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**March 3-6, First Week of Session**

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**Impact Fee Burden of Proof Legislation**

SB 580 by Senator Haridopolos and HB 227 by Rep. Aubuchon passed their first committees of reference this week. The one-page bills, as amended in each committee, significantly change the burden of proof in civil actions challenging impact fees adopted by local governments. Under current Florida impact fee case law, a local government must establish that its impact fee meets the "dual rational nexus test". The test requires the local government prove: 1) a rational nexus between the need for additional capital facilities and the growth in population generated by the development; and 2) a rational nexus between the expenditures of the funds collected and the benefits accruing to the development. When the local government meets this two-prong test, the local government's impact fee will be clothed with a presumption of validity.

If passed, the proposed legislation will require that local governments establish the state law requirements for imposing an impact fee by a preponderance of the evidence (otherwise known as the "greater weight of evidence"). The legislation also prohibits the courts from applying any deferential standard that favors either party. SB 580 now moves to the Senate Judiciary Committee while HB 227 moves on to the House Civil Justice and Courts Policy Committee.

**Water Policy**

This week, the Department of Environmental Protection (DEP) held a stakeholders meeting to discuss draft legislation on water policy. The original draft addressed several issues, including:

Preventing homeowner associations and local governments from prohibiting implementation of Florida-friendly landscaping.

Providing priority funding to failing onsite sewage treatment and disposal systems within impaired water bodies and prohibiting waivers of mandatory connection to central wastewater systems within impaired water bodies or where the approved Basin Management Action Plan disallows such systems.

Requiring that all wastewater facilities with a discharge equal to or more than 100,000 gallons per day, into impaired waters, meet advanced wastewater treatment requirements for new or expanded systems beginning July 1, 2012 and phasing in that requirement for existing systems by December 31, 2016.

Eliminating the dependence on documentary stamp funding for the Water Protection and Sustainability Program and providing funding from a \$0.06 per gallon fee on all water used to produce and bottle water. This "severance" fee is estimated to produce approximately \$100 million per year, which is about equal to the documentary stamp revenue provided prior to the economic slowdown. The new funding source will provide funding for Alternative Water Supply Development, the Total Maximum

Daily Load (TMDL) program, Surface Water Improvement and Management program (SWIM)

Providing that a portion of the new severance fee be used to fund the Conserve Florida Clearinghouse; directing the Clearinghouse to develop and maintain a Guide to water conservation; providing clearer direction for how utility water conservation plans, developed using the Guide, can meet the consumptive use permitting requirements for water conservation.

At the meeting, DEP announced that the primary provision in the bill, to create an alternative funding source for water projects by imposing a "severance" of \$0.06 cents per gallon on the bottled water industry, would remain, but many of the other provisions would be withdrawn. The Florida Friendly (previously termed xeriscape) provision is expected to be amended on to other legislation. The revised version of the legislation is much slimmed down, and has eliminated the AWT requirement. Proposed committee bills are expected to come out of the House Agriculture and Natural Resources Committee and the Senate General Government Appropriations.

### **Expedited Permitting Legislation**

Representative Schenk has filed HB 73 to expedite the permitting process for economic development projects. The bill passed the Governmental Affairs Policy Committee on Wednesday by a unanimous vote. The bill creates a new section of law requiring the Florida Department of Environmental Protection (DEP) and the state's water management districts to adopt programs to expedite the processing of environmental resource permits (ERP) and wetland resource permits (WRP) when such permits are for economic development projects identified by a municipality or county as meeting the

definition of target industry businesses under s. 288.106(1) (o), Florida Statutes. Under the statute, a "target industry business" is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.

Under current law, environmental resource permits and wetland resource permits, among others authorized pursuant to Part IV of Chapter 373, Florida Statutes, must be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application. Current law also authorizes expedited permitting of environmental resource and wetland resource permits for certain projects, including affordable housing, aggregate mining, and permits associated with Everglades activities.

### **Medicaid Reform**

On the heels of the County Commission's passage of a resolution supporting a repeal of the Medicaid Reform Pilot, Representative Schwartz and Senator Sobel introduced legislation to do just that. HB 1393/SB 2464 delete from Florida Statutes 409.912 and 409.91211, any provisions relating to the Medicaid managed care pilot program. By introducing "repealer" bills, the House sponsor was able to avoid the bill cap and bring forth this important legislation.

### **Social Services Funding**

Medicaid funding: At the Social Services Estimating Conference on Tuesday, Medicaid Impact Conference Issues were discussed and it was noted that by increasing the Nursing Home Diversion program by 1,000 slots statewide, Medicaid savings would be over \$12M. Implementing an automated point-of-

service verification system to document services that have been provided was estimated to offer savings of \$5.7M, while implementing managed care for Developmentally Disabled recipients for waiver services only, would save approximately \$7M. By eliminating hospice as an optional service, the state estimated a savings of \$52.7M total (including general revenue and trust funds), of which a “savings net of add back” would go to “nursing home care”.

DOEA Funding: At the Broward Delegation Meeting, there was a discussion about the budget exercise in the Healthy Seniors Committee that failed to identify LSP (Local Services Program Dollars) through the Department of Elder Affairs, as core mission funding. The Delegation expressed a commitment to maintaining these dollars, which in Broward are directed to many faith-based and community-based organizations for programming and to provide Kosher meals.

### **Juvenile Justice Update HB 173**

As mentioned in the last update, HB 173 remains problematic because of its expanded use of predisposition secure detention, which is paid for by counties. This week, Florida Association of Counties staff coordinated a meeting with the bill’s sponsor, Rep. Sandy Adams, in advance of a scheduled hearing of the bill in the Criminal and Civil Justice Policy Committee this week. Several counties, including Broward, were in attendance and expressed specific concerns with the bill’s potential fiscal and policy impact. Numerous opponents, including the Southern Poverty Law Center, the Public Defender’s Association, child advocacy groups, and others, submitted amendments and planned to speak against the legislation in its second-to-last committee stop. In a completely unexpected turn-of-events, especially since Rep. Adams is the Chair of the

Appropriations Committee, the bill was removed from the agenda and postponed, giving opponents additional preparation time.

### **Online Travel Companies-"dot com" Issue**

On Thursday afternoon, Senate Finance and Tax Committee workshopped the issue of requiring online travel companies to remit taxes on the full consideration paid for hotel rooms. Chair Thad Altman asked supporters of the remission of these taxes, coordinated by the Florida Association of Counties, to explain the issue. Pinellas County Commissioner Latvala, an independent hotelier from Chairman Altman's district, and Dr. Jim Zingale, with the Capitol Hill Group, and the former head of the Department of Revenue, presented the fiscal details of the current practice of online travel companies and described the impact to the state and local governments. Representatives of the Online Travel Companies were also able to present their interpretation of current law. HB 579 by Representative Long and SB 1970 by Senator Lynn regarding transient rentals tax have been referred to committees but not yet heard.

### **Legislative Session Analyst Intern Pilot**

The Office of Public and Governmental Relations was asked the by FSU College of Law to develop a pilot program for third-year law students interested in public policy and governmental relations, which may evolve into a course-credit earning internship next year. Three students were selected, based on their substantive experience and areas of interest, to work approximately 15 hours per week as unpaid interns, between March 16<sup>th</sup> and May 1<sup>st</sup>.