2003 SESSION AND
SPECIAL SESSION "A"
FTBA LEGISLATIVE WRAP-UP

Overview: This was the most difficult legislation session of the 19 sessions I have been involved in. Many issues were left unresolved, there was much bickering and, as a result, we have been faced with 2 Special Session as far. It could be a very long summer. We passed the Transportation bill, but lost $200 million from the State Transportation Trust Fund and some gas tax dollars to pay for law enforcement to help save manatees. We were very disappointed that the Legislature raided the State Transportation Trust Fund. These trust fund dollars are generated from gas tax revenues and license fees and should be used solely for transportation. That is what the public believes.

The bills listed below are some of the major issues we followed this year. If you click on the highlighted, underlined bill number, it will take you to the engrossed copy of the bill.

CS/SB 676 -- Transportation

Technical Changes and Toll Bonds
Section 338.165, F.S., is amended to clarify the Florida Department of Transportation (FDOT) has specific authority to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway toll facilities to provide funding for needed transportation projects on the State Highway System in the counties in which they are located, which are Brevard, Orange, Pinellas, Manatee, and Hillsborough Counties.

FDOT Reorganization
The committee substitute amends s. 20.23, F.S., deleting unnecessary instructions on the Secretary's responsibilities and to whom the Secretary may delegate, the tasks assigned to other FDOT officers and supervisors, and obsolete references in general. The section is amended to delete the position of Assistant Secretary for District Operations, and creates an Assistant Secretary for Development and Operations, and an Assistant Secretary for Transportation Support. The Offices of Management and Budget; Comptroller; Construction; Maintenance; and Materials are also created within FDOT. The committee substitute also corrects cross-references in s. 110.205, F.S., necessary because of the changes in s. 20.23, F.S.

The committee substitute further amends s. 334.14, F.S., to provide FDOT employees who are required to be engineers must comply with the requirements of ch. 471, F.S.

Contractor Prequalification

Section 255.20, F.S., is amended to provide any contractor who is prequalified by FDOT and eligible to bid on FDOT projects to perform certain work also will be prequalified to obtain bid documents and to submit a bid on those same types of projects for any municipality or other local government. Any local-government entity will be able to disqualify a prospective bidder who is at least 10 percent behind on another construction project for that same entity. The section is further amended to provide local governments may establish an appeals process to challenge the prequalification of contractors. The local government must publish prequalification criteria and procedures to allow contractors to prequalify locally; and provide for a process for contractors who are found not to prequalify by the local government to appeal such finding.

Section 337.14(1), F.S., is amended to provide the 30-day period FDOT has to reply to a contractors application for qualification begins once FDOT determines the application for qualification is complete, thereby giving FDOT sufficient time to request and receive from the contractor the information necessary to complete the application. More time is also allowed for contractors to respond to FDOT's requests for information. Section 337.14(4), F.S, is amended to clarify submitting an application to renew a certificate of qualification does not affect the expiration of the current certification of qualification.

Surety Bonds

One of the intents of amending s. 337.18, F.S., was to clarify the provisions of s. 255.05, F.S., are not applicable to the road construction and maintenance contract bonds specifically addressed in s. 337.18, F.S.. The committee substitute provides the bonds provided for in this section are statutory bonds, and the provisions of s. 255.05, F.S., are not applicable to bonds issued pursuant to this section.

Commercial Motor Vehicle Enforcement

The committee substitute amends s. 316.302, F.S., to authorize FDOT to conduct compliance reviews for the purpose of determining compliance of commercial motor vehicles with all safety requirements contained in s. 316.302, F.S. The section is further amended to require the display of certain information on the side of the power unit of certain commercial vehicles. The committee substitute clarifies commercial trucks are required to comply with federal and state hazardous material requirements only when carrying such materials in amounts that require placarding pursuant to federal law. The bill amends other sections relating to Commercial Motor Vehicle Enforcement.

Right of Way Acquisition

Section 336.467, F.S., is amended to authorize counties or other governmental entities to contract with the FDOT to acquire rights of way for a county or other governmental entities and eliminates the narrow circumstances under which counties are currently authorized to contract with FDOT.

Materials Testing Services

The committee substitute amends s. 337.14 (7), F.S., removing the potential for a conflict of interest that exists as a result of having material lab testing services performed by the same or affiliate entity that performs the construction contract. Material labs owned by or

affiliated with qualified construction companies will be prohibited from acting as material testing labs on FDOT projects.

SITAC

Section 339.64, F.S., is created to provide that FDOT must develop, in cooperation with metropolitan planning organizations, regional planning councils, local governments, the Statewide Intermodal Advisory Council (SITAC), and other transportation providers, a Strategic Intermodal System Plan. The plan must be consistent with the Florida Transportation Plan developed under s. 339.155, F.S., and updated at least once every 5 years, subsequent to updates of the Florida Transportation Plan. Provides the SITAC is created to advise and make recommendations to the Legislature, and FDOT on planning and funding of intermodal transportation projects in this state.

Other Transportation Issues

This committee substitute amends various sections of law including revisions to MPOs, toll violations, aviation, aerospace, and 511 service. Section 335.02, F.S., is amended to provide, notwithstanding any general law or special act, regulations of any county, municipality, or special district do not apply to existing or future transportation facilities or appurtenances thereto, on the State Highway System.

The committee substitute amends s. 95.361, F.S., to clarify the ownership status of roads, built by a private developer or whose origin is unknown, but which have been maintained for many years by a public entity. The section is amended to specify a road which has been maintained by a public entity for at least seven years will vest to the maintaining public entity. Any person, firm, corporation or entity having or claiming any interest in these roads of unknown origin has one year from the effective date of this act to file a claim, or for a period of seven years from the initial date of regular maintenance or repair of the road in question to file a claim, whichever is greater.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 118-0

SB 2586 – Marina Gas Tax – opposed by FTBA

This bill creates an Office of Boating and Waterways within the Fish and Wildlife Conservation Commission (FWC) to manage and promote safe boating. The bill transfers a portion of the fuel tax collected at marinas from the Fuel Tax Collection Trust Fund to the Marine Resources Conservation Trust Fund (MRCTF) as follows:

- In FY 2003-2004, $2.5 million.
- In FY 2004-2005, $5 million.
- In FY 2005-2006, $8.5 million.
- In FY 2006-2007, $10.9 million.
- In FY 2007-2008 and annually thereafter, $13.4 million.

This bill authorizes the use of fuel tax funds deposited into the MRCTF for boating research, boat-related programs and activities, and for on-the-water law enforcement.

Specifically, funds must be used to provide additional law enforcement in counties that have the highest incidence of manatee deaths and injuries; for the placement of uniform waterway markers on the waters of the state; for manatee avoidance technology; for boating education and safety programs; and for grants and loans to local governments for the construction and maintenance of publicly owned boat ramps, piers, and docks. This bill provides the FWC with the spending authority for the first year to hire 10 new sworn officers, and to fund the activities required under the bill. Finally, this bill eliminates requirements that the FWC solicit recommendations from the Save the Manatee Committee on the expenditure of funds from the Save the Manatee Trust Fund.

Signed into law by Governor on 6/17/03; Chapter Law 2003-156
Effective Date: July 1, 2003.
Vote: Senate 27-12; House 116-3

CS/CS/SB 1138 -- Engineering

The bill amends s. 768.28(10), F.S., to provide that the following entities or persons are agents of the Department of Transportation (DOT) for purposes of the waiver of sovereign immunity contained in s. 768.28, F.S.: (1) professional firms that provide monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects; or (2) firm employees who perform such services. The bill specifies that these agents must indemnify the state for agent liability, including reasonable attorney's fees, up to the $100,000/$200,000 limits specified in s. 768.28(5), F.S. The bill also provides that its provisions shall not be construed as designating persons who provide monitoring and inspection services as employees or agents of the state for purposes of ch. 440, F.S. The bill specifies that the grant of sovereign immunity does not apply if the agents are involved in an accident while operating a motor vehicle, or to a firm engaged by the DOT to provide design or construction of a state roadway, bridge, or other transportation facility.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

CS/CS/SB 686 – South Florida Regional Transportation Authority

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

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

The committee substitute provides Palm Beach, Broward and Miami-Dade Counties must each contribute $2.67 million annually beginning on August 1, 2003, and the committee substitute provides these funds may come from each county's share of the ninth-cent fuel tax, the local option fuel tax, or any other source of local gas taxes or nonfederal funds available. In addition, the committee substitute authorizes the levy of an annual license tax in the amount of $2 for the registration or registration renewal of each vehicle registered in the area served by the SFRTA, upon approval by referendum from the registered voters in the county. The committee substitute specifies counties served by SFRTA must continue to dedicate $1.565 million to the SFRTA as they were dedicated annually to Tri-Rail, and the $2.67 million contribution is in addition to these funds.

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

Signed into law by Governor on 6/20/03; Chapter Law 2003-159
Effective Date: July 1, 2003.
Vote: Senate 33-3; House 117-0

HB 1813 – Local Option Fuel Taxes / Motor Fuel

The bill amends s. 206.60, F.S., to add bicycle paths and pedestrian pathways to those projects for which the "1-cent county fuel tax," levied pursuant to s. 206.41(1)(b), F.S., may be spent, at the discretion of county commissions. The bill amends s. 206.605, F.S., to add bicycle paths and pedestrian pathways to those projects for which the "1-cent municipal fuel tax," levied pursuant to s. 206.41(1)(c), F.S., may be spent, at local discretion.

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

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

11-cent local option gas tax for infrastructure projects, provided such projects are consistent with the local government's comprehensive plan.

Signed into law by Governor on 6/3/03; Chapter Law 2003-86
Effective Date: Upon becoming law..
Vote: Senate 37-0; House 118-0

HB 1719 – Construction Lien Law

The bill provides mandatory provisions regarding lien law for direct contracts between an owner and a contractor related to improvements to real property consisting of single or multiple family dwellings up to and including four units. It provides warning language in the Notice to Owner form that alerts owners to liens that may be filed against their property by unpaid contractors, subcontractors, and sub-subcontractors, and establishes the form for the contractor's final payment affidavit. It provides warning language in the Claim of Lien form alerting the owner of the real property that a lien has been placed on his or her property and what steps can be taken to shorten the time the lien can be valid.

It includes an "explanation of owner's rights" regarding the steps to take if no notice is furnished by a lienor in the currently required statement issued to building permit applicants and the owners of the real property by the permitting authority. The Department of Business and Professional Regulation provides the statements to the permitting authority for distribution to each non-owner permit applicant. The non-owner permit applicant, as a condition to issuance of the permit, must deliver the statement to the owner. It creates a permissive inference that a person knowingly and intentionally misapplied construction funds when a valid lien has been recorded against the property of the owner and the person who recorded the lien has received sufficient funds for the construction and has failed, for a period of at least 45 days, to remit sufficient funds to pay off the labor, services, or materials. It requires a state attorney or statewide prosecutor to forward a copy to the department of an indictment or information that charges a contractor, subcontractor, or sub-subcontractor with the willful filing of a fraudulent lien, misapplication of construction funds, or making false statements for inducing payment. It also requires the department to promptly open an investigation, and if probable cause is found, furnish a copy of any investigative report to the prosecutor and to the owner of the property. It requires a lender, prior to making any loan disbursement, to provide a written warning statement regarding lien releases.

Signed into law by Governor on 6/20/03; Chapter Law 2003-77
Effective Date: October 1, 2003.
Vote: Senate 40-0; House 113-0

CS/SB 472 – Mining Activities

This bill provides an exclusive administrative remedy through the Division of Administrative Hearings (DOAH) solely for the recovery of damages to real and personal property caused by the use of explosives in construction mining activities. Recovery of

damages for personal injury, emotional distress, or punitive damages is excluded from this administrative forum and must be pursued separately in court. The administrative remedy for the alleged real or personal property damage must be sought no later than 6 months after the damage occurred. Within 5 days of filing the petition, the case is assigned and an order is issued directing mandatory nonbonding mediation to be held no later than 60 days after the mediator is selected by the parties or the administrative law judge. If no settlement is reached within 15 days of the concluded mediation, the matter may be set for an expedited summary hearing upon mutual agreement of the parties. If the parties have not reached a settlement within 30 days of the concluded mediation, the matter is set for formal administrative hearing.

If the court finds by a preponderance of evidence that the damages are attributable to construction mining activities, the court must direct the respondent to pay the damages within 30 days of the order unless the matter is appealed to a district court of appeal. If the respondent fails to pay the damages within 30 days of the order, or within 30 days of an appellate mandate affirming the order, then the damages may be paid upon the petitioner's request from the security bond the respondent was required to post as a statutory prerequisite to applying or renewing a user license in connection with the construction mining activities. The court may reduce to judgment any amount not covered by the security bond. If the court finds by a preponderance of evidence that the damages were not caused by the respondent's activities, the court must issue an order stating that the respondent is not responsible for the damages. The prevailing party is entitled to taxable costs including expert witness fees and administrative costs.

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

Signed into law by Governor on 6/2/03; Chapter Law 2003-62
Effective Date: Upon becoming a law.
Vote: Senate 37-1; House 114-0

HB 1277 – Unlicensed Contractors

The bill was a bill supported by the Associated General Contractors Association and was filed in response to a court decision last year that held that a prime contract was unenforceable because one subcontractor on the project was deemed by the local government to be improperly licensed. While this decision was returned to the lower court on a procedural issue, dozens of similar cases are now pending in courts around the state.

Several provisions relating to unlicensed construction activity are addresses. The bill specifies that contracts entered into on or after October 1, 1990 by an unlicensed construction or electrical contractor are unenforceable under law or equity. The bill

provides that an individual is unlicensed if the individual does not have a license for the scope of work to be performed under the contract. It provides that a business organization is unlicensed if it fails to have a primary or secondary qualifying agent.

The bill removes the limitations on underground and utility work by a general contractor and states the general contractor may perform this scope of work without additional licensure.

The bill provides that a business organization proposing to engage in contracting is not required to apply for a certificate of authority through a qualifying agent if: 1) the business employs a contractor who is responsible for supervising the work under the contract, 2) the business organization engages only in contracting activities on property owned and operated by the business organization, and 3) a minimum net worth of $20 million dollars is maintained.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

BILLS THAT DID NOT PASS:

Owner Controlled Insurance Programs

Although all interested parties agreed to the bill, it failed to pass this year. We will continue to work on this issue next year. OCIP's are not allowed for FDOT work.

Revisions to Constitutional Amendments

SB 1172 would have given the state's Supreme Court authority to remove from the ballot proposed amendments they deem to be fundamentally inappropriate for the Constitution. Following a vigorous debate about whether or not caging pigs should be addressed by the Constitution, the bill died on a 17 to 21 vote, well below the three-fifths majority needed to pass a joint resolution.

House Bill 1877 would have raised the threshold vote to two-thirds for an amendment to be put in the Constitution. Although the assigned committees approved this bill, Speaker Johnnie Byrd (R-Plant City) refused to allow the issue to be heard by the full House.

Another measure aimed at lowering the number of constitutional amendments approved by voters also failed to pass. House Bill 1883 would have required a newly created Financial Impact Estimating Conference to prepare a 50-word financial impact statement to accompany the ballot summary of citizen petition constitutional amendment proposal.

SPECIAL SESSION A

SB 2A -- Budget

The Governor signed Florida's $53.5 billion 2003-04 budget into law June 23, 2003. Included in the budget were raids on many Trust Funds, including a $200 million taking

from the State Transportation Trust Fund. Although this will not directly affect the 5-year work plan, we believe that Trust Funds should only be used for their intended purpose – doing otherwise negates the trust of the public.

The Governor did veto the $7.2 Million appropriation for High Speed Rail. Following is his veto message of the High Speed Rail money:

"Specific Appropriation 1901J relates to high-speed rail, an objective that the people have articulated is a priority for our state by amending the Constitution of Florida to that effect. Although I called in my 2003 State of the State Address for another opportunity for the voters to consider how high a priority this should be in our state given high-speed rail's tremendous projected costs, we elected officials nevertheless have a responsibility to implement the amendment. This we must faithfully do.

We also have a responsibility to address our state's transportation needs comprehensively and to ensure that taxpayer dollars are spent efficiently. For this reason, I have insisted that high-speed rail must be a public-private partnership, with investors from the private sector investing funds based on the projected revenues expected from the riders of the system. Bids have been submitted from several private firms, and they confirm the concern that high-speed rail will have an even greater impact on our budget than was previously projected.

We can and should continue meeting our regional transportation needs, so that we can provide an affordable, efficient and reliable mode of transportation for our employees, especially in our service industry and for our seniors. For this reason I have approved Specific Appropriation 1901H, which includes $4.9 million for the "planning, design and engineering phases of intermodal centers necessary to implement Florida's High Speed Rail System." Intermodal centers are facilities built to accommodate various modes of transportation such as automobiles, buses, taxis and rail systems. In addition, we can continue to pursue all required federal approvals including securing a record of decision (the federal approval of a project so that federal monies can be used on it in the future) by the U.S. Department of Transportation, an effort that will be aided by the imminent choice of a preferred route for high speed rail.

However, I am vetoing Specific Appropriation 1901J regarding high-speed rail, primarily because I have promised to do so. On April 11, 2002, I transmitted to the Secretary of State, with my signature, Council Substitute for House Bill 261 along with a letter stating the reasons for signing that bill. The letter identified concerns with certain provisions of that bill expanding the powers of the High Speed Rail Authority and providing a broad tax exemption (allowing private businesses to be tax exempt) to development associated with the high speed rail system. I expressly called for this tax exemption to be removed from law, and pledged to veto every dollar of High Speed Rail Authority money in this year's budget if that tax exemption was not removed. Although the High Speed Rail Authority did recommend removal of the tax exemption, and the Department of Transportation and my office raised the issue several times during the 2003 Regular Session, the Legislature failed to act."

SB 24A -- Transportation

Clarifies that the Department of Transportation may use bond proceeds from the Beeline-East Expressway, Sunshine Skyway Bridge, Navarre Bridge and Pinellas Bayway for other transportation improvements in the counties where the toll facility is located. It also increases the amount of bonds issued to fund approved turnpike projects from $3 to $4.5 billion.

The signing deadline for the bill is July 2.
If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-1; House 114-0

SB 50A – Workers' Compensation Reform

General – The bill is estimated to lower premiums by 14.5 percent for all Florida employers and another 4 percent for the construction industry, generating a total savings to the system in excess of $360 million.

This bill is 202 pages long, and it contains changes to a number of provisions found in chapter 440, Florida Statutes, on workers' compensation. This summary will separate changes by categories and reference bill sections and page numbers (as well as statute section numbers). ***Many thanks to Anna Cam Fentriss, Esq., Lobbyist for Florida Roofing, Sheet Metal and Air Conditioning Contractors Association (FRSA), for providing this detailed summary of the bill.***

Specific construction-related statute changes are:

Bill section 1, Section 440.02, F.S., Definitions (upon becoming a law)

Removing $250,000 language, including definitions of "commercial building" and "residential building." Effective shortly after Governor Bush approves the bill.

Bill Section 2, Section 440.02, F.S., Definitions (effective 1-1-04)

Modifies construction exemptions to limit to 3 corporate owners.

Allows the Division of Workers' Compensation to establish by administrative rule industrial classification codes and definitions for same meeting the criteria for "construction industry."

The construction exemption limitation to 3 corporate owners change is made primarily in section 440.02(15)(b) that specifically requires:

- corporate officer must be a shareholder of at least 10%
- must be listed with the Division of Corporations, Department of State
- specifies that the limit applies to a corporation or any group of affiliated corporations and specifies that "the term 'affiliated' means and includes one or more corporations or entities, any one of which is a corporation engaged in the construction industry, under the same or substantially the same control of a group of business entities which are connected or associated so that one entity controls

or has the power to control each of the other business entities. The term ‘affiliated’ includes, but is not limited to, the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.”

- Amends definition of “employee” to include “all persons who are being paid by a construction contractor as a subcontractor, unless the subcontractor has validly elected an exemption as permitted by this chapter, or has otherwise secured the payment of compensation coverage as a subcontractor, consistent with s. 440.10, for work performed by or as a subcontractor,” and “an independent contractor working or performing services in the construction industry,” and “a sole proprietor who engages in the construction industry and a partner or partnership that is engaged in the construction industry.”

- Removes all reference and use of the term “independent contractor” in construction.

- Amends definition of “employer” to specifically include employment agencies, employee leasing companies, and “similar agents who provide employees to other persons.”

- Modifies the definition of the term “construction industry” with respect to owner-builder to make it consistent with chapter 489, Florida Statutes, specifying that “construction” does not include a homeowner’s activities on his or her own premises so long as not sold, resold, or leased by the owner within 1 year after commencement of construction, and specifies that a homeowner is not considered the employer of persons hired to carry out construction “on the homeowner's own premises if those premises are not intended for immediate lease, sale, or resale.”

Bill Section 3, Section 440.05, F.S., Election and Revocation of Exemption (1-1-04)

- Adds requirement of submitting a copy of a stock certificate evidencing required ownership in order to qualify for a certificate of exemption in construction.

For your convenience, here is a complete list of what the law will now require a person to provide to apply for a construction exemption:

- *required application form, notarized and under oath, including:*

- *name, federal tax identification number, social security number*

- *all certified or registered licenses issued under chapter 489*

- *copy of relevant documentation on employment status filed with IRS (see rules)*

- *copy of relevant occupation license in primary jurisdiction of business*

- *registration or charter number of corporation*
- *copy of stock certificate evidencing required ownership*

Specifies that a certificate of exemption applies only to the corporate officer named on the notice of election to be exempt and applies only within the scope of the business or trade listed on the notice of election to be exempt.

Provides that any corporate officer affiliated with a person who is delinquent in paying a stop-work order and penalty assessment issued pursuant to section 440.107, Florida Statutes, or by court order is ineligible for an exemption, and provides that the stop-work order and penalty assessment is in effect against the affiliated person, specifying the definition of "affiliated person" as:

- spouse
- any person who directly or indirectly owns or controls or votes 10% or more of the outstanding voting securities of such other person
- any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person
- any person who directly or indirectly acquires all or substantially all of the other assets of such other person
- any officer, director, trustee, partner, owner, manager, joint venturer, or employee of such other person or a person performing duties similar to persons in such positions
- any person who has an officer, director, trustee, partner, or joint venturer in common with such person
- Provides that exemptions are subject to revocation if at any time the person no longer meets the requirements for exemption, and requires that the department revoke it.
- Provides that a corporate officer electing exemption may not recover workers' compensation benefits or compensation and prohibits a carrier from considering a corporate officer who validly meets the requirements to be an employee for purposes of determining the appropriate workers' compensation premium.

Bill Section 4, Section 440.06, F.S., Failure to Secure Workers' CompensationBill Section 5,Section 440.077, F.S., Effect When Corporate Officer Rejects Ch. 440 Bill Section 6, Section 440.09, F.S., CoverageBill Section 7,Section 440.093, F.S., Mental and Nervous Injuries (new)

Bill Section 8 Pages 37 - 41 Section 440.10, F.S., Liability for Compensation (1-1-04)

- Strikes language that makes employer brought into chapter 440 by waiver of exclusion or exemption from liability under workers' compensation.

- Requires (rather than allows) a contractor to require a subcontractor to provide evidence of workers' compensation.

- Requires an exempt corporate subcontractor to provide a contractor with a copy of his or her exemption certificate.

RESTORATION OF HORIZONTAL IMMUNITY Modifies section 440.10(1)(e), Florida Statutes, to read:

A subcontractor providing services in conjunction with a contractor on the same project or contract work is not liable for the payment of compensation to the employees of another subcontractor or the contractor on such contract work and is protected by the exclusiveness-of-liability provisions of s. 440.11 from any action at law or in admiralty on account of injury to an employee of another subcontractor, or of the contractor, provided that:

1. The subcontractor has secured workers' compensation insurance for its employees or the contractor has secured such insurance on behalf of the subcontractor and its employees in accordance with paragraph (b); and

2. The subcontractor's own gross negligence was not the major contributing cause of the injury.

- Requires (rather than allows) the department to assess a penalty up to $5,000 (per employee) against any employer for any employee improperly classified (per test and criteria in section 440.02) as an independent contractor. (Since independent contractor status is removed for construction, may not strictly apply.)

- Requires all employers with employees working in Florida to obtain a Florida workers' compensation policy or an endorsement for such employees that uses Florida class codes, rates, rules, and manuals in compliance with and approved under chapter 440 and the Florida Insurance Code (chapter 624, Florida Statutes). Provides that failure to comply is a second degree felony (up to 15 years in prison and/or $10,000 fine). Requires that the department adopt rules for construction industry and non-construction industry activities using the following standards (only construction listed here):

- Employees performing new construction or alterations in Florida, even if they cross state lines to return home every night, must be covered by Florida rates.

- Executive supervisors who visit a Florida location but are not in direct charge of a Florida location may be covered by rates of the headquarters' state.

- Employees and superintendents of a permanent staff of a construction contractor assigned to a job located in Florida, either for the duration of the job or any portion of it, payroll must be covered by Florida rates.

- Employees hired for a specific project in Florida must be covered by Florida rates.

Bill Section 9, Section 440.1025, F.S., Workplace Safety Program

- Adds private employers to this provision, requiring a workplace safety program in place for specific identifiable consideration under section 627.0915, Florida Statutes (rate filings; workers' compensation, drug-free workplace, and safe employers).

- Requires the Division of Workers' Compensation to publicize on the Internet the availability of free safety consultation services and safety program resources, and requires that the Division encourage insurers to do the same.

Bill Section 10, Section 440.103, F.S., Building Permits / Minimum Premium Policy

Adds requirement that, as a condition for applying for (new) and receiving a building permit, every employer must show proof and certify (new) to the permit issuer that it has "secured compensation" (practically means complied with WC law) by providing a certificate of coverage, a certificate of exemption, or a copy of the employer's authority to self-insure.

Bill Section 11, Section 440.105, F.S., Prohibited Activities / Penalties

Increases penalties from a second (up to 15 years in prison and/or $10,000 fine) to a first (up to 30 years in prison and/or $10,000 fine) degree felony for the following (*verify exact wording before relying on list below)*:

- knowingly coerce or attempt to coerce an employee to obtain an exemption

- discharge or refuse to hire an employee because he or she has filed a workers' compensation claim

- take any adverse personnel action against an employee for disclosing information to the department or any law enforcement agency related to a violation or suspected violation of chapter 440 or any related rules.

- violate a stop-work order issued by the department under section 440.107, Florida Statutes

- revoke or cancel a policy or membership because an employer has returned an employee to work or hired an employee who has filed a workers' compensation claim.

Under existing penalty of first degree misdemeanor (up to 1 year in prison and/or $1,000 fine), modifies and adds:

- modifies existing violation of knowingly failing to update information on coverage or in application for coverage to require updating be done "within 7 days of after the reporting date for any change in the required information," (whatever that means).

- adds provision that makes it unlawful for an employer to knowingly participate in "the creation of the employment relationship in which the employee has used any false, fraudulent, or misleading oral or written statement as evidence of identity."

Adds two violations that constitute insurance fraud (see next item for penalties) as follows:

- knowingly violate a stop-work order issued by the department pursuant to s. 440.107.

- To knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

Modifies the measurement for imposition of penalties for committing insurance fraud from "amount of any claim or workers' compensation premium involved in any violation" to "monetary value of any violation" (should be a broader standard) of the subsection to apply to existing penalty schedule of:

- third degree felony if monetary value is less than $20,000 (up to 5 years in prison and/or $5,000 fine)

- second degree felony if monetary value more than $20,000 but less than $100,000 (to 15 years and/or $10,000 fine)

- first degree felony if monetary value is $100,000 or more (up to 30 years in prison and/or $10,000 fine)

Increases the penalty for an attorney or other person "to unlawfully solicit any business in and about city or county hospitals, courts, or any public institution or public place; in and about private hospitals or sanitariums; in and about any private institution; or upon private property of any character whatsoever for the purpose of making workers' compensation claims."

Bill Section 12,Section 440.1051, F.S., Fraud Reporting / Civil Immunity / Criminal Penalties

Increases penalty from first degree misdemeanor to third degree felony for:

- knowingly and falsely reports workers' compensation fraud

- retaliates against a person who reports workers' compensation fraud

Bill Section 13,Section 440.107, F.S., Enforcement Powers of Department

Adds a definition for "securing the payment of workers' compensation" to mean obtaining coverage that meets the requirements of the workers' compensation law and the Florida Insurance Code.

Adds the following specification: “If at any time an employer materially understates or conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, such employer shall be deemed to have failed to secure payment of workers' compensation and shall be subject to the sanctions set forth in this section. A stop-work order issued because an employer is deemed to have failed to secure the payment of workers' compensation required under this chapter because the employer has materially understated or concealed payroll, materially misrepresented or concealed employee duties so as to avoid proper classification for premium calculations, or materially misrepresented or concealed information pertinent to the computation and application of an experience rating modification factor shall have no effect upon an employer's or carrier's duty to provide benefits under this chapter or upon any of the employer's or carrier's rights and defenses under this chapter, including exclusive remedy.”

Adds a provision requiring that the department enforce coverage requirements, including requirement to secure the payment of workers’ compensation and the requirement that “the employer provide the carrier with information to accurately determine payroll and correctly assign classification codes.”

Provides that the department has the following powers (some already exist – shown by * asterisk):

- conduct investigations to ensure compliance*
- enter and inspect any place of business at any reasonable time to investigate compliance*
- examine and copy business records*
- administer oaths and affirmations and certify to official acts*
- issue and serve subpoenas for attendance of witnesses or production of business records, books, papers, correspondence, memoranda, and other records (specific ones will be listed in rule)*
- issue stop-work orders, penalty assessment orders, and any other orders necessary*
- enforce the terms of a stop-work order
- seek injunctions and other appropriate relief

Allows the department to collect attorney fees and costs if the department must obtain a court order to enforce a subpoena.

Allows the department to issue a stop-work order to stop all business operations (not limited to a job site – this is new) if an employer failed to secure coverage or produce required business records within 5 business days of receipt of the department’s written

request. A stop-work order is effective immediately when served at the work site, and the department is required to proceed (with orders or anything else necessary) to stop all business operations of the employer.

Allows the department to require periodic reports (will be specified by rule) for a probationary period up to 2 years as a condition of release from a stop-work order.

Specifies that stop-work orders and penalty assessment orders against a corporation, partnership, or sole proprietorship are in effect against any successor business entity that is engaged in the same or equivalent trade or activity and has one or more of the same principals or officers.

Provides for a required penalty of $1,000 per day against an employer that conducts business operations in violation of a stop-work order.

Provides for an additional penalty of 1.5 times the amount an employer would have paid in premium during the periods the employer failed to secure coverage within the preceding 3 years (or $1,000 – whichever is greater).

Provides that any subsequent violation within 5 years after the most recent violation will be deemed a knowing act (in addition to all other penalties available).

Specifies that if an employer fails to provide business records sufficient to determine appropriate payroll, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner will be the statewide average weekly wage multiplied by 1.5.

Allows the department to assess a penalty of $5,000 (in addition to all other penalties) for each employee that the employer improperly represents as an independent contractor (will apply to construction until 1-1-04).

Bill Section 14, Section 440.11, F.S., Exclusiveness of Liability

<u>TURNER CASE FIX</u>

Amends this provision to add language to further protect the employer from being held liable under workers' compensation <u>and</u> more (i.e. personal injury claim) as follows:

- specifically adds vicarious liability

- specifies that an exception to exclusiveness of liability exists as follows:

  When an employer commits an intentional tort that causes the injury or death of the employee. For purposes of this paragraph, an employer's actions shall be deemed to constitute an intentional tort and not an accident only when the employee proves, by clear and convincing evidence, that:

  1. The employer deliberately intended to injure the employee; or

  2. The employer engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was

virtually certain to result in injury or death to the employee, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.

- specifies that a carrier, service agent, or safety consultant will not be liable as a third-party tortfeasor to an employee of an employer or of an employer's subcontractor for assisting the employer or its subcontractor with safety functions.

- specifies that "without limitation, a safety consultant may include an owner, as defined in chapter 713, or an owner's related, affiliated, or subsidiary companies and the employees of each."

Bill Section 15, Section 440.13, F.S., Medical Services and Supplies
Bill Section 16, Section 440.134, F.S., WC Managed Care Arrangements
Bill Section 17, Section 440.14, F.S., Determination of Pay
Bill Section 18, Section 440.15, F.S., Compensation for Disability
Bill Section 19, Section 440.151, F.S., Occupational Diseases
Bill Section 20, Section 440.16, F.S., Compensation for Death
Bill Section 21, Section 440.185, F.S., Notice of Injury or Death / Reports
Bill Section 22, Section 440.192, F.S., Procedure for Resolving Benefit Disputes
Bill Section 23, Section 440.1926, F.S., Alternate Dispute Resolution (new)
Bill Section 24, Section 440.20, F.S., Time for Payment of Benefits
Bill Section 25, Section 440.25, F.S., Mediation and Hearings Procedure
Bill Section 26, Section 440.34, F.S., Attorney Fees and Costs

Bill Section 27, Section 440.38, F.S., Security for Compensation / Insurers

Adds a requirement that any employer with employees working in Florida must maintain required coverage under a Florida endorsement using Florida rates and rules pursuant to payroll reporting that accurately reflects the work performed in Florida. (See summary information on bill section 8 above.)

Bill Section 28.,Section 440.381, F.S., Application for Coverage / Payroll Audit

Specifies that "submission of an application that contains false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage" is a second-degree felony (up to 15 years in prison and/or $10,000 fine).

Establishes a new mechanism as follows:

- Requires the department to immediately notify a carrier if the department finds an employer has "materially understated or concealed payroll, has materially misrepresented or concealed employee duties so as to avoid proper classification for premium calculations, or has materially misrepresented or concealed information pertinent to the computation and application of an experience rating modification factor."

- Requires that the carrier start a physical onsite audit of the employer within 30 days of department notification and provide the department with a copy of the audit. If the carrier gives written notice of cancellation within 30 days of department notification to the employer, the carrier is not required to perform the audit.

- If the carrier fails to do this, the department must contract with auditing professionals to perform the audit at the carrier's expense.

Bill Section 29, Section 440.42, F.S., Insurance Policies / Liability

Adds requirement that an insurer mail notification to an employer of policy cancellation for nonpayment of premium at least 10 days before the effective date of cancellation.

Bill Section 30, Section 440.49, F.S., Liability Subsequent Injury / Special Disability Trust Fund

Bill Section 31, Section 440.491, F.S., Reemployment / Rehabilitation

Specifies that training and education is to be at a community college (Part III, Chapter 420, Florida Statutes) or a vocational-technical school (section 230.63, Florida Statutes).

Specifies that "appropriate training and education" includes securing a GED if necessary.

Specifies that an employer or carrier will be responsible for training and education temporary total compensation benefits when an employee reaches maximum medical improvement and is unable to earn at least 80% of the compensation rate.

Specifies that these benefits will not in addition to the 104 weeks specified in section 440.15(2), Florida Statutes (temporary total disability benefits).

Provides that an employee who refuses education and training recommended by the vocational evaluator will forfeit any additional training and education benefits and any additional payment for lost wages (was 50% reduction in wage loss benefits).

Requires that the department adopt rules to implement this statute, including carrier requirements to notify the injured worker of the availability of training and education benefits.

Bill Section 32, Section 440.525, F.S., Exam and Investigation of Insurers and Claims Handlers

Bill Section 33, Section 627.162, F.S., Premium Installments / Collections

Increases the maximum delinquency and collection fee from $10 to $25 (or 5 percent of the installment due – whichever is greater – existing law).

Bill Section 34, Section 627.285, F.S., Peer Review of Rating Organization (new)

Requires that the Financial Services Commission contract for an independent actuarial peer review and analysis of the ratemaking processes of any licensed rating organization

that makes workers' compensation rate filings (currently is just NCCI) at least once every other year. Requires a final report to the commission, Senate, and House by February 1, and specifies that the first report is due February 1, 2004.

Bill Section 35, Section 627.311, F.S., Workers' Compensation JUA (effective 7-1-03)

Modifies the FWCJUA board of governors from 13 members to 9 as follows:

- 3 members appointed by the Financial Services Commission (new)
- 2 members, having certain qualifications, from the 20 domestic insurers (was 5 members)
- 2 members, having certain qualifications, from the 20 foreign insurers (was 5 members)
- 1 member appointed by the largest Florida property and casualty insurance agents association (existing)
- the consumer advocate or designee

Removes 1 member appointed by the insurance commissioner to serve as chair, and provides that the Financial Services Commission will designate a member to serve as chair

Requires that all insured in the FWCJUA participate in the safety program(s) of the JUA.

Modifies the subplans and structure as follows:

Requires establishment of 4 (rather than 3) subplans, with new Subplan "D" added to include:

Any employer, regardless of the length of time for which it has conducted business operations, which has an experience modification factor of 1.10 or less and either employs 15 or fewer employees or is an organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code and receives more than 50 percent of its funding from gifts, grants, endowments, or federal or state contracts. The rate plan for subplan "D" shall be the same rate plan as the plan approved under ss. 627.091-627.151 and each participant in subplan "D" shall pay the premium determined under such rate plan, plus a surcharge determined by the board to be sufficient to ensure that the plan does not compete with the voluntary market rate for any participant, but not to exceed 25 percent. However, the surcharge shall not exceed 10 percent for an organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code.

Requires that the FWCJUA provide for a depopulation program to reduce the number of insureds in Subplan "D" and specifies:

If an employer insured through subplan "D" is offered coverage from a voluntary market carrier:

a. During the first 30 days of coverage under the subplan;

b. Before a policy is issued under the subplan;

c. By issuance of a policy upon expiration or cancellation of the policy under the subplan; or

d. By assumption of the subplan's obligation with respect to an in-force policy,

that employer is no longer eligible for coverage through the plan. The premium for risks assumed by the voluntary market carrier must be the same premium plus, for the first 2 years, the surcharge as determined in sub-subparagraph 22.d. A premium under this subparagraph, including surcharge, is deemed approved and is not an excess premium for purposes of s. 627.171.

Requires that subplan "D" applications and policies include notice that the policy could be replaced by a policy issued from a voluntary market carrier and such offer means the policyholder is no longer eligible for subplan "D" coverage. The notice must also specify that acceptance of subplan "D" coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

Provides that the FWCJUA may issue assessable policies to insureds in subplans "C" and "D" and may levy assessments (on a pro rata earned premium basis) to fund deficits in those subplans on verification by the department.

Specifies that assessments levied against subplan "C" participants will only cover deficits attributable to subplan "C," and assessments levied against subplan "D" participants will only cover deficits attributable to subplan "D." Also specifies "in no event may the plan levy assessments against any person or entity, except as authorized by this paragraph." (Page 177 of the bill, and paragraph is 627.311(4)(d)2., Florida Statutes.)

Provides that the FWCJUA may issue assessable policies with differing terms and conditions to different groups within subplans "C" and "D" when a reasonable basis exists for the differentiation.

Bill Section 36, Section 921.0022, F.S., Criminal Punishment / Offense Severity Chart

Bill Section 37, Report to Legislature on Outstanding Enforcement Issues

Requires that the Department of Financial Services (DFS) provide a report to the Senate president, House speaker, minority leaders of both houses, and the chairs of the standing insurance committees of both houses on:

- Any provision of chapter 440, Florida Statutes, on carrier compliance and enforcement that DFS finds it is unable to enforce.

- Any administrative rule relating to carrier compliance and enforcement that DFS finds it is unable to enforce.

- Any other impediment to workers' compensation enforcement resulting from the transfer from former DLES to DFS or the reorganization of former DOI into DFS.

Bill Section 38, Section 946.523, F.S., Prison Industry Enhancement Programs

Bill Section 39, Section 985.315, F.S., Educational/Vocational/Technical Work-Related Programs

Bill Section 40, Joint Select Committee on Workers' Compensation Rating Reform

Provides for the creation of this committee composed of 3 senators (appointed by the Senate president) and 3 representatives (appointed by the House speaker). The committee members will appoint the chair and vice chair, and DFS is to provide information and assistance as requested by the committee.

The committee "shall study the merits of requiring each workers' compensation insurer to individually file its expense and profit portion of a rate filing, while permitting each insurer to use a lost cost filing made by a licensed rating organization. The committee shall also study options for the current prior approval system for workers compensation rate filings, including, but not limited to, rate filing procedures that would promote greater competition and would encourage insurers to write workers' compensation coverage in the state while protecting employers from rates that are excessive, inadequate, or unfairly discriminatory."

A final report and recommendations are due by December 1, 2003 to the President of the Senate and the Speaker of the House of Representatives, and the committee terminates on December 1, 2003.

Bill Section 41, FWCJUA Report to Legislature

Requires that FWCJUA board of governors submit a report by January 1, 2005 to the Senate president, House speaker, minority leaders of both houses, and the chairs of the standing committees with jurisdiction over workers' compensation of both houses including the board's findings and recommendations on the following issues:

- The number of policies and the aggregate premium of the workers' compensation joint underwriting plan, before and after enactment of this act, and projections for future policy and premium growth.

- Increases or decreases in availability of workers' compensation coverage in the voluntary market and the effectiveness of this act in improving the availability of workers' compensation coverage in the state.

- The board's efforts to depopulate the plan and the willingness of insurers in the voluntary market to avail themselves of depopulation incentives.

- Further actions that could be taken by the Legislature to improve availability of workers' compensation coverage in the voluntary and residual markets.

- Actions that the board has taken to restructure the joint underwriting plan and recommendations for legislative action to restructure the plan.

- Projected surpluses or deficits and possible means of providing funding to ensure the continued solvency of the plan.

- An independent actuarial review of all rates under the plan. The costs of the independent actuarial review shall be paid from the Workers' Compensation Administration Trust Fund, pursuant to a budget amendment approved by the Legislative Budget Commission. The board shall submit a plan for such review to the Legislative Budget Commission by October 1, 2003.

- Such other issues as the board determines are worthy of the Legislature's consideration.

Bill Section 42, Section 443.1715, F.S., Disclosure / Confidentiality (Unemployment Comp)

Provides that the employer or carrier facing a workers' compensation claim may request employee wage records for the quarter that includes the date of accident and subsequent quarters from the Division of Unemployment Compensation. Requires that the request be made with the authorization or consent of the employee or any employer who paid wages after the date of the accident. Requires that the Division of Unemployment Compensation provide the most current information within 15 days of receiving the request.

Bill Section 43, Section 626.989, F.S., Fraud Investigation by DFS

Requires that DFS prepare and submit to the Senate president and the House speaker a joint performance report by November 1, 2003 and January 1 of each year thereafter including at least:

- The total number of initial referrals received, cases opened, cases presented for prosecution, cases closed, and convictions resulting from cases presented for prosecution by the Bureau of Workers' Compensation Insurance Fraud by type of workers' compensation fraud and circuit.

- The number of referrals received from insurers and the Division of Workers' Compensation and the outcome of those referrals.

- The number of investigations undertaken by the office which were not the result of a referral from an insurer or the Division of Workers' Compensation.

- The number of investigations that resulted in a referral to a regulatory agency and the disposition of those referrals.

- The number and reasons provided by local prosecutors or the statewide prosecutor for declining prosecution of a case presented by the office by circuit.

- The total number of employees assigned to the office and the Division of Workers' Compliance unit delineated by location of staff assigned and the number and location of employees assigned to the office who were assigned to work other types of fraud cases.

- The average caseload and turnaround time by type of case for each investigator and division compliance employee.

- The training provided during the year to workers' compensation fraud investigators and the division's compliance employees.

Bill Section 44, Section 626.9891, F.S., Insurer Anti-Fraud Investigative Units

Requires that each workers' compensation insurer report to the department on its experience in implementing and maintaining an anti-fraud investigative unit or an anti-fraud plan by August 1 of each year.

Bill Section 45, Section 440.1925, F.S., Procedure to Resolve MMI or Impairment Disputes

Repealed.

Bill Section 46, Section 112.19, F.S., Death Benefits for Law Enforcement / Correctional Employees

Bill Section 47, Section 112.191, F.S., Death Benefits for Firefighters

Bill Section 48, Special Provision for Law Enforcement, Firefighters, Paramedics and More

Provides: The amendments to sections 440.02 and 440.15, Florida Statutes, which are made by this act shall not be construed to affect any determination of disability under section 112.18, section 112.181, or section 112.19, Florida Statutes.

Bill Section 49, Miscellaneous / Procedural

Provides: If any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if possible.

If approved by the Governor, these provisions take effect October 1, 2003, except as otherwise provided.
Vote: Senate 25-14; House 81-34

SB 18A – Tax Amnesty

Creates a four-month amnesty period from July 1 to October 31, 2003, when taxpayers can pay delinquent taxes without being subjected to penalties or criminal prosecution. Additionally, the taxpayer will receive an interest waiver of 25 or 50 percent; however,

the interest rate on remaining delinquent taxes is increased from the prime rate to prime plus four percentage points. Governor Bush signed this bill into law and it takes effect immediately.

Approved by the Governor, chapter law not yet available; these provisions take effect June 18, 2003, 2003, except as otherwise provided.
Vote: Senate 35-0; House 112-2

HB 143A – Civil Rights Act

Empowers the attorney general to initiate lawsuits against employers of any size who engage in "a pattern or practice" of discrimination. It calls for a reasonable threshold and a hearing process before the attorney general can pursue corrective action and allows for correcting the behavior without putting the employer out of business. The bill also expands the Florida Civil Rights Act to include "public accommodations" and gives Florida's attorney general authority similar to that provided to the U.S. Attorney General for pursuing discrimination cases.

Approved by the Governor, chapter law not yet available; these provisions take effect June 18, 2003, 2003.
Vote: Senate 36-1; House 112-1

HB 63A – Clean Indoor Air Act

Implements the constitutional amendment passed by voters prohibiting smoking in enclosed indoor workplaces. The exceptions to this prohibition include: private residences, stand-alone bars with less than 10 percent of its sales from food, designated smoking rooms in hotels, other public lodging, tobacco shops, DOH smoking cessation programs, medical and scientific research, and in an intransit lounge in the customs area of an airport. Penalties for violating this law range from a warning for the first violation to revocation of the right to smoke on the premises for a fourth violation. In addition, monetary penalties range from $250 to $750 for the first violation and from $500 to $2,000 for subsequent violations.

If approved by the Governor, these provisions take effect July 1, 2003.
Vote: Senate 38-2; House 106-10

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