

PBC Legislative Update

MARCH 28, 2011

VOLUME 5 NUMBER 9

IN THIS ISSUE:

State Issues

Legislative Priorities

1. FAC Legislative Day
2. Pensions
3. Red Light Cameras
4. Pain Management Clinics
5. Pre Trial Bill
6. Growth Management
7. House Appropriations Bill
8. Library Funding
9. Transportation Disadvantaged
10. Beach Funding
11. Health Care Funding
12. Environmental Appropriations
13. Permit Streamlining
14. Numeric Nutrient Criteria
15. Fuel Tax
16. Homelessness
17. Enterprise Zone
18. Agriculture Bill – Veto Override
19. Bert Harris Bill

State Issues - Third Week of Session

Florida Association of Counties Legislative Day

By: County Staff

On Wednesday, County Commissioners and staff from around the state traveled to Tallahassee for FAC Legislative Day. From Palm Beach County, Chair Karen Marcus, Commissioner Burt Aaronson, and Assistant County Administrator Brad Merriman joined our legislative team at the Capitol for a day of meetings that included discussions about pain management clinics, pre trial release, enterprise zones, and other county priorities.

Pensions

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

House Bill 1405, which was heard before the *House State Affairs Committee* on Thursday, March 24th, proposes several changes to the Florida Retirement System including:

- Requiring a 3% employee contribution for current and future members of all classes of the FRS Pension Plan and Investment Plan (was 5% in the original filed version).
- Closing the Deferred Retirement Option Program (DROP) to new participants, effective July 1, 2011.
- Increasing the retirement age and years of service for members of the FRS who enroll on or after July 1, 2011.

As written in the bill, the retirement age for a person entering the Special Risk or Special Risk Administrative Support classes would go from age 55 to age 60 and the years of service would shift from 25 to 30. The bill also increases the retirement age for all other classes of employees from 62 to 65 years of age, and the years of service from 30 to 33 years. It changes the name of the FRS defined benefit program (pension plan) to the Florida Retirement System Pension Plan. It changes the name of the defined contribution program from the Public Employee Optional Retirement Program (investment plan) to the Florida Retirement System Investment Plan.

Retirement age for special risk workers will rise to 55 years of age or 30 years of service while the regular class will rise to 65 years of age or 33 years of service. The bill does keep the existing accrual rates.

While this bill passed the committee along party lines, it is still different from the current Senate Bill 1130 sponsored by Senator Ring. The County still maintains its support of the Senate Bill as opposed to the House Bill.

Senate Bill 1130 does not abolish DROP. The Senate version has a tiered system where contribution rates are based upon salary: no defined contribution for those who make less than \$40,000 per year, 2% for those making between \$40,000-75,000 and 4% for those above \$75,000.

The Senate's main budget writer, Senator JD Alexander, has said publicly that he would like to see a 3% contribution rate across the board.

Red Light Cameras Repeal/ Fiscal Analysis

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

HB 4087 by Corcoran/Trujillo – Traffic Infraction Detectors (Red-Light Cameras)

Current law requires \$83 out of each \$158 traffic infraction fine (approximately 52.5 percent) to be remitted to the Department of Revenue, with local governments retaining \$75 (approximately 47.5 percent). Based on the \$8.4 million actually received by DOR between July 2010 and February 2011, approximately \$7.6 million has been retained by local governments that have installed traffic infraction detectors. HB 4087 would eliminate the source of this revenue by repealing the red light traffic camera program.

The following chart details amounts remitted from participating local governments in Palm Beach County to the Department of Revenue as a result of red-light camera programs in place from July 2010 through February 2011.

JURISDICTION	COUNTY	Grand Total
PALM SPRINGS	Palm Beach	\$195,963
WEST PALM BEACH	Palm Beach	\$113,365

From July 2010 through January 2011, fines collected from violations of red-light cameras have resulted in approximately \$8.4 million, distributed as follows: \$7.1 million to the General Revenue Fund; \$1 million to the Department of Health Administrative Trust Fund; and \$305,000 to the Brain and Spinal Cord Injury Program Trust Fund.

The County continues to support maintaining red-light camera programs.

Pill Mills/Prescription Drug Monitoring Program

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

On March 22, the Senate Criminal Justice Committee passed SB 818 with 4 amendments. Senator Fasano's legislation authorizes certain health care practitioners to complete a continuing education course relating to the prescription drug monitoring program, creates a felony of the third degree for any person to register or attempt to register a pain-management clinic through misrepresentation or fraud, revises the list of entities that are not required to register as a pain-management clinic and requires that the prescription drug monitoring program comply with the minimum requirements of the National All Schedules Prescription Electronic Reporting Act. This bill was voted favorably with 5 yeas and 0 nays.

Meanwhile, the Proposed Committee Bills (PCB) in the House were filed as **HB 7095**, which would remove the pain management clinic regulations that became law last year, and **HB 7097**, which repeals the Prescription Drug Monitoring Program (PDMP). This legislation continues to be monitored carefully.

Pre Trial Bill

By: Ericks Consultants and The Moya Group

Sen. Ellyn Bogdanoff's Pretrial Release bill, SB 372, was heard by the Senate Criminal Justice Committee and was temporarily postponed until next week.

Currently, 62% of prisoner's are in pretrial status, but cannot afford their bail. As a result, this leads to extreme overcrowding and the imprisonment of non-violent offenders. Out of 2,715 prisoners that were released on the pre-trial program, 97% successfully appeared for their trial during the period between their release and court date. Because of the success of this program, Broward County, along with the Florida Sheriff's Association, opposes this bill, adding that there is an estimated adverse fiscal impact of \$55 million statewide and would cost taxpayers excessive amounts of money.

Growth Management

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

Growth Management (CS/SB 1512)

On Monday the Senate Community Affairs Committee adopted a strike-everything amendment and favorably recommended SB 1512 which addresses the procedure and factors by which local government plan for and finance local transportation infrastructure. Specifically the bill:

- Creates definitions for a transit oriented development (TOD) and mobility plan.
- Revises the definition of financial feasibility to change the requirement that committed or planned funding sources be available for years 4 through 10 (current law requires the funding sources be available for years four and five) of the capital improvement schedule.
- Specifies the role population projections should play in land use planning (i.e., revises the needs test).
- Requires local governments to designate long-term transportation management systems if transportation deficiencies are projected to occur within 10 years.
- Changes the term backlog to transportation deficiency.
- Allows local governments to allow a development to proceed if it meets statutory requirements, has a binding agreement with the local government, and the local government determines that the road improvements the developer provides for as mitigation will significantly benefit the impacted transportation system.
- Revises the methodology for calculating proportionate-share and proportionate fair-share.
- Removes impacts to toll roads from the definition of proportionate-share and proportionate fair-share.
- Requires local governments to revise their proportionate fair-share mitigation ordinances.
- Allows for mass transit projects to extend outside a transportation deficiency area.
- Exempts transit-oriented developments from transportation impact review in the development of regional impact process.
- Provides a finding of important state interest.

The bill will be heard next by the Transportation Committee.

On the House side, the House growth management bill that was formerly a proposed committee bill (PCB CMAS 11-04) has now been assigned a bill number, **HB 7129**. The bill is in the House Economic Affairs Committee and is expected to be heard next week.

Also on Thursday, the House passed **HB 4001**, which repeals the Urban Infill and Redevelopment Program. The program was to be administered through the Division of Housing and Community Development of the DCA and was designed to provide grants for local governments to implement infill and redevelopment plans, and to maintain existing ones.

In 2000, the Legislature appropriated \$2.5 million for this program, however no additional funding was provided in subsequent years, making it an inactive program.

General House Appropriations Bill Analysis

Both chambers are ready for final committee action, which will occur Wednesday in the House and start Thursday in the Senate.

On Friday, the Revenue Estimating Conference (REC) adjusted their initial General Revenue estimate downward by \$215.8 million. The REC has determined the disparity between projected revenues and the needs of the State to be within a range of \$2.9 billion and \$4.6 billion.

According to House Speaker Dean Cannon, the general House Appropriations bill will

do the following:

- Prioritize critical needs.
- Will not raise taxes or fees. In the area of higher education, adjustments to tuition or fees are permitted but only when participation in the underlying program is voluntary, and the fees reflect a sharing of the actual cost of the program.
- Provide sufficient reserves to weather altered fiscal forecasts and preserve Florida's bond ratings. Unallocated General Revenue, the Budget Stabilization Fund, and the Lawton Chiles Endowment should provide a total budget reserve that exceeds \$2.2 billion.
- Prioritize education, and K-12 will receive the largest percentage of the General Revenue allocation
 - When adjusted for the savings to the local school districts from FRS contribution rates, the K-12 proportional share of the general revenue funding for FY 2011-12 will be a reduction of two tenths of a percent (.2%) from FY 2010-11.
 - The K-12 General Revenue funding level will exceed the General Revenue appropriation from FY 2009-10.
- Will not adopt strategies to control Medicaid spending that result in cost shifts toward the other aspects of Florida's state-funded health care infrastructure, including driving uncompensated care into Florida's public hospitals and emergency departments.
- Will not revise adult sentencing policies, change inmate release schedules, or take any action that jeopardizes the long-term safety of the public to save money in the current fiscal year.
- Reflect reasonable adjustments to state employee benefits, specifically the Florida Retirement System (FRS).
- Prioritize the delivery of services to people (education, health care, and public safety) over the purchase of things (transportation, general government, and the environment).

The adjustments to the general revenue allocations do not diminish the House's proposed \$2.2 billion in reserves.

Library funding

By: County Staff

The House appropriated \$1 million for local government library cooperatives and \$17.7 million for local government library grants from General Revenue. The total amount from General Revenue for all library, archives and information services has been funded at \$22.7 million.

The Senate has noticed that its budget documents will be available next week.

Transportation Disadvantaged Funding

By: Akerman Senterfit

The two versions of Medicaid reform take different approaches to Transportation Disadvantaged. The Senate version of the bill mandates that transportation services are offered but removes the requirement that they contract with the existing coordinated system with the Commission for the Transportation Disadvantaged. The CTD system has been in place for 30 years and by going to "competitive procurement", the CTD is worried about gaps forming from companies that won't take the extra steps that they will.

The House version calls for these services to be provided with a single, statewide contract with the Commission for the Transportation Disadvantaged.

The House has released its first proposed budget and maintains last year's funding level for Transportation Disadvantaged.

1917 SPECIAL CATEGORIES

GRANTS AND AIDS – TRANSPORTATION DISADVANTAGED
FROM TRANSPORTATION DISADVANTAGED TRUST FUND 38,404,800

1918 SPECIAL CATEGORIES

GRANTS AND AIDS - TRANSPORTATION DISADVANTAGED - MEDICAID SERVICES
FROM TRANSPORTATION DISADVANTAGED TRUST FUND 65,486,126

Beach Funding

By: County Staff

Beach renourishment project funding received a little bit of hopeful news this week when the Senate proposed a \$16.2 million appropriation to fund the first 12 projects on the State's renourishment project prioritization list, a big improvement over the Governor's proposal to eliminate funding. Although Palm Beach County's budget requests are not included in the top 12, funding for the City of Delray Beach's request of \$2.28 million in State matching funds for its \$14.5 million Delray Beach renourishment project has been included on the State priority list.

Proposed FY2012 Health Care Appropriations

By: Ericks Consulting

Below is a summary of the proposed House FY2012 Health Care Appropriations Committee:

- Overall proposed budget totals \$29.2 billion
 - \$7.1062 million in general revenue
 - \$22.131 million in trust funds
- Includes funding for 35,475 authorized positions
- 2.39% increase in total spending
- 5% increase general revenue funds over the 2010-2011 fiscal year
 - Includes \$2.1 billion in state funds for stimulus flameout
 - Includes 3.79% reduction in state FTE or 1396 full-time equivalent positions
- Budget does fund a number of different things
 - Medicaid price level and workload adjustment of almost \$2.9 billion
 - Restores the Medically Needy For Adults programs with \$687 million in general revenue
 - Florida Kid Care enrollment increases with a \$36.2 million total
 - Nursing Home Diversion waiver slots and provides funding for another 1000 slots in program
 - Local service, community care and home care for the elderly programs
 - PACE by adding additional slots
 - Restores nonrecurring dollars to DCF (\$85 million), Mental Health and Substance Abuse (\$69 million), Maintenance Adoption Subsidies (\$15 million) and DOH (\$24 million)
 - Fully fund community based care and equity
 - Resources to address the APD waiver deficit
 - Funded with \$48 million in general revenue
- Hospital rates reduced by 7%
- Nursing home rates reduced by 7%
- County Health Department rates reduced by 7%
- Institutional Care for the Development of Disabled rates reduced by 3%
- Medicaid Non-Emergency Transportation rates were reduced by 7%
- DCF agency overhead reduction of \$22.8 million
- Independent Living Program reduced by \$8 million
- DCF Mental Health Civil Commitment reduced by 293 FTEs and \$6.5 million in general revenue
 - Reflects a 10% reduction in positions and budget for mental health facilities that provide civil commitment services
- DCF Mental Health Forensic Commitment reduced by \$16.5 million in general revenue
 - Reduces the program by 275 positions
 - Then takes 7% reduction

Environmental Appropriations

In regard to environmental programs the first budget proposals released by Sen. Hays and by Rep. Williams maintain certain priorities of the Legislature (i.e., grants to local governments for drinking water and wastewater infrastructure and the Petroleum Tanks Cleanup program), while continuing to make the reductions necessary to balance the state's revenue with its expenditures. Key programs are funded as follows:

Program	House	Senate
Florida Forever	0	0
Northern Everglades Projects (DACS)	4,500,000	0
Everglades Restoration (DEP)	26,000,000	0
Drinking Water Revolving Loans	81,683,538	91,043,594
Wastewater Treatment Facility Construction	164,343,724	164,346,724
Beach Restoration	0	16,251,075
Underground Petroleum Tank Clean-up	130,000,000	125,000,000
Mosquito Control	0	0
Total Maximum Daily Loads (Grants)	6,385,000	6,385,000
Water Management District Trust Fund	18,300,000	15,863,535

Environmental Permitting HB 991

By: The Moya Group, Ericks Consultants and Corcoran & Johnston

HB 0991, Environmental Permitting by Representative Patronis passed unanimously out of the **Rulemaking & Regulation Subcommittee** on March 23, 2011. This bill is a general permit streamlining bill that creates, amends, and revises numerous provisions relating to development, construction, operating, and building permits, permit application requirements and procedures, programmatic general permits and regional general permits, and permits for certain projects. The Committee Substitute for this bill included Palm Beach language that only allows a state agency or agency of the state to require as a condition of approval for a permit or as an item to complete a pending permit application, that an applicant obtain a permit or approval from any other local, state or federal agency if it has explicit statutory authority to do so

Numeric Nutrient Criteria

By: Corcoran & Johnston, Foley and Lardner, and Ericks Consultants

The *House State Affairs Subcommittee* is scheduled to meet at noon on Monday and will consider House Memorial 1401 by Rep. Greg Steube. This Memorial urges Congress to keep the U.S. Environmental Protection Agency (EPA) from overextending its mandate and to direct the agency not to intrude into Florida's previously approved clean water program.

House Bill 239 by Rep. Trudi Williams has been stalled in the House. The Florida Department of Environmental Protection (EPA) and staff from the Governor's Office are working on compromise language to the bill.

On December 6, 2010, the United States Environmental Protection Agency (EPA) published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs. A portion of the final rule, relating to establishing site-specific alternative criteria, became effective on February 4, 2011. The remainder of the final rule becomes effective 15 months after publication, on March 6, 2012.

House Bill 239 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. The bill does not limit the ability of any state, regional, or local governmental entity to:

- Apply for any pollution discharge permit
- Comply with the conditions of such permits, including NPDES permits
- Implement best management practices, source control or pollution abatement measures for water quality improvement programs "as provided by law"

Notwithstanding the prohibition to give any effect to the EPA criteria, the bill authorizes the DEP to adopt numeric nutrient criteria for a particular surface water body or class of surface waters if the DEP determines that numeric nutrient criteria are necessary to protect aquatic life expected to inhabit those waters, and if the criteria are based on:

- Objective and credible data, studies and reports establishing the nutrient levels which the water body may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses.
- The criteria may be expressed in terms of concentration, mass loading, waste load allocation, load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements.
- The bill designates DEP-adopted nutrient Total Maximum Daily Loads (TMDLs) that were approved by the EPA as of December 6, 2010, as site-specific numeric nutrient water quality criteria. The site-specific criteria are not effective if the EPA disapproves, approves in part, or conditions its approval of the criteria, unless ratified by the Legislature.

A study commissioned by the Florida Water Environment Association Utility Council in November, 2010, estimates that wastewater utilities alone will spend between \$24 billion and \$51 billion in capital costs for additional wastewater treatment facilities and incur increases in annual operating costs between \$4 million and \$1 billion to comply with the federal numeric nutrient criteria

Fuel Tax Fix

By: The Moya Group

HB 1363, the Florida Department of Transportation's legislative package, sponsored by Rep. Brandes was heard in the **Transportation & Highway Safety Subcommittee** this week. Palm Beach County's proposed language was accepted onto the bill that allows local governments to use their Local Option Fuel Tax dollars on the installation, operation and maintenance of traffic lights and streetlights.

HB 1363 passed unanimously in the Transportation & Highway Safety Subcommittee with 15 Yeas and 0 Nays.

Homelessness Issues

By: Ericks Consultants and County Staff

One of Palm Beach County's top homelessness priorities passed unanimously in the House Economic Affairs Committee. **HB 639 by Rep. Gary Aubuchon** would remove the current cap on the Affordable Housing Trust Fund. The bill has wide support.

Advocates for the homeless received good news this week in terms of the FY2012 budget for homeless programs. Both the House and Senate Health

Appropriations Committees restored the funding for homeless programs and the Office of Homelessness statute at DCF and provided an additional \$366,000 for Homeless Transitions Programs.

Enterprise Zone Bill and Revenue Estimating Conference Projections

By: The Moya Group & County Staff

HB 725 (Perman) / SB 872 (Negron) relating to Enterprise Zones

House Bill 725 will not create new enterprise zones as have been in many similar bills passed by the Legislature in the past. It allows local governments to apply to OTTED to review the request and make a determination if it's in the best interest of the State to allow for the expansion of the existing Enterprise Zone by up to 3 square miles or as is the case in Martin County, the creation of a new Zone of up to 10 square miles. This legislation will allow for an extended review by OTTED, as it does not go into effect until 2012 to determine if there are any fiscal impacts that would prevent the designation from occurring. These proposed enterprise zones may have the effect of stimulating private sector economic activity.

On Tuesday, March 22nd, HB 725 passed unanimously during the House *Economic and Development Committee*.

The Office of Economic and Demographic Research (EDR), during the Revenue Estimating Conference, adopted a "0 cash" impact in FY 11-12, and then an "annualized .1" in 2012-2013, followed by ".1 cash" in the next three fiscal years.

Veto Override on Agriculture Bill

The House and Senate took up and passed House Joint Resolution 7103 relating to agriculture, a bill that was previously vetoed by then Governor Charlie Crist in 2010 and overrode the veto.

Former Governor Charlie Crist vetoed House Bill 7103 on May 15, 2010, stating the following concerns about restrictions placed on local governments:

"There is not an adequate justification for the state to interject its authority over local decision making. While state regulation is sometimes necessary to provide certainty, uniformity, and stability on certain policy issues, it should be applied sparingly. This bill attempts to apply a remedy without significantly identifying a problem."

House Joint Resolution 7103 addresses various issues relating to agriculture, including: fees for stormwater management, land use permits, building codes, tax receipts, farm tractors, insurance premiums, and open burning. The Florida House originally passed the bill unanimously on April 26, 2010.

Specifically, the bill:

- Prohibits counties from imposing a fee for stormwater management on agricultural land if the agricultural operation has certain specified permits or implements best management practices (BMPs);
 - Prohibits counties from enforcing any regulations on agricultural land under certain conditions;
 - Allows counties that have adopted stormwater ordinances to charge an assessment on agricultural land as long as the ordinance provides for credits against the assessment for implementing BMPs;
 - Allows a county to enforce its wetland protection acts adopted before July 1, 2003;
 - Requires an applicant for a local land use permit, building permit, or certificate of occupancy for nonagricultural land to sign a written acknowledgement of contiguous sustainable agricultural land;
 - Expands eligibility for exemption from a local business tax for persons who sell farm, aquacultural, grove, horticultural, floricultural, or tropical fish farm products;
- Exempts farm fences from the Florida Building Code as well as any city or

Palm Beach County

Board of County

Commissioners

Karen T. Marcus, Chair

Shelley Vana, Vice Chair

Paulette Burdick

Burt Aaronson

Steven Abrams

Jess R. Santamaria

Priscilla A. Taylor

County Administrator

Robert Weisman

**Palm Beach County
Legislative Affairs**

301 North Olive Avenue
Suite 1101.4
West Palm Beach, FL
33405

**Todd J. Bonlarron
Director**

Phone

Office (561) 355-3451
Mobile (561) 310-7832

Fax

(561) 355-3982

E-mail

tbonlarr@pbcgov.com

We're on the Web!

www.pbcgov.com

- county code. It also exempts nonresidential farm buildings and fences from county or municipal fees, with the exception of floodplain management regulations.
- Reverses 2005 legislation to return tropical foliage to exempt status from the provisions of the License and Bond law;
- Allows insurance companies, when calculating their gross writing ratio, to exclude gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers.

Bert Harris Legislation

HB 701 by Eisnagle/SB 998 by Simmons – Property Rights

House Bill 701 passed out of the *House Community and Military Affairs Subcommittee* by a vote of 10-4. Senate Bill 998 was unanimously passed out of the *Senate Committee on Community Affairs* on March 7th. It is expected to be heard in the *Senate Judiciary Committee* on Monday, March 28th.

This property rights legislation amends the Bert Harris Act and makes the following changes to Florida's statutory protections on real property rights:

- Specifies that a moratorium on a development that is in effect for longer than 1 year is not a temporary impact to real property and may constitute an "inordinate burden;"
- Changes a notification period from 180 days to 120 days;
- Deletes the term "ripeness" and replaces it with language specifying when the prerequisites for judicial review are met;
- Specifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property; and
- Specifies that sovereign immunity is waived for purposes of the Bert Harris Act.