



Volume XI, Issue 5 • February 6, 2009

February 2-5 Committee Week

**Growth Management Changes
Workshopped**

This week the Senate Select Committee on Florida's Economy workshopped proposed legislation that will make significant changes to Florida's growth management laws. The legislation is seen as one answer to revitalizing Florida's economy by removing current regulatory impediments to economic development and job creation. The proposed changes include:

- Creating a "Dense Urban Land Area" which is defined as a local government having an average of at least 1,000 people per-square mile of land area according to the latest census and latest population estimates from the Office of Economic and Demographic Research. The following 7 counties would meet this definition: Broward, Duval, Hillsborough, Miami-Dade, Orange, Pinellas and Seminole. In addition, approximately 270 cities also meet this definition.
- Eliminating transportation concurrency in these areas by automatically designating them as Transportation Concurrency Exception Areas (TCEAs).
- Creating a transportation concurrency waiver for traffic impacts on SIS facilities where there is an OTTED job creation project.
- Eliminating the penalty for failing to adopt a school facilities element/school concurrency into the local comprehensive plan.
- Eliminating the development of regional impact (DRI) program in Dense Urban Land Areas.
- Retaining the requirement that development orders from DRI-size projects (even though exempt under this proposal)

be reviewed by the state land planning agency.

- Extending the financial feasibility compliance deadline for comprehensive plans until December 1, 2011 for all counties.
- Limiting comprehensive plan text amendments to one-time per year for all counties.
- Extending the Alternative State Review Process for comprehensive plan amendments to Dense Urban Land Area communities. Presently, the alternative state review pilot program is applicable to Broward and Pinellas counties and a limited number of designated cities.

Department of Community Affairs Secretary, Thomas Pelham, spoke in favor of the proposal. Although the committee took no formal vote on the legislation, the bill will probably be considered by the Senate Community Affairs Committee at its meeting of February 17th. In addition, while the proposal does not appear to affect the County's transit concurrency program, staff has spoken with Senators Ring and Sobel, and is working with committee staff to secure an amendment that will eliminate any potential negative impacts to the County's transit concurrency program.

Everglades Land Purchase

Senators on the Senate's Environmental Preservation and Conservation Committee continued to raise questions about the state's purchase of 186,000 acres of land from U.S. Sugar to further Everglades restoration efforts. South Florida Water Management District (SFWMD) Executive Director Carol Wehle and DEP Secretary

Mike Sole were peppered with questions from Senators concerned about how the purchase is presently structured. Senators expressed concern with the proposal's high costs, the lease-back of certain lands to U.S. Sugar at less than the commercial lease value (\$50 vs. \$150-200 per acre), the accuracy of the appraisals, the purchase of more land than is needed for restoration purposes, and the ability of the District to finance the expected over \$3.0 billion cost when factoring in the debt service. A number of questions were also raised about the District and DEP's alleged "interference" with interests expressed by at least one private company to purchase the unnecessary U.S. Sugar assets. Wehle told Senators the Governor is committed to purchasing the U.S. Sugar lands and paying the expected debt service without the SFWMD raising ad valorem taxes, and that the market will determine whether financing will be available to achieve the purchase. Although the purchase is not subject legislative approval, more legislative hearings are expected in the coming months as House and Senate members continue to scrutinize the proposal.

Timeshare Transactions

The House Economic Development Policy Committee considered and passed unanimously HB 61 by Rep. Precourt, which clarifies state law governing state and local taxes due from timeshare transactions. In 2006, the Fourth District Court of Appeals held in *Broward County v. Fairfield Resorts, Inc.*, that timeshare inspection packages were not included in the tourist development tax statutes or the County's ordinance and were not, therefore, subject to the tourist development tax. HB 61 amends Florida law to provide which timeshare transactions are taxable and which are not.

Occupancy of a timeshare unit by an owner, a non-paying guest, or another timeshare owner as a result of an exchange will not be taxable. Fees charged by third parties to

facilitate a timeshare exchange are considered service fees or membership fees and are also not subject to tax. In addition, regulated short-term products (i.e., short-term stays at a timeshare resort intended to entice the guest to purchase a timeshare resort or become a member of a timeshare program) are not taxable transactions where the consideration paid is applied to the purchase price of the timeshare estate.

Short-term occupancy of a timeshare unit in a manner similar to that of a hotel, motel, resort, or other public lodging facility stay, is subject to tourist development tax, tourist impact tax, transient rental tax, and convention development tax, as applicable. In cases where a timeshare is acting as a public lodging facility, those transactions will be taxable. The bill is effective on July 1, 2009, but it does not provide a basis for assessments of taxes or tax refunds for any time prior to that date. The bill next goes to the full Economic Development and Community Affairs Policy Council for consideration.

Service of Process Fees

SB 412 by Sen. Crist passed unanimously out of the Senate Judiciary Committee, and if enacted will, amongst other changes, increase the fees sheriffs charge to serve writs, summons and other legal process. Under Florida law, county sheriffs must charge fixed, nonrefundable fees for the service of process in civil actions as established in statutory schedules. Under §30.231, F.S., the sheriff must charge \$20 for service of summons or writs except for executions and \$20 for each witness to be served with a subpoena. For executions, the sheriff must charge \$20 for docketing and indexing each writ of execution, \$20 for advertisement of the sale of property under process, \$20 for each sale under process, and \$20 for each deed, bill of sale, or satisfaction of judgment.

SB 412 amends the statute to increase the sheriff's fees to \$40 from \$20 for service of summons or writs except executions and witness subpoenas. For executions, each category above is also increased to \$40. The bill exempts the State of Florida and its agencies from the increased fees, and makes clear that fees applicable to the state and its agencies are those in place on June 30, 2009, the day before the act takes effect. The bill now moves to the Senate Criminal Justice Committee.

Dot.com Legislation Filed

HB 579, filed by Rep. Long, will clarify that internet-based transactions for hotel and other transient rental accommodations are subject to state sales tax and local tourist development taxes. Online travel companies (OTC) will have to register with DOR and remit taxes on the total rent charged to customers unless the hotel owner or operator agrees in writing to collect and remit the applicable taxes on the OTC's behalf. The bill specifies requirements for any such agreement between an owner/operator and OTC. The OTC must register with any county that self-administers its tourist development tax program. DOR is required to provide OTCs with amnesty for unpaid taxes, penalties, & interest under specific conditions and DOR is authorized to adopt emergency rules to implement the amnesty provisions. If enacted, the act takes effect on July 1, 2009.