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PROPERTY TAX REFORM

Despite the difficulties many local governments are facing as a result of the economic crisis, the Legislature and Governor remain committed to continuing to promote “property tax reform.” There are several Joint Resolutions filed in the House and Senate which place issues on the ballot that restrict local government revenues. These joint resolutions include:

SB 1906/HB 1263 – Government Revenues/Voter Approval/New Taxes & Fees The Senate version of TABOR, SB 1906, was temporarily postponed in the Senate committee on Governmental Oversight and Accountability after lengthy debate and public comment. The Governor’s Office stood in support of the bill. HB 1263 has not yet been scheduled for a hearing in the House.

SB 738/HB 385 - Limitation on Amount of Combined Ad Valorem Taxes – 1.35% limits the total aggregate ad valorem taxes levied by counties, municipalities, school districts and special districts on any parcel of real property to 1.35% of the highest taxable value of the property. The House heard the bill last week and there was much discussion on the difficulty of implementation. The Senate version was heard in Community Affairs this week and passed on an 8-1 vote with Sen. Deutch as the negative vote.

GROWTH MANAGEMENT

Growth Management is front and center in many discussions this legislative season. There are several bills filed that make various changes to the way the Department of Community Affairs regulates growth in Florida, many of which have significant impacts on local governments.

HB 7049 formerly the proposed committee bill (PCB) MLA 09-01, was considered this week in the House Military and Local Affairs Policy Committee. This bill was discussed in a workshop setting. Among the many provisions included in this bill, is one which seeks to abolish the Department of Community Affairs as a separate state agency. The Division of Community Planning and Division of Housing and Community Development would be transferred to the Department of State (DOS). The Office of Emergency Management would be created within the Executive Office of the Governor and would assume the role and duties of the Division of Emergency Management. The oversight of the Florida Housing Finance Corporation will be assigned to DOS for administrative purposes. According to the staff analysis, this will necessitate no change in policy or operations.

The bill also provides for a local government preemption which would prohibit a county, municipality or any other entity of local government from enacting or maintaining an ordinance that sets standards for security that requires a lawful business to expend funds to

enhance the service of functions of local governments.

In addition, the bill would define 'dense urban land area' as a municipality that has an average of at least 1,000 people per square mile using land area data from the most recent census tracts, and Broward would be included in that definition.

Further, the bill authorizes the creation of transportation concurrency exception areas (TCEAs) at the discretion of local governments. The bill facilitates creation of TCEAs in municipalities and dense urban areas of county by specifying that such designations are not subject to state challenge. However, the bill makes provisions to require coordination with the state land planning agency, the Department of Transportation and regional planning councils.

Transportation concurrency may be waived for job creation projects certified by the Office of Tourism, Trade and Economic Development as meeting criteria from the expedited permitting process in s. 403.973(3), F.S. The bill provides an exemption from certain financial feasibility requirement in TCEAs created by local governments relating to achieving and maintaining adopted levels of service.

The bill establishes two alternative review processes for local comprehensive plan amendment adoptions, allows for the state land planning agency to establish procedural rules to administer the processes and report to the legislature regarding implementation and use.

The next and final stop for HB 7049 will be the Economic Development & Community Affairs Policy Council.

SB 360 has many similar provisions and passed out of its final committee, Ways and Means this week. SB 360 is

scheduled to be heard by the Full Senate, possibly next week.

PUBLIC CONSTRUCTION WORKS

HB 611 by Rep. Hukill makes significant changes to current state law relating to the competitive award of local government road and public construction works. The House Roads, Bridges, and Ports Policy Committee considered and approved the bill Wednesday by a vote of 13-7. As passed, the bill makes the following changes:

- Requires local governments to competitively award projects to repair public buildings, structures or public construction works which exceed \$200,000, removing the exemption for repair of public facilities in current law.
- Limits the exemption from competitively awarding public building, structure, or public construction works projects where the financial source may be diminished or lost to those circumstances in which the local government undertaking the project did not materially contribute to a delay in funding or competitively awarding the project.
- Requires that a local government that decides to undertake a public construction project using its own services, employees, and equipment must first advertise and receive competitive bids or proposals. Thereafter, the local government must hold a public hearing and make certain findings relative to costs, including a finding that the local government can perform the project at a cost that is equal or less than the lowest responsive bid or proposed accounting for employee compensation, benefits, equipment and materials.

- Exempts local governments that own or operate a public airport, seaport or public transit systems from competitively awarding repair projects when performing repair and maintenance to such facilities' buildings, structures, and other public constructions works.
- Defines "maintenance" for purposes of §255.20, F.S.
- Provides that a local government may grant a "local presence" preference to the contractor with the greatest local presence within the local government's jurisdiction if two or more bidders are otherwise equal with respect to price, quality and services. No other local preferences are permitted.

The bill next moves to the House Military & Local Affairs Policy Committee for consideration.

RED LIGHT CAMERAS

SB 2004 by Rep. Altman creates the Mark Wandall Traffic Safety Program to be administered by the Florida Department of Transportation. Under this program, counties and municipalities will be authorized to use traffic infraction camera technology to reduce red-light signal violations. The Committee adopted amendments and approved the bill by a vote of 8-0 as a committee substitute. As approved, the bill provides as follows:

- Preempts to the state the regulation and use of cameras for enforcing red-light signal traffic violations.
- Requires Counties and municipalities adopt an ordinance addressing the requirements specified in statute in order to use traffic infraction detectors (i.e. cameras) to enforce red-light signal traffic violations. The ordinance must specifically

authorize the use of traffic infraction detectors and such detectors must meet FDOT developed specifications.

- Requires county or municipal ordinance to authorize traffic infraction enforcement officers or code enforcement officers to issue citations for red-light traffic signal violations. Citations must be issued to the vehicle owner within 30 days after the violation occurred and an owner has 30 days to respond to the citation. The bill specifies conditions an owner may establish to avoid liability.
- Requires the ordinance establish a \$150 fine for violation of a steady red light. Red light violations are treated as parking violations and no points are imposed upon an operator's driving record. The bill prohibits imposing of additional surcharges or fees on top of the fine. If a person elects to challenge the violation in court and is found to have committed the alleged violation, the court may impose the \$150 fine plus costs.
- Requires county or municipality post FDOT-specified signs at locations where a traffic infraction detector may be in use and the traffic infraction detector must be located on FDOT, county and municipal right-of-ways. In addition, a 30-day public awareness campaign must be conducted prior to commencing the red-light enforcement program.
- Requires that fine proceeds collected by a county or municipality be remitted as follows: 1) 20% to the county court to be distributed as provided pursuant to §318.21, F.S.; 2) 20% to DOR who must deposit the proceeds into the Department of Health Administrative Trust Fund for

distribution to trauma centers, specified public hospitals and specified nursing homes; and 3) 60% is retained by the county or municipality.

- Provides for annual reporting to FDOT, including complaints filed with the governing body of the county or municipality alleging that a county or municipality is not employing traffic infraction detectors as required by law. The county or municipality must report the complaint, its investigation, and any corrective action taken to FDOT.

The bill next moves to the Senate Criminal Justice Committee for consideration.

HOMELESS

HB597 BY Rep. Reed authorizes the collection of voluntary contributions in the amount of \$1 to be added to the issuance and renewal of motor vehicle registrations and drivers licenses to aid the homeless. The bill replaces the existing Emergency Financial Assistance for Housing program with a homeless prevention grant program to be administered by local homeless continuums of care to provide emergency financial assistance for families facing the loss of their current home due to financial or other crises. It also encourages local coalitions for the homeless to adopt the Housing First approach to ending homelessness and encourages the Department of Children and Family Services and the community-based care lead agencies to develop and implement procedures to reduce the number of young adults who become homeless after leaving the child welfare system. While staff has some concerns about this legislation, primarily with definitions and measurements, the concept of additional funding is sound. HB 597 passed the House Health Care Services Policy Committee last week but was not heard this week.

AFFORDABLE HOUSING

HB 161 by Rep. Aubuchon revises provisions relating to affordable housing and assessment of property receiving low-income housing tax credit. The bill defines the term "community land trust," and provides for assessment of structural improvements, condominium parcels, & cooperative parcels on land owned by community land trust and used to provide affordable housing. HB 161 passed the House Military & Local Affairs Policy Committee this week, has four additional committee references, and is scheduled to be discussed during the Office of the EDR's Revenue Estimating Impact Conference to estimate the bill's cost to the state.

ENERGY & ENVIRONMENT

Streamlined Permitting: HB 1123 on Environmental Permitting passed in the Agricultural and Natural Resources Policy Committee this week by a unanimous vote. The bill attempts to streamline state and federal wetland permitting programs by allowing for the delegation of certain functions from the Army Corps of Engineers (COE) to the Department of Environmental Protection (DEP). Specifically, the bill permits the DEP to obtain permission from the COE to develop and implement an expanded state general permitting program for dredge and fill activities that affect up to five acres of land and a regional permitting program for activities that will cause minimal adverse environmental effects. In exchange for authorization by the COE, the DEP will add slash pine and gallberry to its list of indicator species used to delineate wetlands, bringing the state list into closer conformance with the federal list. The bill also directs the DEP and water management districts to review and compare the state and federal mitigation rules and recommend revisions that eliminate inconsistent, redundant, and duplicative provisions. Additionally, the bill directs the DEP and water

management districts to recommend ways of increasing the geographic size of drainage basins and regional watersheds in order to bring the state mitigation rules, which reflect a basin-specific approach to mitigation, into closer conformity with the federal rules, which reflect a watershed approach to mitigation.

A committee member who spoke on the bill opined the bill would make the permitting process more efficient by reducing the total number of sources from which a permit applicant has to obtain approval. Public comments on the bill were generally in favor of the basic premise of streamlining the permitting process. However, certain comments revealed concerns that the proposed changes vest too little authority at the local level, and for counties with delegated authority, the bill could prove problematic. HB 1123 will next be considered by the General Government Policy Council.

ANR-09-02 was published late Friday as a proposed committee bill, and has some of the same problematic provisions.

PCB 09-03: Water Management Districts propose to modify the process of appointing members to a Water Management District (WMD) governing board. Currently, the Governor selects and appoints members to WMD governing boards. PCB 09-03 would create a new council, the Florida Water Management District Governing Board Nominating Council, charged with establishing policies and procedures governing the appointment of governing board members. Specifically, the proposed bill would require the council to nominate a minimum number of qualified candidates from which the Governor would appoint members to the WMD.

HB 1133 by Rep. Poppell passed in the Agricultural and Natural Resources Policy Committee this week by a unanimous vote. Section 1 of the bill prohibits

counties from enforcing regulations on farm operation related activities that take place on agricultural land and that currently meet state, regional, or federal regulations. Furthermore, the section prohibits local governments from imposing assessments or fees for stormwater management on land classified as agricultural if the operation already possesses a relevant state or national permit. Essentially, these proposed changes attempt to prohibit local governments from imposing more stringent or duplicative rules or fees on farm operations already possessing valid permits. HB 1133 does preserve the authority of counties to enforce their wetland protection ordinances, regulations, and rules adopted prior to January 1, 2009. HB 1133 will next be considered by the Military and Local Affairs Committee.

CAMPAIGN FINANCING AND LOCAL GOVERNMENT EXPENDITURES

SB 216 by Sen. Justice and co-sponsored by Sen. Fasano and Sen. Gaetz would prohibit a local government or a person acting on its behalf from spending or accepting public funds for a political advertisement or electioneering communication concerning an issue, referendum, or amendment that is subject to the vote of the electors. The Florida League of Cities spoke against this bill testifying that local governments can currently only use funds for a "valid public purpose," so local governments are not wasting taxpayer money and that local governments know what is best for their local community; therefore they should be able to promote issues which are in the best interest of their local communities. The League of Women Voters of Florida spoke in favor of this bill stating that governments, no matter how local, should not be able to use tax dollars collected from everyone within their jurisdiction to support issues which everyone within their jurisdiction might not support, and that local governments would still be able to

promote issues, but not use tax dollars to do so. This bill was approved unanimously.

SOVEREIGN IMMUNITY

HB 995 by Rep. Wood was heard in the House Civil Justice & Courts Policy Committee this week and approved; the bill allows local governments to pay tort claims from other public resources in addition to any existing insurance coverage. Presented under the guise of extending more home rule authority to local governments, the bill amends section 768.28(5), F.S., to authorize a subdivision of the state to settle and pay tort claims from insurance proceeds or other available funds without requiring a further act of the Legislature (i.e., a claims bill).

The effect of the bill is to allow local governments to pay claims above the current \$100,000/\$200,000 statutory limit regardless of insurance coverage, insurance policy limits, or the lack of a commercial insurance policy. Under the bill, if a subdivision does not agree to pay that portion of a judgment exceeding the statutory caps, in whole or in part, that portion of the excess judgment may be reported to the Legislature, but may be paid only by further act of the Legislature. The intent of the bill, of course, is to avoid the claim bill process before the Legislature and thrust the lobbying for settlement of these claims to local government governing bodies.

Unlike the uniform system that exists under current law to pay judgments in excess of the statutory caps, the bill proposes no standards to assist in determining when an excess judgment claim should be paid or not paid. The bill is a circumvention of the purpose for sovereign immunity and has the potential, if passed, to create uncertainty in the insurance market for local government risks which may result in increased insurance premiums. Moreover, the bill

propagates a dual-system for addressing governmental tort claims – one for the state and its agencies and another for political subdivisions such as counties and school boards which have been recognized by the courts as forming part of the "state" since counties and school boards perform functions on behalf of the state.

The bill passed the Committee by a vote of 8-1. It next travels to the Military and Local Affairs Policy Committee for consideration.

SEMINOLE COMPACT

The House Select Committee on Seminole Indian Compact Review has met twice to consider the Compact and a proposed committee bill is expected to be offered and reviewed in a workshop setting next week.