

# PBC Legislative Update

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### State Issues -Fourth Week of Session

#### Enterprise Zone in the Glades

*By: Pittman Law Group, Foley & Lardner, and County Staff*

Thank you to Sen. Joe Negron for his amendment to SB 7202 in Budget committee on Friday that will allow the Enterprise Zone that currently exists in the Glades to expand up to an additional 3 miles.

The amendment could affect 4 existing enterprise zones across the state including South Bay and Pahokee. With an unemployment rate hovering near 40%, the Glades region is in desperate need of economic incentives like those offered through an enterprise zone designation. The amendment passed unanimously and SPB 7202 passed favorably out of the Senate Budget Committee by a vote of 17-1.

This 700+ page legislative package contains many agency reorganization proposals including the creation of Jobs Florida, which would merge the Office of Tourism, Trade and Economic Development (OTTED), the Agency for Workforce Innovation (AWI), and the Florida Housing Finance Corporation (FHFC), among others.

Identical Language is in the House Economic Package by Rep. Precourt.

The Office of Economic and Demographic Research (EDR), during the Revenue Estimating Conference, adopted a "0 cash" impact in FY 11-12.

#### Energy Legislation

*By: Corcoran and Johnston*

On Monday, the Senate Communications, Energy, and Public Utilities Committee filed Senate Bill 2078, which should be taken up by the Committee on April 4th. The bill currently contains provisions relating to renewable energy, energy conservation, and economic development. In the short term, it allows an investor-owned utility to recover the costs of renewable energy projects. If a utility chooses to do so, at least twenty-five percent of the total renewable energy capacity must be from renewable energy resources other than solar energy. Total costs for a utility in any calendar year cannot exceed two percent of the utility's total revenue from retail sales of electricity for the calendar year 2010. Each utility receiving cost recovery must annually report on the costs and benefits of the projects, including the number of jobs created.

For the long term, the bill establishes a process for creating a state energy resources plan that will incorporate renewable energy into the existing planning process and electricity generation fleet in a strategic and economical way.

The bill also addresses energy conservation, requiring each public utility to conduct a free energy audit of the business structures of each of commercial customer within its service territory and requiring that the Department of Management Services develop and implement a prioritized list of buildings on which to have an energy audit and economical, energy-saving retrofits done.

As to economic development, the bill abolishes the Florida Energy and Climate Commission and statutorily creates an independent Florida Energy Office, which is not only to have all of the current FECC duties, but also is to market the state as a location for energy-related investment, businesses, and research and development and to assist those interested in relocating in the state.

### **Pensions**

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

House Bill 1405, which was heard again this week and 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 a new Senate Bill 7094 that was filed this week by the Senate Budget Committee. The new bill differs drastically from the old one in that it offers four new proposed positions. The new bill:

- Closes the defined benefit program to all new employees except those in Special Risk classification and a limited number of others
- Eliminates the COLA for new retirees. The existing COLA is 3%
- Eliminates the DROP program after July 2011
- Makes the FRS employee contribution rate 3%, thus matching it up with the House bill.

County Staff testified before the Senate Budget committee on this new bill.

### **Red Light Cameras Repeal**

*By: Foley & Lardner, Moya Group, Corcoran and Johnston, and County Staff*

The Senate Transportation Committee approved SB 672 by Garcia repealing the Red Light Camera law that went on the books just last year. In a packed committee on Tuesday, Senator Garcia told lawmakers that use of cameras to issue tickets to red light violators was sold as a safety issue for communities. He says the law is not about safety because very little of the revenue is going to safety promotion but rather to trauma centers and local governments. The Florida Sheriffs Association and several individuals representing police agencies and law enforcement groups told committee members that the law has changed driver behavior in their communities. As a result, there are fewer accidents and less red light runners that improve safety in their local areas. Chairman Latvala reminded committee members that back in the 1990's he sponsored the red light camera legislation and supports the issue. He told the members that he would be voting for the bill in committee but that he would not

support it if it makes it to the Senate Floor. Had he voted against bill, it would have failed on a tie vote. The final vote was 4-2.

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

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

The House dispensing ban bill advanced this week as the Senate rejected a repeal of the drug database and Governor Scott creates a pill mill strike force. On Wednesday, the House Judiciary committee voted out an amended **HB 7095**, which substantially revises the regulation of controlled substances.

The original bill, among other provisions, repealed pain clinic regulations, prohibited physicians from dispensing controlled substances in their offices, and banned wholesale drug distributors from distributing such drugs to physicians and dentists. The bill also required wholesale distributors to buy back undispensed drugs held by physicians and dentists. A strike all amendment offered by Rep. McBurney and adopted by the committee deleted the restrictions on wholesale distributors and narrowed the dispensing ban to schedule II and III drugs, the controlled substances that are most susceptible to abuse. The amendment also bans community pharmacies from dispensing these drugs unless the pharmacy is owned by a publicly traded corporation, is owned by a corporation that has at least \$100 million in taxable assets in the state, or has been continuously licensed for the past 10 years. Finally, the amendment requires wholesale distributors to credential physicians, dentists, and pharmacies that purchase schedule II or III drugs from the distributor. The amended bill still repeals the regulation of pain clinics, as in the original bill. Voting in favor of the amended bill were Reps. Baxley, Eisnagle, Gaetz, Goodson, Harrison, Julien, McBurney, Metz, Passidomo, Pilon, Snyder, and Steube. Voting against were Reps. Campbell, Hager, Porth, Schwartz, Soto, and Steinberg.

In the Senate, the Health Regulation Committee on Monday rejected an attempt by Chairman Rene Garcia to amend a repeal of the drug database onto **SB 818** by Sen. Mike Fasano. SB 818 strengthens a number of provisions related to controlled substances but does not repeal the drug database. Supporters of the database rejected privacy concerns and pointed to the over 30 states that operate similar systems.

Meanwhile, on Monday, Gov. Rick Scott launched a strike force to combat the state's pill mill epidemic, made up of squads in each of FDLE's seven regions throughout the state. Governor Scott also appeared to endorse the dispensing ban favored by the House with certain exceptions.

### **Pre Trial Bill**

*By: Ericks Consultants, The Moya Group and County Staff*

The Senate's Pretrial legislation, SB 372 by Sen. Ellyn Bogdanoff, was on the Criminal Justice Committee agenda this week; however, it was temporarily postponed in Committee for the second week in a row most likely because it did not have the needed votes to pass. The bill has again been agendaed for the Senate Criminal Justice Committee on Monday, April 4, 2011.

The House Criminal Justice Committee took up the companion bill, HB 1379 by Rep. Chris Dorworth, and narrowly passed it by a vote of 7-6. The House Judiciary Committee will hear this bill next. Palm Beach County continues to oppose this measure because it will cause a significant increase in inmate housing costs and would limit the types of defendants who could be placed in pretrial diversion programs.

### **Juvenile Civil Citations**

**HB 997 by Rep. Pilon/SB 1300 by Sen. Storms**

*By: County Staff*

Legislation creating a Juvenile Civil Citation program modeled after the successful

program in Miami-Dade County passed the House Justice Appropriations Committee this week despite several concerns from the Florida Teen Court Association. HB 997 by Rep. Ray Pilon would establish a civil citation program that would enable first time misdemeanor juvenile offenders from entering the juvenile justice system. Today when a juvenile is arrested, the juvenile is entered into JJIS (Juvenile Justice Information System). Under the civil citation program, the juvenile would only be entered into the Prevention portion of JJIS. The purpose of the Prevention JJIS system is to track data for research purposes. Law enforcement does not access this section.

Palm Beach County had concerns, like Teen Courts that it would no longer be able to operate its First Offenders Program that is currently in place. Language assuring that counties with programs similar to the Civil Citations program would be able to maintain those programs if so desired was amended to the bill. If a County chose to implement a civil citation program, then DJJ would be available to assist in the implementation of such.

The bill now moves to the House Judiciary Committee. Similar legislation is moving through the Senate. SB 1300 by Sen. Rhonda Storms passed the Senate Judiciary Committee with a 6-0 vote.

### **Growth Management**

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

### **Growth Management (HB 7129)**

The House and Senate continue to craft large bills that substantially revise Florida's growth management system. This week, the House Committee on Economic Affairs passed **HB 7129** with a number of amendments. The bill, which was 284 pages before the amendments were adopted, makes major changes to how growth management would be handled in Florida.

In short, the bill attempts to streamline the growth management process and enhance home rule by:

- Focusing the state oversight role on significant state or regional resources.
- Eliminating the twice-a-year limitation on local government adoption on plan amendments.
- Eliminating state mandated concurrency traffic concurrency at the state level as a requirement.
- Amending the Future Land Use element component to modify the determination of "urban sprawl."
- Modifying the need requirement to require that planning be based upon a specified minimum population.
- Removing the financial feasibility requirement in the capital improvements element, and instead requiring local governments to list their funded and unfunded capital improvements.
- Removing specific provisions for optional elements within a local government's comprehensive plan.
- Encouraging Sector Plans and Rural Land Stewardship plans (also see CS/SB 1904, reported below).
- Repealing rule 9J-5 of the Florida Administrative Code and incorporating relevant definitions and provisions of the rule into statute.
- Changing the requirements for the sector plan process and rural land stewardship programs to encourage the use of those programs.
- Focusing state-level review and challenges on important state resources and facilities.
- Removing state-mandated concurrency for transportation, parks and recreation, and schools.
- Allowing the local application of concurrency for transportation and other facilities, subject to certain guidelines.
- Removing the requirement to adopt an evaluation and appraisal report, while still requiring local governments to evaluate their comprehensive plans once every seven years and to those updates that may be needed.

### **Growth Management (SB 1122)**

On the Senate side, the bill that will be the bill most in alignment with the major House bill is **SB 1122**.

On Tuesday, a **PCS** for **SB 1122** was adopted and reported favorably by the Senate Committee on Community Affairs. The bill makes sweeping changes to Florida's Growth Management Act, most of which are designed to reduce state oversight of land use planning and transfer additional control to local governments.

A committee substitute for that bill was filed on the 30<sup>th</sup> that rolls in all amendments adopted during the last hearing on the bill.

Specifically, the major changes in the CS would:

- Make concurrency for parks and recreation, schools, and transportation facilities optional for local governments.
- Apply an expedited comprehensive plan amendment process statewide.
- Specify that population projections should be covered for a 10-year window and act as a floor for requisite development except for areas of critical state concern.
- Allow additional planning periods for specific parts of the comprehensive plan.
- Abolish 9J-5, F.A.C. However, the bill does re-incorporate some of its relevant & substantive provisions.
- Allow the capital improvements element (CIE) to be updated by ordinance and moving the CIE deadline to 2013.
- Remove many of the state specifications and requirements for optional elements in the comprehensive plan, but allow local governments to continue to include optional elements.
- Allow for mass transit projects to extend outside a transportation deficiency area.
- Exempt transit-oriented developments from transportation impact review in the development of regional impact (DRI) process.
- Expand and revise the optional sector plan process (also see CS/SB 1904, reported below).
- Reduce the requirements of the 7-year evaluation and appraisal process.
- Make Revisions to the rural land stewardship program.
- Restrict the state's ability to interpret joint planning agreements.
- Prohibit local governments from increasing or creating new impact fees for nonresidential development for two years.
- Make DCA the sole agency for reviewing commercial/industrial uses for purposes of the Highway Beautification Act.
- Revise the make-up of the RPCs allowing for representation of commercial and business entities.
- Re-enact language relating to the burden of proof for impact fees.
- Clarify and broaden the window for permit extensions.
- Remove certain requirements relating to energy efficiency and green house gas reductions.
- Remove the optional provisions relating to recreational surface water use policies.
- Repeal the Local Government Comprehensive Planning Certification Program.
- Prohibit local governments from having referenda for local comprehensive plan amendments or requiring a super majority vote for the adoption of comprehensive plan amendments.
- Encourage planning innovation technical assistance.
- Clarify that a landowner seeking certification of a water and/or wastewater utility from the Public Service Commission for at least 1,000 acres may seek such certification for planning purposes, in order to be prepared to provide service on its property, without being required to show an immediate need for service.

**CS/SB 1122** will next be heard in the Senate Committee on Environmental Preservation and Conservation.

**Growth Management (HB 7001)**

On Wednesday, the Senate passed **HB 7001** by a 2/3 majority of each house, removing the argument that the legislation violates the mandates provision of the Florida Constitution.

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled "An Act Relating to Growth Management" or "The Community Renewal Act". The bill made a wide array of changes to Florida's growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raised two counts: first, that SB 360 violated the single subject provision of the Florida Constitution; and, second, that the bill was an unfunded mandate on local governments. The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate. The court ordered the Secretary of State to expunge the law from the official records of the state. The case is currently being appealed to the First District Court of Appeal, and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted. Local governments, developers, and other private interests are facing uncertainty as a result of this lawsuit.

The bill seeks to reenact sections of law amended by the parts of SB 360 (ch. 2009-96, Laws of Florida) most closely related to the subject of growth management to eliminate any possible question that any of these provisions could be subjected to a single subject challenge. The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360, such as:

- Extending the compliance deadline for local governments to submit financially feasible capital improvement elements, and eliminating of one of the penalties for failing to adopt a public schools facility element.
- Creating Transportation Concurrency Exception Areas (TCEAs) in any: "municipality that qualifies as a dense urban land area; urban service area which has been adopted into a local comprehensive plan and is located in a county that qualifies as a dense urban land area; and any county, including the cities within the county, which has a population of at least 900,000 and qualifies as a dense urban land area but does not have an urban service area designated within the local comprehensive plan."
- Creating the option for other local governments to create TCEAs in certain designated areas.
- Recognizing via explicit language that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees.
- Creating a waiver from transportation concurrency requirements on the state's strategic intermodal system for certain job creation projects run by the Office of Tourism, Trade, and Economic Development.
- Creating an exemption from the development-of-regional-impact (DRI) process for certain developments.

The bill will next be presented to the Governor for his signature.

### **Appropriations/Budget**

*By: Corcoran and Johnston and County Staff*

This week, facing a \$3.75 billion budget shortfall, the Senate Budget Committee passed roughly a \$70 billion budget. The full Senate expects to hear the budget next week, as does the House. Currently, the Chambers are \$3.3 billion apart (the House is \$3.3 billion less than the Senate).

Among many items of difference in their respective budgets, the Senate cuts funding to hospitals and public employee health benefits but includes funding for water management districts and expressway authorities, which the House does not. The House cuts funding for biomedical research and the road-building trust fund. Both budgets eliminate 5,000 state job positions and rely on their pension reform plans for additional savings.

In regard to environmental programs the first budget proposals released by Sen. Hays and by Rep. Williams the Senate adopted some amendments to the amount allocated to several programs. The table below summarizes positions each Chamber is likely to take into conference:

<b>Program</b>	<b>House</b>	<b>Senate</b>
Florida Forever	0	308,600,000
Northern Everglades Projects (DACS)	4,500,000	0
Everglades Restoration (DEP)	26,000,000	4,100,000
Drinking Water Revolving Loans	81,683,538	91,043,594
Wastewater Treatment Construction 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

NOTE: The source of funding for the amount being allocated by the Senate for the Florida Forever TF is revenue derived from the sale of surplus lands by the DEP and WMDs. The implementing bill in the Senate provides specific guidance to the agencies for the identification, sale and deposit of revenues.

**Library funding**

- 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.

**Transportation Disadvantaged Funding**

- 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**

- 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.

### **Public Records**

*By: Pittman Law Group and County Staff*

### **SB 828 by Sen. Bogdanoff/HB 667 by Rep. Clemens**

This legislation creates an exemption from the public records requirements for information received as part of active investigations of the Inspector General on behalf of a unit of local government.

Senate Bill 828 by Sen. Elyn Bogdanoff passed out of the Senate Community Affairs Committee by a vote of 9-0 and will be heard next by the Judiciary Committee on April 4th. Its companion, HB 667 by Rep. Jeff Clemens, passed unanimously out of both the House Government Operations Subcommittee and the Community and Military Affairs Subcommittee. The last committee of reference is the House State Affairs Committee.

This exemption was one of the recommendations of the Attorney General grand jury report and is similar in practice to the procedures used by the Florida Commission on Ethics.

### **School Nutrition Programs - SB 1312**

*By: County Staff*

The Healthy Schools for Healthy Lives Act, SB 1312 by Sen. Gary Siplin, passed the Senate Agriculture Committee this week. The bill would transfer all responsibilities for school food and nutrition programs from the Department of Education to the Department of Agriculture and Consumer Services (DACS). The bill will be heard next by the Senate Budget Committee.

Currently, the Florida Department of Education and the DACS are both responsible for school food and nutrition programs. Proponents of this legislation believe that by combining the various aspects under one roof at DACS, the program will be more efficient. It will also enable DACS to work with Florida farmers to bring Florida produce into the schools. Opponents of the bill are concerned that there will be a lack of nutrition education in the schools.

There is no companion bill in the House.

### **Affordable Housing**

*By: Ericks Consultants and County Staff*

HB 639 by Rep. Aubuchon relating to affordable housing was heard by the full House this week. This bill contains language that would allow the statutory cap on the amount of documentary stamp tax revenue that goes into the Sadowski Trust Fund for affordable housing. Staff is watching this closely because there are other pieces of legislation in process that would transfer trust fund revenues from the State Housing Trust Fund and the Local Government Housing Trust Fund, as well as the Florida Housing Finance Corporation, as part of government reorganization packages and appropriation bills.

The bill passed the House 117-0.



## **Wage Protection Bill**

*By: County Staff*

The House Community & Military Affairs Subcommittee heard HB 241 by Rep. Tom Goodson this week. Rep. Goodson indicated federal laws cover this issue and counties did not need to have their own rules. He also believed State law covered some aspects of wage theft. Members of the committee had some concern about pre-empting local law. The purpose of this bill was to keep one standard across the state rather than 67 county ordinances and more than 400 city ordinances.

Florida Legal Services opposes the legislation mainly because it doesn't allow local communities to meet their needs. A long discussion of the Miami-Dade County wage theft ordinance ensued. Florida Legal Services maintained that the Miami ordinance only reinforces state and federal law by simply creating an administrative process to resolve issues rather than go through the court system and that it saves money.

Florida Retail Federation supports the legislation and feels the Miami Dade ordinance is unconstitutional because it creates its own court system. FRF believes the Miami ordinance goes beyond the creation of an administrative process. FRF does not believe that the Miami program is voluntary because the hearing officer has subpoena power. Hearing officers also must interpret Florida Laws of Civil Procedure and whether or not a case can be dismissed with or without prejudice.

Palm Beach County will continue to monitor this issue closely as it may affect a proposed local wage theft administrative process.

The bill passed 10-5 despite strong opposition from local governments who wish to maintain home rule authority.

## **Impact Fees (SB 410)**

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. Should a local government impose 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; and
- 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 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.

The bill will next be presented to the Governor for his signature.

## **Property Rights (SB 998 & HB CS/HB701)**

In 1995, the Bert Harris Act was enacted by the Legislature to provide a new cause of action for private property owners whose property has been "inordinately burdened" by state or local government action that may not rise to the level of a "taking" under the State or Federal Constitution. Several court decisions since original adoption have affected the applicability of the Act.

Both bills are identical and provide additional legislative intent to these issues. Specifically, they:

- Restructure the definition of existing use to make it clear that the term "existing use" has two separate definitions:
  - (1) An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity, or
  - (2) Such reasonably foreseeable, non-speculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.
- Clarify that both "inordinate burden" and "inordinately burdened" mean the same thing.
- Specify 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."
- Change the requirement that property owners who seek compensation under the Bert Harris Act present the claim in writing to the head of the governmental entity 180 days prior to filing an action to make it 120 days prior to an action.
- Specify that payment of compensation can be part of a settlement offer from the local government.
- Delete the term "ripeness" but would leave the language requiring the local government to provide a written decision identifying the allowable uses to which the subject property may be put. The bills clarify that the failure of the local government to issue the decision within the notice period constitutes the local government's final decision identifying the uses for the subject property. For the purposes of fulfilling the prerequisites to judicial review on the merits, the issuance or failure to issue the written decision operates as a final decision that has been rejected by the property owner.
- Specify that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property. This provision should allow property owners to sue when the restrictions are applied to their property without being excluded by the statute of limitations even if the law or regulation was enacted more than a year before it is applied to the property.
- Delete the section of the Bert Harris Act that provides for the sovereign immunity of government and replaces it with language that waives sovereign immunity for causes of action under s. 70.001, F.S. This is consistent with how the section of law was interpreted by the courts in *Royal World Metropolitan, Inc. v. City of Miami Beach*.

Both bills also state that the act would be applied prospectively and would not affect pending litigation.

**The Senate Judiciary Committee passed SB 998** on Monday. It will next be heard by the Senate Budget Committee, its last committee of reference.

**CS/HB 701** was passed by the House Judiciary Committee on Thursday and will next go to the Economic Affairs Committee, its last committee of reference.

## **Economic Development**

*By: Foley & Lardner*

On Friday, the House Select Committee on Government Reorganization rolled out a plan promoting infrastructure and job creation opportunities in Florida. The State Economic Enhancement and Development Trust Fund (SEED Fund), the new superfund, will be housed under the Office of Tourism Trade and Economic Development within the Executive Office of the Governor. This superfund combines three existing trust funds (Economic Development Trust Fund, Florida Housing Trust Fund and the State Transportation Trust Fund – *not the 5 year work program*) into one account estimated to be \$427Million in Fiscal Year 2012-2013. This fund would be used for transportation facilities that meet a strategic and essential state interest for economic growth, affordable housing programs and economic development incentives for job creation, workforce training associated with relocating new businesses or expanding existing ones, and tourism promotion and marketing. The committee adopted the plan that will be added to the Appropriations package that will be considered on the Floor of the House next week.

#### **Local Bill Update**

*By: County Staff*

#### **HB 741 by Rep. Berman - Lake Worth Drainage District, Palm Beach County**

House Bill 741 would expand the powers of the Lake Worth Drainage District (District) by granting it the authority to enter into interlocal agreements with local governments and public and private utility providers to develop and operate water supply facilities in Southeast Florida. It would also provide for financing for the development and operation of water supply facilities by the issuance of notes, bonds, and other evidences of indebtedness. Lastly, HB 741 prohibits the District from engaging in retail sales of public water supplies or acting as a water utility.

House Bill 741 has passed unanimously out of the House Community & Military Affairs and Agriculture & Natural Resources Subcommittees. It has been placed on the House Finance & Tax Committee agenda for Tuesday, April 4th.

#### **HB 4191 by Rep. Hager - Palm Beach County - South Lake Worth Inlet Advisory Committee Repeal**

House Bill 4191 amends a special act relating to the South Lake Worth Inlet District to delete provisions establishing a committee to advise the Palm Beach County Board of County Commissioners on improvements, operations, maintenance and enhancement of the inlet and adjacent property, and to assist in the development, coordination and public review of the Inlet Management Plan.

This bill was requested by the Palm Beach County Board of County Commissioners. During a 2010 workshop, it was determined that the advisory committee for the South Lake Worth Inlet was no longer needed as the dredging of the inlet and subsequent changes to adjacent property that included the development of a county park had been completed.

House Bill 4191 passed unanimously in both the House Community & Military Affairs Subcommittee and Economic Affairs Committee. It is now ready to be brought up on the House floor for a vote.

#### **HB 1045 by Rep. Clemens - Loxahatchee Groves Water Control District**

House Bill 1045 creates section 8 of the Loxahatchee Groves Water Control District's (District) charter providing for the dedication of width of four roads located within the District. As a part of a referendum question, the affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment. It allows the District to perfect easements on the strip of road adjacent to their existing easement in limited circumstances on those four roads.

This local bill passed unanimously out of the House Community & Military Affairs Subcommittee and then passed out of the Economic Affairs Committee by a vote of 15-1. It is now ready to be brought up on the House floor for a vote.

## FEDERAL ISSUES

### BUDGET AND APPROPRIATIONS

*By: US Strategies*

#### FY 2011 Appropriations

Conflicting reports on budget negotiations and political posturing make it difficult to know whether progress has been made or agreement can be reached on funding for the remainder of FY 2011 in order to avoid a government shutdown next Friday. Short of such an agreement, another short-term continuing resolution would be needed to avoid a shutdown, and it's not clear that can be achieved either, since little has been said about a short-term CR or what it would include. Making the deadline even more difficult to meet is the House requirement that members must be allowed at least 72 hours to review legislation before voting on it.

On Wednesday night, Vice President Joseph Biden told reporters that progress was being made and a tentative agreement that included approximately \$33 billion in spending cuts had been reached. This notion was quickly disabused by House Speaker John Boehner (R-OH) who said the next morning that "there is no agreement on numbers, and nothing will be agreed to until everything has been agreed to." Boehner said his conference would fight for its preferred \$61.5 billion in cuts, as well as several policy riders included in the spending bill the House passed in February such as; blocking funds for the 2010 health overhaul, Planned Parenthood, and EPA implementation of greenhouse gas regulations.

This week, Senate Majority Leader Harry Reid (D-NV) urged Boehner to ignore calls from conservatives who want him to stick with \$61.5 billion in cuts. While Senate Democrats seem ready to agree to spending cuts far beyond their opening bids, Reid said that some GOP-preferred provisions are off limits. He specifically mentioned those which would block EPA from taking actions to protect air and water quality.

#### FY 2012 Budget Resolution

The House Budget Committee is expected to release its FY 2012 budget resolution next week and rumored to be included in it is a proposal to convert Medicaid to a block grant. This would mean the states would receive a fixed amount of funding for the program each year and would have more flexibility to design their own program and reduce benefits. It is reported that the Committee's proposal would cut Medicaid by \$1 trillion over 10 years. While the budget resolution itself cannot make changes to the Medicaid program, if Congress passed a budget resolution which calls for changes and cuts to Medicaid, any legislation to implement those provisions would require a simple majority to pass the Senate, not the 60 votes generally required to end debate and proceed to a vote.

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