

2011 FAC Legislative Wrap-Up Series



FLORIDA ASSOCIATION OF COUNTIES
MAY 11, 2011

Agenda



- Growth Management and Transportation
- Environmental Issues
- Pretrial Release
- Finance and Tax

Growth Management Summary



- **DCA Priorities**
 - Statewide Application of Alternative Review Process
 - Focus State Review on Compelling State Interests
 - Statewide Application of Optional Sector Planning

Growth Management Summary



- **Primary Bills**

- SB 1122 – Growth Mgt. Overhaul (Bennett)
- SB 1904 – Sector Planning (Altman)
- HB 7129 – Growth Mgt. Overhaul (Workman)
- HB 7207 – Budget Conforming Bill

Growth Management - HB 7207



- Major overhaul of Growth Management Act
- Repeal of 9J-5
 - Minimum Standards Placed in Statute
- Eliminates financial feasibility
- CIE Simplified
 - Review / Updates Required Annually
 - Not Subject to State Review

Growth Management - HB 7207



- Eliminates transportation, school, & parks concurrency as a statewide requirement.
 - Local Option Not Preempted

- Alternative State Review Process is standard review process, with changes.
 - ✦ Renamed: “Expedited State Review Process”
 - ✦ Does not apply to ACSC, Sector Plans, RLSAs and EARs
 - State Coordinated Review Process

Growth Management - HB 7207



- **Dense Urban Land Area (DULA) Eliminated**
 - No longer needed for concurrency exemptions
 - Definition retained for DRI exemptions only

- **Definition of Urban Service Area Changed**
 - Broader / Less Rigid

Growth Management - HB 7207



- Twice / year limit on amendments eliminated
- State agencies can only comment on state resources within their jurisdiction
- State can only challenge amendment based on review agency comments

Growth Management - HB 7207



- Comments on state resources that would be adversely impacted, if not resolved, may result in challenge by State Land Planning Agency (SLPA)
- Affected persons can challenge within 30 days

Growth Management - HB 7207



- **Evaluation and Appraisal Report (EAR)**
 - Requires local review once every 7 years.
 - If updates are required, must notify State Land Planning Agency in writing of proposed changes within one year.
 - Updates require plan amendments, which are subject to standard state review process.

Growth Management - HB 7207



- **Sector Planning**
 - Removes Pilot Program & Limitations on Sector Plans
 - Establishes 15,000 Acres as minimum size
 - Does not require demonstration of need

Permit Extensions



- Previous Permit Extensions

- 2009 (SB 360)

- ✦ 2-year extension.
- ✦ Expiration date between Sept. 1, 2008 – Jan. 1, 2012.
- ✦ Law challenged in court.

- 2010 (SB 1752)

- ✦ Reauthorized 2-year extension from SB 360.
- ✦ Granted an additional 2-year extension (if acted on).
- ✦ Expiration date between Sept. 1, 2008 – Jan. 1, 2012.

Permit Extensions



- ▶ 2011 (HB 7207)
 - Creates an additional 2-year extension
 - Extension is limited to those that did not receive both extensions allowed under SB 1752.
 - That is, HB 7207 caps the total extensions from 2009 – 2011 to 4-years.

Growth Management - HB 7207



- **Proportionate Share Mitigation**
 - Attempts to clarify how formula is calculated and applied for transportation improvements.
 - Requires FDOT to conduct a study and provide a report to the Legislature by December 1, 2011
- **Century Commission Abolished on June 30, 2013**

DCA Reorganization - SB 2156



- **Creates the Department of Economic Opportunity**
 - Transfers the Divisions of Community Planning and Housing and Community Development to new agency
- **Defines new agency as the State Land Planning Agency**
 - State planning review functions to be under new Division of Community Development
- **Division of Emergency Management (DEM) is administratively moved the Executive Office of the Governor.**
- **Building Code Compliance transferred to DBPR**
- **Florida's Community Trust transferred to DEP**

Transportation



- Major Transportation Packages Died
 - ✦ HB 1363 / SB 1180

- Transportation Funding
 - \$150 mill trust fund sweep for FY 11/12
 - Permanent redirect from trust fund (doc stamp \$) to Department of Economic Opportunity”
 - ✦ FY 12/13 - \$50 mill.
 - ✦ FY 13/14 - \$65 mill.
 - ✦ FY 13/14 - \$75 mill. (each year thereafter)

Transportation Funding



- **County Grant Programs**
 - County Incentive Grant Program - \$55 mill.
 - Small County Outreach Program - \$21.3 mill.
 - Small County Road Assistance Program - \$10 mill.

Affordable Housing



- **Housing Trust Fund Cap Eliminated**
 - HB 639 (Rep. Aubuchon)
 - SB 912 (Sen. Bennett)

- **Housing Funding**
 - \$190 mill. trust fund sweep for FY 11/12
 - Beginning FY 12/13, permanent \$75 mill redirect to new Department of Economic Opportunity

Questions



Questions on Growth Management and
Transportation issues?

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Environmental Permit Streamlining



- HB 991/SB 1404
- 40 pages when filed – 80 pages when it passed the house
- 42 sections: comprehensive policy changes
- Local government impacts:
 - May not condition permit on other approvals
 - “Incentive-based” permitting
 - DRI exemption for solid mineral mining
 - Delegation or preemption > 400,000
- Senate bill never heard in committee
- Died in Messages
 - 3rd party “burden of persuasion” amended onto Rulemaking bill (SB 1382, HB 993); passed.

Fertilizer



- **HB 457/SB 606**
- **When filed:**
 - Removed legislative intent
 - Preempted to the State: sale, composition, formulation, packaging, use, application and distribution of fertilizer
 - Deleted provision allowing local governments to adopt more stringent regulations
- **FAC helped negotiate:**
 - Grandfather clause for existing ordinances (as of 7/1/11)
 - Retain legislative intent
 - Retain ability to adopt more stringent ordinances
 - Prospective preemption of sales, nutrient content level and release rates
- **Passed House / Senate Bill Died on Calendar**
- **Applicator Preemption Issue**
 - Certification and training
 - Limit to prohibited application period
 - BMP's and enforceability

Agriculture Bill



- SB 2076/HB 7215
- Comprehensive DACS revisions
 - Dairy Industry
 - Pest control regulations
 - Wildlife trappers
 - Tomato producers and packers
 - Frozen deserts
- Fertilizer Ordinance Grandfather Qualification
 - If county amends any portion of its ordinance, must comply with preemption language = loss of grandfathering
- FAC negotiated: Removal of the grandfather qualification, add fertilizer preemption language from HB 457
- Passed

Septic Tanks



- **HB 13/SB 1698**
- **SB 550 (2010):**
 - Established minimum effluent levels
 - Evaluation and Assessment Program:
 - ✦ 5-year cycle
 - ✦ DOH Rulemaking (procedures, standards and enforcement)
 - ✦ Minimum separation distance from drain-field to water table
- **HB 13**
 - Repeal of SB 550
 - Passed House / Died in Senate Messages
- **SB 1698 (as filed)**
 - Preemption of evaluation program to State: Mandate of costs to local governments (administration, data collection and tracking); Limited evaluation and repair standards

Septic Tanks (continued)



- **SB 1698 (FAC negotiated amendments)**
 - Grandfather clause for existing ordinances
 - Local government flexibility outside scope of program (to address public health, environmental and water quality issues)
 - No effect on required connection to central sewer systems
 - May implement in portions of county (First Magnitude Springs)
- **Died on Senate Calendar**
- **Appropriations Implementing Bill (SB 2002)**
 - DOH is funded only to complete Phases II and III of Nitrogen Reduction Study. Until complete, no state agency may adopt septic tank rules or policy.

Agricultural Wetlands Exemption



- HB 421/SB 1174
- Provides that persons engaged in agriculture may alter topography even if diverted water flow adversely impacts wetlands.
- Qualified activities disputes resolved by DACS.
- No mitigation required if agricultural activities occurred on the land in the four years prior to conversion.
- Amendments
 - Agricultural purpose must be consistent with “normal and customary practice” within the specific area.
 - Activities must implement DACS Best Management Practices or USDA practice standards.
- Passed

Bert J. Harris Act



- **HB 701/SB 998 by Sen. Simmons**
- **Proposed changes to Act:**
 - Waiver of Sovereign Immunity
 - Moratorium longer than one year may constitute “inordinate burden”
 - Notice period reduced from 180 days to 120 days
 - Adoption of ordinance does not constitute application to property (1 year to file claim)
- **FAC worked to negotiate amendments:**
 - Sovereign Immunity waived “only to the extent specified in section”
 - Temporary impacts “may, depending on circumstances” result in inordinate burden
 - 120 day notice increased to 150 days
 - “As applied” language to contemplate both adoption and application; Length of time between enactment and claim may be considered in determining inordinate burden
- **Passed**

Numeric Nutrient Criteria



- HB 239/SB 1090
- Provided that DEP, water management districts or other state, regional or local government entity may not give effect to the EPA's final rule on NNC
- Reclassified surface waters
 - Human use
 - Aquatic life use
- No effect on application/compliance with NPDES permits
- TMDLs shall constitute site specific alternative interpretation
- HB 239 Died in Messages /SB 1090 was never heard in committee
 - Concern about effect on pending litigation; National effort to limit funding for program; Petition to withdraw EPA's determination of need

Ocean Outfalls



- **HB 613/SB 796**
- **History:**
 - SB 1302 (2008) required ocean outfalls to meet AWT standards by 2018, and be discontinued by 2025.
 - Six in Miami-Dade, Broward and Palm Beach – 300 MGD (claimed a savings of approximately \$4 billion dollars).
- **Bill:**
 - Extends AWT requirement for five years or until 2023
 - Provides that 60% reuse be calculated from entire wastewater flow
 - Peak flow backup may not exceed 5% of new “baseline”
 - Reuse requirements may be adjusted based upon demand, alternative supplies, treatment levels and cost, among others
- **SB 796 was never heard on floor; HB 613 died in Messages**

Questions?



Questions on environmental issues?

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Legislation Limiting Pretrial Release



- Senator Bogdanoff (SB 372/SB 1398) & Representative Dorworth (HB 1379)
- Original bills restricted pretrial release programs to only indigent defendants
- House Bill excluded anyone with a Failure to Appear from a pretrial program
- Established a new intent that pretrial only be used as an *alternative* to release on one's own recognizance or release by posting of a surety bond.



Legislation Limiting Pretrial Release



- Preemption for local ordinances, orders and practices
- Duplication of reporting requirements
- Court must find in writing that the defendant is indigent prior to admission to a pretrial program



Legislation Limiting Pretrial Release



- Pretrial programs must not interfere with defendants who wish to post bond through a surety agent
- Counties could reimburse surety agents for the cost of a surety bond



SB 372 & HB 1379



Affected Parties

- Sheriffs
- Counties
- Judges
- State Attorneys
- Public Defenders
- Service Providers.
- Public Safety Coordinating Councils
- Bail Industry

Impact to Local Communities

- Increased Risks to Public Safety
- Disruption in delivery of justice
- Increased burden on local tax payer costs
- Diversion programs would be delayed
- Justice varies by population
- Justice varies for different economic status



Supporters of Pretrial Legislation Some Bail Bond Agents

“The bill limits participation in such program to indigent defendants. This will likely increase the number of pretrial detainees who pay for a commercial bond in order to be released from jail. Consequently, bail bondsmen are likely to see an increase in revenue if the bill becomes law.” – House Staff Analysis

Opponents to Legislation Limiting Pretrial Release

- Sheriffs
- Counties
- Judges
- State Attorneys
- Public Defenders
- Service Providers
- Public Safety Coordinating Councils

“Effective pretrial release programs supervise defendants and decrease the likelihood of reoffending and enhance public safety. If this PCS passes and the eligibility criteria for the pretrial release program is narrowed to indigents, this additional layer of accountability and public safety will not be available to the judge for those non-indigent defendants.” – House Staff Analysis

Amendments to Pretrial Legislation



- Indigency criteria does not apply to counties with population fewer than 350,000
- Changed indigency criteria to 300% of poverty
 - Creates additional workload for Clerk of Courts
- Differentiates pretrial supervision programs as “government-funded”
- Defendants who are not otherwise eligible are eligible after 48 hours of detention
- Prohibits any defendant with a failure to appear from being eligible for pretrial supervision added to SB 372

Action on Senate Pretrial Legislation



- SB 372 on the agenda and held in the Senate Criminal Justice Committee for three weeks
- 6th week of session Sen. Bogdanoff amended SB 372 onto a Judiciary repealer bill, SB 1398, in the Judiciary Committee
- SB 1398 now held the pretrial language and was headed to Senate Budget Committee
- Withdrawn from Budget, placed in Rules, withdrawn from Rules and placed on Special Order
- Second to last day of session, the pretrial language was amended out on the Senate Floor

Action on House Pretrial Legislation



- HB 1379 passed the House Criminal Justice Committee on a narrow 7-6 vote
- In the interim, Rep. Dorworth filed the pretrial language to HB 7023, companion to SB 1398
- Four weeks later HB 1379 was before the second and final committee, Judiciary, and again passed narrowly on a 10-8 vote
- After the Senate removed the pretrial language, Rep. Dorworth filed an amendment to put pretrial back on SB 1398

Final Action



- SB 1398 died in House Messages



Questions?



If you have any questions on Pretrial Release

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Finance & Tax: Tax Policy



- **State Revenue Cap – TABOR** (HB 7221/SJR 958) – Passed
- Amendment to the State Constitution to:
 - Replace the existing state revenue limitation with a new state revenue limitation based on inflation and population changes.
 - Not applicable to local governments.
 - November 2012 election.
- **Tourist Development Tax/Sales Tax** (HB 493/SB 376) – Failed (died on Special Order Calendar)
- Provides definitions relating to the tourist development tax, transient rentals tax, the convention development tax, and a municipal resort tax.
 - Legislation would have exempted online travel companies (OTC's) from remitting applicable taxes on the retail price of transactions.

Tax Policy (continued)



- **Recapture; Non-homestead Cap; & First-Time Homesteader (HJR 381/SJR 658) – Passed**
- **Amendment to the State Constitution to allow:**
 - Legislature by general law to prohibit increases in assessed value of homestead and specified non-homestead property if just value of property decreases;
 - Reduces limitation on annual increases applicable to non-homestead real property from 10% to 5%;
 - Provides additional homestead exemption for owners of homestead property who have not owned homestead property for specified time (three years) before purchase of current homestead property. (50% of just value capped at county median just value; first 5 years only.)
 - November 2012 election; effective January 2013 if passed.
 - Estimated impact (assuming millage rates do not change) CFY 14 (\$156.2 m); CFY 15 (\$333.7m); CFY 16 (\$565.8m.)

Finance & Tax: Budget & Admin



- **Local Government Accountability (HB 107/SB 224) – Passed**
 - Revises provisions relating to procedures for declaring special districts inactive;
 - Specifies level of detail required for local governmental entity's proposed budget;
 - Revises provisions for local government entity's audit & annual financial reports;
 - Requires local governmental entity's budget to be posted online;
 - Revises budgetary guidelines for district school boards:
 - ✦ Requires Sheriffs and all constitutional officers to submit line item budgets to the BOCC's
 - ✦ Removes 15 day deadline to present budget after July 1 certification; and
 - ✦ Requires online posting of budgets and budget amendments

Budget & Admin (continued)



- **Local Business Taxes (HB 311/SB 582) – Passed**

Specifies that an individual who engages in or manages a business, profession or occupation as an employee of another person (i.e., an employee) is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from local business tax.

- Local governments that had a tax structure in compliance with ch. 205, F.S., which resulted in actual tax collections prior to October 13, 2010, may continue imposing their taxes in the same manner.

- **Value Adjustment Boards (HJR 381/SJR 658) – Passed**

Requires a petitioner challenging the assessed value of property before the value adjustment board to pay a specified percentage of the taxes by a certain date.

- A petitioner before a value adjustment board (VAB) challenging an assessment of property for property tax purposes must make a partial payment of at least 75 percent of ad valorem taxes before those taxes become delinquent, less any applicable discount.
- A petitioner before a VAB challenging the denial of a classification or an exemption must make a payment of the amount of tax (ad valorem and non-ad valorem) which the taxpayer admits in good faith to be owing before such taxes become delinquent, less any applicable discount.

Finance & Tax: Appropriations



- **Department of Highway Safety and Motor Vehicles (SB 2160 – Budget Conforming Legislation) – Passed**
Implements several provisions related to the duties and responsibilities of the Department.
 - Adopts Driver's License Transition plan created by the Department and Tax Collectors (FAC Participation)
 - Approves transition schedule as proposed in transition report
 - Allows the Department to create rules to exempt or make special cases for small counties
 - Allows Tax Collector's to retain \$7 fee for replacement drivers licenses upon completion of transition; and
 - Allows Tax Collector's to retain \$9 fee for replacement state identification card upon completion of transition
- **State Budget and Related Items (SB 2000) – Passed**
A summary and analysis of the SFY 2012 Budget will be made available with the FAC Final Legislative Report

Questions



Questions on Finance and Tax issues?

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Legislative Wrap Up Series



Join us for our other webinar in the series

Pension Reform, Medicaid Reform and State Budget

Thursday May 12th, 2011

10:00 am to 11:00 am

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