

# Broward SLI

State Legislative Information

April 9, 2011

Number 11 - Volume XIII

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## Budget Conference

The House and Senate passed general appropriations packages off their respective floors this week, setting up the budget conference process where differences in the versions will be negotiated. With an almost \$3 billion difference between the chambers, many speculate that the conference process may take the next three weeks. Areas with significant deviations include: Medicaid Reform, Pension Reform, Transportation Funding, Health and Human Services Funding, and Education Funding.

## Health and Human Services Appropriations

Human Services Department Director, Susan Myers, traveled to Tallahassee this week to meet with key members of the Broward Delegation, as well as House and Senate legislators expected to participate in the Budget Conference process. Ms. Myers provided detailed information about impacts of the proposed Senate HHS reductions in the areas of community adult mental health treatment, adult substance abuse treatment, homelessness grant programs, and Medicaid home- and community-based care. In addition, Ms. Myers discussed concerns with legislatively proposed changes to child protection teams (CPTs), including opposition to its movement from the Department of Health to the Department of Children and Families (DCF). Broward County, through its Human Services Department (HSD), is the only county in the state to provide CPT services.

Furthermore, the HSD is a direct service provider to adult substance abusers through its medical detoxification, residential rehabilitation, and outpatient services. As a result, the loss of state funding in the area of adult substance abuse (from which the county receives grant dollars) would have a negative impact on HSD's ability to provide services to our community, presently plagued by prescription drug abuse. In member meetings, Ms. Myers and staff pointed out that legislation presently moving through the process seeking to expand jail diversion and eligibility for pretrial misdemeanor substance abuse programs will further tax our community substance abuse treatment resources, at the same time the state is proposing to dramatically reduce funding levels, especially in the Senate. On Tuesday, the Senate adopted an amendment that added an additional \$10 million to the adult substance abuse treatment line item under DCF; however, the Senate's behavioral health funding levels remain significantly lower than the House. The Senate's Adult Substance Abuse funding proposes a reduction of \$37 million over current year, while the Adult Community Mental Health line item is \$172 million less than the current year's.

## Online Travel Companies

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Both the Senate and House bills, CS/SB 376 and CS/HB 493, respectively, were heard in committee this week. On Tuesday, HB 493 by Rep. Brodeur, passed after an unusual procedural occurrence, where the question was called after initial public testimony, but before many were permitted to speak. A vote was taken on the bill and an opponent, Rep. Randolph, voted in the affirmative in order to make a motion to request that the bill be retained in committee. That motion was not voted on before a second motion to adjourn was made by the Chair. That motion did not carry, but a motion to immediately certify the bill was successful.

In the Senate Finance and Tax committee, the lobbyist for Expedia was invited to make a PowerPoint presentation on the OTC merchant model. Subsequently, Mr. Steve Wolens, counsel for Broward and Osceola counties, presented to the committee and fielded a series of questions related to litigation against the OTCs. National hotel chains were represented and testified articulately about the competitive disadvantage being codified by the legislation. In the end, the bill passed 4-3.

## Pretrial

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SB 372 was again temporarily postponed in Senate Criminal Justice, its first committee of reference. The bill has not been calendared for next week's meeting.

## Medicaid Reform

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CS/CS/SB 1972 was substantially amended in committee this week. Broward County offered three amendments, sponsored by Sen. Sobel, based on conversations Commissioner Sharief undertook with the House Chair, Rep. Schenck. One of those amendments was accepted by the committee. The amendment ensures that no fewer than three (3) managed care plans may exist in a district at any given time and was drafted to ensure that plan participants actually have "choice"; otherwise Medicaid-eligible persons should be afforded the option to be placed back in to regular Medicaid. The other two amendments, relating to Fraud Detection and prompt payment of non-emergency services will be attempted again on the floor.

## Economic Development

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The House passed two bills, HB 7205 (81-38) and HB 7207 (81-38), that, taken together, create and provide a dedicated source of revenue to the State Economic Enhancement and Development (SEED) trust fund on Thursday. HB 7205 creates the State Economic Enhancement and Development Trust Fund within the Office of Tourism, Trade and Economic Development currently located within the Executive Office of the Governor. This trust fund will serve as a depository of rental car surcharges, documentary stamp tax proceeds and local matching funds. HB 7207 terminates the following trust funds and transfers remaining balances in each fund to the SEED Trust Fund: Economic Development Transportation Trust Fund; Economic Development Trust Fund; Tourism Promotion Trust Fund; Florida International Trade and Promotion Trust Fund; State House Trust Fund; Local Government Housing Trust Fund.

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## Government Reorganization

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The House Select Committee on Government Reorganization heard testimony and passed a proposed committee bill (PCB) relating to government reorganization on Friday (17-6). PCB SCGR 11-03 proposes to create the Department of Economic Opportunity, which would be responsible for coordinating the efficient delivery of services and programs related to economic development, workforce development, community planning and development, and affordable housing. The bill would:

- Require the Department of Economic Opportunity assist local governments and their communities in finding creative planning solutions related to comprehensive planning and community development.
- Require the Department of Economic Opportunity create a single statewide strategic plan to address the promotion of business formation, expansion, recruitment and retention throughout the state.
- Maintain the functions of current public-private partnerships, but consolidate the organizations into a single public-private partnership with a single board of directors.
- Change the process and timeline by which businesses apply for, are notified of and receive economic development incentive funding. The bill reduces the current 32-day process to a 10-day process.

The department head, appointed by the Governor, will serve as the state's chief negotiator for business recruitment and business expansion. The purpose of the department is to assist the Governor in working with the Legislature, state agencies, local governments, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies to promote economic opportunities for the people of the state of Florida. The following divisions will be established within the department: Strategic Business Development; Community Planning and Development; Workforce Services; Finance and Administration. The bill transfers the following trust funds from the Executive Office of the Governor to the Department: Economic Development; Economic Development Transportation; Tourism Promotional; Professional Sports Development; Florida International Trade and Promotion.

## Public Works Projects

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SB 1352, sponsored by Sen. Hays, passed the Senate Community Affairs Committee 7-2 on Monday. The bill limits government entities' ability to require a contractor, subcontractor, supplier or carrier on a public works project to:

- Pay employees a predetermined amount of wages or wage rate.
- Provide employees a specified type, amount, or rate of employee benefits
- Control or limit staffing.
- Recruit, train, or hire employees from a designated or single source.
- Designate any particular assignment of work for employees.
- Participate in proprietary training programs.
- Enter into any type of project labor agreement.

The bill would also extend the length of time for an entity to submit a notice to protest a bid specification from 72 hours to 7 days on state related procurements.

The bill is now pending in the Senate Governmental Oversight and Accountability Committee. This bill would have significant negative impacts to Broward County's

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Living Wage and Prevailing Wage Ordinance/Program and the Small Business/County Business Enterprise/Sheltered Market Ordinance/Program. The next and final committee of reference is Senate Budget. The House companion bill, HB 923, which has not yet been heard by a House committee, is pending before the House Government Operations Subcommittee.

## **Destination Resorts**

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CS/SB 2050, sponsored by Sen. Braynon, was amended and favorably approved (4-2) by the Senate Commerce and Tourism Committee on Tuesday. The bill designates up to five destination resort casinos in Florida and couples Broward and Miami-Dade counties into district 5, in which only one resort could exist.

The measure was amended to:

- Protect the thoroughbred industry from any impacts of the casinos.
- Provide pari-mutuels with slot machines with similar games and tax rates as any new facility that opens in Miami-Dade or Broward counties.
- Require any county that hasn't passed a referendum allowing slots to do so before a facility could open there.

The bill could hinder the Seminole gaming compact approved last year; however, arguments were made that the new facilities would likely not open before the first five-year term of the compact ends.

The bill still has two more committee stops before heading to the full Senate, and a House companion was assigned to a committee that has since been disbanded by Speaker Dean Cannon, R-Winter Park. The previous destination resorts bill by Sen. Jones was withdrawn from consideration, due to an inability to reach agreement on a proposed pari-mutuels provision.

## **2% Cap on Ad Valorem and Special Assessment Taxes**

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PCB 11-04, sponsored by the Senate Committee on Finance & Tax chaired by Rep. Precourt, proposed a committee joint resolution to limit the total of all ad valorem taxes and non-ad valorem assessments collected on any one parcel to 2 percent of the taxable value. The Broward County Office of Management and Budget supplied the following assessment of the impact of the bill:

- A typical tax bill collects revenues for approximately 8 different taxing authorities. In Broward, these typically include the School District, County, City, Hospital District, Children's Services District, Water Management District, Inland Navigation District, Drainage and/or Community Development Districts.
- Until the tax and assessment rates are adopted and the rates are reported to the Tax Collector, there would be no way to determine if the cap has been exceeded.
- If it is determined that the cap has been exceeded, the Constitutional Amendment does not prescribe how the situation would be rectified. When voting on the ballot measure, the public would not have any information on how the reductions would be determined including which taxing authorities would have to reduce their budgets and how much each would have to reduce.
- How this "reduction" in revenues would be distributed could have a significant budgetary impact on the taxing authorities. It would be very difficult to ensure that the reductions imposed by the General Law are equitable given that there are no criteria for determining how to measure whether a taxing authority should have to reduce the revenues collected.

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- A good example of how this law would result in inequities is the impact resulting from Community Development Districts. These districts were created to pay for the capital and maintenance costs of infrastructure to serve new developments and often charge special assessments ranging from hundreds to thousands of dollars per parcel. There are currently no statutory provisions regulating the amounts for these assessments. It would be inequitable for counties, cities and other general purpose governments to be forced to reduce their taxes and fees for certain properties due to the disproportionate impact of the special assessments made by Community Development Districts.
- Treating all special assessments the same would also result in inequities. Many special assessments are for capital improvements that add to the value of property and are not for recurring services. Also, it should be noted that not all special assessments are collected on the tax bill.
- Using the “taxable” value” would also result in inequities given the variance between the taxable values of similar properties due to Save our Homes (SOH). Properties that have large differentials between their taxable and assessed values would have a significantly lower cap than similar properties.
- 2% is not a realistic cap given that the total millage rate is above 2% (excluding debt) in 25 out of the County’s 32 cities (including unincorporated) without even considering the special assessments. Six out of the seven with total millage rates below 2% currently pay more than 1.95%. The only city with a total millage rate below 1.95% relies very heavily on its Community Development District’s special assessments to support its budget.

## Pension Reform

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In an effort to balance the budget and close the nearly \$3.75 billion shortfall, the Florida Senate passed their final version of Pension Reform (SB 2100) on Thursday (26-13). The House then rejected the Senate bill (sent over in House Messages) in favor of their bill (CS/CS/HB 1405) and sent the bills to the House/Senate conference committee to be finalized, approved and sent to the Governor. The two versions differ significantly.

The Senate bill, as amended on the floor, would:

- Tier the employee contributions (see below).
- Delay the elimination of DROP until 2016.
- Adjust the cost of living for members retiring on or after July 1.
- Prevent employees hired July 1 or later from joining the existing defined benefit retirement plan, which guarantees lifetime payments. Instead, they would be offered optional defined contribution plans similar to a 401(k). The length and level of benefits would depend on how good a job each employee does in choosing investments.

Under SB 2100, public employees participating in FRS would contribute:

- 2 percent on the first \$25,000 of income.
- 4 percent of the next \$25,000 of income.
- 6 percent from any income above \$50,000.

Statewide elected officials would contribute:

- 3 percent of the first \$25,000 of income.
- 5 percent of the next \$25,000 of income.
- 7 percent for any income above \$50,000.
- 7 percent for state-wide elected officials including the House and Senate members.

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The House bill, CS/CS/HB 1405, sponsored by Rep. Workman:

- Requires all employees pay 3 percent of their salary annually into the FRS.
- Leaves cost-of-living adjustments intact.
- Eliminates DROP as of July 1, 2011.
- Extends the eligible age of retirement and years of service:
  - Special Risk Class: increases age from 55 to 60 and years of service from 25 years to 30 years.
  - All other classes: increases age from 62 to 65 and years of service from 30 to 33 years.

Under the House plan, a worker earning \$35,000 would pay roughly 1,050 per year for their pension. Rep. Workman argued this would save upwards of \$710 million; eliminating DROP would save nearly \$156 million to the state. This would bring Florida in line with the other 47 states that require employees to contribute to their retirement and allow the state to shift the money to other areas of the budget.

## **Homestead/Nonhomestead Property Tax**

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CS/SJR 658, sponsored by Sen. Fasano, will be heard in the Senate Judiciary Committee on Tuesday, April 12. Its companion bill, CS/CS/CS/HJR 381, sponsored by Rep. Dorworth, was favorably approved (20-2) by the House Finance & Tax Committee on Wednesday. The Joint Resolutions, if passed by a three-fifths vote of the membership of both the Florida House and Senate and approved by 60 percent of Florida voters, would take effect on January 1, 2013, and would affect properties purchased on or after January 1, 2012. The proposals would amend the State Constitution to:

- Prohibit increases in the assessed value of homestead property if the just value of the property decreases.
- Reduce the limitation on annual assessment increases applicable to nonhomestead property from 10 percent to 3 percent.
- Provide an additional homestead exemption for owners of homestead property who have not owned homestead property for a specified time before the purchase of the current homestead property.

CS/SJR 658, if approved by Judiciary, moves to Budget and then Rules as its final committee reference. HJR 381 is currently pending before the House Appropriations Committee, and then moves to its final committee reference, Senate Economic Affairs. The County strongly opposes these bills and has been collaborating with the Florida Association of Counties (FAC) to raise the limitation on annual assessment increases to 7% or at least rate to higher than 3%.

## **Enterprise Zones**

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SB 1296, sponsored by Sen. Detert, which would have advanced the date of the expiration of the Florida Enterprise Zone Act, in effect eliminating enterprise zones in the state of Florida, was withdrawn from consideration on Wednesday. HB 1099, the House companion bill sponsored by Rep. Holder, is pending before the House Economic Development and Tourism Subcommittee.

## Sales Tax Holiday

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CS/HB 733, sponsored by Rep. Porter, provides for a three-day sales tax exempt period from August 12 to August 14, 2011 and passed the House by vote of 117-1 on Wednesday. The bill allows for a three-day holiday on sales tax holiday on:

- Clothing, footwear, wallets, bags and textbooks that cost \$75 or less.
- School supplies that cost \$15 or less.

The three-day holiday fiscal impact is estimated to cost the state \$34.7 million in lost revenue while local governments would lose about \$7.6 million in FY2011-12. The bill is now pending in Senate messages.

## Value Adjustment Boards

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CS/HB 281, sponsored by Rep. Logan, was favorably approved by the House Economic Affairs Committee (11-0) on Thursday. The Senate companion, SB 880, sponsored by Sen. Garcia, also passed the Community Affairs Committee on Monday (8-1). The bills require a petitioner before a value adjustment board who challenges an assessment of property to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of ad valorem taxes before April 1, less any applicable discount. If the payment is not made by that date, the value adjustment board must deny the petition.

If the value adjustment board determines that the petitioner owes ad valorem taxes in excess of the amounts paid, the unpaid amount accrues interest at the rate of 12 percent per year from April 1. The bill also eliminates current language which provides for a four percent discount that applies for 30 days after the mailing of a tax notice resulting from the action of a value adjustment board. The bill is expected to have a positive fiscal impact on local governments, and becomes effective on July 1, 2011.

## Fertilizer Bills

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CS/CS/HB 457 by Rep. Ingram was heard in its final committee of reference on Thursday. A strike-all amendment, filed by Rep. Brandes, was adopted that significantly reduces the preemption contemplated in the original bill. Cities and counties worked closely with the bill sponsor to assure all major areas of concern were addressed by the strike-all amendment. Specifically, the strike-all amendment makes the following changes to the bill as initially filed:

- Counties and municipalities may adopt additional or more stringent standards than the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (Model Ordinance), provided that certain circumstances are met. Originally, local governments were preempted from adopting regulations differing from or more stringent than the Model Ordinance.
- Fertilizer ordinances adopted before July 1, 2011 are grandfathered in.
- Local governments are no longer preempted from regulating the use and application of fertilizer. However, the Department of Agriculture and Consumer Services (DACCS) retains the authority to regulate the sale, composition, packaging, labeling, retail and wholesale distribution, and formulation of fertilizer, including nutrient content level and release rates.

CS/CS/HB 457 now moves to the House floor. The Senate companion bill, SB 606 by Sen. Evers, is now in the Community Affairs committee, but was not heard this week; the bill has three remaining committees of reference.

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## **Bert Harris/Property Rights Bills**

CS/HB 701 by Rep. Eisnaugle, which revises the Bert J. Harris Private Property Protection Act, was heard in the Economic Affairs Committee, its final committee of reference, on Thursday morning. The Senate companion is CS/SB 998, by Sen. Simmons. In general, the bills change Florida's statutory property rights protections by specifying that a moratorium on development for more than one year may constitute an "inordinate burden", rather than just a temporary impact. The bill also specifies that enacting a regulation does not necessarily constitute actual application of that regulation to a property. A strike-all amendment to CS/HB 701 was adopted that allows the passage of time between the enactment of a law or regulation, and when the law or regulation is first applied to be considered when determining if a property has been inordinately burdened; changes the bill's pre-suit notice period from 120 days to 150 days; defines when a law or regulation is first applied for purposes of the one-year limitations period for filing a cause of action under the act; and broadens the waiver of sovereign immunity provision, but limits the waiver to actions within the scope of the Act. The amended bill passed unanimously. CS/SB 998 will be heard in the Budget committee next Wednesday afternoon.

## **Growth Management**

CS/SB 1512, one of Sen. Bennett's growth management bills, will be heard in the Transportation Committee on Tuesday morning. This is the bill's second committee of reference; earlier in the Session it passed unanimously in the Community Affairs Committee. The bill revises comprehensive plan requirements relating to capital improvement and future land use plan elements, and also revises transportation concurrency requirements. This will be an important bill to watch, as the County has concerns about many of its provisions, including the effect it would have on the County's ability to mitigate a project's impact on transportation and overcapacity roads. While there is not an identical House companion, CS/SB 1512 contains some of the provisions of HB 7129, the House's major growth management reform package.

## **Numeric Nutrient Criteria**

CS/HB 239, by Rep. Williams, was heard in the House Federal Affairs Committee on Tuesday. As originally drafted, the bill would prohibit the Department of Environmental Protection (DEP), Water Managements Districts (WMD), and other governmental entities from implementing the EPA's numeric nutrient water quality rules for Florida's lakes and flowing waters. However, an amendment to the bill removed that section as a result of concerns raised by those entities and some environmental groups, who feared that the effect would be less protection for many Florida water bodies. The removal of this section will allow more time for the stakeholders to work with Rep. Williams and hopefully improve the bill's language. CS/HB 239 passed in committee by a vote of 9 to 5; it is now in the State Affairs Committee. Two similar Senate bills, SB 1490 by Sen. Evers and SB 1090 by Sen. Dean, have been referred to committees but neither has yet been heard.

## **Firearms Preemption Bill Passes Last Hurdle**

On Thursday, the House Judiciary Committee heard CS/CS/HB 45 relating to the regulation of firearms and ammunition, and passed the bill as a committee substitute by a 12-6 vote. The new committee substitute specifically adds counties, cities,

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districts, state agencies, and others to the listing of entities subject to a noncriminal citation for violating the state's preemption on firearms and ammunition. The amended bill also removed language which provided that a state attorney who did not investigate an alleged violation of §790.33, F.S., could be held accountable pursuant to The Florida Bar rules of professional conduct.

The bill allows affected individuals or organizations to file suit for declaratory and injunctive relief, or for actual and consequential damages, against the mentioned entities and any person in his or her individual or official capacity. The bill directs the court to award a prevailing plaintiff attorney's fees and costs subject to a 1.5 to 3 contingency-fee-multiplier, wherever applicable. The revised bill increases the damages a court may award the prevailing plaintiff, from liquidated damages in the amount of three times the attorney's fees awarded, to actual damages or an amount determined by the court of not less than \$25,000 to \$100,000, whichever is greater. The bill also provides that an award of damages is not subject to the sovereign immunity limits in §768.28, F.S.

CS/CS/CS/HB 45 now moves to the Calendar where it will be available for consideration by the entire House. Its Senate companion, CS/CS/SB 402 awaits consideration before the Senate Rules Committee, the measure's last committee of reference.

## **House Ocean Outfall Bill Headed to Calendar**

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The House State Affairs Committee, on Thursday, heard and passed CS/HB 613, relating to ocean outfalls, on a 15-2 vote. The bill has been placed on the House Calendar and is available for floor consideration. In the Senate, CS/SB 796 will be heard in the Community Affairs Committee on Monday, April 11<sup>th</sup>, where it is expected to pass easily.

## **House Transportation Package Moves**

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On April 6, the Transportation & Economic Development Appropriations Subcommittee heard and unanimously passed CS/HB 1363, the House transportation package for this Session. The Subcommittee adopted seven amendments which accomplish the following:

- Exempts DOT's toll adjustments from the requirement to prepare a statement of estimated regulatory costs and from the requirement of submission to the legislature for ratification. The department, however, must still adopt any adjustment to tolls through the state's rulemaking process.
- Permits transportation and expressway authorities to conduct meetings and workshops by means of communications media technology.
- Creates a two year pilot program, in three separate urban areas, for bicycles on highway approaches and bridges on limited access facilities.
- Removes language regarding the fine for not having a Commercial Motor Vehicle medical examiner's certificate.
- Provides that the \$500 cap on sign permit fees does not affect the validity of any other aspect of any agreement, resolution, or ordinance regarding signs, or the removal of any sign, or the repayment of any fees already paid.
- Provides that if a local government requires the removal of a sign, it must adhere to the provisions of §70.20(2), F.S., which requires a local government to pay just compensation through an agreement or in eminent

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domain to remove a sign.

- Revises provisions related to the management of vegetation affecting the visibility of outdoor advertising signs.
- Reduces the number of nonconforming signs prior to DOT issuing a permit for a new sign that requires vegetation to be cleared from at least two to one.
- Revises view zone requirements related to outdoor advertising.
- Creates a tourist-oriented commerce signs pilot program in rural areas of critical economic concern.
- Exempts temporary harvest signs and signs erected under the tourist-oriented commerce sign pilot program meeting certain conditions from permitting requirements.

Additionally, the bill requires that bus benches and transit shelters placed on state road right-of-ways comply with all laws and rules, including the Americans with Disabilities Act (ADA). Cities and counties will be required to indemnify, defend, and hold harmless FDOT from any suits, damages, liabilities, attorney's fees and court costs. This issue arose as a result of an ADA lawsuit filed against a local government in Pinellas County in which FDOT was also named as a defendant. The local government allegedly permitted the installation of inaccessible bus stops, and non-compliant benches and shelters on state roads. Due to the limitation on sign permit fees, Senate staff has opined the bill may constitute an unfunded mandate and, therefore, the bill must comply with the provisions of Article VII, §18, of the State Constitution (i.e., a statement the bill fulfills an important state interest; and passage by a ⅔ vote of the membership of each house – 80 votes in the House and 27 votes in the Senate). The bill does not presently contain any statement asserting that the act fulfills an important state interest.

The bill now moves to the House Economic Affairs Committee. The Senate Transportation package will be heard in the Senate Transportation and Economic Development Appropriations Subcommittee Wednesday, April 13<sup>th</sup>.

## **State Road 7- Glades Road Tolling Study**

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It has been reported that the Florida Department of Transportation will launch a three-year study next month that will consider adding HOV and toll lanes on State Road 7 from Sample Road in Broward County to Glades Road in Palm Beach County. The study will also consider tolling on Glades Road from State Road 7 east to U.S. 1 in Palm Beach County. The SR 7 Study will cost \$5 million and the Glades Road Study \$2.5 million. The study will likely include consideration of dedicated bus lanes for premium bus service or bus rapid transit. A similar effort is ongoing in Miami-Dade County, involving the possible expansion of busbay lanes on U.S. 1, to allow motorists to avoid congestion by paying fluctuating toll rates based on traffic volumes.