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Pretrial Release HB 445/SB 782

On March 26th, both House and Senate versions of this legislation were considered. SB 782, by Sen. Thrasher was up first in the Senate Criminal Justice committee. Numerous proponents of the legislation, all from the bail industry, and numerous opponents, primarily counties, law enforcement, justice system personnel and pretrial program staff, all submitted appearance cards. The Chairwoman, Sen. Dockery, offered nearly thirty minutes for testimony, during which Broward County placed information provided by the Broward Sheriff's Office into the record with respect to a strike-all and late-filed amendment. The amendments were intended to offer some concessions to opponents in the area of eligibility. Defendants would be ineligible for pretrial only if *willfully* failing to appear and a subsection was added offering judicial discretion to place otherwise ineligible persons into drug or mental health court or other diversionary program, as long as the person met the criteria set for those programs. While somewhat improved, the bill continued to limit pretrial eligibility to those certified as indigent. The operational impact of such a requirement remains exorbitant, with BSO estimating that 1500 current daily pretrial supervision clients would become ineligible. Because indigency is not determined until 4-6 weeks after the first appearance, persons would be required to remain in jail awaiting a determination of indigency (and, thus, eligibility for pretrial). Since 75% of our daily pretrial population (2100) would remain in jail an extra 4-6 weeks, the bill will dramatically increase our average length of stay (ALOS), which is currently 28 days. The fact that Broward is under a federal consent decree with respect to jail population adds cause for considerable concern, since the bill is expected to cause an immediate and significant increase in our jail population should it pass. When it was clear the bill did not have the votes needed, the sponsor requested that it be temporarily passed (TPd), which means no votes were taken.

In the House Civil and Criminal Justice Appropriations Committee, two late-filed amendments were offered dramatically improving the bill: 1A, which stated that only a person who willfully failed-to-appear within the previous year would be considered ineligible, and; 2A, which completely removed the requirement of indigency. While substantially less problematic, BSO still assessed an impact on their pretrial population of 25% or an additional 700 p/day increase to our jail population. Rep. Dorworth, in line to become Speaker, worked for nearly two hours to come to agreements which would secure the necessary votes to see the bill pass. Had the bill not passed committee, especially in light of the fate of the Senate bill only an hour earlier, the chances of the legislation would have been nil. As such, the sponsor accepted the amendments from Rep. Soto (who had indicated he would vote against the bill without them). After significant debate by members of the committee and only a few members of the public being allowed to testify, a committee member "called the question"—meaning that no additional testimony could be taken and that the sponsor had three minutes to "close" on the bill. After doing so, two committee members opposing the bill spoke eloquently.

The vote was taken 6-5, with Rep. Soto's decision to vote "yes" being the deciding factor.

Arrestee Medical Expenses SB 218

Upon reconsideration, after being temporarily postponed last week in the Senate Health Regulation Committee, SB 218 successfully passed on a unanimous vote 4-0. Its house companion, also temporarily postponed in a previous week's committee, was not reconsidered. It is highly unlikely that the bill will have any additional movement on the House side.

SB 1752 Sections 23 and 24

After significant pressure from the Department of Environmental Protection (DEP), water management districts, counties with delegated authority - like Broward, and finally from the business industry, Sen. Gaetz relented, accepting floor amendments to strip expedited permitting language from the jobs bill. Section 23, amending sec. 373.4141, FS, would have required approval or denial of a permit for activities involving the management or storage of surface waters, within 30 days of receipt. If no action occurred by the governmental entity within 30 days the permit would be approved by default unless part of a federally-delegated program. The unintended consequence of the section, brought to light most effectively by the business sector it was intended to benefit, was that permits would simply be routinely denied to avoid issues of non-compliance with federal laws and potential exposure to liability. The removal of this section maintains the current 90-day provision in state law, but Sen. Gaetz clearly expressed his desire to continue working to shorten the timeframe.

Sen. Storms sponsored "friendly" amendments to substantially limit the application of section 24 to only those counties with the financial and technical resources, and administrative capabilities to accept the environmental resource permitting (ERP) delegation. DEP will be required to grant the delegation if the entity meets all of the criteria set forth previously; no arbitrary withholding of delegation is permitted under the bill. Section 24 allows only one agency, DEP, to delegate the ERP, so that one-stop permitting exists. No other state agency, specifically water management districts, may delegate the authority. If a local government chooses not to seek delegation, no preemption will occur.

Petroleum Site Contamination Cleanup

HB 1385 by Rep. Poppell was amended and successfully passed out unanimously on March 26th from the Natural Resources Appropriations committee. Elements of the bill considered problematic by Broward County included the efforts to prohibit local governments from denying development orders and permits on the grounds that a property is contaminated and the establishment of a low-score site initiative. The bill's sponsor worked with the Florida Association of Counties and the League of Cities to address concerns about the development order language, but was less receptive to other suggestions presented by Broward County to address our concerns that the bill is not protective enough of human health and the environment. Broward County continues to work to extend groundwater monitoring from 6 months (currently in the bill) to one year and implement environmental health protections suggested by Department staff.

Florida Jobs Bill

SB 1752, sponsored by Sen. Gaetz, unanimously passed the Florida Senate on Thursday, March 24th. The \$187 million bill, known as the "Florida Jobs Bill," contains specifics for multiple economic development programs, including the entertainment tax credit, renewal of the qualified target industry (QTI) incentive, and research commercialization matching grants.

Summary of the tax credits and incentives:

- Provides tax credits for small and large businesses that hire unemployed Floridians, for capital-intensive industries in return for adding new, high-paying jobs, and job creation to improve competitiveness of Florida ports;

- Removes tax disincentives that drive boat and aircraft purchases and maintenance out of the state;
- Doubles the state's film incentive to include digital media companies producing long-term jobs in Florida;
- Provides \$30 million for Florida's space industry for new and expanded space-related businesses and re-training workers now engaged in the Shuttle program;
- Re-authorizes the Qualified Target Industry Incentive to link tax refunds with the number of jobs created, wages paid and location of businesses;
- Establishes the State University Research Commercialization Grant Program, a source of seed capital to take to market products developed by publically sponsored research;
- Requires greater transparency and "return on investment" results in the use of economic development funds;
- Improves the ability of local governments to receive delegated authority from the state to avoid duplicative and triplicative regulatory reviews of the same project; and
- Extends the Florida Homebuyer Opportunity Program.

The bill now heads to the Florida House, which has not come up with one comprehensive bill, but instead has several separate bills that contain similar incentives. Florida's unemployment rate is now 12.2 percent, the highest level since records first began being kept 40 years ago.

Entertainment Industry Tax Incentive

The House Finance and Tax Council unanimously passed HB 697 (SB 1430), sponsored by Rep. Precourt, in an attempt to lure lucrative film and entertainment contracts to Florida. The bill, if passed into law, would allow the state to issue up to \$75 million in corporate income and sales tax credits to qualified entertainment enterprises. The credits could be used to offset costs of production and materials and distributes available funds among a handful of general areas including commercial and music videos and independent productions and converts current cash incentives to transferable tax credits that won't be redeemable until 2011.

Proposed tax credit allocations over three years:

- \$55 million for FY2010-2011
- \$50 million for FY2011-2012
- \$27 million for each of FY 2012-2013, 2013-2014 and 2014-2015

Bottled Drinking Water Tax

SB 152 (HB 1167), sponsored by Sen. Lynn, passed the Senate Commerce Committee by a 6-1 vote. This bill removes the current Florida sales tax exemption on purchases of bottled water, establishes a surcharge on bottled water sold at retail and requires that monies collected from the surcharge be deposited into the Ecosystem Management and Restoration Trust Fund. If passed into law, the tax would become effective on July 1, 2010.

Gasoline and Oil Inspection Fees

SB 1774, sponsored by Sen. Altman, was unanimously passed by the Senate Commerce Committee. The bill amends s. 525.09, F.S., and if passed into law, would extend the one-eighth cent per gallon petroleum inspection fee currently assessed on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil sold in Florida, to alternative fuels containing alcohol (ethanol) and sold in Florida. The extension of this inspection fee, to recapture revenue from the state's 10% ethanol requirement, would fund the Department of Agriculture and Consumer Services' inspection, testing, and analyzing of alternative fuels, required under current law. Additionally, it requires that payment of the inspection fee be accompanied by a detailed report, made under oath, which shows the number of gallons of alternative fuel sold and delivered in each county in Florida.

Chinese Drywall

HB 965 (SB 2160), sponsored by Rep. McKeel, unanimously passed the House Finance and Tax Committee on Thursday.

The legislation:

- ✓ Requires property appraisers to adjust assessed value of specified properties affected by tainted imported drywall;
- ✓ Specifies remediation or repair as not being change or improvement to property for specified purposes;
- ✓ Prohibits consideration of homestead property as abandoned under specified circumstances;
- ✓ Provides for assessment of specified property after completion of remediation or repair;
- ✓ Provides application to 2010 and subsequent assessment rolls; and
- ✓ Provides for future repeal unless reviewed and reenacted.

HB 965 becomes effective upon becoming law and shall apply to the 2010 and subsequent assessment rolls. The Senate companion bill has been heard in Community Affairs and is currently in the Senate Finance and Tax Committee.

Pain Management Clinics

SB 2272 by Sen. Fasano and cosponsored by Senators Aronberg, Gaetz, and Gelber was heard in its first committee stop, Health Regulation, on Friday. A strike-all version by Sen. Bennett was considered and passed by a 6-0 vote. The bill increases regulations regarding pain management and pain management clinics by requiring that only a medical physician, osteopathic physician, or pharmacist may dispense medication on the premises of a pain clinic. The physician or pharmacist must complete a 3-hour course related to prescribing, administering, or dispensing controlled substances at the initial licensure and for licensing renewal. In addition to increasing disciplinary actions against a licensee, the bill requires a new application process, submitted under oath, and includes information about a clinic's ownership, identification of the clinic manager and other ranking employees, along with other information such as photographs, fingerprints, and background checks by the Florida Department of Law Enforcement. The bill also requires a licensee who is authorized to prescribe controlled substances and practices at a pain-management clinic to be responsible for maintaining the control and security of his or her prescription blanks and any other methods used for prescribing controlled substance pain medication. The licensee is required to notify the Department in writing, within 24 hours, following any theft or loss of a prescription blank or breach of any other method for prescribing pain medication and is also required to comply with the requirements for counterfeit-resistant prescription blanks in the Florida Controlled Substances Act. The licensee is required to notify the applicable licensing board of the date of termination of employment within 10 days after terminating his or her employment with a pain management clinic. The companion bill, HB 1499, by Rep. Llorente, has three policy committee references and an appropriations committee reference but has not yet been heard.

HB 225 by Rep. Legg and cosponsored by the Health Care Regulation Policy Committee was heard in early March. This bill would prohibit doctors from dispensing more than a 72 hour supply of a controlled substance and requires prescriptions for controlled substances to be filled at pharmacies rather than in a doctor's office or clinic, if the medication is required for over a 72 hour period. Another provision of the bill requires pharmacies to participate in, and transmit, dispensing information for controlled substances through a multi-state electronic prescribing network effective 2012 for new pharmacies and 2013 for existing pharmacies. Additionally, the bill amends current law to clarify that pain management clinic registration only applies to clinics that primarily treat pain by dispensing or prescribing controlled substances. The bill passed with one dissenting vote. Originally the bill was referred to two policy committees but the second policy committee reference was removed and an appropriations committee reference was added.

HB 7103 - Right-to-Farm Legislation

In 2003, the Legislature enacted laws prohibiting counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural, if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state; however, that legislation did not explicitly prohibit the enforcement of existing measures. Presently, some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

HB 7103 prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. In addition, the mandate provision (requiring a 2/3rds vote of the Legislature because of an unfunded mandate) appears to apply because the bill reduces the authority that counties have to raise revenues by prohibiting a county from imposing an assessment or fee for stormwater management on certain lands while exempting non-residential farm buildings and fences from fees. The Revenue Estimating Conference determined that HB 7103, if passed, will have a negative indeterminate fiscal impact on local government revenues.

HB 1445 - Fertilizer Legislation

The legislation, by Rep. Nelson, provides the Florida Department of Environmental Protection (DEP) with rulemaking authority to revise the state's model fertilizer ordinance. Of particular concern to counties without existing ordinances is language requiring local governments to have a comprehensive program to address non-point pollution before adopting ordinances. The US Environmental Protection Agency (EPA) has proposed specific nutrient load limits, but the state has successfully stalled their implementation through a series of townhall meetings and input from businesses and other counties that feel the proposed standards are too restrictive. Broward County staff believe the bill generally supports the work of the Broward Everglades Working Group, as well as the current draft rewrite of Broward's landscape code which incorporates some of the model ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. HB 1445 does, however, specify the composition workgroup to review any proposed ordinance, and if local government wishes to adopt more stringent standards, two (2) of said workgroup could hinder the process.

Beach Funding

It has been all about appropriations this week. Next week is the mid-way point in the 2010 Session, and the only order of business in the House and Senate will be passage on the floor of their respective plus or minus \$70 billion appropriations bills. The Senate includes \$15 million for statewide beach projects. In the House we have \$5.2 million for projects (which was a reversion and reappropriation of all the existing beach dollars identified by DEP).

FRS Retirement Bills

Both the House and Senate will be considering FRS related bills as part of their appropriations bills on March 31st. Each year the Legislature sets the participating employer contribution rates to fund FRS. The FRS is a multiple employer, non-contributory (employee) retirement plan that provides retirement income to more than 668,000 active members and 290,000 retired members and beneficiaries. There are more than 960 state and local government employers. FRS offers a Defined Benefit Plan as well as an Optional Retirement Plan and the contribution rates are based on a blend of the two plans.

The Defined Benefit Plan provides retirement income determined by a percent of final pay with participants accruing retirement credits based on their membership class. The years of credible service is multiplied by the average final salary, and multiplied by the rate for the membership class plus up to 500 hours of annual leave. All membership classes can enroll in a Deferred Retirement Option Program (DROP) which provides for a five to eight year defined retirement date and for the Defined Benefit Plan which includes a fixed, annual cost of living adjustment of three percent.

In 2000 the Legislature enacted a Public Employees Optional Retirement Program (defined contribution plan) which allows those members who select this plan to manage their own investments.

Each year an actuarial study must be conducted and reported to the Legislature. The Actuarial Valuation of July 2009, submitted to the Legislature in December of 2009 and which is used to base the new employer contribution rates, reported that the FRS Pension Plan had dropped from a funded ratio of 106.7 percent to 88.5 percent. The FRS market value in 2008 was \$126.9 billion but only \$99.0 billion in 2009. Unfortunately, the Actuarial Valuation took place at a severely depressed economic downturn period. The state actuary conducted a 5-year Experience Study in 2009 which indicated a \$15.4 billion unfunded liability.

Currently both chambers are proposing employer contribution rates for the upcoming fiscal year, but have differing approaches to make up for the unfunded liability created by the declining economy. The bills which will be debated on the floor during Session next week are as follows:

SB 2022: This bill establishes the rates for the employer contributions for the upcoming fiscal year which begins July 1, 2010 and changes FRS from a noncontributory (employee) system to a contributory system. The bill requires active members enrolled in FRS, the Senior Management Service Optional Annuity Program, the State University Optional Retirement Program and the Community College Optional Retirement Program to contribute a quarter of one percent (.25%) of their gross salary towards their retirement effective January 1, 2011.

HB 5701: This bill eliminates the Retiree Health Insurance Subsidy (HIS) which is provided to retirees at a rate of \$5 per month for each year of service with a minimum of \$30 per month to a maximum of \$150 per month. For fiscal year 2007-2008, the Florida Division of Retirement reported that 244,390 individuals received health insurance subsidies. Employers would no longer contribute to the HIS effective July 1, 2010, and the State Board of Administration estimates that funds are available to disperse subsidies through December 31, 2010. Savings to counties, cities, and other participants are estimated at \$111.4 million with greater savings to the state (\$196.7 million to general revenue and 26.7 million in trust funds).

HB 5703: This bill temporarily suspends, for up to three years, the requirements for public retirement plans to pay the full contribution rate if the public retirement plan was funded at 90 percent or more for the valuation performed in the plan year ending in 2008. Approximately 30 percent of local governments and FRS meet the requirement. The estimated savings to counties is \$304.5 million.

HB 5607: This bill establishes the employer payroll contribution rates for each membership class of the defined benefit plan and optional retirement plans within the FRS for FY 2011 and FY 2012. Other controversial retirement bills, have either not been heard in the House (HB 1319) or have been temporarily postponed in the Senate (SB 1902). As policy committee meetings have now ended in the House, it is unlikely HB 1319 will be heard. However, there appears to be a sense of urgency to deal with municipal pension plans and policy council bills may still emerge.

Workplace Policies Workshop

The Senate Judiciary Committee held a workshop on workplace policies March 26th. Requested by Sen. Dan Gelber, the workshop brought together a small panel of participants to discuss the addition of sexual orientation and gender identity protections to the state's anti-discrimination laws. Panel members informed committee members about how adding those protections into law would not only protect workers, but also enhance the competitiveness of Florida's businesses. County staff made a brief presentation to the Committee in support of adding these important civil rights protections to state law.

Sovereign Immunity

Legislation to increase the state's sovereign immunity caps for the first time in 29 years moved a step closer to reality as the Florida Senate this past week considered and passed CS/SB 2060 by a vote of 38-0. SB 2060 amends §768.28(5), Florida Statutes, to increase the current caps to \$200,000 per claim/\$300,000 per incident or occurrence. In the House, HB 1107 awaits a hearing before the Criminal and Civil Justice Policy Council. The house bill takes a more significant departure from current law and SB 2060 by bifurcating the governmental liability system between the state and its political subdivisions, increasing the caps on local governments to \$200,000/\$400,000 on October 1, 2010, and further increasing those caps to \$250,000/\$1,000,000 effective October 1, 2011. The move to increase the sovereign immunity caps is linked with other tort reform measures which also passed the Florida Senate last week including, SB 1224 – slip and fall legislation (32-5), SB 2440 – parental waivers (38-0), and SB 712 – contingency fee agreements (27-15).

Seaport Legislation

Bills to help Florida's public seaports meet their infrastructure needs and respond to increased global competition passed committees last week. CS/HB 963 and CS/CS/SB 2000 contain regulatory changes for permitting seaport projects that will allow ports to better compete against the economic development and job creation programs created in other states such as Georgia. Some of the changes include:

- Creating a port conceptual permit system which would allow for the issuance of an umbrella permit that ties together a series of individual environmental permits and authorizations normally needed for port operations.
- Clarifying the applicability of state stormwater rules to structures related to port activities provided certain conditions are met.
- Revising the work program amendment process for seaport projects funded under the Department of Transportation's 5-year work program.
- As clarification, deleting references to memoranda of agreement between the Department of Environmental Protection and the Florida Ports Council for a supplemental permitting process for seaports. Instead, the department is empowered to directly provide a supplemental permitting process.
- Adding wetlands communities as an issue needing consideration when establishing mixing zones related to dredging and return water discharges.

The bills were considered in the House Economic Development Policy Committee and the Senate Environmental Preservation and Conservation Committee, respectively, passing unanimously in each committee.

CS/CS/HB 1169 creates a new section of law entitled the "Florida Ports Investment Act." The bill creates an incentive for insurance companies to make investments in the Florida Port Investment Corporation (created by the bill) in exchange for future insurance premium tax credits. The Corporation will make subsequent investments in seaport projects upon application by ports. Funding for port projects must be on a matching basis with at least 25% of a project's funding coming from port funds, local funds, private funds or federal funds.

An insurance company which makes an investment will earn a vested credit against premium tax liability equal to one-hundred percent of the face amount of the credits purchased by the participating investor. The insurance company is entitled to use no more than 10 percent of the credit, including any carry forward credits, per year beginning with premium tax filings for calendar year 2012. The total amount of tax credits which may be allocated may not exceed \$100 million. Participating insurance companies may use no more than \$10 million annually.

CS/CS/HB 1169 passed the House Finance & Tax Committee unanimously and absent reference to any other committees, the bill will move to the Calendar for consideration on the House Floor. Its companion measure, SB 1992, has yet to be heard in its first Senate committee.

Online Travel Companies

The House Finance and Tax Committee on Thursday considered CS/HB 1241 (OTC industry bill) and passed the bill 14-0. The bill amends local tourist development tax laws and the state's transient sales tax law to require that accommodation owners or operators collect and remit TDT and sales taxes on the rental of transient accommodations. The bill requires that owners or operators of transient accommodations separately state taxes and fees collected from consumers. The bill exempts unrelated entities, i.e., online travel companies, from having to collect and remit such taxes or from having to separately state any taxes and fees. Prior to passing the bill, the committee did approve an amendment by Rep. Fitzgerald which preserved existing lawsuits pending on the date the bill becomes law.

The Senate companion measure, SB 2436, however, was temporarily postponed by its sponsor after a strike-all amendment to the bill failed on a 4-4 vote. The bill will likely be heard again during the 6th week of the Session.

Recycling - House Legislation

HB 1559 was temporarily postponed in the House Agriculture and Natural Resources Policy Committee after members raised questions about the bill's costs and provisions contained in a proposed strike-all amendment. The strike-all would give counties recycling credit for waste-to-energy production only if the county had implemented a program that recycled at least 50% of its municipal solid waste by means other than gasification or combustion. In addition, the strike-all contained conflicting goals for recycling construction and demolition debris. It is not known at this time whether the bill will again be heard as the Committee's Chair announced last Thursday's meeting would be the last for the Session.

Other Bills of Interest:

Relating to Autism: SB 214 by Sen. Ring was heard in Banking and Insurance last week and passed. The bill requires a physician to refer a child whose parent or guardian suspects the minor has an autism spectrum disorder (ASD) to an appropriate specialist for screening, evaluation, or diagnosis and requires health insurers and HMOs to provide direct access to an appropriate specialist for the diagnosis of ASD at least three visits per policy year.

Children's Services Councils: HB 1227 by Rep. Mayfield, was heard in Military and Local Affairs Policy Committee but was temporarily postponed when the Committee ran out of time after extending their time limit twice.

City of Lauderhill Local Bill: HB 1295 extending the corporate limits of the City of Lauderhill was heard in Military and Local Affairs Policy Committee and passed.

Relating to Mobile Home Park Tenancies: SB 1016 by Sen. Jones, passed its third committee of reference last week. The bill requires the Florida Housing Finance Corporation to use its expertise to provide technical assistance to mobile home owners working through their homeowners' association to purchase their mobile home park; provides mobile home park homeowners' associations a right of first refusal to purchase a mobile home park in situations in which a mobile home park is subject to a change in land use; and declares in legislative findings that mobile home parks are an essential element of providing affordable housing in the state.

State Revenues/Voter Approval New Taxes and Fees (TABOR): SB 2420 by Sen. Haridopolos, was heard in the Senate Community Affairs Committee, its first of five stops, and passed. The bill was amended to remove local governments and only apply to state revenue and expenses.