

# PBC Legislative Update



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## Legislative Update —April 2017

### FEDERAL ISSUES

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### STATE ISSUES

## As Affordable Housing Woes Mount, Legislators Again Propose Sweeping Money Intended For Housing Programs

By *The Tampa Bay Times*

For the 10th year in a row, the governor and legislature are proposing to sweep money from the affordable housing trust funds into the general revenue fund to spend on other purposes. Since the start of the Great Recession, that has added up to \$1.3 billion.

This year, the trust funds will collect about \$292 million for affordable housing from the documentary stamp taxes on real estate transactions. The draft Senate budget released last week allocates \$162.4 million of the funds into affordable housing while the House and Gov. Rick Scott propose spending even less of the proceeds on housing — \$44 million.

A steady stream of recent reports offers a window into the wilting American dream of affordable housing across Florida.

Nearly one million very low-income Florida households pay more than 50 percent of their incomes for housing. The state has the third highest homeless population — 34,000 — in the nation.

More people in Broward County spend 30 percent of their income on housing than anywhere else. Renters in South Florida's black communities spend 58 percent of their income on rent.

Miami ranks No. 1 in housing costs for people of moderate incomes. Orlando, once a haven for affordable housing, is tied with Las Vegas as the city with the greatest shortage of rentals for low-income tenants. And rent in Tampa is getting more expensive faster than anywhere else.

Florida legislators saw this coming 25 years ago when they put a 10 cent surcharge (per \$100 of amount paid) on every real estate transaction and directed the money into the William E. Sadowski Affordable Housing Trust Funds to go into state and local housing programs. Three years later, they steered another 10 cents of the tax into the funds.

A vestige of the growth management laws and named after the former head of the state's planning and growth management agency, the funds were designed to leverage private and federal funding to help develop affordable housing for the workforce, the elderly and disabled as Florida grew.

But, as with much of Florida's growth management laws, lawmakers broke their promise. Of the \$1.87 billion collected and deposited in the trust funds since the recession in the 2008-09 fiscal year, lawmakers diverted nearly \$1.3 billion to other purposes — from tax breaks to spending.

### **House, Senate Move In Different Directions On Building Code Reform**

*By Florida Politics*

Bills to change the way the Florida Building Code is updated continue to move through the Legislature, but the House and Senate now appear to be taking a different approach to reforming the system.

The House Careers & Competition Subcommittee voted unanimously last week to approve legislation (HB 901) that would keep international and national building codes as the baseline for the Florida Building Codes, but would require the Florida Building Commission to update the code every five years instead of every three. However, the Senate continues to move legislation (SB 860) that would allow the state to adopt provisions of the international code, while using the most recent version of the Florida Building Code as its baseline.

That House proposal, sponsored by Rep. Stan McClain, would also dramatically reduce the size of the commission, turning the 27-member board into an 11-member board.

“To start winnowing down commission seats somewhat haphazardly, with all due respect, overnight from 27 to (11) probably isn't the best way to address the issue,” said Lori Killinger, who represents the Florida Manufactured Housing Association, one of several groups whose representation on the commission would be eliminated.

Under McClain's proposal, the board would no longer be required to have:

- An air conditioning or mechanical contractor;
- Two of the municipal or district code enforcement officials, including the one who is also a fire marshal;
- A representative of the Department of Financial Services
- A county code enforcement official;
- A representative of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities
- A representative of the manufactured buildings industry
- A mechanical or electrical engineer
- A representative of the building products manufacturing industry
- A representative of a municipality of charter county
- A representative of the building owners and managers' industry, who is active in the commercial industry
- A public education representative
- A swimming pool contractor

- A representative of the green building industry;
- A representative of the natural gas distribution system;
- A representative from the Department of Agriculture and Consumer Services' Office of Energy; and
- The member who is the chair.

The bill adds an addition residential contractor to the committee, and stipulates one of the residential contractors must be one who builds an average of less than 20 custom homes a year; while the other must be a residential contractor who builds an average of more than 100 homes a year.

McClain, a Belleview Republican and state certified residential contractor, said the Florida Building Commission does have subcommittees set up, which he said thought would be the place for for people to weigh in on code changes and “having 11 (people) on the commission is the right number.”

Sara Yerkes, the senior vice president for government relations at the International Code Council, said the plan to update Florida's code every five years instead of every three could put the state behind the times. Since it takes several years to develop the code, Yerkes said moving to a five-year cycle could put Florida “eight to nine years in the rear.”

“If Florida wants to be a leader, a five-year cycle is not going to do that,” she said.

McClain said the move to a five-year cycle would give allow for “some stability in our industry.”

“I think all we're trying to ask for is to give a little more stability moving forward from a regulatory process,” said McClain.

The proposal cleared its first of two committee stops last week, and now heads to the House Commerce Committee. A hearing has not yet been scheduled for the bill.

Meanwhile, the Senate Regulated Industries unanimously approved its bill that would essentially flip the set of building codes the construction industry uses as its standard.

The Senate proposal removes the provision requiring the International Code be used as a baseline, and instead requires the “6th edition, and subsequent editions, of the Florida Building Code,” be used as the foundation for the development and updates to the state code. It also calls on the commission to review the Florida Building Code every three years “to consider whether it needs to be revised.”

The Senate proposal, sponsored by Sen. Jeff Brandes, maintains a 27-member building commission. His proposal also creates an internship path for building code inspector certification and would require the Florida Building Code Administrators and Building Inspectors to give provisional certificates to code inspectors and plan examiners who meet certain requirements.

Brandes' bill now heads to the Senate Appropriations Committee.

### **Daytona Homeless Shelter: Who Will Be County Council's Swing Vote**

*By Daytona Beach News Journal*

Asked repeatedly to support development of a Daytona Beach homeless shelter, the Volusia County Council had taken the position that it wouldn't fund day-to-day operations. And then last week, unprecedented promises by three members rang through a packed Peabody Auditorium. Heather Post and Joyce Cusack told a crowd of 1,500 they'd vote in favor of the county paying \$4

million for a Daytona Beach shelter, split between construction and, in a surprise to others on council, operating costs. Billie Wheeler had her emailed responses read aloud

### **Major Issues Get Little Attention as Scott, Lawmakers Feud**

*By Orlando Sentinel*

TALLAHASSEE - A surge in heroin and opioid deaths has some officials calling for Gov. Rick Scott to declare a public health emergency. Florida's teachers are leaving the profession in droves. And state prisons are struggling to hang on to corrections officers because their pay is so low. But as the 60-day legislative session nears the halfway point, critical issues such as those are getting scant attention as Scott and legislative leaders clash over taxpayer spending for tourism ads, boosting university budgets and property tax rates.

### **Federal Flood Insurance Premiums Likely To Rise**

*By New York Times*

The cost of federal flood insurance likely will rise for thousands of homeowners after Congress hits its September deadline to renew and reform the deeply troubled program. The National Flood Insurance Program was created because private insurers couldn't bear the risk of catastrophic loss, but the program is \$24.6 billion in debt and struggling to remain solvent. The program offers rates that do not fully reflect the risk of flooding the U.S. Government Accountability Office concluded in a February report.

### **Jay Ambrose: Trump Takes On The Opioid Epidemic**

*By Naples Daily News*

He gave repeal a try, Obamacare is still standing and now President Donald Trump is flat on his back, or so goes the narrative. He's not. He is taking on sluggard, ineffective government with oomph and clarity and, as part of that effort, is going after one of the biggest killers in America - the opioid epidemic. To achieve his ends, Trump has created something called the White House Office of American Innovation that starts with an assemblage of some of the country's best retired business executives working with Jared Kushner, Trump's son-in-law.

### **The Government's Struggle To Hold Opioid Manufacturers Accountable**

*By The Washington Post*

To combat an escalating opioid epidemic, the Drug Enforcement Administration trained its sights in 2011 on Mallinckrodt Pharmaceuticals, one of the nation's largest manufacturers of the highly addictive generic painkiller oxycodone. It was the first time the DEA had targeted a manufacturer of opioids for alleged violations of laws designed to prevent diversion of legal narcotics to the black market. And it would become the largest prescription-drug case the agency has pursued.

### **Clear Majority of Floridians Support Airbnb, Poll Finds**

*By Sunshine State News*

An overwhelming majority of Floridians support allowing homeowners to rent out their houses through the popular homesharing website Airbnb, a new poll shows. The Fabrizio, Lee and Associates poll, commissioned by Airbnb, found 80 percent of Floridians are in support of allowing homeowners to rent out their houses on Airbnb, while only 20 percent oppose. (See the poll in the attachment at the bottom of the page). Over half of those surveyed -- 52 percent -- say renting homes through Airbnb is good for the state, while only 13 percent say it's bad.

### **Poll Shows 80% of Floridians OK With Vacation Home Rentals**

*By FloridaPolitics.com*

A new poll commissioned by the vacation home rental giant Airbnb shows that Floridians are overwhelmingly supportive of the idea of people renting out their homes to tourists. The poll found 80 percent support allowing Florida residents to rent out their homes through Airbnb and more than half think the rapidly-rising trend is good for the state. And the poll also found that surveyed voters would support taking away cities' and counties' abilities to regulate vacation rentals, leaving it up to the state, a question addressing two bills moving through the Florida Legislature.

### **Lake Okeechobee Reservoir Stalled In The House, Not Dead**

*By Fort Myers News Press*

TALLAHASSEE - A plan to build a reservoir to curb Lake Okeechobee discharges has stalled in the Florida House, and supporters might have to wait until the 11th hour to find out whether Senate President Joe Negron can pull it off. It's not surprising the House hasn't given the bill a single hearing as the 60-day session ending May 5 reaches its halfway point. This is Negron's top priority - one he's vowed to fight for his Treasure Coast constituents. So it's beneficial for Speaker Richard Corcoran to hold it hostage until the Senate supports some of his priorities, such as K-12 funding, cutting business incentives, charter school expansion and judicial term limits.

### **Health Officials Brace For Return of Zika**

*By The Hill*

Florida officials and federal public health experts are keeping a careful eye on the mosquito population in Miami ahead of what they fear will be a breakout year for Zika, a virus that has already infected more than 5,100 people in the United States. The Sunshine State is ground zero for transmissions of the mosquito-borne virus that happen on American soil. While the vast majority of people infected with Zika caught it while traveling abroad, all but six of the 222 confirmed cases acquired within the United States have been in Florida. The other six cases were acquired around Brownsville, Texas.

### **Where Did \$1.3 Billion For Affordable Housing Go? Florida Legislature Took It**

*By Miami Herald*

Florida has an affordable housing problem, but you wouldn't know it from the proposed budgets that emerged this week from state lawmakers.

For the 16th year in a row, the governor and legislature are proposing to sweep money from the affordable housing trust funds into the general revenue fund to spend on other purposes. Since the start of the Great Recession, that has added up to \$1.3 billion.

This year, the trust funds will collect about \$292 million for affordable housing from the documentary stamp taxes on real estate transactions. The draft Senate budget released last week allocates \$162.4 million of the funds into affordable housing while the House and Gov. Rick Scott propose spending even less of the proceeds on housing — \$44 million.

“Housing is definitely a problem, but the issue is we aren't going to just throw more affordable housing into South Florida,” said Rep. Carlos Trujillo, R-Miami, chair of the House Appropriations Committee, adding that he believes the program couldn't absorb more than the House will give it.

Besides, he adds, “the reality is there's only a 60-day legislative session. There's only so many issues you can tackle in 60 days.”

Of \$1.87 billion collected and deposited in the trust funds since the recession, lawmakers diverted nearly \$1.3 billion to other purposes.

A steady stream of recent reports offers a window into the wilting American dream of affordable housing across Florida.

Nearly one million very low-income Florida households pay more than 50 percent of their incomes for housing. The state has the third highest homeless population — 34,000 — in the nation.

More people in Broward County spend 30 percent of their income on housing than anywhere else. Renters in South Florida's black communities spend 58 percent of their income on rent.

Miami ranks No. 1 in housing costs for people of moderate incomes. Orlando, once a haven for affordable housing, is tied with Las Vegas as the city with the greatest shortage of rentals for low-income tenants. And rent in Tampa is getting more expensive faster than anywhere else.

As home ownership has declined, population growth has continued and wages remain stagnant, there is an increasing demand for low income housing.

Florida legislators saw this coming 25 years ago when they put a 10 cent surcharge (per \$100 of amount paid) on every real estate transaction and directed the money into the William E. Sadowski Affordable Housing Trust Funds to go into state and local housing programs. Three years later, they steered another 10 cents of the tax into the funds.

A vestige of the growth management laws and named after the former head of the state's planning and growth management agency, the funds were designed to leverage private and federal funding to help develop affordable housing for the workforce, the elderly and disabled as Florida grew.

Housing is definitely a problem, but the issue is we aren't going to just throw more affordable housing into South Florida. Rep. Carlos Trujillo, R-Miami

But, as with much of Florida's growth management laws, lawmakers broke their promise. Of the \$1.87 billion collected and deposited in the trust funds since the recession in the 2008-09 fiscal year, lawmakers diverted nearly \$1.3 billion to other purposes — from tax breaks to spending.

The first sweep occurred in 2003 under former Gov. Jeb Bush. The housing boom had expanded the trust funds to \$392 million and lawmakers wanted to skim the excess into other needs. But when the recession hit, and Florida's budget tanked, the sweeps continued.

The Shimberg Center for Housing Studies at the University of Florida reports that between 1993 and 2012, Florida lost at least 51,000 rental units that were privately owned and publicly subsidized and, by 2020, another 43,200 subsidized rental units could be gone.

According to the Florida Housing Coalition, a non-profit housing advocacy group, Florida now has only 22 affordable and available rental units for every 100 of the state's poorest renters, and the market for starter homes is weak.

The Sadowski Coalition, 30 diverse groups that include the Florida Housing Coalition, AARP, the Florida Realtors Association, the Florida Chamber of Commerce, the Florida Home Builders Association and Associated Industries of Florida, is urging lawmakers to leave the money collected by doc stamp taxes in the funds.

"The House budget is utterly unacceptable," said Jaimie Ross, executive director of the Florida Housing Coalition and facilitator of the Sadowski Coalition. "We deal with that regularly. The Senate usually comes out with higher funding and the House picks up the governor's budget and we have that heavy lift to get to a compromise."



## Working in every county

The coalition argues that the programs have a proven track record working in partnership with all 67 counties and local governments to provide programs to help families find and keep affordable housing, offering everything from assistance with down payments, closing costs, home repairs and rehabilitation of rental housing.

If lawmakers leave the \$272 million available, the projects that could be completed would bring \$3.78 billion in positive economic impact into the state's economy and 28,700 jobs, the coalition claims.

The Sadowski funds go to Florida Housing Finance Corp., an independent agency, which distributes 70 percent of its funds to the State Housing Initiatives Partnership program (SHIP) to provide affordable housing to low- to moderate-income families. The agency gives the remaining 30 percent of the Sadowski money to the State Housing Trust Fund for programs such as the State Apartment Incentive Loan (SAIL), which provides low-interest loans on a competitive basis to affordable housing developers.

Trujillo noted there is another source of funds available for affordable housing this year — \$111 million in revenues earned from administering a successful housing loan guarantee program that has run its course. But housing advocates say that money already belongs to the Florida Housing Finance Corp. and should not be used to supplant revenues from the doc stamps for the affordable housing programs.

## A misunderstood scandal

House Speaker Richard Corcoran, R-Land O'Lakes, and Trujillo defended the House's funding levels last week, and argued that Sadowski fund has not only become too large but too generous.

"Affordable housing has grown around this huge source of money so it's no longer the people who can't afford housing, now it's those people who struggle to afford adequate housing but they are fully salaried and employed," Corcoran said.

He also pointed to recent sanctions and investigations against two developers who submitted inflated claims to the Housing Finance Corp. to qualify for higher federal subsidies to do work on four low-income housing projects in Miami-Dade County. The projects were not affiliated with the Sadowski-financed programs, and no state funds were used.

"The affordable housing industry, has been wracked with not repugnant scandal, it's been wracked with graft and corruption resulting in prison sentences," Corcoran said. "I think there needs to be reform in that whole thing."

But Ross urges them to make a distinction between the federally funded programs and those operated with Sadowski money.

"The scandal involving South Florida developers is shameful," she said. "The good news is that the Legislature can rest assured that no Sadowski State and Local Housing Trust Funds were involved with any of those developments. The abuse committed was with the federal tax credit program.

"That program is administered by the Florida Housing Finance Corporation, which also oversees the Sadowski state and local housing trust funds, so confusion about this is understandable, but our state and local housing trust programs played no part in those abuses."

She also sent House and Senate leaders a letter providing clarifications and attempting to assure them the programs have had "no misuse of funds" in their 25-year history.

## Federal cuts loom

Complicating the future of affordable housing is the proposal by President Donald Trump to eliminate \$6 billion in housing assistance programs at Housing and Urban Development, including two programs dedicated to affordable housing — the Community Development Block Grants and the HOME Investment Partnership.

Fewer people own homes in Florida than they did prior to the recession and, as the home ownership rate has dropped from a peak of 71 percent in 2007 to 64 percent in 2015, rental costs have risen.

“There was no housing built during the recession, and now with enough funds to build 3,000 to 5,000 units, we can’t keep up,” said George Romagnoli, Pasco County community development director and chairman of the Florida Housing Coalition.

The shortage of affordable housing extends into moderate income communities as well, where teachers, first responders, nurses and others often can’t find homes near their jobs, according to data compiled by the coalition in its 2016 Home Matters report.

For example, a report by the National Association of Home Builders found that dental assistants, paramedics, firefighters and elementary school teachers living in the Lakeland metro area — considered the third most affordable region in the state — would not make enough to buy a median-priced home.

Childcare workers, maids and housekeepers, landscapers, nursing assistants and janitors earning the average wage in Miami or Orlando don’t earn enough to rent a one-bedroom apartment in either of those metro areas, the data show.

According to two charts created by the Sadowski Coalition listing the number of housing units that could be built in each House and Senate district if the programs were fully funded, there would be 241 additional housing units built in Corcoran’s Pasco County district and 1,908 in Trujillo’s alone. Statewide, there could be 12,657 homes built, housing an estimated 92,881 people.

## Future shock

Sen. Jeff Brandes, R-St. Petersburg, chair of the Senate Transportation, Tourism and Economic Development Committee fears that Florida’s affordable housing problem is going to get worse and he says the model used to develop affordable housing is unsustainable.

“The problem I see coming for Florida is we have another 5 million people potentially moving to the state by 2030 where already there is a situation where the average cost per affordable housing unit is costing between \$150,000 to \$200,000 to construct,” he said. “The math simply doesn’t add up.”

He held a workshop last week to discuss approaches to help fill the gap in affordable housing. He said his goal is to pass legislation this year that creates a task force to look into the problems.

Trujillo also argues that it is unrealistic to expect to build enough housing in a year to use all the money going into the Sadowski funds, and he’s no fan of the trust funds, anyway.

“I don’t believe in trust funds in general,” he said. “The revenue stream is not voluntary. People who buy properties have to pay a tax, the doc stamps, in order to fund a trust.”

Mark Hendrickson, a member of the housing coalition board who specializes in affordable housing financing, agrees lawmakers shouldn’t fund the program because it’s a trust fund.



“I agree with the speaker about trust funds,” he said. “But our contention is the program should be funded because it is needed, it has leveraged millions of dollars to help people get access to safe and affordable housing, and it’s effective.”

#### Affordable housing bait and switch

Anyone who purchases real estate in Florida pays a documentary stamp tax on the transaction, a portion of which is earmarked to fund community partnerships to develop affordable housing. But for years, Florida lawmakers have swept money from the funds and used it for general revenue.

<b>Fiscal year</b>	<b>Doc stamp funds for housing (in millions)</b>	<b>Money swept to general revenue</b>	<b>Net change</b>
2008-09	\$220.4	\$250.0	-\$29.6
2009-10	\$161.5	\$91.9	\$69.6
2010-11	\$166.1	\$174.3	-\$8.2
2011-12	\$177.1	\$189.5	-\$12.4
2012-13	\$168.5	\$96.7	\$71.8
2013-14	\$193.1	\$204.1	-\$11.0
2014-15	\$231.6	\$91.9	\$139.7
2015-16	\$259.7	\$81.0	\$178.7
2016-17	\$296.8	\$116.9	\$179.9
<b>Totals</b>	<b>\$1,874.8</b>	<b>\$1,296.3</b>	<b>\$578.5</b>

#### **Court Ruling Could Boost South Florida Gambling**

*By The News Service of Florida*

THE CAPITAL, TALLAHASSEE, April 4, 2017..... In a decision that opens the door for a poker room in downtown Miami --- and possibly others throughout South Florida --- an appeals court on Tuesday decided that gambling regulators were wrong to deny a new pari-mutuel permit to a Miami operator.

The 1st District Court of Appeal decision is a major victory for West Flagler Associates, which operates Magic City Casino in Miami and plans to open a cardroom downtown.

The dispute between West Flagler and the state Department of Business and Professional Regulation, centers on “summer” jai alai permits, the source of several previous legal challenges. The permits allow pari-mutuels to operate lucrative cardrooms.

The case stems from a Florida law that creates the possibility of converting other pari-mutuel permits to summer jai alai permits. The law allows Miami-Dade and Broward pari-mutuels that have the lowest betting handle for two consecutive years to convert to summer jai alai permits. But if those pari-mutuels do not seek conversion, other facilities can seek the permits.

In 2015, West Flagler applied for a summer jai alai permit based on the handle from 2012 and 2013 after Hialeah Park Race Track did not seek to convert its permit to a summer jai alai permit.

But gambling regulators rejected West Flagler's application, arguing that the statute only allowed the granting of a new summer jai alai permit based on "the two consecutive years next prior to filing an application."

Because West Flagler's application was filed in 2015, "your application is incapable of being approved," the Division of Pari-mutuel Wagering wrote to John Lockwood, a lawyer representing the pari-mutuel, in September 2015.

But, siding with Lockwood's arguments Tuesday, a three-judge panel of the 1st District Court of Appeal found that the language in the statute regarding the "two next years prior" only applied to pari-mutuels that want to convert their permits to summer jai alai permits, not to pari-mutuels seeking new permits.

The "plain meaning" of the law "creates two separate ways for permittees to obtain a summer jai alai permit," and "the Division's conflation of these two distinct permit opportunities improperly imposed unrelated timing requirements on the 'new permit' language," Judge Harvey Jay wrote in a six-page opinion joined by judges Timothy Osterhaus and Allen Winsor.

The appellate court ordered gambling regulators to reinstate West Flagler's summer jai alai application.

"The decision frees up the opportunity for new permits with the potential for multiple new cardroom locations, provided they conduct the jai alai activity," Lockwood told The News Service of Florida on Tuesday.

Industry experts estimate that Tuesday's decision could open the door for at least a half-dozen more summer jai alai permits in Broward or Miami-Dade counties and could even allow the new permit-holders to add slot machines at some point in the future.

"It's just further chaos that creates more uncertainty," said Marc Dunbar, an attorney with the Jones Walker law firm who specializes in gambling law.

The appellate decision came as lawmakers struggle to reach consensus on a new broad gambling plan in an attempt to strike a new gambling deal, known as a compact, with the Seminole Tribe. It's also the latest in a string of court rulings that could affect how much money the state receives from the tribe. The Florida Supreme Court is poised to decide on a separate case that centers on whether pari-mutuels can add slot machines in counties where voters have approved them, without the express permission of the Legislature.

"Obviously, every single court decision that's happened over the last few months has to be taken into account when we're negotiating the compact in the coming weeks," said House Commerce Chairman Jose Felix Diaz, a Miami Republican who's representing the House in the negotiations on a gambling deal.

### **House Readies For Gambling Negotiations**

*By The News Service of Florida*

Setting the stage for negotiations with the Senate, the Florida House prepared for a vote as early as Wednesday on a gambling package that would essentially renew a 20-year deal with the Seminole Tribe. The Senate approved a package (SB 8) last week that is friendly to the pari-mutuel industry. Taking questions about the House's plan Tuesday, House sponsor Mike La Rosa, R-St. Cloud, maintained that his plan is a "status quo" proposal that would allow the tribe to continue to offer banked card games, such as blackjack, at most of its casinos. In exchange for what is known as "exclusivity" over the card games, the tribe would pay the state \$3 billion over seven years. "I don't consider that this is anything other than a status quo, long-term benefit for the state," La Rosa said during a question-and-answer session about the plan after a procedural maneuver in which the House replaced the language of the Senate bill with its own proposal. Lawmakers are attempting to craft a new gambling "compact" with the tribe after a portion of a 2010 agreement that gave the Seminoles the exclusive rights to operate banked card games expired in 2015. La Rosa told his colleagues Tuesday that his plan creates a "firewall" against an expansion of gambling in the future,

in contrast with the Senate proposal. "No new gaming authorization is contemplated anywhere in this," he said. But Rep. Joe Abruzzo, D-Boynton Beach, argued that the tribe would be paying as little as what would be the equivalent of a 13 percent tax on revenues from its slot machines and card games, compared to a 35 percent tax paid on slot machine revenue by pari-mutuels in Miami-Dade and Broward counties. "I submit to you this is not fair. This is not right," Abruzzo said. Tribal leaders and their lawyers contend the House and Senate plans would not get requisite approval from the U.S. Department of the Interior because the bills require a greater revenue share with the state without the perks of the exclusivity the Seminoles enjoyed under the last deal.

### **Lawmakers Poised To Help Foster Kids Drive**

*By The News Service of Florida*

The House could give final approval Wednesday to a bill that would extend a program that helps foster children get driver's licenses. House members took up the measure (SB 60) on Tuesday and positioned it for a vote that could send the bill to Gov. Rick Scott. Senators last month unanimously approved the proposal, sponsored by Sen. Aaron Bean, R-Fernandina Beach, Rep. Jennifer Sullivan, R-Mount Dora, and Rep. Ben Albritton, R-Wauchula. The bill would make permanent a pilot program that helps foster children pay for insurance and other costs related to getting driver's licenses. Supporters of the bill say foster children often do not have family support to get licenses.

### **Negron Trims Controversial Water Plan**

*By The News Service of Florida*

THE CAPITAL, TALLAHASSEE, April 4, 2017..... Senate President Joe Negron on Tuesday toned down a wide-ranging water bill intended to protect his district's waterways, as he sought to make it more palatable to House leaders and people living south of Lake Okeechobee.

The Stuart Republican was joined by other Senate leaders in announcing an amendment to the measure (SB 10) that would reduce the price tag from \$2.4 billion to \$1.5 billion --- with half of the costs covered by the federal government --- and shift the size and location for a water-storage project south of the lake.

The amendment, which will go before the Senate Appropriations Committee on Wednesday, also would support economic development in the Glades communities. In addition, Negron said he would support a request by Gov. Rick Scott for money to reduce the use of septic systems as a way to maintain waterways.

Negron said the changes seek "a delicate balance" between the needs of the state and landowners, who along with Glades-area residents and politicians have been highly critical of the reservoir plan.

"The goal has always been to use the amount of land that is necessary to create 120 billion gallons of (southern) storage," Negron said.

Negron has focused on the issue, at least in part, because polluted discharges from Lake Okeechobee have led to toxic algae in the St. Lucie and Caloosahatchee estuaries east and west of the lake. His basic concept is to send water from the lake south to a reservoir instead of into the other waterways.

Large farmers in the region, including powerful players in the sugar industry, have opposed Negron's initial plan. U.S. Sugar spokeswoman Judy Sanchez said the proposed amendment improves the bill, but "significant concerns" remains over "arbitrary timelines" for the reservoir.

"The decision to no longer take 60,000 to 153,000 acres of farmland out of production is a positive step forward," Sanchez said in a prepared statement.

Sen. Rob Bradley, a Fleming Island Republican who is sponsoring the bill, said he knew it would have to "evolve" as the lawmakers heard from Glades residents, farmers and people in the state's Treasure Coast.

"The amendment, I think, represents the Senate's position and it's a huge step in this process," Bradley said.

Negron said his goal is to complete the reservoir within four years.

The amendment proposes \$64 million for the project next fiscal year but delays for a year plans to increase the state's share of the project through bonding, a form of debt that is opposed by House leaders and Scott.

Money would come from the state's Land Acquisition Trust Fund and grow to \$100 million a year that could be used for bonding.

Also, instead of first trying to find willing sellers from among farmers for a 60,000-acre reservoir, the proposal would initially use land already in state hands for deep-water storage, reducing the footprint with the Everglades Agricultural Area.

It would be up to the South Florida Water Management District to determine the best layout for the storage, to determine how much additional land may still need to be acquired through purchase, allowing existing leases to expire or via land swaps.

Senate Appropriations Chairman Sen. Jack Latvala, R-Clearwater, said he spoke to Scott last week, asking for some help with the water-management district.

"I can't say they're on board with this proposal, but they are obviously going to be in the driver's seat in terms of executing it," Latvala said of the district.

Negron said additional land will be needed.

"We'll see how ultimately things move forward," Negron said. "All of us are committed to doing this in a way that's scientifically sound."

The amendment would prohibit the district from using eminent domain to acquire the land.

The proposal also would encourage economic development in the Everglades Agricultural Area through training programs, support for expansion at the Airglades Airport in Clewiston and plans for an inland port in Palm Beach County.

The Everglades Foundation, which has been a proponent of Negron's proposal, quickly gave its support to the changes.

"President Negron's amendment moves us closer than ever before to our goals of greater water storage south of Lake Okeechobee, massive reductions of algae-causing discharges and improvements in the quality of water entering the Everglades and Florida Bay," Everglades Foundation CEO Eric Eikenberg said in a release.

### **Ericks Consultants Week of April 3<sup>rd</sup>**

*By Ericks Consultants*

#### **STATE BUDGET**

The Appropriations Committees in each chamber approved their budgets this week, making them ready for a floor vote for next week. The conference process, where the two chambers reconcile

their differences, could begin as early as April 17th. The budgets are vastly different from one another- the Senate is \$4 billion bigger than the House. Differences include Federal hospital funding, business incentive funds, bonding and more.

#### House Budget

<http://www.flsenate.gov/Session/Bill/2017/05001>

#### Senate Budget

<http://www.flsenate.gov/Session/Bill/2017/2500>

### **INTERGOVERNMENTAL RELATIONS**

#### **PUBLIC RECORDS ATTORNEYS FEES**

House Government Accountability voted unanimously to give judges discretion in awarding attorneys fees in public records cases after adopting a compromise amendment that would establish guidelines for judges to follow in their determination. The bill is to crack down on a cottage industry of public records “gotcha” litigation plaguing local governments and burdening taxpayers. The League of Cities, Florida Association of Counties, special districts, local law enforcement and many other public entities support the legislation. The bill is now ready to go before the full House. Its Senate companion was passed out of the Senate last week.

SB 80: <http://www.flsenate.gov/Session/Bill/2017/0080>

#### **SPECIAL DISTRICTS/ COMMUNITY DEVELOPMENT DISTRICTS**

Senate Community Affairs voted 5-2 to approve a bill that would require special districts to post meeting minutes online within 30 days of the meeting and that they would have to remain for at least a year. It would also prohibit counties and municipalities from requiring filing fees from a CDD if all it is petitioning to do is contract. It would dissolve CDDs if all functions are transferred to a general purpose government or if the people in the CDD vote to dissolve via referendum. The bill has two more committees of reference and does not have a House companion.

<http://www.flsenate.gov/Session/Bill/2017/01750>

#### **COMMUNITY REDEVELOPMENT AGENCIES**

House Ways & Means voted 14-5 and Senate Community Affairs voted 5-3 to approve a Speaker priority of CRA reform. While the the original bill would have eliminated CRAs by 2037, both chambers adopted an amendment that would allow for CRAs to continue with supermajority votes of the creating government. The supermajority vote would be needed to continue the CRA’s existence on the date when the CRA expires in its charter or by September 2037. The legislation requires ethics training for CRA governing board members, requiring CRAs to utilize the same procurement system as its creating local government, adopting a budget, ethics training, posting an annual audit and performance data online and requiring municipally created CRAs to submit budgets to the county in which they are located. Proponents say that CRAs should be functions a county or municipality, with elected board members who are accountable to the voters. They also argued that CRAs distort the free market by driving in businesses to areas that cannot sustain economic growth. Opponents argued that CRAs provide financing for longterm infrastructure projects that spur economic growth in blighted areas and that, while bad ones exist, there are numerous examples of successes. Opponents asked that the Legislature create a study instead and invite participation from all the various CRA stakeholders. Both opponents and proponents agree on the accountability measures. The Senate bill still has three more committees of reference, while the House bill has one more committee.

SB 1770: <http://www.flsenate.gov/Session/Bill/2017/01770>

HB 13: <http://www.flsenate.gov/Session/Bill/2017/00013>

### **SELECTION AND DUTIES OF COUNTY OFFICERS**

Senate Judiciary temporarily postponed a bill to place a constitutional amendment on the ballot to require that the county sheriff be an elected position even as it voted 7-2 to do the same for property appraiser. The bill is directly targeted to Miami-Dade County, which is the only county in the state without an elected sheriff or property appraiser. However, the bill would have the entire state vote on the issue. The bill could still potentially affect charter counties with elected sheriffs as some duties have been transferred to other offices or as non-partisan election ordinances have been passed. The Senate property appraiser bill now has one more committee, while the sheriff bill has two more committees in the Senate. The bills have various House companions in different committee stages, however the House bill related to sheriff was also temporarily postponed by House Government Accountability this week.

<http://www.flsenate.gov/Session/Bill/2017/00134>

#### **TOWING AND WRECKER FEES**

Senate Transportation voted unanimously to approve a bill that would prohibit counties and municipalities from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The bill doesn't prevent local governments from charging local business taxes or charging the owner of the vehicle a reasonable fee for towing and storage at a facility owned by the local government. The sponsors assert the bill will not interfere with local regulations of towing companies and that the industry is in favor of smart regulations. Palm Beach County expressed opposition. The bill has an insignificant fiscal impact according to committee staff. The Senate bill has two more committees of reference in the Senate. The House bill is on the House floor.

<HTTP://WWW.FLSENATE.GOV/SESSION/BILL/2017/00282>

#### **LINEAR FACILITIES**

The Senate voted 34-3, with Sens. Farmer, Rodriguez and Garcia in dissent, to clarify the law in response to a Third District Court of Appeals decision in a Power Plant Siting case. The bill amends exemptions from the land-use-consistency provisions of the Power Plant Siting Act (PPSA) and Transmission Line Siting Act (TLSA) to include established rights-of-way and corridors, to rights-of way and corridors yet-to-be established, and to creation of distribution and transmission corridors. The bill preempts local authority to require underground transmission lines. Proponents contend that the court case overturned historical application of the Acts and that the new interpretation would lead to increased costs. Opponents argue that the interpretation is not new and that the bill can jeopardize undergrounding utility lines. The House bill is in its final committee and has not yet been placed on the agenda.

<http://www.flsenate.gov/Session/Bill/2017/01048>

#### **DRONES**

A bill to preempt local governments in regulations of drones, with the exception of illegal acts arising from the use of drones unanimously passed out of its second of four Senate committees as well as its final House committee. The Florida Association of Counties and Florida League of Cities oppose the bill but stated that local authority over unmanned is a gray area in Federal law. Proponents contended that the bill is necessary for public safety and consistency.

HB 1027: <http://www.flsenate.gov/Session/Bill/2017/01027>

SB 832: <http://www.flsenate.gov/Session/Bill/2017/00832>

#### **MUNICIPAL CONVERSION OF SPECIAL DISTRICTS**

The House unanimously voted to pass a bill that would prevent a runaround of the incorporation process. The sponsors stated the bill was in response to the incorporation of West Lake in Palm Beach County, made possible from the votes of only five people. The Senate sponsor said the original law was passed to simply benefit one landowner in Palm Beach County, which was an "inappropriate use" of the state statutes. The intent is not relitigate the incorporation of West Lake



but remove a bad public policy going forward by requiring population thresholds be met. Palm Beach County supports the bill. It is in its final committee of reference in the Senate.

<http://www.flsenate.gov/Session/Bill/2017/00719>

#### **HOUSE PASSES PERSONAL DELIVERY DEVICES**

The House voted unanimously to make way for Personal Delivery Devices (PDDs) or small, low-emission motorized technology that travels on sidewalks and crosswalks using a navigational system and can be used for the delivery of goods. The bill would allow PDDs to travel on county and municipal sidewalks but also for home rule authority for counties and municipalities to enact regulations. Senate Banking & Insurance also unanimously approved the Senate bill. It has one more committee to go through in the Senate.

<http://www.flsenate.gov/Session/Bill/2017/00601>

#### **GROWTH MANAGEMENT**

Senate Community Affairs unanimously approved a bill that would require consideration of private property rights in local government comprehensive plans. The bill is similar to legislation from the 2016 Legislative Session. It has two more committees in the Senate and has not been heard in the House.

<http://www.flsenate.gov/Session/Bill/2017/00940>

#### **VACATION RENTALS**

Senate Community Affairs temporarily postponed Vacation Rentals. This does not mean the bill has been defeated, but it is a slight setback for its proponents as time is running out.

The bill would re-preempt local governments from regulating vacation rentals. The sponsors argue local governments can address issues through ordinances restricting activities on the properties applied equally to properties within the same zoning but not targeting use of the properties. Vacation rental owners and managers testified that 25 local governments went too far after the 2014 law that slightly reversed the 2011 preemption, listing regulations from soundproofing pools to other noise ordinances placed solely on vacation rentals. Since non-rental property owners could also be disruptive neighbors, ordinances should apply across the board. Local governments and the hospitality industry argue vacation rentals are not as deterred from the fines imposed on other properties within the same zoning since they act as commercial enterprises and generate a lot of revenue. The bill has two more committees of reference in the Senate. The House bill has one more committee of reference.

<http://www.flsenate.gov/Session/Bill/2017/00425>

#### **CONSTRUCTION**

House Commerce Committee voted unanimously to approve a construction related package that would: create a certifying entity for solar energy; implement recommendations of the Construction Industry Workforce Taskforce; change some requirements in the Florida Building Code; prohibit local governments for charging different water and sewer rates or requiring separate water connections for larger water meters and for sprinkler systems in single family units; preempts regulations on franchise signage and gasoline station signage. The committee adopted a series of amendments, some of which were not made publicly available until well after the meeting concluded, sparking some objections to the process. One of the amendments would require local jurisdictions to calculate to cost savings of utilizing a private third party for inspections and reduce permit fees accordingly. Language was removed in the bill that would have prevented locals from charging certain permit fees. The bill is now ready to go before the full House. The Senate bill has two more committees of reference and does not have the preemption language.

<http://www.flsenate.gov/Session/Bill/2017/01021>

## **FINANCE & TAX**

### **WORKERS COMPENSATION**

Senate Banking & Insurance voted 7-1 and House Commerce Committee voted 20-9 to address the workers compensation system that businesses have been panicking over since a Supreme Court decision on attorney's fee caps led to a 14.5 rate increase. The committee bill focuses on allowing judges to award hourly rather than percentage based attorneys fees in certain circumstances. The hourly rate is capped at \$200/hr (\$150 in the House bill), subject to annual adjustment based upon average wages, and injured workers would be on the hook for the remainder. Retainer agreements between injured workers and attorneys must be filed with the judge. It also requires injured workers, rather than carriers, to pay for attorneys fees before a petition has been filed. The bill also changes from charged-based reimbursement for hospitals to 200% of Medicaid rate for unscheduled surgery and 160% of Medicaid rate for scheduled surgery and requires authorization or denial of medical procedures. It would also extend benefits. Members in opposition argued that the policy does not take injured workers into account and only focuses on fees. The Senate bill has one more committee of reference. The House bill can now go to the House floor.

SB 1582 <http://www.flsenate.gov/Session/Bill/2017/01582>

HB 7085 <http://www.flsenate.gov/Session/Bill/2017/07085>

### **HOMESTEAD EXEMPTION EXPANSION**

House Ways & Means voted 13-6 after a lively debate to put a Constitutional Amendment on the 2018 Ballot to increase the Homestead Exemption Expansion by \$25,000 for all property taxes excluding school district revenue. An amendment offered by a Palm Beach County Democrat would have increased the exemption even further to \$75,000. It was ultimately withdrawn. Local governments spoke out in force against the bill, which would significantly impact local budgets in the tens of millions. Locals argued it was a tax shift rather than a tax cut, because it would lead to businesses and non-homestead homeowners shouldering more of the tax burden and would also lead to a cut in services. Some local governments spoke of the important projects in their budget that would be cut, such as programs addressing the opioid crisis in Palm Beach County. Members in support of the bill argued that homeownership was down over the state and that owning a home has become more expensive. They argued that local governments could absorb the cuts if they "sharpened their pencils." Opponents argued that local governments are held accountable if taxes are too high and, therefore, services funded at the local level are needed to meet community needs. One South Florida member opposed the bill because the amendment would offset the cuts for fiscally constrained counties, forcing non-fiscally constrained counties. The bill has not yet received committee references.

### **HOUSE TAX PACKAGE**

House Ways & Means unanimously voted to file the House tax package proposal worth \$296.8 million with recurring costs potentially reaching \$949 million. The package has a number of cuts, sales tax holidays, tax credits and exemptions, including ones to benefit affordable housing. The proposal is supported by both Republican and Democrat committee members as fair and impactful for average Floridians. The Bill has not received committee references.

### **PROPERTY TAXES**

House Ways & Means voted 14-1 to pass a property tax package that, among other things, requires property appraisers to waive penalties for persons who receive but were not entitled to homestead exemptions; removes time limitations on businesses receiving a \$25,000 exemption, increases exemptions for widows, widowers, and the blind and disabled; requires "delinquent" rather than "outstanding" taxes be paid before establishing a title by adverse possession. It is estimated to have a \$38.9 million impact to local governments annually beginning in FY 2018-19. The bill has one more committee in the House and two more committees in the Senate.

### **LIMITATIONS ON PROPERTY TAX ASSESSMENTS**

Senate Appropriations unanimously voted to place a constitutional amendment on the 2018 ballot to permanently maintain the 10 percent cap on annual non-homestead parcel assessment increases currently in the Constitution that is set to expire in January 2019. The creation of this 2018 amendment is specified in the current constitutional language for renewal. The House already voted 110-3 to pass the bill.

### **FLORIDA RETIREMENT SYSTEM (FRS) REFORM**

House Appropriations voted 18-8 to file an FRS reform package. The package would change the default plan to the investment plan starting on January 1, 2018; require the investment plan for new Elected Officers Class enrollees, reduce accrual rates for Elected Officers Class from 3.3 to 3.0; establishes a new line-of-duty death benefit; and authorizes renewed enrollment in the investment plan. The bill is estimated to have a negative fiscal impact of \$17.3 million (which includes \$8.4 million for counties and \$0.9 million for other local governments) for this fiscal year, rising to a projected \$21.4 million fiscal impact in FY 19-20. Opponents cite numerous rankings and studies that puts Florida's FRS system at the top compared to other states. They argued that reform would harm a system that is working. Proponents argue that unfunded liabilities are not sustainable and that the workforce has evolved to a point where the investment plan makes more sense (i.e. no one works at the same employer for 20 years anymore). The committee passed the bill along with several other budget conforming bills and the budget. It is now ready to go before the full House next week.

### **EMPLOYER CONTRIBUTIONS TO FRS**

House Appropriations unanimously voted to increase employer contributions by \$149.5 million with an estimated impact of \$39.3 million to counties and \$7.7 million to other local governments. The adjustment is made each year in accordance with state actuarial determinations. The bill is part of the budget package and is ready to go before the full House.

<http://www.flsenate.gov/Session/Bill/2017/07022>

### **LOCAL FINANCIAL EMERGENCIES**

Senate Community Affairs voted unanimously to approve a local financial emergency package. The bill would expand oversight of local governments, charter schools, school districts and technical career schools to include the House, Senate, and Joint Legislative Audition Committee. It has two more committees in the Senate. Its House companion has one more committee of reference in the House.

### **TRAFFICKING IN FETANYL**

Senate Criminal Justice voted unanimously to pass a bill that would establish mandatory minimums for trafficking in fentanyl and other synthetic drugs in an effort to combat the current opioid crisis rocking the country. The committee adopted an amendment to provide judicial discretion to depart from the minimums after weighing all of the facts of the case. The amendment sparked a long debate on mandatory minimums and whether they should be applied in this situation. The proponents of judicial discretion claimed that there was no evidence that mandatory minimums work to deter behavior and that mandatory minimums takes power from judges and gives it to prosecutors. Opponents of judicial discretion claimed that trafficking was different from addiction and that the current crisis was too compelling to not make it as tough as possible. The bill also provides that selling fentanyl to individual who dies as a result of consuming it would be considered murder, similar to how cocaine is currently treated. The bill still has three more committees of reference. Its House companion unanimously passed its final committee of reference and is now ready to go before the full House.

### **SENATE MEDICAL MARIJUANA PACKAGE**

Senate Health Policy finally began this week to create the official Senate Amendment 2 Implementation package. The committee voted unanimously to approved a bill that took ideas from each of the seven Senate proposals. The resulting legislation would increase the number of

licenses, increase number of days of supply patients can be granted at a time (with protocol for physician override,) maintain the “vertical” model, prohibit minors from purchasing, establish an independent testing facility, utilize seed to harvest tracking software, establish a research center, and more. Like the House bill, the Senate bill prohibits smoking. However, it does not go as far as the House to ban vaping and edibles. The bill has two more committees of reference. Its House companion also has two more committees.

#### **HEALTH CARE BUDGET IMPLEMENTATION BILLS**

House and Senate Appropriations passed their budgets and implementation bills through committee and they are now ready to appear on the floor next week. The Senate Health Care implementing bill contains language dealing with PACE slots in the Tri-County Area, establishing a statewide Substance Abuse and Mental Health Safety Net, and hospital outpatient services.

#### **SOBER HOMES**

Senate Appropriations unanimously approved a bill to implement recommendations from the Sober Homes Task Force regarding deceptive marketing practices and patient brokering for recovery residences (sober homes.) The legislation would expand prohibitions on patient referrals and false advertising, increase penalties, allow the Office of Statewide Prosecutor to investigate patient brokering practices, allow patient brokering to be charged as a RICO offense, and require substance abuse service personnel providing direct clinical treatment to patients be certified by DCF. The Senate bill has one more committee stop in the Senate. The House bill is ready to go before the full House.

SB 788 <http://www.flsenate.gov/Session/Bill/2017/00788>

HB 807 <http://www.flsenate.gov/Session/Bill/2017/00807>

#### **HOUSE PASSES OPEN CARRY**

The House voted 80-34 to pass a bill that would decrease penalties for open carry violations from a misdemeanor to a civil fine for the first two violations. The bill is in response to individuals that have inadvertently exposed their firearms and were charged with misdemeanors as a result. Displaying a firearm in a threatening way would still be a misdemeanor should the bill pass. Its companion has not been heard in the Senate.

<HTTP://WWW.FLSENATE.GOV/SESSION/BILL/2017/00779>

#### **GROUP HOMES**

Senate Children, Families & Elder Affairs unanimously voted in favor of a proposals that would make improvements to group homes by requiring the adequate array of services provided for group homes, however the committee adopted an amendment that removed a statewide quality rating system. The sponsor stated that he was continuing to work on the rating system. The Chairman of the committee made clear that he had requested the rating system be removed because he feels that more work should be done to encourage foster parents and foster care placement rather than a reliance on group homes. The bill still has an assessment component that helps assess the child’s service needs to ensure appropriate placement. The bill has two more committees of reference. Its House companion, which does still contain the group home quality rating language, also has two more committees.

<http://www.flsenate.gov/Session/Bill/2017/01680>

#### **KIDCARE**

Senate Governmental Oversight and Accountability voted unanimously to establish a workgroup to enhance the operational efficiencies and return on investment of the Florida Kidcare Program. The bill has one more committee of reference. Its House companion has not been heard yet in committee.

#### **HUMAN TRAFFICKING**

Senate Appropriations and House Health & Human Services unanimously voted to address a gap in services for human trafficking victims. The bill would change the statutes to refer to “victims of commercial sexual exploitation” rather than “sexually exploited child” in order to encompass adult victims and victims that do not qualify for Federal assistance. It would require DCF or a sheriff’s office to conduct a multidisciplinary staffing on child victims of commercial sexual exploitation to determine the child’s service and placement needs and develop a plan to serve them. The bills are now ready to go to the floor in both Chambers, with the Senate as early as April 13th.

SB 852: <http://www.flsenate.gov/Session/Bill/2017/00852>

HB 1383: <http://www.flsenate.gov/Session/Bill/2017/01383>

#### **CERTIFICATES OF NEED**

House Health & Human Services voted 12-5 to approve a Speaker priority of eliminating the state’s Certificate of Need (CON) program after removing nursing homes and hospice care from the bill. Under the bill, anyone who wants to build or replace or add beds or services to a hospital would no longer be required to go through AHCA licensure review. The sponsor argues that CON is an expensive process that no longer serves its purpose. She dismisses the concerns of public hospitals, stating they are incentivized through LIP funding and special district tax revenues to provide charity care. She says the committee members should be more worried about the expansion of non-profit hospitals, and the lack of competition it causes, than a proliferation of hospitals with no CON process as hospitals are expensive to build. Hospitals argue that repealing CON will lead to a two-tiered health system in Florida: one for patients with good insurance and means to pay and one for low-income patients on government insurance. Proponents argue the CON process is a protectionist, outdated policy that harms competition. The bill is now ready to go before the full House. Its Senate companion has not yet been heard in its first of four committees.

#### **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (SFRTA)**

Senate Transportation and House Transportation & Infrastructure unanimously voted to approve language to address SFRTA liability and insurance concerns for All Aboard Florida and the Florida East Coast Railway. The initiative is supported by all three counties and other local governments served by Tri-Rail. The House bill now has more committee of reference. The Senate bill has two more committees of reference.

<http://www.flsenate.gov/Session/Bill/2017/695/BillText/c1/PDF>

#### **HOUSE PASSES TRANSPORTATION NETWORK COMPANIES**

The House voted unanimously bill that would preempt local governments and provide uniform statewide regulations for ride hailing app companies (Uber, Lyft) separate and apart from taxis. The bill is a compromise negotiated and backed by TNC companies and the insurance industry. The bill defines TNCs and sets requirements for: insurance, background checks, anti-discrimination and zero tolerance drug policies, paratransit services, fare collection methods, etc. The bill would allow airports and seaports to charge the same fees for pickup that taxis are charged (but no higher) and designate staging areas for pickup/dropoff. Amendments that would require minimum standards in the anti-discrimination policies failed. Meanwhile, Senate Rules voted 10-1 to approve the Senate package. The bill is now ready for the Senate floor.

#### **VESSEL REGISTRATIONS**

Senate Appropriations voted unanimously bill that further reduces registration fees for vessels if the owner has a personal locator beacon. The bill builds upon President Negron’s priority legislation from last Session and is designed to encourage boaters to own technology that can help locate them if lost at sea. Meanwhile, House Government Accountability also unanimously approved the House companion. Both the Senate and the House bill are ready to go ready before the full House.



<http://www.flsenate.gov/Session/Bill/2017/00718>

## **ENVIRONMENT**

### **EVERGLADES LAND BUY**

The Senate Appropriations unanimously passed a new version of the Senate President's priority of providing options to create a reservoir south of Lake Okeechobee, in the Everglades Agricultural Area, to store water and prevent toxic algae blooms in the lake's estuaries. The new bill would focus on land that the state already owns with options for smaller adjacent land swaps and leases with farmers. It adds Glades economic development and workforce training for displaced workers in the EAA. Environmental supporters contend that a reservoir is the only option for restoring freshwater flows southward, a critical component of Everglades restoration efforts. The compromise also authorizes the South Florida Water Management District to begin discussions with owners of the C-51 Reservoir in Palm Beach County and determine if the state should pursue a P3 for the facility to add 60,000 acres of water storage. Acquiring land through Eminent Domain is prohibited in the bill. The bill is expected to be voted on by the full Senate next week. It remains to be seen if the House will accept the compromise proposal.

### **AMENDMENT 4 IMPLEMENTATION**

House Ways & Means unanimously passed a bill to implement Amendment 4 to provide exemptions on ad valorem assessments for renewable energy devices. The bill is currently retroactive, causing some concern for rural counties with existing solar facilities that would be negatively impacted. The environmental community and solar industry supports the Senate bill but oppose consumer protections in the House bill, claiming that it decreases competition and poses barriers for businesses in the industry. The bill has one more committee in the House. Its Senate companion has two more committees in the Senate.

<http://www.flsenate.gov/Session/Bill/2017/01351>

## **CORAL REEFS**

Agriculture and Natural Resources Appropriations Subcommittee voted unanimously to pass a bill that would create the Southeast Florida Coral Reef Ecosystem Conservation Area from St. Lucie Inlet to Biscayne Bay. The bill is in response to a spreading coral reef health crisis as the reefs are extremely vulnerable yet valuable to the environment. The House bill now has one more committee of reference. Its Senate companion has two more committees of reference.

<http://www.flsenate.gov/Session/Bill/2017/01143>

## **GAMING**

### **SENATE AND HOUSE GAMING PACKAGE**

After the Senate voted 32-6 to send its gaming package over to the House, the House stripped the Senate package and amended its package on the bill in full. It passed the House package 73-40 in a party-line vote without a single Democrat voting in favor. The House reenacts the Seminole Compact agreement for 20 years with little change. Democratic members oppose the bill for not allowing slots in counties other than Broward and Miami-Dade and also object to some of the funding being allocated to charter school capital outlay. The Senate bill would significantly expand gaming throughout the state from lottery machines at gas stations to slots being offered in additional counties to decoupling casinos. Rumor is that a conference between the two chambers could begin next week. However, the House has been adamant that it will not expand gaming and refuses to compromise with the Senate in that aspect.

**Anfield Consultants Week of April 3<sup>rd</sup>**

*By Anfield Consultants*



### **Nonnative Animals (CS/CS/SB 230 & CS/HB 587)**

Background: The exotic animal trade has long been a thorny issue for environmentalists in Florida. For decades the introduction and spread of non-native species has been directly traced to escaped pets and zoo specimens. Some species have proven to be as damaging to the native ecosystem as any other natural hazard. For example, the tegu lizard, imported from Latin America, has a habit of raiding gator nests and procreates rapidly. And the poisonous lionfish, which is native to Pacific waters but can now found in coral reefs all along the coast of Florida, has proven devastating to reef fish populations and has no natural predators.

Proposed Changes: This bill directs the Florida Fish and Wildlife Commission to establish a pilot program for mitigating the impact of tegu lizards, red lionfish, and common lionfish, all of which would be deemed “priority invasive species,” on public lands and waters of the state. The Commission would be required to enter into competitively bid contracts with private entities to capture and destroy these pests on all state-owned public lands and waters managed by the Commission. The Commission may also enter into memoranda of agreement with other federal, state and local partners for lands and waters under the jurisdiction of those parties.

Captures and kills must be properly documented via photographs and notation of the geographic area where the specimen was caught for research purposes. The Commission must submit a report on its findings and recommendations regarding the progress of this program to the Legislature and Governor by January 1, 2020.

The bill also requires pet dealers (defined as anyone who sells more than 20 animals a year to the public) who sell or resell any of the priority invasive species listed in this bill to electronically tag each specimen they sell with a passive electronic transponder (PIT). The Commission, which is in charge of the tagging program, would also have rulemaking authority to “identify non-native animals that threaten the state’s wildlife habitats and therefore must be implanted with a PIT tag, and establish standards for the types of PIT tags used in the program and the manner in which they are implanted.” The bill requires the Legislature to appropriate \$300,000 per year over the next two fiscal years from the State Game Trust Fund for the purpose of implementing this pilot program.

Update: On Monday, the (H) Agriculture & Natural Resources Appropriations Subcommittee adopted a strike-all for HB 587. The strike-all conforms the House bill to the Senate bill (as described above), except in that the House version does not contain any provisions appropriating funds for the program.

CS/HB 587 will next be taken up in the (H) Government Accountability Committee, its last committee of reference. CS/CS/SB 230 is currently in the (S) Appropriations Committee.

### **Rural Economic Development Initiative (SB 600 & PCS/HB 333)**

Background: The Rural Economic Development Initiative (REDI) was established in 1997 by the Legislature to encourage and facilitate the location and expansion of major economic development projects in rural communities. The Department of Economic Opportunity (DEO) administers the REDI, however, numerous state agencies and organizations are also required to participate in the REDI by designating a deputy secretary or higher-level staff person to serve as a REDI representative. These representatives are required to work with REDI in the reviewing, evaluating, and proposing impact mitigation of any statute or rule that may have an adverse effect on rural communities.

REDI may also recommend up to three Rural Areas of Opportunity to the governor, who may then create these RAOs by executive order. The RAOs, with REDI recommendation, can then in turn designate certain developments within their districts as catalyst projects, making these projects eligible to receive benefits and tax exemptions provided by REDI. Proposed Changes: This bill makes several changes to REDI, the foremost being the make-up of its representative membership. The bill changes the membership to include:

- The executive director of the DEO or his or her designee, to serve as chair;
- The Secretary of Transportation or his or her designee;
- The Secretary of Environmental Protection or his or her designee;
- The Commissioner of Agriculture or his or her designee;
- The State Surgeon General or his or her designee;
- The Commissioner of Education or his or her designee;
- The President of Enterprise Florida (EFI) or his or her designee;
- The chair of the board of CareerSource Florida, Inc., or his or her designee; and
- Five members from the private sector, three who are appointed by the executive director of the DEO, and one each appointed by the President of the Senate and the Speaker of the House of Representatives.

The bill also:

- Clarifies the legislative intent of REDI to include encouraging job creation, improved community infrastructure, the development and expansion of workforce, and improved access to healthcare;
- Expands the definition of “rural area of opportunity” to include any rural community that faces competitive disadvantages, including low labor force participation, low education levels, high unemployment, a district grade of “D” or “F” pursuant to s. 1008.34, F.S., high infant mortality rates, and high rates of diabetes and obesity;
- Clarifies that REDI is to focus its efforts on the challenges of the state’s rural areas of opportunity and economically distressed rural communities, and that REDI is to work with private organizations that have an interest in the renewed prosperity and competitiveness of these communities;
- Clarifies that when undertaking outreach and capacity-building efforts, its purpose should be to improve rural communities’ ability to compete in a global economy;
- Requires that the report by REDI be submitted to the DEO, the President of the Senate, and the Speaker of the House of Representatives by September 1 of each year; and
- Expands the information to be included in the report to include evaluation of organizational progress towards goals, REDI accomplishments, and issues affecting the performance of REDI programs and activities.

Update: On Monday, the (S) Agriculture Committee adopted a committee substitute for SB 600. The committee substitute removes the requirement that an analysis be done by OPPAGA. It also clarifies that communications methods that improve community infrastructure can include more than broadband. Lastly, it removes the requirement that catalyst projects be identified by EFI. An amendment to the CS re-adds the President of EFI or his or her designee to the membership of the REDI governing board. CS/SB 600 will next be taken up in the (S) Governmental Oversight and Accountability. CS/HB 333 is currently in the (H) Transportation & Tourism Appropriations Subcommittee.

### **Marine Turtle Protection (HB 1031 & SB 1228)**

Background: Five species of sea turtle spend a portion of their lives in Florida’s waters and nest on Florida’s beaches. All five of these species are listed as endangered species under the federal Endangered Species Act and Florida’s own Marine Turtle Protection Act (MTPA). Under this law, it is illegal to harass or hinder any sea turtle species while they are nesting or swimming, or to traffic in any turtles, turtle parts, or eggs. However,

prior to 2016, the MTPA did not specify that actual possession of a sea turtle, or parts thereof, was a violation. At least one court case found a defendant “not guilty” because “possession” of sea turtles was not specifically listed in law.

In 2016, the law was amended to clarify that possession in itself, without FWC authorization, constituted a third degree felony under that chapter. This change created a new subparagraph 6. to s. 379.2431(1)(d), F.S. The former subparagraph 6., which makes solicitation or conspiracy to commit a violation of the MTPA a third degree felony, became subparagraph 7. Unfortunately, the bill’s drafters made an error in failing to correct a cross-reference to the old subparagraph in the Offense Severity Ranking Chart in the Criminal Punishment Code, which leaves judges in the awkward position of having to reference a non-existent paragraph when sentencing an offender for conspiracy to violate the MTPA .

**Proposed Changes:** This bill amends the Offense Severity Ranking Chart to correct the numbering for the solicitation or conspiracy to commit a violation of the MTPA.

Furthermore, the bill adds possession of a sea turtle species or hatchling, or parts thereof, or the nest of any sea turtle species, as a level three violation.

**Update:** On Monday, the (S) Criminal Justice Committee passed SB 1228 without amendment. The bill will next be heard in the (S) Environmental Preservation and Conservation Committee, which is not schedule to meet again. The House companion, HB 1031, is currently (H) Government Accountability Committee.

### **Covenants and Restrictions of Property Owners (CS/CS/HB 735 & SB 318/CS/SB 1046)**

**Background:** The Marketable Record Title Act (MRTA) was enacted to simplify real estate transactions. In general, it provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. One effect of MRTA is that covenants and restrictions affecting real property are extinguished 30 years after their creation. Current law allows residential homeowners' associations to preserve existing covenants and restrictions, and provides a means by which expired covenants and restrictions of a homeowners' association may be revived if previously extinguished by MRTA.

**Proposed Changes:** This bill would:

- Authorize counties and municipalities to amend, release, or terminate a restriction or covenant that they imposed or accepted during the approval of a development permit. Changing a covenant or restriction in this manner would thus be treated like an ordinance for a zoning change. This provision is retroactive and applies to existing restrictions and covenants (removed in Senate bill 1046);
- Replace the term "homeowners' association" with "property owners' association," thus extending statutory provisions regarding preservation and revival to a broader range of associations, notably commercial property owners' associations;
- Authorize parcel owners who were subject to covenants and restrictions, but who do not have a homeowners' association, to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions;
- Repeal a current requirement that a homeowners' association board achieve a two-thirds vote for preservation of existing covenants and restrictions; and
- Require a homeowners' association to annually consider preservation of the covenants & restrictions, and furthermore require an association to file a summary preservation every five years.
- Require counties and municipalities to follow the same procedural requirements as passing an ordinance when acting to amend, release, or terminate a covenant or restriction it imposed or accepted as a condition of its approval or issuance of a development permit (removed in SB 1046).
- Exempts a homeowner's association that does not wish to preserve its covenants

and restrictions from having to file a summary notice.

Update: On Monday, the (S) Community Affairs Committee adopted one amendment to SB 1046. The amendment removes:

- sections of the bill that authorized counties and municipalities to amend, release, or terminate a restriction or covenant that they imposed or accepted during the approval of a development permit;
- retroactivity clauses pertaining to existing restrictions and covenants; and
- a section that added that a marketable record title is also free and clear of all zoning requirements or building or development permits that occurred before the effective date of the root of title.

CS/SB 1046 will next be taken up in the (S) Judiciary Committee. CS/CS/HB 735 is currently in the (H) Judiciary Committee.

### **Community Development Districts (CS/SB 1770 & CS/HB 13)**

Background: The Community Redevelopment Act of 1969 (Act) authorized a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas. The Act defines a “blighted area” as an area in where there are a substantial number of deteriorated structures causing economic distress or endangerment to life or property, as well as two or more of the factors listed in statute. All taxing authorities with jurisdiction over the area must agree that the area is blighted by inter-local agreement or by passage of a resolution by the governing bodies. Once approved, a local government may fund its CRA through a special community redevelopment trust fund that is itself funded through tax increment financing (TIF). In recent years, many members of the Legislature have expressed concern that some CRAs have existed well beyond their original expiration date, all while the original blighted areas these agencies were meant to address have continue to remain impoverished. In 2016, a Miami-Dade County grand jury found several instances of fund mismanagement by one of that jurisdiction’s CRAs and a significant lack of oversight. The grand jury report noted that while county and municipal governments may not pledge ad valorem tax proceeds to finance bonds without voter approval, the board of a CRA can pledge TIF funds to finance bonds without any public input. A report done by Broward County’s Inspector General found significant over-lap between the duties and offices of the governing boards of two local municipalities and the CRAs within those cities.

Proposed Changes: This bill provides for the eventual phase-out of all the CRAs in existence as of July 1, 2017, either by the expiration date stated in the CRA’s charter or by September 30, 2037, whichever comes sooner, with the exception of those CRAs that have any outstanding bond obligations. After July 1, 2017, the governing body of a county or municipality may not create any new CRAs except by a super majority vote of its members. The House version does not allow for the creation of any new CRAs and has an ultimate phase out date of September 30, 2037, or whenever CRA’s charter expires, whichever comes sooner.

The bill also:

- Requires the commissioners of a CRA to undergo 4 hours of ethics training annually;
- Requires each CRA to use the same procurement and purchasing processes as the creating county or municipality;
- Expands the annual reporting requirements for CRAs to include audit information and performance data and requiring the information and data to be published on the agency website;
- Provides that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA and only for those purposes specified in current law beginning July 1, 2017;

- Requires a CRA created by a municipality to provide its proposed budget, and any amendments to the budget, to the board of county commissioners for the county in which the CRA is located 60 days before the start of the CRA's fiscal year; and
- Requires counties and municipalities to include CRA data in their annual financial report.

Lastly, the bill provides a process for the DEO to declare a CRA inactive if it has no revenue, expenditures, and debt for 3 consecutive fiscal years.

Update: On Monday, the (S) Community Affairs Committee adopted several amendments to SB 1770. Together, the amendments make the following changes:

- Provide that the governing body of the local government that created the CRA may approve its continued existence beyond the expiration date in its charter and beyond the phase out date of September 30, 2037, by a super majority vote of the governing body members;
- Makes a technical change that provides that the notice of inactive status is only to be delivered to the governing board or commission if the agency does not have any board members or agents who may receive the notice;
- Revises the initial date after which moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA, and only for those purposes specified in current law, from July 1, 2017, to October 1, 2017;
- Requires a governing body of a local government that appoints itself as the governing body of the CRA and consists of five members to appoint two additional non-elected persons with specified expertise to act as members of the CRA;
- Removes certain performance data including the number of jobs created within the CRA, the sector of the economy to which the new jobs pertain, and the number of jobs retained within the CRA from the list of information required under the CRA annual report; and
- Revises the definition of the term "blighted area."

Public testimony on the bills was lengthy, with the main opposition coming from local governments that currently operate a CRA.

The Florida League of Cities cited the amended bill's inclusion of a mandatory affordable housing component within the list of projects for which monies from a redevelopment trust fund may be expended as a point of concern, arguing that affordable housing is not an issue that CRAs were created to address. They also raised issue with mandatory inclusion of non-elected members to a CRA governing board, stating that elected members would in the end be more accountable than appointed ones.

Miami-Dade, the City of Miami, the City of Orlando, the City of Coco, and other local governments had problems with the super-majority vote requirement to sustain CRA operations as well, stating that this would be a difficult threshold to meet for charter counties that often have only five-member governing boards. They cited the beneficial work done by their CRAs as a further inducement to keep CRAs up and running. The bill's sponsor, although unconvinced by the arguments, agreed to work with the bill's opponents going forward.

CS/SB 1770 was voted favorably, 5-3. Its next stop is the (S) Appropriations Subcommittee on Transportation.

On Wednesday, the House companion, HB 13, was heard in the (H) Ways & Means Committee. The committee adopted a strike-all to the House bill that does the following:

- Maintains the House prohibition on the creation of new CRAs;
- Allows currently existing CRAs to be re-authorized by super-majority vote of the local governing board in the same manner as the Senate bill;
- Revises the list of performance data that must be included in each project report published on the CRA website; removing number of jobs retained and affordable housing units created within the CRA area as a metric and adding measurements of overall commercial real estate value and public vs. private spending; and
- Changes the effective date from Oct. 1 to July 1 to coincide with local



government fiscal calendars.

Local governments that currently operate CRAs, as well as local government advocates, spoke out in opposition to some of the bill's provisions, namely the prohibition on the creation of new CRAs and the super-majority requirement to maintain a currently existing CRA.

A representative for the City of Coco argued that CRAs allow local governments to more easily concentrate resources on a single blighted area, and that abolishing CRAs would remove an effective tool for urban renewal.

The City of Miami, which has 3 CRAs, made the same argument, stating that while there had been a few bad actors in the past, that the CRA process as a whole has had a beneficial effect on the city.

Even those committee members who supported the bill but who also have CRAs in their districts expressed a desire to see further amendments to the bill.

CS/CS/HB 13, which passed 14-5, will next be taken up in (H) Government Accountability Committee.

### **Growth Management (SB 940 & HB 1309)**

**Background:** A local government may choose to amend its comprehensive plan for a variety of reasons. A local government may wish to expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners and developers, however, all must be approved by the local government before going into effect.

In recent years, local landowners throughout the state have filed Bert Harris suits for alleged "inordinate burdens" placed on their lands due to comprehensive plans that restrict planned developments on privately owned land. Some legislators have suggested requiring comprehensive plans to have a private property rights component as one means of addressing the issue.

**Proposed Changes:** This bill requires local governments to address the protection of private property rights in their comprehensive plans by setting forth principles, guidelines, standards, and strategies to achieve the following objectives:

- Consideration of the impact to private property rights of all proposed development orders, plan amendments, ordinances, and other government decisions;
- Encouragement of economic development;
- Use of alternative, innovative solutions to provide equal or better protection than the comprehensive plan; and
- Consideration of the degree of harm created by noncompliance with the provisions of the comprehensive plan.

Each local government would be required to adopt a private property rights element at its next evaluation and appraisal update review, or by July 2019, whichever comes first.

Local government would then be required to adopt land development regulations consistent with their adopted private property rights element within 1 year of adopting the element.

Lastly, the bill provides the model form and objectives that the private property element must adhere to.

**Update:** On Monday, the (S) Community Affairs Committee passed SB 940 without amendment. Its next committee of reference is the (S) Environmental Preservation and Conservation Committee, which is not schedule to meet again. HB 1309 is currently in the (H) Agriculture & Property Rights Subcommittee.

Otherwise, an annexing municipality must seek the consent of 50% of the area's landowners whenever they own at least 70% or more of the land and are not registered to vote in that area.

CS/SB 1488 will next be taken up in the (S) Judiciary Committee. HB 1087 is currently



in the (H) Agriculture and Property Rights Subcommittee.

### **Flood Insurance (CS/CS/SB 420 & CS/HB 813)**

Background: This bill makes three changes to state law regulating flood insurance. In Florida, the flood insurance market is regulated through the Office of Insurance Regulation (OIR).

#### **Sale of Personal Lines, Residential Flood Insurance**

In 2014, the Legislature passed SB 542, granting certain regulatory exemptions to the sale of personal lines of residential flood insurance under s. 627.715, F.S. (Note: It does not apply to commercial residential lines, commercial non-residential lines, or excess flood insurance.)

Under these exemptions, an insurer may establish flood rates through the standard OIR process provided in s. 627.062, F.S., or it may use the expedited process where the rate is filed with the OIR, but OIR is not required to review it before or shortly after implementation. The OIR may still review the rates at its own discretion. The exemptions sunset on October 1, 2019.

This same law also allows surplus lines agents to export flood insurance to a surplus lines insurer without making a diligent effort to seek coverage from three or more authorized insurers until July 1, 2017.

#### **NFIP**

The National Flood Insurance Program (NFIP) is a federal insurance program run by FEMA and is available to all purchasers living in flood-prone communities provided those communities adopt and enforce federal floodplain management criteria.

Under current law, insurance agents who receive a flood insurance application must obtain a signed acknowledgement from applicants stating that they understand that the full risk rate for flood insurance may apply to the property if flood insurance is later obtained under the NFIP. However, there is no definite time period in statute for acquiring this acknowledgement.

#### **Florida Commission on Hurricane Loss Projection Methodology**

This Commission is charged with reviewing methods, standards, principles, and models used by the state to project hurricane and flood losses. Current law requires it to revise its actuarial methods and standards every two years. However, the Commission finds the frequency of such revisions to be too costly.

Proposed Changes: This bill would require the Florida Commission on Hurricane Loss Projection Methodology to revise previously adopted actuarial methods, principles, standards, models, or output ranges at least every four years for flood loss projections. It extends the exemption period for personal lines residential flood insurance rates from OIR review a further six years, from the current sunset of Oct. 1, 2019, to Oct. 1, 2025. It also expands the exemption to include excess coverage.

It changes the requirements for exemption for surplus line insurers from having to obtain three declinations; instead of requiring \$300 million or more in capital, those insurers would only be required to provide an exceptional rating from a private rating agency approved by the OIR (For the House bill, this rating must be “superior” or “excellent”, and it must come specifically from A.M. Rating Service, not just any rating service approved by OIR). The current sunset for this exemption would be moved from July 2017 to July 2025.

Lastly, the bill would prohibit a policy from being removed from the NFIP if the policyholder does not sign an acknowledgment within 21 days of his or her current policy expiring. The acknowledgment must provide a warning of the potential rate increase should they choose to return to the NFIP at a later date. A policy must be returned to the NFIP if the assigned agent does not receive this signed acknowledgment from the Policyholder

Update: On Monday, the (S) Community Affairs Committee adopted one amendment to

CS/SB 420. The amendment provides:

- A new sunset date for the section that allows flood policies to be placed with a surplus lines insurer with a superior financial strength rating without the agent first receiving three declinations from admitted insurers. Instead of July 2025, it would now sunset July 2022; and
- A sunset date for the section that prohibits a policy from being removed from the NFIP if the policyholder does not sign and return an acknowledgment within 21 days of expiration. The sunset date for this provision is January 1, 2020.

CS/CS/SB 420 will next be heard in the (S) Rules Committee, its last committee of reference. CS/HB 813 is currently in the (H) Commerce Committee, the last committee of reference for that bill.

### **Environmental Regulation Commission (CS/HB 861 & CS/SB 198)**

Background: The Environmental Regulation Commission (ERC) is an independent review body that exists within the DEP. Seven members appointed by the Governor and approved by the Senate serve on the ERC. When making appointments, the Governor must provide reasonable representation from all sections of the state. Membership of the ERC must be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community. The ERC members serve for four years. The Governor may fill a vacancy on the ERC at any time.

The ERC is charged with reviewing all proposed rules by the DEP, including new environmental standards that the committee may approve, disapprove, or modify at its discretion.

Proposed Changes: This CS restricts the time period during which the Governor may fill a vacant position and revises the voting requirements for approval or disapproval of a proposed rule containing standards. It requires the Governor appoint a new member to the ERC within 90 days of a vacancy occurring. It also modifies the approval threshold for proposed rules containing new environmental standards submitted to the ERC for review. With only two exceptions, all rules would require only a simple majority vote of the board's 7 members to approve. Those two exceptions are rules that modify air and water quality & quantity standards, which must be approved by a supermajority of 5 votes.

Update: On Monday, the (S) Committee on Ethics & Elections passed CS/SB 198 without amendment. The Senate bill will next be heard in the (S) Rules committees, its last committee of reference. CS/HB 861 is currently in the (H) Oversight, Transparency & Administration Subcommittee, where it was discussed last week, although no votes were taken.

### **Renewable Energy Source Devices (CS/HB 1351 & CS/SB 90, HB 1411)**

Background: Under s. 193.624, F.S., the cost and value of renewable energy devices are exempt from real estate property tax assessments.

A "renewable energy device," as currently defined in statute, generally encompasses the power plant components of the device, but does not encompass auxiliary components such as wiring, structural supports, and other integral systems, or conditioning and power storage devices used in conjunction with solar and geothermal energy. Also, the prohibition only applies to devices installed on or after January 1, 2013, and is limited to devices installed on real property classified as "residential" for tax purposes.

During the 2016 primary election, voters approved a constitutional amendment, Amendment 4, to expand the exemption beyond its current limits.

Proposed Changes: There are actually three bills which deal with this subject matter, however only two of them are currently identical: CS/SB 90 and HB 1411. Those two

bills simply expand the current prohibition on taxation of renewable energy devices to all real property, not just those used for residential purposes. It expands the definition of “renewable energy device” to include auxiliary components “integral” to solar and geothermal devices (including wiring, structural supports, power conditioning & storage devices) and extend it to include all such devices regardless of installation date. It does not include “any equipment that is on the distribution or transmission side” where the renewable energy source device is interconnected with the electric utility’s distribution grid or transmission lines.

The bills also create a new section of law that prohibits personal property taxes from being levied on renewable energy devices.

With a few exceptions, all the changes to statute made by these bills would sunset on December 31, 2037.

**HB 1351**, which applies only to electric utilities and is modeled after a similar Arizona law, contains the same tax exemption provisions as CS/SB 90 and HB 1411, but also goes further. It creates a new section of law that governs the sale, finance, or lease of distributed energy generation systems, requiring those systems to meet the safety standards of various regulatory organizations. Agreements made between a buyer/lessee and a merchant who sells, finances, or leases a distributed energy generation system must also meet certain requirements under the House bill, including a detailed, accurate projection of what rates the consumer will pay should they purchase the system and whether, and the extent to which, the estimate is based upon the buyer’s or lessee’s participation in a utility net metering program (if so, the estimate must identify any conditions or requirements for participation in the program).

A buyer or lessee who installs a distributed energy generation system and wishes to receive the benefit of an electric utility’s net metering program must comply with the applicable interconnection tariffs and rules of the electric utility and any applicable interconnection rules and standards established by the PSC. Otherwise, a buyer or lessee of a distributed energy generation system is not required to interconnect with an electric utility unless the buyer or lessee wishes to receive the benefit of a metering program. These provisions would not apply to any person or company that markets, sells, solicits, negotiates, or enters into an agreement for a distributed energy generation system as part of a transaction involving the sale or transfer of real property to which the system is affixed. Thus, these provisions do not appear to apply to home sellers, including real estate brokers and agents. The bill also provides penalties for non-compliance.

Lastly HB 1351 requires that any financing agreement entered into between a local government and a property owner for the financing of a qualifying improvement under a PACE program must comply with the disclosure requirements described above for the sale, finance, or lease of a distributed energy generation system.

Update: On Monday, the (H) Ways & Means Committee adopted two amendments to CS/HB 1351. The first amendment revises the definition of “renewable energy source device” to conform with the definitions contained Senate bill, CS/SB 90.

The amendment also provides that the exemptions provided for in the bill do not extend to any devices installed as part of a utility scale renewable energy projects that is planned within a fiscally constrained county in accordance with a comprehensive plan amendment or planned unit. The amendment defines “utility scale renewable energy project” to mean a facility composed of one or more renewable energy devices that:

- Are certified pursuant to ss. 403.501-405.518, F.S.; and
- When used together, are designed to achieve a total AC electric generating capacity of more than 20 megawatts.

For the purposes of this bill, a facility’s components need not be located on the same individual parcel, but can be situated on multiple contiguous parcels or parcels in close proximity to each other.

The second amendment was technical.

The Florida Association of Counties waived its time in support of these amendments. During public testimony, Bob Stump, a former member of the Arizona Corporation Commission, was invited by the bill's sponsors to speak on behalf of the measure. Citing his own experience with solar regulation in his state, he argued that regulation of the roof-top solar industry would help cut back on bad practices, such as unregulated operators giving unrealistic estimates on energy savings, that may hinder the solar industry.

The Southern Alliance for Clean Energy, the Florida Solar Energy Industry Association, Vote Solar, and the Sierra Club all voiced opposition to the bill in its current form, as well as their preference for the less extensive Senate version. They voiced particular concern for the requirement that the solar industry conform to standards set by utilities and the PSC, citing the unsavory history between the electric utilities and the controversial Amendment 1 referendum in 2016. They also took issue with the bill's definition of "Seller," which may create an unintended exemption from the Deceptive and Unfair Practices Act.

The bill passed 19-0. CS/CS/HB 1351 will next be heard in the (H) Commerce Committee. CS/SB 90 is currently in the (S) Appropriations Subcommittee on Finance and Tax.

### **Recovery Fund for the Deepwater Horizon Incident (CS/CS/SB 364)**

Background: In 2010, an explosion at the offshore Deepwater Horizon drilling platform resulted in a massive oil spill and ecological damage to the shorelines of five Gulf Coast states. The US government and the five affected states filed suit and imposed heavy civil and administrative penalties on BP. The five Gulf States, in their own separate civil actions, entered into a settlement agreement with BP for \$5.9 billion dollars, to be divided among the state and local governments of the region. Pursuant to this agreement, Florida is to receive \$2 billion over a period of 18 years.

Under current statute, 75% of funds received "by the state from any governmental or private entity for damages caused by the Deepwater Horizon oil spill" must go to eight "disproportionately affected" counties: Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, and Wakulla. Disbursement of funds received from the suit is handled by two agencies: the DEP, which is the designated lead agency for environmental restoration, and the DEO, which administers funds through its non-profit, Triumph Gulf Coast, Inc. and the Recovery Trust Fund.

Triumph Gulf Coast was created in 2013 for the purpose of disbursing these funds.

Proposed Changes: This bill:

- Defines "settlement agreement" as "the agreement between the gulf states and the BP entities with respect to economic claims arising from the Deepwater Horizon incident." Adding the definition clarifies that the Act relates to the \$2 billion of economic damage settlement funds negotiated by the Attorney General.
- Appropriates economic damage settlement funds to Triumph Gulf Coast. After reasonable and necessary payment of attorney fees, costs, and reasonable expenses, the bill requires settlement funds received by the state prior to June 30, 2017, to be transferred to the Recovery Fund no later than August 1, 2017.
- Creates a recurring appropriation to Triumph Gulf Coast to ensure that settlement funds received by the state on or after July 1, 2017, are transferred to the Recovery Fund within 30 days of receipt by the state.
- Removes the requirements that Triumph Gulf Coast retain an independent financial advisor, economic advisor, or money manager. The State Board of Administration would absorb such duties.
- Removes the requirement that K-20 institutions have a "home campus" within the disproportionately affected counties in order receive grant awards for programs of excellence, allowing K-20 institutions to be eligible for such awards so long as the institution has a campus within the disproportionately affected counties.

- Adds two members to the board of directors of Triumph Gulf Coast, Inc., with the Senate President and the Speaker of the House of Representatives each appointing an individual from one of the lesser-populated counties within the disproportionately affected counties.

Update: On Wednesday, the (S) Appropriations Committee adopted a strike-all for CS/SB 364. The strike-all:

- Provides revised definitions for “public infrastructure,” “awardee,” and clarifies that the “settlement agreement” refers to the agreement reached between gulf states and BP in 2015 as a part of the settlement in the case of In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico;
- Provides that 75% of all payments to the state pursuant to the settlement agreement after Jan. 1, 2017, be transferred from the General Revenue Trust Fund immediately to the Triumph Gulf Coast Trust Fund. No more 0.75% of these funds can be used for administrative costs. At least 32% of remaining funds must be allocated to board projects within the eight disproportionately affected counties identified as “public infrastructure”:
  - o Roads
  - o Bridges
  - o Seaports
  - o Rail Transport
  - o Traffic signals
  - o Under & above ground utilities
  - o Fuel storage and transmission
  - o Hazardous waste disposal & handling
  - o Information storage and distribution
  - o Water supply maintenance & distribution
  - o Wastewater treatment & disposal
- No county may receive less than 4% of the settlement distribution;
- Before June 30, 2017, 30% of funds must be transferred to the counties, with no less than 5% going to each county, and must go to addressing impacts of the Deepwater Horizon Incident;
- Provides that interest earned in the trust account shall be deposited monthly into the Triumph Gulf Coast Trust Fund. Triumph Gulf Coast, Inc., may invest surplus funds in the Local Government Surplus Funds Trust Fund, pursuant to s. 218.407, F.S., and interest earned and net of fees must be transferred monthly into the Triumph Gulf Coast Trust Fund;
- Provides that the annual salary of any employee or contracted administrative staff may not exceed \$130,00, nor may any associated benefits exceed 35% of that salary;
- Requires Triumph Gulf Coast, Inc. to publish a summary of every project it intends to award funds to on its website at least 14 calendar days before doing so; and
- Adds support programs to provide transferable workforce skills to people within the affected counties.

Two additional amendments to the strike all were also made in committee. The first makes a technical change. The second clarifies that only projects reviewed and approved by the appropriate board of county commissioners in the affected counties may receive funds.

CS/CS/HB 364 will now be placed on the Second Reading Calendar in the Senate.

### **Water Resources (PCS/SB 10 & HB 761)**

Background: In 2000, Congress, as part of the Clean Water Act, approved implementation of the Comprehensive Everglades Restoration Plan (CERP) as a means of bringing all major water projects tied to Everglades restoration under one state-federal umbrella. Many of the current reservoirs, the Aquifer Storage & Recovery (ASR)



systems, Stormwater Treatment Areas (STAs) and other projects that have been built or are under construction are integrated parts of CERP.

In 2008, then Gov. Charlie Crist signed the River of Grass agreement with the US Sugar Corporation, which contained options to buy more than 187,000 acres in the Everglades Agricultural Area (EAA) for purposes of constructing a more historical “flow-way” from the lake to the Everglades. Because of the magnitude of this acquisition, many CERP projects were put on indefinite hold to re-evaluate their design aspects to account for this prospective purchase. Eventually the SFWMD, citing lack of available funding, opted to buy only 26,800 acres of land. Under an amended agreement with US Sugar that same year, the SFWMD retained the right under three different options to purchase the remaining 153,200 acres. The first two options have since expired. The remaining third option allows the SFWMD to purchase the land at “fair market value” in competition with other buyers.

Proposed Changes: This PCS would require the SFWMD to implement one of three options:

- Option A requires the SFWMD to seek out proposals from willing sellers within the Everglades Agricultural Area to purchase enough land to build one or two reservoirs equaling 360,000 acre-feet of water storage. The SFWMD may not exercise its powers of eminent domain under this option.
- Option B requires the SFWMD, if they are unable to purchase the necessary land from independent sellers under Option A, to purchase the land from US Sugar under the terms of the 2010 River of Grass Agreement.
- Option C, to be exercised if the SFWMD is unable to purchase any land under Options A or B, requires funds from the Land Acquisition Trust Fund for CERP to be increased by \$50 million per year, with a portion of those funds going towards future land acquisitions in the EAA for reservoir construction purposes. Under each option the SFWMD, unless other funding is available, is required to begin the planning study under CERP for the Everglades Agricultural Area Reservoir project component by certain dates. If land is acquired under Options A or B, the bill authorizes the distribution of \$1.2 billion in Florida Forever bonds and provides contingent appropriations for the debt service payments on such bonds. The bill requires that the SFWMD seek any applicable federal credits towards the reservoir project.

The PCS also:

- Creates the Coast-to-Coast Comprehensive Water Resource Program and transfers \$3.3 billion of bonding authority from the Florida Forever Trust Fund to this newly created program. The duration of each series of bonds issued cannot exceed 20 annual maturities, and the amount of documentary stamp tax that may be pledged to service these bonds is also limited.
- Requires the SFWMD to give preferential consideration to hiring agricultural workers displaced as a result of the reservoir project, consistent with their qualifications and abilities, for the construction and operation of the reservoir project.
- Reduces the amount that can be bonded by Florida Forever for land acquisition and improvement from \$5.3 billion to \$2 billion.
- Requests the Army Corps of Engineers, in re-evaluating its Lake Okeechobee Regulation Schedule, to consider the effect of repairs made to the Herbert Hoover Dike as well as the construction of any new storage south of the lake.
- Creates the Water Protection & Sustainability Program Trust Fund, a new water storage facility revolving loan fund. The DEP would be authorized to award loan amounts for up to 75 percent of the cost of planning, designing, constructing, upgrading, or replacing water resource infrastructure or purchasing land for water storage facilities. Alternative water supply and water sustainability projects would be given priority under this program.
- Makes the payment of debt service or funding of debt service reserve funds, rebate obligations, or other amounts payable to water resource protection and



development bonds issued under this bill's provisions a 1st priority for LATF funding.

- Designates the EAA Reservoir Project, C-34 West Basin Storage Reservoir, C-44 Reservoir, Western Everglades Restoration Project, C-111 South-Dade Project, and Picayune Strand Restoration Project as priority projects for LATF funding under CERP.
- Appropriates \$35 million LATF funds annually to the St. Johns WMD for St. John's River and Keystone Heights' restoration projects, and \$2 million for projects in the Florida Keys relating to water supply, stormwater collection, sewage treatment and disposal, and canal restoration & muck removal.
- Appropriates \$20 million to offset damages to property owners incurred due to retrofitting onsite sewage treatment and disposal systems in order to cleanup Indian River Lagoon, and the St. Lucie and Caloosahatchee estuaries.
- Creates a water reuse grant program. The DEP would be authorized to grant up to 100 percent of the cost for planning, designing, constructing, upgrading, or replacing infrastructure designed to expand a facility's capacity to make reclaimed water available for reuse.

Update: On Wednesday, the (S) Appropriations Committee took up CS/SB 10 for consideration. The committee adopted another PCS for the bill, as well as one late filed amendment to the PCS. The amended PCS does the following:

- Requires the SFWMD to develop a plan to provide a minimum of 240,000 acrefeet of storage through a deep storage reservoir and water quality treatment features, using the A-2 parcel, land swaps, and purchases. The district may consider alternate configurations using the A-1 parcel if a minimum of 360,000 acre-feet of additional storage can be achieved (60,000 acre-feet currently provided by A-1 FEB);
- Requires the SFWMD to use DMSTA2 modeling to determine the amount of acreage needed in order to meet water quality standards;
- Directs the SFWMD to negotiate modifications of lease terms on state and district owned lands to make land available for the reservoir project;
- Directs SFWMD to negotiate for the acquisition of privately owned property if needed for the reservoir project through purchase or land swap;
- Moves up the date for the EAA reservoir project planning study to commence if Congressional approval of the post-authorization change report has not occurred;
- Clarifies that ongoing Comprehensive Everglades Restoration Plan (CERP) projects will continue to receive funding;
- Authorizes the district to begin planning and discussion with the owners of the C-51 Reservoir project to determine if the state should acquire or enter into a public private partnership for this water storage facility that will add approximately 60,000 acre-feet of storage south of the Lake;
- Establishes the Everglades Restoration Agricultural Community Training Program in DEO for the purpose of stimulating and supporting training and employment programs, to match state and local training programs with identified job skills associated with non-agricultural employment opportunities in areas of high agricultural unemployment. The bill expresses the Legislature's intent to promote the implementation of the Airglades Airport in Hendry County and an inland port in Palm Beach County to create job opportunities in areas of high agricultural unemployment;
- Establishes a revolving loan fund to provide funding assistance to local governments and water supply entities for the development and construction of water storage facilities;
- Revises the uses of the Water Protection and Sustainability Program Trust Fund to include the water storage facility revolving loan program;
- Provides funding for the reservoir projects, including an authorization to bond funds from the Land Acquisition Trust Fund (LATF). The total cost is reduced

from \$2.4 billion to approximately \$1.5 billion, half of which could be paid by the federal government. The amendment includes an appropriation of \$64 million from the LATF for the 2017-18 Fiscal Year; and

- Allows for funds not spent on the reservoir projects to be used for other Everglades Restoration projects as provided in Legacy Florida.

The adoption of the PCS was followed by a very long Q & A session with the bill sponsor. Discussion mainly revolved around the implementation of the proposed land buys, including details of how the SFWMD may substitute a big land purchase in the EEA with dozens of other purchases in lands contiguous to the EAA that may either be swapped with the growers or otherwise co-opted into the project. Questions at times also turned to implementation of the jobs component of the bill, namely over how agriculturally trained workers might be retrained or integrated into any project workforce dealing with reservoirs or other works.

Sen. Bradley acknowledged that the most significant challenge facing the project was not in finding enough land for storage, but in finding enough land adjacent to the storage areas for treatment of the water before it enters the Everglades system, where it must meet state and federal water quality standards.

Sen. Simmons, in offering an amendment that he later withdrew, gave an impassioned plea to focus attention and state funds on repair and maintenance of the Herbert Hoover Dike, citing a report by the National Academy of Sciences, Engineering, & Medicine, as well as a 2005 letter from then Governor Jeb Bush identifying the HHD as a top funding priority. He argued that only by fixing the dike and re-adjusting the lake's regulation schedule can the SFWMD begin to accurately gauge how many additional acre ft. of storage is actually needed, whether south or north of the lake.

Public comment as usual was dominated by the two main groups of stakeholders who have become entrenched on opposite sides of this proposed measure: sugar growers and the rural communities they employ spoke against the bill, while environmentalists and coastal communities spoke in favor of it.

This was the last committee of reference for PCS/SB 10. HB 761 is still in the (H) Natural Resources & Public Lands Subcommittee. The Senate will hear the bill on the floor on Wednesday, April 12th. Additional amendments are expected.

### **State Park Fees (CS/CS/HB 185 & CS/CS/SB 64)**

Background: The Division of Recreation and Parks (DRP) within the DEP manages 163 parks and 11 state trails covering 800,000 acres, 100 miles of beaches, and more than 1,500 miles of multi-use trails.

The division may charge reasonable fees, rentals, or charges for the use or operation of facilities and concessions in state parks. Entrance fees and camping fees vary among the parks. Individuals may also purchase an annual pass that allows entrance into Florida State Parks in lieu of entrance fees for one year from the month of purchase. Certain individuals may use a variety of discounts and fee waivers to visit Florida State Parks and use the facilities.

Proposed Changes: This bill provides free annual passes and a 50% discount on base camping fees at state parks for the following two groups:

1. Families operating a licensed foster home under s. 409.175, F.S.; and
2. Families who have adopted a special needs child, as described in s. 409.166(2)(a)2., F.S., from the Department of Children and Families.

The division would be given rulemaking authority to identify the types of written documentation that must be provided in order to receive these benefits, which it must do in consultation with the Department of Children and Families.

Update: On Wednesday, the (S) Appropriations Committee adopted a PCS for CS/SB 64 and one amendment to that strike-all. The amended PCS provides free annual state park entrance passes and a 50 percent discount on base campsite fees to foster families, as well as a one-time free annual state park entrance pass and 50% discount on camp fees for any family that adopts a disabled child. The free pass will would be provided at the time of adoption.

CS/CS/SB 64 will next be placed on the Second Reading Calendar. CS/CS/HB 185 is currently in the (H) Government Accountability Committee.

### **Sharks (CS/CS/HB 823 & CS/CS/SB 884)**

Background: Shark finning is the process of catching a shark, removing its fins, and discarding the rest of the shark. Shark fins command a high price on the black market, where they are often sold as a key ingredient in shark fin soup. A single fin from some large species can command prices as high as \$20,000. Fins command a far higher value per pound than the rest of the fish. Shark-fanners often throw the shark back into the ocean alive once they have removed the fins. Unable to swim properly, sharks either bleed to death or suffocate. This practice has decimated shark populations around the world, removing a vital apex predator from the food chain and disrupting other fish stocks as the result of by-catch from shark fishing methods.

Congress banned shark finning in U.S. waters in 2000 under the Shark Conservation Act. In Florida, fisherman may only catch one shark per day and a maximum of two sharks per vessel per day even if more than two fishermen are on board. Fishermen may only take sharks by hook-and-line gear. All sharks harvested in Florida waters must be landed in whole condition. Individuals may not possess a shark that has had the head removed, been divided, filleted, ground, skinned, finned, or had the caudal (tail) fin removed while in or on the waters of the state, on any public or private fishing pier, or on a bridge or catwalk attached to a bridge from which fishing is allowed. Fishermen may eviscerate or gut the shark or slice the base of the caudal fin to bleed the carcass as long as the caudal fin remains attached before landing.

Proposed Changes: This bill further tightens current restrictions on shark fishing in the state. It defines “landing” as the act of bringing the harvested organism, or any part thereof, ashore. It prohibits the possession of a fin separated from a shark on the waters of the state or landing said fin ashore, unless such possession is authorized by FWC rule or the fin is lawfully obtained on land for taxidermy purposes. It provides penalties for 1st, 2nd, and 3rd time offenders with a commercial fishing license according to the following schedule:

- 1st time offense – 2nd degree misdemeanor, punishable as provided in s.775.082 or s. 775.083, with the addition of an administrative fine of \$5,000 and suspension of the harvester’s saltwater license privileges for 180 days;
- 2nd time offense – 2nd degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, with the addition of an administrative fine of \$10,000 and suspension of the harvester’s saltwater license privileges for 180 days; and
- 3rd and subsequent offenses – 1st degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, with the addition of an administrative fine of \$10,000 and permanent suspension of the harvester’s saltwater license privileges.

Violators suspended under this chapter will not be permitted to engage in saltwater fishing or even step foot on a vessel where fishing occurs. For non-commercial violators, the penalties are similar, except that third and subsequent violations only merit administrative fines between \$5,000 and \$10,000.

The House version is similar to the Senate version, except that it provides slightly lighter penalties for possession of a shark fin. It provides the following penalties:

- On the 1st offense (chargeable as a 2nd degree misdemeanor), a \$4,500 administrative fine and suspension of all license privileges under the chapter for

180 days.

- On the 2nd offense (chargeable as a 2nd degree misdemeanor), a \$9,500 administrative fine and suspension of all license privileges under the chapter for 365 days.
- On the 3rd and subsequent offenses (chargeable as 1st degree misdemeanors), a \$9,500 administrative fine and permanent revocation of all license privileges under the chapter.

Update: On Thursday, the (S) Appropriations Committee adopted a strike-all to CS/SB 884. The strike-all was technical, correcting duplicative language. This was the last committee of reference for CS/CS/SB 844. CS/CS/HB 823 is currently in the (H) Government Accountability Committee.

### **Public Notification of Pollution (CS/SB 532 & HB 1065)**

Background: Many commercial, industrial, agricultural, and utility operations & entities are required to report various releases, discharges, or emissions, either as a condition of permitted operations or pursuant to law or rule. Under state law, to the extent notification is required, it typically must be made to the DEP.

In 2016, the DEP initiated rulemaking to establish a requirement for public notification of pollution release from installations throughout the state. This rulemaking was challenged in administrative court by several commercial associations, who argued that the DEP had over-stepped the authority granted to it in statute.

In November of last year, an administrative law judge ruled in favor of the petitioners, holding that the DEP lacked the rulemaking authority for its proposed rules. The final order concluded that the authorities cited by the DEP as providing it with the statutory authority to adopt the rule were only general grants of authority and not specific enough to authorize the DEP to require that owners and operators of installations provide notices to local governments, the general public, and broadcast media.

Proposed Changes: This bill creates the Public Notice of Pollution Act. The Act requires the DEP to publish a list of substances at specified quantities that pose an immediate and substantial risk to the public health, safety, or welfare. Releases of these substances at the quantities specified are “reportable releases.”

The owner or operator of any installation where a reportable release occurs and who has knowledge of it must provide a notice of the release to the DEP. The notice must be submitted to the DEP within 24 hours after discovery of the reportable release and must contain the detailed information described in the bill about the installation, the substance, and the circumstances surrounding the release.

The DEP would be required to publish each notice on the Internet within 24 hours after it receives the notice. It must also create a system for electronic mailing that allows interested parties to subscribe to and receive direct announcements of notices received by the DEP. The bill provides that submitting a notice of a reportable release does not constitute an admission of liability or harm. Finally, the bill provides for \$10,000 per day in civil penalties for violations of these notice requirements and authorizes the DEP to adopt rules to administer said penalties.

Update: On Thursday, the (S) Appropriations Committee passed CS/SB 532 without amendment. It has been put on the Special Order Calendar for consideration on Wednesday, April 12th

. Its House companion, HB 1065, is still in its first committee of reference and has not moved.

### **Natural Hazards (SB 464 & CS/HB 181)**

Background: In order for state, tribal, and local governments to receive a FEMA mitigation grant, the applicant must produce a hazard mitigation plan approved by FEMA

that conforms to certain requirements. At a minimum, the plan must outline processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government. Jurisdictions must update their plans and re-submit them to FEMA every five years to maintain eligibility.

Florida's Division of Emergency Management (FDEM) is responsible for updating and maintaining the state's Enhanced Hazard Mitigation Plan in order to comply with FEMA requirements. The FDEM accomplishes this with the collaboration and coordination of an advisory team known as the State Hazard Mitigation Plan Advisory Team (SHMPAT). SHMPAT participants include numerous state agencies, regional planning councils, water management districts, state universities, government entities, and other community stakeholders. The primary function of SHMPAT is to assist the FDEM with the development, implementation, and maintenance of the state hazard mitigation plan, comment on draft versions, and maximize the leveraging potential of all state mitigation related resources.

**Proposed Changes:** This bill creates a natural hazards inter-agency workgroup for the purpose of sharing information on the current and potential impacts of natural hazards throughout the state, coordinating ongoing efforts of state agencies towards addressing the impacts of natural hazards, and collaborating on statewide initiatives to address those impacts. The work-group would be comprised of liaisons from each agency within the state executive branch, each water management district, and a representative from the Florida Public Service Commission, as well as a representative from the FDEM to act as the main coordinator of the group.

The FDEM would be charged with preparing an annual report on behalf of the workgroup, starting on January 2019 and continuing every year thereafter, regarding implementation of the state's enhanced hazard mitigation plan as it relates to natural hazards.

The term "natural hazards" in the bill includes, but is not limited to: extreme heat, drought, wildfires, sea-level change, high tides, storm surge, saltwater intrusion, stormwater runoff, flash floods, inland flooding, and coastal flooding.

The House version of this bill provides an appropriation of \$84,738 in recurring funds and \$4,046 in non-recurring funds from the Grants & Donations Trust Fund to the FDEM and one full-time position and associated salary rate of \$47,000 for the purpose of implementing the act

**Update:** The (S) Rules Committee passed SB 464 on Thursday without amendment. This was the last committee of reference for the Senate bill. The House bill, CS/HB 181, has been received by the Senate and referenced to committees. This bill is positioned for passage.

### **Onsite Sewage Treatment & Disposal Systems (CS/CS/CS/HB 285)**

**Background:** Septic systems, or onsite sewage treatment and disposal systems (OSTDS), are generally regulated and overseen by the Department of Health of each county in accordance with state law. The OSTDS duties of DOH include application reviews, site evaluations, permitting, complaint investigations, and inspections. Before covering with earth and placing a system into service, a person installing or constructing any portion of an OSTDS is required to notify the county health department of the completion of the construction activities and have the system inspected by DOH for compliance. In addition, DOH is authorized to adopt rules to administer recommended standards, including disclosure requirements, for voluntary system inspections. However, current law prohibits a governmental entity from mandating an inspection of a system at the point of sale in a real estate transaction.

Current law also provides that counties may opt in to the state DOH's evaluation and assessment program for septic systems. This program requires inspections every five



years. The exception to the voluntary participation rule are counties containing a first magnitude spring, which must opt out in accordance with a specified process. According to the DOH, every county that had a 1st magnitude when the program was enacted elected to opt out of the program rather than abide by its regulations. No local government as of yet has chosen to opt in to the program.

**Proposed Changes:** This bill requires the DOH to survey and identify every septic tank system in the state by Jan. 1, 2017, and to incorporate that information within the existing septic tank database system. The survey must, at minimum, include the total number of septic systems in the state, the total number of systems in each county, and a statewide map of these systems, including their location and condition. It also provides a disclosure at point-of-sale requirement for homes that have a septic system, and provides the form and wording of the disclosure to prospective buyers.

**Update:** On Thursday, the (H) Commerce Committee passed CS/CS/HB 285 with one amendment. The amendment revises the length and wording of the point-of-sale disclosure, still advising that the homeowner get the tank inspected but not pressing too hard on the point.

This was the last committee of reference for CS/CS/CS/HB 285. There only potential vehicle on the Senate side is SB 874, which is currently in (S) Environment and Natural Resources Appropriations Subcommittee.

### **Building Code Administrators & Inspectors (CS/CS/HB 909 & CS/CS/SB 860)**

**Background:** In order to become a certified building code inspector or plan examiner, applicants must first sit for an exam for which one of six pre-qualifications must first be met. Some inspectors are listed as private providers, who are limited by law from inspecting residential buildings larger than 1,000 square feet (other private providers in this category are exempt from this limitation).

**Proposed Changes:** This bill would add a seventh qualification an applicant can meet in order to sit for the plans examiner or inspector exam. The bill provides that a person may sit for the plans examiner or inspector examine if:

- He or she completes a four-year internship with a building official, while being employed full time by the city, county, or local jurisdiction; and
- He or she passes an exam administered by the ICC, passes a principles and practice exam, and passes an approved 40-hour training course.

The bill also provides:

- That partial completion of the internship program may be transferred between jurisdictions rather than have the applicant being required to complete the internship with one city, county, or local jurisdiction.
- That an inspector or plans examiner may seek additional category certifications as an inspector or plans examiner by completing additional one-year internship programs, passing an exam administered by the ICC, and passing a board approved 40-hour course.
- Reciprocity with any other state that requires an examination administered by the ICC.
- That an applicant for certification may apply for a one-year provisional certificate before completing the internship program if the applicant has not passed the principals and practice examination or the 40-hour code training courses.
- That in addition to performing a plans exam or inspection in the building official's jurisdiction, a building official may perform a plans examination or inspection in a jurisdiction having a population of 50,000 or less under an interagency agreement.
- Amends the definition of "Building code inspector" to include any person contracted for construction regulation responsibilities who conducts inspections;
- Amends the definition of "Building code administrator" to include any person



contracted for building construction regulation responsibilities who conducts supervision, and excludes a person performing a plan review or inspection under an interagency agreement with a different jurisdiction from that definition;

- Clarifies that nothing in the bill shall prohibit a local government, school, state agency, university, or community college from contracting with any person for construction regulation responsibilities; and
- Clarifies that the Department of Business & Professional Regulation may review and approve home inspector exams by a nationally recognized entity provided those exams meet standards defined by rule and are certified by DBPR.

(Removed from House Ver.)

Lastly, the bill amends the current definition of private providers in statute who are not limited to square footage to include building officials. This would allow private building inspectors and plans examiners to review residential buildings larger than 1,000 sq. ft.

Florida Building Code (Senate Version)

Background: Current law requires the Florida Building Commission to revise the Florida Building Code every three years by adopting the most recent version of the International Code Council I-Code and then making whatever changes it deems necessary to account for Florida conditions. Under this arrangement, amendments made to the state code are only effective until the next edition of the I-Code is adopted, whereupon the Commission must make those amendments again to maintain a continuously uniform state code.

Proposed Changes: This bill would flip the process around. Instead of being required to automatically adopt the I-Code, the Commission would be authorized to work with the 6th Edition of the Florida Building Code and any later editions as its base, adopting whatever changes are made to the I-Code into the state code as it deems appropriate. The bill would require a two-thirds vote by the Commission to re-adopt the state code.

The Senate Version of this bill also provides that pool or spa contractors are not required to subcontract certain types of basic electrical installation, replacement, disconnection, or reconnection of wiring on the load side of their equipment, but must do so when making these same modifications to a circuit breaker.

Update: On Thursday, the (H) Commerce Committee adopted three amendments to CS/HB 909. The first amendment allows currently designated standard certified building officials under an inter-agency service agreement within a jurisdiction that has a population of 50,000 or less to conduct plan reviews and certified inspections. The second amendment allows an applicant for building code inspector or plans examiner certification to apply for a provisional certification for the duration of his or her internship period.

The third amendment removed the provision requiring exams already recognized by a national entity to meet national standards defined by rule and be certified by the DBPR. This was the last committee of reference for CS/CS/HB 909. CS/CS/HB 860 is currently in the (S) Appropriations Committee.

### **Construction (CS/CS/HB 1021 & SB 1312)**

#### **Solar Energy Certification**

Background: The Florida Solar Energy Center (FSEC) was set-up in 1976 to serve as the state's main solar energy research institute. For decades, the FSEC has been charged with setting standards and testing criteria for solar energy devices sold in Florida.

In 2009, an OPPAGA study found a significant back-log in the number of solar energy systems awaiting FSEC certification.

Proposed Changes: This bill would remove the requirement that the FSEC certify all solar energy devices. It provides that a solar energy device may meet state certification requirements by meeting the standards of any "recognized certifying entity" that certifies

such equipment pursuant to NREL standards. However, the NREL does not currently set such standards.

### **Construction Industry Workforce Taskforce**

Background: In 2016, the Legislature created the “Construction Industry Workforce Taskforce” (CIWT) to address the construction industry labor force shortage in the state. The CIWT proposed a number of changes, including the expansion of apprenticeship programs and study to explore how current secondary and higher education programs might be utilized towards that goal.

Proposed Changes: This bill requires the DOE and DEO to create a study on how to implement the recommendations of the CIWT, which must be provided to the Governor, President of the Senate, and Speaker of the House of Representatives before January 9, 2018. The study must address:

- Expanding the definition of “local education agency,” as used in apprenticeship programs, to include nongovernmental entities, private training organizations, industry trade organizations, labor unions, or other community-based organizations;
- Determining the appropriateness of transferring apprenticeship programs from the DOE to DEO;
- Providing clarity on how current apprenticeship programs are funded from the state to the local educational agencies and what options such agencies have in how they spend apprenticeship funding;
- Requiring the State Board of Education to accept the curriculum developed by the NCCER or other comparable national curriculum, as satisfactory courses for high school credit, college credit, or state-supported scholarships;
- Providing additional support to K-12 programs to ensure construction-related education programs are offered through existing career and technical education programs; and
- Authorizing an alternative instructor certification process through the DOE which does not require certification through local educational agencies.

The bill also requires Career Source Florida (CSF) to fund construction training programs using existing federal funds awarded to CSF for training purposes. CSF must use the Florida Rebuilds Initiative as the implementation model.

Lastly, the bill requires the DBPR to provide funds of \$150,000 to the University of Florida School of Construction Management for the continuation of the CIWT. The funds will be provided from the DBPR Building Permit Surcharge trust fund. (Removed from House Ver.)

### **Florida Building Code**

Background: Section C408 of the 5th edition of the Florida Building Code (FBC) requires a commercial building to receive a commissioning report prior to receiving a passing mechanical final inspection. Heating, ventilation, air conditioning, and the lighting systems are tested in the report.

Such standards are also required of HVAC engineers and technicians through their regulatory body, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHREA)

Proposed Change: The bill provides that the FBC will eliminate duplicate commissioning reporting requirements for HVAC and electrical systems. The bill also authorizes electrical or mechanical engineers to provide commissioning reports in addition to a licensed design professional.

Lastly, it prohibits any political subdivision of the state from adopting or enforcing any ordinance, building permit, or requirement that impairs or conflicts with advertising and signage. (House Ver. Only)

## Local Government Fees

Background: With the exception of certain facilities, FBC enforcement of construction is the responsibility of local governments. Local governments are authorized to provide a schedule of consistent reasonable fees to be used solely for carrying out their responsibilities in enforcing the FBC. These fees include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including re-permitting fees, time extension fees, re-inspection fees, and licensing fees.

Proposed Changes: This bill prohibits local jurisdictions from requiring payment of any additional fees for obtaining permits, if proof of licensure pursuant to ch. 489, F.S., and insurance coverage required by ch. 440, F.S., has been previously provided and recorded. The bill also prohibits a local jurisdiction from requiring an owner of a residence to obtain a permit to paint his or her residence regardless of whether the owner is a limited liability company.

## Fire Prevention

Background: State law requires all municipalities, counties, and special districts with fire-safety responsibilities to enforce the Florida Fire Prevention Code (FFPC) as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements

Proposed Changes: This bill prohibits local governments from requiring a separate water connection for a residential fire-sprinkler system for a dwelling if the dwelling's original water connection is adequate and prohibits a local government from charging certain fees for larger water meters.

Update: On Thursday, the (H) Commerce Committee passed CS/HB 1021 with seven amendments. The amendments make the following changes:

- Provide intent language to a section of statute allowing building owners to use a private building code inspector. It provides that it is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency and reduce the permit fees accordingly;
- Provide that an engineer who fails to disclose to a potential customer prior to contracting whether or not he or she maintains professional liability insurance, or the limits of that insurance policy, is grounds for disciplinary actions by the Board of Professional Engineers;
- Exempt municipal gas utilities from construction contracting regulations under ch. 489, F.S. (Public utilities in general are exempt from these regulations);
- Provide that solar energy systems may be certified by a state-licensed engineer in accordance with standards contain in the Florida Building Code;
- Remove a provision prohibiting local enforcement agencies from charging additional fees to apply for or pull a permit if proof of licensure is provided and recorded. The provision is instead revised to include independent and special districts to the list of entities that are prohibited from charging additional fees tied to certain activities already listed in that statute;
- Remove the requirement that the Department of Education submit its study on implementing the recommendations of the Construction Industry Workforce Task Force to the Legislature. Instead, it would submit the report directly to the Task Force itself. CareerSource Florida would also be charged with developing a similar plan using federal funds to be submitted to the same Task Force; and
- Require the Florida Building Commission to adopt an amendment to the code regarding certain door components.

This was the last committee of reference for CS/CS/HB 1021. SB 1312 is currently in (S) Community Affairs, which is scheduled to meet week 7.

### ***LOCAL ISSUES***

#### **Palm Beach County Criminal Justice Commission Will Pay For Database**

*By Palm Beach Post*

The Palm Beach County Criminal Justice Commission will use \$50,000 in county money to pay part of the tab for a program that compares crimes and criminals. Since the 2014-2015 budget year, the Florida Department of Law Enforcement has given money for the Palm Beach County-based Law Enforcement Exchange program (LEX). The database, founded in the 1990s, compares dates and times, methods of operation, descriptions of people or vehicles, and other aspects of both solved and unsolved crimes.

#### **Editorial: Fight Proposed State Laws That Would Strong-Arm Town**

*By Palm Beach Daily News*

New legislation under consideration in Tallahassee would strip local communities of the ability to set many laws regarding business, home ownership and taxes. Palm Beach officials are alarmed - and rightfully so. Such proposals would change life on the island. Mayor Gail Coniglio, who also is a vice president of the Palm Beach County League of Cities, said all 39 municipalities are "standing shoulder to shoulder" opposing the proposals, which have a one-size-fits-all mentality. She and others are ready to take on Tallahassee. Residents should be on alert as well.

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Mary Lou Berger

Mack Bernard

**County Administrator**

Verdenia Baker



## **Palm Beach County Appropriations**

*By County Staff*

### **Local Bills**

The local bills for the West Palm Beach Police Pension Fund and the Building Code Advisory Board were on the Government Accountability Committee agenda on Thursday. The Committee was not able to hear all the bills in its allotted time. The bills will be continued to the next House Government Accountability Committee which will take place during week 7 of Session.

### **Solid Waste Authority**

On Thursday, local bill HB 531 by Representative Lori Berman, passed out of the House Government Accountability Committee. HB 531 will allow private companies in a contract with the Solid Waste Authority to depreciate their equipment over seven years, which is the industry standard, rather than five. Seven-year contracts would encourage competition for future franchise awards and haulers can depreciate the cost of equipment over a longer period of time. With the increased competition and reduced costs, lower fees are expected for ratepayers.

HB 531 has been placed on the House Calendar.

### **SB 10 - Relating to Water Resources**

Wednesday, the Senate Appropriations Committee approved an amended version of SB 10 by Senator Rob Bradley. SB 10 establishes options for additional water storage south of Lake Okeechobee to reduce the damaging discharges to the St. Lucie and Caloosahatchee estuaries. The amended bill, a priority of Senate President Joe Negron, reduces the total cost of the plan from \$2.4 billion in state and federal funds, to \$1.5 billion. The state's share would be \$750 million and the federal government would be expected to match the remaining \$750 million. Additionally, the size of the reservoir has been reduced from 60,000 to 14,000 acres. The amendment also provides grants to establish training programs for agricultural workers and promotes the implementation of the Airglades Airport in Hendry County and an inland port in Palm Beach County to create job opportunities in the area.