

# PBC Legislative Update

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### **State Issues**

#### **Second Week of Session**

#### **TABOR**

*By: County Staff, Corcoran and Johnston, Moya Group, Ericks Consultants, and Pittman Law Group*

On Tuesday, the Senate passed SJR 958, relating to State Revenue Limitation, by a vote of 27-13. The Resolution is a proposed Constitutional amendment that, if approved by voters in 2012, would provide for the following:

- Replaces the existing state revenue limitation based on Florida personal income growth with a new state revenue limitation based on changes in population and inflation.
- Requires excess revenues to be deposited into the Budget Stabilization Fund, used to support public education, or returned to the taxpayers.
- Adds fines and revenues used to pay debt service on bonds issued after July 1, 2012 to the state revenues subject to the limitation.
- Authorizes the Legislature to increase the revenue limitation by a supermajority vote.

The Senate legislation does not affect local governments. At this time, Speaker Cannon has not yet confirmed whether or not the House bill will mirror the Senate's.

#### **Pensions**

*By: Ericks Consultants, Moya Group, Pittman Law Group, Corcoran & Johnston and County Staff*

#### House Bill 1405 by Workman – Retirement

On Thursday, The House *Government Operations Subcommittee* passed its version of the pension legislation that includes the following major provisions:

- 5% contribution to the Florida Retirement System
- Eliminates the Deferred Retirement Optional Program (DROP) to any new enrollees
- Raises the retirement age
  - -"Special risk" – Age 55 to age 60 or 25-30 years on the job (Whichever is reached 1st)
  - - General – 60 to 62 or 30 to 33 years on the job (Whichever is reached 1st)
- Requires all new employees to enter into the defined contribution plan rather than the traditional defined benefit plan
- Reduces service accrual rates for employees prospectively. Every class is reduced to 1.6% with the exception of the members of the special risk class. These members will continue earning the current service accrual rate of 3%.

- Reduces the minimum disability retirement benefit awarded to judges, effective July 1, 2011. The benefit is reduced from two-thirds to one-third of their salary. The bill does not reduce the minimum in-line-of-duty disability for members of the Special Risk Class.

The House version is much closer to the Governors proposal, because of the 5% contribution and the elimination of DROP. Out of 21 speakers during public testimony, only one, Florida Chamber lobbyist David Hart, was a proponent of the legislation in its current form. Meanwhile, several state workers, Union Lobbyists for AFL-CIO, AFSCME, PBA, FEA, and others spoke in opposition to the legislation. The House version has two committees of reference before it is brought to the floor.

Meanwhile, the Senate version is more closely aligned with the County's position. Currently, the highest level of contribution in the Senate FRS bill (SB 1130 by Senator Ring) would cap employee contributions at 4 percent, while the majority who make under \$40,000 a year would not have to contribute at all. The major bill components as passed last week are listed below:

- An overall statutory cap on employee contributions is included of no more than 2% for regular and special risk classes; and no more than 4% for elected and senior management classes, and the bill envisions the Legislature setting annual employee contribution rates each year;
- Employee contribution rates for the first year, state fiscal year 2011/2012, are set at no more than:
  - 0% (no employee contribution) for gross employee compensation up to \$40,000,
  - 2% for gross employee compensation \$40,000 to \$75,000,
  - 4% for gross employee compensation above \$75,000 (perhaps subject to overall caps stated above, but it is not yet specified);
- Overtime up to 300 hours can be used for Average Final Compensation/highest 5 years;
- Only those new FRS participants in (i) elected class, (ii) senior management class and (iii) in positions with starting salary more than \$75,000 are required to go to Defined Contribution 401k-type plan (prospective only effective July 1, 2011; Defined Benefit plan would continue for employees in regular and special risk classes in positions with starting salaries less than \$75,000;
- If FRS reaches or surpasses 100% actuarial funding, then employee contributions to FRS would stop until it again dips below 100%;
- FRS vesting is increased from 6 to 8 years prospectively only for new employees beginning July 1, 2011;
- DROP remains in place unchanged;
- Retiree Cost of Living Adjustments are not reduced or eliminated, and will remain the same;
- There is no minimum retirement age imposed/retirement ages are not affected;
- Membership classifications are not affected;
- Multipliers/annual service accrual rates are not changed;
- County savings derived from employee contributions are not diverted to state general revenue.

Senate Bill 1130 will be heard next during the Senate *Budget Committee* and then to the Senate floor. Senate Bill 1130 is not likely to be taken up by the Senate *Budget Committee* until later in the session as part of the overall state budget package because FRS contribution rates are a significant component of the overall state budget. The Senate *Governmental Oversight Committee* passed 10-2.

### **Red Light Cameras**

*By: Moya Group, Corcoran and Johnston, and County Staff*

#### House Bill 4087 by Corcoran and Trujillo – Traffic Infraction Detectors

On Thursday, the House *Economic Affairs Committee* passed House Bill 4087, relating to the installation and use of traffic infraction detectors. The bill passed by a vote of 10-8. This bill, if approved by both the House and Senate, would repeal the use of red

light cameras. The use of red light cameras to enforce traffic laws passed last year in House Bill 325 by Representative Ronald Reagan.

All public testimony heard in this committee were in opposition to this bill. The Florida League of Cities (FLC), City of Tallahassee, City of Apopka and the Association of Counties (AOC) all publicly opposed the repeal. They argued that the money was the deterrent or punishment for running a red light.

Notable items that would be repealed in this legislation:

- Cities and counties having the ability to use traffic infraction cameras within their respective jurisdictions;
- A \$158 fine for violation of red light running of which \$75 goes to the state, \$75 to local governments, \$10 to trauma care, and \$3 to Spinal Cord research;

Of the three members of the Palm Delegation on the committee, Representatives Perman and Slosberg voted against the bill and Rep. Abruzzo voted for it. The next stop for this bill is the House *Appropriations Committee*. The Senate companion, Senate Bill 672, by Senator Garcia, has not yet been heard.

### **Pill Mills/Prescription Drug Monitoring Program**

*By: Ericks Consultants, Corcoran & Johnston, and County Staff*

This week, county lobbyists met with Chairman Schenck to discuss his legislation. He explained that he is working on a strike-all to his bill and that he would be meeting with Senator Fasano in the next few weeks to discuss what, if any, agreements they can come to regarding their respective bills. He maintains that he and House leadership are, in no way, in favor of the Prescription Drug Monitoring Program, and that his bill continues to be the main focus of the House.

County lobbyists also met with Senator Fasano's office, following the passage of his Senate Bill 818, relating to Controlled Substances, in Health Regulation on Monday. A strike-all amendment was introduced and the subsequent changes to the original bill are as follows:

- Includes an exception from registration as a pain-management clinic in both ch. 458, F.S., and ch. 459, F.S., when a majority of the physicians who provide services in the clinic primarily provide interventional pain procedures of the type routinely billed using surgical codes;
- Strikes the requirement in existing law that allopathic physicians working in a pain-management clinic effective July 1, 2012 must have completed a pain medicine fellowship or a pain-medicine residency;
- Authorizes an ARNP or a PA, to perform an appropriate medical examination of a patient, in lieu of the allopathic physician or osteopathic physician on the same day that the physician dispenses or prescribes a controlled substance to a patient at a pain-management clinic and changes the terminology for the examination performed by a physician that is in current law to an appropriate medical examination rather than a physician examination;
- Specifies the standard of care that must be met is set forth in a specific rule when a physician prescribing or dispensing more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain at a pain-management clinic documents in the patient record that the dosage is within the standard of care;
- Removes a dwelling as a location in which the new element for the crime of burglary may occur;
- Deletes one of the conditions that defines an adulterated controlled substance; Removes the new misdemeanor offense created in the bill as filed for a person or health care practitioner who performs a prohibited act with an adulterated controlled substance that is listed in Schedule V;
- Clarifies and exempts a law enforcement officer from securing a subpoena, court order, or search warrant in order to obtain access to or copies of records required to be maintained under ch. 893, F.S., relating to controlled substances;

- Prohibits the substitution of an opioid analgesic drug with tamper-resistance technology under certain circumstances.

The bill is on the agenda for Senate Criminal Justice next Tuesday. In Committee and in our meeting, Senator Fasano maintained his unwavering support for the Prescription Drug Monitoring Program and the effort to end pain management clinic abuse.

### **Growth Management**

*By: The Moya Group, Corcoran & Johnston, Pittman Law Group and County Staff*

This week, the Community and Military Affairs Subcommittee workshopped, amended, and approved HB CMAS 11-04, a 283-page bill addressing growth management. The bill is a sweeping re-write of growth management law. The bill streamlines the comprehensive plan amendment process in a number of ways, including:

- Updating and clarifying the statutory requirements of comprehensive plans.
- Creating an expedited review process for state review of comprehensive plans and plan amendments, with some limited exceptions including areas of critical state concern, large area plans, and newly created comprehensive plans.
- Focusing the scope of state review and challenges to important state resources and facilities.
- Increasing accessibility to large scale planning tools.
- Eliminating certain areas of concurrency as a state mandate, but allowing local governments to maintain or implement similar tools at a local level by keeping issues that are critical as required concurrency items for all areas of the state, and allowing local government flexibility in addressing how to implement transportation and school facilities.

The bill will now be assigned a bill number and begin moving through the process.

### **Permit Streamlining**

*By: Ericks Consultants and Corcoran & Johnston*

On Tuesday, March 15, the **House Agriculture & Natural Resources Subcommittee** passed **HB 991** by Representative Patronis by a vote of 10-5. HB 991 is a permit streamlining bill. The DEP, along with environmental groups, the Florida League of Cities and the Florida Association of Counties raised concerns but said they have been and will continue to work with Representative Patronis. The bill changes include rewriting rules involving wetlands mitigation banking, reducing the time periods for agencies to respond to applications and allowing a shortened general permit application for projects involving less than 10 acres of wetlands. Local governments could not adopt stricter water quality or wetlands regulations unless they seek approval from the state prior to June 15. Environmentalists said they are worried this bill could become a train of ideas they do not like as Session moves along.

### **Senior Center/West County Homeless Resource Center:**

*By: The Pittman Law Group and County Staff*

With the anticipated release next week of the House and Senate draft budgets, we continued to work this week to include in the budget funds for the relocation of the Belle Glade Senior Center and the development of the West County Homeless Resource Center.

Palm Beach County is requesting \$3.5 million to relocate the Belle Glade Senior Center from the current location at the West County Government Complex at SR80 and SR15 to a site donated by the City of Belle Glade. A new Senior Center would be constructed at the donated site and would provide a much larger, more accessible location that would serve more seniors in the area. The then-vacated location at the Government

Complex would be converted into the County's second Homeless Resource Center. The funding request for the Homeless Resource Center is \$500,000.

### **Impact Fees**

*By: Ericks Consultants and County Staff*

Impact fees continue to be a source of contention in the realm of growth management. In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when adopting impact fees. Pursuant to statute, an impact fee ordinance adopted by local government must, at a minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures; if a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs;
- Require that notice be provided at least 90 days before the effective date of a new or amended impact fee.

In 2009, the House passed HB 227, which amended s. 163.31801, F.S. to place the burden of proof on the local governments to show by preponderance of evidence that any impact fees instituted by them meet these statutory standards. Since this amendment was passed, suits have been filed against the Legislature by counties claiming the bill is an unconstitutional preemption of the Separation of Powers clause, since earlier cases by the Florida Supreme Court have ruled that "a preponderance of evidence" need not be established, but that the fees simply meet the less stringent requirements of the dual rational nexus test.

On Wednesday, the Senate Rules Committee passed **SB 410**, which amends s. 163.31801, F.S. to explicitly state that "a preponderance of evidence" is required. The bill also provides for retroactive operation of this act which, if found unconstitutional by the courts, will instead be applied prospectively.

This was the bill's last committee of reference. It will be placed on the Senate calendar.

The House version of this bill, **HB 7021**, was reported favorably on Thursday by the House Economic Affairs Committee, its last committee of reference. It will next be available for floor action.

### **Juvenile Justice**

*By: The Pittman Law Group and County Staff*

Palm Beach County is watching several juvenile justice related issues that would focus efforts on prevention rather than punitive sanctions. The County is also monitoring initiatives aimed at keeping certain juvenile violations from interfering with the future ability to obtain employment or educational opportunities.

- **SB 1534 (Smith)/ HB 1297 (Thurston) relating to Criminal History Records of Juveniles** – The bill language would require all records to be sealed for juveniles once released from their sentence. The County is working with Sen. Chris Smith and Rep. Perry Thurston to get this legislation moving through the committee process.
- **HB 333(Corcoran)/SB 554(Fasano) relating to Community-Based Juvenile Justice** – The bill is expected to create a Community-Based Juvenile Justice pilot program and put the parts in place for the program to grow in the future. Ultimately, the counties would be hired to run these programs for DJJ. Palm Beach County is not listed as one of the pilot counties. The bill passed the Criminal Justice Committee and now awaits a hearing in Justice Appropriations.

- **SB 1300 relating to Juvenile Civil Citations (Storms)** – This bill would require that a juvenile civil citation program be established at the local level with the concurrence of the chief judge of the circuit and other designated persons. It authorizes a law enforcement agency, the Department of Juvenile Justice, a juvenile assessment center, the county or municipality, or an entity selected by the county or municipality to operate the program and it restricts eligibility of participants for the civil citation program to first-time misdemeanor offenders.

The Civil Citation program began in Miami-Dade County under the leadership of Wansley Waters, the new Secretary of the Department of Juvenile Justice. It will be heard in its first Committee, Criminal Justice, on March 22<sup>nd</sup>.

A similar measure is moving through the House, *HB 997* by Rep. Ray Pilon.

### **Numeric Nutrient Criteria**

*By: Corcoran & Johnston and Ericks Consultants*

On Tuesday, the House Agriculture & Natural Resources Committee passed House Bill 239, relating to Numeric Nutrient Water Quality Criteria, by Representative Williams, with a vote of 12-3. According to staff, the bill prohibits state, regional, or local governmental entities from implementing or giving any effect to the federally-promulgated criteria in any program administered by a state, regional, or local governmental entity.

### **Fertilizer Preemption**

*By: Corcoran & Johnston*

On Monday, the Senate Agriculture Committee unanimously passed Senate Bill 606, relating to Fertilizer, by Senator Evers. The legislation creates a statewide regulation for the sale and use of fertilizer, removing authority from cities and counties and giving it to the Department of Agriculture and Consumer Services. As it is currently written, the bill preempts the authority of local governments to enact fertilizer ordinances more stringent than the state's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (model ordinance). It grants the Department of Agriculture and Consumer Services the exclusive authority to regulate the sale, composition, formulation, packaging, use, application and distribution of fertilizer. It provides that fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations were adopted. It also authorizes counties or municipal governments to enforce the provisions of the model ordinance in their respective jurisdictions.

## **Federal Issues**

### **Federal Overview**

*By: US Strategies*

### **BUDGET AND APPROPRIATIONS**

#### **FY 2011 Continuing Resolution (CR) for FY 2011**

On Tuesday, March 15<sup>th</sup>, the House passed the three-week stopgap funding bill on a 271-158 vote. The 104 Democrats voting against the measure (H.J. Res. 48) were joined by 54 Republicans. The \$6 billion cut contained in the extension of the CR does not include the policy riders – including defunding the health care law and Planned Parenthood – sought by House conservatives. Among agencies and programs affected by the cut are Agriculture's research and conservation programs; Justice's state and local law enforcement programs; Commerce's Census Bureau; Homeland Security's construction; the National Park Service's historic preservation program; EPA; Labor's

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Employment and Training Administration; HUD's Brownfields program; the Corporation for Public Broadcasting, and the Social Security Administration.

The Senate passed the measure on Thursday, March 17<sup>th</sup>, on an 87-13 vote, with nine Republican and four Democrats opposing. There were four more Republican votes against passage than had been cast against the previous extension two weeks ago. H.J. Res. 48 was signed by President Obama on Friday, March 18<sup>th</sup>.

With the CR extended through April 8, pressure on the House, Senate, and White House to compromise on a budget for the balance of the fiscal year – not another CR extension – is even greater than before. But in the House, with only 186 Republicans voting for the CR, Speaker John Boehner (R-OH) will need the support of 30 Democrats at a minimum for passage of another spending bill. At this point, it's felt that this level of support from Democrats for significantly deeper non-defense discretionary cuts is unlikely. And it's felt that the 54 Republicans who voted against the CR extension are likely to oppose almost any additional spending measure that reflects a compromise with the White House.

The two CR extensions have moved the Republicans \$10 billion closer to H.R. 1's target of cutting \$61.5 billion from the remainder of this year's budget. House and Senate leaders are saying they believe they can reach agreement on a budget that avoids another CR extension or government shutdown before Congress leaves Washington for its spring recess on April 15. Given the experience of the past several weeks, however, and with Democratic leaders continuing to push for inclusion of nondiscretionary and defense spending cuts in the mix – a step Republican leaders have adamantly refused to take – it's unclear how a \$51.5 billion difference in spending proposals will be reconciled in three weeks.

**Both the Senate and House are now in recess – the Senate until Monday, March 28, the House until Tuesday, March 29.**

**Senators' Letter to President on Deficit Problem**

On Friday, March 18<sup>th</sup>, 32 Republicans and 32 Democrats in the Senate sent a letter to President Obama, asking him to support a "broad approach to solving the deficit problem." Beyond FY2011 funding decisions, the letter says, "we urge you to engage in a broader discussion about a comprehensive deficit reduction package. Specifically, we hope that the discussion will include discretionary spending cuts, entitlement changes and tax reform." Led by Senators Michael Bennet (D-CO) and Mike Johanns (R-NE), the Senators on the letter told the president that, "with a strong signal of support from you, we believe that we can achieve consensus on these important fiscal issues. This would send a powerful message to Americans that Washington can work together to tackle this critical issue."

**Congressional Budget Office (CBO) Report on Reducing the Deficit**

A report published late last week by the Congressional Budget Office presents more than 100 options for altering federal spending and revenues to reduce federal budget deficits. The report covers mandatory and discretionary spending and revenue options drawn from sources including legislative proposals, various Administrations' budget proposals, Congressional staff, other government entities, and private groups. Among discretionary spending options affecting local governments are proposals to drop wealthier communities from the CDBG program; reduce Justice Department funding for State and Local Law Enforcement Assistance, Justice Assistance, Juvenile Justice, Community Oriented Policing Services (COPS), and Violence Against Women; increase payments by tenants in federally assisted housing; and reduce funding for the arts and humanities. CBO's list includes elimination of:

- Grants to States for Energy Conservation and Weatherization
- Grants for Wastewater and Drinking Water Infrastructure
- Grants to Large and Medium-Sized Hub Airports
- Intercity Rail Subsidies
- Transit Starts Programs
- Senior Community Service Employment

