senate Bill 200 (Chapter 76-38) amends Sections 790.16 and 790.161, F. S., to distinguish the crime of discharging a machine gun from the crime of making, possessing, throwing, placing or discharging any destructive device with intent to do bodily harm, property damage, or cause disruption of governmental operations, commerce or the private affairs of others. Penalties are provided for the specified damages caused by such destructive devices.

Evidence

"The Florida Evidence Code," Committee Substitute for Senate Bill 754 (Chapter 76-237), codifies the law of evidence and abrogates inconsistent common law rules of evidence governing the admission of evidence in civil and criminal actions tried in the courts of the state. The code takes effect July 1, 1977, so as to give the bar, bench, and Legislature sufficient time to study the code and to determine whether further change is needed.

Sentences and Judgments

In the event that the death penalty was declared unconstitutional by the Florida Supreme Court or the United States Supreme Court, House Bill 4178 (Chapter 76-275) provides that those crimes designated as capital felonies would be considered

life felonies; however, since the death penalty has not been declared unconstitutional all capital felonies remain capital felonies. The statute of limitations upon the prosecution of life felonies is extended from four years and may be commenced at any time.

The courts will be required to sentence a convicted defendant for each criminal offense committed during the course of one criminal transaction or episode, according to Senate Bill 7 (Chapter 76-66). The sentencing judge may order the sentences to be served concurrently or consecutively.

House Bill 1302 (Chapter 76-55) provides that anyone injured by a person who intentionally receives, retains, disposes, or aids in concealment of any stolen property shall be entitled, in a civil action, to a judgment in the amount of three times the amount of damages sustained plus court costs and reasonable attorney's fees.

The "Mutual Participation Program Act of 1976" is created by House Bill 3996 (Chapter 76-274) which provides for a 2-year pilot program whereby the terms of institutional confinement, guaranteed parole date, and terms of parole supervision and release are developed by the Parole and Probation Commission and the Department of Offender Rehabilitation. The Department and Commission shall submit to the Legislature an annual evaluation of the program, and shall promulgate required rules by September 1, 1976. The act also amends Section 924.06, F. S., relating to appeal by the defendant, to provide that a defendant who pleads guilty or nolo contendere, with no express reservation of the right to appeal, shall have no right to a direct appeal and that such a defendant shall obtain review by means of collateral attack.

Section 921.242, F. S., is created to permit the victim of a crime to appear and make a statement at the offender's sentencing hearing, or to submit a written statement, when the offender has pleaded guilty or nolo contendere; and requires the state attorney to advise victims of the proper content of such statements. The court is authorized to refuse to accept a negotiated plea and to order the defendant to stand trial.

Other changes in laws relating to correctional programs are contained in the Corrections section of the HEALTH AND REHABILITATIVE SERVICES article.

Bail, Parole and Probation, and Civil Rights

Eligibility for bail on appeal from a conviction of a felony is prohibited by Senate Bill 509 (Chapter 76-138) unless the defendant establishes that the appeal is taken in good faith and on fairly debatable, not frivolous, grounds; nor will bail on appeal be allowed if other felony charges are pending against the defendant, and probable cause has been found that the person has committed the felony at the time the request for bail is made. An order by the trial court denying bail may be appealed to an appellate court.

Senate Bill 128 (Chapter 76-70) would require felons and misdemeanants placed on probation after conviction to perform public service for tax-supported or tax-exempt entities with the consent and under the supervision of such entities.

Committee Substitute for Senate Bill 925 (Chapter 76-238), "The Salvation Army Act," would require the court to place in the order of probation the requirement that probationers pay a specified amount ($10 per month) to a court approved public

or private entity providing him with supervision and rehabilitation. The Salvation Army is named in the act as an entity authorized to provide such supervision and rehabilitation.

Senate Bill 569 (Chapter 76-139) provides that conviction of a felony in Florida would result in the suspension of civil rights which could be restored only upon a full pardon, conditional pardon, or restoration of civil rights granted pursuant to Section 8, Article IV of the State Constitution. Provision is made that the application for a pardon shall be forwarded directly to the Governor rather than to the Pardon Board.

Summaries of other acts relating to penalties for infractions of laws and other regulatory measures can be found in articles relating to specific subjects such as BUSINESS REGULATION AND COMMERCE, MOTOR VEHICLES AND TRANSPORTATION, etc.

LOCAL GOVERNMENT*

The 1976 Florida Legislature enacted laws of consequence to local governments in the areas of housing and community development, planning and zoning, county officials' salaries and municipal annexation. These and other general laws relating to Florida's local governments are summarized below.

Housing and Community Development

In the area of housing and community development, House Bill 2010 (Chapter 76-249) stands out as the most significant enactment. Addressing itself to the lack of adequate housing for low and moderate income Floridians, the sagging construction industry, and the instability of the money supply in the home mortgage market, the Legislature created by this act a Florida Housing Finance Agency within the Department of Community Affairs to serve as the state's conduit for generation of housing-related capital. The agency is to consist of the Secretary of the Department (ex officio) and 8 members of the public, half of whom are to represent housing-related labor and industries. The act provides for the powers of the agency, including the study of housing needs and the setting of standards for residential housing financed by the agency. The agency is empowered to purchase mortgage loans and notes from lending institutions for the purpose of constructing,

* Prepared by the House Committee on Community Affairs

purchasing, leasing or refinancing residential housing for eligible persons and to acquire mortgage loans for ineligible persons under certain conditions. Lending institutions are required to reinvest an amount equivalent to the mortgages purchased by the agency in mortgage loans for residential housing for eligible persons. The agency is authorized to make loans to and purchase secured obligations from lending institutions under certain conditions, and to require such loans and obligations to be secured by collateral of at least 100% of the principal amount of the outstanding loan as determined by the State Board of Administration, or to make additional requirements for the pledging, assigning, or holding of such collateral.

The act further authorizes the establishment of a housing development fund from legislative appropriations or from sufficient surplus funds generated from bonds. The agency is authorized to use the moneys in the fund to make grants and advancements for certain development costs. Advancements are required to be repaid with 3% interest when the mortgage or construction loan is closed. The agency's bonds shall be legal investments for persons or entities authorized to invest in bonds and shall be eligible securities for the security of public funds.

The issuance of bonds to finance or refinance housing and related facilities is authorized by constitutional amendment, subject and pursuant to the provisions of proposed Section 16, Article VII, of the State Constitution. Revenue bonds are to be payable solely from such pledged revenues, and the State Board of Administration is designated as the state fiscal agency to make the determinations required by the proposed amendment to the State Constitution in connection with the issuance of such bonds. House Joint Resolution 1779, adopted by the 1976 Session of the

Florida Legislature, proposes creation of Section 16 of Article VII of the State Constitution to permit the issuance of revenue bonds, without an election, to finance or refinance housing facilities. This resolution, discussed in the CONSTITUTIONAL AMENDMENTS article, will take effect upon approval of the electorate at the General Election to be held in November of 1976; if the amendment fails of adoption, House Bill 2010 (Chapter 76-249), and all provisions therein relating to creation of the Florida Housing Finance Agency, will stand repealed immediately following the date of such election.

In the area of community development, Senate Bill 853 (Chapter 76-147) provides an exemption from the New Communities Act for a one-time creation or extension of special road and bridge districts pursuant to the provisions of Chapter 336, Florida Statutes, if the acreage is less than 1,000 acres and was owned or under contract for acquisition by July 1, 1975. Under the provisions of this act businessmen who may not be residents of a redevelopment project are now eligible to serve on the board of commissioners of a community redevelopment agency provided the business or profession in which they are engaged is within the area of operation of the agency. The act also amends the Community Redevelopment Act to authorize community redevelopment agencies to issue revenue bonds based on the anticipated assessed valuation of the completed community redevelopment project.

In an effort to assist in the elimination of slums and blight through community redevelopment plans, the 1976 Legislature adopted Committee Substitute for House Joint Resolution 3982 for submission to the voters at the 1976 General Election which proposes amendments to Sections 3 and 4 and the addition of Section 16,

Article VII of the State Constitution, relating to the valuation and taxation of property lying within certain community redevelopment areas and to the financing and issuance of bonds for such projects.

Senate Bill 859 (Chapter 76-148) deletes the requirement that parcels of land be contiguous before they can be combined into a water and sewer district or a road and bridge district. However, before non-contiguous tracts can be combined, the county commission must "deem such a combination to be reasonably necessary for the purpose of providing any improvements," and approve same, subject to referendum requirements. Also, the interest on annual installment payments of special assessments for water system improvements and sanitary sewers is increased from 6 percent to 8 percent per annum.

Planning and Zoning

Planning and zoning also constituted a major area of concern to the 1976 Legislature, and two enactments of consequence to local governments resulted. Most important of the two is Committee Substitute for Senate Bills 35 and 37 (Chapter 76-155) which is designed to insure that property owners are given adequate notice of proposed local ordinances which rezone their property or alter the land use plan enacted pursuant to the provisions of the Local Government Comprehensive Planning Act. By similarly amending Chapters 125, 163 and 166, F. S., this act specifies procedures for public notice and hearing prior to the enactment of such ordinances by both counties and municipalities. If the proposed rezoning or the proposed revisions to the land use plan affect less than 5% of the land within the local government's jurisdiction, notice of intent to pass such an

ordinance must be given by mail and a time and place specified for a hearing to be held on the matter. On the other hand, if more than 5% of the land within the city or county would be affected, then notice must be provided by published specialized newspaper advertisements 7 days in advance of the first of the two hearings on the subject. This act further prohibits municipalities and counties from adopting these rezoning or land use change ordinances under their emergency ordinance-making powers.

The other act relating to local government planning and zoning, Committee Substitute for House Bill 33 (Chapter 76-110), clarifies the authority of local governing bodies in regard to the approval of plats. This act specifies that for plats located wholly within the boundaries of a municipality, the municipality shall have sole authority to approve the plat. Similarly, within the unincorporated area of the county, the governing body of the county shall have sole authority over plat approval. When a plat overlaps into more than one jurisdiction, two plats are to be prepared and each affected governing body will have exclusive jurisdiction to approve the plat within its own boundaries. This act further provides that the clerk of the circuit court may copy and reproduce certain otherwise unrecorded maps and plats for informational purposes. The effective date of this act is January 1, 1977.

Municipal Annexation and Audits

On the subject of municipal annexation, the Legislature adopted House Bill 4057 (Chapter 76-176), clarifying Chapter 171, F. S., to provide that each municipal annexation ordinance shall propose "only one reasonably compact area" to be annexed.

Additionally, if any area to be annexed is "predominately owned by individuals, corporations, or legal entities who are not registered electors of the area," then no annexation of the area may take place unless the consent of a majority of such persons is obtained.

Senate Bill 347 (Chapter 76-73) revises the laws relating to municipal audits to conform them to recent court holdings and present governmental practices. The act provides that 20% of the electors (not just freeholders) of a municipality may petition for a postaudit of the affairs of a municipality, or of any independent agency or authority of a municipality. In the event the municipality fails to pay for the cost of the audit, the responsibility for withholding cigarette tax funds to cover cost of such expenses is transferred from the Comptroller to the Department of Revenue. In addition, the county supervisor of elections is charged with the responsibility to certify whether or not the petition contains a sufficient number of signatures.

County Officials' Salaries

The law relating to county officials' salaries is changed by Senate Bill 54 (Chapter 76-80) which repeals Section 145.18(1), F. S., and thereby does away with the cost-of-living adjustments to county officials' salaries. However, cost-of-living adjustments certified prior to July 1, 1976, will not be affected.

Emergency Telephone System

House Bill 3451 (Chapter 76-272) relieves local governments of the obligation of implementing the "911" emergency telephone system until the Legislature appropriates funds to

finance such implementation. The act further provides for partial reimbursement of costs to local agencies which have already implemented the system utilizing local funds as of July 1, 1976.

Counties Generally

Senate Bill 584 (Chapter 76-102) authorizes counties to appoint agents to investigate violations of any law relating to cruelty to children or animals. This act would allow counties to appoint such animal control agents who are empowered under this law to enter private property and take custody of neglected or cruelly treated animals. The animal's owner must be notified and a hearing held within ten days of the seizure to determine the owner's fitness to retain custody. Pursuant to court order the county is allowed to sell at public auction, to destroy or otherwise dispose of seized animals.

Committee Substitute for Senate Bill 1288 (Chapter 76-244) authorizes each county to create a Fine Arts Council to encourage and coordinate resources for the development of the arts. Its 15-member council, appointed by the county commission, is authorized to issue revenue bonds (upon a resolution of approval by the county commission) to finance or refinance a capital project under Part I of Chapter 159, F. S., Bond Financing, and such bonds will not constitute a debt of the county or city. Existing arts councils are unaffected by this act, except that they are given the option of coming under its provisions if they so desire.

Senate Bill 1373 (Chapter 76-196) authorizes the Division of Cultural Affairs of the Department of State to accept and administer state appropriations for fine arts grants and provides

guidelines for expenditure of funds pursuant to contracts or grants between the Division and local groups.

House Bill 1460 (Chapter 76-21) provides that warrants or vouchers of county hospitals may be countersigned by the hospital administrator or by such other full-time employee of the hospital as the board of trustees may designate. The authorization would exist only in the absence of the chairman and chairman pro tem of the hospital's board of trustees. The act also changes the date for the annual report of the board of trustees to the board of county Commissioners. Such report must now be submitted prior to July 1 of each year.

Senate Bill 255 (Chapter 76-17) redefines the boundaries of Clay and Duval counties in order that former residents of Duval County, who had been cut off from public services by the construction of I-295, will be able to receive necessary services from Clay County.

MOTOR VEHICLES AND TRANSPORTATION*

In general, the 1976 Florida Legislature assumed a wait-and-see attitude after adopting massive revisions of the motor vehicle license plate laws during its 1975 session. Several minor adjustments were made to provide expanded availability of dealer tags. In addition, amendments to the Uniform Traffic Control Law were adopted, perhaps not the least of which was a complete reorganization and renumbering of that law in order to provide a more rational organization of Chapter 316, Florida Statutes.

In the area of transportation, the Legislature adopted a wide range of measures, ranging from the designation of the official Florida Air Fair to a modification of the membership of the Board of Pilot Commissioners.

MOTOR VEHICLES

Traffic Control

A revision of the numbering system of the Florida Uniform Traffic Control Law is made by Senate Bill 318 (Chapter 76-31). No substantive changes have been made by this act which merely redesignates certain sections of Chapter 316, F. S., in a more logical manner.

The owner or lessor of real property, or any person authorized by either, may cause any motor vehicle parked on his

*Prepared by the Senate Committee on Transportation

property without his permission to be towed away without personal liability for costs of removal, transportation, storage, or damages caused by removal under the provisions of Committee Substitute for House Bill 249 (Chapter 76-83). Removals may be made of cars parked on property appurtenant to and obviously a part of a single family residence, or in the case of other property, whenever reserved or no-parking signs are prominently posted. Any person causing removal of a vehicle shall immediately notify the police of the name and location of the person removing it, and upon request, inform the person owning the vehicle of the name and location of the person removing the vehicle. Persons improperly causing the removal of motor vehicles shall be liable for expenses incurred as a result of the removal. Persons regularly engaged in the business of towing motor vehicles, who properly remove a vehicle at the request of a property owner, shall have a lien on the vehicle to the extent of reasonable costs of towing and storage.

Under the provisions of House Bill 2947 (Chapter 76-91), when wreckers or tow trucks are removing disabled vehicles to repair shops or to other appropriate locations, the combination of vehicles is exempt from maximum allowable weights established by law; however, this exception does not apply to the load limits for bridges and culverts as established by the Department of Transportation.

House Bill 1381 (Chapter 76-218) establishes a maximum state, county and municipal speed limit of 55 miles per hour, and provides when motor vehicle lighted lamps and illuminating devices are required. Provisions are made authorizing the Department of Transportation to increase the speed limit to a maximum of 70 MPH on highways under its authority, provided Congress has approved

such speed limits on limited access highways. Provision is also made for municipalities and boards of county commissioners to set speed zones not to exceed 55 miles per hour after investigation determines such a change reasonable and in conformity to criteria promulgated by the Department of Transportation; except that changes on state highways or connecting links or extensions shall be made only by the Department of Transportation and shall not exceed 55 miles per hour. Noncriminal violations solely for excessive speeds of less than 70 MPH on designated categories of roads are not to be considered by insurance companies for rate increases or surcharges on insurance premiums.

House Bill 81 (Chapter 76-82) prohibits insurers from increasing premiums or refusing to issue or renew an automobile insurance policy solely because the insured or applicant received a moving traffic violation citation which was subsequently nolle prosequi or dismissed.

School buses shall be subject to the same maximum speed limit as other motor vehicles in excess of a weight of 8,000 pounds under the requirements of Senate Bill 70 (Chapter 76-159). The act also provides that equipment used or worn by school safety patrols, special school police, or special police appointed to control and direct traffic at or near schools, needs to be made of retroreflective materials only when used or worn during periods of darkness.

The statutory definition of "bicycle" as contained in the State Uniform Traffic Control Law is expanded by House Bill 328 (Chapter 76-286) to include "mopeds" propelled by a pedal-activated helper motor with manufacturer's certified maximum rating of 1 1/2 brake horsepower. Mopeds are not to be driven

at a speed in excess of 25 miles per hour, are not to be operated by any person under the age of 15 years of age, and shall not be operated on paths or parts of roadways set aside for the exclusive use of bicycles. "Mopeds" are otherwise subject to the same traffic control regulations that are presently imposed upon bicycles. There are no safety equipment, licensing, or insurance requirements for the operation of mopeds.

Electric powered vehicles with horsepower ratings of 3 to 6 horsepower shall not be required to be equipped with unobstructed, fixed upright safety glass windshields and wipers as a prerequisite to registration or operation upon public roads and highways under the terms of House Bill 1135 (Chapter 76-34). This act does require that such electric vehicles be equipped with hydraulic brakes on the two rear wheels capable of achieving specified braking forces, and shall have a windscreen approved by the Department of Highway Safety and Motor Vehicles sufficient to meet certain protection requirements when operated on the public roads and highways.

Chartered municipalities are authorized by House Bill 3301 (Chapter 76-270) to employ as parking enforcement specialists individuals who have completed a training program established and approved by the Police Standards and Training Commission for parking specialists, even though such individuals do not otherwise meet minimum standards set for police officers or auxiliary or part-time officers. Parking enforcement specialists employed by chartered municipalities are empowered to enforce all state, county and municipal laws and ordinances governing parking within the boundaries of the employing municipality, but are not empowered

to carry firearms or other weapons nor to have arrest authority.

Senate Bill 92 (Chapter 76-183) provides that sheriff's departments or police departments of chartered municipalities may hire individuals who have met established training requirements as traffic infraction enforcement officers. These officers are to be employed through a Selective Traffic Enforcement Program as approved by the Division of Standards and Training of the Department of Criminal Law Enforcement, or through a similar program. Such employment shall be as part of an accident investigation team, or other type of traffic infraction enforcement under direct supervision of a fully qualified law enforcement officer. Traffic infraction enforcement officers are authorized to issue citations for noncriminal traffic infractions, but they are not vested with arrest authority or permitted to carry firearms or other weapons.

A local governing authority may enact ordinances and erect signs in the rights-of-way to control, regulate or prohibit hitchhiking on any street or highway including all state or federal highways lying within its boundaries, under the provisions of Senate Bill 290 (Chapter 76-72).

Motor Carriers - Regulation by Public Service Commission

Senate Bill 929 (Chapter 76-239) places a limitation on the exemption of wreckers from regulation by the Public Service Commission as motor carriers operating for compensation. Wreckers are exempt from regulation only if used to transport motor vehicles to garages and repair shops, provided such transportation is incidental to the primary purpose of repairing such vehicles.

"Nonemergency service" is defined by Senate Bill 1386 (Chapter 76-171) as the transportation by motor vehicle of persons who do not need or do not expect to need medical assistance enroute. A certificate of public convenience and necessity from the Public Service Commission is made a prerequisite to the transportation of persons in nonemergency service. In addition, certain trucks engaged in waste collection and disposal are exempted from requirements relating to registration of motor vehicles not conforming with maximum weight requirements normally imposed upon vehicles.

House Bill 4015 (Chapter 76-205) provides for the disposition of monies collected from motor carriers by the Public Service Commission as follows: thirty-five percent to the Florida Public Service Regulatory Trust Fund; two percent to the Revenue Sharing Trust Fund for municipalities, and the remainder to the State Treasury for credit to the Revenue Sharing Trust Fund for counties.

License Tags and Registration

Senate Bill 415 (Chapter 76-135) defines the term "marine boat trailer dealer" and provides that such dealers and manufacturers may purchase dealer tags for boat trailers owned by the dealer while the trailers are used for purposes of his business, but not if used for hire. The cost of the dealer tag is $12.50 annually. If the dealer registers and sells a trailer for which a regular tag has been issued, provisions are included to allow the tag to be transferred to another trailer of the same weight series upon application to the Department of Highway Safety and Motor Vehicles and payment of the $4.50 transfer fee.

Under the provisions of Senate Bill 505 (Chapter 76-137) motor vehicle and trailer coach dealers are provided with dealer

tags for motor vehicles owned by the dealer if the tags are issued for vehicles in inventory and for sale and provided the proper license taxes are paid.

Indefinite registration license plates and vehicle registration certificates to the owners of 500 or more rental trailers are granted by Senate Bill 1195 (Chapter 76-152). These tags will not bear the annual validation stickers, and the annual payment of registration license tax and fees (commencing June 1, 1977) would be evidenced by a single receipt issued by the Department of Highway Safety and Motor Vehicles. A bond must be posted by the applicant for indefinite tags and registration in order to guarantee payment of future license taxes. Provisions are made to require the return of tags should the number of trailers owned decrease in subsequent years, and additional taxes and fees must be paid if the number of trailers increases. The words "Sunshine State" are to be imprinted at the bottom of these special license plates.

Driver Licenses

Persons charged with driving under the influence of intoxicating beverages shall be entitled to trial by jury under Senate Bill 1219 (Chapter 76-153). The act also provides that enforcement of a suspension, revocation or cancellation of a driver's license is not stayed by the filing of a petition for certiorari, but the Department of Highway Safety and Motor Vehicles may order a stay of enforcement. Any person convicted of driving while his driver's license is suspended or revoked shall be subject to an additional 3 month suspension or revocation. In the case of any driver given notice of a suspension or revocation who fails to surrender the license, or otherwise

satisfactorily account for it, the period of suspension or revocation shall extend until a period has elapsed after the date of surrender of the license, or after the date of expiration of the license, whichever occurs first, which is identical in length with the original period of suspension or revocation. The act also expands the application of provisions relating to driving while the license is suspended or revoked, and removes portions of the statutes exempting thirty-six month old convictions from being counted under the point system.

Motor Vehicle Inspection Certificates

Committee Substitute for Senate Bill 300 (Chapter 76-164) provides criminal penalties for certain violations of the motor vehicle inspection laws. The act provides that it shall be a second degree misdemeanor for each of the following infractions: sale of a motor vehicle by a dealer without a current inspection certificate; improper possession, transfer, removal or affixation of inspection certificates; and issuance of an inspection certificate to a vehicle that has not been actually inspected. It also provides that in the case of an occasional or private sale of a motor vehicle with invalid certificate, such vehicle may be driven only to an inspection station with authority obtained from the nearest highway patrol station. All motor vehicles required to be registered in Florida must have a valid Florida official inspection certificate. Finally, the act declares unlawful the unauthorized manufacture, alteration, forgery, counterfeit or reproduction of a Florida inspection certificate, or the unauthorized possession, barter, sale, trade, or agreement to supply such certificates. Violation

of any of these provisions is deemed a felony of the third degree.

Noise Control

The dates after which a specified class of new motor vehicles may produce no more than prescribed levels of noise are extended by House Bill 4137 (Chapter 76-289). State noise emission standards shall be maintained in effect until standards promulgated by the United States Environmental Protection Agency become effective.

Mobile Home Manufacturers

"Mobile home manufacturer" is redefined by Senate Bill 1061 (Chapter 76-195) to exclude a Florida resident engaged in the business for three or more years prior to the effective date of the act (June 20, 1976), provided that person neither manufactured nor assembled more than seven mobile homes in any one year and has not employed more than one person for such purposes at any one time.

TRANSPORTATION

Department of Transportation Contracts

House Bill 2675 (Chapter 76-85) has provisions that will make it easier for small contractors to bid on contracts proposed by the Department of Transportation by requiring that only contractors bidding on contracts in excess of $100,000 need to be certified by the Department. All successful bidders on contracts of $100,000 or less or for construction of buildings must furnish contract bonds prior to award of the contract. The act also directs the Department of Transportation to establish qualifications for persons to bid on contracts in excess of $100,000. Finally, provisions are made to assure subcontractors

are paid by the prime contractor, by requiring that the prime contractor must certify that all subcontractors have received their pro rata shares of prior payments before additional periodic payments may be made to the prime contractor under the contract.

Limitations on excessive recoveries by contractors from the Department of Transportation as a result of adjustments of the contract prices for bituminous material used in roadway construction are made by House Bill 3989 (Chapter 76-174). This provides that price adjustments may be made only in certain instances and only when documentation is available to show actual cost of the materials to the contractor. The Department of Transportation is directed to take immediate steps to recover excess payments made since July 1, 1974.

Outdoor Advertising

An extension of the time limit for removal of lawfully erected outdoor advertising signs that do not conform to statutory regulations is granted by House Bill 4079 (Chapter 76-52). Such signs shall not be required to be removed until the end of the fifth year after they have become nonconforming.

Dedicated Taxes

Provisions are made by Senate Bill 823 (Chapter 76-145) to allow the special road and bridge tax levied by counties, and turned over to the municipalities for repair and maintenance of roads, to also be used for road construction purposes and for bridges, effective December 31, 1976.

Counties chartered prior to June 1, 1976, are authorized by House Bill 2433 (Chapter 76-284) to levy a discretionary

1-cent sales tax on the first $1,000 of taxable transactions, subject to approval by a majority vote of the county electorate. All revenues derived from this local sales tax are to be deposited in the Rapid Transit Trust Fund and earmarked solely for development, construction, equipment, maintenance, operation, supportive services, and related costs of a fixed guideway rapid transit system. The rate of tax authorized under the provisions of this act is specified.

Board of Pilot Commissioners

The membership composition of the Board of Pilot Commissioners is modified by Committee Substitute for Senate Bill 1200 (Chapter 76-217). Total board membership is reduced from ten to nine and the number of members who must be active licensed pilots is reduced from eight to five. Of the four nonpilot members, two must be actively involved in their professional or business capacity in maritime or marine shipping.

Historic Canopied Roadway Designation

That portion of Coral Way in Coral Gables which lies between LeJeune Road and Red Road is designated as an historic canopied roadway by House Bill 3610 (Chapter 76-304). Limitations are placed on the expenditure of state funds for the alteration of Coral Way and on the erection of signs adjacent to Coral Way. The Division of Archives, History and Records Management of the Department of State is authorized to obtain historic easements in property situated along Coral Way for purposes of preserving the roadway or any structure of historic significance along the roadway, and shall provide for the erection of suitable markers on and along the road. Any changes for preserving or enhancing the

historic or scenic value of the roadway shall be subject to consultation and official approval by the Division before any work is begun.

Tampa-Hillsborough County Expressway

The definition of "expressway system" in the Tampa-Hillsborough County Expressway Authority Law was expanded by House Bill 3537 (Chapter 76-256) to include a modern highway system of roads, bridges, causeways and tunnels within any area of the county. Prior law limited "expressway system" to the metropolitan area of the City of Tampa.

Official Florida State Air Fair

The Central Florida Air Fair is designated as the official Florida State Air Fair by House Bill 2008 (Chapter 76-45).

PUBLIC OFFICERS AND EMPLOYEES*

Although public officers and employees are the subject of considerable legislation, much of it concerns refinements in current law. Among the most significant enactments affecting governmental employees is one which prohibits employment discrimination practices due to age. Other important legislation involves the establishment of uniform layoff procedures, a complete revision of the deferred compensation plan, an increased per diem allowance and redefinition of certain terms in public collective bargaining. Changes in the retirement laws permit Florida Retirement System members to claim and purchase prior municipal or special district service; allow a member of the Elected Officers Class within the FRS to use service as a metropolitan judge in home rule counties for additional retirement credit; provide recomputation of benefits for certain state retirees; and allow selected employees with critical or terminal illness to take early retirement.

Career Service System

Fingerprinting is no longer required for all career service positions. The Department of Administration through the Division of Personnel is required by Senate Bill 73 (Chapter 76-116) to establish and implement procedures for the Department, in consultation with the employing agency, to designate those

*Prepared by Senate Legislative Services

positions for which the occupants should be fingerprinted. The positions to be designated include all law enforcement officers and other positions involving a special trust, responsibility, or sensitive location. Persons occupying or applying for the designated positions are required to be fingerprinted by the employing agency, and the fingerprints will be processed by the Department of Criminal Law Enforcement at the expense of the employing agency according to a schedule of charges approved by the Department of Administration. This act also requires that layoffs of employees be conducted within a "competitive area," and the Administration Department is required to develop layoff procedures to establish relative merit and fitness of employees, and to include therein a formula for uniform application among all employees in the competitive area, taking into consideration the type of appointment, length of service and the quality of performance.

House Bill 3050 (Chapter 76-268) exempts academic and academic administrative employees of the Florida School for the Deaf and the Blind from the state career service system and requires the salaries of such employees to be set by the Board of Trustees of the school, subject to the approval of the State Board of Education.

Public Employment

House Bill 1290 (Chapter 76-248) prohibits the filling of a full-time position in state government by more than the equivalent of one full-time officer or employee, except as provided for by rules adopted by the Department of Administration. Even more stringent control in limiting the number of state employees is proposed by Senate Joint Resolution 266 (discussed in the

Article on CONSTITUTIONAL AMENDMENTS) which would amend the State Constitution to prohibit by July 1, 1978, the number of full-time employees from exceeding 1% of the total estimated population of the state and the number of part-time employees from exceeding 10% of the full-time employees.

House Bill 4063 (Chapter 76-208) contains the "Florida Age Discrimination in Employment Act" which prohibits discrimination against an individual because of age by the state or any local government entity as employer, by an employment agency, or by a labor union. The state or local government employer is prohibited from discriminating in the areas of hiring, discharging, mandatorily retiring, employment opportunities, employee status, and wages. Employment agencies are prohibited from discriminating in making referrals of individuals for employment. The act prohibits labor unions from discriminating in areas of membership and in referring individuals for employment, or causing or attempting to cause a state or local government employer to discriminate because of age. Also unlawful is discrimination against an individual because he has opposed a practice made unlawful by the act, or because of his involvement in any proceeding, investigation or litigation under the act; or by publishing an advertisement for employment or membership which indicates an age preference, limitation, or specification. Not prohibited is any act based on a reasonable bona fide occupational qualification, a bona fide seniority system, or a bona fide employee benefit plan.

Retirement by a department or agency of a state employee who is within the career service system, or who is protected by any other merit system plan or system providing for tenure, solely because the employee has attained the age of 65 is

prohibited. An employee who has attained the age of 65 may be transferred to a job requiring less responsibility and less arduous duties if he is unable to carry out the full duties of his position; or, if agreed to by the employee or required by the Career Service Commission as the result of an appeal, an employee may be reduced to a part-time position. An employee who is aggrieved by a violation of this act may appeal to the Career Service Commission if he is within the career service system. If he is not within the system, he may bring a civil action.

The provisions of this act relating to group insurance for officers and employees of state and local government units are discussed under Group Insurance below, and reimbursement for private aircraft transportation under Per Diem and Travel Expenses.

Collective Bargaining

The definitions in the law relating to collective bargaining by public employees are the subject of three bills. House Bill 3051 (Chapter 76-269) amends the definition of the words "public employer" by providing that the district school board shall be the public employer of all employees of the school district, and the Board of Trustees of the Florida School for the Deaf and the Blind shall be the public employer for the academic and academic administrative personnel of the school. Senate Bill 301 (Chapter 76-39) excludes from the definition of "public employee" persons holding positions of employment with the Florida Legislature and persons who have been convicted of a crime and are inmates confined to state institutions. Committee Substitute for Senate Bill 814 (Chapter 76-214) changes the definition of "managerial employees" to include not only those persons primarily responsbile for

performing managerial duties but also those who assist in formulating policies and perform some specified managerial duties. Specifically included within the definition are the administrative personnel of the state system of public education, but this inclusion does not affect collective bargaining contracts entered into prior to the effective date of this act (June 22, 1976). Firefighters are excluded from the definition of managerial employees.

Public Officer Liability

Senate Bill 258 (Chapter 76-117) creates Section 116.015, F. S., to provide that a state or county officer who unknowingly receives counterfeit currency into public funds shall not be held personally liable, but may charge such losses as an expense against any available funds of his office. Any officer so affected must furnish the appropriate state attorney's office with a written report of the matter.

Ethics and Financial Disclosure

House Bill 2811 (Chapter 76-89) authorizes an officer or employee to request a hearing before the Commission on Ethics to present oral or written testimony in response to allegations that he violated the Code of Ethics. This right exists only if a majority of the Commission members present and voting consider the allegations are of such gravity as to affect the general welfare of the state or the ability of the officer or employee to discharge effectively his duties. The hearing shall be a public meeting, and all documents made or received in connection with

the Commission's investigation shall be public records. After investigation, the Commission shall make a finding and a public report; and if it finds that a violation has been committed, it shall recommend appropriate action to the agency or official having the power to impose any penalty under the Code of Ethics.

Committee Substitute for Senate Bill 417 (Chapter 76-18) defines the word "gift" for purposes of ethics in government and financial disclosure to mean real property, tangible personal property, or intangible personal property of material value to the recipient, when transferred to the donee directly or in trust for his benefit or by any other means. Forms for disclosure of financial interests and clients represented before agencies are to be sent by regular mail by the Secretary of State to persons required to file. Persons required to file both a statement of contributions and a statement of financial interest will do so on one form which will be prescribed jointly by the Commission on Ethics and the Department of State. The statutory requirement for filing of semiannual statements of contribution by elected public officers is changed to an annual statement to be filed no later than 12 o'clock noon of July 15 of each year for the previous calendar year. State and national officers are to file with the Department of State, and elected county and municipal officers with the clerk of the circuit court.

Per Diem and Travel Expenses

House Bill 3266 (Chapter 76-250) authorizes an agency (at the request of an employee who, upon emergency notice, is required to incur either Class A or Class B travel) to pay the employee's

actual expenses for meals and lodging directly to the vendor, provided the amount does not exceed the authorized per diem for such period. Excluded from this provision are legislators and employees of either house of the Legislature or of joint legislative management.

Each department, and each state agency not within a department, are required to submit by February 1 of each year a report of all conventions, conferences, and meetings attended at public expense outside the state. The reports are to be made to the Appropriations and Governmental Operations Committees of both houses of the Legislature and to such other legislative committees as the President of the Senate and the Speaker of the House of Representatives may designate. The report shall contain the name, location, and purpose of the convention, conference, or meeting; the names and positions of persons who attended; and the total amount of public funds expended for attendance.

Senate Bill 468 (Chapter 76-166) authorizes approval of travel by the designated representative of an agency head, but prohibits approval unless accompanied by the signed statement of the traveler's supervisor to the effect that the travel is for official business and for a stated purpose. The act further provides that the employee's official headquarters will change when he is stationed in a city for over 30 continuous work days, unless an extension is approved by the Department of Administration. The maximum per diem for all employees, other than for convention travel, is increased from $20 to $25, but lodging and meals at a state institution are reimbursable at actual cost not to exceed

the maximum otherwise allowed. The breakfast allowance is increased from $1.75 to $2.00. The uniform travel authorization request form furnished by the Department of Banking and Finance is required only for convention or conference travel. It must be signed by the traveler's supervisor before being approved by the agency head or his designated representative.

House Bill 4063 (Chapter 76-208) requires that a traveler on a private aircraft be reimbursed the actual amount paid for his transportation up to the cost of a commercial airline ticket even though the owner or pilot of the aircraft is also entitled to transportation expense for the same flight.

Group Insurance

Senate Bill 1000 (Chapter 76-151) authorizes part-time employees, and retirees who so elect at the time of retirement, to participate in the state group insurance program at their own expense, and authorizes every county, municipality and district school board which provides group insurance for officers and employees to allow retired former employees to participate in the group insurance programs at their own expense.

House Bill 4063 (Chapter 76-208) authorizes every local governmental unit to contract with an approved insurance company or a professional administrator to provide, on the basis of competitive bids, group insurance for officers and employees of the unit and to pay for all or part of the premiums for the insurance. Additionally, each county, municipality, school board, local governmental unit and special taxing unit is authorized to self-insure any plan for health, accident, and hospitalization

coverage; and the Department of Administration is authorized to self-insure any plan for health, accident, and hospitalization coverage for state officers and employees. A self-insurance plan for the state or any local government is subject to approval, based on actuarial soundness, by the Department of Insurance.

House Bill 1433 (Chapter 76-226) removes the provision in the definition of "past service" under the Florida Retirement System Act which requires a member to have been employed by a participating employer on December 1, 1970, and allows past service to be claimed as creditable service and purchased by members of the Florida Retirement System who were former officers or employees of a city or special district, notwithstanding the status or form of the retirement system, if any, of the city or special district, and irrespective of whether the officers or employees of such city or special district are or become a covered group under the Florida Retirement System. A formula for purchasing credit for such past service is prescribed.

The act also gives an employee who becomes eligible for membership in the Florida Retirement System as a result of the consolidation or merger of governments, or the transfer of functions between units of government, the right to elect either to continue to participate in the local retirement system or to become a member of the Florida Retirement System. If the employee elects to continue to participate in the local system, the rate of contributions made by the employer to the local retirement system cannot exceed the combined rate of retirement and social security contributions paid by the employer to the Florida Retirement

System on behalf of an employee who is a regular member of that system. If the employee elects to transfer to the Florida Retirement System, he may receive past service credit for the time he was an employee of the employing entity prior to the entity's coming under the Florida Retirement System. Employees who through consolidation, merger, or transfer of functions became members of the Florida Retirement System prior to this act, and employees who became members of an existing system prior to December 1, 1970, through consolidation, merger, or transfer of functions, and subsequently become members of the Florida Retirement System, may also receive such past service credit, but the required contributions and accrued interest cannot be paid from state funds. No past service credit may be purchased for any service which is used to obtain a benefit from any local retirement system.

Pursuant to Senate Bill 988 (Chapter 76-240), any member of the Elected State Officers' Class of the Florida Retirement System may purchase additional retirement credit in that class for service prior to January 1, 1973, as a judge of a metropolitan court established under Section 6 of Article VIII of the State Constitution which relates to home-rule counties.

Survivors' benefits under the Teachers' Retirement System are increased by House Bill 357 (Chapter 76-225). A dependent widow or widower 50 years of age but less than 65 will now receive $150 per month for life instead of $100, and a widow or widower 65 years of age or older will now receive $175 per month for life instead of $125.

House Bill 2710 (Chapter 76-228) extends a monthly minimum

benefit recomputation figure to permit certain qualified retirees under state-supported retirement systems to apply for recomputation of retirement benefits, to provide for eligibility of those retirees who were unintentionally made ineligible for such benefits by Chapter 75-242, Laws of Florida. Retroactive payment of the recomputed benefit is provided to those who would otherwise have been eligible for the $8-minimum benefit during the period July 1, 1975, through June 30, 1976. Beginning January 1, 1977, a member of any state-supported retirement system who has already retired under a retirement system that does not require its members to participate in social security, who is over 65, and who has at least 10 years of creditable service, or the surviving spouse or beneficiary of such a member who, if living, would be over 65, is eligible to receive a recomputed monthly retirement benefit equal to $10 multiplied by the total number of years of creditable service.

House Bill 4105 (Chapter 76-212) permits any state official or state employee who is a member of the retirement system established under Section 112.05, Florida Statutes, and who has 29 consecutive years of service as of January 1, 1976, and who has a terminal or critical illness, as certified by two licensed physicians, to apply for early retirement. Such member's benefits will be reduced by five-twelfths of one percent for each month by which such retirement precedes 30 consecutive years of service.

Deferred Compensation Plan and Tax-Sheltered Annuities

The 1975 "Government Employees Deferred Compenation Plan Act" is rewritten by Committee Substitute for House Bill 3957

(Chapter 76-279). It authorizes the State Treasurer with the approval of the State Board of Administration to establish one or more plans for state employees, create a trust or other special funds for the segregation of assets deferred, and delegate the administration of the plan to a qualified employee; or the Treasurer may contract with a private corporation or institution to provide for administration. No state plan shall become effective until approved by the State Board of Administration, and until the State Treasurer is satisfied by an opinion from one or more federal agencies that the deferred compensation and the investment "products" purchased will not be taxable income to the employee until actually received, but that such compensation will be deemed compensation at the time of deferral for purposes of social security, retirement, pension or benefit programs.

A county, municipality, or other political subdivision may, by ordinance, establish a deferred compensation program for its employees, designate the official to approve and administer the plan, and obtain from the federal agencies the same satisfaction as to the effect of deferrals on taxable income, social security, retirement and pensions as is required of the State Treasurer for the state plan.

Pursuant to a plan, the state, a state agency or a political subdivision may by contract, or by collective bargaining agree with an employee to defer all or a portion of the employee's compensation and place the deferred compensation in savings accounts, or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtednesses, or other approved investment "products," which shall be

underwritten and offered in compliance with applicable federal and state laws and regulations. Deferrals of compensation may be accomplished by payroll deductions. The deferred compensation plans do not supersede, but are to serve in addition to benefits provided by retirement, pension or benefit programs established by law. The financial liability of the state, county, municipality or other political subdivision is limited to the value of the investment option purchased on behalf of any employee.

A five member advisory council, composed of state employees representing the three branches of state government, is created to provide assistance and recommendations to the State Treasurer relating to the provisions of the plan, the investment options to be offered, and the contracts or appointments to be entered into or made.

Senate Bill 1117 (Chapter 76-78) permits a governmental agency, under agreement with an employee, to pay the amount by which the employee's salary is reduced to a credit union, bank, or savings and loan association as payment into a custodial account qualified under Section 403(b) of the Internal Revenue Code. Such reduction shall be considered a part of the employee's salary for all purposes other than federal income taxation.

STATE GOVERNMENT*

Administrative Procedures

The 1976 Legislature enacted two laws to clarify and revise the Administrative Procedure Act, one to define more clearly the parameters of the economic impact statement required to be filed with every proposed rule, and adopted a proposed constitutional amendment which would permit the Legislature to nullify an administrative rule and allow the Governor and Cabinet to defer the statutory suspension of a rule until the next legislative session.

House Bill 4144 (Chapter 76-131) is the most extensive 1976 amendment to the Administrative Procedure Act. The definition of "rule" is expanded to include any form which imposes any requirement or solicits any information not specifically required by statute or an existing rule. An additional test for exclusion of internal management memoranda from the definition of "rule" is supplied.

Each agency is required to adopt a list of forms and instructions used in dealing with the public which shows how to obtain copies free of charge. Agencies must have a rule which would make agenda for meetings, hearings and workshops available at least seven days in advance to any person paying a reasonable cost. Notice of meetings, hearings and workshops is to be given

*Prepared by House Committee on Governmental Operations

at least seven days prior to the event in the same manner as notice of rulemaking and is to include a general statement of subject matter. Emergency meetings are exempt from such notice requirement.

The ground of exercise of invalidly delegated legislative authority as the basis for challenging a proposed rule or an existing rule is deleted, and the procedure for handling a challenge by the Division of Administrative Hearings of the Department of Administration, the Administrative Procedures Committee, and the agency concerned is revised. Between 21 and 45 days after notice of rulemaking, or not more than 10 days after the final public hearing, every agency required to publish its rules in the Florida Administrative Code must file three certified copies of the rules and supporting documentation with the Department of State. Agencies exempted from this publication requirement need file only one copy. Means are established whereby an agency may withdraw or amend a rule prior to adoption. Agencies are permitted to adopt implementing rules prior to the effective date of a statute, but may not enforce such rules until the statute takes effect.

Detailed procedures are created for the review of agency rules by the Administrative Procedures Committee, including procedures for the amendment or withdrawal of a rule by an agency to satisfy Committee objections, or procedures resulting from refusal by an agency to do either.

Statutory requirements relating to the contents of the Florida Administrative Weekly and the distribution of the Florida Administrative Code by the Department of State are modified. Each agency must give notice of petitions for declaratory statements

and their disposition in the Weekly and transmit copies to the Committee.

Deleted is the provision for a proceeding separate from the rulemaking proceeding in order to protect the substantial interests of a party. Statutory language relating to the types of hearings not assigned to a hearing officer from the Division of Administrative Hearings is clarified and two types are added: (1) student disciplinary suspensions or expulsions conducted by educational units and (2) hearing before the Public Employees Relations Commission to determine the appropriateness of a bargaining unit. The 14 day notice requirement for hearings may be waived by the agency head or hearing officer without consent of the parties in hearings on student disciplinary expulsions or suspensions. Communications by advisory staff are excluded as part of the record in hearing cases if they are public records.

No agency head, agency or hearing officer may issue a subpoena or order directing discovery to any legislator or legislative employee if the subpoena or order concerns documents or testimony relating to legislative duties. Any subpoena or order directed to a legislator or legislative employee must show on its face that the testimony sought does not relate to legislative duties.

A specific timetable is established for the handling of applications for licensing. Any application not approved or denied within 90 days after receipt, or receipt of requested additional information, or within fifteen days after the final public hearing on the application, whichever is latest, is to be considered approved and a license is to be issued subject to the satisfactory completion of any required examination. The Public

Service Commission when issuing a license is exempted from these time requirements, as well as any other agency specifically exempted by law. Any exemption from the licensing procedure requirements of this act which may be granted by the Administration Commission is to be for a single application only and shall not be renewable. The Commission is required to transmit a copy of the petition for exemption, the Commission's order and any alternative procedures prescribed to the Administrative Procedures Committee. In addition, the notice of petition and response thereto must appear in the Weekly.

In matters of judicial review, where an agency action has the effect of suspending or revoking a license, supersedeas (stay of execution on a judgment) must be granted upon reasonable conditions, unless the court on petition of the agency determines the supersedeas would constitute a probable danger to the health, safety or welfare of the state. The court order must specify the conditions on which the stay or supersedeas is granted.

House Bill 4034 (Chapter 76-207) stipulates that the provisions of Florida Statutes, 1973, shall control in all administrative adjudicative proceedings, including the judicial review phase, conducted pursuant to any provision of the Florida Statutes and which were begun prior to January 1, 1975, the effective date of the 1974 revision of the Florida Administrative Procedures Act. Any action seeking judicial review of such a proceeding, which has been dismissed or otherwise disposed of on the ground that the judicial review provisions of Florida Statutes, 1973, were repealed by the 1974 revision of the APA, must be reinstated by the dismissing court if the dismissed party petitions within 60 days of the effective date of this act (June 20, 1976).

Committee Substitute for Senate Bill 949 (Chapter 76-276) requires state agencies to prepare data on the economic impact of proposed adoption, amendment, or repeal of rules, and enumerates seven items of information which the agency must include in each statement of economic impact. If such a statement is required before any agency may act on the application or petition of a person, it must be prepared within a reasonable time. Deleted is the agency option of stating in the notice of intended action that the costs of the proposed rule cannot be estimated. The Legislature is directed to consider the economic impact of any general or special law upon the public and each administering agency assigned to implement or enforce such legislation, but no law is to be held invalid for failure to comply with the provisions of the act. The act repeals Committee Substitute for House Bill 874 (Chapter 76-1), the Florida Economic Impact Disclosure Act of 1975, which the 1976 Legislature had passed over the Governor's veto.

Committee Substitute for Senate Joint Resolutions 619 and 1398 proposes an amendment to Section 18, Article I of the Florida Constitution which would authorize the Legislature to nullify, by concurrent resolution, a rule of an agency of the executive branch for the reason "that the rule is without or in excess of delegated legislative authority." The proposed amendment would also permit suspension of a rule as provided by law on the same ground, and allows the Governor and Cabinet to defer the suspension until the next regular legislative session when "failure of the Legislature to disapprove the suspension ... shall automatically reinstate the rule."

State Regulatory Reform

The Florida Legislature voted overwhelmingly to cause at least a partial "sunset" on Florida's regulatory bureaucracy. Committee Substitute for Senate Bill 1156 (Chapter 76-168), the "Regulatory Reform Act of 1976," provides for repeal on a six year rotating schedule of numerous sections of the statutes that require the licensure or regulation of certain professions, occupations or businesses. Exempted from the repeal provisions of this act are the statutes relating to dog racing, horse racing, frontons and alcoholic beverages.

A select joint legislative committee is created to establish procedures for implementing the act. Criteria and procedures are provided for reviewing the programs and functions and determining the economic effects of continued regulation. Any program or function scheduled for termination may, upon favorable review, be extended for any length of time not to exceed six years at which point the Legislature will again review the program or function and again reestablish or modify it. An unfavorable review would result in the abolition of all personnel positions incident to the program or function and the reversion of all appropriations and funds to either the fund from which they were appropriated or to the General Revenue Fund. All new regulatory laws enacted subsequent to this law are to be subject to these same provisions. Continuation of causes of action is provided for.

Committee Substitute for Senate Bill 1257 (Chapter 76-170) provides various technical amendments to the laws relating to private investigative or patrol agencies, and the licensing of persons seeking statewide gun permits. Fees and procedures

for the licensing and yearly renewal of licenses for Class "G" statewide gun permits are modified. License fees will be deposited into a trust fund for the Division of Licensing, Department of State, to use for hiring personnel and paying expenses relating to licensing and regulation of investigative and patrol agencies. Any unencumbered balance in this fund at the beginning of each fiscal year exceeding $50,000 will revert to general revenue. The Division will now have access to the information in the state criminal justice information systems so that applicants for gun licenses may be screened for criminal records. The number of members on the Department's advisory council on investigative agencies is increased from five to nine.

Committee Substitute for Senate Bill 325 (Chapter 76-184) amends the statutes which specify the ratios of apprentices or trainees to journeymen which contractors on state, county or municipal contracts must agree to hire. The act calls for a new formula to be determined by dividing 5 into the average number of journeymen, disregarding fractional parts. If the contractor is unable to recruit the required number of apprentices or trainees, additional notice requirements must be met before commencing work.

Public Officers

Three acts relating to public officers were enacted by the 1976 Legislature.

Senate Bill 258 (Chapter 76-117) creates Section 116.015, F. S., to provide that a state or county officer who unknowingly receives counterfeit currency into public funds shall not be held personally liable, but may charge such losses as an expense against any available funds of his office. Any officer so affected

must furnish the appropriate state attorney's office with a written report of the matter.

The statutory requirement that a tax collector give bond for collecting municipal taxes is transferred from Section 193.116(F. S., "Assessments," to Section 137.02, F. S., "Bonds of County Officers," by Senate Bill 624 (Chapter 76-140). The bond requirement for tax collectors engaged in collecting municipal taxes would still exist by having the amount fixed by the county commissioners, subject to approval by the Department of Banking and Finance. The bond is to be specifically conditioned to account for all taxes collected by the tax collector. Bond approval by each municipality would no longer be required.

The passage of Senate Bill 1047 (Chapter 76-224) is an attempt to legislate more efficient procedures in the collection of public money. The new procedures should increase the interest earned by such accounts. Currently the time period for collecting officers to deposit funds into the appropriate treasury is "within 30 days after the first day of the month next succeeding the day receiving the same," or an approximate maximum of 60 days. This act shortens the time for deposit or disbursement of public money to 7 working days after the close of the week in which the funds were received. If an officer fails to comply, he will lose the compensation for collecting the monies to which he would otherwise have been entitled. The bill specifically exempts officers from this requirement when the funds must be held or disbursed pursuant to law, court order, or the purpose for which they were collected.

State Agencies

Senate Bill 199 (Chapter 76-97) requires all state agencies

to audit and purge their publication mailing lists in the first quarter of each odd-numbered calendar year (beginning January 1, 1977) instead of annually. The act provides a specified form for use by agencies in making a survey of addressees, and requires a report of the survey results be submitted to the Auditor General by the following June 30. Effective July 1, 1980, this reporting requirement is repealed. Provision is also made for copies of agency publications to be sent to the State Library.

A recommendation of the Governor's Management and Efficiency Study Commission (page 167 of the Commission's Report) is implemented by Senate Bill 224 (Chapter 76-71). The act requires competitive bidding on all Class B printing contracts of over $500. Prior to enactment of this law the competitive bidding requirement was effective for any contract over $50.

Senate Bill 377 (Chapter 76-99) requires publicly supported and controlled auditoriums to display the Flag of the United States daily. Those within a separate building shall display the flag upon a flagstaff on the grounds of the auditorium except when the weather does not permit, and those within a part of a building shall display the flag inside the auditorium whenever it is open.

Committee Substitute for Senate Bill 158 (Chapter 76-4)* repeals provisions of Section 255.053, F. S., which required that 50% of the work on state building construction contracts must be satisfactorily completed before the contractor can be paid in excess of 90% of the amount due on the contract. It provides that district school boards shall have full authority and responsibility for all decisions regarding school construction contracts and payments.

*Vetoed in 1975 and passed over the Governor's veto by the 1976 Legislature.

Senate Bill 45 (Chapter 76-29) changes the audit requirement for the Division of Purchasing of the Department of General Services from quarterly to annually. It also requires that the Auditor General report his findings to the Legislative Auditing Committee within 60 days after the Division responds to the audit. The Division has 20 days to respond to audit findings (see Section 11.45(6)(d), F. S.), thus the Legislature will now have the Division of Purchasing report within 80 days of completion.

House Bill 4119 (Chapter 76-292) appropriates the sum of $1,131,842 from the General Revenue Fund to the Division of Buildin Construction and Property Management of the Department of General Services for transfer to the Supervision Trust Fund. This appropriation was necessary because of a deficiency in the Trust Fund which jeopardized the orderly operation of state buildings. Any unencumbered cash balance in this fund as of June 30, 1976, is to be deposited unallocated into the General Revenue Fund.

Senate Bill 1373 (Chapter 76-196) authorizes the Division of Cultural Affairs of the Department of State to accept and administer state appropriations for fine arts grants and provides guidelines for expenditure of funds pursuant to contracts or grants between the Division and local groups.

Committee Substitute for House Bill 3434 (Chapter 76-93) assigns to the Historic Preservation Project Review Council of the Department of State the responsibility of evaluating proposals for the creation of new historic preservation boards, provides specific evaluation criteria, and describes procedures for submitting proposals. Proposals for creation of a state historic board of trustees must be submitted to the Division of Archives, History and Records Management of the Department of State for

review by the Review Council. Upon receipt of the evaluation of the proposal by the Council, and at the request of the person seeking the creation of the state historic board, the Division shall submit the proposal with the evaluation thereof to the Speaker of the House of Representatives and to the President of the Senate.

Departmental Reorganization

Committee Substitute for House Bill 944 (Chapter 76-247) creates the Division of Security within the Department of General Services and describes the Division's powers and duties. Personnel and equipment of the legislative security force and the security guards of the Division of Building Construction and Property Management of the Department of General Services are transferred to this new division. The Division of Law Enforcement of the Department of Criminal Law Enforcement is required to provide, on a need basis, personal security for state officers and members of the Legislature upon request of the President of the Senate, the Speaker of the House of Representatives, the Lieutenant Governor, and any member of the Cabinet.

In an effort to prevent duplication in the setting of fire safety standards, the Legislature passed House Bill 4145 (Chapter 76-252) which directs the State Fire Marshal to establish uniform fire safety standards for all state-owned and state-leased buildings, hospitals, nursing homes, rest homes, correctional facilities, public schools, public lodging establishments, public food service establishments, elevators, migrant labor camps, and self-service gasoline stations. The authority of certain state agencies to establish fire safety standards is abolished but the

law specifically provides that the responsibility for conducting fire safety inspections and enforcing fire safety laws shall not be affected. With respect to public schools, the State Fire Marshal shall utilize the fire safety standards adopted by the State Board of Education. When certified by the State Fire Marshal, fire department personnel and persons employed by local governments having no organized fire departments, may be designated as ex officio agents of the Marshal and shall make the required reports on forms furnished by the Marshal.

Senate Bill 249 (Chapter 76-281) transfers the Bureau of Financial Responsibility of the Department of Insurance to the Department of Highway Safety and Motor Vehicles by a type four transfer. The Bureau will continue to administer the relevant provisions of Chapter 324, F. S., relating to financial responsibility, and Chapter 627, F. S., relating to rates and contracts of the Insurance Code. The Bureau of Management Improvement of the Department of Administration is to review the functions of the Bureau of Financial Responsibility and recommend to the Department of Highway Safety and Motor Vehicles by November 1, 1976, the number of positions, funds, appropriations, and equipment required to perform the requisite functions.

Legislature

House Bill 3242 (Chapter 76-92) amends Section 11.30, F. S., relating to the legislative staff internship program. Prior to July 1, 1976, the legislative staff internship program was supervised as a joint effort by both houses of the Legislature. The new act reorganizes the internship program so that each house supervises and coordinates the program as it affects that house.

It further provides for appointment of a three member sponsoring committee from the House of Representatives and from the Senate, a program administrator for each committee, and specifies certain duties to be performed by each administrator.

By adoption of House Concurrent Resolution 3260, the Legislature charged itself with the responsibility to devise and present to the people of Florida a program of fiscal reform and economic development no later than the end of the 1978 Session of the Legislature. This program is to include a statement of economic goals for the 10-year period beginning with the fiscal year 1978-79 and ending with the fiscal year 1987-88; a statement of economic policies to be instituted pursuant to these goals; a program of tax reform in keeping with such statements on goals and policies; a set of priorities for government spending, with education, services, and programs to Florida residents having the highest priority; a complete review and analysis of all departments of government, with the purpose of eliminating unnecessary items and determining priorities within the jurisdiction of each department; and a requirement that each department justify its services and programs as being accomplished most efficiently in the public sector, and if no such justification can be asserted, a requirement to contract for those services in the private sector.

The presiding officers of each house of the Legislature, as soon as practicable after the Organization Session in November 1976, are to create a six-member Joint Legislative Committee composed of three members appointed from each house to prepare a report containing recommendations for specific goals, policies, and legislation for such 10-year period for presentation to the Speaker of the House of Representatives and to the President of

the Senate on or before March 31, 1978, at which time the Committee shall be terminated. The appropriate committees of the House and the Senate shall then review action by the Legislature in the area of fiscal responsibility on a biennial basis, beginning with the 1980 Legislative Session, to determine if legislative action is in keeping with the specific economic policy recommendations of the Joint Legislative Committee, and shall prepare appropriate reports for presentation to the Legislature.

House Bill 3870 (Chapter 76-94) amends Section 11.145, F. S., by removing the statutory requirement that standing committees of the Legislature prepare and submit reports of their findings, recommendations, and proposed legislation to designated legislative officers and offices prior to the convening of each regular session.

Under the provisions of House Bill 4144 (Chapter 76-131), discussed above in the section on Administrative Procedures, agencies and hearing officers are prohibited from issuing subpoenas or orders to any legislator or legislative employee directing discovery concerning documents or testimony relating to legislative duties.

For purposes of collective bargaining, Senate Bill 301 (Chapter 76-39) excludes from the definition of "public employee" persons holding positions of employment with the Florida Legislature.

Miscellaneous

Senate Bill 583 (Chapter 76-191) authorizes the employing governmental authority of any law enforcement officer, as defined, to pay the legal cost and reasonable attorney's fees of that officer when any civil or criminal action, in any court, is commenced against that officer provided the action arose out of

the performance of his official duties, and when:

(a) the plaintiff requests dismissal of his suit; or

(b) such law enforcement officer is found to be not liable or not guilty as charged.

In 1974 the Florida Emergency Telephone Act was passed which implemented the "911" emergency telephone numbering system. House Bill 3451 (Chapter 76-272) amends the requirements concerning implementation of a statewide plan to provide that compliance by a local public agency is conditional upon receipt by that agency of funds appropriated by the Legislature. The act further provides for possible partial reimbursement of local agencies which have already implemented the system utilizing local funds as of July 1, 1976.

House Bill 1052 (Chapter 76-198) provides for the recognition by the Florida Legislature of April 19, Patriots' Day (the beginning of the American Revolution in 1775), as a day of great historical significance and urges its observance by public officials, schools, private organizations and all citizens. Paid holidays to be observed by state agencies are designated as follows: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day (November 11), Thanksgiving Day, Friday after Thanksgiving and Christmas Day. If any of these holidays fall on Saturday, it will be observed on the preceding Friday, or if occurring on a Sunday, the following Monday. The Secretary of Administration is empowered to declare one other working day as a paid holiday for career service employees, and when appropriate to designate a State Day of Mourning following the death of a statesman.

TAXATION*

"No new taxes!" was the 1976 battle cry of many legislators and, when the confusion of the Legislature's final days came to its constitutional end, served to describe accurately the session's outcome. Excepting a gross revenues tax upon radio common carriers, municipal electric utilities, and rural electric cooperatives, the sole newly authorized tax was a local option 1-cent sales tax for rapid transit in charter counties. To raise new revenues the Legislature relied mainly upon new or increased interest, delinquency, and payment extension charges. Even these revenues were partially offset, however, by sales tax exemptions for motor vehicles and boats sold to out-of-state residents. On the local level, ad valorem tax exemptions for totally and permanently disabled veterans, nongovernmental lessees of governmental property, homes for the aged, nursing homes, hospitals, nonprofit sewer and water companies, and persons who are paraplegic, hemiplegic, or otherwise totally and permanently disabled, were created or adjusted. The Board of Tax Adjustment was renamed the Property Appraisal Adjustment Board and many of its procedural guidelines were revised. Likewise, exemption application deadlines, assessments procedures, challenges of assessments by the property appraiser, collection of taxes, and delinquency procedures received the Legislature's attention during the Bicentennial year.

*Prepared by House Bill Drafting

Corporate Income Taxation

The single act of the 1976 regular session of the Legislature relating to corporate income taxation, House Bill 3808 (Chapter 76-173), updates to January 1, 1976, reference to the United States Internal Revenue Code for purposes of the Florida Income Tax Code.

Excise Tax on Documents

Two new laws relate to the documentary stamp tax. House Bill 2038 (Chapter 76-199) requires appointed collection agents to deduct their commissions prior to remitting tax collections to the Department of Revenue. Committee Substitute for Senate Bills 804, 807, 808, 809, 833, 845, 846, 847, and 960 (Chapter 76-261) provides for payment of interest on delinquent tax payments at the rate of 1 percent per month based on the purchase price of stamps not affixed. Other provisions of this act are discussed under the Sections on Sales and Use Taxation, Intangible Personal Property Taxation, and Miscellaneous, below.

Sales and Use Taxation

A discretionary 1-cent sales tax on the first $1,000 of taxable transactions is authorized for charter counties by House Bill 2433 (Chapter 76-284). Authority for levy of the tax is conditioned upon approval by a majority vote of the county electorate and is limited to charter counties which adopted a charter prior to June 1, 1976. All revenues derived from this local sales tax are to be deposited in the Rapid Transit Trust Fund and earmarked solely for development, construction, equipment, maintenance, operation, supportive services, and related costs of

a fixed guideway rapid transit system. The rate of tax authorized under the provisions of this act is specified.

The 1976 Legislature overrode two 1975 gubernatorial vetoes to create new sales and use tax exemptions. Committee Substitute for Senate Bill 251 (Chapter 76-7) exempts the sale of a motor vehicle to a resident of another state when the vehicle is to be used and registered in the purchaser's state of residence and the proper notorized statement of intent is executed and submitted to the appropriate sales tax collection agency in Florida and in the purchaser's state of residence. Senate Bill 440 (Chapter 76-6) likewise exempts the sale of a boat by or through a registered dealer to a purchaser who removes the boat from the state within 10 days after the date of purchase or, where the boat is repaired or altered, within 10 days after completion of repairs or alterations (not to exceed 90 days from date of purchase).

Committee Substitute for Senate Bills 804, 807, 808, 809, 833, 845, 846, 847, and 960 (Chapter 76-261) increases, from 6 percent per annum to 1 percent per month, the interest rate on delinquent sales tax remissions and imposes a charge upon extensions of time granted for making returns of sales tax collections.

Utility Gross Revenue Taxation

House Bill 2003 (Chapter 76-265), which relates generally to taxation for the benefit of the Florida Public Service Regulatory Trust Fund, provides as follows: the method of payment of gross revenue fees and taxes is changed from an annual to a semiannual basis with respect to telephone, telegraph, electric utility, and gas utility companies; the annual tax on gross intrastate revenues of railroad, express, and pullman companies is increased from 1/10

of 1 percent to 1/8 of 1 percent; fees for water and sewer system utility applications are increased; liability of water and sewer utilities for gross receipts taxation is to be computed at a rate of 2 1/2 percent of gross receipts, rather than at a rate of $1.50 for each $100 or fraction thereof; the registration fee for motor carriers is set at $8, rather than at $5 for non-reciprocal carriers and $6 for reciprocal carriers as formerly provided; transfer of motor carrier identifying devices is authorized when accomplished pursuant to Florida Public Service Commission rules; a gross revenues tax of 1/8 of 1 percent is imposed on each radio common carrier; and a gross revenues tax of 1/64 of 1 percent of gross operating revenues is imposed on municipal electric utilities and rural electric cooperatives.

Miscellaneous

The Multistate Tax Compact is repealed, effective October 1, 1976, by Senate Bill 982 (Chapter 76-149).

The rate and payment of interest on delinquent or deficient state tax payments is the subject of Committee Substitute for Senate Bills 804, 807, 808, 809, 833, 845, 846, 847, and 960 (Chapter 76-261). The rate of interest on extensions of time for estate tax payments is changed from 6 percent per annum to .5 percent per month and an interest charge of 1 percent per month is imposed on deficient or delinquent estate tax payments. The payment of interest on delinquent documentary stamp tax payments is provided for (see: Excise Tax on Documents, above), as is the payment of interest at a rate of 12 percent per year on delinquent intangible personal property tax payments (see: Intangible Personal Property Taxation, below). Interest is to be charged at a rate of 1 percent per month on delinquent gross receipts tax, motor fuel tax, and

special fuel tax payments, and is increased from 6 percent per annum to 1 percent per month on delinquent cigarette tax payments. Interest payable on delinquent sales tax collections is increased and a charge is imposed for extension of time for making returns (see: Sales and Use Taxation, above). An increase of from 6 percent per year to 12 percent per year is made in the rate of interest payable on delinquent remissions and erroneous refunds of tax, to which the provisions of Chapter 214, Florida Statutes (Administration of Designated Non-property Taxes), are made applicable.

AD VALOREM TAXATION

Exemptions

Senate Bill 182 (Chapter 76-163) extends the homestead exemption for totally and permanently disabled veterans to any totally and permanently disabled veteran who was a permanent resident of the state on January 1, 1976, or a permanent resident of the state for not less than 5 years as of January 1 of the tax year for which an exemption is being claimed, rather than only to ex-servicemen whose total and permanent disability is due to one or more of a specified list of disabilities.

Committee Substitute for House Bill 1759 (Chapter 76-3)* provides that, in the case of governmental property in Escambia, Santa Rosa, and Okaloosa Counties leased or subleased to a non-governmental lessee on or prior to the effective date of the act, the annual ad valorem tax to be paid by the nongovernmental lessee is to be diminished by the amount of rent paid to any

*Vetoed in 1975 and passed over the Governor's veto by the 1976 Legislature.

governmental lessor or sublessor. Payment or reimbursement of such taxes levied or collected in 1972 and 1973 is required to be made by a governmental lessor or sublessor, if a governmental authority (but not the United States, the state, a county or a municipality). This act was subsequently repealed by Senate Bill 895 (Chapter 76-283).

Senate Bill 895 (Chapter 76-283) generally conditions and revises rules and provisions related to taxability of leasehold interests in governmentally-owned property. No exemption is hereafter to be allowed for those portions of privately held leasehold estates in government property which are used predominantly for a private, commercial service and which serve no governmental, municipal, or public purpose, except that exempt status is continued or granted to any such leasehold estate created, extended or renewed prior to April 15, 1976 (rather than December 31, 1971, as formerly provided). An application for exempt status for any leasehold interest in government property is required to be made on or before March 1 with the property appraiser, and approved or denied by the Board of Tax Adjustment based upon property appraiser findings of fact. No such exemption granted before June 1, 1976 (rather than June 1, 1971, as formerly provided), is to be revoked if such revocation would impair any existing bond agreement.

As part of a wide-ranging revision of numerous tax administration provisions, Committee Substitute for Senate Bill 512 (Chapter 76-234) touches upon tax exemption in several important particulars. The maximum income limitations applicable to homes

for the aged (for purposes of determining exempt status) are increased and social security benefits are included for purposes of determining such income. These income limitations are also to be adjusted hereafter based upon increases in the cost-of-living (as reflected in the United States Department of Labor's Consumer Price Index), rather than based upon increased income limitations established by the United States Department of Housing and Urban Development; and exemption for homes for the aged is further conditioned upon state residency requirements (which do not apply to persons who have lived in the home on or before July 4, 1976). The definition of "charitable purpose," for purposes of determining qualifying use of property for exempt status, is limited to functions or services which are of such a community service that discontinuance could "legally" result in the allocation of public funds for continuance of the function or service. Portions of property (used as nursing homes or homes for special services) which are leased as parking lots or garages operated by private enterprise are specifically declared to be subject to taxation, but hospital property used for the treatment of private outpatients is exempted. Property of a sewer and water company owned or operated by a Florida not-for-profit corporation, the income of which is exempted from federal income taxation, is exempted under specific circumstances, as is homestead property used and owned by a paraplegic, hemiplegic, or other totally and permanently disabled person who has resided within the state for 5 years (when the total income of all persons residing in or upon the homestead does not exceed $8,200).

Provisions of the act concerning the Board of Tax Adjustment (Property Appraisal Adjustment Board) and property assessments are discussed below under the topic Property Assessment and Review.

Committee Substitute for House Joint Resolution 3982, more fully discussed in the article on CONSTITUTIONAL AMENDMENTS, would amend the Florida Constitution to provide certain ad valorem tax exemptions, valuations and collections with respect to community redevelopment projects. The resolution is to be voted on at the 1976 General Election.

Property Assessment and Review

The Board of Tax Adjustment, renamed the Property Appraisal Adjustment Board by Senate Bill 331 (Chapter 76-133), was a focal point for legislative activity in 1976. Committee Substitute for Senate Bill 512 (Chapter 76-234) was the major new law in this area, having the effect of requiring election of the members of each board by the governing body which the member represents (rather than appointment by the chairman of the governing body). The act also establishes a board quorum, provides for counsel, provides for removal of board members by the Governor for failure to attend meetings, limits selection of special masters, requires board decisions to contain findings of fact and conclusions of law, provides for taxpayer notification of board decisions, and specifies new and extensive procedures for appeals of board decisions by the property appraiser and by taxpayers. Committee Substitute for House Bill 625 (Chapter 76-122) provides that lists contained in required notices of Board of Tax Adjustment meetings need not

specify names and addresses of applicants for certain exemptions (homestead, permanently and totally disabled veterans, disabled veterans confined to wheelchairs, quadriplegics, government property, widows, blind persons, and persons totally and permanently disabled) when notice is given that such lists are maintained by the property appraiser at a specified location.

With respect to property assessment, Committee Substitute for Senate Bill 512 (Chapter 76-234) requires that notice of increased assessments (beginning with the 1978 tax year) contain a statement of the dollar value of the prior year's assessment and the current assessed value as determined by the property appraiser. Informal taxpayer/property appraiser conferences (prior to petition to the Board of Tax Adjustment) are authorized and the property appraiser is, in turn, authorized to file suit to contest any property assessment made by the Board of Tax Adjustment. March 1, rather than April 1, is established as the annual deadline for application for several exemptions or special assessments. Department of Revenue established standards of value are not, hereafter, to be deemed to establish the true value of any property or to have the force or effect of rules, even though they are deemed to be prima facie correct. Provision for a Department of Revenue uniform parcel numbering system is repealed. The act takes effect July 1, 1976, except for the provisions relating to taxpayer notification of increased assessments by each property appraiser which become operative with the 1978 tax year.

Senate Bill 815 (Chapter 76-144) provides that, when certain requirements are met in the renovation of any building used by the

public for the purpose of making the building accessible to the handicapped, the renovations shall be assessed at the salvage value of the materials used in the renovation.

Property Tax Collection and Administration

Senate Bill 725 (Chapter 76-143) requires the mailing of additional tax notices by the tax collector when required by the Department of Revenue (rather than authorizing such mailings upon concurrence of the county governing authority), or when payment has not been received prior to March 1 of the year following the year of assessment. Warrants for seizure for nonpayment of taxes are to be issued prior to April 30 of the second year following the year of assessment, rather than upon compilation of the initial list of delinquent taxpayers. The bar on allowance of attorney's fees as court cost in suits ratifying such warrants is removed, and notice to the taxpayer is required to be made by the court clerk. Court ordered tax refunds are exempted from requirements of Department of Revenue approval for payment, but the Department is required to approve refunds of payments made to the tax collector in error. Refund procedures are revised and alternatives are provided for prompt or delayed payment by the tax collector. Refunds of amounts paid for tax certificates subsequently determined to be void are made subject to general tax refund provisions. Fees collected with applications for tax deeds are to be refunded if the tax deed sale is canceled, and void tax certificates are to bear interest at the rate of 8 percent per year from date of purchase.

Committee Substitute for House Bill 645 (Chapter 76-12)

requires lenders of money who collect escrow funds for payment of ad valorem taxes to pay promptly the taxes so that the maximum tax discount available may be obtained for the property. Notice of deficiency in such an escrow account is required to be given within 15 days after the lender receives the notification of taxes due, and such mortgagees are required to give annual statements of escrow accounts.

Intangible Personal Property Taxation

Senate Bill 647 (Chapter 76-32) provides that the making of a consolidated intangible personal property tax return by an affiliated group of corporations does not establish taxable situs for intangibles held by an includable corporation when such intangibles would not otherwise be required to be returned for taxation.

House Bill 4108 (Chapter 76-130) provides that, when notes, bonds, and other obligations for the payment of money are secured both by personalty and by real property, the taxpayer may elect to be taxed (for intangible personal property tax purposes) at rates for personalty and for realty and to apportion the tax based upon the value of the genuine primary security. "Genuine primary security" is defined to mean the collateral to which the taxpayer, either by law, regulation, or contract, looks first for collection.

Committee Substitute for Senate Bills 804, 807, 808, 809, 833, 845, 846, 847, and 960 (Chapter 76-261) provides for collection of interest on delinquent intangible personal property tax payments at the rate of 12 percent per year (former law provided for collection of penalties beginning 12 months after due date of the tax payment).

House Bill 3639 (Chapter 76-222) redefines the term "intangible personal property," for purposes of tax applicability, to include condominium and cooperative apartment leases of recreation facilities, land leases, and leases of other commonly used facilities and to provide that these leases are not to be valued as other than intangibles. The act further requires the property appraiser, in making his assessment of leasehold interests in property serving the unit owners of a condominium or cooperative subject to a lease, to assess at fair market value without regard to the income derived from the lease. The act takes effect January 1, 1977.

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F L O R I D A S T A T E L E G I S L A T I V E S Y S T E M

07/09/76 1976 REGULAR SESSION -- STATISTICS

	SENATE		HOUSE		TOTAL	
	INTRODUCED	PASSED	INTRODUCED	PASSED	INTRODUCED	PASSED
CONCURRENT RESOLUTIONS	21	7	43	9	64	16
RESOLUTIONS	13	10	25	21	38	31
GENERAL BILLS	1313	165	2512	174	3825	339
LOCAL BILLS	64	34	209	152	273	186
GEN BILL/LOC APPLICATIONS	0	0	0	0	0	0
JOINT RESOLUTIONS	41	3	94	2	135	5
MEMORIALS	12	3	34	1	46	4
WITHDRAWN	1		342			
TOTAL	1464	222	2917	359	4381	581

APPROVED BY GOVERNOR	150	147	297
BECAME LAW WITHOUT SIGNATURE	35	164	199
VETOED BY GOVERNOR	14	15	29
BILLS TO CONFERENCE COMMITTEE	5	3	8
BILLS AMENDED	172	368	540
COMMITTEE SUBSTITUTES	140	204	344
FAILED TO PASS SENATE BY VOTE	1	0	1
FAILED TO PASS HOUSE BY VOTE	0	9	9
UNFAVOR COMMITTEE REPORT IN SENATE	41	6	47
UNFAVOR COMMITTEE REPORT IN HOUSE	6	65	71
DIED IN SENATE COMMITTEES	701	149	850
DIED IN HOUSE COMMITTEES	42	1411	1453
DIED IN CONFERENCE COMMITTEE	0	0	0
DIED ON SENATE CALENDAR	270	113	383
DIED ON HOUSE CALENDAR	17	452	469
DIED IN MESSAGES	16	134	150
AUTOMATICALLY PREFILED HOUSE BILLS (1975 SESSION)	0	1011	1011

Compiled by
Legislative Information Division

VETOED BILLS*

Senate Bills:

CS/SB 212 - Vetoed June 18, 1976
SB 259 - Vetoed June 24, 1976
SB 527 - Vetoed June 29, 1976
SB 615 - Vetoed June 24, 1976
CS/SB 738 - Vetoed June 24, 1976
CS/SB 842 - Vetoed June 23, 1976
SB 915 - Vetoed June 23, 1976
SB 950 - Vetoed June 16, 1976
SB 963 - Vetoed June 23, 1976
SB 1010 - Vetoed June 24, 1976
SB 1224 - Vetoed June 18, 1976
SB 1346 - Vetoed June 23, 1976
CS/SB 1384 - Vetoed June 29, 1976

House Bills:

HB 1300 - Vetoed June 23, 1976
CS/HB 1808 - Vetoed June 29, 1976
HB 2102 - Vetoed June 22, 1976
HB 2338 - Vetoed June 22, 1976
HB 2959 - Vetoed June 29, 1976
HB 3121 - Vetoed June 24, 1976
CS/HB 3170 - Vetoed June 24, 1976
HB 3239 - Vetoed June 22, 1976
HB 3243 - Vetoed June 23, 1976
CS/HB 3299 - Vetoed June 23, 1976
HB 3325 - Vetoed June 23, 1976
HB 3628 - Vetoed June 16, 1976

*This list excludes local bills vetoed by the Governor.